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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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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
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 21 June 2023

3 pm

Prayers—read by the Lord Bishop of St Edmundsbury and Ipswich.

Farming: Support
Question

3.07 pm

Asked by ***The Lord Bishop of Southwell and Nottingham***

To ask His Majesty's Government what assessment they have made of whether the Department of Environment Food and Rural Affairs has published sufficient detail in relation to post-EU funding to enable those working in farming to plan for the future; and what assessment they have made of any adverse consequences for the mental health and wellbeing of such people.

Lord Harlech (Con): My Lords, I declare my farming and land management interests as set out in the register. I start by paying tribute to the right reverend Prelate for the incredible work that he has done in support of his community in respect of the horrific events occurring in Nottingham on 13 June.

The Government are supporting mental health for farmers through the farming resilience fund, and we are working with charities such as Yellow Wellies to ensure that farmers have the support that they need. We are increasing access to NHS talking therapies across all parts of England, including rural areas. We have published information this year on what is on offer to farmers to support the environment alongside food production, through new grants and ongoing payments.

The Lord Bishop of Southwell and Nottingham: I thank the Minister for his kind words and thank the whole House for its concern following the tragic events in Nottingham last week.

I thank the Minister for his Answer. I know he will agree with me that farmers need to be valued for the extraordinary work that they do in supplying the nation's food. Among farmers in Nottinghamshire, as elsewhere, it is clear that they are under increasing strain due to the volatility in fuel prices and other high input costs. They also face considerable stress caused by the continued uncertainty, with three out of the 15 sustainable farming incentives still not yet fully up and running. How is Defra going to respond to the EFRA Committee findings, confirmed by the NFU members' survey, of serious gaps that exist in the rural mental health provision, which are clearly a factor in such uncertainty?

Lord Harlech (Con): The right reverend Prelate raises a number of very important points, and Defra is looking closely at all of these. I specifically take his point on the EFRA *Rural Mental Health* report. The Government will respond in due course to acknowledge the report. We are already taking steps in the right direction to support and improve mental health in rural communities. We are investing £2.3 billion extra a year into the expansion and transformation of mental health services in England, and we are also supporting mental health and well-being as an outcome of our future farming resilience fund.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend the Minister pay tribute to the plight of small family farms, which face particular anguish over rising input costs, to which the right reverend Prelate referred, but also the inability to pass those costs on to consumers? My noble friend was kind enough to refer to charities. Will he work closely with the FCN, the RABI, the Addington Fund and others to ensure that the right support is getting to those farmers at the right time?

Lord Harlech (Con): I completely agree with my noble friend and pay tribute to the outstanding work being done by charities, such as the Farming Community Network, the YANA project, the DPJ Foundation and the Royal Agricultural Benevolent Institution, for the help and support that they are giving and for raising awareness about farmers' health and welfare. Farming can seem like a lonely job at times, but to anyone who is struggling I say that you are not alone. Talking is often the first step, but also the hardest. I urge anyone struggling to cope with the pressures they are facing to reach out to one of these organisations.

Lord Wigley (PC): My Lords, I draw attention to my registered interest. Does the Minister accept that the greatest contributor to mental stress is uncertainty? For farmers, there will always be uncontrollable uncertainty from the weather and climate fluctuations. Will he therefore accept that there is a duty on government to minimise the uncertainties that are within their control, such as the legislative framework, the support mechanisms, trade agreements, bovine TB control and policing of rural areas? Will he undertake to seek a period of stability and transparency in these controllable dimensions to minimise the stress on the farming community?

Lord Harlech (Con): My Lords, in January we published a full prospectus of what our new farming schemes will pay for and, since then, there has been further detail on support for tenants, uplands and our expanded SFI scheme, which is opening this summer. Obviously, there are a great number of uncontrollable circumstances affecting rising prices for farmers. The noble Lord is correct that we must give clarity and certainty on everything within Defra's control.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, farmers are struggling to cope with spikes in energy prices, spiralling input costs, rural crime and changes to agriculture support policy. Over 60% are suffering mental health issues. Throughout this, they continue to produce the food that the country depends on. It is time for the Government to review the current emergency funding mechanisms and establish a dedicated rural mental health funding stream to support farmers through the transition to ELMS. Is the Minister prepared to do that?

Lord Harlech (Con): We have taken significant action to support the sector at this time, including bringing forward 50% of BPS payments. Our new farming schemes will support farmers to produce food profitably and sustainably, and will include £600 million in grants for equipment to help farmers to become more productive. Farm businesses are also able to access the energy bills discount scheme, which will offer further support with energy bills until March next year.

Lord Swire (Con): My Lords, an additional pressure on farming and the farming community is the age of farmers. One traditional pathway for getting younger farmers into farming was through our county farms, but many of those have been sold off by councils around the country. What can the Minister say to encourage younger people to get on the first rung of the ladder into farming in order to bring down the average age of farmers?

Lord Harlech (Con): My noble friend makes an excellent point. We want to encourage new entrants to develop successful land-based businesses in England. Through the new entrant support scheme we want to nurture entrepreneurs to develop their business ideas, foster innovation and promote growth. The National Federation of Young Farmers' Clubs contributed to the detailed co-design of the farming investment fund by engaging with Defra at various stages of the process to both inform and challenge thinking of the policy design of the scheme.

Baroness Hayman of Ullock (Lab): My Lords, the right reverend Prelate mentioned the EFRA Select Committee's report *Rural Mental Health*. One recommendation was around Defra working with the Department of Health and Social Care on having high priorities for action on farming and veterinary mental health in particular, to develop a work programme together. Can the Minister say what discussions Defra is having with the Department of Health and Social Care on how to tackle this problem?

Lord Harlech (Con): Discussions are ongoing in response to the issues that the report rightly raised. In our recent document *Unleashing Rural Opportunity*, we set out how we are taking action to increase the number of doctors in underserved areas through the targeted enhanced recruitment scheme for GP trainees and to support community pharmacies in more sparsely served areas through the pharmacy access scheme.

Lord Bellingham (Con): My Lords, is the Minister aware that tenant farmers across the UK—in Scotland, England, Northern Ireland and Wales—are the lifeblood of agriculture? Unfortunately, many of them cannot reap the benefits of diversification on farms and estates because they do not own the buildings. What can the Minister say about the Government's policy towards helping tenant farmers?

Lord Harlech (Con): My noble friend raises a very important issue, which was also highlighted in my noble friend Lady Rock's review about the importance of tenant farmers. I agree that they are the lifeblood of the sector. The Government have set out our next steps to support tenant farmers from day one of the agricultural transition. We have worked with tenant farmers, we have co-designed our farming schemes, and we have announced a new tenant farming forum which will improve the way we communicate with the sector and help us ensure that our schemes are as accessible as possible to tenants. We will be launching a call for evidence to examine the need for a tenant farming commissioner in England.

Baroness Bennett of Manor Castle (GP): My Lords, the Minister referred to SFI, the sustainable farming incentive scheme. A new 2023 scheme has just been announced, which includes 19 new stand-alone actions, and just four actions have been carried over. About 3,300 farmers now enrolled in SFI 2022 will be served notice to end their agreements and invited to join SFI 2023. They will get closure payments for three schemes not carried over. Does the Minister believe there is sufficient advice and support for farmers to navigate this really quite incredible level of complexity?

Lord Harlech (Con): My Lords, change is difficult but that does not mean that it should not be done. We want to support farmers. It is not a zero-sum game of just food security or increasing biodiversity; farmers are in a key position to do this and we want to support them as much as we can. That is why we have added six new standards to the SFI this summer, including on arable and horticultural land, grassland, hedgerows, integrated pest management and nutrient management. In addition, the SFI agreement payment will pay £20 per hectare for the first 50 hectares entered into the scheme in order to help farmers navigate the new scheme entrance process.

Vetting Social Media Accounts

Question

3.18 pm

Asked by ***Lord Wallace of Saltaire***

To ask His Majesty's Government what policies they have in place for vetting the social media accounts of speakers invited to address Civil Service events, and cancelling invitations where past postings are critical of His Majesty's Government; and what assessment they have made of the compatibility of any such policies with their commitment to free speech.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): My Lords, the Government are not in the business of limiting free speech. It is the Conservative Party that has consistently defended free speech against attacks from across the political divide. The only guidance we have produced is for cross-departmental diversity networks, to ensure that they conduct checks on external speakers before inviting them to participate in Civil Service events. The guidance helps to maintain impartiality, given that these events take place in Civil Service workplaces and workspaces. For anything beyond that, it is for departments to set their own approach.

Lord Wallace of Saltaire (LD): My Lords, I find that a little difficult to accept, because we have slowly begun to hear about who has been cancelled. A chemical weapons expert was cancelled from a chemical weapons conference because of some social media tweets he made two or three years before on other aspects of government domestic policy. If we are going to cancel experts from expert conferences—experts on medical research, digital research or whatever—the Government are going to lose a lot, and not just freedom of speech. The Minister in the Cabinet Office said in the Commons that it is concerned only with

"speakers linked to abhorrent organisations".—[*Official Report*, Commons, 11/5/23; col. 421.]

The chemical weapons expert, whom I have met, is an active Liberal Democrat and an Anglican: I do not know whether the Government regard those as abhorrent organisations. Does the Minister accept that it may now be time to have a free-speech champion in Whitehall along the lines the Government insist on having for universities?

Baroness Neville-Rolfe (Con): I like to think that we are free speech champions. Unfortunately, the matter the noble Lord raises is now the subject of ongoing legal correspondence, which means it would be inappropriate for me to comment at this stage.

Baroness Smith of Basildon (Lab): My Lords, I have read the document concerned—*Due Diligence and Impartiality – Supporting and Protecting our Diversity Networks*—the guidance and the forms that have to be filled in. I wonder whether many Members of the party opposite who have spoken in this House would be eligible to be invited to events under that guidance. The Minister said that this applies only to cross-departmental events and not to departmental ones. Does the guidance apply only when civil servants meet civil servants from other departments on courses? Does it not apply for meetings and events within a department? More helpfully, can she tell us how many speakers have been blocked and how many invitations have been withdrawn?

Baroness Neville-Rolfe (Con): The guidance is for cross-government diversity networks. Obviously, there are individual diversity networks in different departments that have existed for some years, and which are helpful and provide support to staff. There may have been a misunderstanding here. This guidance is for such networks; we do not collect individual numbers or monitor what speakers individual diversity networks invite. This guidance was produced in 2021; the Cabinet Office had a review by a senior official in February and it seemed to be working reasonably well.

Lord Cormack (Con): Is my noble friend aware that in at least one department, disturbing stories are emerging of civil servants being told that they are not allowed to agree with JK Rowling and such things as that? Civil servants are there to carry out government policy, whichever side the Government come from. Can we not ensure that there is genuine freedom of thought and speech in every Civil Service department?

Baroness Neville-Rolfe (Con): I very much agree with my noble friend; we need to do exactly that. Civil servants need the ability to listen to different points of view and to serve the Government, whatever their political persuasion, to the best of their ability and in a way that maintains political impartiality. I think that is agreed ground across the House.

Lord Watts (Lab): My Lords, how can the Minister have had a review in her department if it does not keep the data required to do that review?

Baroness Neville-Rolfe (Con): The HR people group within the Cabinet Office produces different guidance on different things. It has a network in which people regularly discuss how things are operating. The guidance I referred to was considered as part of that process in February. It is available in the Library of the House, if noble Lords want to look at it, as the noble Baroness has obviously done. It is a good thing that it is publicly available.

Lord Dobbs (Con): My Lords, the House will know that I am a little slow on certain things, particularly things such as "cross-departmental diversity networks", which is a strange phrase. Let me ask a simple question. Is it not a fact that all freedoms require counterbalancing responsibilities if they are to mean anything, particularly in the Civil Service, which has an overriding responsibility to act impartially as part of a government system headed by an elected Government? Does my noble friend agree that a balance is absolutely necessary in this? As my noble friend Lord Cormack pointed out, is it not timely for the Civil Service to be reminded of that fundamental responsibility?

Baroness Neville-Rolfe (Con): I entirely agree with my noble friend. The balance between free speech and Civil Service impartiality is exactly what we are trying to strike.

Baroness Hayman (CB): My Lords, I am slightly confused. I am no expert on this issue, but am I right in interpreting the noble Baroness as saying that the guidelines in the Library apply only to cross-departmental diversity networks, that diversity network events in a single department are not subject to these guidelines and that a department could decide not to follow them for its internal activities?

Baroness Neville-Rolfe (Con): The guidelines apply to cross-government diversity networks and they should follow the guidelines, although, obviously, there can be local interpretation.

The Lord Speaker (Lord McFall of Alcluith): My Lords, we now have a virtual question from the noble Lord, Lord Strasburger.

Lord Strasburger (LD) [V]: My Lords, the cancel culture to which my noble friend referred in his original Question is just one illustration of the Government's distaste for challenge and dissent. Other examples are the attempts to stop some workers expressing their views by industrial action, and the outrageous sanctioning of peaceful protest. Why are the Government so scared of citizens expressing their critical opinions?

Baroness Neville-Rolfe (Con): We certainly are not. I think the noble Lord does not understand what we are trying to do. In the Higher Education (Freedom of Speech) Act, the Prime Minister recently stressed the importance of freedom of speech, and we have taken action through it in universities because challenge, debate and free speech are a vital part of British life and the British constitution.

Lord Wallace of Saltaire (LD): My Lords, I am confused by all the references to the diversity network. My understanding from at least two of those who have been cancelled in this way was that they were invited, in their capacity as experts, to expert conferences. The chemical weapons expert was invited to speak again to a Ministry of Defence-led conference on chemical weapons at which, on the previous occasion, he had spoken alongside a Chinese Communist official who was also a chemical weapons expert. Importantly, the relevance of their views on domestic politics to their expertise is low and should not be a reason for cancelling them. If we are going to go down that road, the Government will be denying themselves a great deal of expertise which is valuable for policy development. Is that the direction in which we may be going?

Baroness Neville-Rolfe (Con): Of course we need expertise in policy development—I am as keen on that as the noble Lord—but the guidance was developed by the Government People Group for the specific use of the cross-government diversity networks. I cannot comment further for the reasons I outlined at the beginning of the debate, although I believe the Ministry of Defence is looking into the circumstances of one of the cases the noble Lord mentioned, and I will keep him updated when I am able to do so.

Baroness Chakrabarti (Lab): My Lords, I share the bemusement of other noble Lords. Why are diversity networks being singled out for Government censorship, and how on earth does it compromise Civil Service independence for grown-up professional people to be subjected to a range of even controversial views?

Baroness Neville-Rolfe (Con): The guidance was developed because of certain things that were happening, notably to remove the risk of extremist views being engaged in some of these diversity networks; it was a particular issue relating to that. If the noble Baroness reads the guidance, she will see that it is measured and tries to ensure that debate and good engagement by the diversity networks continues, but that they are not used as a sort of campaigning platform for nefarious organisations such as terrorists.

Medical Research Charities

Question

3.29 pm

Asked by ***Baroness Warwick of Undercliffe***

To ask His Majesty's Government what assessment they have made of the effectiveness of their engagement with medical research charities regarding (1) their negotiations for association with Horizon Europe, and (2) the alternative Pioneer programme.

The Parliamentary Under-Secretary of State, Department for Science, Innovation and Technology (Viscount Camrose) (Con): We are moving forward with discussions on the UK's involvement in Horizon Europe; that is our preference. We will continue to engage with representatives across the sector, including medical research charities, as these discussions progress. We have engaged widely with the sector on association and Pioneer, including with medical research charities, and we continue to welcome thoughts on the proposals laid out in the Pioneer prospectus.

Baroness Warwick of Undercliffe (Lab): I thank the Minister for that reply, and I am pleased that he recognises the vital contribution made by charity-funded medical research to the UK's excellent R&D reputation. I am grateful for the briefings we have had from various charities, including the British Heart Foundation, which have all reinforced that. They point out the huge progress that has been made—for example, in cardiovascular research—in the past few years, which has been made possible because of the collaboration and recruitment of scientists, technicians and researchers, both within Europe and around the world. However, it is clear that there is still uncertainty about the degree to which the Government are communicating with or are at least involving those charities in the work they are doing and the negotiations. Surely the Minister accepts that it would be sensible—indeed, essential—for them to have a seat at the table in the negotiations and in looking at the opportunities available from both programmes.

Viscount Camrose (Con): DSIT meets medical research charities on a quarterly basis through the DSIT charities forum. That brings together government representatives with a broad range of member charities from the Association of Medical Research Charities—AMRC—including the British Heart Foundation and Cancer Research UK, as well as smaller charities for topic-specific discussions, which includes the Horizon or Pioneer programmes. In addition, DSIT meets policy officials from AMRC on a monthly basis.

Baroness Walmsley (LD): My Lords, if the UK is readmitted but participation in the programme falls to drastically low levels, provisions would allow the UK to withdraw. Can the Minister say what that level would be? Does he feel that there is any danger that this might happen due to the science sector's lack of confidence in the Government's long-term commitment to Horizon?

Viscount Camrose (Con): I cannot, of course, comment on ongoing negotiations for fear of affecting their outcome against us. I recognise the concern about the amount of time being taken, but the Government are, as the noble Baroness says, pursuing a policy of becoming a science and technology superpower by 2030. In the Government's view, an excellent way to further that objective is to reassociate with the Horizon programme but on terms that are fair and appropriate for our sector stakeholders. Failing that, we will opt for our bold and ambitious alternative, Pioneer.

Lord Bassam of Brighton (Lab): My Lords, it has now been 128 weeks of uncertainty, delay and broken promises since the Government took us out of the world's biggest and most prestigious science fund, Horizon Europe. Will the Minister confirm or deny that part of the continued delay to the UK's re-entry into the programme has been caused by a demand for a fee reduction? Does he agree that our continued exclusion from the scheme is damaging research and development collaborations across the EU that have benefited the UK in the past?

Viscount Camrose (Con): I thank the noble Lord for that question. The first thing to remind the House is that it was not a decision of the UK Government not to be associated with the Horizon programme. Following the trade and co-operation agreement—of which association to Horizon was a part—that association was withdrawn from the United Kingdom. Beyond that, as I say, I cannot comment on the forces at work behind individual negotiation points, but I recognise the frustration and concern that result from the lengthy period of negotiations.

Lord Fox (LD): My Lords, on 19 June, UKRI and DSIT launched a search for ideas that were "bold and ambitious"—a phrase the Minister used just now—and

"transformative ideas for moonshots across the research and innovation landscape".

That would apparently be delivered by the Pioneer programme in the event that we do not sign up to Horizon. Can the Minister confirm how much will be invested in those moonshot programmes? Can he also confirm that in the event that we sign up to Horizon, those projects will still be funded?

Viscount Camrose (Con): The funding for the Pioneer programme would end up being the same as the funding that would be made available were we to join the Horizon programme, as is our preference. As to individual elements within the Pioneer programme, I cannot comment on their size right now because the programme continues to be based on huge input, which we greatly welcome, from all aspects of the sector.

Lord Kakkar (CB): My Lords, I draw the House's attention to my registered interests. Is the Minister able to explain how the funding that had originally been allocated to the Horizon programme and has not been spent on that programme to date has been applied, and can he confirm that the residual funds that have not been applied will be applied to drive the science agenda in our country?

Viscount Camrose (Con): As is normal practice in order to keep budgets taut and realistic, funding that was not spent on the Horizon programme due to our non-association was returned to the Treasury. However, should we—as is the Government's preference—be able to associate with Horizon, those funds would contribute to Horizon.

The Earl of Kinnoull (CB): My Lords, the trade and co-operation agreement has 24 committees, one of which is on the association with Union programmes. Perhaps the Minister could tell us whether that committee is actively involved in discussing Horizon. Secondly, the Horizon programme and our non-association with it is a matter of mutual harm to both sides, because there is a lack of things. A sense of urgency is important here, and I regret that I do not feel that a sense of urgency is coming from His Majesty's Government. I remind everyone that the Windsor Framework surfaced on 27 February, which is jolly nearly four months ago. This is simply a discussion about money and about the premium being paid to join the Horizon programme. It seems to me that a one-issue discussion should take less than four months.

Viscount Camrose (Con): As I say, I recognise the concern and frustration about the length of time. However, I do not recognise the characterisation that it is due purely to one participant in the negotiations foot-dragging. It is inevitably a complex negotiation with a number of moving parts, on which, I am afraid, I am unable to comment for fear of prejudicing the outcome of the negotiations.

Viscount Stansgate (Lab): My Lords, the Minister talks about, for example, Cancer Research UK, which is the biggest independent funder of research—I think that two years ago it was investing just under £450 million. It is on record as saying that joining Horizon Europe offers

"unparalleled opportunities for the UK to foster international collaborations".

Will the Minister take that back to the department in the hope of incentivising the discussions, which we know are taking place and to which he just referred? The Government have to make a decision, and it is not in the best interests of science in the UK for them not to do so.

Viscount Camrose (Con): Yes, indeed, I will be very happy to take that back. As I say, for the Government, the preferred outcome of the negotiations is to associate with Horizon on fair and appropriate terms.

Lord Brooke of Alverthorpe (Lab): In response to the question from my noble friend, the Minister was reasonably confident that we would move forward, but subject to "fair and appropriate terms". Would he care to define to the House a little more clearly what those are?

Viscount Camrose (Con): At the risk of testing the House's patience, I cannot describe what our negotiating goals are for fear of prejudicing the outcome of the negotiations.

Baroness Andrews (Lab): In the light of comments from across the House, what progress does the Minister think we are making towards us becoming a global science superpower, and when does he think we might actually become such a thing? [*Laughter.*]

Viscount Camrose (Con): I regret hearing the laughter at the question. We are a country with 1% of the world's population, over 6% of the world's published academic studies, and over 13% of the most highly cited academic studies in the world. I think I am right in saying that that makes us third globally, second in the OECD and first in Europe.

Domestic Abuse Refuge Spaces
Question

3.40 pm

Asked by ***Baroness Thornton***

To ask His Majesty's Government what assessment they have made of the availability of refuge spaces for domestic abuse survivors.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, under this Government, the number of bed spaces has risen. There were 4,344 refuge spaces across England in May 2022, which are the latest figures we have. We are committed to ensuring that victims have access to the support they need within domestic abuse safe accommodation, including refuges. Councils in England have a new duty to provide support within safe accommodation to victims under the Domestic Abuse Act 2021, and 36,545 victims received support within safe accommodation in the first year of this duty.

Baroness Thornton (Lab): I thank the Minister for that Answer. As she will understand from her support of and commitment to this issue, it takes huge courage and great risk for a woman to flee domestic violence. Unfortunately, when they have no place to go, those courageous women are left to make a horrific decision between returning home and becoming homeless. I therefore ask the Minister whether the Government have any plans to increase support at a local level to provide the housing promised under the Domestic Abuse Act 2021, which she mentioned and which we all supported. The research that prompted this Question says that there are thousands of women who have to choose between those two brutal situations.

Baroness Scott of Bybrook (Con): The noble Baroness brings up a really serious point. It is essential that the number of women who are turned away goes down. We have provided local authorities with funding and support to commission services to meet the needs of these victims. As I said, the number of refuge bed spaces is rising, but those are not the only safe spaces. In fact, only 46% of those supported were in refuges. Some 28% are in sanctuary schemes, in which places where they want to stay in the area they already live in are made safe for them. Some 13% are in safe dispersed accommodation, 5% in specialist accommodation, 1% in second-stage accommodation, and 7% in other safe accommodation. This is about not just refuges but looking after the individual, and giving the individual choice and support through what, as the noble Baroness says, are very difficult times.

Baroness Eaton (Con): My Lords, we are all extremely distressed to hear of the increase in this dreadful crime of domestic abuse. I am pleased to hear from my noble friend of the work that is being done to care for these women, but is any work being done on the prevention and early intervention that might prevent so many people having to seek refuge?

Baroness Scott of Bybrook (Con): My noble friend brings up a really interesting point, and one that we need to do much more work on. Prioritising prevention is one of the four pillars of the tackling domestic abuse plan, and part of the tackling violence against women and girls strategy. The objective has to be to reduce the amount of domestic abuse, domestic homicide, and suicides connected to domestic abuse by stopping people from becoming perpetrators and victims in the first place. In the tackling violence against women and girls strategy, the Government have committed to invest £3 million to understand this issue better: what works to prevent violence against women and girls in the first place?

Baroness Burt of Solihull (LD): My Lords, despite the incredible work that refuges do to keep abused women and children safe from their abusers, they face severe shortfalls in the funding that they need to do the job. Over half of referrals are turned away, mainly because of lack of space and capacity. There is a one-third shortfall in funding at the moment between the £189 million of projected need and the £127 million received from DLUHC. Will the Minister undertake to review funding for refuges? I appreciate that there are a lot of other alternatives. As I understand it, a report is coming out today on community funding and availability of services, but does she agree that every woman and child facing abuse should be able to flee to safety?

Baroness Scott of Bybrook (Con): I certainly agree with the noble Baroness's last point. Since 2021, my department has committed £507 million to local authorities for the delivery of new duties. This year, £127.3 million will cover the estimated cost of unmet need to support victims and their children in safe accommodation. There is an issue with the Women's Aid estimate because it includes the costs of all other services, including funds that already exist, so there is a slight disconnect there. The Government have also put in place—this is quite important—support for charities that look after victims and do a lot of work. I thank them for all the work they do, particularly with specific groups of women who need extra support. The Government are supporting them, particularly through the cost of living crisis; for example, with their energy costs.

Baroness Crawley (Lab): My Lords, can the Minister say what the government can do further in partnership with local authorities to assist those victims of violence who have no recourse to public funds or have insecure immigration status? As she will know, both those things can be used by perpetrators to coerce and control their victims.

Baroness Scott of Bybrook (Con): In April 2021, the Home Office provided £1.4 million of support for a migrant victims scheme to provide the support that the noble Baroness talks about because they have no recourse to public funds. A pilot has been run by Southall Black Sisters and their delivery partners, providing a really good wraparound support service for migrant victims of domestic abuse; this has included offering them sustenance, helping them, counselling them and giving them legal advice. During the pilot,

the scheme supported 425 migrant victims. We have allocated another £1.4 million this year to continue to fund this pilot; we are going to take on board the lessons learned by Southall Black Sisters.

Lord Farmer (Con): My Lords, the Office for National Statistics has found that a third of domestic abuse victims are male, yet there are very few refuge spaces for men and children in London, the Home Counties and the east of England, although there are places elsewhere. I recently visited a men's charity in Kent, where there are none at all. How will the Government encourage local authorities to bridge that gap?

Baroness Scott of Bybrook (Con): My noble friend brings up an interesting issue. Yes, we talk more about women than men but there are men who are victims of domestic abuse. The problem is that the numbers are smaller so it is difficult to get a lot of refuges across the country. Under the safe accommodation support duty, tier 1 local authorities are required to assess the need for, and provide support for, all victims of domestic abuse, including male victims. The male victims' organisation that keeps an eye on this is called ManKind and provides expert input into monitoring these duties as part of the domestic abuse safe accommodation national expert steering group, which is chaired by my colleague, Felicity Buchan. The voice of the man who is domestically abused is there at the centre; we ensure that they get the support they need.

Baroness Walmsley (LD): My Lords, does the Minister agree with me that it is important to work upstream with schools to ensure that young men understand what a healthy sexual relationship is, and that young women know—and, indeed, have the confidence—not to accept the early stages of the wrong sort of relationship?

Baroness Scott of Bybrook (Con): I agree with the noble Baroness. Following on from the answer that I gave my noble friend, this is exactly what we should be looking at when considering how to tackle violence against women and girls. That is where the investment into that research goes, and I am sure that some of the work that the noble Baroness talked about will be happening.

Finance (No. 2) Bill

First Reading

3.51 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

British Nationality (Regularisation of Past Practice) Bill

Committee (and remaining stages)

3.51 pm

The Senior Deputy Speaker (Lord Gardiner of Kimble): My Lords, I understand that no amendments have been set down to the Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. With the agreement of the Committee, I will now report the Bill to the House without amendment.

House resumed. Bill reported without amendment. Standing Order 44 having been dispensed with, Report and Third Reading agreed without debate. Bill passed.

National Security Bill

Commons Amendments and Reasons

3.53 pm

Motion A

Moved by ***Lord Sharpe of Epsom***

That this House do not insist on its Amendment 22, to which the Commons have disagreed for their Reason 22A.

22A: Because the law already makes sufficient provision in relation to donations to political parties.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, as well as Motion A, I will also speak to Motions B, C and D.

It is a pleasure to bring the National Security Bill back to this House. I thank noble Lords for their support so far. The vast majority of this Bill has now been settled, and measures that are vital to our national security will now be available to our security and intelligence services and to law enforcement. This new toolkit will facilitate the tackling of state actors who threaten the safety and security of the UK. The Government are busy working towards the implementation of this legislation, but there is only so much that we can do without Royal Assent. I ask noble Lords to bear this in mind through any votes that we may have.

Starting with the amendment that has been tabled in lieu of Amendment 122, the Government have listened to the concerns raised by the noble Lord, Lord Coaker, regarding the updating of the ISC's memorandum of understanding, or MoU. The concerns raised by the noble Lord are that the Prime Minister has not attended a session of the ISC since 2014 and that the MoU is out of date. As I said the last time that this issue was debated, the ISC MoU is under regular review and the ISC is always welcome to review and suggest revision to it. The amendment tabled to force this process is therefore unnecessary.

This amendment cannot compel the Prime Minister to attend a session of the ISC, which I suspect is the amendment's true driver. However, the Security Minister recently met with the chair of the ISC to better understand the committee's concerns and find an agreeable resolution to the issue. In that meeting, he committed to attending an evidence session of the ISC to discuss the powers taken in the National Security Bill in greater detail and the plans for implementing the legislation. The Minister also committed to giving the ISC further updates on the progress of implementation through quarterly written updates.

I remind the House that, under the Justice and Security Act 2013, there is already provision in place for the review and amendment of the MoU where there is agreement between the Prime Minister and the ISC. Therefore, although I understand the spirit behind the amendment, it will not provide for anything new in practice. I believe that the Security Minister's offer of

[Lord Sharpe of Epsom]
attendance at a session and to provide regular written updates about the implementation of the Bill shows that the Government take the committee and its concerns seriously.

We have responded to the concerns raised about the ISC MoU in respect of the Bill, but the Bill is not the mechanism to address wider concerns. I ask noble Lords to recognise this. I also note that the Home Secretary is giving evidence to the Iran hearing in July and appreciates the ISC's critical role in scrutiny of the intelligence and security community.

I turn to Motion A1, tabled by the noble Lord, Lord Carlile, to propose an amendment in lieu of Amendment 22, which concerns donations to UK political parties from foreign powers. I thank the noble Lord for recently meeting with my noble friend Lady Scott, the Minister with responsibility for elections. I turn to the substance of the amendment: it creates a duty on political parties to write an annual policy statement to ensure the identification of donations from foreign powers and a duty on political parties to provide the Electoral Commission with an annual report on donations received by foreign powers. I will set out the reasons why the Government oppose this amendment.

First, on the annual return to the Electoral Commission, as I have said before, accepting a donation from a foreign power, whether directly or indirectly, is already illegal. The amendment does nothing to assist parties in identifying illegal donations. Taken together, this renders the reporting of such activity to the Electoral Commission as an annually submitted blank page. This is not a helpful addition to the transparency framework surrounding political donations and, on that principle, we oppose its inclusion.

Secondly, the requirement to publish an annual policy statement lacks utility. Political parties are already required by law to take all reasonable steps to verify the identity of a donor and whether they are permissible. To reiterate, foreign powers are not permissible donors. The existing law also prohibits impermissible donors seeking to direct money through permissible proxies, and it is an offence knowingly to facilitate the making of an impermissible donation. The legal framework is clear, and requiring the publication of a policy statement adds nothing.

Thirdly, given that the amendment will not add value, we do not think that it is reasonable or proportionate. It is worth highlighting that political parties are not banks or security services: they do not have the means to undertake sophisticated forensic accounting. While these services can be obtained through the private sector, they are likely to be cost prohibitive. Political parties are not global corporations: there are over 380 parties currently registered with the Electoral Commission, many of which are predominantly made up of volunteers. This amendment would add burdens on political parties and could risk disincentivising parties from accepting donations, which could, in turn, harm our democracy.

There is also a point on convention here. As far as we are aware, political parties have not been engaged on their views for this proposed amendment. The Government do not unilaterally change laws relating to political parties without such consultation taking place. It could lead to inequitable outcomes and, as such, is another reason why the Government oppose the amendment.

For all of these reasons, the Government's position is that this is the wrong way to go about preventing threats from foreign powers to our political system, which I know that the noble Lord, Lord Carlile, is concerned with.

During engagement with noble Lords and throughout previous stages, concerns have been highlighted about donations from companies and unincorporated associations. I would therefore like to set out the framework that we are operating in. Only those with a genuine interest in UK electoral events can make political donations. To be a permissible donor, companies must be registered in the UK, incorporated in the UK and carrying out business in the UK.

4 pm

Unincorporated associations must carry on business wholly or mainly in the UK and have their main office here to be able to make donations. I highlight that unincorporated associations making political contributions are already subject to additional controls compared with other types of donors. If they are making political contributions or donations of more than £25,000 within a year, they must notify the Electoral Commission and provide it with information about how they are funded.

This is not to say that the Government do not recognise the risk of foreign interference in our democracy, including foreign powers that might seek to do that through political donations. That is why the Government are already taking further action to safeguard the integrity of the system. The Government's reforms to Companies House will deliver more reliably accurate information on the companies register and will provide greater powers for Companies House to query and challenge the information it receives. The Government are also currently legislating via the Economic Crime and Corporate Transparency Bill to enhance data sharing between Companies House and public authorities, including the Electoral Commission. This will indirectly support the enforcement of the rules on donations by providing greater confidence in the accuracy of the data held by Companies House.

These reforms build on updates made to electoral law last year in the Elections Act 2022, which closed loopholes on foreign third-party campaign spending and included a number of other measures which ensure that our democracy remains secure. I remind the House that there are reforms in this Bill that seek to increase the transparency of foreign political influence activity through the foreign influence registration scheme and give our agencies more tools to tackle foreign interference; these include substantially higher maximum penalties where a foreign power is involved in the commission of existing electoral offences, including those related to the making of political donations. The Bill also provides for a new offence of foreign interference, which includes manipulating whether or how any person participates in political processes.

I encourage your Lordships to take into consideration the importance of finishing this Bill. The Bill was never meant to be about political donations; it is about creating a more secure environment for the UK.

The longer we spend in this place debating issues the Bill was not designed to cover, the further away that additional safety and those additional tools are.

I turn to Amendments 26A and 26B to the serious crime amendment which clarifies the application of the new defence. Under the proposed government amendment, the defence will apply to the proper exercise of a function of the Armed Forces only when relating to intelligence. This is an alternative version of the amendment tabled by the noble Lord, Lord Anderson, and I hope the House will welcome this additional safeguard.

Finally, in the other place the Government tabled a minor amendment to the foreign influence registration scheme. It is designed to ensure parity across devolved Administrations in relation to public officials covered within the meaning of "political influence activity".

The Bill will ensure that our law enforcement and intelligence agencies have the power they need to combat the evolving nature of state threats. That is why we are adopting a robust and front-footed posture. The Bill will confront and tackle state threat activity that may seek to undermine the democratic principles of the United Kingdom and the security of its people. As I have said before, I am grateful to your Lordships for the progress and the improvements this House has given to this landmark piece of legislation. The Bill will leave this House more robust, more balanced and better equipped to tackle modern threats to our national security. I now urge the House to agree with the government Motions and amendments and grant our police and intelligence services the powers they need to protect the democratic principles of the United Kingdom and the security of its people. I beg to move.

Motion A1 (as an amendment to Motion A)

Moved by ***Lord Carlile of Berriew***

At end insert ", and do propose Amendment 22B in lieu—

22B: After Clause 14, insert the following new Clause—

"**Foreign interference in elections: duties on political parties**

(1) A UK-registered political party must, within three months of the passing of this Act, and annually thereafter, publish a policy statement to ensure the identification of donations from a foreign power (whether made directly or through an intermediary).

(2) A UK-registered political party must provide the Electoral Commission with an annual statement setting out individually the details of all donations from a foreign power, including whether made directly or through an intermediary (and identifying all such intermediaries).

(3) In this section, "UK-registered political party" means a political party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000.""

Lord Carlile of Berriew (CB): My Lords, in moving Motion A1 as an amendment to Motion A and proposing Amendment 22B in lieu, I should say that I shall support, if it is necessary to do so, Amendment 122B, which will be moved by the noble Lord, Lord Coaker.

The Minister mentioned the very pleasant meeting I had with three Ministers and a number of officials about my amendment, and I was very grateful for that meeting. I was given a very simple message—with which I do not agree—that the law goes far enough to protect political parties and those who vote for them from the intervention of foreign powers. My amendment would place no extra burden on Ministers; I removed that from the original version. What it does—rightly, in my view—is place a burden on political parties to do what in the commercial world is routine and carry out proper due diligence, as the term is, on the people who contribute to them.

I listened with great care to what the Minister said a few moments ago. If my noble friend Lord Kerr will forgive me for quoting one of his many memorable sotto voce utterances, he turned and said to me, "So that leaves it to the thief to report the crime, doesn't it?" I agree with him. Indeed, what the Minister said suggested that when, say, a company is used, up there in Companies House, if you make a complaint, there are investigators who will carry out an investigation to see where the money ultimately comes from—the ultimate donors, not those nice nominees who are nominated directors of the company. However, I do not know how many of your Lordships know this, but Companies House has no investigators whatever—zilch, zero. If noble Lords will take the trouble, during the boring parts of what I hope will be a short speech, to look at GOV.UK, they will see that it tells people that if they want an investigation done into a company they should go to the Serious Fraud Office or somewhere like that.

I accept that the Government want political parties to be properly funded, not improperly funded, although some political parties have accepted unusual sums of money from unusual places. However, I hope that the Minister—and noble Lords if this comes to a vote later—will agree that more due diligence is needed, and that we cannot take at face value that the criminal should report his own crime. We are dealing with bad people here, not good people.

I thank the organisation Spotlight on Corruption for some excellent research that it has done; I feel that it deserves that namecheck. Donations from foreign powers are a significant threat to the UK's national security and undermine the integrity and credibility of our democratic processes. There is plenty of evidence to support that. A report in 2020 by the Intelligence and Security Committee identified that members of the Russian elite linked to Putin had donated to UK political parties.

Another bit of evidence is that in January 2022 the Security Service warned that an alleged Chinese agent had sought to influence UK parliamentarians on behalf of the Chinese Communist Party and had donated to two major political parties that stand in every seat in this country. In mid-April 2023 concerns were raised in Parliament about alleged links between the Chinese Communist Party and Conservative Party fundraising. The Minister of State for Policing said that

"all political parties need to be alert to the danger of representatives of hostile states seeking to infiltrate or influence their activities".—[*Official Report*, Commons, 19/4/23; col. 249.]

This amendment is just that alert.

[Lord Carlile of Berriew]

The Home Office impact assessment for the Bill emphasises that foreign interference is a direct attack on our sovereignty, national institutions and values. The Bill will not prevent that attack unless political parties are required to play a part. One of the noblest things that this noble, unelected House does is to protect democracy from itself, and that is what the amendment is intended to do.

We turn to the safeguards that the Minister says are effective. They are not. The rules that are supposed to prohibit foreign donations in the Political Parties, Elections and Referendums Act 2000 are absolutely riddled with loopholes. They enable foreign money to be channelled to political parties and MPs through what appear to be lawful donors, such as UK-registered businesses and unincorporated associations. The Act requires UK political parties only to check the status of donors; it does not require them to have a risk-based approach to donations. The nominated directors may look like ordinary nominees, but I think it was yesterday that we heard from my noble friend Lord Vaux, in an excellent speech, how names can appear in Companies House as directors and bear no relationship to the control of a company. We come to the same point twice in two days. While the UK's anti-money laundering framework has been progressively tightened over the last decade, the minimal checks that parties are required to perform are a glaring anomaly.

How effective are the sanctions? The Electoral Commission referred eight cases to the Metropolitan Police in the period 2011 to 2021. I will give your Lordships one guess as to how many prosecutions there have been—absolutely none, because it is completely unreasonable to ask the police suddenly to move into this complex area to carry out the detective work and do the due diligence that any company, whether significant or relatively insignificant, should carry out.

I do not accept for one moment that what I am proposing will affect tiny political parties, because they will be taking their funds from a small group of closely interested people who will, effectively, be their close friends. What we are talking about here is the bigger political parties.

There is consensus among independent experts that parties should check the source of donations. In 2018, the Electoral Commission argued that risk management principles adapted from anti-money laundering undertaken by businesses could

"prevent foreign money being used in UK politics".

It emphasised that political parties had a duty to do just that. This was supported, in effect, in the July 2021 report *Regulating Election Finance* by the Committee on Standards in Public Life.

I was pleased to note that my original amendment, to which this is in itself an amendment, was supported in the other place by the Conservative chair of the Intelligence and Security Committee, Sir Julian Lewis MP, who said that the need for political parties to do more to determine the source of donations is "entirely appropriate" and that the additional measures would not be "over-onerous" and were "eminently reasonable". The Government said that the amendment would impose "huge administrative burdens" on grass-roots political campaigning, but this is just not the case. As the chair of the Electoral Commission has highlighted, a requirement to determine the true source of donations is proportionate and would not by design overburden smaller parties with limited resources.

About 35 years ago, when I was an MP in the old Liberal Party, my Whip and the Opposition Labour Whips asked me to go and sit on the Reasons Committee in the other place. I think it was not really a compliment. If your Lordships have ever been behind the Speaker's chair they will know that there is a little room, which I thought until that night was private facilities for the Speaker. In fact, it is the reasons room, though that is not on the door, because visitors would assume that it was straight out of "Alice in Wonderland"—and it is, a bit. The Government of the time were privatising the railways and the opposition parties had tried to avoid ping-pong happening twice in one night. I think the reason I was chosen was that they thought I could keep a debate on next to nothing going for an extremely long time.

Noble Lords: Oh!

Lord Carlile of Berriew (CB): I am not sure how to take that laughter.

Interestingly, we debated for one and three-quarter hours who should be the chair of the committee, until my pager pinged—we had pagers in those days. It read: "You can go home now. Their Lordships have gone to bed".

4.15 pm

I knew nothing about the Reasons Committee until that night, but I discovered then that it is a cipher. The reasons brought to us in this House do not bear intellectual analysis. What we are doing, I hope, on my amendment is using our minds—our critical faculties—to decide how best elections should be conducted in this country. My submission to your Lordships is that the small change I am suggesting would help just that aim. I beg to move.

Lord Coaker (Lab): My Lords, I will speak to my amendment in Motion C1. We very much support the amendment put forward by the noble Lord, Lord Carlile. Should he wish to press it, we will certainly support him in the Lobbies later.

I am grateful to the Minister for his comments and for the valiant effort he made to defend what the Government are not doing about updating the memorandum of understanding. I thank him for his attempt to gloss over and make the best of it.

I pay tribute to the work of our security services. As we know, there is no difference among any of us here in our admiration for their work and the way in which they keep us safe. We all wish to see the National Security Bill become an Act as soon as possible. However, that does not mean that we do not have a responsibility to scrutinise and improve the Bill where we think change is needed. My amendment is part of that ongoing process.

I say to the noble Lord, Lord Carlile, that I must be a veteran, because I have been to the Reasons Committee a few times, not just the once. I do not know whether I was particularly good at it or just regarded as a toady who would do what anyone said. I am not sure exactly where the room was but I remember going there on a number of occasions.

On a serious point, that is something I now regret. The point the noble Lord, Lord Carlile, was making was that Members of Parliament—I was one of them; I am talking about myself—should take more notice of the revisions that are sent down. Sometimes the reasons given were simply spurious, such as, "We don't agree with it". I would not say that they were made up, but they were not far away from it. That is a source of great regret to me. Personally, I should have done more and taken more notice of them. That is partly why I understand that the reasons the Government have given are totally inadequate. They have basically dismissed what we said and what this House passed in my amendment that the other place then disagreed with.

The Minister will note that I have taken seriously the Government's rejection of my original amendment. He will have seen that the duty to update has been changed to a duty to review. This is a significant, important change, as it would not require the Government to update the memorandum of understanding; it would simply require them look at the memorandum of understanding, review it and see whether change is needed. The Minister said that that is already included in the Bill. I submit to your Lordships that the Government will not do this unless something is put forward in the Bill to say that are required to review it, rather than the Government saying, "It's in a piece of legislation that we have passed so we will do it anyway". It will not happen.

The Intelligence and Security Committee—I know my noble friend Lord West will speak in a few minutes—is our voice. It was set up by Parliament to hold the Executive to account on intelligence and security matters. It is astonishingly and incredibly important. All Select Committees and committees of this Parliament are important, but the Intelligence and Security Committee was set up in 1994 to fill a vacuum, and the MoU was updated in 2013.

Some noble Lords have far more experience of that committee than me and will know how it works, but the fundamental point is that confidential and classified security-related matters can be discussed and debated there on our behalf. I do not expect to know what no doubt my noble friend Lord West and others discuss; it is totally inappropriate and wrong for me to know that, and I accept that. That is not what this is about. But it is important that those who are selected, appointed or voted, in some instances, to be members of that committee have access to all the classified information across government, because it is across government that they hold the Executive to account. That is how a democratic system functions while keeping security material safe and classified. It is a really important committee.

There can be no doubt that, as the Intelligence and Security Committee said in its annual report in December last year, the intelligence architecture has changed. The committee has asked not for anything radical or for a complete rewriting of the rules; it is simply saying to the Government, is it not appropriate to update the memorandum of understanding to reflect the changed security environment in which government operates? This committee should do it on our behalf but, essentially, also on behalf of the people of our country; it is totally reasonable to ask for that.

The committee gives some examples of changes that should happen in areas where it does not currently have the opportunity to operate. One is BEIS and

"the activities of the Investment Security Unit".

I would have thought there was a clue in the title. I do not know what it does; I can guess, but I do not really know. Another is the Department for Culture, Media and Sport and

"the activities of the Telecoms Security and Resilience Team",

which is not accountable to the ISC. The report also mentions the "Office of Communications" and the "Counter Disinformation Unit", which are not accountable to the ISC and do not come under its remit. There is also the Department for Transport and

"the activities of the Transport Security, Resilience and Response Group",

which, again, is not accountable to the ISC. The report further mentions the Foreign, Commonwealth and Development Office and

"the activities of the Intelligence Policy Department",

which, again, is not accountable to the ISC. It also mentions the Department of Health and Social Care—we have heard a lot about this—and

"the activities of the Joint Biosecurity Unit".

None of these is accountable to the ISC, and the Government should at least review that. Instead of updating this and saying, "You have to do it", all the amendment says is, "Perhaps review whether the ISC should look at these".

Noble Lords can see how ridiculous this is. The example that the committee gives is BEIS and the activities of the investment security unit, which the Government say the BEIS Select Committee can look at. That is completely and utterly ridiculous, because the point is that the ISC has security clearance to look at classified information, in a way that the BEIS Select Committee, as good as it is, cannot. So how on earth can the BEIS Select Committee look at anything that may be classified in the investment security unit, without the necessary security clearance? It cannot be done.

My amendment does not actually require the Government to do anything, but they have simply rejected it, saying that it is not necessary, that they are not even going to look at it and that various commitments have been made. I am sure the Security Minister and the Minister opposite will agree that there should be a review. Indeed, it appears that that is what the Security Minister has said. But what about the Home Secretary, the Prime Minister and the other people at the top of government? If the Security Minister is making those noises to the committee, why are the Government just going to say that this simple amendment, requiring a review, is not needed and is inappropriate and wrong?

[Lord Coaker]
Just saying that we do not need it is not answering the point; it is just an assertion, and that is not good enough.

The Minister in the last minute or so has just glibly, if I might say so, pointed out that my amendment does not require the Prime Minister to attend. No, it does not, but let me tell noble Lords this from the Dispatch Box. It is an absolute disgrace that no Prime Minister of our country has been to the ISC since 2014. That is nine years. It is actually in the report—meeting with the Prime Minister; I had to read it a couple of times. I spoke to the Minister four or five months ago about this, and I asked him to ask why on earth the current Prime Minister, despite being invited, as I understand it, still has not responded to say when he is going. That is despite my saying then that it was completely unacceptable that no Prime Minister had been to the ISC.

Perhaps the Minister could update the House on what has happened. Who has the Minister made representations to and why has nobody taken any notice? Why has the Home Secretary not gone to see the Prime Minister about this? I say again—I could not believe it. Apparently, for 20 years after 1994, the Prime Minister of the day went once a year to the ISC; and then it stopped. The committee has tried to get Prime Ministers to go, and they will not. The Prime Minister of this country should go at least once a year to the Intelligence and Security Committee of our country, which is how this Parliament holds intelligence and security agencies to account. Can the Minister take that back to the Government? I speak for myself and for His Majesty's Opposition, and I shall let others speak for themselves, but I think it is disgraceful that a Prime Minister has not been to speak to the Intelligence and Security Committee. I hope that that is heard loud and clear, that we can get something done about it and that the next time this is raised, the Prime Minister has spoken to the ISC with the Security Minister.

Lord King of Bridgwater (Con): Having been the chairman of the ISC for its first seven years, may I just say that it is quite untrue to say that we called the Prime Minister to report to the ISC? We used to report to the Prime Minister when we were conducting various investigations.

Lord Coaker (Lab): I take that point, and I apologise if I suggested it was the other way around. The point I am making is that the Prime Minister, according to the information here, used to go and speak with the Intelligence and Security Committee, and there was that two-way communication. My contention is that that is an important thing for the Prime Minister of our country to do. I would have hoped that the ISC had the opportunity to talk to the Prime Minister at least once a year since 2014.

I finish where I started. The defence and security of our country is the Government's highest priority, and we all support them in that. We welcome the work of the security services to keep us safe. Mine is a simple amendment that seeks to update, through a review, the memorandum of understanding under which the ISC operates. It is a sensible thing for the Government to do and when the time comes, I shall seek to test the opinion of the House.

4.30 pm

Baroness Hayter of Kentish Town (Lab): My Lords, I support Motion A1, having had my name on the original amendment—I think it was Amendment 22 at the time—from the noble Lord, Lord Carlile.

There are two reasons for being concerned about foreign influence in UK politics. One is indeed the ISC Russia report, as it highlighted what was going on and gave good evidence of malign attempts to affect our politics and our elections—the same could be said about China. The other reason is this Government's decision to give long-term expats the vote, no matter how long they have lived abroad. By doing so, they enable those expats to become permitted donors to UK political parties. Someone living for, say, 40 years in Russia can be on our electoral roll—no checks, no questions asked—and thereby be free to donate to a political party, with no checks on the source of these fundings, nor even whether they belong to that permitted donor. In fact, there is no way to ascertain whether the said donor is in fact in prison, whether they have properly earned income or whether such money that they donate is actually their own or has been given on behalf of a political power.

In the *Guardian* today, we read of a wealthy Chinese couple banned from Britain after they were accused of donating to British political figures on behalf the Chinese Communist Party. They happen not to be permitted donors but were no doubt able to put their money through somebody who was. Interestingly, that story seems to have come to light following an immigration tribunal, rather than by checks by a political party of the sort that would be required if Motion A1 were agreed by this House.

As the noble Lord, Lord Carlile, said, PPERA—the Political Parties, Elections and Referendums Act—requires parties to check only that the donors are permissible. The Minister said again today—as all his predecessors did—"Oh, but we'll check that the donors are valid people". That is not the point that we are making. We are saying that, by being able to be on the electoral register, they become donors and we do not check the source of the money that they give. We are not asked as political parties to carry out due diligence on donors, even those operating in high-risk countries of the sorts that are listed in the 2022 money laundering and terrorist finance regulations 2022. As a political party, we can take a donor from one of those countries and are not required to do any checks—in fact, we are not required to check anything other than that the donor is legitimate. So overseas-domiciled citizens—who long ago gave up paying taxes here, of course—can donate to a political party without any questions about the money.

Motion A1 would effectively introduce a "know your donor" culture and would make a political party responsible for showing how it would identify and look at donations from a foreign party and for sharing that information with the Electoral Commission. Back in the summer—on the day that we debated this, I think—the Minister wrote to me and said that

"it is in the national interest to have greater openness about the influence on British politics by foreign powers".

I could not agree with him more. Motion A1 would ensure that foreign donations were properly scrutinised and openly made.

Lord West of Spithead (Lab): My Lords, I support Motion A1 from the noble Lord, Lord Carlile, and Motion C2. On Motion A1, I spoke in favour of the previous version of this amendment on Report on behalf of the Intelligence and Security Committee. Our position in the committee remains very much the same: we firmly support the introduction of this clause. Indeed, I cannot really understand why the Government continue to oppose the amendment. It is eminently sensible and the previous version received widespread support across this House. Indeed, as the noble Lord, Lord Carlile, said, it was notable that, apart from the Government Front Bench, not a single Peer across the House spoke against it.

The ISC's Russia report in 2020 recognised that the UK, including political parties, had welcomed money from Russian elites, and the Government acknowledged that. They have, for example, as part of the Bill increased the sentences for electoral offences involving foreign powers. There is no doubt that protecting our democratic institutions should be the very top priority for the Government and parliamentarians, but the Government have adopted a rather dismissive and worryingly complacent approach to this risk. They claim that they oppose this amendment on the basis that the existing protections within electoral law are sufficient, that the amendment would not work in practice and that it would place an undue burden on grass-roots political organisations. These claims are patently not true.

Current protections within the electoral financing law are demonstrably inadequate. As the noble Lord, Lord Evans, the chairman of the Committee for Standards in Public Life, who is in his place, noted on Report, his committee undertook a major report into the regulation of electoral finance in 2021 and provided a series of recommendations to close several loopholes in this space, all of which were rejected by the Government. The report stated that

"we consider the current rules are insufficient to guard against foreign interference in UK elections".

One of the many problems the committee identified was the ability of a foreign corporation to create a UK subsidiary with the sole function of receiving and channelling money to a UK political party. Further, as extraordinary as it may seem, unlike charities or companies, political parties do not have to examine the source of funds they receive. This means that it is perfectly possible for companies to make significant donations to political parties despite clearly not making operating profits and therefore with limited explanations of how they can afford such donations and where the money comes from. These factors clearly increase the threat of political parties being unduly influenced by a foreign power.

The report also noted that, since 2018, the Electoral Commission has supported the introduction to electoral finance of risk management principles that are used in anti-money laundering checks conducted by companies. As the noble Baroness, Lady Hayter, suggested on Report, this amendment would introduce such principles and ensure that political parties identify foreign money and potential proceeds of crime, establishing a culture of "know your donor" within parties similar to the "know your customer" approach in the financial sector.

Contrary to the Government's suggestion, this amendment would not place a significant administrative burden on smaller political organisations, and nor would it be too difficult for political parties to implement in practice. As the shadow Security Minister noted in the other place, the Electoral Commission has stated:

"These requirements could be introduced in a way that recognises the need for proportionality … with different requirements depending on the size of a regulated entity's financial infrastructure, or the size of a donation".—[*Official Report*, Commons, 3/5/23; col. 129.]

Guidance would prevent this amendment, which increases transparency and accountability, becoming a disproportionate burden. The fact that due diligence measures are used in the charity sector and not just by commercial enterprises demonstrates that it would be entirely possible for similar measures to be adopted by political parties.

I find it extraordinary that the political parties currently do not have to check the source of their funding in the same way as charities and businesses—it is extraordinary—and it is inexplicable that our Government or any political party could consider it appropriate to oppose such a sensible and proportionate amendment. It is entirely necessary and it would go a long way to strengthening our democratic institutions, providing greater protection from foreign influence. I am sure that the Government agree that we must protect our democratic institutions from harmful interference and I am sure that, having heard all these arguments, they will change their view—or I hope they will

Moving on to Motion C1, on behalf of the Intelligence and Security Committee—I have been given its approval to speak on this—I am grateful to my noble friend Lord Coaker for introducing this amendment and we fully support it. It is interesting to note that, when a similar amendment was debated in the House, many Peers spoke in favour but only one, on the Government Front Bench, spoke in opposition. It seems to be a trend with these various amendments. Strangely, the same was true in the other place, where many MPs spoke in support and only the Minister opposed the amendment. The Security Minister himself acknowledged the need for the amendment when he stated that an update to the ISC's memorandum of understanding needed to be made.

Parliament is united in its support for independent oversight of the intelligence agencies; it is only the Government who are seeking to undermine the ability for oversight, for purposes unknown. National security is too important to play party politics with. Members from across both Houses have repeatedly explained the need for this amendment throughout the passage of the Bill, but to no avail.

I intend to do so again to demonstrate the absurdity of the Government's opposition to it. The ISC's memorandum of understanding, which sits underneath the Justice and Security Act 2013, outlines its remit and the organisations that it oversees. Its remit encompasses the expenditure, administration, policy and operation of the agencies and four other organisations that form part of the UK intelligence community. As the ISC has made very clear in its most recent annual reports, intelligence and security activities are increasingly undertaken by a wider assortment of policy departments,

[Lord West of Spithead]
as the noble Lord, Lord Coaker, mentioned, including those that generally do not carry out national security-related activity, such as BEIS—now the Department for Business and Trade—DCMS and the Department for Transport.

Those teams are not currently listed in the ISC's MoU. This is solely because, when the MoU was drafted in 2013, they were not responsible for intelligence and security matters. Had they been, Parliament would have included them in the ISC's remit. Parliament was clear on the remit it wished the ISC to have and the work it wished it to do on its behalf and that of the British public.

Effective oversight of intelligence and security matters can be undertaken only by the ISC. Only it has the security infrastructure to scrutinise effectively those aspects where classified material, such as intelligence, underpins decisions on national security. This is not rocket science—perhaps sometimes it is, but that is a different issue. Intelligence and security matters deal primarily with highly classified information. Parliament established the ISC, supported by security infrastructure such as the appropriate computer systems, storage facilities and vetted staff, to provide independent oversight of classified matters precisely because Select Committees cannot effectively undertake that role. They definitely cannot do it and it is wrong for the Government to pretend that they can.

The sole purpose of the ISC, and the reason Parliament set it up, is for it to hold the Executive to account on behalf of Parliament and the public. Independent oversight in this space is particularly important given the gravity of national security decisions and the significant intrusive powers that the agencies have at the Government's disposal. The inability for Select Committees to provide effective oversight of intelligence and security matters has already been acknowledged by the Minister on Report.

The ISC's MoU, which sets out which government bodies it can oversee, is woefully out of date. There is now intelligence and security activity undertaken by government that is outside the ISC's independent oversight, which means that it is outside Parliament's democratic oversight. I am sure noble Lords agree that that is unacceptable. In effect, it means that secret activity is being carried out in our name that no one is scrutinising. The ISC's MoU needs to be updated so that Parliament can ensure that the Government are acting appropriately in the intelligence and security space at all times.

I find it appalling that the Government continue to oppose this amendment. It is hardly controversial. There is no reason to oppose it unless one wants there to be less independent oversight, less transparency and less accountability in relation to classified intelligence and security. Is that really what the Government want? Would they rather keep any problems behind closed doors? If so, we should be very afraid. This is a matter of grave concern. I therefore support this amendment.

Lord Wallace of Saltaire (LD): My Lords, the Commons reason given for disagreeing to Lords Amendment 22 is:

"Because the law already makes sufficient provision in relation to donations to political parties".

Yet we have heard that the Committee on Standards in Public Life and the Electoral Commission have made it quite clear that they do not believe the current law makes sufficient provision for that. I remind the noble Lord that the Committee on Standards in Public Life and the Electoral Commission, like the Intelligence and Security Committee, are part of the structure of constitutional safeguards in our politics. They are there to remind the Government how the rules need to be kept. A wise Government should accept that advice. When they do not accept it, Parliament should insist that they do.

4.45 pm

There is plenty of evidence that there is a problem, that foreign governments are actively engaged in attempts at interference: the Russians, the Chinese and others. However, I remind the Minister that the last time I raised this question in the House, he accused me of spreading rumours. I thought it was ungracious of him at the time and I hoped he might have the grace to withdraw that accusation. He will, of course, recall that the Government in Russia accuse of people of spreading rumours and send them to prison for a long period, and so do the Governments in Turkey and Pakistan. It is not the sort of language that should be used in a democratic parliament such as ours.

There is a great deal of evidence that foreign Governments attempt to influence all political parties, to a greater or lesser extent, by various means, including donations. It is, of course, natural that they concentrate their attacks very often on the governing party, and there is evidence that there have been attempts to push money indirectly from the Russian and Chinese Governments on to the Conservative Party. They also, no doubt, try other parties and there is evidence they have tried and, on occasion, succeeded with other parties, not only opposition parties but fringe movements on the right and left, and even occasionally groups active in referendum campaigns. These are not rumours; there is evidence. There is a problem; the Commons reason is wrong.

The purpose of the Bill is to stiffen the safeguards against foreign power interventions in Britain's democratic politics. It does so successfully in many other areas. Some of us thought that the efforts it intended to make to interfere with interaction between international companies, international policy researchers, universities and other Governments were almost too onerous. With political parties, it was too far in the opposite direction. I do not understand how the Minister justifies leaving this particular part of the stable doors open when the Bill rightly moves to close so many other doors. There is a problem here. It has been drawn to our attention by several of the respected committees which advise us on the rules of politics, and the Government should recognise and accept that. If they do not, I hope this House will insist on supporting the amendment.

Lord Anderson of Swansea (Lab): My Lords, there is no doubt that a number of foreign Governments seek to subvert our democracy and in many cases that means seeking to influence political parties, particularly the governing parties. All parties are looking for finance;

the temptation is to accept that money. I rise mainly to applaud the colleagues who have spoken before, and particularly to adopt what the noble Lord, Lord Carlile, said so well about the inadequacy of the current safeguards.

I congratulate the Government on organising the two-day conference on the reconstruction of Ukraine. Understandably, it is focusing mainly on financial reconstruction, but I have just come from a parallel conference on restoring, or improving, democracy in Ukraine, which involves looking particularly at the political parties. What sort of example are we giving to Ukraine if we allow these loopholes to continue? How do we inoculate Ukraine against possible subversion from Russian oligarchs and others? How do we inoculate ourselves and our own democracy from similar attempts? I think of the phrase "sunlight is the best disinfectant", which is attributed mainly to the great American jurist, Justice Brandeis, who was so towering in his intellect and legal knowledge. If we are to have the sunlight, the onus must surely be on the Government, or anyone else who seeks to block that sunlight, to give good reasons why they should do so, because we know that there are malign forces seeking to subvert our democracy.

We need an active citizenry and a committed democracy to counter these sorts of attempts. I believe the response of the Government, as the noble Lord, Lord Carlile, and others have shown so well, is inadequate to that task.

Lord Balfe (Con): My Lords, I will take just two minutes, because when I vote against the Government, I generally listen to the debate and have a clear view. Democracy is being bought. This is part of a very difficult proposition that we have. I completely support the noble Lord, Lord Carlile, but I am also concerned at the amount of money that goes into political parties in Britain, because it is just not true that people pay for nothing. We need to look at the whole structure of party financing.

I have been many times to Ukraine, which has just been mentioned. It is not just foreign financing; one of the curses of Ukraine was oligarchs buying political parties and buying seats in the Verkhovna Rada, the Ukrainian parliament. We have to look at what we call democracy and how it functions if we are allowing so much money to go into it from basically pretty covert sources.

I would like to see a very strict limit on donations. I am delighted in some ways that the Labour Party is now reported as getting millions every quarter—but this is not the way forward, any more than it is for our party. We have to find a better way of doing it. To all those people who deride state funding, I say that at least it is in the open and is based on the number of votes.

I will support the noble Lord, Lord Carlile, but I see this as a much wider thing. I will also support the Motion about the Intelligence and Security Committee. The noble Lord, Lord West, made an excellent speech outlining why we should, and I have nothing to add to it. We need a fundamental look at the way we fund democracy in this country.

Lord Purvis of Tweed (LD): My Lords, these Benches will support Motion C1 in the name of the noble Lord, Lord Coaker, if he tests the opinion of the House. He made the case very adequately, and I need not add anything. These Benches will also support the noble Lord, Lord Carlile, if he seeks to test the opinion of the House on Motion A1.

The coming year is likely to be the most expensive year in British politics—let us be honest about it—so the time to act is now, rather than having regrets after the next election if there are difficulties with some of the sources of the donations. Therefore, the noble Baroness, Lady Hayter, is right: it is no longer good enough simply to verify the donor and not the source of the funds.

I used to give tours of the House of Commons when I worked for David Steel—and I also thought that was a toilet behind the Speaker's chair, after the Speaker no longer used the toilet under his chair with the curtains around it—so I learned something about the Reasons Committee. I do not think it would have taken the committee an hour and 45 minutes to come up with Reason 22A:

"Because the law already makes sufficient provision in relation to donations to political parties".

That was the reason given before the current situation for reporting mechanisms was put in place. It is a reason that has been given by the Government each time there has been a proposal for change. The question is not whether we agree with that reason—which, of course, we should not—but what the merits of the case for seeking extra information about the sources of funding are.

Like the noble Lord, Lord Coaker, I thank the Minister for the way he has engaged on the Bill. If he does not mind me saying so, it has been a model of how Ministers can operate. But there are these two outstanding issues on which he can use his good counsel with his colleagues in the House of Commons.

I know the Minister made the point that this will potentially delay the Bill a little longer. He will forgive me for saying so, but the Bill was delayed because of the Government bringing forward the foreign influence registration scheme without notice in Committee in the Commons, dumping on us and then having to bring 150 concession amendments. We have done our job and we continue to do it—that is the point of us being here. The time to act is now.

The Minister also mentioned that one of the deficiencies of the amendment from the noble Lord, Lord Carlile, is that political parties had not been consulted. That is a bit rich. The Government have not asked the Electoral Commission to ask political parties for their view about it, but then they say that is a problem with the amendment because there was no consultation. That is not really relevant, if the Minister does not mind me saying so.

We have to move to a situation in which we check not just the status of the donor, as the noble Baroness said, but the status of the source of funds. We would do it if a donor was buying property and HMRC was uncertain about the source of the funds—that is why we have unexplained wealth orders. It seems odd, as it seems to be the Government's and the Minister's position

[Lord Purvis of Tweed]
that the very same person who could be liable for an unexplained wealth order from HMRC if they were buying a property would be able to donate considerable funds to a political party and there would be no questions asked. It does not match. We also have a list of countries where extra checks have to be made by law because of the list of countries in the anti-money laundering and terrorism financing regulations that the Minister's department puts forward.

In that regard, I will ask a couple of questions of the Minister. I hope he is able to answer them today but, if he is not, I will be grateful if he writes to me. In support of my noble friend Lord Wallace of Saltaire, I note that we seem to be in a position in which, over the last seven years, if you are a Conservative treasurer and you donate more than £3 million, you have a unique set of characteristics and skills that will mean that you have a 100% chance of being elevated to this House. If you donate more than £3 million and coincidentally then become the treasurer of the governing party, that governing party elevates you to be a Member of Parliament to hold that governing party to account. This is Britain in the 21st century. I understand that the current treasurer has given £600,000 through Unatrac Ltd and that he has also given personal donations. He is a joint national—I do not cast any aspersions on him whatever. I would be grateful if the Minister could confirm that he does not have a non-dom status. I would also be grateful if the Minister could state where his permanent residency is: London or Cairo. I would be grateful for a simple, straightforward clarification.

I would also be grateful if the Minister could state when Unatrac stopped trading with Russian oil and gas enterprises. Another Minister, the noble Lord, Lord Ahmad, is here—he and I have debated Russian sanctions and trying to clamp down on economic activities with Russia for a long time in this House. Apparently, Unatrac has made a statement that over the last few weeks it has suspended trading with Russian oil and gas. I would be grateful if the Minister could tell me when that ceased permanently.

I ask that because, according to the accounts of Unatrac, its immediate parent company is Unatrac Subco Ltd, which is incorporated in Dubai. Unatrac's ultimate parent undertaking is Unatrac Holding Ltd, based in the UAE. The UAE is on the list of the anti-money laundering and terrorism financing regulations; extra requirements have to be made when businesses are carrying out activities from the UAE. The Minister says that political parties that receive millions of pounds in donations do not have to do that. The context we are facing is that over the coming year, as many noble Lords have said, money and politics will affect all political parties. The time to act is now. We must amend the Bill to make sure that we do not regret it in 2025.

5 pm

Lord Sharpe of Epsom (Con): My Lords, I thank all noble Lords who have taken part in this relatively short debate. It was remiss of me earlier not to praise our security services, as the noble Lord, Lord Coaker, did, so I will correct that omission now. I also thank in particular the noble Lords, Lord Coaker and Lord Carlile, for the spirit in which they discussed and spoke to their Motions.

There is obviously a fundamental disagreement on the burden that this Bill would place on political parties, and indeed on whether the laws stand up to "intellectual analysis"; I believe that was the phrase used. I think I have made a strong case already that all of the matters under discussion are already illegal. However, there are one or two points that perhaps deserve clarification, so I will go into those briefly.

On overseas electors, as raised by the noble Baroness, Lady Hayter, it is a long-standing principle first introduced by the Committee on Standards in Public Life in 1998 that if you are eligible to vote for a party in an election then you are also eligible to donate to that party.

On unincorporated associations being used to funnel donations to political parties, there are a number of existing rules that make sure that ineligible foreign money is prohibited from entering through proxy donors. Permissible donors cannot give donations on behalf of impermissible donors. It is right that unincorporated associations that carry on business mainly in the UK and have their main office here can donate to political campaigns. I have already said this, but I will say it again: unincorporated associations that are making political contributions are already subject to additional controls compared with other types of donors. If they make political contributions or donations over £25,000 within a year, they must notify the Electoral Commission and provide it with information about how they are funded.

On the questions raised about the Committee on Standards in Public Life, the Government responded to the committee's report *Regulating Election Finance* in September 2021. The Elections Act 2022 contains measures that closely link to the recommendations made in that report—for example, the new requirement on political parties to declare their assets and liabilities over £500 on registration, and a restriction of third-party campaigning to UK-based or otherwise eligible campaigners. However, as the Government's response stated, the recommendations in the report deserve full consideration. As noble Lords will be very well aware, electoral law is complex, and more work is required to consider the implications and practicalities of all the committee's recommendations.

The noble Baroness, Lady Hayter, also referred to a report in the newspapers today. I obviously cannot comment on the details of the individual case, but the Government absolutely recognise the risk posed by those who wish to evade the rules on donations. I think this story demonstrates just seriously the Government take that risk.

I am not sure there is very much point in me saying anything else. I say to the noble Lords, Lord Balfe and Lord Anderson, that we are not Ukraine. Self-evidently, there are very robust laws already in place.

If I was ungracious to the noble Lord, Lord Wallace, in a previous debate, I would like to apologise for that.

The noble Lord, Lord Purvis, raised a number of party-political matters. Obviously, I am here to speak on behalf of the Government so I will not address those, but I suggest that he writes to the party.

I now move on to Motion C1 from the noble Lord, Lord Coaker. I join him in praising the work of the ISC, on which the noble Lord, Lord West, sits. Of course, we agree with much of what has been said. However, His Majesty's Government consider the current MoU to be sufficient to allow the ISC to discharge its statutory oversight duties of the agencies and the wider intelligence community. The MoU is subject to continuous review and His Majesty's Government welcome the ISC proposing changes that it would like the PM to consider.

The ISC has a broad remit over security and intelligence policy, as set out in the Justice and Security Act and the accompanying memorandum of understanding between the ISC and the Government. Those documents also set limitations where, for example, there would be a conflict with current operations or where it would be duplicative of the work of other jurisdictions. We believe that those guiding principles are working effectively and would seek to maintain them but, as I just said, the Government would welcome the ISC proposing changes it would like the PM to consider. It also shows the respect the Government have for the work of the ISC that the Security Minister has made the commitments that he has.

I say to the noble Lord, Lord Coaker, that I do not believe I was glib in my remarks about the Prime Minister earlier. Obviously, I am unable to comment on the PM's diary, but I have said this before and made the commitment at this Dispatch Box: I will make sure that No. 10 is well aware of the discussions that we have had in the Chamber today.

With that, I am afraid that I do not think there is much point in me saying too much else. I beg to move.

Lord West of Spithead (Lab): We in the ISC have tried to get movement on the MoUs being changed. There is no doubt—all ISC members feel this way—that we are being thwarted in getting this to happen and we do not really understand why. The Minister makes it sound as though this is a nice process that is happening. It is not, I am afraid. It is not happening, which is extremely worrying.

Lord Sharpe of Epsom (Con): Obviously, I will make sure that those concerns are reflected to my right honourable friend the Security Minister, who will see the committee fairly soon. As I have just said to the noble Lord, Lord Coaker, clearly I will make sure that this debate is widely understood in the appropriate places.

Lord Carlile of Berriew (CB): My Lords, I am grateful to all those who have spoken in this debate; I am particularly grateful to the Minister for his great courtesy. I say to him, with great respect, that he has answered mostly questions of his choice that were not directly relevant to the points I made. In my experience over the years, the repetition of a weak defence is capable of convincing only the defendant and nobody else.

I thank those who spoke. It is worth mentioning their names for a particular reason. The noble Lord, Lord Coaker, was powerful, as ever. The noble Baroness, Lady Hayter, made some powerful additional points. The noble Lord, Lord West, is always the right person to have on the bridge with you if you can arrange it; he spoke powerfully about the views of the ISC. The noble Lord, Lord Wallace of Saltaire, speaks on matters of the constitution with great political and academic knowledge, and has done so for many years. I have always respected the noble Lord, Lord Anderson of Swansea, whom I have watched in the other place as well as here, for the wisdom of his views. The noble Lord, Lord Purvis, has yet again made another powerful speech in your Lordships' House. Interestingly, the noble Lord, Lord Balfe, was the only Member on the Conservative Back Benches to speak in this debate—a factor that I take to be of significance.

Taking all that into account, it is my intention to invite the House to agree to my Motion by expressing its opinion.

5.07 pm

Division on Motion A1

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Motion A1 agreed.

Division No. 1

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5.19 pm

Motion B

Moved by ***Lord Sharpe of Epsom***

That this House do agree with the Commons in their Amendments 26A and 26B.

26A: In subsection (2), in inserted subsection (2)(b), at end insert "relating to intelligence"

26B: In subsection (2), in inserted subsection (5), at end insert "relating to intelligence"

Motion B agreed.

Motion C

Moved by ***Lord Sharpe of Epsom***

That this House do not insist on its Amendment 122, to which the Commons have disagreed for their Reason 122A.

122A: Because section 2 of the Justice and Security Act 2013 already makes sufficient provision in relation to memoranda of understanding.

Motion C1 (as an amendment to Motion C)

Moved by ***Lord Coaker***

At end insert ", and do propose Amendment 122B in lieu—

122B: After Clause 89, insert the following new Clause—

"**Duty to review the Intelligence and Security Committee of Parliament's memorandum of understanding**

(1) The Prime Minister must ensure that the memorandum of understanding between the Prime Minister and the Intelligence and Security Committee of Parliament (the "ISC") under section 2 of the Justice and Security Act 2013 (the "MoU") is reviewed in the light of any changes to the intelligence or security activities of His Majesty's Government as a result of this Act.

(2) Any revisions to the MoU arising as a result of the review under subsection (1) must be agreed between the Prime Minister and the ISC in accordance with the process set out in section 2 of the Justice and Security Act 2013.

(3) Any engagement between the Prime Minister and the ISC relating to revisions to the MoU arising as a result of the review under subsection (1) must commence within the 6-month period beginning with the day on which this Act is passed.""

5.20 pm

Division on Motion C1

Contents 223; Not-Contents 165.

Motion C1 agreed.

Division No. 2

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5.31 pm

Motion D

Moved by ***Lord Sharpe of Epsom***

That this House do agree with the Commons in their Amendment 153A.

153A: In paragraph 16(3), leave out from beginning to the second "of" and insert "A special adviser within the meaning of section 1"

Motion D agreed.

Ugandan School Attack

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Tuesday 20 June.

"At the outset, I thank my friend the honourable Member for Strangford, Jim Shannon, for raising this important matter and for his courtesy in taking the trouble to inform my office.

On Thursday 16 June, there was an horrific and cowardly attack on Hubrich secondary school in Mpondwe in western Uganda, which borders the Democratic Republic of Congo. The Government of Uganda have confirmed that 42 people were killed, of whom 37 were students from the school. Six people were injured. There are also reports that a further five to seven people, which may include children from the school, were abducted. The Ugandan authorities believe that the perpetrators are from the Islamic State-affiliated armed group the Allied Democratic Forces, or ADF, which operates in the DRC. The Ugandan military is pursuing the attackers. Those responsible for the attack must be brought to justice.

I issued a tweet on 17 June expressing my horror at the attack, which took the lives of so many innocent schoolchildren. My condolences go out to all the victims and to their families. The British Government strongly condemn this attack. We have confirmed that no British nationals were caught up in the attack. In response to the attack, the Foreign Office updated its travel advice for Uganda on 17 June with a factual update. The British high commissioner in Kampala issued a tweet sending her condolences to all those affected and the British high commission in Kampala remains in close touch with the Ugandan authorities."

5.32 pm

The Minister of State, Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords—

Lord Collins of Highbury (Lab): My Lords, I do not think it is necessary for the Statement to be read. It was taken yesterday, so it is in *Hansard*.

Forty-two people are dead, including 37 children, and students remain in terrible danger after being abducted. I know that the whole House will wish to convey condolences to all those parents who are suffering unimaginable pain and fear. In response to Jim Shannon the Minister, Andrew Mitchell, said that before these horrific events the FCDO was "looking at commissioning" a new joint analysis of conflict and stability report for the region. I hope the Minister can tell us where we are on that report and when it will be completed and available.

On the illicit financial flows that are used to back these terrorists, Andrew Mitchell referred in the other place to the *Integrated Review Refresh*, indicating that the Government were actively engaged in working out how we can do more on that front. Can the noble Lord assure the House that we have the right resources to map illicit financial flows? Do we understand where we have leverage over those who support the ADF and other armed groups in the area?

Lord Goldsmith of Richmond Park (Con): My Lords, this was an horrific and cowardly attack on a secondary school in Mpondwe. I echo the noble Lord in saying that my heart and the thoughts of all members of the Government go out to the families involved.

As a brief update, the Government of Uganda have confirmed that 42 people were killed and that 37 of them were students at the school. Six people were injured and there were reports of a further five to seven people, which we think includes children from the school, being abducted. The authorities in Uganda believe that the perpetrators are from the Islamic State-affiliated armed group the Allied Democratic Forces, which operates in the DRC. The Ugandan military is pursuing the attackers and those responsible of course must be brought to justice.

The noble Lord asked two specific questions. The first related to the joint analysis that was raised by our colleague in the other place, the Minister for Africa. The Government have commissioned analysis for the Horn of Africa. We are not yet in a position to set out timelines. However, we are in regular contact with partners in the region to identify the drivers of conflict and how to react to them. On illicit finance, it is worth pointing out that the ADF is already under UK and UN sanctions. In addition, we are working with a number of African Governments to address loopholes in existing legislation that enable this type of money to be laundered in support of groups such as the ADF.

Lord Purvis of Tweed (LD): My Lords, from these Benches I associate myself with the condolences offered by the noble Lord, Lord Collins, to the families of those affected by this truly horrific terror incident. Because the attacks were on young people, this trauma will live with them for the rest of their lives.

The United States State Department two days ago issued a statement on the final report by the UN group of experts on the DRC, which covered many of the aspects the Minister has referred to. The State Department condemned Rwanda for its support of the M23 group, which has committed multiple violations of international humanitarian law and human rights abuses, including rapes and summary executions of civilians. Specifically with regard to the Allied Democratic Forces, also known as ISIS-DRC—which, as the Minister says, the Ugandan authorities believe are responsible for this horrific attack—the State Department said that the US designated that as a terrorist organisation in 2021

"and urges our partners to do the same".

I can see no reference to the UK proscribing ISIS-DRC, the Allied Democratic Forces, as a terrorist organisation. Is this the case? If it is, why have we not?

Lord Goldsmith of Richmond Park (Con): My Lords, the UK does not speculate and therefore I cannot speculate on future sanctions and designations or on organisations that may or may not be proscribed.

The noble Lord is right to raise broader issues around the DRC. Of course, as discussed before in this House, we are very concerned by continuing violence and the deteriorating humanitarian situation in the eastern DRC. We are monitoring the situation closely. We very strongly condemn the continuing advance of the UN-sanctioned M23 illegal armed group across that province. The resumption of violence has caused huge human suffering. We believe there are now 1.5 million people displaced as a direct consequence of the M23 crisis. We are supporting a range of diplomatic efforts, including the Nairobi and Rwanda processes, which aim to bring this conflict to an end.

Lord Popat (Con): My Lords, I express my sorrow, as a proud Ugandan, at the recent attack, which took the lives of so many innocent schoolchildren. My condolences and prayers at this difficult time go to the people of Uganda, especially the victims and their families. Would my noble friend the Minister agree that this is a shocking terrorist crime and that we, the British Government, will do everything possible to support the Government of Uganda to help recover those who were kidnapped?

Lord Goldsmith of Richmond Park (Con): My Lords, I echo everything my noble friend has said. I pay tribute to him for his work as the trade envoy—I believe he still is a trade envoy—for the UK Government in Uganda. We stand ready to support the Government. We have not yet been asked for support by the Government of Uganda to help retrieve the abducted people—we think they are children—but we are absolutely ready to provide whatever support is appropriate if that request comes through.

Baroness Bennett of Manor Castle (GP): My Lords, I associate myself with all the expressions of sorrow, condolence and best wishes for the safe recovery of those who have been abducted. My question follows that asked by the noble Lord, Lord Collins, who focused on illicit financial flows. I think there is very good evidence in this region of the smuggling of gold, which goes through Uganda. A lot of it is thought to end up in the UAE. Can the Minister give me reassurance that that gold is not ending up in the United Kingdom or tell me what steps the Government are taking to stop that conflict gold getting out and subsequently funding dangerous armed groups?

Lord Goldsmith of Richmond Park (Con): The noble Baroness makes an important point. I will certainly not pretend to be an expert, but, just as illicit gold is known to provide resources to some of these extremist terrorist organisations, so too are the proceeds of the illegal wildlife trade, such as the poaching of elephants —we know that al-Shabaab gets a lot of its funding through IWT. Therefore, this is of huge interest to the UK Government, and it is a focal point of much of our work. As a consequence of what is becoming a scramble for critical minerals in our pursuit of net zero, we have to be absolutely certain that, by solving one problem, we are not contributing to the merciless destruction of natural environments and communities as well. I do not think that any western Government has yet got their head around this, but we are determined to focus on it increasingly in the coming months and years.

Northern Ireland Troubles (Legacy and Reconciliation) Bill

Report (1st Day)

5.41 pm

Clause 2: The Independent Commission for Reconciliation and Information Recovery

Amendment 1

Moved by ***Lord Caine***

1: Clause 2, page 3, line 11, leave out "one, two or three" and insert "between one and five"

Member's explanatory statement

This provides that the ICRIR will have between one and five other Commissioners (in addition to the Chief Commissioner and the Commissioner for Investigations), with the actual number to be decided (as currently) by the Secretary of State under paragraph 6 of Schedule 1.

The Parliamentary Under-Secretary of State, Northern Ireland Office (Lord Caine) (Con): My Lords, before I begin, I will take a moment to mark, on the longest day of the year, the annual day of reflection to remember the losses experienced by so many during the Troubles. It is also an opportunity to remind ourselves of how far Northern Ireland has come since the most difficult days of the Troubles; to remember the steps that have been taken since 1998 to build a more peaceful, prosperous and stable Northern Ireland; and to ensure that the experiences and horrors of the Troubles are never repeated.

I remind the House that this is Report, and the Bill has been debated extensively in Committee. I have held countless meetings with noble Lords over recent weeks and months. In accordance with the Standing Orders of the House, I will seek to be brief, and I hope that other noble Lords will attempt to follow suit.

I have always maintained that central to the effective delivery of this legislation is the need for an independent body to carry out reviews and, where an individual co-operates properly with the body, to grant immunity from prosecution. The Government fully recognise the need for the commission to have credibility, expertise and legitimacy so that effective investigations can be carried out and information provided to families as soon as possible.

As I mentioned, we debated the independence of the commission extensively in Committee, and I have sought to address as many concerns as possible. On the final day of Committee, I announced the intended appointment of the former Lord Chief Justice of Northern Ireland, Sir Declan Morgan KC, as the chief commissioner, having obtained input from the Lord Chief Justices of Northern Ireland and England and Wales, and the Lord President of the Court of Session in Scotland.

To allay further concerns around the integrity and independence of the immunity process, I tabled Amendments 79 to 83, placing a duty on the commission to produce guidance related to determining a request for immunity. This will replace the power that, in the Bill as currently drafted, sits with the Secretary of State for Northern Ireland. It was the subject of some debate, as noble Lords will recall.

Alongside this, I retabled Amendments 132, 133 and 137 to 140, seeking to ensure that there is international expertise among the commissioners and requiring consultation with the relevant senior judge where the appointee no longer holds high judicial office. This is complemented by Amendments 1 and 131, increasing the number of possible commissioners from five to seven, which helps to ensure that there is an appropriate range of skills, experience and independent scrutiny across the commission.

Amendments 141 and 142 ensure that terms of appointment of the commissioners do not exceed a period of five years. In our view, that will facilitate the

periodic refreshment of commissioners to provide new perspective, impetus, views and specialist expertise, while ensuring that there is also continuity. These amendments will strengthen the independence of the commission. I beg to move.

5.45 pm

Lord Murphy of Torfaen (Lab): I associate myself with the Minister in remembering those who suffered violence over the last number of years and thank him for the way in which he has engaged with Members of this House and beyond. His amendments generally improve the Bill, but I suspect that he will find this evening that they do not go far enough for those with fundamental objections to the Bill. We shall certainly not vote against them today or Monday, as they do, as I say, improve it.

The Minister made reference to Sir Declan Morgan, who has been appointed as the chief commissioner designate—a clever move on the Government's part, because he is a man of huge integrity, experience and expertise. There is some doubt as to whether it should have been announced quite this early, but I understand why the Government decided so to do.

I am sure that this evening we will hear a number of important points on the many issues, from immunity to prosecution and other matters. I hope that the House will be able to give consideration briefly to those points.

Baroness Suttie (LD): I echo a lot of the comments that the noble Lord, Lord Murphy, has just made, and the Minister's comments about remembering. It is very important that we never forget all those impacted and killed by the Troubles.

I too start by thanking the Minister for the constructive way in which he has engaged on the Bill, given the constraints that he faces at the other end of the building. He has always shown himself willing to meet and discuss, and I know that he has dedicated a considerable amount of time to the Bill, including during the summer holiday last year, perhaps. For that we thank him.

Again, like the noble Lord, Lord Murphy, most of us feel that, although the amendments are to a very large degree to be welcomed, they are not game-changing; they have not really changed the Bill to the extent to which many of us would have liked to see. I am sure that we will return to that issue at later stages, but this group is a positive example of amendments that these Benches are happy to welcome.

Lord Caine (Con): I am very grateful to the noble Lord and noble Baroness for their support and kind words, and I hope that this year I might actually get some time off during the summer. That might be the triumph of hope over experience, but you never know. I take great heart from the comments of the noble Lord, Lord Murphy of Torfaen, when he describes the Government as having made a "clever move". I welcome that, and I am very grateful. The amendments that I have proposed will strengthen the independence of the commission.

Amendment 1 agreed.

Amendment 2

Moved by ***Lord Caine***

2: Clause 2, page 3, line 11, at end insert—

"(3A) The principal objective of the ICRIR in exercising its functions is to promote reconciliation."

Member's explanatory statement

This would impose the principal objective of promoting reconciliation on the exercise of the ICRIR's functions.

Lord Caine (Con): My Lords, at Second Reading I committed to carrying out extensive engagement, which has just been recognised by the noble Lord and the noble Baroness—and I hope it is recognised more widely across the House that this is exactly what I have done. The amendments that I am bringing forward in this group seek to take on board and respond to a number of concerns raised in the House and elsewhere, as far as possible.

The Government remain committed to delivering better outcomes for those most affected by the Troubles by providing more information in a more timely manner to more people than is possible under current mechanisms. This is a hugely difficult task, and the legislation—as I have admitted both in this House and in the media—requires some finely balanced political and moral choices that are challenging for many, myself included. We must be realistic about what we can deliver. I have reflected on how we can strengthen the Bill and I am thankful for the many conversations that I have had on this, including with the Commissioner for Victims and Survivors in Northern Ireland, Ian Jeffers. While we have our differences, I am grateful for the way in which he has always conducted our meetings. It is widely recognised that the current mechanisms for addressing legacy issues provide satisfactory outcomes to very few of those affected, leaving far too many victims and families—including many of those who died while serving the state—empty-handed.

Amendments 2, 3 and 7 to Clause 2 in my name place the commission, when exercising its functions, under a duty to have regard to the general interests of persons affected by Troubles-related deaths and serious injuries. These amendments also provide that, in exercising its functions, the commission's principal objective is to promote reconciliation. It is our view that putting more information in the public domain via an effective information recovery process, subject to the exceptions set out in Clause 4, will help to do that. These amendments seek to strengthen our commitment to victims, provide greater direction to the commissioner and respond to the debate in Committee, where your Lordships raised concerns over the extent to which the commission would take a victim-centred approach to its work.

Amendment 85 will place the commissioner under a new duty to offer victims and their families the opportunity to submit personal impact statements setting out how they have been affected by a Troubles-related death or serious injury. Amendment 86 creates a corresponding duty to publish those statements, subject to limited exceptions. This will give families a voice in the process. As the noble Baroness, Lady Smith of Basildon, put it in Committee:

"Without that, this will be one of the biggest failures of the Bill".—[*Official Report*, 31/1/23; col. 646.]

[Lord Caine]
That is something that we are attempting to rectify. The new duty corresponds to recommendations made by the Commissioner for Victims and Survivors, Ian Jeffers, and is complemented by a separate duty to publish the statement if the individual so wishes. I am also grateful to the noble Baroness, Lady Suttie, for raising this amendment in Committee.

Baroness Ritchie of Downpatrick (Lab): My Lords, I thank the Minister for his explanation of the amendments in this group about making the Bill more victim-centred. Undoubtedly, the most important people in all this are the victims. Many of them have passed on and their families—some of whom have passed on, through the passage of time—have not seen justice and truth: the very things they were looking for. I acknowledge what both the Minister and my noble friend Lord Murphy said, on the summer solstice, the longest day of the year, which is the day that victims of the Troubles in Northern Ireland are remembered.

In relation to Amendment 2, can the Minister, in his wind-up, explain the practical application of the amendment on the operation of the ICRIR. How will the amendment really promote reconciliation in the exercise of those functions, given that the Bill has been opposed by legal representatives, such as the European Council of Ministers, political representatives from the Irish Government and all the political parties in Northern Ireland, and the victims and survivors—a wide spectrum?

Lord Weir of Ballyholme (DUP): My Lords, first, my colleagues and I associate ourselves with the earlier remarks noting and indeed supporting real victims of the Troubles. It is important that they are at the forefront of our mind as we debate all these amendments today.

I acknowledge that the amendments before us in this group all represent very small steps forward. They are small ameliorations and small improvements. It is difficult to quibble with their exact wording; there is nothing that we would seek to divide on in this group of amendments. However, by their very nature, they are symptomatic of the wider problems with this Bill. Whatever small improvements are made, they cannot turn the irreconcilable and the unacceptable into something that is acceptable and worthy of legislation. They omit some of the most important aspects. Indeed, part of the problem with these amendments is that they have sins of omission, rather than sins of commission. What do I mean by that? If we first take Amendment 2, we see that it introduces the concept of reconciliation, which is on the face of the Bill, directly into the work of the commission, but there is a danger of that being seen as tokenistic. At no stage does the Bill actually define what the objectives of reconciliation are. There is a danger that this has been thrown in simply so that there can be a direct reference to reconciliation, but with no meat put on the substance.

The other, more fundamental, issue regarding reconciliation is that many victims will see this legislation as being entirely unacceptable, taking away from them any prospect at all of justice and granting immunity to those who carried out some of the most heinous crimes during the Troubles. Therefore, the idea of reconciliation being at the heart of the Bill while immunity from prosecution remains is a central paradox of the Bill that is not properly addressed by Amendment 2.

On Amendment 3, the weakness is in the reference to the

"general interests of persons affected"

by the Troubles. Having a victim-centred is something that no one would disagree with but, in this wording, no distinction is drawn, for example, between a perpetrator and a victim. Someone who, for example, could have suffered injuries or death as a result of their own terrorist actions is put on the same plain as those innocent victims. I think that, again, there has been a problem of successive Governments failing to tackle this particular problem.

Finally, on Amendment 85 and 86, the involvement of victim statements is generally welcomed but, again, this belies the flaws within this process as a whole. Victim statements are commonplace within the criminal law and give an opportunity for those who have suffered directly to have their views taken into account. However, with that, the norm is that a victim impact assessment is taken into account by the courts to establish, for example, whether a tariff should be greater or less than would otherwise be imposed. The views of the victims can genuinely be taken into account. In this case, however, while it is welcome that those views will be published, it will have no impact whatever on the potential immunity. Therefore, the question for many victims will be: what is the point if whatever they say has no impact whatever?

We do not oppose these amendments and will not be dividing on them, but they fundamentally do not change the flawed nature of this Bill.

6 pm

Baroness O'Loan (CB): My Lords, today, the Day of Reflection, was proposed many years ago by Healing Through Remembering. It is a very symbolic day, as noble Lords have noted, for families of victims, and we tonight, as they remember the dead and support the injured, are debating a Bill which takes away the rights they have under the law. They do not want the Bill; it is important to say that.

I thank the Minister for the amendments he has tabled that reflect my earlier comments during the passage of the Bill. On behalf of the noble Lord, Lord Hogan-Howe, who cannot be here today, I thank him for the meetings he held with the noble Lord and with me.

It may seem desirable—admirable, indeed—that the Minister has introduced a requirement in government Amendment 2 that the principal objective of the ICRIR in exercising its functions is to promote reconciliation. However, it seems to me that there may be a contradiction between the promotion of reconciliation and the conduct of an investigation. How does one conduct an independent, impartial investigation with the principal objective of promoting reconciliation? Does that objective detract from the duty to investigate fearlessly, regardless of what the outcome of an investigation may be, so that people can be assured that the Government act in accordance with their obligations under the rule of law?

Investigation can lead to the exposure of matters that were hitherto unknown or unconfirmed but which may demonstrate, for example, that a named individual or individuals were responsible for a particular atrocity, and that can cause massive concern, particularly in circumstances in which terrorist perpetrators regard their activities as justified by circumstances, or where state actors did not take action to prevent a planned murder of which they were aware. It may certainly lead to hostility and distrust, rather than promoting reconciliation. I do not know what the answer to this is, but I think there is a conflict there, or a dissonance.

I welcome the two government Amendments 85 and 86, which provide for victim statements and the publication of those statements. The Government have yet to provide, as the NIHRC has stated, that victims or family members are informed when an individual has applied for immunity. Victims or family members are not currently expressly required to be informed of the outcome of the immunity request. There is no express requirement for the independent commission to provide reasons why it is or is not granting immunity, and there is no proposed option for an individual requesting immunity, or an interested person, to appeal a decision on immunity made by the ICRIR. In short, the Bill still does not comply, in this context, with the requirements of the victims' rights directive in its provision for victims.

Lord Morrow (DUP): My Lords, the Minister was at pains to point out that Amendment 2 is all about reconciliation, yet no matter how much you search through the Bill, there is no definition of reconciliation in it. I am having difficulty, as are my colleagues, in being reconciled to the Bill and to have reconciliation with it, but I hope the Minister will—and I am sure he will—when he is winding up on Clause 2, give his definition of reconciliation. It seems to me that reconciliation means different things to different people. I am sure he will have observed that all the victims groups that have spoken about the Bill have not spoken in favour of it; therefore, I think he has a job to do. However, as my noble friend Lord Weir has said, we will not be dividing the House on this, but I earnestly ask the Minister why there is no definition of reconciliation in the Bill.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I know my noble friend Lord Weir touched on this, but Amendment 3 requires the ICRIR to

"have regard to the general interests of persons affected by Troubles-related deaths and serious injuries".

I ask the Minister to clarify: have the Government failed conclusively to rule out perpetrators, including those who died or were injured at their own hand, from the scope of this duty which is now being placed upon the ICRIR? It would certainly be wrong that those who have been perpetrators and died or were injured at their own hand should be placed on the same level as those who are innocent victims.

Baroness Suttie (LD): My Lords, I place on record my thanks to the Minister for introducing Amendments 85 and 86, which, in essence, as he has said, are the same amendments that I tabled in Committee and were recommended by the victims' commissioner, Ian Jeffers. It is a very welcome and common-sense change to the Bill, allowing for individuals affected by death and other harmful conduct to provide and publish personal statements to the ICRIR. I am very grateful that he is willing to make this small but important change, notwithstanding my earlier comments about the bigger picture of the Bill, including, in particular, immunity and other issues that we will get to later this evening. I will be very interested to hear the Minister's response to the important points raised by the noble Baroness, Lady O'Loan, about the potential conflict between reconciliation and investigation.

Lord Murphy of Torfaen (Lab): My Lords, I agree with every word spoken by every Member of this House who has taken part in this very brief debate. First, I thank the Minister for certainly improving what was there before—there is no question about that—but it does not, of course, go to the heart of the issue of why it is that victims, victims groups and the victims' commissioner are probably the people most opposed to the Bill as a whole. Putting the word "reconciliation" in it does not mean to say it makes it any better, because, as my noble friend Lady Ritchie and the noble Lord, Lord Weir, said, there is a vagueness about the definition, so it does not actually mean very much at the end of the day.

What is purposeful, I think, is the fact that there are going to be victim statements. I think that is a distinct improvement, but ultimately the reason that victims and their families and their advocates in Northern Ireland are opposed to the Bill is because of the proposals on immunity, which we will reach a little later this evening. However, the Opposition will not oppose the amendments.

Lord Caine (Con): My Lords, again, I am very grateful to those who have participated in the admirably short debate on this group of amendments.

Returning briefly to the issue of personal impact statements, as I set out, these are designed to give victims and families a voice in the process, and an opportunity to set out how they have been personally affected by the Troubles. The noble Lord, Lord Weir of Ballyholme, referred to the way in which the amendment is drafted and the fact that the victim's impact statement will not be part of the immunity process. The Government's clear view is that determinations for applications for immunity must be solely a matter for the chief commissioner of the new ICRIR to determine within the framework of the legislation. The commission will decide, of course, to what extent families should be involved in the immunity process more generally.

The noble Baronesses, Lady Ritchie and Lady O'Loan, touched on the issue of the potential conflict between the duty on reconciliation and investigations. As the amendments set out, the primary objective of reconciliation does not contradict the functions of the ICRIR—I shall say "the commission" for short—which are focused on the provision of information to families and the powers of the ICRIR will facilitate that. There is no question of the duty getting in the way of investigations. Certainly, when it comes to family reports,

[Lord Caine]
the only thing that will not form part of the final family report will be those that are referred to in Clause 4 regarding national security and the duty to keep people safe and secure and not to put people's lives at risk.

In response generally to the noble Baroness and the noble Lord, Lord Morrow, I touched on the issue of reconciliation way back at Second Reading in November, when I said that no Government can legislate to reconcile people or to impose reconciliation on people. However, we can try to put in place as many measures as possible to promote reconciliation. In my view, reconciliation in Northern Ireland means a place where society is peaceful and prosperous and which most people who live there would be proud to call home. I hope that deals with some of those points.

On the point made by the noble Lords, Lord McCrea and Lord Weir, the Government have never accepted any kind of moral equivalence between those who injured themselves at their own hands and the victims of terrorism in Northern Ireland. We made it quite clear when we passed the victims' payment scheme in this House a few years ago that we did not accept any equivalence and there is certainly no intention to do so here.

On that note, I hope that I have managed to respond to a number of points and beg to move.

Amendment 2 agreed.

Amendment 3

Moved by ***Lord Caine***

3: Clause 2, page 3, line 26, at end insert—

"(4A) In exercising its functions, the ICRIR must have regard to the general interests of persons affected by Troubles-related deaths and serious injuries."

Member's explanatory statement

This would require the ICRIR to have regard to the interests of various categories of person when carrying out its functions.

Amendment 3 agreed.

Amendment 4

Moved by ***Lord Caine***

4: Clause 2, page 3, line 26, at end insert—

"(4A) At least three months before the start of each financial year the ICRIR must—

(a) produce and publish a work plan for that year, and

(b) give a copy of the plan to the Secretary of State.

But this duty does not apply in relation to any financial year which starts before 1 April 2025.

(4B) A work plan must deal with the following matters—

(a) the caseload which the ICRIR is expecting;

(b) the plans which the ICRIR has for dealing with its caseload;

(c) the plans which the ICRIR has for engaging with persons entitled to request reviews of deaths and other harmful conduct;

(d) policies which the ICRIR is planning to introduce, review or change;

(e) such other matters as the ICRIR considers appropriate."

Member's explanatory statement

This would require the ICRIR to produce a work plan for each financial year before the start of the year.

Lord Caine (Con): My Lords, I will again try to be mercifully brief given that, with one technical exception, I have retabled these amendments from Committee, where they were debated extensively. They are designed to amend operational matters in the legislation. I hope noble Lords will bear with me as they are very technical.

Amendments 4, 5, 6 and 8 to Clause 2 and Amendment 125 to Clause 54 ensure that the commission produces and publishes a work plan for each financial year. This will ensure that the commission has properly considered and planned for its expected caseload in each financial year. The work plan will set out the commission's engagement strategy and any plans to make policy changes. This will ensure that it has properly considered and planned for its expected caseload.

Amendment 127 is entirely technical in nature. It seeks to change the definition of "reserved provision" in regard to this legislation, reflecting the fact that Section 8(b) of the Northern Ireland Act 1998 requires consent to a Bill for an Act, rather than to the Act itself. This will simply tidy up the drafting.

Amendment 130 to Schedule 1 will require the commission to keep accounts, prepare an annual statement of accounts and provide that statement to the Secretary of State and the National Audit Office, which will be under a duty to audit the commission with audits laid in Parliament. Amendment 134 to Schedule 1 deletes a reference to a commissioner having been removed from office on grounds of ill health, as ill health is not a ground for removal from office, as is standard for such posts.

Amendment 135 to Schedule 1 provides a definition for being insolvent in regard to this legislation. Amendments 136 and 143 update the provisions about the application to the commissioners and ICRIR officers of the law relating to the rehabilitation of offenders, which ensures that the Bill reflects the current approach taken in law.

Amendment 144 to Schedule 1 ensures that the commissioner for investigations, who is also an ICRIR officer, falls only within paragraph 14 of Schedule 1, as a commissioner, and not also within paragraph 20 of that schedule as an ICRIR officer. Paragraphs 14 and 20 make equivalent provision to ensure that the prohibitions on trade union activity which govern the police do not apply to the ICRIR, which I am sure noble Lords opposite will welcome.

6.15 pm

Amendment 145 to Schedule 2 avoids overlap with provisions of the Assaults on Emergency Workers (Offences) Act 2018, which will apply to designated ICRIR officers but is law only in England and Wales. Amendments 162 and 164 deal with the accountability of ICRIR officers. As noted many times, the commissioner for investigations will have the full powers and privileges of a constable and be able to designate other officers with police powers as required. I have tabled a few amendments enabling the commission to enter into bespoke arrangements with relevant oversight bodies regarding arrangements for external oversight of the ICRIR's use of police powers. This will ensure that those powers are used proportionately.

Finally, I come to Amendments 163, 165 and 166. The Bill as drafted includes consequential amendments giving the ICRIR the power to request communications data directly from UK companies. As I set out in Committee, on further reflection, the Government do not consider it necessary to give the ICRIR access to this power given the nature of legacy investigations. I have therefore retabled amendments to remove such provisions from the Bill.

Telecoms operators are required to comply with the Data Protection Act 2018, meaning they would need a business case justification for retaining communications data from 1998 and before. Therefore, the likelihood of providers holding relevant data for the purposes of the commission's functions is extremely remote. Removal of this clause will have no impact on the commission's ability to obtain communications data previously obtained and still held by the relevant authorities using investigatory powers as part of previous investigations. It also does not affect powers which purely flow from ICRIR officers, where designated, having the powers and privileges of constables.

I do not wish to speak for other Members of the House and will respond to amendments tabled by noble Lords in this group when I close.

Baroness O'Loan (CB): My Lords, most of the amendments in this group are unexceptional. I have tabled Amendments 21 and 26 to Clause 9, which provides that close family members will have to apply to have their cases reviewed. There is a definition of "close family members" which effectively excludes those who are not parents, spouses, partners, children, brothers, sisters, half-brothers or half-sisters. For example, it does not include cousins, aunts and grandparents. This does not reflect modern families, who are much smaller than previously, where the deceased may be an only child with no issue or where the only surviving relatives are more distant but may be close.

In such cases, while a family member can make a request, the decision over whether it is appropriate will be made by the investigation commissioner. My Amendments 21 and 26 to Clause 9 remove from them that power to decide whether it is appropriate for a family member to make a request and leave it where it should belong—with the family member in question. This would be a victim-informed approach and go some way to meeting the requirements of the victims' directive.

I hope the Minister will see that these two amendments are simply designed to give effect to the rights of victims, taking a victim-centred view of those who might not fit within the definition of a close family member but might well have been very close to the deceased person—even if they have felt forced by circumstances such as a threat by paramilitaries to leave Northern Ireland and therefore have not been able to return or have found it too traumatic to do so.

To respond to the Minister's comments on the removal of access to communications data and the removal of the RIPA scheduling which was originally provided for in this Bill, this is not such a remote matter as he appears to think. Those powers were used most recently in Operation Kenova, which is investigating matters that occurred during the period covered by this Act. Those powers were used and should remain in the Bill.

Lord Murphy of Torfaen (Lab): My Lords, there are a lot of technical amendments to this and obviously we support those, as we support the other amendments in this group. Annual reports, work plans—all very sensible—but, in the nature of things, this is a relatively small part of this controversial Bill, and we will not oppose the amendments.

Lord Bew (CB): My Lords, I wish to return to something I focused on in Committee: the role of the ICRIR and its officers. Tomorrow, I have the honour of addressing former Chief Constable Boutcher's staff who are working on the Kenova inquiry. There are some 80 staff and a budget, so far, of over £40 million. We must have in our mind's eye the criteria for people who work for the ICRIR. The concerns I had in the past have been greatly mollified by the fact that Sir Declan Morgan will now play such a key role in this new body. It is important to recall that there is no obstacle to employment in the ICRIR for those officers with, for example, HET experience, who did a good job, and former officers of the PSNI, and I am simply asking for reaffirmation of this from the Minister. We have to think about the complexity of issues, such as expense. Kenova is running to a cost of £40 million now, dealing with only a tiny percentage of the case load that the ICRIR might have, and therefore we do need experienced officers who know the ground working in this area. The Minister has been helpful in the past, but I am looking for a degree of reassurance.

Baroness O'Loan (CB): Before the noble Lord sits down, I have a question. He talks about the tiny proportion of the cases which are dealt with by Operation Kenova. The reality is that Operation Kenova has dealt with over 200 cases of the 1,000 which currently remain to be dealt with. My understanding is that the budget of the ICRIR is to be £50 million a year, which will come to £250 million, so the approximate cost will be very much the same.

Lord Bew (CB): I am grateful to the noble Baroness for the intervention. I did not express it quite correctly; I was thinking of the likely number of prosecutions, which is a substantially lower number. She is right to make the correction.

Lord Caine (Con): I am grateful to noble Lords for their contributions. I turn first to Amendment 10 to Clause 4, in the name of the noble Lord, Lord Bew. The legislation is clear in relation to the powers provided to the ICRIR to assist in the performance of its functions. That includes Clause 5, in relation to disclosure, and Clause 6, which provides for ICRIR officers to have the powers and privileges of a constable. Clause 14 provides the ICRIR with the power to compel individuals to provide information, a power which is not provided to police officers but, in the Government's view, is necessary to ensure that the commission can deliver effective legacy mechanisms while complying with our international obligations. Although I am sympathetic to the intent behind the amendment, I suggest that it is not necessary.

In respect of the noble Lord's comments about the employment of former Royal Ulster Constabulary officers—former members of the Historical Enquiries

[Lord Caine]

Team—there is absolutely no prohibition, as I made clear in earlier comments in Committee. I think he is aware of my steadfast support and gratitude for the service and sacrifice of the Royal Ulster Constabulary over many years.

I turn to Amendments 21 and 26 in the name of the noble Baroness, Lady O'Loan. We had an extensive discussion about this issue yesterday afternoon so she will be unsurprised by my response. In our view, the Bill's definition of a "close family member" is already extensive and covers spouses, civil partners, cohabitees, children, parents and siblings, as well as stepchildren, step-parents and half-step-siblings, and the ICRIR must accept a request for a review from any of these individuals. Therefore, this is a provision which is unlikely to be required in the majority of cases, given the comprehensive scope of the definition of close family member. However, where no close family member exists, it is right that the ICRIR has discretion—I repeat, discretion—to consider whether that request is appropriate. This could, for example, be considering the nature of the relationship to the deceased by the person requesting the review, both in terms of how they are related or the reality of that relationship. Factors such as whether they were estranged or were closely involved in the individual's life could be relevant.

In respect of the comments made by the noble Baroness about data, we discussed this extensively. I am afraid I do not know the details of the circumstances in which Kenova has made the request to which she referred, but I think the Government's position on this is solid.

Amendment 4 agreed.

Amendments 5 to 8

Moved by ***Lord Caine***

5: Clause 2, page 3, leave out line 27 and insert—

"(5) No later than six months after the end of each financial year, the ICRIR must—

(a) produce and publish an annual report in relation to that year, and

(b) give a copy of the annual report to the Secretary of State.

(5A) An annual report must deal with the following matters—"

Member's explanatory statement

This amends the existing provision about annual reports so that it takes the same form as the new provision in the amendment in Lord Caine's name about work plans (including by imposing a time limit for producing the reports and requiring the reports to relate to financial years).

6: Clause 2, page 3, line 42, leave out subsection (6)

Member's explanatory statement

This is consequential on the amendment in Lord Caine's name which amends the existing provision about annual reports.

7: Clause 2, page 4, line 4, at end insert—

"(9) In this section "persons affected by Troubles-related deaths and serious injuries" means—

(a) family members of persons whose deaths were caused directly by conduct forming part of the Troubles (and the reference to those deaths has the meaning given in section 9(9)),

(b) persons who suffered serious physical or mental harm that was caused by conduct forming part of the Troubles, and

(c) family members of persons who suffered such harm and have subsequently died."

Member's explanatory statement

This is consequential on the amendments in Lord Caine's name about the duty to have regard to certain persons' interests.

8: Clause 2, page 4, line 4, at end insert—

"(9) In this Act "financial year", in relation to the ICRIR, means—

(a) the period which—

(i) begins with the day on which this section comes into force, and

(ii) ends with the following 31 March; and

(b) each subsequent period of one year which ends with 31 March."

Member's explanatory statement

This is consequential on the amendments in Lord Caine's name about work plans and annual reports.

Amendments 5 to 8 agreed.

Amendment 9

Moved by ***Lord Eames***

9: After Clause 2, insert the following new Clause—

"ICRIR: immunity consent

(1) The ICRIR process must have as its central feature the requirement for a close family member of a deceased person to grant consent prior to the granting of specific immunity for deaths caused by a troubles-related offence, subject to section (Objections to request for immunity)(3).

(2) If there is an objection raised to a request for immunity in relation to deaths then the ICRIR may not exercise any powers in section 14, 15 or 16, subject to section (Objections to request for immunity)(3).

(3) The Chief Commissioner may still conduct a review under section 9(3) to (6) if they deem it to be proportionate and in the public interest.

(4) Nothing in this section affects the operation of section 23."

Member's explanatory statement

This provides for the victim's consent to be central to the process. In the absence of such consent in regards offences causing death, there can be no immunity (subject to subsection (3) of the new clause in Lord Eames' name after Clause 12). If there is no consent, it is also the case that the ICRIR may not supply information or produce a public report, but nevertheless may still exercise the power in section 23 to refer to prosecutors.

Lord Eames (CB): My Lords, I rise to address Amendment 9, recognising the consequential relationship of Amendments 20, 27, 29, 59, 61, 62 and 69. In Committee, I frequently reminded noble Lords of the centrality of the urgency of victims' needs. I also referred to my personal experience, over my adult life, of being in close contact with so many victims. No later than this week, knowing this debate was taking place, I have been reminded of this by two families who are not members of any organisation for victimhood, but who quietly and with dignity carry the wounds of their victimhood in the privacy of their own homes.

It is that morass of emotions which prompted me to table this amendment, because back home in Northern Ireland there is almost universal opposition to this Bill. The more you think about it and try to analyse it, you come up with a conclusion that, first, we differ on

what reconciliation means; secondly, any attempt through legislation to define reconciliation is going to run into a multitude of difficulties; and, thirdly, the reconciliation in the Bill is, for many of us who have experience of the Troubles, nothing short of hypocrisy. My amendment seeks to recognise the need of victimhood not just to be recognised as a term but to be experienced in the process of reaching what the Bill is set out to aim for: reconciliation with a small R.

6.30 pm

When we come to consider the role of the ICRIR, we should recognise that there are limits to what this legislation or any other legislation can define or describe. A lot is going to be left to the way in which this new organisation runs its affairs. The reason the noble Baroness, Lady Hoey, and I are suggesting the incorporation of the terms of Amendment 9 is not to oppose the Bill but to try to make it better, more acceptable. Is how we get to a definition of immunity or how we reach the process of immunity more important than recognising victimhood? Is it more important than recognising that people have their memories, their hurts and their scars? We have said that so often in this House, and we have been reminded tonight by the noble Lord, Lord Murphy, and others of the significance of today as a day of remembrance.

I will be as brief as I can in moving this amendment. Once again, I thank the Minister for his compassion, as well as his listening ability. I ask him to accept that this is not an attempt to derail what he has said already—not least what he has said tonight—but an attempt to make it more acceptable to that vast community which thinks at this moment that what we are talking about has no relevancy to their situation.

I ask again, which is more important in the process of reconciliation: to create a technical process for immunity or to recognise by involvement the needs of suffering people who are carrying in their hearts and minds the scars of our Troubles? In my opinion and, I think, that of many of my colleagues who, like me, have given so much of their lives to this process, it has to be stated for the record that the immunity process has to climb over the reality of victimhood. Until it does so, it will be very unsatisfactory as an attempt at reconciliation. I beg to move Amendment 9.

Baroness Hoey (Non-Afl): My Lords, as a signatory to Amendment 9 in the name of the noble and right reverend Lord, Lord Eames, and the amendments that follow from it, I support it very strongly. Realistically, we know that the Government are going to push the Bill through, so rather than trying to wreck it completely, it is important that we try to make it as good as it can be.

Fundamentally, Amendment 9 seeks to make what is imperfect legislation that little bit less imperfect. It would do so by at least making the immunity process absolutely victim centred. To put it simply, save for exceptional circumstances which we have set out in the amendment—such as a disagreement among family members as to whether to consent—the core principle will be that an immunity certificate cannot be granted unless there is the consent of a victim.

We have built in a provision whereby if a close family member requests a review, that is taken as consent. Once consent is given, a perpetrator—within the scope set out in the Bill—can obtain immunity, the family can obtain information and the chief commissioner can publish a report of his findings. But crucially, if there is no family consent, none of those things can happen. The chief commissioner may still conduct a review if a referral is made by one of the specified statutory bodies, but he may not grant immunity, provide information to families or publish a report if there is no consent. That means that the wishes of victims' families are central to the process.

We would prefer that the Bill in this format was not here at all—but it is. These amendments seek to make the best of a bad situation and at least give victims, in all but exceptional cases, a veto over perpetrator immunity.

It should be noted—I raise it now because it is central to the whole issue of outcomes for victims—that if you look at paragraph 5(1) of Schedule 11, it appears that Section 4 of the Northern Ireland (Sentences) Act 1998 is being amended to, in effect, reduce the tariff to zero or at the most one day. At the moment, it works out as a two-year sentence for anyone convicted of a pre-1998 offence. On the face of it, this seems to mean that even if one were to be convicted of an offence on referral to the DPP by the chief commissioner, there would be a term of imprisonment of, in effect, one day maximum. That may not be called an amnesty, but it is a de facto amnesty. I am very sad about that and regret it. It is wrong. It was wrong in 1998, it is wrong now and it will be for ever wrong.

If the Government are determined to force the Bill through, at least our amendment would put victims at the centre of an imperfect process. I ask a simple question: how could anyone reasonably object to elevating the interests of victims over those of perpetrators?

Lord Dodds of Duncairn (DUP): My Lords, first, I join with other noble Lords who have thanked the Minister for his engagement in relation to both the amendments he has tabled on Report and the amendments we considered in Committee and have brought forward again on Report. I think it has been a genuine engagement. I am pleased that the Minister has listened to some extent and that there have been improvements as a result of the discussions that have taken place, and indeed following amendments tabled in the other place which the Government responded to.

In paying tribute to the Minister, we should also pay tribute, as others have, to the innocent victims of terrorism, murder and mayhem in Northern Ireland over many years. We should pay tribute to their enormous tenacity and fortitude in the face of what has been happening in recent days in Northern Ireland, with the continuing eulogy and glorification of murderers and criminals by elected representatives, including those who purport to be the First Minister "for all".

In relation to the Bill being brought back, given the pause and the length of time that has passed, and the universal opposition to it, some had hoped that this would be one area where the Government might actually listen to all the parties in Northern Ireland, but that does not appear to be the case. The Minister and your

[Lord Dodds of Duncairn]
Lordships will be aware that on 19 June, the leader of the Democratic Unionist Party, Sir Jeffrey Donaldson, and others wrote to the Prime Minister asking, even at this stage, for the proposals to be withdrawn. The letter restated our fundamental opposition to an amnesty—which is what the Bill in effect creates—paid tribute to the victims and recognised that while we and other noble Lords have tabled amendments, that should not be misconstrued in any shape or form as providing tacit consent to this regime, which undermines confidence in the rule of law and has done so much harm to victims.

I will speak to the amendments in my name and those of my noble friends, but I say initially that I have a lot of sympathy with Amendment 9, moved by the noble and right reverend Lord, Lord Eames, on putting the victims at the centre of this immunity process if we are to have it. It talks about those cases that involve death; I would prefer it to cover all cases. Having said that, I think it is worthy of support, and I hope the Government will consider it.

The noble and right reverend Lord, Lord Eames, talked about hypocrisy in relation to mentioning reconciliation, yet we have the Bill before us. That was a very powerful but correct description, and I often hear that word mentioned by victims in relation to the approach taken in the Bill by the Government.

Amendment 59A, standing in my name and in the names of my noble friends, would require the commissioner for investigations to refer a file to the PPS when an individual is found to have provided false statements to the ICRIR. At present there is no explicit provision in the Bill to require the ICRIR to provide material evidence of false statements to the prosecutor in aid of proceedings. I would be grateful if, when the Minister responds, he can address that point and reassure your Lordships that this is not some kind of loophole that can be exploited but that, in the absence of this amendment, there will be no gap and that we will ensure that there is a joined-up approach to pursuing convictions.

Amendment 61A would require an individual to be disengaged from activity which would be reasonably regarded as precluding reconciliation in order to be eligible for immunity from prosecution, Although the concept of immunity is in our view irredeemable, a further problem is that the Bill as drafted places no impediment to a perpetrator gaining the protection of immunity and then going on to publicise, promote or commemorate—the favourite word now used by terrorist apologists—his or her deeds in such a way that harms victims and generally offends the cause of peace and reconciliation. The Government have brought forward new proposals allowing immunity to be revoked in instances of glorification of terror, and I welcome that. However, I think it could go further in capturing activities that do not necessarily constitute offending but which will cause deep harm to victims, survivors and their families. Our Amendment 86A follows on by requiring the permanent revocation of immunity of individuals engaged in the sort of activity that I have outlined.

It should not be acceptable in general terms that political representatives of the IRA and Sinn Féin, including the potential First Minister or anyone else, and especially people who have taken advantage of this system, should go around the country, not doing enough to fall foul of the "glorification of terrorism" legislation but doing enormous harm psychologically to victims and their families by their continuing commemoration, eulogising and glorification of the perpetrators of some of the most heinous criminal and obscene acts that we have seen anywhere over the last 30 years. The purpose of these amendments is to address that point and to urge that the Government do something about it. It is not only causing trauma to victims and retraumatising their families but is toxifying the political atmosphere in Northern Ireland as people try to get the Assembly up and running again.

6.45 pm

Amendment 61C is designed to prevent the grant of immunity to any person subject to active proceedings who has moved abroad to escape prosecution. We discussed this in Committee and we have discussed it with the Minister in detail, and I understand the position. However, the way the Bill is currently worded, this could have the effect of encouraging offenders to return to Northern Ireland to live out their final days there in close proximity to those they terrorised, having taken advantage of fleeing the jurisdiction for many years. We think that that will cause further problems for victims.

Amendment 89A is an amendment to the Government's Amendment 89. It is intended to probe the omission of offences under Section 13 of the Terrorism Act 2000 from the proposed new clause on "Subsequent convictions: revocation of immunity" in the amendment in the name of the noble Lord, Lord Caine. The Government's proposed new clause on revocation of immunity for subsequent convictions is based on Schedule 1A of the Counter-Terrorism Act 2008, which helpfully covers offences in Section 1 of the Terrorism Act 2006—which was the focus of our proposed offence in Committee—and Sections 11 and 12 of the Terrorism Act 2000. Although this is a step forward, the Government's proposal does not cover Section 13 of the 2000 Act, which prohibits the wearing or display of items of clothing which explicitly or implicitly arouse the suspicion of support or membership of a proscribed organisation.

In recent days and over the last number of years we have seen these kinds of displays happening on the streets of Northern Ireland. Therefore, this could allow a loophole for perpetrators who have gained immunity to go about at these kinds of events without facing any prospect of criminal enforcement. There needs to be a recourse to revocation of immunity for the full range of activities that constitute glorification of terrorism. It is wrong that, having adopted the rest of it, the Government have omitted the part that talks about the display and wearing of paramilitary garb, and so on. That happens very frequently. Indeed, there was an example the other day of a convicted murderer who was released from prison early on medical grounds because he had only a short time to live. Many years later, that terrorist carried the coffin of one of his IRA volunteers through the streets of Belfast. So I have to

say that these are real, practical problems and this causes immense damage and hurt to victims. Indeed, right across the spectrum of people in Northern Ireland, people are appalled at this kind of behaviour, yet it is allowed to happen.

Indeed, it happens with the encouragement, again, of leading politicians who claim that they want to be First Minister for all. How can you be a First Minister for all when you are out eulogising and praising murder and criminal activity? Imagine if the Prime Minister of any civilised country anywhere in the world was running around, being present at and organising eulogies and commemorations of criminals and murderers. It really does not bear thinking about, but that is the reality of what we face.

In conclusion, Amendment 93A would allow the offences for which immunity has been granted to be taken into account in sentencing for post-Troubles offences. The public rightly expect that sentencing should take into account whether an offence is a first offence and, if it is not, the severity of any sentence or penalty should reflect that. We believe that if somebody is convicted of a future offence and they have received immunity, whatever the crime was that they got immunity from being prosecuted for should be taken into account. The way the Bill currently stands, that would not be the case.

Finally, we regard Amendment 98A as very important, as it would treat a public prosecution as having begun when the file is passed to the PPS in Northern Ireland. The Kenova case has been mentioned. That is an example of an enormous amount of work that has gone into the pursuit and investigation of very serious issues in Northern Ireland. The files have been passed to the PPS and there they have sat for an inordinately long time—I cannot remember precisely how long off the top of my head, but it is a number of years. There is still no sign of that case emerging from that office, yet under the proposals in the Bill, as of 1 May next year, that would come to a complete halt, with no prospect of any criminal prosecution. That work should not be nugatory or conclude in that fashion. We believe it is important that this amendment is taken on board so at least that case and others where the file has been passed should continue. That would obviously be welcomed by those involved in that investigation but also by the families of the victims and many across the board of Northern Ireland.

I hope the Minister will take on board some of the amendments we have tabled. I look forward to his response.

Baroness Ritchie of Downpatrick (Lab): My Lords, we are now on one of the main debates in this Bill: the issue of amnesty and immunity. As the noble Lord, Lord Dodds, and the noble and right reverend Lord, Lord Eames, said, this issue goes to the heart of the legislation, but it also drives a dagger through victims in Northern Ireland—people who have endured immeasurable suffering because of the loss of their loved ones in unexplained circumstances, because many of them have not been told how or why that loss happened, or the nature of the wounds inflicted on them. Those who are victims suffer many wounds in later life that can never be measured in terms of compensation or monetarily but can be measured only in terms of loss of family lives and family time, because they have lost their loved ones. We all know many of those people, whose lives have been totally turned around by the actions of paramilitaries and—we cannot deny it—of state forces.

However, this issue of immunity strikes at the heart of everybody. As the noble and right reverend Lord, Lord Eames, said, there is universal opposition to this Bill and this particular part of it on immunity, and the clauses dealing with the withdrawal of access to inquiries and investigations. That is very much a denial of basic human rights in any normal democracy.

In the unavoidable absence of my noble friend Lord Hain, I will speak to Amendment 63, which is in his name and those of the noble Baroness, Lady O'Loan, the noble Lord, Lord Blair of Boughton, and my noble friend Lord Murphy of Torfaen. As the Bill stands with the Government's amendments, there are only two circumstances in which immunity for some of the most heinous crimes imaginable can be revoked: if there is a conviction for misleading the ICRIR or for a subsequent terrorist offence. This is not good enough. Amendment 63 sets out other circumstances which would put in place at least some accountability measures as to the future conduct of perpetrators.

Are the Government seriously saying that, as far as they are concerned, someone who has confessed to a sectarian murder, for example, is perfectly free to harass that person's family, laugh at their grief, celebrate their loss and still retain their immunity? Are they saying that they should still retain their immunity if they are a threat to the public? Where in this legislation is there any element of accountability for perpetrators? They do not even have to express remorse or regret for their actions. Presumably, they could appear before the ICRIR, describe what they have done to the best of their knowledge and belief, say, "By the way, I would do it all over again", and still walk away with lifelong immunity in their pocket. As far as the world at large is concerned, they will not have a stain on their character, but we will never forget, nor will those who were the victims. They will carry the cross of the loss of their loved ones, in the most heinous circumstances, to their graves.

If we let this element of the legislation go through as the Government currently propose, we will be telling victims and survivors that we care more about the perpetrators than we do about them. I cannot believe that that is the message this House wants to send. The clauses regarding conditional immunity and those dealing with the eradication of inquests and investigations undoubtedly go to the very heart of this legacy debate. To impose conditional immunity and remove access to inquests and inquiries is a denial of basic civil liberties.

It is worth noting the following from the Council of Europe's Commissioner for Human Rights, Dunja Mijatović, who spoke yesterday on immunity. She said:

> "Despite this, the UK government has decided to go ahead with the Bill in a way that does not recognise Northern Ireland's violent past or honours the suffering of victims. While the government has recently published amendments, these leave the fundamental problems with the Bill intact, such as the conditional immunity scheme that would result in impunity for serious human rights violations".

[Baroness Ritchie of Downpatrick]

She went on to talk about the cutting off of

"avenues to justice for victims",

and questioned the ability of the ICRIR

"to deliver outcomes that would meet human rights standards".

I would like the Minister to comment on the commissioner's words and the actions the Government will take on foot of that.

It is noteworthy that victims organisations throughout Northern Ireland, such as Amnesty, the CAJ and the Human Rights Commission, have asserted in their submissions that the government amendments are not compliant with the provisions required by the ECHR—a point denied by the Secretary of State yesterday.

I am told that the Secretary of State relies on the amnesty provisions in the weapons Act as a basis for the amnesty in this Bill. When he was Secretary of State, Sir Patrick Mayhew, later Lord Mayhew—a former colleague of the Minister—said on the then Northern Ireland Arms Decommissioning Bill that that amnesty was "tightly defined", and

"available only to those who adhere to the strict terms of a decommissioning scheme, and only for offences that they technically commit in respect of anything done in accordance with such a scheme"—

mainly offences of a possessory nature. He continued by saying that these provisions

"in no sense constitute some form of general amnesty covering other offences: the security forces will go on with undiminished resolution pursuing and bringing to justice those responsible for other crimes".—[*Official Report*, Commons, 9/12/1996; col. 24.]

How does that square with this information and this clause on immunity? Maybe the Minister could comment on that in the light of the Government's current Bill.

For all these reasons, I support the amendments in the names of my noble friends Lord Hain and Lord Murphy. If my noble friend Lord Murphy pushes Amendment 66 to a vote on Monday, I will support him in the Division.

7 pm

Baroness O'Loan (CB): My Lords, I must apologise to the House. I omitted to declare my interest as a member of the Operation Kenova steering group when I spoke on it previously.

The amendments in this group cover a massive range of issues affecting the proposed immunity provisions, which are contrary to the UK's obligations under the Human Rights Act 1998 and the European Convention on Human Rights and are not consistent with the Government's obligations under the Good Friday agreement. They will provide immunity from prosecution for murder, torture and other terrible crimes that have left people dead or with life-changing, life-limiting injuries. The only crimes for which immunity will not be possible are sexual ones.

Northern Ireland has not previously had immunity from prosecution. What we had were prosecutions that, on conviction, resulted in a maximum two-year sentence. We also had law that said that certain evidence was not admissible in a case. So, where information led to the recovery of one of those whom the IRA disappeared, that information could not be used for the purpose of prosecution. Similarly, when guns were brought in for decommissioning, they and any information attached to them could not be used as evidence. However, that did not confer immunity on an individual; it was still possible for them to be prosecuted for the crimes they had committed.

Those laws on the disappeared and decommissioning, and even the sentences Act, resulted from the Good Friday agreement and were not in breach of our convention obligations. However, these immunity provisions are different. The extent of the problem was made clear yesterday by the Northern Ireland Human Rights Commission, which is made up of advisers to the Northern Ireland Government. It said that,

"even with the UK Government's additional amendments … fundamentally, the Northern Ireland Troubles (Legacy and Reconciliation) Bill is not compliant with the European Convention on Human Rights … the Belfast (Good Friday) Agreement 1998 requires the UK Government to incorporate the ECHR into Northern Ireland law and to do so to provide people with 'direct access to the courts, and remedies for breach of the Convention' … Therefore, our previous advice stands that closing off any pursuit of justice outside of the ICRIR is incompatible with human rights and the Belfast (Good Friday) Agreement".

I would like to the Minister to explain to me, if he can, how people will have direct access to the courts and remedies for breaches of the convention under this Bill.

Even with the Government's amendments—more than 120 of them—this legacy Bill will not provide something that is compliant. It will prevent direct access to the courts and to remedies. The Government's 25 amendments to their immunity scheme do not, even in their totality, make the scheme compliant with convention rights. Such things as the revocation of immunity in particular circumstances do not change those facts. Amendment 63 in the names of the noble Lord, Lord Hain, and others would require that, to get immunity, a person would have to comply with the ICRIR's requirements to provide fingerprints and "non-intimate samples". It would also mean that a grant of immunity could be revoked in the event that a person commits a Terrorism Act offence, is a danger to the public or, to echo the comments of the noble Lord, Lord Dodds, attempts to make a profit from their criminality.

As the noble Baroness, Lady Ritchie, said, the Council of Europe's Commissioner for Human Rights issued the following statement yesterday:

"I have repeatedly warned that the Northern Ireland Troubles (Legacy and Reconciliation) Bill would undermine the human rights of victims, as well as truth seeking, reconciliation and justice efforts. Serious concerns have also been expressed by the Council of Europe's Committee of Ministers, the Parliamentary Assembly of the Council of Europe, the UN High Commissioner for Human Rights, UN Special Rapporteurs, national human rights institutions, parliamentary committees"—

of this Parliament, indeed—

"and civil society organisations, including victims' groups. Despite this, the UK government has decided to go ahead with the Bill in a way that does not recognise Northern Ireland's violent past or honours the suffering of victims. While the government has recently published amendments, these leave the fundamental problems with the Bill intact, such as the conditional immunity scheme that would result in impunity for serious human rights violations, the unilateral shutting down of avenues to justice for victims, and questions about the ability of the Independent Commission for Information Recovery to deliver outcomes that would meet human rights standards".

It is clear that, even with the Government's amendments, this Bill is not compliant with our international obligations. As has been said, it continues to be the case that nobody in Northern Ireland or elsewhere—apart from the Government, it seems—thinks that the Government's amendments will fix the Bill.

As the Northern Ireland Human Rights Commission has said, the fundamental issue is that the ICRIR's conditional immunity scheme is not, at its core, compliant with human rights. The noble Lord, Lord Dodds, has proposed Amendment 98A in this group. He said that it would be welcomed by those who have seen investigations completed and files just sitting there, waiting to be dealt with by the prosecutor of the Public Prosecution Service for Northern Ireland. The Kenova files have been waiting for up to four years. They include the Stakeknife files and the file that dealt with the terrible murders of three young constables on the Kinnego Embankment in Lurgan. All that will be lost. It will simply cease to operate unless the amendment in the name of the noble Lord, Lord Dodds, is accepted. I urge colleagues to think very seriously about the terrible injustice that would be done if we did not get that amendment through.

Despite all the amendments, the conditional immunity scheme remains in breach of our obligations. As we look at conditional immunity for murder, it must be more questionable—indeed, offensive—that immunity from prosecution will not be available for sexual offences but will be for the most heinous murders and tortures carried out by people like those who abducted and murdered Jean McConville, a mother of 10, in 1972; like those who planted the Enniskillen bomb; and like those who murdered people watching a football match in Loughinisland, as well as for all the other atrocities. Why? To know that your loved one was savagely murdered—even to witness it, as some did—is surely as egregious and terrible as any sexual offence.

Nobody in Northern Ireland wants these provisions. I urge noble Lords to support the amendments that seek to remove them, in particular Amendment 66 in the name of the noble Lord, Lord Murphy, to which I and the noble Baronesses, Lady Suttie and Lady Ritchie, have added our names.

Lord Blair of Boughton (CB): My Lords, I will not detain the House much on this issue and Amendment 63, to which my name is attached, because I am really here to talk about Amendment 31, the Kenova amendment, which we will come to later on. I just want to remind noble Lords of the shocking effects of letters of comfort. We are about to repeat that same mistake if we continue with this process and do not do something to get Amendment 63 through the House on Monday.

Lord Morrow (DUP): My Lords, I will speak to Amendment 61A, tabled by me and my noble friends Lord Dodds and Lord Weir. My noble friend Lord Dodds has already spoken very eloquently on this, but I will add some comments.

Amendment 61A would require

"an individual to be disengaged from activity which would be reasonably regarded as precluding reconciliation in order to be eligible for immunity from prosecution".

Earlier, I tried to push the Minister a little on this, because although reconciliation is laced through the Bill, its definition is anything but clear. I still feel strongly that the definition should be in the Bill. However, we are where we are.

Admittedly, the Government have brought forward new proposals allowing immunity to be revoked in incidents involving glorification of terror, as my noble friend Lord Dodds said. It is very disturbing when one watches our television screens or reads a newspaper to see leading, prominent politicians elegising the past—murder—and commemorating those who were intercepted by the security forces while carrying out murder, or who were blown up by their own bomb. In an age of reconciliation, how can this continue? Yet those same people tell us that they will be a First Minister for everybody.

That is the strangest way of setting out. If that is their idea of reconciliation, then I no longer understand plain English. Surely it is time for the Government to take a long hard look at this situation. As has already been said by others, this is not good legislation. It is bad legislation, and it has no support back in Northern Ireland from anyone who has spoken publicly about it. I have not read of support for this legislation, yet the Government are intent on pushing on and pushing it through. Those of us who have these great concerns are therefore making an honest attempt to make this less bad. That might not be good grammar, but it is the best way that I can say it.

We want the Government to stop and think. Admittedly, they brought forward new proposals allowing immunity to be revoked for the glorification of terror, but this does not go far enough in capturing activities that do not necessarily constitute offending, but which will cause deep harm to victims, survivors and their families. If this Bill is about reconciliation, it must take into account the hurt caused not only 30 years ago but right up to recent times. Some tell us that we have every right to remember our dead, and maybe that is true, but we have absolutely no moral right to glorify those who carried out these evil deeds of terror. "Reconciliation" is in the title of the Bill, but that seems to be as far as the Government are willing to go.

The ICRIR will be statutorily required to oversee an amnesty process which runs contrary to reconciliation and which is opposed almost unilaterally by victims. Any sense that the ICRIR can deliver on its primary objective is diminished from the word go. It should be made clear in Clause 18 that one condition for immunity, applied not just at the point of application but thereafter, is that an individual is not engaged in activity which can reasonably be regarded as precluding reconciliation by glorifying terror and violence, eroding support for the rule of the law or traumatising victims yet again.

7.15 pm

Amendment 86A would insert a new clause that

"requires the permanent revocation of immunity granted under the Bill in the event that the immunity requests panel or the Secretary of State is satisfied that an individual has engaged in activity that precludes reconciliation".

Where an individual benefiting from immunity engages in activity that is deemed to preclude reconciliation, for this or other crimes, there must be operable provisions

[Lord Morrow]

to ensure that immunity is revoked. This, presumably, would place the burden on a victim's family or a member of the public, rather than making it a positive obligation on the ICRIR—or in its absence, the Secretary of State—to act swiftly based on evidence received and revoke immunity.

Amendment 93A would

"allow the offences for which immunity has been granted to be taken into account in sentencing for post-Troubles offences".

It is accepted that when a court is sentencing an individual, it can have recourse to consider all relevant offending and conduct by that individual, including in the past. A lack of rehabilitation or character reform would often lead to greater tariffs. That principle must be embedded here too.

Amendment 89A

"is intended to probe the omission of offences under section 13 of the Terrorism Act 2000 … from the proposed new Clause on Subsequent convictions: revocation of immunity in Lord Caine's name".

The Government's new clause on revocation of immunity for subsequent convictions is based on Schedule 1A to the Counter-Terrorism Act 2008. The schedule helpfully covers offences in Section 1 of the Terrorism Act 2006, on "Encouragement of Terrorism", which was the focus of our proposed offence in Committee, and in Sections 11 and 12 of the Terrorism Act 2000, on membership and support for proscribed groups or organisations.

There needs to be recourse to revocation of immunity for the full range of activities that constitute the glorification of terrorism. It is wrong that, while someone in receipt of immunity would be banned from addressing an event that encourages support for a proscribed group under the Government's amendment, in theory they could lawfully attend such an event wearing terrorist regalia. The noble Baroness, Lady O'Loan, made the point strongly about this amendment and glorification. I urge the House to support it; it would be a big miss if the House does not.

Amendment 114A

"is intended to ensure that designated persons responsible for making recommendations about the initiation and carrying out of relevant memorialisation activities are under a duty to prevent the glorification of Troubles-related offences".

Clause 48 tells us that designated persons carrying out the Troubles-related work programme

"must have regard to the need to ensure that— (a) there is support from different communities in Northern Ireland for the way in which that programme is carried out, and (b) a variety of views of the Troubles is taken into account in carrying out that programme".

Lord Browne of Ladyton (Lab): My Lords, I will speak to Amendments 71, 72, 73 and 74 in my name, which are amendments to Amendment 70, tabled by the Minister, who has continued diligently to engage with all shades of opinion in your Lordships' House. Like other noble Lords, I thank him for that.

For the reasons given, I support the amendments in the name of my noble friends Lord Hain and Lord Murphy of Torfaen. At this stage, I feel no need to go over those reasons again. In proposing these amendments, I am conscious that, when juxtaposed with the larger issue of immunity itself, they are confessedly procedural and administrative in their scope. But they do seek to do something in the province of responsible legislation: they anticipate that which can be anticipated, minimise the effect of contingency and, in this particular case, ensure that, if the chief commissioner is unable to consider requests for immunity—whether for reasons of misadventure or owing to a potential or perceived conflict of interest, or for any number of reasons—there is a person empowered to do so. To some extent, this has been anticipated by Amendment 70 in the name of the Minister.

While the government amendment is welcome, the amendments I have tabled seek to do three specific things. Amendments 71, 72 and 73 mandate the appointment of a deputy for the chief commissioner. This deputy would be appointed by the Chief Commissioner immediately upon their own appointment and would be empowered to exercise some or all of the immunity functions if the chief commissioner were absent or otherwise unable to do so. I believe that the mandatory appointment of such a deputy would better ensure a consistency of approach, strengthen institutional memory in respect of such decisions and place a further brick in the wall dividing the Secretary of State—mindful as I am of new subsection (7B) in Amendment 70—from the fraught question of immunity.

Where Amendment 70 seeks to engage that eventuality by recourse first to a rapid nomination by the chief commissioner and, if that is not possible, through an ad hoc appointment by the Secretary of State, my amendments would see such a person already in place. This person would be fully briefed on these issues and placed in their position by the chief commissioner at the start of their term.

Given that new subsection (7C) in Amendment 70 quite rightly mandates that a stand-in for the chief commissioner must have held high judicial office, it is evident that one of the qualities such a person must possess is impartiality. Surely, being appointed by the Commissioner rather than by an active politician in the shape of the Secretary of State would strengthen claims to judicial objectivity rather than the reverse. Moreover, having a named deputy in place from the beginning of the chief commissioner's term will provide confidence that, where decisions must be made in his absence, they will conform with the standards set by the chief commissioner and follow the tramlines of decision-making in a manner that is consistent across all cases. I beg to move.

Viscount Brookeborough (CB): My Lords, I have listened to everything. I have not bothered to intervene because I basically agree that this is not a great Bill and that all we can hope to do is make it less damaging to what is happening in Northern Ireland.

The one thing that strikes me is that reconciliation is on the face of the Bill. I have been struggling with that and with the definition of "reconciliation". I decided to look it up on my phone. It is on the face of the Bill: therefore, it is the number one objective of the Bill. If we had reconciliation, we would not be worried about the other things. "Reconciliation" is defined as

"the restoration of friendly relations"

and

"the action of making one view or belief compatible with another".

The definition goes on to say

"an act of reconciling, as when former enemies agree to an amicable truce".

The problem is that we know that there is not an amicable truce. We know from the glorification of terrorism and lots of other parts of what we have been discussing that that is not there. Yet it is on the face of the Bill as being the number one objective.

What troubles so many of us in Northern Ireland, whether our families have directly suffered a death, or for all the people we k now who have suffered and their families—one family has been mentioned; three of my soldiers were killed, one after the other, and a sister was mown down on a checkpoint for serving in the security forces—is that the people in Northern Ireland see the Bill coming and would love to have reconciliation but the Government are not giving one little inch to assuaging their lives and their fears. I know that there have been amendments, and everybody is very grateful for that, but, if people are to accept this and if it is to work, there has to be something significant, so they actually feel that it was made for them.

All I plead is this: we really hope that the Government accept some of these amendments, which will enable people to say "Yes, but they have done this and they have worked towards us, and we want to make it work". We know that at the moment virtually nobody in Northern Ireland is saying that.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, Amendment 61A stands in the name of my noble friends Lord Dodds, Lord Weir and Lord Morrow. The explanatory statement says:

"This amendment would require an individual to be disengaged from activity which would be reasonably regarded as precluding reconciliation in order to be eligible for immunity from prosecution".

There is another amendment in the name of my noble friends that is in a similar vein.

I draw attention to something that my noble friend Lord Dodds has already mentioned. There is a question in my mind concerning the legislation as it stands. My noble friend mentioned the late Joe Clarke, one of the hooded men who received an apology on his deathbed from the chief constable of the PSNI over his treatment while he was interned in 1971. He was one of 14 men who claimed that they were subjected to state-sanctioned torture. They all claim innocence. However, at his funeral the other day, Mr Clarke was buried with what appeared to be full so-called IRA military honours: his coffin was draped in the tricolour and he was escorted by men and women in some sort of uniform—white gloves, black ties and white shirts. I believe that this is reserved for members of the IRA, particularly those who have carried out what is known as IRA active service—and we know what that really means.

To deepen the plot, one of those carrying Clarke's coffin in that military-style uniform was none other than a man who had been arrested and imprisoned over the murder of two soldiers at the Massereene barracks in Antrim during the time when I was the local Member of Parliament for that constituency. That person and his doctors told the court that he had only three to four years to live at most. Strangely, 14 years later, he is the picture of health, miraculously cured and carrying an IRA man's coffin. Actually, that person is a neighbour of mine. I ask the Minister this: would the likes of Mr Shivers receive immunity or an amnesty under the present legislation as it stands, without the amendments suggested by my noble friends Lord Dodds, Lord Weir and Lord Morrow?

Baroness Suttie (LD): My Lords, the sheer number and scope of amendments in this group should serve as a clear indication to the Government that there continue to be grave concerns about the proposals for immunity set out in Clause 18. I have added my name on behalf of these Benches to Amendment 66, tabled by the noble Lord, Lord Murphy, and also signed by the noble Baronesses, Lady O'Loan and Lady Ritchie, which would remove Clause 18.

7.30 pm

Although there are important amendments in this group, including Amendment 9 tabled by the noble and right reverend Lord, Lord Eames, and the noble Baroness, Lady Hoey, and we have heard some very powerful speeches in their favour, these Benches would prefer to see Clause 18 removed altogether. Indeed, I remain unconvinced that it is possible to amend Clause 18. I think it would be better to remove it and start again.

A great many points have already been made by noble Lords which I will not repeat, but I will summarise our concerns on three points. The first point is devolution. I strongly believe in devolution, and even given that, very sadly, there remains no functioning Assembly or Executive in Northern Ireland, I have to ask the Minister whether it is ever right to push ahead with something so strongly opposed by all political parties in Northern Ireland. The noble Lord, Lord Dodds, who is not in his place, made a very powerful speech in that regard.

The second point, which has been raised by lots of noble Lords, is human rights and compliance with Article 2 and the right to justice. It is of great concern that the proposals in Clause 18 continue to be so strongly opposed by so many key human rights organisations at NI, UK and international level.

The third point is the most important, and the noble Baroness, Lady Ritchie, made a very powerful speech in this regard. It is about the victims themselves. If this Bill is supposed to be about reconciliation, as other noble Lords have said, and moving on from the past, it should be of the deepest concern that it continues to be so strongly opposed by the victims themselves. They regard this Bill as closing down their hope of justice. For all these reasons, we oppose and will vote against Clause 18.

Lord Murphy of Torfaen (Lab): This was bound to be a powerful and very emotional debate about an issue which goes, as many noble Lords have said, to the very heart of the legislation. It also goes to the heart of the opposition to the legislation. We heard some excellent speeches from the noble and right reverend Lord, Lord Eames, onwards on various amendments which have been tabled, which are very welcome and sensible.

As the noble Baroness, Lady Suttie, said, she and I and others have tabled Amendment 66, which removes the clause dealing with immunity. One of my later successors as Northern Ireland Secretary, the right

[Lord Murphy of Torfaen]
honourable Karen Bradley, said some years ago that proposals for legacy must follow the rule of law. She went on:

"Conservatives in government have consistently said that we will not introduce amnesties or immunities from prosecution".

It is as clear and simple as that.

Why then should we be so drastic as to propose the deletion of that vital clause? First, we need to send a message as clearly and strongly as we can to the Members of the House of Commons when they consider the amendments that go back from this place. The Government have a majority of 80. Inevitably, with that large majority they can do what they want, but they should think again because of the nature of this Bill. Every single Northern Ireland Member of Parliament from all parties in Northern Ireland voted against it. To send a signal to the House of Commons that this House recognises the significance of the opposition to the Bill in Northern Ireland would be very powerful.

People say that the release of prisoners under the Good Friday agreement was similar—not the same because prisoners had to have served at least two years in prison before they could be released. The big difference between this and that is that the people of Northern Ireland, in a referendum on the Good Friday agreement, however distasteful they thought it was, voted in favour. No one in Northern Ireland is voting in favour of this. In fact, this entire Bill, with the possible exception of some national security elements, should have been passed by the Assembly in Belfast, and I suspect that the reality is that not one single Member of the Belfast Assembly would have voted for this Bill. Perhaps a handful might have done so, but I very much doubt that.

That is why it is so important that the Government should think again about this. They should think in terms of who is against it. Every church in Northern Ireland is against it. Every single political party is against it. All the victims' groups and the victims' commissioner are against it. The Northern Ireland Human Rights Commission and every single human rights group are against it. Internationally, only a day or so ago the Tánaiste—the Deputy Prime Minister and Foreign Minister of Ireland—said how much the Irish Government are against it because their legacy provisions in the Republic are affected by it. The Council of Europe is against it. The United Nations is against it. The list goes on and on but, most significantly, it is because there is no consensus in its favour.

The Minister has been involved in Northern Ireland for a very long time, and he knows that you cannot simply impose things on Northern Ireland. You cannot impose resolution on Northern Ireland. People in Northern Ireland should decide for themselves on this, which is the most crucial and delicate issue that they can possibly make a decision on. Imposition is entirely improper. That is the message I hope we will be able to send to the House of Commons when we vote on these issues on Monday.

The Minister will say this wrecks the Bill. It does not. It takes out the part of the Bill which is most severely disliked. The Government will still have their commission and their reviews, but they will have to put something else in place of this proposal on amnesties and immunity, and that something else has to be based upon the co-operation and consent of the people of Northern Ireland. I went to Belfast in April when we were dealing with the anniversary of the Good Friday agreement, and not one single person came up to me and said they agreed with this legislation—indeed, the opposite. All the people, right across the political spectrum, I talked to about the Bill were against it because this immunity issue is the one that they particularly disagree with for all the reasons that noble Lords have spoken about in this short debate. Why on earth are the Government persisting in something that should not be imposed upon the people of Northern Ireland against their will?

Lord Caine (Con): My Lords, this has been a very thorough debate, as indeed it was in Committee. At the outset, I am very grateful to the noble Lord, Lord Murphy of Torfaen, for quoting some words which I think I probably drafted for Karen Bradley when she was Secretary of State a few years ago. I gently remind the noble Lord, Lord Murphy, of a letter to which he put his name, as did the noble Lord, Lord Hain, to Karen Bradley in 2018. They wrote that

"the priority is surely now … not investigations that have little or no likelihood of either prosecution or alternative closure satisfactory to victims".

I would be interested to hear at some stage what the alternative proposal of His Majesty's Opposition might be.

Lord Murphy of Torfaen (Lab): I rarely do this in the House of Lords, but I think that is worth an answer. It would have been based on consensus. Whatever was done would have been done with the agreement of the people of Northern Ireland through their elected representatives and through the people in their other organisations. That is the difference.

Lord Caine (Con): The noble Lord will be aware from his own experience that the search for any consensus around this subject has eluded successive Governments of—I was going to say "both parties", but it is actually three parties if you include the coalition.

The noble Baroness mentioned devolution. I well remember the history of why we are in this position in the first place: after the Stormont House agreement, the First and Deputy First Ministers came to what was then Her Majesty's Government and said, "This is all far too difficult for us to do in Stormont. Please do it at Westminster". The assumption always was that these issues would be dealt with in Stormont, with some parallel legislation in this House. Anyway, enough of the history.

I genuinely accept that this is the most controversial and challenging aspect of the Bill. As I acknowledged at Second Reading, I have found this very difficult. I reminded the House at the time that one of my first jobs in politics was to work alongside the late Ian Gow MP, a wonderful man, when he was chair of the Conservative Northern Ireland Back-Bench committee, so I understand. I have had many meetings with victims' and survivors' groups over many years, and intensively ever since I took on responsibility for this Bill in your Lordships' House. Indeed, I responded

to a request from the noble Baroness last year. I have done this very willingly and have heard many harrowing stories that I will never forget. One of the most difficult parts of the job of being a Northern Ireland Minister, as the noble Lord, Lord Murphy, will acknowledge, is that one has to listen to some of the most appalling stories of suffering and grief; I completely acknowledge that.

As I said earlier, the Government are determined, through the legislation, to attempt to deliver better outcomes for those most affected by the Troubles. I do not underestimate that this is a hugely difficult task and that the legislation contains, as I have said, finely balanced political and moral choices that are challenging for many.

On the comments that have been made about our international obligations, we debated that extensively in Committee and I have had lots of discussions in private. We are not going to agree. The Government's advice is clear that the provisions of the legislation are compatible with the Human Rights Act and the ECHR.

Baroness O'Loan (CB): Could the Minister explain to us how they are compatible?

Lord Caine (Con): I explained that at length in Committee. They allow for investigations to an Article 2-compliant criminal standard, they allow for prosecutions in cases where people do not co-operate with the commission, and they allow for revocation.

Baroness O'Loan (CB): Possibly my question was not properly phrased. Could the Minister explain how an immunity provision such as this is compliant with our obligations?

Lord Caine (Con): There are circumstances where setting aside the prospect of a prosecution, if it is for the greater good of providing more information to victims and survivors that will help society to move on, can be justified.

On the noble Baroness's other point, I think she referred—I hope she will forgive me if I did not hear her quite right—to recourse to human rights remedies. The Bill does not remove the right of individuals to bring challenges under the Human Rights Act 1998, and that could include judicial review of decisions taken by the ICRIR in relation to the conduct of reviews. As a public authority, the ICRIR is under a duty to act compatibly with human rights obligations, something that we will probably talk about more in the next group of amendments.

7.45 pm

I recognise that this is a hugely challenging and difficult area. I suggest that we have to step back and make a realistic assessment of what we can achieve. It is 25 years since the Good Friday/Belfast agreement was reached, it is 29 years this year since the first ceasefires, and of course it is well over 50 years since the start of the Troubles themselves. We must be honest about what we can realistically achieve for people in circumstances where the prospects of prosecutions and convictions are vanishingly small. To quote again from the letter that the noble Lord, Lord Murphy, signed back in 2018,

> "experience suggests that it would be a mistake to expect that judicial outcome in any but a tiny percentage of the crimes that have not already been dealt with. Most of the cases were not easy to investigate immediately after they were committed and the passage of time—up to 50 years—has only made the chances of a successful outcome much less likely".

For many, unfortunately, that is the uncomfortable reality of the situation in which we find ourselves.

In those circumstances, the Government's objective is to provide greater information, accountability and acknowledgment to victims and families in a more timely manner and to more people—I emphasise "more people"—than is possible under current mechanisms. The way that we do that is by creating an effective information recovery process. The ICRIR will conduct reviews for the primary purpose of providing answers for those who want them, and will grant immunity from prosecution only if individuals provide an account that is true to the best of their knowledge and belief. This is difficult, but it is a crucial aspect of the information recovery process. It is why Clause 18 and conditional immunity are central to this legislation and, in the Government's view, should not be removed.

Given the range of issues discussed in this group, I will unfortunately have to contradict my earlier comments about being brief and make a slightly longer speech on a group of amendments that took well over an hour to debate. However, I will try to be as brief as possible and respond thematically while setting out the changes that we have brought forward to strengthen the immunity process.

On Clause 21, the commission is already under a duty to consider all relevant information that it holds when forming a view on the truth of a person's account as part of their application for immunity, including information obtained through a related review. I am going further by tabling Amendments 76, 77 and 78. They will remove Clause 21(4) from the Bill, which many interested parties asked me explicitly to do, and introduce a new duty to require the commission to take reasonable steps to secure information relevant to the truthfulness of an individual's account when applying for immunity.

I am further strengthening immunity provisions by introducing circumstances in which immunity may be revoked, something that was not in the original version of the Bill. I have therefore brought back Amendments 16, 17, 90 and 167, creating a new offence for those who choose wilfully or recklessly to mislead the commission when providing information. Individuals who are granted immunity will automatically lose it if they are convicted of wilfully or recklessly misleading the commission as part of their application. People convicted of this offence could also go to prison for up to two years and face an unlimited fine.

I understand the concerns about the glorification of terrorism and that those granted immunity could go on to encourage or glorify terrorism in their communities. In respect of glorification, the noble Lords behind me will have heard my comments about the Member for

[Lord Caine]
North Belfast and his attendance at a particular event in south Armagh the weekend before last, which are a matter of record.

Responding to the amendments tabled by the noble Lord, Lord Dodds, on this matter in Committee, I have brought forward Amendments 64, 65 and 89 to ensure that a grant of immunity must be revoked if an individual is subsequently convicted of terrorism offences or offences connected to terrorism committed after immunity was granted. The offender will also be precluded from reobtaining immunity for offences within the scope of the revoked grant. This seeks to address a number of concerns raised by Amendment 63 in the name of the noble Lord, Lord Hain—I do not know the reason for the noble Lord's absence today but, whatever it is, I wish him a speedy return to your Lordships' House. I am generally sympathetic to the noble Lord's amendment, which would introduce licence conditions on those granted immunity. I would go so far as to suggest that the Government's amendments share a similar objective and send a clear message that, once immunity is granted, individuals who are convicted of offences that could impede reconciliation will lose their immunity.

In terms of the conditions set out under proposed new subsection (14B) of Clause 18, there is a degree of overlap with my Amendments 64, 65 and 88. Offences covered by this amendment include those listed in Schedule 1A to the Counter-Terrorism Act 2008, as well as other offences determined by a sentencing court to have a terrorist connection. Offences listed in Schedule 1A to the 2008 Act include a wide range of offences under the Terrorism Act 2000 and the Terrorism Act 2006, as well as other related offences. These include offences relating to fundraising, involvement in terrorist funding arrangements, the encouragement of terrorism and disseminating terrorist publications. It also includes some offences that are similar to those in Section 13 of the Terrorism Act 2000, which was referred to by noble Lords behind me, such as membership of a proscribed organisation, inviting or expressing support for a proscribed organisation, and encouraging terrorism.

Through Amendment 88, I have also clarified that the commissioner is able to refer for possible prosecution conduct which constitutes "connected" offences within the meaning of the Bill. These are offences which do not themselves meet the Bill's definition of "serious offence" but are nevertheless factually connected to such offences, for example because they form part of the same incident. This would allow the commission to refer evidence of sexual offences which were connected to a death or serious injury to prosecutors, if that came to light during an investigation into a death or serious injury.

As a reminder to your Lordships, I am intending to oppose the question that Clause 19 stand part of the Bill. This is because I propose moving provisions made by Clause 19 to the new schedule titled "No immunity in certain circumstances", introduced by Amendment 65. This schedule will bring together these provisions and those relating to the revocation of immunity mentioned before. Moving Clause 19 into the schedule is intended to make this already complex legislation easier to follow, by bringing exceptions to the duty to grant immunity together into one place.

Amendment 60 makes it clear that where a person applying for immunity is subject to an ongoing prosecution, immunity may not be granted if there is a risk that it might prejudice that ongoing prosecution.

I turn next to the notion of incentives for engaging with the commission. I have therefore retabled Amendments 159, 160 and 161 to disapply the Northern Ireland (Sentences) Act 1998 for future convictions. This means that individuals who choose not to engage with the commission and are subsequently convicted of an offence will not be able to apply for early release; they will be liable to serve a full sentence. I know the noble Baroness, Lady Hoey, referred to this in her comments but, with respect, I think she was referring to the Bill as currently drafted and not as amended. My amendment makes it very clear that anybody who is convicted of an offence and has not been granted immunity under this process will be subject to a full sentence, which, given the nature of the incidents that we are looking at, could mean a very long time in prison.

This approach, in our view, gives us a better chance of maximising the amount of information we can obtain from people who engage with the commission, through ensuring that those who choose not to engage and are subsequently convicted will be liable to that full sentence. Alongside this, I have retabled Amendment 146 to increase the financial penalty for non-compliance with the commission from up to £1,000 to up to £5,000.

I am sympathetic to the intention behind Amendment 18 in the name of the Baroness, Lady O'Loan, in seeking to leave out Clause 7 because, all things considered, we would want as much information obtained by the ICRIR as possible to be available in any future criminal proceedings. But it is important to the efficacy of the information recovery process that information cannot be used in criminal proceedings against those individuals who provide it as part of the immunity process or in response to a notice issued under Clause 14, relating to the supply of information. This is a crucial aspect of encouraging the provision of information and, in the case of supplying information under Clause 14, it provides an important legal safeguard of the right against self-incrimination—important because the clause contains a power to compel testimony, a power that police constables do not have.

To be absolutely clear, Clause 7 does not restrict the use of material in criminal proceedings against anyone other than the person who provided it; and where Clause 7 does not impose restrictions, normal rules on the admissibility of evidence in criminal proceedings would apply. In cases where people have not been granted immunity, because they have either refused to engage or not provided an account that the immunity requests panel determines is true to the best of their knowledge and belief, the ICRIR has the necessary policing powers, such as interviewing people under caution. Clause 7 would not prohibit the transcript of an interview under caution from being adduced as evidence against a defendant in the normal way.

It is worth reminding the House that this arrangement is not unique. The Attorney- General can give an undertaking that information collected during a public inquiry can be inadmissible in any subsequent criminal proceedings. This was the case during the Saville inquiry

into the events of Bloody Sunday, as noble Lords will recall, and in the Stormont House agreement, which made it clear that any information provided to the then ICIR could not be used in criminal proceedings at all.

On a similar note, I turn to discussing Amendments 9, 29, 59, 61 and 62 in the name of the noble and right reverend Lord, Lord Eames, to whom I always listen with the greatest of respect and admiration. The Government's view on his amendments can be summarised as follows: to get as much information to families as we possibly can, we need to ensure that the right incentives are in place for people to come forward. That is why we have developed a test for immunity, in which an individual must provide an account that is true to the best of their knowledge and belief. That account must be tested against any information that the ICRIR holds and, as a result of Amendment 76, which the Government are bringing forward, the ICRIR must take reasonable steps to secure information to test the truthfulness of any account. This is the most effective way to get as much information to families as possible about what happened to their loved ones. If an individual decides not to provide a truthful account that could be passed to families, or does not participate in the immunity process at all, immunity will not be granted and that individual will remain liable for prosecution should the evidence exist.

Touching briefly on the referral of conduct to prosecutors, I understand the rationale behind Amendment 59A in the name of the noble Lord, Lord Dodds of Duncairn, but it is not necessary. If an individual is not granted immunity because the account they have provided is not deemed to be true to the best of their knowledge and belief, and if there is sufficient evidence that an offence has been committed, we expect the commission to refer that case to prosecutors. However, given the age of some of these cases, and to ensure that we can manage the operational burden on prosecutors, it would not be proportionate to require a referral in every case.

Viscount Brookeborough (CB): I have just a quick point. When we talk about the individual giving all the relevant and truthful knowledge, to what extent will he be asked about the other people involved in the incident, whenever it was? If he fails to give information on them, does that mean that he has fallen short of what is required by the commission, because there is virtually no incident that did not involve a number—or in fact quite a lot—of people? If he gives information but the other people he has named do not come forward when asked to, will they then be open to prosecution using some of what that original person either said or failed to say as evidence?

Lord Caine (Con): I am grateful to the noble Viscount, Lord Brookeborough, for his intervention. Much of what he says will of course be dependent upon the way in which the criminal investigation, if there is one as part of a review, is carried out. But there is a duty to take reasonable steps to establish the truthfulness of an individual's account by looking at all the relevant information that is available. If an individual's account is deemed to be not truthful to the best of their ability, they will not qualify for immunity.

8 pm

The noble Lord, Lord Dodds, made a couple of points, one of which was about people coming back to the UK to live out their years. If there is an active prosecution for someone who has fled the UK, they will not be able to apply for immunity. If there is no active prosecution, they would be able to apply, but in the same way that anyone living in the UK would. They would have to provide an account that is true to the best of their knowledge and belief.

The noble Lord, Lord Dodds, also referred to sentencing for post-1998 crimes under Amendment 93A. This was subject to debate in the other place, as he mentioned. The Bill sets out that those who do not co-operate and who are consequently convicted will face a full sentence, as I have set out. Those who are granted immunity will, as a result of government amendments, be subject to clear consequences if they engage in criminal behaviour following a grant of immunity, as I think I made clear in response to earlier amendments.

I wish to clarify, in response to Amendments 20, 27 and 69 in the name of the noble and right reverend Lord, Lord Eames, that requesting a review is not a process for which legal representation is required. Family members can already obtain help or representation from whomever they wish when making a request for a review. I suggest that these amendments are therefore unnecessary.

I will touch very quickly on Amendments 71, 72, 73 and 74, tabled by the noble Lord, Lord Browne of Ladyton. I question the practicality of an immediate nomination by the chief commissioner of another person who is also judicially qualified to perform the same or all of the immunity functions, because there is no mechanism to appoint an additional judge. We have set out that the remaining commissioner roles are to be advertised and subject to open competition. This would not be workable if the field was restricted to the judiciary. We would also need to consider the right way to manage the risk that too early a nomination could mean that the person called upon to act may no longer be eligible or available. Our system ensures that an eligible and available person is identified.

Noble Lords will be relieved to know that I am nearly at the end of my speech. The ability of ICRIR officers to use their powers of arrest and detention as part of investigations is, with the greatest respect to the noble Baroness and others, key to ensuring compliance with our international obligations. I have therefore retabled Amendments 94 and 97 to remove any doubt as to the circumstances in which criminal enforcement action can be taken where immunity has not been granted and where a referral to a prosecutor has not yet been made.

In addition to allowing for the exercise of powers of arrest and detention, the amendment also ensures that the commission would be able to charge a person with an offence before a referral to a prosecutor has been made, as would be necessary in urgent cases. The amendment clarifies that those with existing powers of detention, such as the police, may continue to use those powers where they are being exercised in connection with the exercise of the commission's functions. This would

[Lord Caine]
allow, for example, a police custody officer to detain a suspect at a police station for the purposes of questioning by commission officers.

I apologise to the House for speaking at such length on this group of amendments, but there are many and I think it only right that we do justice to the importance of this challenging debate. I hope that I have answered as many questions as possible and I ask the noble and right reverend Lord to withdraw his amendment.

Baroness O'Loan (CB): My Lords, I would like to query what the Minister said about Amendments 94 and 97 and about me. I have never suggested that the officers of the ICRIR would not have the powers of a constable.

Lord Caine (Con): Forgive me, I am having difficulty hearing the noble Baroness.

Baroness O'Loan (CB): My Lords, I said that the Minister made some allusion to me in the context of Amendments 94 and 97 as he was concluding his remarks. I have never suggested that the officers of the ICRIR would not have the powers of a constable. I just want to place that on record.

Lord Caine (Con): I am grateful to the noble Baroness. I do not think I was in any way ascribing those opinions to her. If she thinks I was, then I apologise.

Lord Eames (CB): My Lords, I appreciate once more the manner in which the Minister has dealt with my amendments. I want to do everything I can to encourage him to take forward a little further the area I addressed. In light of what he has said, which does not surprise me, I beg leave to withdraw my amendment.

Amendment 9 withdrawn.

Clause 4: Actions of the ICRIR: safeguards

Amendment 10

Tabled by ***Lord Bew***

10: Clause 4, page 4, line 26, at end insert—

"(d) would create or exercise police powers additional to those exercised by the PSNI, or

(e) would create or exercise new duties towards prosecutors, additional to those exercised by the PSNI."

Member's explanatory statement

These additional paragraphs in Clause 4(1) make clear that the ICRIR will not be exercising additional powers of any description not normally available to police officers.

Lord Bew (CB): My Lords, I rise to address the subject of the fairness of the working of the commission in future. This amendment is alongside Amendments 37 and 47, which essentially have the same effect.

Lord Caine (Con): Just to clarify: does the noble Lord wish to speak to Amendment 12, which we have not yet reached?

Lord Bew (CB): Yes, I wish to speak to Amendment 12.

Amendment 10 not moved.

Amendment 11

Moved by ***Lord Caine***

11: Clause 4, page 4, line 29, at end insert—

"(2A) Subsection (1)(c) does not apply to grants of immunity from prosecution by the ICRIR under section 18 (but see paragraph 3 of Schedule (No immunity in certain circumstances)."

Member's explanatory statement

This amendment is consequential on paragraph 3 of new Schedule (No immunity in certain circumstances) in Lord Caine's name.

Amendment 11 agreed.

Amendment 12

Moved by ***Lord Bew***

12: Clause 4, page 4, line 31, at end insert—

"(4) Before carrying out any reviews, the ICRIR must publish, and in carrying out any reviews, the ICRIR must take into account, guidelines containing best practice on the rights of those likely to be named in any reports."

Member's explanatory statement

This new subsection makes it clear that when carrying out reviews and in the exercise of its power to make findings in reports the ICRIR will follow best practice for the due protection of the rights of any person who may be named with critical comment.

Lord Bew (CB): My Lords, I apologise for being, as they say in Northern Ireland, a little bit previous. I want to address the fairness of the functioning of the commission. My concerns on this matter, like many people in Northern Ireland and on this island, have been greatly allayed by the appointment of Sir Declan Morgan as the chair of the commission. None the less, fairness has to be at the heart of the future working of the commission. This applies both to people who might work for the state forces who come before it, and those who do not.

It has been established in recent years that good practice in such inquiries is what might be called pre-Maxwellisation. I recall the Green report to the Commons Treasury Committee of 2016, which laid out ground rules for handling people who come before a commission in guaranteeing fairness. I know that to some, these will be seen as exaggerated concerns, but we have talked a lot about the international requirements and obligations that the United Kingdom has under Article 2. There is also an international requirement in, I think, Article 6 to protect reputation and to be fair to the reputation of individuals.

I wish to return to the theme—the Minister has listened already with some responsiveness to it—of the importance of guaranteeing as much as we can that when the commission is set up, it works as fairly as possible in respect of the rights of the individuals who may be coming before it.

Baroness Ritchie of Downpatrick (Lab): My Lords, with permission, and in the unavoidable absence of my noble friend Lord Hain, I will speak to Amendment 31, upon which a vote will take place on Monday. The amendment is in his name and those of the noble

Baroness, Lady O'Loan, the noble Lord, Lord Blair, and my noble friend Lord Murphy of Torfaen. This amendment seeks to turn a terrible Bill into one that could at least act in the interests of victims, rather than the perpetrators of horrendous crimes of violence, by inserting as a method of bringing some form of justice a model based upon Operation Kenova, led by former Chief Constable Jon Boutcher. This model was referred to by the noble Baroness, Lady O'Loan.

Operation Kenova has the interests of victims, survivors and their families at its core, in stark contrast to the current legislation, in which victims and survivors are barely mentioned and to which they are universally opposed, along with each and every political party in Northern Ireland, as well as the Irish Government. In Operation Kenova, there is a proven model of the way to deal effectively with the legacy of Northern Ireland's violent past.

After his remarks on this amendment in Committee, my noble friend Lord Hain wrote a detailed letter of rebuttal to the Minister. Sadly, the Minister's reply completely failed to rebut any of my noble friend's arguments. While acknowledging the excellent work of Operation Kenova, the Minister, the noble Lord, Lord Caine, made a number of assertions that simply do not stack up. The first was that, in some cases, a full Kenova-type investigation would not be appropriate if a family simply wanted information that could be readily found. The second was that an Operation Kenova model could not be upscaled and it would take too long to deal with the legacy case load. The third was that it would not be value for money. Each of these contentions does not stand up to scrutiny.

On the first, this circumstance has arisen with Operation Kenova, and it has been dealt with in a sensible and pragmatic way by the Kenova team, as the family requested. It is simply not an issue. Indeed, Kenova has been praised by victims' groups precisely because of its effective truth recovery, providing information never before revealed on what actually happened to loved ones. In fact, Jon Boutcher visited a gentleman who lived quite close to me and whose son was brutally murdered. He did so before the gentleman, sadly, passed away, to explain the circumstances in which his son was murdered. That person was deeply grateful for that information and then, sadly, died some days later.

On the other contentions, I urge the Minister to take note of the independent National Police Chiefs' Council's review of Operation Kenova. The reviewers are recognised nationally as experts in investigations, especially homicide investigations—they deal in analysis, not assertion. On upscaling to deal with outstanding legacy cases, they said that

"the Terms of Reference … included the question as to whether Kenova might offer a 'scalable' model upon which to build any future Legacy Investigative capability for Northern Ireland. Having exhaustively reviewed its strategy, governance, partnerships and all facets of its operations, the review team firmly believes that Kenova would form the best possible foundation for this purpose".

In his evidence to the Northern Ireland Affairs Committee on 2 September 2020, Jon Boutcher, who leads Kenova, said that legacy cases could be addressed within "five to 10 years" because Operation Kenova has developed processes that can now carry out comprehensive investigations expeditiously, not least because it now has unfettered access to security and police files that have hitherto been hidden. This is the considered view of a hugely experienced and highly regarded senior investigator.

8.15 pm

In the past, the Minister has alluded to the fact that Jon Boutcher himself said that aspects of Operation Kenova could not be scaled up. He was referring to the level of his personal engagement with families. Although that would not be feasible with a larger case load, there is no reason why the principle of quality contact with the investigation team and senior staff could not be scalable.

On value for money the NPCC said:

"The review team have identified several examples of exceptional innovation, organisational learning and national best practice which should be considered in other legacy, and similarly complex, inquiries in the future. These outstanding operating practices have undoubtedly contributed to the excellent 'value for money' that Kenova represents when compared with other large-scale investigations".

But perhaps most tellingly for those who want to see legacy dealt with, with the interests of victims and survivors at its heart, the review said:

"Any future Historical Investigation Unit or similar would benefit immeasurably from building on the exceptionally strong reputation that Kenova has achieved and by adopting its leadership and investigative model throughout. Discussions with several key stakeholders, including representatives of victims' families and survivors from all sections of the community, in fact revealed that one of the main challenges for any alternative investigative initiative in this area would be that it would inevitably risk being constantly negatively compared with Kenova, with the confidence of victims' families and survivors being undermined as a consequence".

In short, in Operation Kenova, there is a working model that is compliant with Article 2 of the ECHR, unlike the Bill. It is a working model that gives value for money and is scalable, as referenced in the NPCC review above. It is also a working model that has the confidence of families whose cases it has dealt with, and of Northern Ireland political parties. From his long service in Northern Ireland, the Minister will know that achieving a model backed by pretty well every victims' group and every political party in Northern Ireland is unique. It is also a working model that is delivering on legacy, which the Bill so badly fails to do. If the Government continue to resist this amendment, which has wide cross-party and Cross-Bench support, I will put it to a vote on Monday. In that respect, I commend Amendment 31 to the House.

Baroness O'Loan (CB): My Lords, I will speak to my Amendment 13, which is also in the name of the noble Baroness, Lady Ritchie, and which simply requires the removal of the word "reasonably" from Clause 5. The noble Lord, Lord Hogan-Howe, is unable to be with us today, but he associates himself with my remarks.

The Government told us that one of the purposes of the Bill is to provide families with information that was not previously available to them, and another is to gather all investigative and review functions within the ICRIR. This was always the proposal under the Stormont House agreement, and I have no difficulty with it, except for the way in which it is done and the immunity clause. But the powers accorded under the Bill do not provide to the ICRIR the access to information that will be necessary to obtain the information that families need,

[Baroness O'Loan]

without lengthy judicial reviews and threats of judicial reviews, which have bedevilled inquiries such as the Saville inquiry and, indeed, the Kenova investigation.

In normal criminal investigations, there is a proviso that an investigator will not do anything which would prejudice national security or put someone's life at risk. There is law that deals with this. The law also provides mechanisms which include a power to recover information, such as the search process when a warrant has been obtained. For example, police will seize all the computers in a house to determine whether the contents of any of them may be relevant to the matter under investigation. Those are general statutory investigation powers. Those charged with criminal investigation also have powers to require the provision of information from agencies and individuals. For example, under Section 17 of the Police Reform Act 2002 there is a simple duty on every chief constable and local policing body to provide information to the IOPC. Similarly, Section 66 of the Police (Northern Ireland) Act 2000 says:

"The Chief Constable and the Board shall supply the Ombudsman with such information and documents as the Ombudsman may require for the purposes of, or in connection with, the exercise of any of his functions".

There is no qualification, simply a duty to provide information. However, this Bill as drafted states that a relevant authority

"must make available to the ICRIR such … information … documents, and … other material as the Commissioner for Investigations may reasonably require".

This provision applies only to information which the ICRIR reasonably requests. Of course, an investigator must always act reasonably and in compliance with the law. However, there is no process for which a chief constable may, for example, say, "No, it's not reasonable for you to make that request for information". I had those conversations in the early days of my tenure as Police Ombudsman. I was told, for example, that it was not reasonable for me to ask for sensitive information, such as information held by Special Branch—now the Intelligence Branch. I was able to point to the law, which said that the chief constable

"shall supply the Ombudsman with such information … as the Ombudsman may require".

That is how it is in criminal investigations. It is not required that the investigator demonstrates the reasonableness of any request for information.

The Minister has said that a requirement that information shall be reasonably required is to be found in other statutes. He cited one, the Finance Act 2008, so I looked it up. Section 113 of and Schedule 36 to the Finance Act 2008 provides that an officer of His Majesty's Revenue and Customs can require a taxpayer to provide information reasonably requested by the officer for the purposes of collecting a tax debt owed by a taxpayer. There is a big difference in the powers required to collect an unpaid tax debt and those required to investigate a murder, as is evidenced by the current state of the law, which provides necessary protections for privacy in appropriate circumstances under the GDPR and the Data Protection Act, for example, but also empowers criminal investigators to access information. This is the proper working out of UK compliance with its obligations under the Good Friday agreement and the European convention.

If an agency could respond to a request for information by the ICRIR by challenging the reasonableness of that request, there would be inevitable and very lengthy disputes, possibly—indeed probably—involving judicial review, about why what the ICRIR was asking for was reasonable. The reality is that the investigator—the ICRIR in this case—may be in possession of material justifying the reasonableness of the request for information, but that material cannot be disclosed at this particular point in time without compromising the integrity of the investigation. The result is that an agency may be unaware of the material which the investigator holds, but it may be very aware that information which is held by that agency is highly compromising of the agency and may indicate how it came about that, despite an agency, for example, being aware of a proposal to murder someone, it did not intervene to stop that murder. It has happened.

The necessary unqualified powers to compel the production of documentation, especially documentation held by the other agencies, security intelligence services and police intelligence units, will not be available to the ICRIR because of how the Bill is drafted and the definition of sensitive information. The proposed powers to identify and gather information will also be subject to veto by the Secretary of State under the extensive provisions of Clauses 29 and 30. Access to information could be severely curtailed through the exercise of powers conferred on the Secretary of State in this Bill, because it gives the Secretary of State powers to give guidance about how the ICRIR is to identify sensitive information such as that held by police intelligence units and how that information is held and handled, et cetera, and even to create new criminal offences in relation to such matters.

Last year, the European Committee of Ministers exposed serious concerns about the Bill, and the Commissioner for Human Rights has now said that the amendments proposed by the Government do not sufficiently allay those concerns. This emphasised again that it is crucial that the legislation, if progressed and ultimately adopted, is in full compliance with our convention obligations and will enable effective investigation into outstanding cases.

The Committee of Ministers has called on the Government, first, to ensure that the Secretary of State for Northern Ireland's role in the establishment and oversight of the ICRIR is more clearly circumscribed in law, in a manner that ensures that the ICRIR is independent and seen to be independent. Secondly, it has called on them to ensure that the disclosure provisions unambiguously require full disclosure to be given to the ICRIR. Thirdly, it has asked that they ensure that the Bill adequately provides for the participations of victims and their families for transparency and public scrutiny, which is fundamental to Article 2. It has again stressed the importance for the success of any investigative body of gaining the confidence of victims, families of victims and potential witnesses.

I also put my name to Amendment 31 in the name of the noble Lord, Lord Hain, supported also by the noble Baroness, Lady Ritchie, who has spoken at length about it, as well as the noble Lords, Lord Blair and Lord Murphy. The noble Lord, Lord Hain, is unable

to be with us today. I shall support that amendment if a Division is called. I do not think that I need to describe the reasons for it, but I shall say that the National Police Chiefs' Council has said that the Kenova model could effectively be scaled up for the purposes of the ICRIR.

I regret that I cannot support Amendment 28 in the names of the noble Baroness, Lady Hoey, and the noble Lords, Lord Bew and Lord Godson, because it requires that, when a family is seeking a review or investigation, they will have to be able to show that, if there is to be a review, and there has previously been an investigation or an inquest, for example, the ICRIR should not decide to grant a review unless there is compelling new evidence. To require a family to provide compelling new evidence would be to deprive them of their Article 2 rights to investigation, in particular in older cases where investigations and inquests were not as thorough or impartial as they are now. It is not the role of a traumatised and bereaved family to gather compelling new evidence. They have neither the powers nor the access to do so. That is the job of the investigator—in this case, the ICRIR.

Baroness Hoey (Non-Afl): My Lords, with regard to Amendment 28 in the name of myself, the noble Lords, Lord Bew and Lord Godson, I tabled similar in Committee and have changed it to take note of what the Minister then said, deleting the parts that he found objectionable, which related to family requests for reinvestigations. I hope that what remains the Minister will find acceptable, given that the purpose of my amendment to Clause 11 is to ensure that there will not be duplication by the ICRIR in relation to previous investigations, despite what the noble Baroness, Lady O'Loan, has said, without compelling new evidence. This is the concept that was used in the overseas operation Act, and I cannot understand why it cannot be used in this legislation.

If the previous investigations listed in the amendment, such as those by a public inquiry, HET, or the police services Legacy Investigation Branch are not added to the Bill, thus narrowing the ICRIR's potential range, I repeat what I said at Committee: namely, that the ICRIR could end up reinvestigating every one of the nearly 4,000 deaths, the cost will be £1 billion at least, not the budgeted £250 million, and the process will last for many years.

8.30 pm

We now have legacy practitioners—a new force in Belfast, not the victims' relatives, as the Bill naively believes—using the concept of collusion, or "collusive behaviours", to use the phrasing chosen by the Police Ombudsman, who can design a case to reinvestigate any death. Collusion can be alleged in relation to all loyalist killings and, indeed, all republican ones, by virtue of the use of security force agents in both paramilitary groups, never mind the alleged investigatory failings that the Strasbourg court complains of.

Rewriting history is about the complexity of the Troubles being distorted into a single concern with state killings, which of course republicans and their allies then use —slowly, drip by drip, case by case—to construct the narrative of the IRA being a popular resistance force that had no alternative to killing. The Committee of Ministers at the Council of Europe, when enforcing European Court judgments on the so-called McKerr line of cases, refers only to killings

"either during security force operations or in circumstances giving rise to suspicion of collusion in their deaths by security force personnel".

There we have it. Strasbourg has therefore, in effect, accepted a republican perspective on the matter for the past 20 years. This means that some 90% of victims' families are told by the human rights court that they do not count.

I fear that the following will happen when the ICRIR opens next year if this amendment is not added to the Bill: the IRA Army Council will almost certainly not be tempted by the immunity opportunity, nor will the loyalist paramilitary groups. There will be a small number of requests for reviews from distressed relatives, but the vast majority of requests will be from legacy practitioners who will demand rigorous reinvestigations—in fact, new criminal investigations in hundreds of cases—often on the flimsiest of allegations, unless prevented by this amendment.

The judicial reviews and civil suits will also keep on coming. However, recent court judgments in London and Belfast on the temporal scope of ECHR Article 2 procedure, already referred to, suggest that demands for reinvestigation are no longer being obliged, both for time-lapse reasons and the non-application of the Human Rights Act to deaths before 1982.

The Belfast agreement never envisaged what has happened on legacy. About victims, it simply said:

"The achievement of a peaceful and just society would be the true memorial to the victims of violence".

The Northern Ireland parties failed to deal with the matter and it has passed, as usual, to Westminster. The only credible legacy initiative was former Chief Constable Sir Hugh Orde's Historical Enquiries Team, but that was needlessly closed down.

This amendment is designed to stop unintentional ICRIR mission creep. Without a mention in statute that narrows access and curtails repeat applications, the commission's workload will only grow. We need finality and I am afraid that, without my amendment, we will not get it.

I also want to say something about Amendment 31, which I will not be able to support if it goes to a vote on Monday. This amendment from the noble Lord, Lord Hain, and others is, in essence, the alternative legacy policy promoted by the former Chief Constable of Bedfordshire Police, Jon Boutcher, head of Kenova, and other former Metropolitan Police officers in your Lordships' House.

Everyone talks about Kenova, but I guarantee that most Members of the House of Lords do not know anything about the detail of Kenova. It is important to spell out that it is in fact four separate operations commissioned by the PSNI following particular judicial rulings on which, to date, £37 million has been spent, without any prosecutions—although 30 files and a million pages of evidence on MI5, Army and IRA personnel are with the PPS. It started out as one inquiry into the late Freddie Scappaticci, or "Stakeknife", about the IRA and the use of informers by the Security Service.

[Baroness Hoey]
Then there was Operation Denton, a review—but not an investigation—about the Glenanne Gang and alleged loyalist collusion with the security forces. The other two Kenova commissions are much less complex, so I will not go into them because of the time.

Jon Boutcher, as I am sure many of your Lordships know, was a detective superintendent in the Metropolitan Police Service in July 2005 when, in Vauxhall, then my constituency, we had the terrible tragedy of Jean Charles de Menezes, a Brazilian electrician mistaken for a suspected Islamist terrorist, who was shot dead by armed police officers on a stationary Tube train at Stockwell station, just down the road. Cressida Dick was in charge of that operation on 22 July and Jon Boutcher was one of the silver commanders in the control room. The Met's plan had been for SO12, a surveillance team, to apprehend its suspect after he left his apartment building. SO19, comprising firearms officers, was also deployed. A series of events then led to tragedy: confusion in the control room, SO19 having to stop for petrol, SO12 failing to arrest the suspect before the Tube station and SO19 catching up with him only as he entered the station.

The Menezes family, with London supporters who lobbied me—I got to know many of them during that time—brought a human rights case to Strasbourg. The actions of the Met's senior officers that day may be followed in the 2016 court judgment Da Silva v United Kingdom. It is clear from that that the Met was a police service that believed in "shoot to kill" when it came to possible suicide bombers. The family's case at Strasbourg was not on Article 2 substantive obligations—the right to life—but Article 2 procedural obligations. Possibly inspired by Northern Ireland cases, they argued unsuccessfully that there had been an inadequate investigation into the death. The court, however, found the investigation in general to be adequate.

Kenova is about extensive reinvestigations that would never happen in London and which our courts increasingly suggest are pointless because of the time lapse and the fact that Article 2 of the ECHR does not apply to such elderly events. I put it to your Lordships' House that we must not be starstruck, almost, by Kenova and think that it is the solution to everything. The Kenova investigations are about a small subset of victims: those whose relatives were agents or informants, who, sadly, can never be told what went on, and those who allege collusion with state forces, who will never be satisfied with any report.

I am very pleased that the government amendment usefully refers to the UK Human Rights Act, the HRA, and not to the ECHR, as the noble Lord, Lord Hain, does. Amendment 31, if passed, would ensure that we spend millions of pounds and not actually achieve very much, other than to ensure that state forces—the RUC, the Army and all those who worked so hard to defend innocent people—will be the ones who will be chased and pursued. So I will not be voting for that on Monday and I hope the Minister will respond to what I said on my first amendment, Amendment 28.

Also, does the Minister have any comment on what Minister Varadkar said today? He is the Minister in the Republic of Ireland, for noble Lords who have not heard of him, and he is now threatening that an interstate case at Strasbourg will be taken against the UK Government if this legacy Bill passes. I would be very grateful if the Minister commented on that.

Lord Blair of Boughton (CB): My Lords, it is unusual for me to start by saying that I could not disagree more with what I have just heard from the noble Baroness, Lady Hoey. I was Metropolitan Police Commissioner at the time of the death of Jean Charles de Menezes, and it was a tragedy. I do not actually understand the connection that she is making with what is happening in relation to Operation Kenova.

Baroness Hoey (Non-Afl): Strasbourg.

Lord Blair of Boughton (CB): I shall stop there on that point.

I support Amendment 31 in the name of the noble Lord, Lord Hain, and the other signatories to it. It concerns Operation Kenova—the multiple investigations being carried out by ex-Chief Constable Jon Boutcher into some 200 murders on both sides of the conflict in Northern Ireland. I last spoke on Kenova on 24 January this year, when I read into the record of the House comments made by Jon Boutcher the previous October. I will not repeat all of that, except to remind noble Lords of his summary of his focus, being on the Provisional IRA,

"which committed these murders and whether steps were, or were not taken by the security forces before these abductions and murders occurred to protect people".—[*Official Report*, 24/1/23; col. 161.]

I am not an expert on Northern Ireland, but I bring before the House two aspects of my own professional experience which I believe are of relevance. First, I have investigated murders and I know how difficult it is to tell families of victims that the trail has run cold and the investigation is, at least for the time being, being closed. Secondly, I have led some very large and complex investigations and watched many others. Never have I seen such a comprehensive, transparent and outstanding investigation as Kenova. Mr Boutcher has meticulously worked to gain the trust of families and has submitted a number of files, as we heard during the debate, to the Northern Ireland prosecution services. The submissions await a decision and the families know that. To discontinue all those inquiries by an Act of Parliament in these Houses seems to me to be an extraordinary step.

Of course, like many others in the House, I am a great supporter of the truth and reconciliation process in South Africa, but that process took place instead of investigations, not after they had been completed. Moreover, entering into such an approach has to be a voluntary process; and, having come this far, from a position of deep cynicism to trust in Kenova's approach, I doubt whether many families will wish the completed investigations into these deaths just to be put to one side. With respect to the Minister, he knows that the continuance of Kenova is supported by politicians of every stripe in Northern Ireland, a position which I believe is not a common occurrence on any topic, let alone one as explosive as this. Any suggestion that the Kenova model is too expensive is risible, given all the suffering and all the costs that have preceded it.

I hope that when the House returns to this subject next week, it will ask the Government to think again.

Baroness Suttie (LD): My Lords, this has been an interesting short debate. These Benches fully support Amendment 31, tabled by the noble Lord, Lord Hain, and signed by the noble Lords, Lord Blair and Lord Murphy, and the noble Baroness, Lady O'Loan; if it is pushed to a vote on Monday, we will certainly support it. As other noble Lords have spelled out so clearly—perhaps not the noble Baroness, Lady Hoey, who has reservations, but certainly the noble Lord, Lord Blair, and the noble Baroness, Lady Ritchie—the Operation Kenova model, with investigations to criminal justice standards, has been proven to work and should and could provide an effective alternative to the approach being adopted by the Government. I still hope that the Government will move further in this direction and support at least the spirit of Amendment 31. If they will not, it would be very useful to hear why from the Minister in his concluding remarks.

Lord Murphy of Torfaen (Lab): My Lords, I very much appreciate the amendments put forward by the Government in this group, which are a genuine attempt to improve the Bill. In particular, Amendments 30 and 33 make it clear that the commission must act in a way that is consistent with the Human Rights Act and therefore the European Convention on Human Rights. The problem is that the Government need to ensure that the people who take these matters very seriously are convinced, when it is said that the legislation is compliant, that it actually is. That is a job of work that the Minister must undertake in the weeks ahead.

I very much support Amendment 31 in the name of my noble friend Lord Hain, ably moved by my noble friend Lady Ritchie. I have met Jon Boutcher on a number of occasions and have been deeply impressed by his work and by him personally. Operation Kenova has achieved a very compassionate and efficient way of dealing with these issues, not just in a couple of cases but in anything up to 200, as the noble Lord, Lord Blair, has said. I hope the Government seriously consider my noble friend's amendment on this issue, because it would be more generally acceptable than the present system.

8.45 pm

Lord Caine (Con): My Lords, I am grateful to all those who have spoken. We have debated compatibility with the European convention at length, as recently as the last group. I do not propose to revisit all those arguments in response to this group.

I have, however, brought back Amendment 32 to make it clear in the Bill that the independent commissioner for investigations will determine whether a criminal investigation should form part of a review. I have also tabled Amendments 30 and 33 expressly to confirm that the commissioner, when exercising operational control over the conduct of reviews and other functions, must comply with obligations imposed by the Human Rights Act. In addition, I will place a duty on the commission to publish a statement outlining how each review was conducted as part of its final report, thus enhancing the transparency of its work through Amendments 34, 49, 50 and 55.

The legislation rightly ensures that the independent commission, via the commissioner for investigations, has the flexibility to determine whether and when it is appropriate to use police powers during its review. An approach requiring a criminal investigation in all cases, as would be required under Amendment 31 in the name of the noble Lord, Lord Hain, would remove such flexibility and significantly increase the likely time to complete reviews, further delaying the provision of information to many families. I do not intend to go over the contents of my letter to the noble Lord again; it is there for everybody to see.

As I have said in the House on numerous occasions, I recognise the work carried out by Operation Kenova and the way in which Jon Boutcher, to whom I pay tribute, has developed strong relationships with the families of victims. There are many features of Operation Kenova's work that the Government consider capable of being built on, should the commission choose to do so. However, as I have put on record numerous times, the Government view it as vital that the commission is free to determine its own approach to these complicated matters. That would be constrained if we were to adopt the amendment of the noble Lord, Lord Hain.

In response to amendments tabled by the noble Baroness, Lady O'Loan, in Committee, I have brought forward Amendments 14 and 15 to Clause 5. These would extend the list of authorities which may be required by the commissioner for investigations to provide the commission with assistance for the purposes of, or in connection with, the effective use of information, documents and other material provided by those authorities under Clause 5.

On the issue of Maxwellisation, I have introduced a series of amendments to Clauses 15 and 17, in response to discussions with the noble Baroness, Lady O'Loan, requiring the chief commissioner to share only relevant sections of a report criticising a person rather than the full draft report and allow them to make representations about that material.

I am sympathetic to what Amendments 39 and 41 in name of the noble Baroness, Lady O'Loan, attempt to do. We explored this in Committee and the noble Baroness and I discussed these matters yesterday, so I do not intend to go over all the arguments again. Suffice it to say that, in our view, the current drafting ensures that the chief commissioner can modify material as well as exclude it, so in our view the amendments are unnecessary.

In response to Amendments 12, 37 and 47 tabled by my noble friend Lord Bew, the ICRIR is already under a clearly defined obligation, in Clause 4(1)(b), not to do anything that would risk putting, or would put, the life and safety of any person at risk. It is the Government's view that this safeguard is wide enough to offer sufficient protection of the rights of anyone likely to be named in reports, and therefore my noble friend's amendment is unnecessary.

In respect of Amendment 13 to Clause 5, again in the name of the noble Baroness, Lady O'Loan, it is not unusual for legislation giving a power to require the provision of information to be subject to the requirement of reasonableness. Reasonableness is a widely used and understood term, which is included in other legislation. She referred to one example which I provided, in the Finance Act. I could add the paragraph 19ZA of Schedule 3 to the Police Reform

[Lord Caine]
Act 2002, which uses the same reasonableness requirement formulation in the equivalent power of the director-general of the Independent Office for Police Conduct. The Inquiries Act 2005 gives the chairman of an inquiry the ability to require a person to provide evidence and documents to the inquiry panel within such a period that appears reasonable to the inquiry panel. Section 17(2) of the Criminal Appeal Act 1995, which gives equivalent powers to the Criminal Cases Review Commission, is also drafted in those terms, so there are a number of other examples.

In practice, the commissioner for investigations will decide, based on the facts of the particular review, what information can reasonably be required of a relevant authority. If there is a dispute, and the relevant authority considers the commissioner has acted unreasonably in imposing the requirement, the matter will ultimately have to be resolved by the courts. I believe the noble Baroness, as we discussed recently, is reading too many restrictions into the Bill, where do they not exist and there is no intention for them to exist, and where our purpose is to get as much information into the public domain as possible.

Baroness O'Loan (CB): I thank the Minister for giving way. Does he accept that, in the examples he gave of the time within which information might reasonably be provided, and the powers of the chair of a tribunal who is reasonably requesting information, there is a distinction between a reasonable request for information and a request for information to be provided within a reasonable time? We have seen, in the current judicial review, the difficulties faced by the Government in relation to the information held in respect of the Prime Minister which is required by the Covid inquiry.

Lord Caine (Con): If I am honest, I am not entirely sure I follow the point the noble Baroness is making, but I stand by the point I have just made, that our intention is not to impose unnecessary restrictions through this legislation but to allow the commission to access information and be in a position to put more information about what happened into the public domain than has been the case.

Turning to Amendment 28 in the name of the noble Baroness, Lady Hoey, I understand the intention behind this amendment, but Clause 11(7) already requires the commissioner for investigations to ensure that the commission does not do anything that duplicates any aspects of a previous review, unless duplication is deemed absolutely necessary. We believe this is a proportionate approach that ensures the resources of the commission are not wasted through unnecessary duplication, while providing limited discretion for the commission where that might be required. In our view, the effects of the amendment tabled by the noble Baroness would be to hamper the ability of the commission to conduct reviews which might lead to the effective provision of information to many families, which would run counter to a key objective of the legislation. I therefore urge noble Lords not to press their amendments.

Lord Bew (CB): I beg leave to withdraw Amendment 12.

Amendment 12 withdrawn.

Clause 5: Full disclosure to the ICRIR

Amendment 13 not moved.

Amendments 14 and 15

Moved by ***Lord Caine***

14: Clause 5, page 5, line 21, leave out from "require" to "to" in line 22 and insert "any of the following persons"

Member's explanatory statement

This amendment is consequential on the other amendment of this Clause in Lord Caine's name

15: Clause 5, page 5, line 25, after "section" insert "—

(a) the Chief Constable of the PSNI;

(b) the chief officer of a police force in Great Britain;

(c) the Police Ombudsman for Northern Ireland;

(d) the Director General of the Independent Office for Police Conduct;

(e) the Police Investigations and Review Commissioner."

Member's explanatory statement

This would expand the persons subject to the duty to provide assistance under Clause 5(7) (currently the duty applies to the Chief Constable of the PSNI and the Police Ombudsman for Northern Ireland).

Amendments 14 and 15 agreed.

Clause 7: Admissibility of material in criminal proceedings

Amendments 16 and 17

Moved by ***Lord Caine***

16: Clause 7, page 6, line 15, at end insert—

"(3A) Subsection (2) does not apply in relation to proceedings against D for an offence under paragraph 8(1)(a) of Schedule (distortion of evidence); and subsections (2) and (3) do not apply in relation to proceedings against D for an offence under section (False statements: offence) (false statements)."

Member's explanatory statement

This amendment allows for certain evidence given to the ICRIR to be used (against the person who gave the evidence) in criminal proceedings relating to false statements and distortion of evidence.

17: Clause 7, page 6, line 28, after "Where" insert "subsection (3A) or"

Member's explanatory statement

This amendment is in consequence of the amendment to insert subsection (3A).

Amendments 16 and 17 agreed.

Amendment 18 not moved.

Clause 8: Admissibility of material in civil proceedings

Amendment 19

Moved by ***Lord Caine***

19: Clause 8, page 7, line 37, after "section" insert "—

"civil proceedings" does not include—

(a) family proceedings within the meaning of Article 12 of the Family Law (Northern Ireland) Order 1993 (S.I. 1993/1576 (N.I. 6));

(b) family proceedings within the meaning of section 75(3) of the Courts Act 2003;

(c) family proceedings within the meaning of section 135 of the Courts Reform (Scotland) Act 2014 (asp 18) or proceedings under the Children (Scotland) Act 1995 or the Children's Hearings (Scotland) Act 2011 (asp 1);"

Member's explanatory statement

This excludes family proceedings from the scope of Clause 8.

Lord Caine (Con): My Lords, as has been said many times, the Government's primary focus has been to establish one effective legacy body focused on providing better outcomes for families. We want to ensure that organisations such as the PSNI, the Police Ombudsman and the judiciary are able to focus their capabilities and resources on the present, not the past.

It remains our view that the commission, when established, should be the sole body responsible for Troubles-related cases. However, we are mindful of concerns about the ending of some existing ongoing processes. This is particularly the case given the current legislative timetable and the expected timeframe for the independent commission to become fully operational. Amendments 106, 129, 151, 155 and 156 in my name therefore ensure that ongoing criminal investigations, ombudsman investigations, the consideration of prosecution decisions, coronial inquests and the publication of reports will continue until 1 May 2024, when the commission will become fully operational.

Amendment 91 removes the provision which allows reports or statements about criminal investigations to be produced for a limited period after Clause 34 comes into force. That is now redundant, given my amendments to extend this time to 1 May 2024.

I hope that the additional time provided will be welcomed by noble Lords who have expressed concern regarding specific work, including Operation Kenova and Operation Denton. We hope that the additional time provided will allow such cases to conclude their work while ensuring a smooth transition between the ending of the current mechanisms and the commission taking on all responsibility for outstanding cases.

Our amendment provides until 1 May 2024 for inquests to conclude. Since the Bill's introduction, expeditious case management in order to reach an "advanced stage" has resulted in the overloading of a system that was already struggling under incredible pressure, causing delay and frustration. This amendment will ensure that resources will now be focused on completing those inquests that have a realistic prospect of conclusion in the next year.

Troubles-related cases that do not conclude by 1 May 2024 will be transferred to the fully operational new commission led by Sir Declan Morgan as chief commissioner—the man who was responsible, as noble Lords will know, for reforming the inquest system a number of years ago. It is the Government's expectation that this amendment provides sufficient time for coroners and Sir Declan as chief commissioner to develop a considered plan that will allow for the seamless handover of outstanding cases to the new commission.

Going back to our previous debate, I remind noble Lords that the independent commission will be supported by a legislative requirement of full disclosure by state bodies, and it will have access to all necessary policing powers and the power to compel witnesses to comply with its reviews. At the conclusion of any review, the commission will be able to make findings, made public via a family report, in a manner similar to an inquest.

9 pm

In response to concerns raised by the Lord Advocate, which I had the pleasure of discussing last week with the Solicitor-General for Scotland, Amendment 87 in my name ensures that in circumstances where, following a review, the commissioner for investigations considers that there is evidence that an offence has been committed under Scots law—and immunity from prosecution for that offence has not been granted—the Lord Advocate has the power to direct a referral allowing her to consider the case for prosecution. The commissioner for investigations must comply with such a direction unless the suspect has been granted immunity from prosecution for the offence concerned. This demonstrates the Government's commitment to respecting the particular constitutional arrangements in Scotland regarding the role of the Lord Advocate and ensuring that the Bill operates as intended in all three of the UK's criminal justice jurisdictions. I beg to move.

Baroness Ritchie of Downpatrick (Lab): My Lords, I believe that the Bill and the government amendments to this clause to do with inquests and judicial outcomes clearly undermine the fundamental tenet of basic human rights: the right to access to inquests and investigations for those seeking truth and justice following the heinous murder of their loved ones. Clause 40 deals with investigations, inquiries and inquests, but the Government seek to eradicate such provisions.

In my former role as MP for South Down, as an MLA for that constituency and as a district councillor, on many occasions I met families who had lost their parents, their siblings or their sons and daughters through summary execution by paramilitaries or as a result of state violence. On all occasions, those people wanted truth, justice and, above all, to know what had happened to their loved ones, why it had happened, what were the circumstances, and most of all, whether it could have been avoided.

I suppose that I have the most direct experience with Loughinisland, where six men were gunned down on 18 June 1994. That was subject to an inquiry by the former Police Ombudsman for Northern Ireland, the noble Baroness, Lady O'Loan, which was then progressed by her successors until eventually a Police Ombudsman report was published in 2016 which found elements of collusive behaviour between security forces and members of loyalist paramilitary organisations. I knew many of those people who were killed, and I have to say that the people I knew had absolutely no participation in terrorism. They abhorred violence, and perhaps their only political act was to vote. In fact, two of those people who were killed on that night were indirectly related to me, one of them the eldest man to be killed in the Troubles; his brother was married to my aunt. Those things you do not easily forget.

[Baroness Ritchie of Downpatrick]

Clause 40 deals with investigations and the Government seek to eradicate those provisions. I am a signatory to Amendment 110 in the name of the noble Baroness, O'Loan, which seeks to remove this clause from the Bill and try to ensure a redress system. This view is supported by the Commission for Victims and Survivors, Amnesty and the CAJ, and latterly by the Tánaiste, Micheál Martin. He wrote an opinion piece this week for the *Financial Times* in which he states:

"Existing mechanisms for dealing with the legacy of the past, while imperfect, deliver important outcomes for those families, such as the vindication of a murdered loved one's innocence. In its Legacy bill, the UK government intends to permanently close off access to these mechanisms—inquests, police ombudsman investigations, civil cases and police investigations—which are working for families and, importantly, demonstrating a vindication of the state's obligations under the European Convention on Human Rights to investigate killings effectively".

With the government amendments in this group, all investigations into harmful conduct forming part of the Troubles will be brought to an end by the Bill and by the amendment of the deadline to 1 May 2024. That applies to inquests, investigations, inquiries and investigations by the Police Ombudsman. After that date, the only remaining available investigation will be a toothless light-touch review by the ICRIR. This is a much inferior mechanism to those that currently exist.

For example, in the case of the late Sean Brown from Bellaghy, whose inquest hearings were last week—he was murdered by loyalist paramilitaries about 30 years ago—if information from the MoD and the police does not reach the inquest hearing, which has been delayed, the family fear that what they believe to be deliberate delaying tactics, which have proved successful for the state agencies, will continue until 1 May 2024 and there will therefore be no redress. The late Sean Brown's widow and family simply want truth and justice via the inquest system. It is important that this right is not denied to them through this arbitrary deadline of 1 May 2024. I am also aware of police widows who seek similar redress, which they are entitled to.

The Commission for Victims and Survivors wants the inquest system to remain as it is because of a number of families who are concerned about this change of approach. These are the people who carry the weight of loss in circumstances that have never been properly explained. The 1 May 2024 deadline has added to that weight and their sorrow.

The Human Rights Commission's view is that the existing system should be developed, not regressed. There have been significant steps forward for several families in uncovering the truth and seeking justice that would not have been possible without the existing systems—I have already referred to Loughinisland and the Police Ombudsman's investigation. That point is emphasised by the CAJ, which states that the Bill will shut down existing legacy mechanisms when such mechanisms are increasingly delivering for families. The government amendments are designed to copper-fasten and extend this process.

I therefore support the amendment in the name of the noble Baroness, Lady O'Loan, which seeks to remove Clause 40 and ensure that the existing work, which is being done very efficiently and is helpful to families, can continue. Can the Minister confirm whether he received support for or opposition to these amendments and for the Government's intended purpose in this legacy Bill in all the meetings he had over the last number of months? I urge him to withdraw the 1 May 2024 deadline and go back to the drawing board of the Stormont House agreement as a basis for dealing with legacy, because it has the involvement of the parties and of the Irish Government. Will he and government colleagues meet the Irish Government to discuss this issue as a matter of priority? If the noble Baroness moves her amendment on Monday, I will be very happy to support it.

Baroness O'Loan (CB): My Lords, group 6 refers to criminal justice outcomes. These really are the critical clauses. They remove from those affected by deaths and serious injuries between 1966 and 1998 the ability to pursue civil actions for the loss or damage that they have suffered; the ability to have investigations, as required by the ECHR; and, in cases where people have suffered a violent death, the ability to have inquests in respect of those deaths.

The noble Lord, Lord Hogan-Howe, who cannot be with us this evening, and I asked the Government to provide definitions of "review" and "criminal investigation" in order to inform your Lordships' understanding of the difference between the two, which is a vital issue in this Bill. The Minister expressed the view that it was not necessary to provide such definitions. However, in its report of January 2021 on the work of Operation Kenova and the Glenanne review—Operation Denton—the National Police Chiefs' Council explained:

"Operation Denton differs from Kenova in that it is being conducted as a review, and not as a criminal investigation at this time. This makes the approach by the operational team fundamentally different to that of Kenova",

which is an investigation,

"from an evidential perspective".

That fundamental difference of approach is why His Majesty's Government were so strongly criticised for making the function of the ICRIR to conduct reviews of deaths. That confusion continues to permeate the legislation. Even by Third Reading, perhaps the Minister might seek the assistance of the National Police Chiefs' Council and provide us with an amendment to define "review" and "investigation", which would help the House in making its decisions.

In future, despite the Minister's Amendment 32 to Clause 23, it is for the commissioner to decide whether investigations should form part of a review. Once the Act comes into force, there will be no criminal investigations as we know them today by the police or other agencies in relation to Troubles-related offences. Existing investigations will cease unless a decision to prosecute has been made and the ongoing investigation is for the purpose of that prosecution. A few minutes ago, the Minister expressed the hope that Operations Kenova and Denton would be complete by 1 May 2024. However, I have to point out to him that that is not to be determined by Kenova and Denton, which have finished their work and are simply waiting for decisions from the Director of Public Prosecutions, security reviews, Maxwellisation and that sort of thing. There is very little that Kenova or Denton can do; it is for others to do this. We have been told, however, that

others cannot do it because there are no resources; we are also told that that is the fault of the Northern Ireland Assembly, which does not sit. This does not seem to be a particularly constructive approach to the problem.

Unless a family member, the Secretary of State for Northern Ireland, the Attorney-General for Northern Ireland or the Advocate-General for Northern Ireland asks for a review and the ICRIR decides both that there should be a review and that the review should take the form of a criminal investigation, other investigations will simply cease without any provision for victims. Earlier, I referred in particular to the case of those three young police officers who were killed in the Kinnego Embankment explosion and whose file has been referred to the DPP. It would be wrong for these cases simply to die with the passing of this Bill.

In more limited circumstances where a review involves a death that was caused directly by conduct during the Troubles, coroners, sheriffs and procurators fiscal in Scotland can ask for a review. In all other cases, the investigation will cease and there will be no investigation and no provision for victims.

As a consequence of the Government's amendments to this Bill, even those that say that there must be compliance with the obligations imposed by the Human Rights Act, such compliance is de facto not possible because, among other reasons, there is provision for immunity from prosecution for murderers and the ICRIR does not have unqualified access to information held by relevant agencies under Clause 5. Despite the Minister's comments on the previous group, I, as Police Ombudsman for Northern Ireland, had the right to require the delivery of information. The ICRIR has the right only to reasonably request information. It is different.

9.15 pm

Moreover, in cases involving criminality by state actors such as police officers, the powers of the police ombudsman, the IOPC and the Scottish police complaints process will no longer exist unless there has already been a decision to prosecute, notwithstanding the very significant amounts of public money which may have been spent during the investigation process.

The Bill provided that civil actions brought on or after 22 May 2022 could not be pursued, even though people have invested time and money with a legitimate expectation that they would be able to get a decision from the court. Some of those people will have incurred significant legal costs and there is no mechanism by which they can recover those costs from the Government, who are depriving them of the right to pursue their cases, which existed in law when the writs were issued. Having abolished the right of civil action, the Bill does not provide any alternative remedy. Judicial review is not a remedy which will provide damages. It is only about decision-making by a public authority.

Clause 39(11), in relation to the application of the 2008 mediation directive, which applies to cross-border mediation, does not address or resolve the lacuna left by the Government's deliberate denial of the process of civil actions afforded to those who have suffered what is often ongoing and very serious harm as a consequence of the Troubles. Very often, people who might have been able to live a fulfilling life, to care for their families and to prepare for their old age were prevented from so doing by a Troubles bombing or shooting. This is not compliant with the Good Friday agreement which, I say again, requires

"direct access to the courts, and remedies".

There will of course be ongoing civil actions which started before 22 May 2022, so there will be two rules applying to civil actions for Troubles-related damage. Those lodged before 1 May 2022 will continue and those lodged afterwards will cease. That is why I have tabled Amendment 105, that Clause 39 should be deleted from the Bill.

Regarding inquests, the situation in the Bill was originally that any inquest which had reached an advanced stage would continue after the ICRIR was established. In a series of those game-changing amendments promised by the Government, government Amendments 106 to 109 provide that such inquests will no longer continue to be heard and that only inquests which are at the final stage, of determination, verdict or findings, can continue. Everything else will be terminated. This is game changing, but it is depriving victims of rights rather than enhancing their rights, which was the suggestion made by the Secretary of State, Chris Heaton-Harris, when he spoke of game-changing amendments. This is thought to be providing an incentive for state actors—police, MoD—to slow even further the provision of information for the purposes of inquests, so that information which could be provided to the coroner may not ultimately arrive in the coroners' court before the due date. The noble Baroness, Lady Ritchie, referred to the inquest into the murder of Sean Brown, which has had 40 days of sitting but has still yet to get the information which has been required by the coroner.

The duty to inquire into the circumstances of sudden death by force has existed for centuries. It will continue to exist even if this Bill is passed for the families of those who die in the United Kingdom, with the exception only of those deaths which occurred during the Troubles. Inquests into deaths by terrorism occurring in the United Kingdom during the years of the Troubles but caused by groups other than the IRA, the UDA and the UVF will also continue to occur.

It is discriminatory and unjustifiable to deprive of inquests the relatives of those who died Troubles-related deaths while enabling all the others in the UK who have suffered the death of a loved one in circumstances which require an inquest to have one. Victims of these killings who are still awaiting inquests will never have the benefit of knowing what might have emerged during an inquest. Recent inquests have resulted in the disclosure of information which has previously been withheld by the state, sometimes as a consequence of lengthy legal action by the coroner.

It has been estimated—by those who would know—that there will only be some 15 outstanding legacy inquests into Troubles deaths by May 2024. Some of those may involve matters in which there is a significant amount of sensitive information. The inquests process has mechanisms to facilitate the consideration of such material by a coroner. The mechanisms do not apply

[Baroness O'Loan]
to ICRIR reviews, and the Chief Commissioner—I have great respect for Sir Declan Morgan—is going to have to work out how on earth to provide Article 2 compliant investigations. The Bill does not help him: there is no duty on state agencies such as the police to provide him with information. Yet the Chief Commissioner will have to provide Article 2 compliant investigations or reviews of those cases in which inquests would have occurred under the existing law. Inquests should continue for this relatively small group of people, as for all others who have experienced the loss of a loved one in similar circumstances and who can secure an inquest because their loved one was murdered by terrorists who did not belong to the IRA, UDA, UVF, et cetera.

So, I have tabled Amendment 110, which is supported by the noble Baronesses, Lady Ritchie and Lady Suttie, and the noble Lord, Lord Murphy. I ask your Lordships to support this amendment, which I intend to press on Monday, and to allow the outstanding inquests to continue.

Lord Browne of Ladyton (Lab): My Lords, I stand to speak to Amendments 100, 103, 104 and 148 in my name, which are in this group. I find difficulty in explaining this: there are other amendments in my name in this group. Respectfully, they are Amendments 101, 149 and 150, and the fact that they are in this group concerns me because they are consequential to Amendment 123, which is in the eighth group. I will take advantage of raising this: Amendment 123 simply seeks to remove the phrase,

"the actual date of the First Reading",

from the Bill and to substitute the actual date of the First Reading, which was 17 May 2022. That will probably save me a few seconds when we come back on Monday. That is the position.

Before I turn to Amendments 100, 103, 104 and 148, I will say two things. I fully support Amendment 110 in the name of the noble Baroness, Lady O'Loan, and will vote for it if she divides the House. I thank the noble Lord, Lord Caine, for addressing an issue that I raised in Committee about respect for devolution and the recognition that Scotland has had a separate jurisdiction from England since 1707 in the context of the UK and the role of the Lord Advocate. He has tabled an amendment to ensure that, in circumstances where, following a review, the commissioner for investigations considers that there is evidence that an offence has been committed, a referral must be made to the Lord Advocate where the suspected offence is an offence under the law of Scotland.

Insofar as it goes, this respects devolution. New subsection (2C) in the amendment reads as follows:

"The Lord Advocate may direct the Commissioner for Investigations to exercise the power of referral and notification in accordance with subsection (2B); and the Commissioner must comply with any direction that is given unless the person concerned has been granted immunity from prosecution under section 18 for the offence concerned".

So, the commission still has the power to impact or to make a decision which will have extrajudicial impact in Scotland. That of itself, I suspect, will be considered disrespectful of devolution by the Scottish Parliament. That is perhaps a debate for another day, but I imagine that that debate will have to be had.

I return to Amendments 100 and those following. In tabling and speaking to these amendments, I am seeking to ensure that civil actions relating to the Troubles are not discontinued precipitately; that we reduce the risk of non-compliance with our obligations under Articles 2 and 6 of the ECHR; and that we preserve for a period of time a path to justice—albeit narrowing—for those families whose concerns, after all, ought to be paramount as we seek to improve this legislation.

Amendment 100 removes the blanket proscription on Troubles-related civil actions continuing on or after the day this Bill comes into force and instead allows such civil actions to be brought up to three years after that date when necessary. Given that, as we know, the ICRIR does not provide a legal remedy for victims and their families, surely accompanying the Bill's other provisions with a complete ban on civil actions adds an element of insult to injury. Perhaps more seriously, this precipitate closure of an avenue towards civil redress, as I explained in detail in Committee and will not repeat, directly engages the UK's obligations to offer access to a court under Article 6 of the ECHR.

As this Bill has journeyed through its various stages in your Lordships' House, we frequently heard concerns about the degree to which the scope and powers of the ICRIR may already compromise access to justice, echoing the view of the former Northern Ireland Director of Public Prosecutions, who suggested that the Bill is incompatible with the ECHR as it abolishes due process. Surely, precluding the possibility of any further remedy through civil actions only imperils compliance with our ECHR obligations still further.

In considering the amendments I have put forward in this group, I returned to the official record of the Committee debates and re-examined the Minister's response, which was characteristically thorough and generous of spirit. In his response on civil claims, he outlined three principal reasons that underlie his desire to discontinue all civil claims as outlined in Clause 39. He expressed concern, first, that they may impose an additional burden on the already backlogged Northern Irish civil courts; secondly, that they might reduce the status of the ICRIR as the primary institution dealing with Troubles-related offences; and, thirdly, that a three-year deadline might concentrate minds and lead to an enormous number of filings before this avenue of recourse is removed.

My answer to the first of these reasons is quite simple. Where families feel that a civil action is more likely to bring them the justice they seek, surely, administrative sclerosis is not an adequate reason for denying them that recourse. There are plenty of examples of this. Although I understand that the pandemic exacerbated the already considerable difficulties in this area, I struggle to countenance the idea that the solution to a struggling justice system is to deny justice to specific groups, rather than for the Government just to get to grips with the problem and make access to justice easier.

On the Minister's second concern, I understand his need for the ICRIR to establish itself as the primary actor in Troubles-related offences, but while that imperative is important, it is surely trumped by the interests of the families it will be established to serve. Where they

feel that civil action is their preferred recourse, the institutional interests of the ICRIR are, to say the least, secondary.

On the third point, about the possibility of a flurry of actions being filed to meet the three-year deadline, what is wrong with that? Some 25 years ago, I regularly appeared before courts and quite often asked judges to do things. On occasion, the judges would say to me, "But Mr Brown, that will open the floodgates", or the people on the other side of the argument would say that it will open the floodgates. I developed quite a neat line, which was to say, "My Lord, this is a court of justice. If you are considering granting justice to one person today, it's hardly a reason not to do so because somebody will come and ask you to do the same thing tomorrow". That is what courts of justice are there for. Again, I appreciate the level of the backlog being worked through by the Northern Irish courts, but ultimately it is their job to dispense justice.

9.30 pm

If civil actions are misdirected or tendentious then they can be dismissed, but others may be brought to a successful conclusion and they should be allowed. That is justice in action. I reiterate that the solution to this backlog is for the Government to get to grips with the problem rather than placing obstacles in the way of those who wish to use the courts to obtain the justice that is due to them.

Before I finish, I shall mention Amendment 104, which provides that the Secretary of State should defray the fees and costs already incurred by litigants, and maybe also by potential litigants, whose proceedings are either terminated or banned by this legislation. If the Government wish to bring such proceedings to a precipitate end, it is incumbent on them to meet the cost of so doing.

Baroness Hoey (Non-Afl): My Lords, I support the Government's intention to set a deadline on the issue of inquests. I oppose Amendment 110 because it is a—"wrecking amendment" is probably wrong because there are lots of things about this Bill that we all want to wreck, but the reality is that, without incorporating all inquests into the new body at some stage, it might as well not exist. We would see what I have mentioned before: lawfare would recommence with a vengeance at a very high cost, forcing reinvestigations that, if we are honest, would never occur or be enabled to occur here in England.

As it is, the ICRIR is already showing signs of becoming just a one-stop shop for reinvestigations of historic deaths currently or previously undertaken, as I mentioned on the previous amendment, by the PSNI's legacy investigations branch, HET, the Police Ombudsman, Strasbourg, public or judicial inquiry, civil suits or inquests. The 50 or so currently outstanding promised inquests are almost all reopened ones that the courts, the DPP or the Attorney-General have decided were inadequate previously. Inquests were apparently being reopened according to two loose criteria: first, the usual one where collusion was alleged, such as Glenanne and Finucane; and, secondly, where the deceased was a terrorist but the command and control arrangements of the security forces were in question—in other words, once again only the state was being reinvestigated.

At the height of the Troubles, as we know, evidence gathering was next to impossible for fear of another death, so inquests tended to be brief, especially for the 700 murdered soldiers. It is worth remembering too that in the case of the IRA's 1974 Birmingham bombing there was never an inquest.

Reopening has been granted when some new information has come to light after inspection of, for example, new files in the National Archives at Kew. Quite often the new information is not that compelling and, increasingly, judicial reviews do not succeed when the killings occurred up to 50 years ago. Judges accept that memories fade and become unreliable.

The Human Rights Act and thus the ECHR Article 2 procedure, much quoted in recent days by the Secretary of State, do not require deaths to be reinvestigated prior to its commencement in 2000. The Supreme Court has of course suggested that the cut-off date should be a decade earlier but certainly not the 1970s, so I think His Majesty's Government are absolutely right on this and I oppose Amendment 110.

Baroness Suttie (LD): My Lords, I shall speak in favour of Amendment 110, to which I have added my name. It would remove Clause 40 from the Bill and would have the effect of leaving the inquest system as it currently stands. I shall be extremely brief because the noble Baronesses, Lady O'Loan and Lady Ritchie, have made the case so powerfully in favour of the amendment.

The Minister will know that the victims' commissioner, Ian Jeffers, is deeply concerned that removing the current inquest system would be an additional blow to families who have already waited decades for an inquest, and it is just not clear how and when the ICRIR will work to deal with them. Does the Minister agree that, when an inquest has begun and the preparatory work has been done, it seems inefficient and impractical to start a new process with new personnel?

Lord Murphy of Torfaen (Lab): My Lords, after immunity, this part of the Bill is the most disliked, criticised and disapproved of in Northern Ireland. I understand why: because we will have inquests abolished, civil action banned and investigations not allowed to go on. That means the rule of law in Northern Ireland is being denied to the people, because of the decision of the Government to impose this Bill upon them.

I am not saying that there might not be occasions when all those things should happen. The problem is that, as in the case of immunity, effectively the Government have no Northern Ireland mandate for what they are doing. You can abolish the rule of law in some forms in a country only if the people are behind it. If the people's representatives from all the political parties in Northern Ireland, and through all the churches and the organisations representing human rights there, and the victims' commissioner for Northern Ireland, are opposed to this serious deflection from the rule of law then the only way that it can happen is if there is consensus.

[Lord Murphy of Torfaen]

The Good Friday agreement and the St Andrews agreement were based on consensus. The Stormont House agreement was based on consensus; the clue is in the name. The Minister shakes his head at that, but he knows that it would be a good basis for action if the Stormont House agreement were put forward. He had a very good Secretary of State at the time, but Johnson sacked him—maybe because he was too good. The issue, at the end of the day, is that you cannot impose these draconian changes in how the judicial and legal system works unless they have a legitimacy among the people who will have to live with them. That applies to the whole Bill but particularly to this provision. The reason why I support Amendment 110 is, again, because it gives the House of Commons the opportunity, if it is passed here, to have another look at it—a deep look at why this aspect of the Bill is so unpopular.

I cannot get my mind or head around why the Government are so stubborn on this. They can do what they like in Britain because they have a mandate, for another year, in the House of Commons. But, more than anybody else in the Government, the Minister knows that it is different in Northern Ireland and that these enormous changes cannot be made effective unless there is some sort of consensus. I do not for one second believe that the Government are wrong in seeking and trying to find a solution. The problem is that, in this case, they simply have not.

Lord Caine (Con): My Lords, I am tempted to write at some point the definitive account of the Stormont House agreement, and to reveal just how exaggerated the levels of consensus in that agreement were. It almost started to unravel right from the start, and it was not entirely about legacy. In fact, legacy was never the motivation behind the talks that led to the agreement; it was about the Executive's finances and welfare reform, principally. Anyway, that is for another day.

I discussed the clauses relating to investigations and inquests when opening this group, and these issues have been discussed at length both at Second Reading and in Committee. I will therefore not repeat well-rehearsed arguments here, other than to note the intervention by noble Lords today and to reassert that the primary purpose of the new commission—the ICRIR—is to provide more information through reviews that can include investigations. Those are not necessarily light-touch, as the noble Baroness, Lady Ritchie of Downpatrick, suggested; they can include full criminal investigations. It is to get more information to more families in a timelier manner than happens under the current processes.

I will respond to one point the noble Baroness, Lady O'Loan, and the noble Lord, Lord Browne of Ladyton, made on the recovery of costs. I have just looked at the Bill, which provides for costs. Clause 39(8)(a) stipulates that, while the prohibition will bring the substantive claim to an end, it will

"not stop costs proceedings from being continued or begun".

The noble Baroness will know that inquests are covered by legal aid. So, I do not think it is entirely right to say that costs cannot be recovered. I willingly give way to the noble Baroness.

Baroness O'Loan (CB): The noble Lord is very generous. I want to ask him if legal aid is available to everyone for inquests, or is it assessed according to income?

Lord Caine (Con): It is assessed in the normal way, which the noble Baroness will know, in Northern Ireland. Inquests are covered by legal aid. The noble Baroness will know from looking at the Bill that cost proceedings where civil cases have begun can be continued. Anyway, I just wanted to try to be helpful to the noble Baroness in clarifying that.

Lord Browne of Ladyton (Lab): I apologise for intervening on the Minister, but he did provoke me. My amendments relate to civil proceedings in these islands. There are sophistications about this, but broadly, costs go with success. In civil litigation, the people who win get costs against the people who made them go through the process in the court, at all that expense, but lost.

If the Government prevent anybody from winning or losing, who is going to bear the costs? I would find no difficulty in persuading a court that my party to a civil action had not lost at all. Therefore, we are both left with our own costs. However, the Government are responsible, through this legislation, for that cost for both of us. Neither of us had the opportunity to win, so we would come to the Government looking for costs. Either the Government will anticipate that in this legislation, or they will have to legislate for the number of people who have had civil claims stopped.

Lord Caine (Con): Well, maybe I was very mistaken in trying to answer some of the questions put to me. I was merely setting out what is stated in the legislation, as the noble Lord will appreciate. I thank him. I do not intend to go over all the same arguments we have had extensively on all these matters, particularly at this late hour.

Moving on to the amendments in the name of the noble Lord, Lord Browne of Ladyton, on civil claims, as has been set out many times, our clear policy intent regarding Troubles-related civil claims is to reduce the burden on the Northern Ireland civil courts, which are ill-equipped to process such numbers, while allowing the ICRIR the ability to establish itself as the sole investigative body looking at Troubles-related deaths and serious injuries.

The amendments in the name of the noble Lord, Lord Browne, include Amendment 159. This would provide a three-year grace period for civil claims to be filed and would direct potential casework away from the new commission while placing further strain on an already creaking system in Northern Ireland. Under current estimates, it will take decades to work through its current backlog of over 700 cases. This is much less likely to provide answers for families in an efficient manner, which, again, sits in opposition to the stated aims I have set out.

In relation to Amendment 104, I remind the House that all civil claims filed before the date of introduction—over 700 cases—will be able to continue to conclusion. Claims that were filed following the Bill's introduction, and with the knowledge that this prohibition would come into force when the Bill became an Act, will not.

In response to Amendment 98A in the name of the noble Lord, Lord Dodds, I sympathise with the sentiment behind the amendment, which is to provide additional scope for prosecutions to proceed. The amendment tabled in my name provides additional time, until 1 May 2024, for prosecution decisions to be made by prosecutors. It is the Government's hope that, with this additional time, resources can focus on concluding a number of decisions in legacy cases before the cut-off point of 1 May 2024, when the commission will become operational.

9.45 pm

On Amendment 123, regarding references to "the First Reading" in the Bill, I am grateful again to the noble Lord for seeking to provide clarity. However, if the Bill were amended by making explicit references to the 17 May 2022 date, there would be no indication of what it signifies. That is not the case with the Bill as drafted, which I suggest provides sufficient clarity.

Finally, on the role of the Lord Advocate, raised by the noble Lord, Lord Browne of Ladyton, as I said in my opening comments, I discussed these matters with the Solicitor-General for Scotland, Ruth Charteris, a few days ago in order to find an agreed way forward that respects the devolution settlement.

Baroness O'Loan (CB): Can the Minister enlighten us as to what remedy the Bill will provide to those who seek, in the civil court, not information but damages for torts they have suffered and that will be removed from them by Clause 39? Judicial review is not a remedy for tort. The remedy for tort is damages, if you establish it.

Lord Caine (Con): As I said and as the noble Baroness will be aware, 700 cases are currently stuck in the Northern Ireland courts, and they will still be allowed to proceed after the prohibition comes into effect. That will probably take many decades to bring to a conclusion but, thereafter, she is right: any cases that were filed after the First Reading of the legislation will not proceed and will therefore go into the new body for examination, should that be the wish of the families.

Amendment 19 agreed.

Clause 9: Requests for reviews of deaths

Amendments 20 and 21 not moved.

Amendments 22 to 25

Moved by ***Lord Caine***

22: Clause 9, page 8, line 17, leave out sub-paragraph (i)

Member's explanatory statement

This is consequential on the amendments in Lord Caine's name relating to Clause 40.

23: Clause 9, page 8, line 22, leave out sub-paragraph (i)

Member's explanatory statement

This is consequential on the amendments in Lord Caine's name relating to Part 1 of Schedule 10.

24: Clause 9, page 8, line 31, leave out sub-paragraph (i)

Member's explanatory statement

This is consequential on the amendments in Lord Caine's name relating to Part 2 of Schedule 10.

25: Clause 9, page 8, line 37, leave out sub-paragraph (i)

Member's explanatory statement

This is consequential on the amendments in Lord Caine's name relating to Part 2 of Schedule 10.

Amendments 22 to 25 agreed.

Amendment 26 not moved.

Clause 10: Requests for reviews of other harmful conduct forming part of the Troubles

Amendment 27 not moved.

Clause 11: Requests for reviews: general provision

Amendment 28 not moved.

Amendment 29 not moved.

Clause 13: Conduct of reviews

Amendment 30

Moved by ***Lord Caine***

30: Clause 13, page 11, line 1, at end insert—

"(A1) The Commissioner for Investigations must comply with the obligations imposed by the Human Rights Act 1998 when exercising functions under this section."

Member's explanatory statement

This amendment expressly confirms that the Commissioner for Investigations (when exercising operational control over the conduct of reviews) must comply with obligations imposed by the Human Rights Act 1998.

Amendment 30 agreed.

Consideration on Report adjourned.

Retained EU Law (Revocation and Reform) Bill

Returned from the Commons

The Bill was returned from the Commons with reasons.

House adjourned at 9.49 pm.