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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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The abbreviation [V] after a Member's name indicates that they contributed by video call.

The following abbreviations are used to show a Member's party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind 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

Thursday 22 June 2023

11 am

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

Introduction: Lord Mott

11.06 am

Darren James Mott OBE, having been created Baron Mott, of Chatteris in the County of Cambridgeshire, was introduced and took the oath, supported by Baroness Williams of Trafford and Lord McInnes of Kilwinning, and signed an undertaking to abide by the Code of Conduct.

Introduction: Baroness Swinburne

11.12 am

Dr Jacqueline Kay Swinburne, having been created Baroness Swinburne, of Llandysul in the County of Ceredigion, was introduced and took the oath, supported by Baroness Jenkin of Kennington and Baroness Williams of Trafford, and signed an undertaking to abide by the Code of Conduct.

Oaths and Affirmations

11.16 am

Earl Russell took the oath, following the by-election under Standing Order 9, and signed an undertaking to abide by the Code of Conduct.

Teacher Training: Dyslexia and Autism

Question

11.17 am

Asked by ***Lord Addington***

To ask His Majesty's Government what level of support is required for a teacher trained under the existing initial teacher training regime to support and educate any person attending a mainstream school with a diagnosis of dyslexia or autism.

Lord Addington (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. I remind the House of my declared interests.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, initial teacher training is designed to ensure that all qualified teachers can teach pupils with special educational needs and disabilities. High-quality teaching is central to ensuring that pupils with SEND, including those with autism and dyslexia, are given the best possible opportunity to achieve at school. All new teachers now also benefit from a two-year induction, underpinned by the early career framework, which includes specific focus on teaching pupils with SEND.

Lord Addington (LD): I thank the Minister for that reply, but most such children are still identified on the initiative of their parents, not the school. Does that suggest that there is a lack of knowledge of these conditions and of other special educational needs in the teaching profession, particularly as we are losing qualified teachers at an alarming rate? Will the Minister consider making it a mandatory requirement that all educational establishments have level 5-qualified teachers who are able to give the necessary support to a front-line teacher, particularly an inexperienced one?

Baroness Barran (Con): Our most recent guidance on initial teacher training, published just a few weeks ago, recommends two work placements during that period, stressing that one could be in a special school and the other could involve mentoring by someone with specialist skills. In addition, we have updated the SENCO qualifications so that every teacher has a specialist to whom they can turn for advice.

Lord Touhig (Lab): My Lords, I refer to my interests in the register. Fewer than 40 in every 100 teachers have received autism training. In secondary schools, that falls to 14 in every 100. As a result, schools are struggling to support children with learning difficulties, particularly autism. There are a great many exclusions; an autistic child is twice as likely to be excluded from school as a non-autistic child. The National Autistic Society has produced a report proposing that all teachers be given specialist training to make sure that children with autism receive the best education possible. Will the Minister look at that report, go through it thoroughly and then agree with it?

Baroness Barran (Con): Yes, yes and it depends on what is in the report. The noble Lord brings enormous expertise in this area. Under our universal services contract, there is the opportunity for additional training in autism. We are very focused on this area. I will of course look at the report and consider it very carefully.

Baroness Stedman-Scott (Con): My Lords, has my noble friend had an opportunity to see the Synergy report, which shows that exclusions from school of young people with autism, ADHD and dyslexia have been dramatically reduced due to the impact of additional teacher training in the system? Will she arrange a meeting with the department to discuss this to see whether we can further enhance outcomes for young people?

Baroness Barran (Con): I would be delighted to arrange a meeting with my noble friend to discuss the Synergy programme. She is right that children with special educational needs might have specific academic challenges, but, inevitably, behavioural challenges can be linked to those. We are working very closely with schools to make sure that, in respect of behaviour and attendance, those children feel as supported and included as possible.

Baroness McIntosh of Hudnall (Lab): My Lords, the Minister will be aware that young people with a diagnosis of autism or ADHD often also exhibit signs of quite significant mental health issues. The two are

[Baroness McIntosh of Hudnall]
not the same. In creating an education, health and care plan for such young people, a number of different kinds of input are necessary, from not just the school but mental health professionals and others. Does she accept that the problem identified by this Question is partly if not wholly one of capacity? Even if they have people trained to do this kind of work, schools are under enormous pressure and find it very difficult to meet the proper demands of an EHCP. Will she look into how that capacity issue could be alleviated?

Baroness Barran (Con): The noble Baroness raises two issues: the importance of multi-agency input and co-ordination, and capacity. Our *Special Educational Needs and Disabilities and Alternative Provision Improvement Plan* aims to address exactly those, giving clarity and confidence to parents as to what they can expect from the system, and support for teachers, including a number of practice guides, the initial ones looking at mental health and wellbeing, autism, and speech and communication needs. So I think we are addressing all of the points raised by the noble Baroness.

Baroness McIntosh of Hudnall (Lab): My Lords, I meant to declare my interest: a member of my family has an EHCP.

Baroness Thornhill (LD): My Lords, I was a secondary school SENCO, back in the bad old days of very little specialist training and much ignorance of dyslexia and other learning difficulties. I was privileged to do part of my postgraduate training with the late Violet Brand, who was a renowned pioneer in dyslexia; it was very rare and ground-breaking. In the Minister's initial response to the noble Lord, Lord Addington, she referred to the role of SENCO. My understanding is that the Government have recently lowered the national SENCO qualification standard. I was going to ask the Minister why the Government are dumbing down this critical role, but I should probably revert to asking her to clarify the position, because both the British Dyslexia Association and I seem to have a different take—the standard has not gone up, it is actually being lowered.

Baroness Barran (Con): There is no question of the Government lowering the standard. What the Government are seeking to do with the introduction of the national professional qualification for SENCOs is to ensure real consistency in SENCO training and qualification, and that it is practically focused and based on the best evidence possible.

Baroness Wilcox of Newport (Lab): My Lords, last March Matt Hancock told the *Times Educational Supplement* that the lack of neurodiversity training in initial teacher training is "striking" and needs to change. Can the Minister tell us if anything has changed in this policy area since that statement was made over 15 months ago by a former Tory Health Secretary?

Baroness Barran (Con): I know that the noble Baroness is a former teacher, so she brings professional insight to this. We had very serious expert panels, including educational experts, on special educational needs and disabilities, both for the core content framework and the reform of initial teacher training. All of them were clear that trainees need to be able to teach everyone, and one of the great skills of a teacher is being adaptive. There also needs to be a pathway to experts in a school, and that is where the SENCO comes in.

Lord Forsyth of Drumlean (Con): My Lords, I declare an interest as I have a family member who is affected by autism and dyslexia. Does my noble friend agree that one of the problems is that before people can get support in the schools, they need a diagnosis, and getting a diagnosis is extremely difficult and takes a very long time? What are we going to do about that?

Baroness Barran (Con): I agree with my noble friend that early, accurate and effective identification is critical, but schools and colleges are permitted to put in place support for children where they have identified a need, without needing to wait for a formal diagnosis.

Baroness Kramer (LD): My Lords, may I press the Minister on the issue of the SENCO qualification? Do I understand correctly that, prior to this change, it was a master's-level qualification and now it is a level 7 NVQ? Given the complexities that many of these youngsters face, can the Minister explain why that dramatic change in the level of expertise and training embedded in the qualification is government policy?

Baroness Barran (Con): I can only repeat what I said in response to the earlier question. As the noble Baroness knows, the existing qualification also includes a significant research element, which is important, and SENCOs can choose, if they wish, to continue to take that. However, our emphasis is on making sure that SENCOs are equipped for the practical challenges they face day to day supporting colleagues in schools, and that this is based on the best evidence available.

Colombia: National Liberation Army

Question

11.29 am

Asked by ***Lord Browne of Ladyton***

To ask His Majesty's Government what steps they are taking with international partners to facilitate the present round of peace talks between the Government of Colombia and the National Liberation Army.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, the ceasefire agreed between the Colombian Government and the National Liberation Army is a welcome step. We share the hope that it will contribute to improving security and alleviate the suffering of conflict-affected communities. As penholder on the Colombia peace process at the UN Security Council, the UK plays a key role in co-ordinating support for Colombia with international partners. Since 2015, the UK has committed £80 million through the Conflict, Stability and Security Fund to support the peace process and improve stability and security in Colombia.

Lord Browne of Ladyton (Lab): My Lords, the recent visit of the Foreign Secretary to Colombia to discuss ongoing support for the implementation of the 2016 peace agreement, and the commitment of a further £3.6 million for that purpose, is to be welcomed and commended. The Minister will be aware of the importance of the Colombian Office of the High Commissioner for Peace to the implementation of President Petro's policy of total peace. However, this department lacks sufficient resources to carry out the necessary work to promote negotiations with the wide range of armed groups that are still functioning in Colombia. Is it possible to hypothecate any of our ongoing financial support for the Office of the High Commissioner for Peace, and will His Majesty's Government consider so doing?

Lord Goldsmith of Richmond Park (Con): I thank the noble Lord for raising the broader issue, and I will certainly take his suggestion back to the appropriate Minister. Although we are not directly supporting the Colombian Office of the High Commissioner for Peace, which he mentioned, we are supporting it indirectly through the trust funds that I mentioned earlier, to which we are, I believe, still the second-largest UN donor. This is a priority for us in our relationship with Colombia. Of course we want the process to succeed; it matters to the whole world that it does.

Baroness Coussins (CB): My Lords, the peace accord with the FARC included a no-amnesty policy for conflict-related sexual violence. What can the UK, as penholder at the UN, do to ensure that a similar commitment forms part of the talks and any final agreement with the National Liberation Army?

Lord Goldsmith of Richmond Park (Con): The UK continues to provide support to help Colombia tackle the legacy of sexual violence and impunity for perpetrators from this long conflict. During his most recent visit to Colombia, Minister Rutley discussed the UK PSVI—preventing sexual violence initiative—with the Foreign Minister and met countless victims of sexual violence, many of whom receive direct support from UK-funded projects. This is very high on the radar in our bilateral relationship.

Baroness Anelay of St Johns (Con): My Lords, I recall that, when negotiations were under way with the FARC, the practical and technical advice given by the UK Government to indigenous groups and to women was extremely helpful in enabling them to participate effectively in the talks. Can my noble friend say whether that assistance is being given currently to these groups in the talks involved with the ELN?

Lord Goldsmith of Richmond Park (Con): It is. We continue to work closely with the Government and with communities to bolster protection for human rights defenders who, as the noble Baroness will know, have faced particular problems and casualties in recent years in Colombia, more so than in many other countries. Through this work, but also through our international climate finance, we are ramping up support for indigenous communities both in Colombia and the wider region, having secured a pledge from other donors of nearly $1.5 billion for the same. Securing land rights, for example, is a major part of what we are trying to do with indigenous people, as well as bolstering support for human rights defenders and supporting the transition of justice mechanisms that are being trialled and rolled out across Colombia.

Lord Purvis of Tweed (LD): My Lords, to go back to the noble Baroness's question, in November, with an Inter-Parliamentary Union delegation, I met for the first time indigenous community representatives in the Colombian Senate in Parliament, and her point is well made. Can the Minister reassure me that transitional justice support is a key element of the work that the UK is doing and co-ordinating and facilitating with Norway and Mexico. Those indigenous community MPs were optimistic but the next stage for transitional justice is going to be critical for community buy-in, especially on land rights issues. The Bar Human Rights Committee supported this work. Are we continuing to support it?

Lord Goldsmith of Richmond Park (Con): The answer is yes. The UK has contributed over £26 million towards transitional justice mechanisms and for victims of the conflict in Colombia since 2016. That included supporting the Truth Commission's work to gather testimony from Colombians, both in Colombia and abroad, as well as enhancing the investigatory capacity of the Special Jurisdiction for Peace, Colombia's post-conflict special court. This issue was raised by the UK's global ambassador for human rights, Rita French, who met the Special Jurisdiction for Peace recently to discuss our ongoing support.

Lord Davies of Brixton (Lab): My Lords, we celebrate the progress being made in the peace talks but there is concern, not least in the United Nations, that the attorney-general, Francisco Barbosa, is obstructing those talks. He is also obstructing the release of young people unfairly detained following demonstrations in 2021. What more can the Government do to ensure that full due process and legal rights are respected in such cases?

Lord Goldsmith of Richmond Park (Con): My Lords, Colombia is a human rights priority country for the UK. That means that we will continue to monitor any and all impacts that limit our ability to support civil society organisations. As penholder of the UN Security Council, we consistently raise the importance of participation of civil society and young people to realise the full benefits of the 2016 peace agreement in Colombia. We are fully utilising our position as penholder but maintaining Colombia as a high priority for human rights.

Baroness Boycott (CB): My Lords, I declare my interest as director of the Hay Festival. We have been going to Colombia for two decades now and have seen a great deal of changes. It always astonishes me that conversations such as this happen without mentioning the word "cocaine". Cocaine is the largest growth factor in Colombia. Every year, despite gazillions of dollars being spent by other countries, particularly the USA, the amount of cocaine that is grown increases.

[Baroness Boycott]
They may have got rid of some of the Colombian cartels but now there are the Mexican cartels. To talk about the peace process without confronting the issue of cocaine, which is illegal across the world and which a lot of people in this city help fund, is lunacy. I am not asking the Minister to say whether he approves of legalisation, which the previous president, Santos, did, who was outspoken that you could not stop crime without it, but could he at least tell me what conversations he has had?

Lord Goldsmith of Richmond Park (Con): The noble Baroness is right to point to the role of drugs. Colombia is still one of the largest producers of coca and cocaine in the world. The trade obviously fuels violence in many areas of the country, as illegal armed groups fight for control of territory and trading routes. That violence disproportionately affects local communities, in particular indigenous communities. Social leaders and former FARC combatants get caught up in it, and so the noble Baroness is right that this issue is inseparably linked to the peace process. Therefore, it is a feature of our discussions with Colombia. We are committed to working bilaterally with international partners, including Colombia, to disrupt, wherever we can, the supply chains that feed the domestic market here that she points to. My own opinion on legalisation is not strictly relevant, but it is interesting that many former presidents of Colombia take the position that President Santos took on this issue.

Lord Collins of Highbury (Lab): My Lords, on 8 May, the UN Committee Against Torture raised concerns over the lack of progress in investigations into the police abuses against protesters during Colombia's national strike mobilisations of 2019 and 2021 under the previous Government of Iván Duque. Can the Minister tell us what representations we have made to ensure that those investigations are properly pursued? One of the things about the past is holding people to account, and we desperately need to ensure that in Colombia.

Lord Goldsmith of Richmond Park (Con): My Lords, through the same programme, the CSSF, which has been the main vehicle for delivering much of the support that we have provided Colombia with in this area, we have supported Colombia's peace and stabilisation programme and launched a £2.1 million project on police innovations for stabilisation in Colombia three years ago. That is supporting the transformation of the Colombian National Police, and the work is ongoing. The embassy regularly reviews the overseas security and justice assistance assessments, including what steps can be taken both to mitigate the risks and to hold wrongdoers to account.

Lord Bellingham (Con): My Lords, the Minister will be aware that the president, His Excellency Gustavo Petro, recently pointed out that many of the key activists in the ELN are actually Catholic priests who are exponents of so-called liberation theology. I do not want to get the Minister into trouble with the Vatican and incur its wrath, but would he agree with me that the Catholic Church should be more proactive in these negotiations?

Lord Goldsmith of Richmond Park (Con): I hope I am permitted just to agree with my noble friend. It would be great to see the Vatican using the influence that it clearly has in the region to support the peace process.

Holocaust Memorial

Question

11.40 am

Asked by ***Lord Lee of Trafford***

To ask His Majesty's Government what plans they have to reconsider the decision to site the Holocaust Memorial in Victoria Tower Gardens.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, I will take a minute to send my thoughts to the family of Sir Ben Helfgott. Sir Ben was a Holocaust survivor and an Olympic weightlifting champion. He was also a tireless campaigner for Holocaust education and a huge supporter of the Holocaust memorial and learning centre. I send my thoughts to his family; may he rest in peace.

Noble Lords: Hear, hear.

Baroness Scott of Bybrook (Con): The Government remain determined to build a Holocaust memorial in Victoria Tower Gardens so that the memory and lessons of the Holocaust remain prominent in British life. The Holocaust Memorial Bill currently before Parliament is intended to remove a statutory obstacle and enable progress towards construction. Victoria Tower Gardens is a site that is uniquely capable of meeting the Government's aspirations for a national Holocaust memorial.

Lord Lee of Trafford (LD): My Lords, it is very sad that a memorial to such an appalling crime against humanity should controversially be rammed through against the views of the Royal Parks, Westminster City Council, local residents and so many others. Apart from all the original and obvious objections to the Victoria Tower Gardens site, there are two new factors. First, we now face a major restoration project to the Victoria Tower itself. The scaffolding alone is going to take a year to erect. Imagine the scale of a chaotic construction site with that project, the proposed memorial and, of course, R&R to come.

Secondly, the unfortunate closure of the Jewish Museum London in Camden provides a great opportunity for a new combined museum and Holocaust memorial—a concept supported by Simon Schama, the former Archbishop of Canterbury, Rabbi Jonathan Romain and many others—on a much more appropriate site. So I implore the Government—

The Lord Privy Seal (Lord True) (Con): Would the noble Lord please proceed to a question? I know that Peers feel strongly about this issue, but it is Question Time.

Lord Lee of Trafford (LD): I implore the Government to think again and preserve and protect our very precious green space.

Baroness Scott of Bybrook (Con): My Lords, the memorial is a manifesto commitment which has cross-party support and has been endorsed by all living Prime Ministers. The Chief Rabbi, who sits on the UK Holocaust Memorial Foundation comittee, is fully behind the Government's proposals, as are leading representatives of the Jewish community, other faith and community leaders, survivors, refugees and the wider public. Their voices were heard at the planning inquiry, emphasising the importance of the memorial and learning centre as a way of providing Holocaust victims and the remaining survivors the prominence in this city that they deserve.

Baroness Deech (CB): My Lords—

Lord Pickles (Con): My Lords—

The Earl of Courtown (Con): My Lords, could we hear from the noble Baroness, Lady Deech, and then the noble Lord, Lord Pickles?

Baroness Deech (CB): My Lords, I declare an interest as honorary president of the National Jewish Assembly. I support the noble Lord, Lord Lee, in drawing attention to the almost total lack of consultation on the memorial. All efforts to open dialogue and to have discussions and round tables have been met with silence, and sometimes abuse. Victoria Tower Gardens is a green enclave, and the dangers of digging down two storeys with piledrivers, which could cause unimaginable damage, have not been taken on board when there are decent alternative sites with as much dignity and more space. I speak for a number of Holocaust survivors in this.

Baroness Scott of Bybrook (Con): I know how strongly the noble Baroness feels about this issue, and I respect everything she has to say. We have had meetings and we are willing to have more; she only has to get in touch with me. However, the planning inquiry in October 2020 enabled all interested parties to express their views on the proposed Holocaust memorial and learning centre, and a full list of witnesses is available in the planning inspector's report on GOV.UK. Officials regularly meet organisations representing survivors of the Holocaust and Nazi persecution and those representing the survivors of subsequent genocides to discuss the latest developments, and we will continue to do so.

Lord Pickles (Con): My Lords, I draw attention to my register of interests, particularly those relating to Holocaust remembrance. I join my noble friend in her tribute to Sir Ben Helfgott. He was, beside other things, a leading light in Holocaust remembrance and a strong advocate of the site in Victoria Tower Gardens. In fact, the last conversation I had with Ben was about his concerns that the Government and Opposition might not fulfil their promise. Does my noble friend agree with me that the announcement made by the Leader of the House in another place that there will be a Second Reading next Wednesday is very welcome? The time for talking is over; it is time for action.

Baroness Scott of Bybrook (Con): I agree with my noble friend. I look forward to the Second Reading and the Bill beginning to go through Parliament and, subsequently, to the building of this important monument.

Baroness Hayman of Ullock (Lab): These Benches share the sentiments and the tribute made by the Minister to Sir Ben. If it is built in Victoria Tower Gardens, the memorial will clearly bring many new visitors to Westminster and to Parliament, which I think is a good thing. However, local residents will want to have a park that they can still be proud of and use for their own recreation. How will the Government ensure that the park is still available for local people to enjoy?

Baroness Scott of Bybrook (Con): The design is sensitive to the heritage and the existing uses of Victoria Tower Gardens; I think it has been misunderstood. The design uses approximately 7.5% of the area of Victoria Tower Gardens, and this project will allow enhancements to be made to the remaining 92.5% of the park. In my opinion, that will help visitors to enjoy the park better, even if they are not attending the memorial.

Lord Clement-Jones (LD): My Lords, I very much share the views of my noble friend Lord Lee and the noble Baroness, Lady Deech, on this out-of-scale proposal, especially in relation to the Buxton anti-slavery memorial. Throughout the process, the Government have refused to publish their assessment of any alternative sites, including some which appear to be eminently suitable, such as the Imperial War Museum—why? Will they do so during the consideration of the Bill?

Baroness Scott of Bybrook (Con): My Lords, all that work was done many years ago, in the early days of this project. We believe that the development will not in any way compromise the Buxton memorial. The design of the Holocaust memorial means that the Buxton memorial will be kept in its current position, with its views preserved. In addition, new landscaping and seating will actually improve the setting of that memorial and the viewing experience from it. The Holocaust memorial will be no higher than the top of the Buxton memorial, and the memorial's bronze fins will step down progressively to the east in visual deference to the Buxton memorial.

Lord Austin of Dudley (Non-Afl): My Lords, there is no more appropriate location for a memorial that shows what can go wrong when politics is infected by extremism, racism and hatred than here in Westminster, at the centre of our politics. That is the whole point. We have heard all sorts of red herrings about this memorial. It will take up less than 10% of the area of the park, and it is at the opposite end of the park to the Palace of Westminster so will have no impact on the work that is to be done here. I take this opportunity to urge the Minister to do everything she possibly can to speed up progress so that Holocaust survivors like Sir Ben, who tragically will not get to see it completed, can be guests of honour at the opening.

Baroness Scott of Bybrook (Con): I thank the noble Lord for his support of this important project. As he said, Victoria Tower Gardens is the most fitting site in terms of the historical, emotional and political significance and its ability to offer the greatest potential impact and visibility for the project. The view of Parliament from the memorial will serve as a permanent reminder that political decisions have far-reaching consequences.

China: High-level Talks

Question

11.51 am

Asked by ***Lord Davidson of Glen Clova***

To ask His Majesty's Government, following the high-level talks between the Governments of China and the United States on 18 and 19 June at which both sides agreed to "effectively manage differences and advance dialogue, exchanges and co-operation", whether they propose to undertake a similar process.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, as set out in the *Integrated Review Refresh*, China represents an epoch-defining challenge for the UK. China is becoming more authoritarian at home and more aggressive overseas. China is also a permanent member of the UN Security Council, is the world's second-largest economy, and has an impact on many global issues of importance to the UK. The IRR makes it clear that we will engage with China where it is in our interest to do so, ensuring that we always put our national security first.

Lord Davidson of Glen Clova (Lab): I thank the Minister for his Answer. What is the current state of play in relation to bilateral dialogue between China and the UK?

Lord Goldsmith of Richmond Park (Con): Dialogue is ongoing. The Foreign Secretary is looking right now at options for a potential visit to Beijing in the coming months—details and dates are not yet confirmed. He spoke to his counterpart, Qin Gang, on 20 February, and met him at the G20 in March. He met the Chinese director of the Office of the Central Commission for Foreign Affairs, Wang Yi, at the Munich Security Conference in February, and met the vice-president, Han Zheng, on 5 May. The nature of our relationship with China is very much set out in the integrated review and involves practical and pragmatic discussions.

Lord Alton of Liverpool (CB): But, my Lords, in the list that the Minister just gave the House, he did not refer to the meeting that took place on Tuesday of this week between the Minister of State in his own department, Anne-Marie Trevelyan, and Liu Jianchao, who is notorious for his human rights record in the People's Republic of China, where he is an active member of the CCP, for his involvement in "Fox Hunt" and Skynet—two particularly awful experiences for people who are persecuted. Given that genocide is under way in Xinjiang, there are daily threats to Taiwan, and 1,200 political prisoners are still in Hong Kong, would we not do better to build up British national resilience rather than continuing dependency on a country which threatens our interests and the rest of the world?

Lord Goldsmith of Richmond Park (Con): I certainly agree with the noble Lord in relation to the need to build that resilience, and I acknowledge that I did not mention that meeting. However, there were many other meetings which I did not mention either. Liu Jianchao is here at the moment to co-host the Great Britain-China Centre's senior leadership forum, which took place on 20 June. As the noble Lord said, he is a senior figure in the Chinese Communist Party. We support the forum itself; it is probably the most effective forum that allows parliamentarians here to raise concerns—including those around Xinjiang and other issues as well—directly with Chinese officials, and, yes, the Minister of State for the Indo-Pacific attended to give the opening remarks.

Lord Collins of Highbury (Lab): My Lords, the Minister mentioned the *Integrated Review Refresh*. Instead of flip-flopping between tough talk and muddled actions, we need to develop a strategy in which we challenge, compete and, where we can, co-operate. Does the Minister accept that, to do that, we first need a complete and comprehensive audit of the UK-China relationship—not restricting ourselves to government, by the way, but including the private sector and local government? Can he give us that reassurance that, instead of hiding behind a refresh, he will actually get on and do a proper audit?

Lord Goldsmith of Richmond Park (Con): My Lords, the relationship is permanently evolving, which is necessary as times change and things change. The *Integrated Review Refresh* sets out our approach to China. It is about protecting our national security, aligning with our allies and partners and engaging with China where it is in our interests to do so. We have not committed to publishing a stand-alone China strategy; I note the comments of the noble Lord, and I will certainly convey them to the Minister. However, we will continue to maintain as much transparency as possible and will keep Parliament informed of our approach towards China, both now and as it evolves.

Lord Cormack (Con): My Lords, the noble Lord who asked the Question clearly has close ties and knowledge of China. However, should we not bear in mind that our interests should always be reflected in our relations with any country, and that the way in which China abrogated a treaty over Hong Kong, which had been entered into solemnly, is not exactly encouraging?

Lord Goldsmith of Richmond Park (Con): The noble Lord is right; the UK has been and remains clear that China today is in an ongoing state of non-compliance with the Sino-British joint declaration. We have been clear that the imposition of the national security law and the overhaul of Hong Kong's electoral system have undermined the civil and political rights that were promised to Hong Kongers under the joint declaration, and we continue to work with our allies to try to hold China to its international obligations.

Lord Purvis of Tweed (LD): My Lords, when Xi Jinping visited this Parliament in 2015, the Conservative Prime Minister hailed the UK as the "best partner" in the West for China. Four Conservative Prime Ministers later, it has been quite hard to find out what that consistent position is, and, as the House of Lords International Relations and Defence Committee has identified, we now have a strategic void with regard to our position on China. Is it still the case, as David Cameron called for in 2015, that

"we should increase our financial and economic co-operation, with the UK as the partner of choice for China in the West"?

Lord Goldsmith of Richmond Park (Con): My Lords, I refer back to the suggestion that was put to me earlier, that our policy should be one of building resilience. That means in our supply chains and in terms of inward investment into the UK. It never makes sense for the UK to be overly dependent on any one country, especially if it is as large, powerful and increasingly assertive as China is.

Baroness Meyer (Con): My Lords, are the Government not worried about China reaching out to Saudi Arabian companies which have been blacklisted in America, with regard to AI?

Lord Goldsmith of Richmond Park (Con): I am sure that we absolutely should be worried about that. I am afraid that I do not have huge knowledge about this area, or indeed any knowledge, so I will have to defer to the Minister and get back to the noble Baroness.

Lord Campbell of Pittenweem (LD): My Lords, the Secretary of State for the United States recently visited China. What assessment have His Majesty's Government made of the success or otherwise of that visit?

Lord Goldsmith of Richmond Park (Con): Secretary Blinken briefed the Foreign Secretary about his visit to Beijing when they met on 20 June. Blinken was in Beijing from 18 to 19 June and met Foreign Minister Qin Gang, top CCP diplomat Wang Yi, as well as President Xi Jinping. Public messaging on the visit has been positive from both sides. The Foreign Secretary was clear in his Mansion House speech that nothing is inevitable about conflict between the US and China, and the IRR, which I mentioned earlier, sets out how we will engage with China where consistent with our interests.

Lord Dodds of Duncairn (DUP): Following the meeting between Secretary Blinken and the Chinese President, the US President Joe Biden described the Chinese President as a dictator. Do His Majesty's Government agree with that assessment?

Lord Goldsmith of Richmond Park (Con): The UK's position on the current Administration in China has been articulated many times by the Prime Minister and the Foreign Secretary. We believe that, internationally, China has become more assertive, and, as I said at the beginning, domestically, China has become more authoritarian. The language used by the President is of course for the President.

NHS Procurement: Palantir Contract

Private Notice Question

11.59 am

Asked by ***Baroness Brinton***

To ask His Majesty's Government, in light of the contract awarded to Palantir, what plans it has to ensure that NHS contracts are procured through a public and transparent tender system as outlined in the Procurement Bill.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): All NHS contracts are procured using correct procedures. This is a new transition contract with Palantir, with new and improved contract terms, including robust exit and transition schedules to support transition from Palantir to the new federated data platform supplier. This contract includes additional terms, such as termination for convenience and a six-month break clause. The contract was procured by a compliant and transparent direct award tender process, using a Crown Commercial Service framework agreement.

Baroness Brinton (LD): My Lords, it is not the first closed contract used that way, particularly for Palantir, since 2020. Ministers deliberately excluded the NHS from the new rules in the Procurement Bill, giving the Secretary of State for Health the powers to create regulations, resulting in untransparent closed contracts such as the £24 million Palantir contract just granted. Unlike every other public body and government department, senior NHS leaders are excluded from any restrictions when they move to providers, as happened last year when two senior staff moved to Palantir. These NHS practices are the exact opposite of what the Government hope to achieve in the Procurement Bill. Will Ministers please reconsider bringing the NHS under the Procurement Bill?

Lord Markham (Con): This was a very sensible move to ensure that the tender process we are going through at the moment allows us to transition to whoever wins the federated data platform. That is a sensible way to do it. It was done according to the Crown Office pre-tendering framework agreement, which is very transparent and well set out. It is normal in these situations that, when you need transition arrangements, you do not want hospitals left in the lurch. You need a transition so that, whoever wins the new bid, hospitals are safe in the meantime.

Lord Berkeley (Lab): My Lords, it is quite easy to invent rules to get away from competitive tender and do direct awards. It goes back to the Horizon Post Office scandal, which is still there 30 years on. Why is this contract exempt from competitive tendering? What is the benefit? Given that the Procurement Bill requires it, why are the Government not doing it?

Lord Markham (Con): As I said, there is a very clear benefit. We are going through the process of a very large £500 million contract for a data platform that will be key to the NHS. Everyone agrees on the importance of data in health work, but we want to make sure that we have an open process so that suppliers have a

[Lord Markham]
chance to win the contract. In any circumstance, you need to make sure that transition arrangements are in place; otherwise, the current supplier is the one most likely to win—if there is a concern about ongoing procedures. By having a transition arrangement in place—clearly, transition can work only with the current supplier—you are making sure that there is an open process for new bidders to come in.

Lord Fox (LD): My Lords, the reason the Minster is able to call this contract "sensible" is that it follows on from a contract given to Palantir that was already granted without tender. This is compounding one after another. To return to my noble friend's original point, can the Minister tell your Lordships' House why all other public services will be subject to a Procurement Bill that hopes to deliver transparency, fairness and ethical purchasing, yet his department is exempting itself from the Bill?

Lord Markham (Con): This went through the long-term plan in 2019, and the idea behind it all—it was debated a lot as the Health and Care Act went through—was to provide an approach which allows the flexibility in place here. What we are doing here is very good: I do not think anyone would want to see hospitals left in the lurch and the impact that would have on waiting lists. This makes sure that we have a robust situation in place so that we have an open tender, which we are going through the process of right now to get the best solution for the NHS—something which I think we all want.

Lord Lansley (Con): My Lords, my noble friend will recall that the review led by the noble Lord, Lord Carter of Coles, and followed up by Professor Briggs with the Getting it Right First Time programme, has made significant improvements in how the NHS procures its services. During the debates on the Procurement Bill—I hope my noble friend will say that this will indeed be taken up in the NHS—we talked about the promotion of innovation through public procurement. I wonder whether the Getting it Right First Time programme could be a mechanism for that, by bringing evidence-based innovation to the attention of procurement managers across the NHS.

Lord Markham (Con): I thank my noble friend. This is absolutely about enabling innovation: the data platform is there so that providers can use it to innovate. We all hear about AI, and AI depends on data. This puts in place a data platform that AI can use. It can also be used for scheduling appointments—currently done in 32 hospitals—and for the dynamic discharge of waiting lists. All those applications can work in place only if we have an open tender process, which is exactly what we are doing here, while making sure that transitions are in place so that no hospital is left in the lurch in the meantime.

Lord Alton of Liverpool (CB): My Lords, one of the issues raised during the passage of the Procurement Bill and, certainly, in the context of transparency, efficiency and getting value for money, was the keeping of some 118 million items of PPE in storage in the People's Republic of China, at a cost of millions of pounds to British taxpayers. I have also raised this directly with the Minister. Can he give us an update as to what has happened to those items? Will they stay in storage? Are we continuing to pay and, if so, at what cost, or are we going to dispose of them? What lessons have we learned from that?

Lord Markham (Con): As I said in a previous Answer, we are in the process of disposing of those contracts. On many occasions, it is easy to look with hindsight. Noble Lords may remember that, at the time, there was a massive rush and countries were gazumping each other to get hold of PPE. It was very much the feeling of this House, and all the people in the UK, that we had to desperately contract suppliers to do it. Did we make mistakes? Yes. Were we right on more than 90% of occasions? Absolutely. To keep the front line going, we needed to order more than 9 billion essential items, and we did so using the very system that we are talking about here in respect of Palantir. There are circumstances—Covid is a prime example—where it is appropriate to do those sorts of direct awards. That notwithstanding, I think we all fundamentally agree that an open, transparent and competitive tendering process will always be preferable.

Baroness Hayman of Ullock (Lab): My Lords, the £25 million contract awarded this week is a drop in the ocean compared with the £480 million that is on its way. The scope of the federated data platform is vague, but there is no doubt that the data it stores will be both vast and sensitive, so it is vital that any procurement process is fair and transparent and enables the public to engage with it so that the system works as intended. However, 48% of adults, when asked, said that they were likely to opt out if it was introduced and run by a private company. This would have a catastrophic impact on the quality of NHS data, which is an extremely valuable resource. Do the Government recognise this as a risk? How will they ensure that we have public faith in the process?

Lord Markham (Con): The noble Baroness is correct: public confidence is vital, particularly in the case of data, where we are concerned about privacy. We are arranging a briefing of noble Lords so that everyone can have the opportunity to understand what we are talking about here, which is almost like the plumbing of the system. The NHS maintains primacy of use—it is the only organisation allowed to use it—and privacy will be maintained at all times. It is much better to think of whoever wins this contract—we do not know who they are—as just the technology provider, like Microsoft, for instance. We use private sector companies for technology all the time. The key thing is that the provider is protected. That is the NHS, and no one else can get access.

Lord Clement-Jones (LD): My Lords, the Minister talked about the plumbing, but is it not the case that, with this further contract, which has had no tendering, Palantir's Foundry system is further embedded in the federated data platform of the NHS, and what we are effectively seeing is what the Doctors' Association UK calls a "monopoly lock-in" that is therefore a shoe-in for the award of the next contract?

Lord Markham (Con): Actually, it is the opposite. It absolutely lets bidders know that, when we are assessing who the best bidder is, we are looking only at who is the best provider. We do not need to have any concerns at all about continuity or risks because we are giving them plenty of time to get their new contract and systems in place. We do not need to worry about any services being lost in the meantime.

Baroness Boycott (CB): My Lords, Palantir is a data analytical company. It wants our data. In cases where it has been in business with other people, it has used that data and sold it under the surveillance capital model. Is the Minister absolutely confident that we are safe in entrusting all of the NHS's data to an American company? It seems to me that that is not in the best interests of a not-for-profit organisation such as the NHS.

Lord Markham (Con): Yes. I really appreciate having this opportunity to state categorically that the NHS will remain the data user here. The data controller will remain in place for each individual institution; sometimes it is the GP and sometimes it is the hospital. Fundamentally, everyone's data will be allowed to be used only by the NHS in these circumstances. There are no circumstances in which Palantir—or any other supplier should it win—will have access to see individuals' data.

Lord Davies of Brixton (Lab): My Lords, health service data is incredibly valuable. The Minister should, and probably does, understand the sensitivity of Palantir in this context. The Minister said that the quality of the contract was the only criterion. Where does price come into it? How can we build in protections against predatory pricing by the sitting tenants of contracts, who create an effective monopoly?

Lord Markham (Con): I think I said that we wanted the best supplier to win; I will check and correct the record if I mentioned quality only. Quality is very important because the contract has to be good, of course, but the price has to be right as well. There are a number of criteria. Again, we will hold a session so will be able to take noble Lords through the whole process. I am confident that, at the end of that process, people will feel confident that we have reached a decision on the best supplier across all the criteria.

Lord Wallace of Saltaire (LD): My Lords, press coverage of this contract has indicated that an alternative British consortium was prepared for this contract. Can the Government confirm whether they examined alternative bidders, in particular British ones, given that the issue of trust in the use of data is an important one? As the noble Baroness remarked, trust in Palantir as a supplier is absent from substantial chunks of the NHS.

Lord Markham (Con): Again, it is important to say that the whole point of this transition arrangement was to allow us to have an open bidding process across loads of suppliers, knowing that, when they were able to put their solution in place, their transition arrangements were in place. That opened up the field to British suppliers and suppliers from around the world. We have had an open process, which has been going on for a number of months now and continues. We expect a contract award around autumn time and I can assure the noble Lord that we have looked at a whole range of suppliers to make sure that we get the best outcome.

Lord Allan of Hallam (LD): My Lords, can the Minister confirm something that he said in a previous answer: namely, that whoever wins the federated data platform contract will not have the right to use any NHS data outside the terms of that contract? Secondly, assuming that the current provider, Palantir, does not get the contract, will the NHS put in place by the end of this transition period procedures to ensure that all the data and access that Palantir had is removed safely so that there is no ongoing situation?

Lord Markham (Con): I thank the noble Lord for giving me an opportunity to clarify that absolutely. The answer is yes on both counts. If Palantir is not successful in winning the contract, no data will remain on its systems; it will be transferred over completely and, as the noble Lord says, whoever ends up winning the contract will be allowed to use that data only in an NHS context—that is, in no other context at all.

Lord Fox (LD): My Lords, can the Minister clarify when he expects the large contract of nearly £500 million to be awarded?

Lord Markham (Con): Round about autumn time. Currently, we think that the contract will be awarded in September and then finalised. The new database should in place by April. Having this transition arrangement until June gives us a safety net to make sure that everything is in place.

Lord Davies of Brixton (Lab): My Lords, I welcome the opportunity of a meeting to discuss data security. Can the Minister say whether it is anticipated that that security will go beyond what is currently being established in legislation going through Parliament? If it will be stronger, why are the other protections not stronger?

Lord Markham (Con): I am sorry; I am not sure that I completely followed the question. It is fundamental here that everyone's data is strongly protected in the best possible terms. As I say, we will arrange in the next few weeks a meeting where we can answer all the questions that noble Lords have and have the experts in the room as well.

Online Safety Bill

Committee (10th Day)

12.16 pm

Relevant document: 28th Report from the Delegated Powers Committee

Clause 91: Power to require information

Amendment 198

Moved by ***Baroness Kidron***

198: Clause 91, page 82, line 14, at end insert—

"(o) the purpose of obtaining information relevant to the death of a child (as defined in section (Duties of OFCOM in certain cases where a child has died)(3))."

Member's explanatory statement

This amendment is consequential on Baroness Kidron's amendment after Clause 117 which would add a new Clause imposing express duties on OFCOM in certain cases where a child has died.

Baroness Kidron (CB): My Lords, first, I want to recognise the bravery of the families of Olly, Breck, Molly, Frankie and Sophie in campaigning for the amendments we are about to discuss. I also pay tribute to Mia, Archie, Isaac, Maia and Aime, whose families I met this morning on their way to the House. It is a great privilege to stand alongside them and witness their courage and dignity in the face of unimaginable grief. On behalf of myself, my co-signatories—the noble Lords, Lord Stevenson and Lord Clement-Jones, and the noble Baroness, Lady Morgan—and the huge number of Peers and MPs who have supported these amendments, I thank them for their work and the selflessness they have shown in their determination to ensure that other families do not suffer as they have.

This group includes Amendments 198, 199, 215 and 216, which, together, would create a pathway for coroners and, by extension, families to get access to information relevant to the death of a child from technology services. The amendments would put an end to the inhumane situation whereby coroners and families in crisis are forced to battle faceless corporations to determine whether a child's engagement with a digital service contributed to their death. Bereaved families have a right to know what happened to their children, and coroners have a duty to ensure that lessons are learned and that those who have failed in their responsibilities are held accountable.

Since the Minister is going to be the bearer of good news this afternoon, I will take the time to make arguments for the amendments as they stand. I simply say that, while parents have been fighting for access to information, those same companies have continued to suggest friends, material and behaviours that drive children into places and spaces in which they are undermined, radicalised into despair and come to harm. In no other circumstance would it be acceptable to withhold relevant information from a court procedure. It is both immoral and a failure of justice if coroners cannot access and review all relevant evidence. For the families, it adds pain to heartbreak as they are unable to come to terms with what has happened because there is still so much that they do not know.

I am grateful to the Government for agreeing to bring forward on Report amendments that will go a very long way towards closing the loopholes that allow companies to refuse coroners' demands and ignore parents' entreaties. The Government's approach is somewhat different from that in front of us, but it covers the same ground. These amendments are the result of the considerable efforts of Ministers and officials from DSIT and the Ministry of Justice, with the invaluable support of the right honourable Sajid Javid MP. I wish to note on the record the leadership of the Secretary of State, who is currently on leave, and the Minister here, the noble Lord, Lord Parkinson.

The Government's amendments will create an express power for Ofcom to require information from services about a deceased child user's online activity following the receipt of a Schedule 5 request from a coroner. This will vastly increase the reach and power of that coroner. Information that Ofcom can request from regulated companies under the Online Safety Bill is extremely wide and includes detailed data on what is recommended; the amount of time the child spent on the service when they accessed it; their user journey; what content they liked, shared, rewatched, paused and reported; and whether other users raised red flags about the child's safety or well-being before their death.

Information notices prompted by a Schedule 5 request from a coroner will be backed by Ofcom's full enforcement powers and will apply to all regulated companies. If a service fails to comply, it may be subject to enforcement action, including senior management liability and fines of up to £18 million or 10% of global turnover—vastly different from the maximum fine of £1,000 under the Coroners and Justice Act 2009. Moreover, these amendments will give coroners access to Ofcom's expertise and understanding of how online services work and of online services' safety duties to children. Also, there will be provisions empowering Ofcom to share information freely to assist coroners in their inquiries. Companies must provide a dedicated means of communication to manage requests for information from bereaved parents and provide written responses to those requests. I look forward to the Minister setting out that these will be operated by a team of experts and backed up by Ofcom in ensuring that the communication is adequate, timely and not obstructive. Importantly, if the communication is not adequate, bereaved families will be able to notify Ofcom.

There are a small number of outstanding questions. We remain concerned that only larger companies will be required to set out their policies on disclosure. Sadly, children are often coerced and nudged into smaller sites that have less robust safety mechanisms. Small is not safe. A further issue is to ensure that a coroner is able, via a Schedule 5 notice given to Ofcom, to compel senior management to appear at an inquest. This is a crucial ask of the legal community, who battled and failed to get companies to attend inquests, notably Wattpad at the Frankie Thomas inquest and Snap Inc at Molly Russell's inquest. Can the Minister undertake to close these gaps before Report?

A number of matters sit outside the scope of the Online Safety Bill. I am particularly grateful to the Secretary of State for committing in writing to further work beyond the Bill to ensure that the UK's approach is comprehensive and watertight. The Government will be exploring ways in which the Data Protection and Digital Information (No. 2) Bill can support and complement these provisions, including the potential for a code that requires data preservation if a parent or enforcement officer contacts a helpline or if there is constructive knowledge, such as when a death has been widely reported, even before a Schedule 5 notice has been delivered.

The Government are engaging with the Chief Coroner to provide training in order to ensure that coroners have the knowledge they need to carry out inquests

where children's engagement with online services is a possible factor in their death. I am concerned about the funding of this element of the Government's plans and urge the Minister to indicate whether this could be part of Ofcom's literacy duties and therefore benefit from the levy. Possibly most importantly, the Secretary of State has undertaken to approach the US Government to ensure that coroners can review private messages that fall outside the scope of this Bill in cases where a child's death is being investigated. I am grateful to the noble Lord, Lord Allan, for his support in articulating the issue, and accept the invitation to work alongside the department to achieve this.

There are only two further things to say. First, delivery is in the drafting, and I hope that when he responds, the Minister will assure the House that we will see the proposed amendments well before Report so that we can ensure that this works as we have all agreed. Secondly, the Government are now looking very carefully at other amendments which deal with prevention of harm in one way or another. I share the gratitude of Bereaved Parents for Online Safety for the work that has gone into this set of amendments. However, we want to see safety by design; a comprehensive list of harms to children in the Bill, including harms caused or amplified by the design of service; principles for age assurance which ensure that the systems put in place by regulated services are measurable, secure and fit for purpose; and a proper complaints service, so that children have somewhere to turn when things go wrong. What we have been promised is a radical change of status for the coroner and for the bereaved families. What we want is fewer dead children. I beg to move.

Lord Allan of Hallam (LD): My Lords, some of the issues that we have been dealing with in this Bill are more abstract or generic harms, but here we are responding to a specific need of families in the UK who are facing the most awful of circumstances.

I want to recognise the noble Baroness, Lady Kidron, for her direct support for many of those families, and for her persistent efforts to use policy and the tools we have available to us here to improve the situation for families who, sadly, will face similar tragedies in future. I appreciate the time that she has spent with me in the spirit of finding workable solutions. It is an alliance that might seem improbable, given our respective responsibilities, which have sometimes placed us in publicly adversarial roles. However, one of the strengths of this Committee process is that it has allowed us to focus on what is important and to find that we have more in common than separates us. Nothing could be more important than the issue we are dealing with now.

I am pleased that it looks like we will be able to use this Bill to make some significant improvements in this area to address the challenges faced by those families, some of whom are here today, challenges which add to their already heart-wrenching distress. The first challenge these families face is to find someone at an online service who is willing and able to answer their questions about their loved one's use of that platform. This question about contacts at online platforms is not limited to these cases but comes up in other areas.

As noble Lords will know, I used to work for Facebook, where I was often contacted by all sorts of Governments asking me to find people in companies, often smaller companies, concerning very serious issues such as terrorism. Even when they were dealing with the distribution of terrorist content, they would find it very challenging. There is a generic problem around getting hold of people at platforms. A real strength of the Online Safety Bill is that it will necessarily require Ofcom to develop contacts at all online services that offer user-to-user and search services to people in the UK. The Government estimate that 25,000 entities are involved. We are talking about Ofcom building a comprehensive database of pretty much any service that matters to people in the UK.

Primarily, these contacts will be safety focused, as their main responsibility will be to provide Ofcom with evidence that the service is meeting its duties of care under the Bill, so again, they will have the right people in the right companies on their database in future. Importantly, Ofcom will have a team of several hundred people, paid for by a levy on these regulated services, to manage the contacts at the right level. We can expect that, certainly for the larger services, there may be a team of several people at Ofcom dedicated to working with them, whereas for the smaller services it may be a pooled arrangement whereby one Ofcom staff member deals with a group. However, in all cases there will be someone at the regulator with a responsibility for liaising with those companies. We do not expect Ofcom to use those contacts to resolve questions raised by individuals in the UK as a matter of course, but it makes sense to make this channel available where there is a relatively small number of highly impactful cases such as we are dealing with here.

12.30 pm

Having established contact, which we hope will happen in a more orderly way in future with the support from Ofcom, the second challenge lies in the decision about what information a service is willing and able to disclose to assist an inquiry. The frustration that services are unwilling, or declare themselves unable, to disclose the information required has been very widely publicised. We see a potential answer in this Bill, in that it grants Ofcom these new powers to order services to disclose a wide range of information under the clauses listed in Chapter 4. It seems entirely sensible to use these new powers for these specific purposes. Services will understand that they have to respond to information requests. As the noble Baroness pointed out, this will not be discretionary: they will be under serious sanction if they refuse, without good reason, to respond to an information request. It seems to me that this will make the decision quite straightforward for many services and, if they seek legal advice, as is often the case, this will come back to say that they do not have a choice and must disclose.

One way to think about the overall effect of the Bill is that it is replacing discretionary decision-making by online services with a body of instructions from the British state, via our regulator, Ofcom, on how we expect decisions to be made in relation to safety. When platforms have received requests from bereaved families to date, they have been exercising their own discretion,

[Lord Allan of Hallam]
weighing up their views on the potential benefits and harms of certain forms of disclosure. I have been involved in those: a platform weighs up the decision; it is not carried out by any third party. With the information notice process that we expect to be coming forward, the decision about what should be disclosed in which circumstances moves from the platforms to coroners and Ofcom acting on behalf of the British state and affected families. Frankly, if I still worked for an online service, I would welcome this shift of responsibility for these decisions. I hope that we will see the new process—which, as I understand, will be introduced in later amendments—work smoothly, with good co-operation from regulated services.

There are still two provisos to that, which are worth noting at this stage. The noble Baroness, Lady Kidron, has already touched on these, but we should put them on record because they will need to be answered as we get into the debate on the government amendments.

First, we need to ensure that any process for data disclosure has the right checks and balances in place to ensure that it is not used inappropriately. I am certainly very confident in Ofcom's propriety as a regulator and in the overall legal framework that we have in the Bill and in the Human Rights Act that underpins that, which creates an overall framework for issues such as people's privacy rights. Everything has to work within that framework. But we should keep stressing the safeguards in place, because these mean that services can feel very safe about complying with orders under the Bill and that it will not involve breaching other rights that they have to users. This is a broader question: there are orders that come from other Governments, shall we say, for disclosure of data that certainly would be problematic. If we are going to order companies to disclose data, we need to make absolutely clear that all of those safeguards are in place for them to feel confident to do so.

Secondly, it must also address any actual or perceived conflicts of law. The noble Baroness touched on this. I particularly note that we have the Data Protection Act and that it is very clear in data protection law that you should not be holding personal data without good reason, so platforms have policies in place that they believe that they are instructed to follow by the Information Commissioner's Office, for example to delete data from accounts that are no longer in use. We need to think about a process for data preservation in particular circumstances. That already works well in law enforcement: for example, there is a well-established process when somebody is accused of a crime to request data preservation of information relevant to that crime. We need to think about how that principle may apply here and ensure that it is in place. I do not think that the companies are being awkward in this case: they are being told by the data protection regulator to do one thing, and if we are now going to tell them to make an exception, we need to give them a legal basis on which to do that.

There is also the point of potential conflicts with law in other regimes, especially companies outside the UK. The noble Baroness mentioned the Stored Communications Act, which is quite significant for US companies, but there are similar measures in place in other countries—we cannot put companies in a position where they have to choose whose law to break. It should not be beyond our wit to work with a friendly Government such as that of the United States to say, "We all understand that we are trying to help bereaved families here, and we have pieces of law in place; how do we make those work together so that they do not create frustration, which none of us wants them to do and is not what they are intended for?"

I repeat my offer to help if there is anything I can do to try to unblock some of this, work on the detail and make sure that this is effective. This is an area where we could make significant progress and certainly move on from a situation that has frustrated everybody and been unacceptable to date.

Baroness Morgan of Cotes (Con): My Lords, I am very pleased to support the noble Baroness, Lady Kidron, with these amendments. I also welcome the fact that we have, I hope, reached the final day of this stage of the Bill, which means that it is getting closer to becoming an Act of Parliament. The amendments to these clauses are a very good example of why the Bill needs to become an Act sooner rather than later.

As we heard during our earlier debates, social media platforms have for far too long avoided taking responsibility for the countless harms that children face on their services. We have, of course, heard about Molly Russell's tragic death and heard from the coroner's inquest report that it was on Instagram that Molly viewed some of the most disturbing posts. Despite this, at the inquest Meta's head of health and well-being policy shied away from taking blame and claimed that the posts which the coroner said contributed to Molly's death

"in a more than minimal way"

were, in Meta's words, "safe". Molly's family and others have to go through the unthinkable when they lose their child in such a manner. Their lives can be made so much harder when they attempt to access their child's social media accounts and activities only to be denied by the platforms.

The noble Baroness's various amendments are not only sensible but absolutely the right thing to do. In many ways, it is a great tragedy that we have had to wait for this piece of primary legislation for these companies to start being compelled and told. I understand what the noble Lord, Lord Allan, very rationally said—companies should very much welcome these amendments—but it is a great shame that often they have not behaved better in these circumstances previously.

There is perhaps no point going into the details, because we want to hear from the Minister about what the Government will propose. I welcome the fact that the Government have engaged early-ish on these amendments and on these matters.

The amendments would force platforms to comply with coroners in investigations into the death of a child, have a named senior manager in relation to inquests and allow easier access to a child's social media account for bereaved families. We will have to see what the Government's amendments do to reflect that. One of the areas that the noble Baroness said

had perhaps not been buttoned down is the responsibility for a named senior manager in relation to an inquest. This is requiring that:

"If Ofcom has issued a notice to a service provider they must name a senior manager responsible for providing material on behalf of the service and to inform that individual of the consequences for not complying".

The noble Lord, Lord Allan, set out very clearly why having a named contact in these companies is important. Bereaved families find it difficult, if not impossible, to make contact with tech companies: they get lost in the automated systems and, if they are able to access a human being, they are told that the company cannot or will not give that information. We know that different coroners have had widely differing experiences getting information from the social media platforms, some refusing altogether and others obfuscating. Only a couple of companies have co-operated fully, and in only one or two instances. Creating a single point of contact, who understands the law—which, as we have just heard, is not necessarily always straightforward, particularly if it involves different jurisdictions—understands what is technically feasible and has the authority and powers afforded to the regulator will ensure a swifter, more equitable and less distressing process.

I have really set this out because we will obviously hear what the Minister will set out, but if it does not reflect having a named senior manager, then I hope very much that we are able to discuss that between this and the next stage.

Social media platforms have a responsibility to keep their users safe. When they fail, they should be obligated to co-operate with families and investigations, rather than seeking to evade them. Seeing what their child was viewing online before their death will not bring that child back, but it will help families on their journey towards understanding what their young person was going through, and towards seeking justice. Likewise, ensuring that platforms comply with inquests will help to ease the considerable strain on bereaved families. I urge noble Lords to support these amendments or to listen to what the Government say. Hopefully, we can come up with a combined effort to put an end to the agony that these families have been through.

Baroness Healy of Primrose Hill (Lab): My Lords, I strongly support this group of amendments in the name of the noble Baroness, Lady Kidron, and other noble Lords. I, too, acknowledge the campaign group Bereaved Families for Online Safety, which has worked so closely with the noble Baroness, Lady Kidron, 5Rights and the NSPCC to bring these essential changes forward.

Where a child has died, sadly, and social media is thought to have played a part, families and coroners have faced years of stonewalling, often never managing to access data or information relevant to that death; this adds greatly to their grief and delays the finding of some kind of closure. We must never again see a family treated as Molly Russell's family was treated, when it took five years of campaigning to get partial sight of material that the coroner found so distressing that he concluded that it contributed to her death in a more than minimal way; nor can it be acceptable for a company to refuse to co-operate, as in the case of Frankie Thomas, where Wattpad failed to provide the material requested by the coroner on the grounds that it is not based within the UK's jurisdiction. With the threat of a fine of only £1,000 to face, companies feel little need to comply. These amendments would mean that tech companies now had to comply with Ofcom's information notices or face a fine of up to 10% of their global revenue.

Coroners' powers must be strengthened by giving Ofcom the duty and power to require relevant information from companies in cases where there is reason to suspect that a regulated service provider may hold information relevant to a child's death. Companies may not want to face up to the role they have played in the death of a child by their irresponsible recommending and pushing of violent, sexual, depressive and pro-suicide material through algorithmic design, but they need to be made to answer when requested by a coroner on behalf of a bereaved family.

Amendment 215 requires a named senior manager, a concept that I am thankful is already enshrined in the Bill, to receive and respond to an information notice from Ofcom to ensure that a child's information, including their interactions and behaviour and the actions of the regulated service provider, is preserved and made available. This could make a profound difference to how families will be treated by these platforms in future. Too often in the past, they have been evasive and unco-operative, adding greatly to the inconsolable grief of such bereaved parents. As Molly Russell's father Ian said:

"Having lived through Molly's extended inquest, we think it is important that in future, after the death of a child, authorities' access to data becomes … a matter of course"

and

"A more compassionate, efficient and speedy process".

I was going to ask the Government to accept these amendments but, having listened to the noble Baroness, Lady Kidron, I am looking forward to their proposals. We must ensure that a more humane route for families and coroners to access data relating to the death of a child is at last available in law.

Baroness Newlove (Con): My Lords, I support the amendments standing in the name of the noble Baroness, Lady Kidron, and other noble Lords. I have listened to noble Lords, so I am not going to repeat what has been said. I pay my respects to the family because as someone who is still going through the criminal justice system, I absolutely feel the anguish of these families.

While we are talking about a digital platform, we are also talking about human lives, and that is what we have to remain focused on. I am not a techno, and all these words in the digital world sound like a lot of Japanese to me. I am not ignorant about what noble Lords are saying, but it has made me realise that, while we have gone forward, for a lot of people and families it still feels like wading through jelly.

I want to speak about how the families will feel and how they will connect through all of these gateways to get what they should quite rightly have about their loved ones' lives and about what has been said about them online. Surely the platforms should have a duty of care, then perhaps we would not be here discussing

[Baroness Newlove]
these amendments. Noble Lords have spoken about the technical aspects of these amendments. By that, we mean data and the role of the coroner. As a former victims' commissioner, I had many discussions with the Chief Coroner about other victims who have suffered loss as well. I think that people do not understand how victims' families feel in the courtroom because you feel alone, and I imagine there are more legal aspects from these mega companies than these families can afford.

12.45 pm

I hope that when the Minister comes to the Dispatch Box it is good, but there are lots of other things. We need to dot the "i"s and cross the "t"s to make sure that families feel that their voices are heard and that they get legal advice and information not just from the coroner but get copies of everything without extra charge.

I want to talk about a humane route for grieving parents and guardians to access data to understand more about the circumstances in which their children died. There is now, horribly, a number of cases, which we have pointed out, where these platforms have left parents in automated loops. They have described it as feeling like contacting a lost property department. Services have refused to engage with inquiries and have refused to appear at inquests. This leaves parents dealing with an already unimaginable situation with nowhere to turn, having to put the pieces together themselves. I am still going through that, and noble Lords cannot imagine the sheer frustration of looking at a blank wall, banging your head against a wall and thinking you have a support system in place but actually it just closes the door in your face.

The noble Baroness, Lady Kidron, has already highlighted the tragedies and issues of these families. In the hours after Olly Stephens was murdered, his parents, Amanda and Stuart Stephens, had to trawl through social media sites to get evidence. This is about their son. We are not talking about data protection; this is about human life. For the Bill to navigate and push forward to support these families, it has to have that humanity, that humane level, to go through and help them. It is all right setting it up to have digital companies comply with Ofcom and the coroner, but there still may be a huge gap to help these families navigate, understand, get the evidence, have copies and feel that we are talking about their loved ones. They are not actually having a voice to understand what emotions they are going through. As my noble friend Lady Morgan has just said, it took Molly Russell's family five years, and then they were drowned in 36,000 pages of almost impenetrable data just 12 days before the original inquest. That caused a further five months' delay. That is not acceptable. This is a further trauma for families.

The parents of Frankie Thomas, who took her life in 2018 aged 15, described their desperation in the aftermath of her death. Her mother Judy said she felt like she was in the wilderness contacting somebody at Instagram. I use social media, and I see many people's sheer frustration at having no response from social media platforms. I agree we should have a single point of contact—a SPOT, as they are known in this world—to help these families, but I would like that single point of contact to go even further. I want that for all victims of crime, but I also do not want it to hinder people if that person has gone on holiday or is off sick and nobody shares that information. We need to ensure that they have a lot of people trained on this who can pick it up. We have a system where the server is not looked at but blocks the families. What is the point of having a single point of contact if that person cannot give other members of staff access to that data to help families?

Grieving families must be given a humane route, facilitated by Ofcom, to access that information from all the platforms where their children have died. We cannot go back after all these experiences and all the energy that the families have put into campaigning for something that should quite rightly be there: information about their loved one. We should not have to have discussions in this place to get that information for families. It is inhumane and shameful and they should not have to go through it any more.

I look forward to listening to the Minister. I pay honour to the noble Baroness, Lady Kidron, for the work she has done. I am glad that she has had conversations because I am still waiting for the Minister to answer my letters. These families should not be here fighting for justice for their loved ones. We should be trying to make their life a bit better, to give them a healthier lifestyle and to understand. I hope the Minister will come up with something good because if there are further gaps, we need to challenge him once again to ensure that we do not fail the families who are listening to us today.

Lord Russell of Liverpool (CB): My Lords, following on from the excellent points that the noble Baroness has made, I want to pursue the same direction. In this group of amendments we are essentially trying to reduce the incidence of tragedies such as those that the families there in the Gallery have experienced and trying to ensure that no one—that is probably unrealistic, but at least far fewer people—will have the same experience.

I particularly want to focus the Minister and the Bill team on trying to think through how to ensure that, as and when something tragic happens, what happens to the families faced with that—the experience that they have and the help that I hope in future they will be able to receive—will make it a less traumatic, lonely and baffling experience than it clearly has been to date.

At the heart of this, we are talking about communication; about the relationship between Ofcom and the platforms; probably about the relationships between platforms and other platforms, in sharing knowledge; about the relationship between Ofcom and government; about the relationship between Ofcom and regulators in other jurisdictions; and about the relationship between our Government and other Governments, including, most importantly, the Government in the US, where so many of these platforms are based. There is a network of communication that has to work. By its very nature, trying to capture something as all-encompassing as that in primary legislation will in some ways be out of date before it

even hits the statute book. It is therefore incredibly important that there is a dynamic information-sharing and analytics process to understand what is going on in the online world, and what the experience is of individuals who are interacting with that world.

That brings me neatly back to an amendment that we have previously discussed, which I suspect the noble Viscount sitting on the Front Bench will remember in painful detail. When we were talking about the possibility of having an independent ombudsman to go to, what we heard from all around the House was, "Where do we go? If we have gone to the platforms and through the normal channels but are getting nowhere, where do we go? Are we on our own?". The answer that we felt we were getting a few weeks ago was, "That's it, you've got to lump it". That is simply not acceptable.

I ask the Minister and the Bill team to ensure that there is recognition of the dynamic nature of what we are dealing with. We cannot capture it in primary legislation. I hope we cannot capture it in secondary instruments either; speaking as a member of the Secondary Legislation Scrutiny Committee, we have quite enough of them as it is so we do not want any more, thank you very much. However, it is incredibly important that the Government think about a dynamic form of having up-to-date information so that they and all the other parties in this area know what is going on.

Baroness Harding of Winscombe (Con): My Lords, I support this group of amendments. I pay tribute to the families who I see are watching us as we debate this important group. I also pay tribute to my noble friend Lady Newlove, who has just given one of the most powerful speeches in the full 10 days of Committee.

The real sadness is that we are debating what happens when things go horribly wrong. I thank my noble friend the Minister and the Secretary of State, who is currently on leave, for the very collaborative way in which I know they have approached trying to find the right package—we are all waiting for him to stand up and speak to show us this. Very often, Governments do not want to give concessions early in the process of a Bill going through because they worry that those of us campaigning for concessions will then ask for more. In this case, as the noble Lord, Lord Russell, has just pointed to, all we are asking for in this Bill is to remember that a concession granted here helps only when things have gone horribly wrong.

As the noble Baroness, Lady Kidron, said, what we really want is a safer internet, where fewer children die. I reiterate the comments that she made at the end of her speech: as we have gone through Committee, we have all learned how interconnected the Bill is. It is fantastic that we will be able to put changes into it that will enable bereaved families not to have to follow the path that the Russells and all the other bereaved families campaigning for this had to follow—but that will not be enough. We also need to ensure that we put in place the safety-by-design amendments that we have been discussing. I argue that one of the most important is the one that the noble Lord, Lord Russell, has just referenced: when you already know that your child is in trouble but you cannot get help, unfortunately no one wants then to be able to say, "It's okay. Bereaved families have what they need". We need to do more than that.

Lord Clement-Jones (LD): My Lords, this has been a very moving debate for a very important cause. I thank the noble Baroness, Lady Kidron, for introducing it in the way that she did, along with those who have spoken in the debate.

The good news is that this is very much a cross-party and cross-Bench debate. It clearly appears to be a concern that the Government share, and I appreciate that. I agree with the noble Baroness, Lady Harding, that it is not a weakness for the Government to concede here but very much the logic of where we have now got to. Compared with what is in the Joint Committee report on the draft Bill, what seems to be proposed—and I very much look forward to hearing what the Minister has to say—goes further than what we were proposing, so it may be that we have reached another milestone. However, we wait to hear the detail.

Like other noble Lords, I pay tribute to the bereaved parents. We heard from parents during our consideration of the draft Online Safety Bill and we have heard further since then, particularly as a result of the two notable inquests into the deaths of Frankie Thomas and Molly Russell, which highlighted the difficulties that families and coroners face. Both families talked about the additional toll on their mental health as they battle for information, and the impossibility of finding closure in the absence of answers.

The noble Baroness, Lady Newlove, said in her very moving speech that a humane process must be established for bereaved families and coroners to access data pertinent to the death of a child. That is what we have been seeking, and I pay tribute to the relentless way in which the noble Baroness, Lady Kidron, has pursued this issue on behalf of us all, supported by 5Rights and the NSPCC. We must have a transparent process in which bereaved families and coroners can access information from regulated services in cases where social media may have played a part in the death of a child.

My noble friend Lord Allan—who I am delighted is so plugged in to what could be the practical way of solving some of these issues—expertly described how Ofcom's powers could and should be used and harnessed for this purpose. That very much goes with the grain of the Bill.

I shall repeat a phrase that the noble Baroness, Lady Kidron, used: the current situation is immoral and a failure of justice. We absolutely need to keep that in mind as we keep ourselves motivated to find the solution as soon as we possibly can. I look forward to good news from the Minister about the use of information notices for the purpose that has been heralded by the noble Baroness, Lady Kidron, but of course the devil is in the detail. We will obviously want to see the detail of the amendment well before Report.

1 pm

The noble Baroness, Lady Kidron, asked a number of additional questions about data preservation, and a number of noble Lords, including the noble Lord, Lord Russell, and the noble Baroness, Lady Newlove,

[Lord Clement-Jones]
talked about the question of help, perhaps with a dedicated helpline for bereaved families. Then there is a question about the obligations of senior management in appearing at inquests. As the noble Lord, Lord Russell, said, we continually need to understand the experience of parents in these circumstances, so the data arising from an independent complaints system is extremely important.

If that was not enough on the architecture of the Online Safety Bill, the noble Baroness also mentioned things that reside outside it, such as data inheritance, given that the data protection and digital information Bill is coming down the track. It is good that the noble Viscount, Lord Camrose, is sitting on the Front Bench because he will no doubt be dealing with that data protection Bill. We will of course table amendments to that at the time.

There have also been questions about the training for coroners and about approaching the US Government, which is an even larger dimension than anything I have mentioned so far. I very much look forward to hearing what the Minister has to say and hope that we will have achieved the goal that so many families want us to achieve.

Lord Knight of Weymouth (Lab): My Lords, I am all that is left between us and hearing from the Minister with his good news, so I will constrain my comments accordingly.

The noble Baroness, Lady Kidron, begin by paying tribute to the parents of Olly, Breck, Molly, Frankie and Sophie. I very much join her in doing that; to continually have to come to this place and share their trauma and experience comes at a great emotional cost. We are all very grateful to them for doing it and for continuing to inform and motivate us in trying to do the right thing. I am grateful to my noble friend Lady Healy and in particular to the noble Baroness, Lady Newlove, for amplifying that voice and talking about the lost opportunity, to an extent, of our failure to find a way of imposing a general duty of care on the platforms, as was the original intention when the noble Baroness, Lady Morgan, was the Secretary of State.

I also pay a big tribute to the noble Baroness, Lady Kidron. She has done the whole House, the country and the world a huge service in her campaigning around this and in her influence on Governments—not just this one—on these issues. We would not be here without her tireless efforts, and it is important that we acknowledge that.

We need to ensure that coroners can access the information they need to do their job, and to have proper sanctions available to them when they are frustrated in being able to do it. This issue is not without complication, and I very much welcome the Government's engagement in trying to find a way through it. I too look forward to the good news that has been trailed; I hope that the Minister will be able to live up to his billing. Like the noble Baroness, Lady Harding, I would love to see him embrace, at the appropriate time, the "safety by design" amendments and some others that could complete this picture. I also look forward to his answers on issues such as data preservation, which the noble Lord, Lord Allan, covered among the many other things in his typically fine speech.

I very much agree that we should have a helpline and do more about that. Some years ago, when my brother-in-law sadly died in his 30s, it fell to me to try to sort out his social media accounts. I was perplexed that the only way I could do it was by fax to these technology companies in California. That was very odd, so to have proper support for bereaved families going through their own grief at that moment seems highly appropriate.

As we have discussed in the debates on the Bill, a digital footprint is an asset that is exploited by these companies. But it is an asset that should be regarded as part of one's estate that can be bequeathed to one's family; then some of these issues would perhaps be lessened. On that basis, and in welcoming a really strong and moving debate, I look forward to the Minister's comments.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, this has been a strong and moving debate, and I am grateful to the noble Baroness, Lady Kidron, for bringing forward these amendments and for the way she began it. I also echo the thanks that the noble Baroness and others have given to the families of Breck Bednar, Sophie Parkinson, Molly Russell, Olly Stephens, Frankie Thomas and all the young people whose names she rightly held in remembrance at the beginning of this debate. There are too many others who find themselves in the same position. The noble Lord, Lord Knight, is right to pay tribute to their tirelessness in campaigning, given the emotional toll that we know it has on them. I know that they have followed the sometimes arcane processes of legislation and, as my noble friend Lady Morgan said, we all look forward to the Bill becoming an Act of Parliament so that it can make a difference to families who we wish to spare from the heartache they have had.

Every death is sorrowful, but the death of a child is especially heartbreaking. The Government take the issues of access to information relating to a deceased child very seriously. We have undertaken extensive work across government and beyond to understand the problems that parents, and coroners who are required to investigate such deaths, have faced in the past in order to bring forward appropriate solutions. I am pleased to say that, as a result of that work, and thanks to the tireless campaigning of the noble Baroness, Lady Kidron, and our discussions with those who, very sadly, have first-hand experience of these problems, we will bring forward a package of measures on Report to address the issues that parents and coroners have faced. Our amendments have been devised in close consultation with the noble Baroness and bereaved families. I hope the measures will rise to the expectations they rightly have and that they will receive their support.

The package of amendments will ensure that coroners have access to the expertise and information they need to conduct their investigations, including information held by technology companies, regardless of size, and overseas services such as Wattpad, mentioned by the noble Baroness, Lady Healy of Primrose Hill, in her

contribution. This includes information about how a child interacted with specific content online as well as the role of wider systems and processes, such as algorithms, in promoting it. The amendments we bring forward will also help to ensure that the process for accessing data is more straightforward and humane. The largest companies must ensure that they are transparent with parents about their options for accessing data and respond swiftly to their requests. We must ensure that companies cannot stonewall parents who have lost a child and that those parents are treated with the humanity and compassion they deserve.

I take the point that the noble Baroness, Lady Kidron, rightly makes: small does not mean safe. All platforms will be required to comply with Ofcom's requests for information about a deceased child's online activity. That will be backed by Ofcom's existing enforcement powers, so that where a company refuses to provide information without a valid excuse it may be subject to enforcement action, including sanctions on senior managers. Ofcom will also be able to produce reports for coroners following a Schedule 5 request on matters relevant to an investigation or inquest. This could include information about a company's systems and processes, including how algorithms have promoted specific content to a child. This too applies to platforms of any size and will ensure that coroners are provided with information and expertise to assist them in understanding social media.

Where this Bill cannot solve an issue, we are exploring alternative avenues for improving outcomes as well. For example, the Chief Coroner has committed to consider issuing non-legislative guidance and training for coroners about social media, with the offer of consultation with experts.

Baroness Newlove (Con): I am sorry to interrupt my noble friend. On the coroners' training and national guidelines, the Chief Coroner has no powers across the nation over all the coroners. How is he or she going to check that the coroners are keeping up with their training and are absolutely on the ball? The Chief Coroner has no powers across the country and everything happens in London; we are talking about outside London. How can we know that no other family has to suffer, considering that we have this legislation?

Lord Parkinson of Whitley Bay (Con): My noble friend rightly pulled me up for not responding to her letter as speedily as we have been dealing with the questions raised by the noble Baroness, Lady Kidron. We have had some useful meetings with Ministers at the Ministry of Justice, which the noble Baroness has attended. I would be very happy to provide some detail on this to my noble friend—I am conscious of her experience as Victims' Commissioner—either in writing or to organise a briefing if she would welcome that.

The noble Lord, Lord Allan of Hallam, rightly raised data protection. Where Ofcom and companies are required to respond to coroners' requests for information, they are already required to comply with personal data protection legislation, which protects the privacy of other users. This may include the redaction of information that would identify other users. We are also exploring whether guidance from the Information Commissioner's Office could support technology companies to understand how data protection law applies in such cases.

The noble Lord mentioned the challenges of potential conflicts of law around the world. Where there is a conflict of laws—for example, due to data protection laws in other jurisdictions—Ofcom will need to consider the best way forward on a case-by-case basis. For example, it may request alternative information which could be disclosed, and which would provide insight into a particular issue. We will seek to engage our American counterparts to understand any potential and unintended barriers created by the US Stored Communications Act. I can reassure the noble Lord that these matters are in our mind.

We are also aware of the importance of data preservation to both coroners and bereaved parents. The Government agree with the principle of ensuring that these are preserved. We will be working towards solving this in the Data Protection and Digital Information Bill. In addition, we will explore whether there are further options to improve outcomes for parents in that Bill as well. I want to assure noble Lords and the families watching this debate closely that we will do all we can to deliver the necessary changes to give coroners and parents the information that they seek and to ensure a more straightforward and humane process in the future.

I turn in detail to the amendments the noble Baroness, Lady Kidron, brought forward. First, Amendments 215 and 216 include new requirements on Ofcom, seeking to ensure that coroners and parents can obtain data from social media companies after the death of a child. Amendment 215 would give Ofcom the ability to impose senior management liability on an individual in cases where a coroner has issued a notice requiring evidence to be provided in an inquest into the death of a child. Amendment 216 would put Ofcom's powers at the disposal of a coroner or close relatives of a deceased child so that Ofcom would be obliged to require information from platforms or other persons about the social media activity of a deceased child. It also requires service providers to provide a point of contact. Amendments 198 and 199 are consequential to this.

As I said, we agree with the intent of the noble Baroness's amendments and we will deal with it in the package that we will bring forward before Report. Our changes to the Bill will seek to ensure that Ofcom has the powers it needs to support coroners and their equivalents in Scotland, so that they have access to the information they need to conduct investigations into a child's death where social media may have played a part.

1.15 pm

We also agree on the importance of greater transparency and accountability from companies and clearer communication with parents. We have had a useful debate about whether it is best to have a single named person or a group of people. As my noble friend Lady Newlove rightly pointed out, with staff turnover and people taking leave, it may be that a team of people is more appropriate. But what is essential is that there is human and humane contact for people to

[Lord Parkinson of Whitley Bay]
engage with companies. We will introduce further measures that require greater clarity from services and create new lines of communication with parents.

We are separately exploring further solutions which can be brought forward in the Data Protection and Digital Information Bill, which will ensure that the myriad issues bereaved parents face in the context of their child's death are addressed in line with the proposals that the noble Baroness has brought forward.

Noble Lords rightly asked when they may see the proposals. We will bring forward further details ahead of Report, but I am very happy to commit to sharing the draft clauses with the noble Baroness, Lady Kidron, in the first instance. It would be very helpful to us all, the Government included, for her to cast her expert eye over them. I hope that she will welcome this and I am very grateful to noble Lords for their contributions to the debate.

Baroness Kidron (CB): I do indeed welcome it. I do not feel I can do justice to all the speakers; I think I will cry, as I did when the noble Baroness, Lady Newlove, was speaking. I shall not do that, but I will thank all noble Lords from the bottom of my heart and will speak to just a couple of technical matters.

First, I accept the help of the noble Lord, Lord Allan, on the progress of the data protection negotiations with the US Government. That will be very helpful. I want to put on the record that there has been a lot of discussion about the privacy of other users and ensuring that it is central, particularly because other young people are in these interactions and we have to protect them, too. That is very much in our mind.

I welcome and thank the Minister. He said a couple of things, including that he hoped that what he will bring forward will rise to the expectation—so do I. The expectation is set high, and I hope that the Government rise to it. In relation to that, I note that a number of noble Lords carefully planted their expectations in *Hansard*. I will be giving the noble Lord a highlighter so that he can find them. I note that it was a particular skill of the ex-Secretary of State for DCMS, for laying down the things she expected to see.

I understood "exploring" and "in our mind"; the Government have certain things in their mind. I understand the context of that because we are talking about other Bills and things that are yet to come. I want to make a statement—I do not know whether it is a promise or a threat; I rather suspect it is both. I will not rest until this entire ecosystem is sorted. This is not about winning an amendment or a concession. This is about putting it right for families and, indeed, for coroners, who are not doing a good job under the current regime.

Finally, I echo those who have pointed out the other amendments that we are seeking on safety by design, age assurance and having the harms in the Bill. I believe I speak for Bereaved Parents for Online Safety; that is what they wish to see come from their pain. It has been the privilege of my life to deal with these parents and these families and I thank the Committee for its support. With my conditions set out, I wish to withdraw my amendment.

Amendment 198 withdrawn.

Clause 91 agreed.

Clause 92: Information notices

Amendment 199 not moved.

Clause 92 agreed.

Clause 93 agreed.

Clause 94: Reports by skilled persons

Amendment 200 not moved.

Clause 94 agreed.

Clauses 95 to 97 agreed.

Amendment 200A

Moved by ***Lord Parkinson of Whitley Bay***

200A: After Clause 97, insert the following new Clause—

"Amendment of Criminal Justice and Police Act 2001

(1) The Criminal Justice and Police Act 2001 is amended as follows.

(2) In section 57(1) (retention of seized items), after paragraph (t) insert—

"(u) paragraph 8 of Schedule 12 to the Online Safety Act 2023."

(3) In section 65 (meaning of "legal privilege")—

(a) after subsection (8B) insert—

"(8C) An item which is, or is comprised in, property which has been seized in exercise or purported exercise of the power of seizure conferred by paragraph 7(f), (j) or (k) of Schedule 12 to the Online Safety Act 2023 is to be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the seizure of that item was in contravention of paragraph 17(3) of that Schedule (privileged information or documents).";

(b) in subsection (9)—

(i) at the end of paragraph (d) omit "or";

(ii) at the end of paragraph (e) insert "or";

(iii) before the closing words insert—

"(g) paragraph 7(f), (j) or (k) of Schedule 12 to the Online Safety Act 2023."

(4) In Part 1 of Schedule 1 (powers of seizure to which section 50 of the Act applies), after paragraph 73U insert—

"Online Safety Act 2023

73V Each of the powers of seizure conferred by paragraph 7(f), (j) and (k) of Schedule 12 to the Online Safety Act 2023.""

Member's explanatory statement

This amendment has the effect of providing that section 50 of the Criminal Justice and Police Act 2001 (additional powers of seizure from premises) applies to the powers of seizure under paragraph 7(f), (j) and (k) of Schedule 12 to the Bill; and makes related amendments to that Act.

Amendment 200A agreed.

Schedule 12 agreed.

Clauses 98 to 103 agreed.

Amendment 201 not moved.

Clauses 104 to 109 agreed.

Clause 110: Notices to deal with terrorism content or CSEA content (or both)

Amendments 202 to 205 not moved.

Amendment 205A

Moved by ***Lord Parkinson of Whitley Bay***

205A: Clause 110, page 95, line 11, leave out "relating to terrorism content present on a service" and insert "that relates to a user-to-user service (or to the user-to-user part of a combined service) and requires the use of technology in relation to terrorism content"

Member's explanatory statement

This amendment makes it clear that the requirement in clause 110(7) regarding which content is communicated publicly is relevant to user-to-user services and may apply in both the cases mentioned in clause 110(2)(a)(i) and (ii).

Amendment 205A agreed.

Amendment 206 not moved.

Clause 110, as amended, agreed.

Amendments 207 and 208 not moved.

Clause 111 agreed.

Clause 112: Matters relevant to a decision to give a notice under section 110(1)

Amendments 209 and 210 not moved.

Clause 112 agreed.

Amendment 210A not moved.

Clause 113 agreed.

Clause 114: Review and further notice under section 110(1)

Amendment 211 not moved.

Clause 114 agreed.

Clause 115: OFCOM's guidance about functions under this Chapter

Amendments 212 and 213 not moved.

Clause 115 agreed.

Amendment 214 not moved.

Clauses 116 and 117 agreed.

Amendments 215 and 216 not moved.

Clause 118: Provisional notice of contravention

Amendments 216A to 216C not moved.

Clause 118 agreed.

Amendment 217

Moved by ***Lord Bethell***

217: After Clause 118, insert the following new Clause—

"Notice by OFCOM to payment-services providers and ancillary services

(1) Where OFCOM have issued a provisional notice of contravention to a regulated service, which specifies the person has failed, or is failing, to comply with a duty or requirement in section 72 (duties about regulated provider pornographic content), it must give notice of that fact to any payment-services provider or ancillary service.

(2) A notice under subsection (1) must—

(a) identify the regulated service in such manner as OFCOM considers appropriate,

(b) state whether the provisional notice of contravention relates to a duty under subsection (2) or (3) of section 72, or duties under both,

(c) give OFCOM's reasons for their opinion that the regulated service has failed, or is failing, to comply with it, and

(d) provide such further particulars as OFCOM consider appropriate.

(3) When OFCOM give notice under this section, OFCOM must inform the regulated service, by notice, that they have done so.

(4) In this section—

"ancillary service" has the same meaning as in section 131(11);

"payment-services provider" means a person who appears to OFCOM to provide services, in the course of a business, which enable funds to be transferred in connection with the payment by any person for access to pornographic content made available on the internet by the regulated service;

"pornographic content" has the meaning given by section 70(2);

"provisional notice of contravention" has the same meaning as in section 118(1)."

Member's explanatory statement

This new Clause requires OFCOM to notify payment-service providers and ancillary services of a regulated service which is found to have breached duties relating to pornographic content.

Lord Bethell (Con): My Lords, I will speak to Amendment 217 in my name. I express my deep gratitude to the noble Baronesses, Lady Benjamin and Lady Ritchie of Downpatrick, and the noble Lord, Lord Curry of Kirkharle, for adding their names in support. I will also address other amendments in this group that bring about business-disruption measures that enforce compliance with the important measures on pornography and harm that we have scrutinised already and will debate—briefly, I expect—at the end of today.

Amendment 217 is modest, but I believe it could make a big difference. It seeks to use the commercial interests of the pornography sites to change their behaviours by ensuring that their important supply chains are informed of breaches in regulations when they have happened. We know that this works because we have seen it work already. It has been widely reported that, at the start of December 2020, Pornhub, the famous porn site, said in its search bar that it was hosting 13.5 million clips. Then, on 14 December, that figure was dramatically reduced overnight to 5 million.

[Lord Bethell]

What had happened was that Pornhub had removed two-thirds of the videos because of a decision by its payment companies, Visa and Mastercard, on 10 December, that they would withdraw payment services from Pornhub's parent company, MindGeek.

That very important decision followed high-profile press reports, including in the *New York Times*, that Pornhub hosted vile videos of child abuse, rape and revenge pornography, and videos of people who had not consented to being recorded. These were illegal recordings—Mastercard said that its own investigation confirmed that the site was hosting illegal content. So, quite simply, the scrutiny of the nature of much of Pornhub's content became too much for those payment companies. To protect themselves and to avoid being tarred by association, Visa and Mastercard had to act, which in turn meant that Pornhub had to act. This is the commercial reality of how the internet will be policed, whether we like it or not. It may well be that commercial interests can drive changes in behaviour much more quickly than blunt regulatory action. At the end of the day, I am interested just in measures that protect children, however they work—and this amendment facilitates effective action.

Payment and ancillary service providers can act in ways that Governments cannot easily do. The Bill could not require such actions as its duties extend only to the platforms themselves and the regulator, not ancillary services essential to the business model; but it can facilitate such interventions by making breaches of regulation transparent to the world. To enable this, the amendment would require Ofcom to notify financial and ancillary services of any breaches of regulations—no ifs or buts, no exemptions and no hiding the bad results. This notification is part and parcel of the process of issuing a provisional notice of contravention in any case, much like when Ofcom gives a notice under Section 110(1). The regulations say that

"OFCOM must carry out a review of the provider's compliance with the notice".

This discretion is at the point of choosing to give the notice. All that the process then entails is directed.

There is a significant limitation to this version of the amendment: it applies only to pornography providers covered by Part 5. That is deliberate. Of course, I would like to see it apply to all services with any pornographic content, which I hope will be included in changes that we will see in primary priority content. I will take a moment to flag to the Minister that amendments to this amendment may be needed if there are perhaps—I speak hopefully here—government amendments to the Bill that tweak the Part 3 and Part 5 distinctions before Report. Amendment 217 places no duties on providers of payment or ancillary services themselves; it simply gives them a right to be informed. It is about transparency and awareness, which are fundamental tenets of the Bill. For that reason, I very much hope that the Minister will commit to embracing this simple and proportionate measure.

This transparency measure becomes more pertinent and relevant when we look at other measures in this group, particularly those that introduce service-restriction measures. As other noble Lords will explain in more detail, I hope, these will allow Ofcom to require the supply chain of companies that support the internet industry—they are often reputable players that can be reached by our UK courts—to cut off essential support services to those who make transgressions. These might include services like hosting and search and, as I mentioned, payment companies like Mastercard and Visa. Without revenue from UK customers, there is little point in any service trying to find ways around access blocks.

1.30 pm

Amendments 218D, 218F, 218J and 218L in this group seek to address the scale and speed of this action. We really should not apply any discount factor to the cost side of the business case based on the chances of being targeted for enforcement. We need to know that there is 100% compliance. These amendments put what the Government have already said on a legal footing. Ofcom should be able to make multiple applications simultaneously—and I note that my noble friend Lord Grade is here; he has spoken very movingly about the challenge faced by Ofcom in trying to create behaviour change in the internet.

To anticipate my noble friend the Minister, I note that in the Committee in the other place the then Minister Chris Philp said that

"procedures under the existing civil procedure rules already allow so-called multi-party claims to be made".—[*Official Report*, Commons, Online Safety Bill Committee, 21/6/2022; col. 501.]

I make it clear that the provisions under the existing Civil Procedure Rules relating to so-called multi-party claims are designed for something other than what we consider today. There may be hundreds, thousands or even tens of thousands of interventions needed to get the sites that need to be sanctioned back within the law. That number of defendants or respondents would be unprecedented under such an administrative procedure, and would be another reason for legal challenge to the whole process.

We must also consider the practicalities of going to court before taking action. I support the case for judicial oversight before draconian measures are taken based on subjective decisions about how harmful a site is or how well it is protecting children from any other broader harms. That seems a very reasonable approach—but for something as clear-cut as child access to pornography, where the decisions are black and white, there needs to be no delay to action. We do not need to waste the court's time protecting pornographers before every enforcement action. With these powers, Ofcom can avoid lengthy battles with well-funded, high-profile sites, leading to it losing its well-founded reputation for effectiveness. Noble Lords should note that, earlier this month, France's Digital Minister, Jean-Noël Barrot, announced new legislation to give its regulator, Arcom, the ability to block adult sites without going to court. That speaks very fulsomely of its experience in this area.

By way of conclusion, we know that the Government believe that the access and service restriction orders are a last resort, because they amount to, in effect, unplugging a website from the internet so that people in the United Kingdom cannot access them and so that supporting services such as payment services do

not help them. These are very severe interventions, but it is precisely these dramatic measures that will be needed to bring pornographic sites back within the realms of reasonable behaviour of the kind that we expect in the real world.

If a provider outside the UK ignores letters and fines, these measures may well be the only possibility. Many pornography providers probably have absolutely no intention of even trying to comply with the kinds of regulations that are envisaged in the Bill. They are probably not based in the UK, are never going to pay a fine and are probably incorporated in some obscure offshore jurisdiction. Ofcom will need to use these powers in such circumstances, and on a bulk scale. We should not put that enforcement activity at risk of the legal stalling games that these sites will undoubtedly play. For that reason, I ask the Minister to commit to these changes by government amendment before Report next month.

Lord Allan of Hallam (LD): My Lords, I want to speak to Amendment 218JA in this group, in my name, to which the noble Baroness, Lady Morgan of Cotes, has added her name. This is really trying to understand what the Government's intentions are in respect of access restriction orders.

Just to take a step back, in the Online Safety Bill regime we are creating, in effect, a licensing regime for in-scope services and saying that, if you want to operate in the United Kingdom and you are covered by the Bill—whether that is the pornography services that the noble Lord, Lord Bethell, referred to or a user-to-user or search service—here are the conditions to which you must adhere. That includes paying a fee to Ofcom for your supervision, and then following the many thousands of pages of guidance that I suspect we will end up producing and issuing to those companies. So what we are exploring here is what happens if a particular organisation does not decide to take up the offer of a licence.

Again, to go back to the previous debate, success for the Bill would be that it has a sufficient deterrent effect that the problems that we are seeking to fix are addressed. I do not think we are looking to block services or for them to fail—we are looking for them to succeed, so stage one is that Ofcom asks them nicely. It says, "You want to operate in the UK, here is what you need to do—it's a reasonable set of requests we are making", and the services say, "Fine". If not, they choose to self-limit—and it is quite trivial for any online service to say, "I'm going to check incoming traffic, and if this person looks like they are coming from the UK, I'm not going to serve them". That is self-limiting, which is an option that would be preferable if a service chose not to accept the licence condition. But let us assume that it has accepted the licence condition, and Ofcom is going to be monitoring it on a routine basis—and if Ofcom thinks it is not meeting its requirements, whether that is to produce a risk assessment or to fulfil its duty of care, Ofcom will then instruct it to do something. If it fails to follow that instruction, we are in the territory of the amendments that we are considering here: either it has refused to accept the licence conditions and to self-limit, or it has accepted them but has failed to do what we expect it to do. It has signed up and thought that it is not serious, and it is not doing the things that we expect it to do.

At that point, Ofcom has to consider what it can do. The first stage is quite right, in the group of clauses that we are looking at—Ofcom can bring in these business disruption measures. As the noble Lord, Lord Bethell, rightly pointed out, in many instances that will be effective. Any commercial service—not just pornography services, but an online service that depends on advertising—that is told that it can no longer take credit card payments from UK businesses to advertise on the service, will, one hopes, come into line and say, "That's the end of my business in the UK—I may as well cut myself off". But if it wants to operate, it will come into line, because that way it gets its payment services restored. But there will be others for which that is insufficient—perhaps that is not their business model—and they will carry on regardless. At that point, we may want to consider the access restrictions.

In a free society, none of us should take pleasure in the idea that we are going to instruct the internet services or block them. That is not our first instinct, but something that is rather potentially a necessary evil. At some point, there may be services that are so harmful and so oblivious to the regime that we put in place that we need to block them. Here we are trying to explore what would happen in those circumstances. The first kind of block is one that we are used to doing, and we do it today for copyright-infringing sites and a small number of other sites that break the law. We instruct service providers such as BT and TalkTalk to implement a network-level block. There are ways you can do that—various technical ways that we do not need to go into in this debate—whereby we can seek to make it so that an ordinary UK user, when they type in www.whatever, will not get to the website. But increasingly people are using technology that will work around that. Browsers, for example, may create traffic between your web browser and the online service such that TalkTalk or BT or the access provider has no visibility as to where you are going and no capability of blocking it. BT has rightly raised that. There will be different views about where we should go with this, but the question is absolutely legitimate as to what the Government's intentions are, which is what we want to try to tease out with this amendment.

Again, we should be really candid. Somebody who is determined to bypass all the access controls will do so. There is no world in which we can say that we can guarantee that somebody with a UK internet connection can never get to a particular website. What we are seeking to do is to make violating services unavailable for most of the people most of the time. We would be unhappy if it was only some of the people some of the time, but it is not going to be all of the people all of the time. So the question is: what constitutes a sufficient access restriction to either bring them to heel or to ensure that, over the longer term, the harm is not propagated, because these services are generally not made available? It would be really helpful if the Minister was able to tease that out.

Certainly, in my view, there are services such as TOR—the Onion Router—where there is no entity that you can ask to block stuff, so if someone was

[Lord Allan of Hallam]
using that, there is nothing that you can reasonably do. At the other end of the spectrum, there are services such as BT and TalkTalk, where it is relatively straightforward to say to them that they should block. Then there are people in between, such as browser owners that are putting in place these encrypted tunnels for very good reasons, for privacy, but which can also add value-added stuff—helping to manage bandwidth better, and so on. Is it the Government's intention that they are going to be served with access restriction orders? That is a valid question. We might have different views about what is the right solution, but it is really important for the sector that it understands and is able to prepare if that is the Government's intention. So we need to tease that out; that is the area in which we are looking for answers from the Government.

The second piece is to think about the long term. If our prediction—or our hope and expectation—is that most companies will come into line, that is fine; the internet will carry on as it does today but in a safer way. However, if we have misjudged the mood, and a significant numbers of services just stick their thumb up at Ofcom and say, "We are not going to play—block us if you dare", that potentially has significant consequences for the internet as it will operate in the United Kingdom. It would be helpful to understand from the Minister whether the Government have any projections or predictions as to which way we are going to go. Are we talking about the vast majority of the internet continuing as it is today within the new regime, with the odd player that will be outside that, or is it the Government's expectation that there may need to be blocking of significant numbers of services, essentially for the foreseeable future?

Other countries such as France and Germany have been dealing with this recently, as the noble Lord, Lord Bethell, is probably aware of. They have sought to restrict access to pornography services, and there have been all sorts of consequent knock-on effects and challenges at a technical level. It would be helpful to understand whether our expectation is that we will see the same in the United Kingdom or that something else is going to happen. If the Government do not have that information today, or if they have not made those projections, it would be helpful to know their thinking on where that might happen. Who will be able to inform us as to what that the future landscape is likely to look like as it evolves, and as Ofcom gains these powers and starts to instruct companies that they must obtain licences, and then seeks to take enforcement action against those that choose not to play the game?

Lord Curry of Kirkharle (CB): My Lords, I support Amendment 217 in the name of the noble Lord, Lord Bethell, and very much support the comments that he has made. I will speak to Amendments 218C, 218E, 218H and 218K in my name within this group. I also support the intent of the other amendments in this group tabled by the noble Lord, Lord Bethell.

I appreciate the process helpfully outlined by the noble Lord, Lord Allan. However, when looking at Ofcom's implementation of existing provisions on video-sharing platforms, the overwhelming impression is of a very drawn-out process, with Ofcom failing to hold providers to account. Despite being told by Ofcom that a simple tick-box declaration by the user confirming that they are over 18 is not sufficient age verification, some providers are still using only that system. Concerningly, Ofcom has not taken decisive action.

When children are at severe risk, it is not appropriate to wait. Why, for example, should we allow porn sites to continue to host 10 million child sexual abuse videos while Ofcom simply reports that it is continuing to partner with these platforms to get a road map of action together? As has been mentioned by the noble Lord, Lord Bethell, Visa and Mastercard did not think it was appropriate to wait in such circumstances—they just acted.

Similarly, when systems are not in place to protect children from accessing pornography, we cannot just sit by and allow all the egregious associated harms to continue. Just as in Formula 1, when a red flag is raised and the cars must stop and go into the pits until the dangerous debris is cleared, sometimes it is too dangerous to allow platforms to operate until the problems are fixed. It seems to me that platforms would act very swiftly to put effective systems and processes in place if they could not operate in the interim.

The Bill already contains this emergency handbrake; the question is when it should be used. My answer is that it should be used when the evidence of severe harm presents itself, and not only when the regulator has a moment of self-doubt that its "road maps", which it is normally so optimistic about, will eventually fix the problem. Ofcom should not be allowed to sit on the evidence hoping, with a wing and a prayer, that things will fix themselves in the end.

1.45 pm

Amendment 218C, 218E, 218H and 218K assert that Ofcom must—rather than may—apply to the court for an interim access restriction order should the conditions be met to do so. This is important, because it is only when we have a tough regulator that platforms will act.

When I moved previous amendments to the Bill, I mentioned my experience as chair, for six years, of the Better Regulation Executive. During that time, I learned that regulators that had a reputation for acting quickly and decisively, and for being tough, had a much more compliant base as a consequence. A compliant base in turn eases the regulatory burden, as regulators are not constantly having to bring forward provisional notices of contravention and expend resources trying to extract information from companies—and so Ofcom's first option in the most serious situations would be to apply the brake immediately. This would have the potential to act as a powerful deterrent. If providers know that the regulator will pursue criminal action on those that breach service conditions, they are more likely to comply and make sure that there is no harmful material in the first place. If we settle for vague enforcement mechanisms, they will undoubtedly be open to abuse. Indeed, appropriate sanctions are impactful only if they are enforced decisively.

We have made immense progress in the development of this Bill in ensuring that children will be protected from pornographic and inappropriate content. We now have the responsibility to ensure that those who fail to comply with these measures face proportionate consequences. As regulator and sole enforcer of the Bill, Ofcom must be empowered to protect users online. In the spirit of willingness to respond positively, which the Minister has demonstrated already this afternoon, I hope that he will also do so with these amendments.

Baroness Morgan of Cotes (Con): My Lords, I will speak briefly to Amendment 218JA, spoken to by the noble Lord, Lord Allan. My name is attached to it online but has not made it on to the printed version. He introduced it so ably and comprehensively that I will not say much more, but I will be more direct with my noble friend the Minister.

This amendment would remove Clause 133(11). The noble Lord, Lord Allan, mentioned that BT has raised with us—I am sure that others have too—that the subsection gives examples of access facilities, such as ISPs and application stores. However, as the noble Lord said, there are other ways that services could use operating systems, browsers and VPNs to evade these access restriction orders. While it is convention for me to say that I would support this amendment should it be moved at a later stage, this is one of those issues that my noble friend the Minister could take off the table this afternoon—he has had letters about it to which there have not necessarily been replies—just by saying that subsection (11) does not give the whole picture, that there are other services and that it is misleading to give just these examples. Will he clarify at the Dispatch Box and on the record, for the benefit of everyone using the Bill now and in future, what broader services are caught? We could then take the issue off the table on this 10th day of Committee.

Baroness Kidron (CB): My Lords, I will be even more direct than the noble Baroness, Lady Morgan, and seek some confirmation. I understood from our various briefings in Committee that, where content is illegal, it is illegal anywhere in the digital world—it is not restricted simply to user to user, search and Part 5. Can the Minister say whether I have understood that correctly? If I have, will he confirm that Ofcom will be able to use its disruption powers on a service out of scope, as it were, such as a blog or a game with no user-to-user aspect, if it were found to be persistently hosting illegal content?

Lord Clement-Jones (LD): My Lords, this has been an interesting debate, though one of two halves, if not three.

The noble Lord, Lord Bethell, introduced his amendment in a very measured way. My noble friend Lady Benjamin really regrets that she cannot be here, but she strongly supports it. I will quote her without taking her speech entirely on board, as we have been admonished for that previously. She would have said that

"credit card companies have claimed ignorance using the excuse of how could they be expected to know they are supporting porn if they were not responsible for maintaining porn websites … This is simply not acceptable".

Noble Lords must forgive me—I could not possibly have delivered that in the way that my noble friend would have done. However, I very much took on board what the noble Lord said about how this makes breaches transparent to the credit card companies. It is a right to be informed, not an enforcement power. The noble Lord described it as a simple and proportionate measure, which I think is fair. I would very much like to hear from the Minister why, given the importance of credit card companies in the provision of pornographic content, this is not acceptable to the Government.

The second part of this group is all about effective enforcement, which the noble Lord, Lord Bethell, spoke to as well. This is quite technical; it is really important that these issues have been raised, in particular by the noble Lord. The question is whether Ofcom has the appropriate enforcement powers. I was very taken by the phrase

"pre-empt a possible legal challenge",

as it is quite helpful to get your retaliation in first. Underlying all this is that we need to know what advice the Minister and Ofcom are getting about the enforcement powers and so on.

I am slightly more sceptical about the amendments from the noble Lord, Lord Curry. I am all in favour of the need for speed in enforcement, particularly having argued for it in competition cases, where getting ex-ante powers is always a good idea—the faster one can move, the better. However, restricting the discretion of Ofcom in those circumstances seems to me a bit over the top. Many of us have expressed our confidence in Ofcom as we have gone through the Bill. We may come back to this in future; none of us thinks the Bill will necessarily be the perfect instrument, and it may prove that we do not have a sufficiently muscular regulator. I entirely respect the noble Lord's track record and experience in regulation, but Ofcom has so far given us confidence that it will be a muscular regulator.

I turn now to the third part of the group. I was interested in the context in which my noble friend placed enforcement; it is really important and supported by the noble Baroness, Lady Morgan. It is interesting what questions have been asked about the full extent of the Government's ambitions in this respect: are VPNs going to be subject to these kinds of notices? I would hope so; if VPNs are really the gateway to some of the unacceptable harms that we are trying to prevent, we should know about that. We should be very cognisant of the kind of possible culture being adopted by some of the social media and regulated services, and we should tailor our response accordingly. I will be interested to hear what the Government have to say on that.

Baroness Merron (Lab): My Lords, I am grateful to the noble Lords, Lord Bethell, Lord Curry and Lord Allan for introducing their amendments, to the noble Baroness, Lady Morgan, for her direct question, and to the noble Baroness, Lady Kidron, for her equally direct question. I am sure they will be of great assistance to the Minister when he replies. I will highlight the words of the noble Lord, Lord Allan, who said "We are looking for services to succeed". I think that is right, but what is success? It includes compliance and enforcement, and that is what this group refers to.

[Baroness Merron]

The amendments introduced by the noble Lord, Lord Bethell, seek to strengthen what is already in the Bill about Ofcom's Chapter 6 powers of enforcement, otherwise known as business disruption powers, and they focus on what happens in the event of a breach; they seek to be more prescriptive than what we already have. I am sure the Minister will remember that the same issue came up in the Digital Economy Bill, around the suggestion that the Government should take specific powers. There, the Government argued they had assurances from credit card companies that, if and when action was required, they would co-operate. In light of that previous discussion, it will be interesting to hear what the Minister has to say.

In respect of the amendments introduced by the noble Lord, Lord Curry, on the need to toughen up requirements on Ofcom to act, I am sure the Minister will say that these powers are not required and that the Bill already makes provision for Ofcom blocking services which are failing in their duties. I echo the concern of the noble Lord, Lord Clement-Jones, about being overly prescriptive and not allowing Ofcom to do its job. The truth is that Ofcom may need discretion but it also needs teeth, and I will be interested to hear what the Minister has to say about whether he feels, in the light of the debate today and other conversations, that there is sufficient toughness in the Bill and that Ofcom will be able to do the job it is required to do. There is an issue of the balance of discretion versus requirement, and I know he will refer to this. I will also be interested to hear from the Minister about the view of Ofcom with respect to what is in the Bill, and whether it feels that it has sufficient powers.

I will raise a final point about the amendments in the name of the noble Lord, Lord Curry. I think they ask a valid question about the level of discretion that Ofcom will have. I ask the Minister this: if, a few years down the line, we find that Ofcom has not used the powers suitably, despite clear failures, what would the Government seek to do? With that, I look forward to hearing from the Minister.

Lord Parkinson of Whitley Bay (Con): My Lords, where necessary, the regulator will be able to apply to the courts for business disruption measures. These are court orders which will require third-party ancillary services and access facilities to withdraw their services from, or impede users' access to, non-compliant regulated services. These are strong, flexible powers which will ensure that Ofcom can take robust action to protect users. At the same time, we have ensured that due process is followed. An application for a court order will have to specify the non-compliant provider, the grounds and evidence on which the application is based and the steps that third parties must take to withdraw services or block users' access. Courts will consider whether business disruption measures are an appropriate way of preventing harm to users and, if an order is granted, ensure it is proportionate to the risk of harm. The court will also consider the interests of all relevant parties, which may include factors such as contractual terms, technical feasibility and the costs of the measures. These powers will ensure that services can be held to account for failure to comply with their duties under the Bill, while ensuring that Ofcom's approach to enforcement is proportionate and upholds due process.

2 pm

The proposed new clause in my noble friend Lord Bethell's Amendment 217 appears to draw on provisions made in Part 3 of the Digital Economy Act 2017 for the age-verification regulator to notify payment service and ancillary service providers of non-compliant services. The noble Lord, Lord Clement-Jones, is right to point to the absence of the noble Baroness, Lady Benjamin; she is unavoidably absent today because of the Windrush Day commemorations, and I know she would have made her points in a similar but perhaps different style from her noble friend.

I am pleased to reassure her and my noble friend Lord Bethell that the enforcement powers in the Bill are stronger than those in the Digital Economy Act. Ofcom will be able to apply to the courts to require ancillary services and access facilities to withdraw their services from, or block users' access to, non-compliant regulated services, rather than rely on the voluntary action of third parties as under the Digital Economy Act. Furthermore, Ofcom can publish the details of enforcement action and must publish details related to confirmation decisions and penalty notices. Ofcom can also require that the provider publish details of its enforcement action, or otherwise notify users of that action, or both. This will provide greater transparency to third parties and users about whether a service has been found to be non-compliant. Ofcom cannot require providers to publish provisional notices of contravention. The provider has the right to make representations to Ofcom before it issues a confirmation decision.

The amendments from the noble Lord, Lord Curry of Kirkharle, mandate that Ofcom must seek business disruption court orders in specific circumstances of non-compliance or breach. I want to reassure your Lordships that we have provided Ofcom with a robust range of enforcement powers to use against companies that fail to fulfil their duties, including in the circumstances described in the noble Lord's amendments. Ofcom will be able to use those powers and sanctions according to what it deems to be the most effective way forward in each case, including issuing enforcement decisions that direct companies to take specific steps to come into compliance or remedy a breach, issuing fines of up to £18 million or 10% of global qualifying revenue—whichever is higher—and applying to the courts for business disruption measures. Ofcom will determine the most effective, proportionate and fair intervention on a case-by-case basis.

The circumstances in which business disruption measures can be sought are set out in Clauses 131 to 135—for example, where a regulated provider has failed to comply with any enforceable requirement, that failure is continuing and the provider has not complied with Ofcom's confirmation decision, or where the risk of harm warrants an application. This provides both services and the regulator with clarity about when these measures could be used. The Government are confident that Ofcom will apply to the courts for business disruption measures where necessary and

proportionate, but it is important that it remains for the independent regulator to determine when to use these powers.

Introducing mandatory requirements would undermine Ofcom's independence and discretion to manage enforcement on a case-by-case basis. This would also frustrate Ofcom's ability to regulate in a proportionate way and could make its enforcement processes unnecessarily punitive or inflexible. It could also overwhelm the courts if Ofcom is strictly forced to apply for business disruption measures where any grounds apply, even where the breach may be minor. Instead, Ofcom will act proportionately in performing its regulatory functions, targeting action where it is needed and adjusting timeframes as necessary. I am mindful that on the final day in Committee, the noble Lord, Lord Grade of Yarmouth, continues to be in his place, following the Committee's deliberations very closely on behalf of the regulator.

Lord Allan of Hallam (LD): I am reminded by my noble friend Lord Foster of Bath, particularly relating to the gambling sector, that some of these issues may run across various regulators that are all seeking business disruption. He reminded me that if you type into a search engine, which would be regulated and subject to business disruption measures here, "Casinos not regulated by GAMSTOP", you will get a bunch of people who are evading GAMSTOP's regulation. Noble Lords can imagine similar for financial services—something that I know the noble Baroness, Lady Morgan of Cotes, is also very interested in. It may not be for answer now, but I would be interested to understand what thinking the Government have on how all the different business disruption regimes—financial, gambling, Ofcom-regulated search services, et cetera—will all mesh together. They could all come before the courts under slightly different legal regimes.

Lord Parkinson of Whitley Bay (Con): When I saw the noble Lord, Lord Foster of Bath, and the noble Baroness, Lady Armstrong of Hill Top, in their places, I wondered whether they were intending to raise these points. I will certainly take on board what the noble Lord says and, if there is further information I can furnish your Lordships with, I certainly will.

The noble Baroness, Lady Kidron, asked whether the powers can be used on out-of-scope services. "No" is the direct answer to her direct question. The powers can be used only in relation to regulated services, but if sites not regulated by the Bill are publishing illegal content, existing law enforcement powers—such as those frequently deployed in cases of copyright infringement—can be used. I could set out a bit more in writing if that would be helpful.

My noble friend Lord Bethell's amendments seek to set out in the Bill that Ofcom will be able to make a single application to the courts for an order enabling business disruption measures that apply against multiple platforms and operators. I must repeat, as he anticipated, the point made by my right honourable friend Chris Philp that the civil procedure rules allow for a multi-party claim to be made. These rules permit any number of claimants or defendants and any number of claims to be covered by one claim form. The overriding objective of the civil procedure rules is that cases are dealt with justly and proportionately. I want to reassure my noble friend that the Government are confident that the civil procedure rules will provide the necessary flexibility to ensure that services can be blocked or restricted.

The amendment in the name of the noble Lord, Lord Allan of Hallam, seeks to clarify what services might be subject to access restriction orders by removing the two examples provided in the Bill: internet access services and application stores. I would like to reassure him that these are simply indicative examples, highlighting two kinds of service on which access restriction requirements may be imposed. It is not an exhaustive list. Orders could be imposed on any services that meet the definition—that is, a person who provides a facility that is able to withdraw, adapt or manipulate it in such a way as to impede access to the regulated service in question. This provides Ofcom with the flexibility to identify where business disruption measures should be targeted, and it future-proofs the Bill by ensuring that the power remains functional and effective as technologies develop.

As the noble Lord highlighted, these are significant powers that can require that services be blocked in the UK. Clearly, limiting access to services in this way substantially affects the business interests of the service in question and the interests of the relevant third-party service, and it could affect users' freedom of expression. It is therefore essential that appropriate safeguards are included and that due process is followed. That is why Ofcom will be required to seek a court order to be able to use these powers, ensuring that the courts have proper oversight.

To ensure that due process is upheld, an application by the regulator for a court order will have to specify the non-compliant provider, the grounds of the order and the steps that Ofcom considers should be imposed on the third parties in order to withdraw services and block users' access. These requirements will ensure that the need to act quickly to tackle harm is appropriately balanced against upholding fundamental rights.

It might be useful to say a little about how blocking works—

Lord Clement-Jones (LD): Before the Minister does that, can he say whether he envisages that operating against VPNs as well?

Lord Parkinson of Whitley Bay (Con): If I may, I will take advice on that and write to the noble Lord.

Lord Clement-Jones (LD): That would be useful.

Lord Parkinson of Whitley Bay (Con): Yes; he made a helpful point, and I will come back on it.

Lord Allan of Hallam (LD): We share a common interest in understanding whether it would be used against VPNs, but we may not necessarily have the same view about whether it should be. Do not take that as an encouragement—take it as a request for information.

Lord Parkinson of Whitley Bay (Con): I thank the noble Lord.

The term "blocking" is used to describe measures that will significantly impede or restrict access to non-compliant services—for example, internet service providers blocking websites or app stores blocking certain applications. These measures will be used only in exceptional circumstances, where the service has committed serious failures in meeting its duties and where no other action would reasonably prevent online harm to users in the UK.

My noble friend Lord Bethell's Amendments 218F and 218L seek to ensure that Ofcom can request that an interim service or access restriction order endures for a period of six months in cases where a service hosts pornographic content. I reassure him that the court will already be able to make an order which can last up to six months. Indeed, the court's interim order can have effect until either the date on which the court makes a service or access restriction order, or an expiry date specified by the court in the order. It is important that sanctions be determined on a case-by-case basis, which is why no limitations are set for these measures in the Bill.

As my noble friend knows, in the Bill there are clear duties on providers to ensure that children are not able to access pornography, which Ofcom will have a robust set of powers to enforce. It is important, however, that Ofcom's powers and its approach to enforcement apply equally and consistently across the range of harms in scope of the Bill, rather than singling out one form of content in particular.

I hope that that is useful to noble Lords, along with the commitment to write on the further points which were raised. With that, I urge my noble friend to withdraw his amendment.

Lord Bethell (Con): My Lords, to be honest, this debate has been an incredible relief to me. Here we have been taking a step away from some of the high-level conversations we had about what we mean by the internet and safety, looking at the far horizon, and instead looking at the moment when the Bill has real traction to try to change behaviours and improve the environment of the internet. I am extremely grateful to the Minister for his fulsome reply on a number of the issues.

The reason why it is so important is the two big areas where enforcement and compliance are going to be really tricky. First, there is Ofcom's new relationship with the really big behemoths of the internet. It has a long tradition of partnership with big companies such as ITV, the radio sector—with the licensed authorities. However, of course it has licences, and it can pull them. I have worked for some of those companies, and it is quite a thing to go to see your regulator when you know that it can pull your licence. Obviously, that is within legal reason, but at the end of the day it owns your licence, and that is different to having a conversation where it does not.

The second class is the Wild West: the people living in open breach of regular societal norms who care not for the intentions of either the regulator, the Government or even mainstream society. Bringing those people back into reasonable behaviour will be a hell of a thing. My noble friend Lord Grade spoke, reasonably but with a degree of trepidation, about the challenge faced by Ofcom there. I am extremely grateful to the Minister for addressing those points.

Ofcom will step up to having a place next to the FCA and the MHRA. The noble Lord, Lord Curry, spoke about some of the qualities needed of one of the big three regulators. Having had some ministerial oversight of the MHRA, I can tell your Lordships that it has absolutely no hesitation about tackling big pharmaceutical companies and is very quick, decisive and clear. It wields a big stick—or, to use the phrase of the noble Baroness, Lady Merron, big teeth—in order to conduct that. That is why I ask the Minister just to keep in mind some of the recommendations embedded in these amendments.

The noble Baroness, Lady Kidron, mentioned illegal content, and I appreciate the candour of the Minister's reply. However, business disruption measures offer an opportunity to address the challenge of illegal content, which is something that I know the Secretary of State has spoken about very interestingly, in terms of perhaps commissioning some kind of review. If such a thing were to happen, I ask that business disruption measures and some way of employing them might be brought into that.

We should look again at enforcement and compliance. I appreciate the Minister saying that it is important to let the regulator make some of these decisions, but the noble Lord, Lord Allan, was right: the regulator needs to know what the Government's intentions are. I feel that we have opened the book on this, but there is still a lot more to be said about where the Government see the impact of regulation and compliance ending up. In all the battles in other jurisdictions—France, Germany, the EU, Canada, Louisiana and Utah—it all comes down to enforcement and compliance. We need to know more of what the Government hope to achieve in that area. With that, I beg leave to withdraw my amendment.

Amendment 217 withdrawn.

2.15 pm

Clause 119: Requirements enforceable by OFCOM against providers of regulated services

Amendments 217A and 218 not moved.

Clause 119 agreed.

Clause 120: Confirmation decisions

Amendments 218ZZA to 218ZB not moved.

Clause 120 agreed.

Clauses 121 and 122 agreed.

Clause 123: Confirmation decisions: children's access assessments

Amendment 218ZC not moved.

Clause 123 agreed.

Clause 124 agreed.

Clause 125: Confirmation decisions: penalties

Amendment 218ZD not moved.

Clause 125 agreed.

Amendment 218A

Moved by ***Lord Parkinson of Whitley Bay***

218A: After Clause 125, insert the following new Clause—

"Confirmation decisions: offence

(1) A person to whom a confirmation decision is given commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed by the decision which—

(a) is of a kind described in section 121(1), and

(b) relates (whether or not exclusively) to a children's online safety duty.

(2) A "children's online safety duty" means a duty set out in—

(a) section 11(3)(a),

(b) section 11(3)(b),

(c) section 72(2), or

(d) section 72(3).

(3) A person who commits an offence under this section is liable—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);

(b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);

(c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);

(d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both)."

Member's explanatory statement

This amendment creates a new offence of failure to comply with requirements of a confirmation decision that relate to specified duties to protect children's online safety.

Amendment 218A agreed.

Amendment 218B not moved.

Clause 126: Penalty for failure to comply with confirmation decision

Amendments 218BA and 218BB not moved.

Clause 126 agreed.

Clauses 127 and 128 agreed.

Clause 129: Information to be included in notices under sections 127 and 128

Amendment 218BC not moved.

Clause 129 agreed.

Clause 130 agreed.

Schedule 13 agreed.

Clause 131: Service restriction orders

Amendments 218C and 218D not moved.

Clause 131 agreed.

Clause 132: Interim service restriction orders

Amendments 218E to 218G not moved.

Clause 132 agreed.

Clause 133: Access restriction orders

Amendments 218H to 218JA not moved.

Clause 133 agreed.

Clause 134: Interim access restriction orders

Amendments 218K to 218M not moved.

Clause 134 agreed.

Clause 135 agreed.

Amendment 219 not moved.

Clauses 136 and 137 agreed.

Amendment 220 not moved.

Clause 138: OFCOM's guidance about enforcement action

Amendments 220A to 220C not moved.

Clause 138 agreed.

Amendments 220D and 220E not moved.

Clause 139: Advisory committee on disinformation and misinformation

Amendments 221 to 224 not moved.

Clause 139 agreed.

Amendment 225 not moved.

Clause 140 agreed.

Clause 141: Research about users' experiences of regulated services

Amendment 225A not moved.

Clause 141 agreed.

Clause 142 agreed.

Amendment 226 not moved.

Clause 143 agreed.

Clause 144: OFCOM's reports about news publisher content and journalistic content

Amendment 227 not moved.

Clause 144 agreed.

Clause 145: OFCOM's transparency reports

Amendment 228 not moved.

Clause 145 agreed.

Amendment 229 not moved.

House resumed. Committee to begin again not before 3.04 pm.

Cost of Living Support

Statement

The following Statement was made in the House of Commons on Tuesday 20 June.

"With permission, Mr Speaker, I will make a Statement on the progress of delivery of cost of living support.

The Government understand the pressures that households face in the current climate. We are all familiar with the global factors that are the root causes of costs being higher, including President Putin's illegal war in Ukraine and the aftermath of the pandemic. We are committed to delivering on our priority to halve inflation, which will help ease those pressures for everyone and raise living standards.

Alongside that important work, we continue to implement our wide-ranging and significant package of cost of living measures to support the most vulnerable during 2023 and 2024. We have increased benefits and state pensions by 10.1% and increased the benefit cap by the same amount so that more people are helped by the uprating. For low-paid workers, we have increased the national living wage by 9.7% to £10.42 an hour. That represents an increase of more than £1,600 in the gross annual earnings of a full-time worker on the national living wage. That increase, and the increases we made to the national minimum wage in April, have given a pay rise to about 2.9 million workers.

To help parents, we are undertaking a significant expansion of childcare, including a rise, later this month, of nearly 50% in the maximum amount of childcare payments for people on universal credit. For the most vulnerable, the £842 million extension of our household support fund into 2023-24 means that councils across England can continue to help families with the cost of groceries, bills and other essentials. Taking into account the extra money that we have provided through Barnett funding for Scotland, Wales and Northern Ireland, who can decide how they allocate that money, we have committed an extra £1 billion. That is on top of what we have provided since October 2021 and brings total funding to £2.5 billion.

With energy bills being one of families' biggest worries, the energy price guarantee will also remain in place as a safety net until the end of March 2024, should energy prices increase significantly during that period. Since that energy bills support began in October 2022, the Government have covered about half of a typical household energy bill this past winter, and by the end of June will have saved a typical household around £1,500. We are also building on and extending the one-off cash payments we provided during 2022-23 that saw us make more than 30 million cost of living payments, including a £150 disability cost of living payment to 6 million people, up to £650 for more than 8 million households on means-tested benefits, and an additional £300 on top of the winter fuel payment for more than 8 million pensioner households. Those payments put hundreds of pounds directly, and at pace, into the pockets of millions of people.

However, we recognise that cost of living pressures continue, particularly for the most vulnerable households. That is why we continue to provide targeted support to help those most impacted by rising prices throughout this financial year, including more support for people on means-tested benefits such as universal credit, with up to three cost of living payments totalling up to £900. The Government have already delivered the first £301 payment to 8.3 million households—support worth £2.5 billion. The two further payments of £300 and £299 will be made in the autumn and the spring, and pensioner households will get an additional £300 on top of their annual winter fuel payment this winter, as they did last year.

I am pleased to be able to confirm to the House that from today, to help with the additional costs that disabled people face, more than 6 million people across the UK on eligible extra-costs disability benefits will start to receive a £150 disability cost of living payment. Those cash payments, which we estimate will be worth around £1 billion, will be automatically transferred into people's bank accounts, with those eligible for the support not needing to take any action. By the end of Monday 26 June, we plan to have made 99% of payments to those already eligible—that is millions of payments being made in just seven days. Most remaining already eligible people will receive their payment by 4 July. We estimate that nearly 60% of individuals who receive an extra-costs disability benefit will also receive the means-tested benefit cost of living payment, and more than 85% will receive either of, or both, the means-tested pensioner payments.

This Government will always protect the most vulnerable, but we are also helping to improve living standards for everyone by getting more people into, and progressing in, better-paid jobs. That is the surest and most sustainable way to raise incomes and grow the economy. The number of people in employment has increased to a record high, but by removing the

barriers that stop people from working, we are reducing the number of people who are economically inactive—those who are neither working nor actively looking for work. It is encouraging that last week's labour market statistics show a further fall in inactivity of 140,000, or 0.4%, on the quarter.

We are tackling inflation to help to manage the cost of living for all households and providing extra targeted support for those that need it. The disability cost of living payments, landing in millions of bank accounts from today as part of our wider support package, underline our commitment to supporting disabled people. That is reflected in how we are stepping up our employment support for disabled people and people with health conditions; ensuring people can access the right support at the right time and have a better overall experience when applying for and receiving health and disability benefits; and transforming the health and disability benefits system so that it focuses on what people can do, rather than on what they cannot. It is also reflected in the fact that we expect to spend over £78 billion in 2023-24 on benefits to support disabled people and those with health conditions, which is 3.1% of GDP.

With the Government's significant package of cost of living support, worth over £94 billion in 2022-23 and 2023-24, we are ensuring that those most in need are protected from the worst impacts of rising prices, putting more pounds in people's pockets and providing some peace of mind to the most vulnerable in society."

2.24 pm

Baroness Sherlock (Lab): My Lords, I read the Written Ministerial Statement on cost of living support with interest. It runs to well over 1,000 words. I regret that most of them are devoted to repeating things that have been announced and implemented in previous months and, in some cases, years. Just 157 words describe anything new, or rather the implementation of something that was announced last autumn, namely that from this week payments of an additional £150 to disabled people to help with the rising cost of living will start to be made.

While any help is welcome for those who are struggling, we must be clear-sighted about the scale and source of the problem that people are facing. This leads us to two questions. How bad is the cost of living problem? Are the Government doing the right things to help people in it? The Government know that the cost of living is a problem. In the Statement, they acknowledge that inflation and interest rates are very high but say that it is a global problem caused by Covid and the war in Ukraine—which is interesting. CPI inflation in the UK is now 8.7%. In Germany, inflation is 6.3%. In France, it is 6%. In the USA, it is 2.7%. Yet all those countries had Covid, and all are affected by the war in Ukraine. In brackets, we should note that this is the week when UK Government debt rose above 100% of GDP for the first time since 1961.

The UK now has stubbornly high inflation, which is not associated with economic growth. Its effect is that the cost of essentials is skyrocketing. Food price inflation was still at 18.4% in the year to May. That is an eye-watering pressure on family budgets, and there is no sign that it will fall sharply any time soon. This is a challenge for most families. How much harder is it for disabled households, who must spend more on almost every aspect of everyday life—food, medicines, clothing, energy and travel? We have all heard reports of disabled people cutting back on spending on food and other basics, simply so that they can afford transport or to run essential equipment. Has the Minister seen the analysis done by Scope? It estimates that, on average, disabled households—households with at least one disabled adult or child—now need an additional £1,122 a month to have the same standard of living as non-disabled households. Do the Government agree with that analysis? If not, what assessment has the Minister's department done of the extra amount that disabled people need, and what was the basis for choosing that figure of £150 as a one-off payment?

We are now seeing the effects of this inflation crisis firmly working their way into interest rates. IFS analysis said that just the latest shifts in mortgage markets will push up mortgage payments by an average of £280 a month. That is over 8% of disposable income. It said for almost 1.5 million people, half of them under the age of 40, will find their mortgage payments jumping by at least 20% of their disposable income. How are people supposed to manage this? They are simply too squeezed already.

Disabled people and their families will be facing a housing crisis as well as a cost of living crisis in general. Labour has set out a plan to tackle mortgagers' problems and stop people losing their homes. It includes ensuring that all borrowers can lengthen their mortgage term or switch to interest-only mortgage payments for a period. It also requires lenders to wait for at least six months before initiating repossession proceedings. Labour would also bring in additional protections for renters What plans do the Government have to help people manage this crisis?

The cost of living crisis has not gone away. Work by the Joseph Rowntree Foundation has shown that the high levels of hardship have barely moved over the last 12 months. They are in danger of being baked in and becoming a new normal. What else can the Minister tell us—and crucially, the people of this country—to put our minds at rest? I look forward to his reply.

Lord Palmer of Childs Hill (LD): My Lords, I thank the Government for the Statement and thank the noble Baroness, Lady Sherlock, for covering so much ground that I too would like to cover to some degree.

The Statement is the Government patting themselves on the back, but what is the reality? I too will concentrate to some degree on people with disabilities. Research has found that people with disabilities had an available amount to spend that was 44% lower than that of other working-age adults, exposing them hugely to the rising cost of essentials. The research said that there was a chasm between the underlying disposable incomes of people with a disability, which it fixed at £19,397 per annum, and the non-disabled population's disposable income per annum, which it fixed at £27,792. This was according to the analysis of official figures and a YouGov survey of just under 8,000 working-age adults, more than 2,000 of whom reported a long-term illness or disability.

[Lord Palmer of Childs Hill]

The announcement of the £150 cost-of-living payment for people on disability benefits, which the noble Baroness, Lady Sherlock, referred to, is, quite honestly, a slap in the face for many. The payment is conspicuously lower than those made for pensioners or people on the lowest incomes. Can the Minister explain why disabled people deserve less help than other disadvantaged groups, especially as they will feel the effects of this crisis particularly acutely?

The noble Baroness spoke about Scope's *Disability Price Tag* report, which states:

"On average, disabled households … need an additional £975 a month to have the same standard of living as non-disabled households."

The extra payment of £150 does not cover even a week of additional costs. Does the Minister recognise these figures, and what will he do to narrow the gap?

With the increase in energy prices, almost half of people with disabilities cannot afford to keep their homes warm. But do not think that non-disabled people are managing: they, too, are not. Support is listed in the Statement—we of course welcome support, whatever it is—for those on universal credit and the like: they have received £301 and will get £300 and £299, to be paid in the autumn and the spring. How do the Government see these beneficences being spent? Are there details of what people will not be able to afford out of this £301, £300 and £299?

The basic fault with the Statement is that it says that the package will support the most vulnerable during 2023-24. Sadly, "the most vulnerable" now applies, in some situations, to individuals and families in work. Has the Minister any light at the end of the tunnel for those with rate increases who were not able to repay their mortgages, and those renting who are facing massive rent increases? Do the Government have any figures on the increased use of food banks, and on the demographic of the current users of these facilities? Do they have current statistics on the number of families with less than £100 in savings? Many people in this House do not realise how many people in this country have less than £100 in savings and are thus vulnerable in the present climate.

It is hard to think of any solutions at this stage, but the noble Baroness gave some indications of Labour proposals. The Liberal Democrats call for an emergency mortgage protection fund to protect families falling into arrears or facing repossession as a result of soaring interest rates, paid for by reversing the Government's tax cuts for banks. The top fund will be targeted at homeowners on the lowest incomes and those seeing the sharpest rise in mortgage rates. It would be a temporary scheme to tackle the current problem of soaring mortgage rates. It could be introduced for one year to begin with, and the Government would have to review the need for it the following year. There is an absolute need: people are struggling with their mortgage payments and will be thrown out of their homes, whether they own or rent them.

In its simplicity, this Statement is welcome, but it does not go anywhere near far enough.

Viscount Younger of Leckie (Con): My Lords, I thank the noble Baroness, Lady Sherlock, and the noble Lord, Lord Palmer, for their comments and questions. I will start by addressing a point the noble Baroness made. We wanted to use this opportunity to explain the help we have already given and are continuing to give to those who are definitely suffering as a result of the problems in the economy at the moment; "problems" is an understatement, and I am the first to say that. We wanted to make it clear that it is not just about the £150, which was the gist of the Statement; the Government are providing total support of more than £94 billion during 2022-23 and 2023-24 to help households and individuals with the rising cost of living.

Cost-of-living payments are only one part of the overall support. We want to get that message across if we have not done so already. It includes support for energy costs, which was alluded to by the noble Lord, Lord Palmer, and the extension of the household support fund in England, which helps with rents, which again were raised by the noble Lord. In 2023-24 we increased benefits, state pensions and the benefit cap by 10.1% and made further increases to the national living wage.

I want to say quite a bit more because one of the issues to raise, which is obviously very topical at the moment, is mortgages and inflation. I reassure the House that tomorrow, the Chancellor will meet with principal mortgage lenders to ensure that they are living up to their responsibilities to their customers, and to ask what help they can give to people who are struggling—I do realise that they are struggling—to pay more expensive mortgages and what flexibilities may be possible for families in arrears. Of course, I am aware of the announcement today.

We have a clear target to halve inflation this year and to support the Bank of England as it returns it to the 2% target. I remind the House that the IMF forecasts that inflation will reduce substantially to around 5% by the end of the year, which would be a large fall from the highs we saw last year. I remind the House that in March, the OBR forecast that inflation would be 2.9% by the end of the year, and that the last Bank of England forecast, which was in May, was for inflation to go down to 5.1% by the end of the year. However, we are not complacent. This is a serious time, as everyone has been saying. We remain focused on our very important ambition, which is to drive inflation down while providing a cost-of-living package worth about £3,300 per household on average over this year and last. The IMF has already noted the "decisive and responsible steps" that we have taken, and we will continue to take such steps to deliver on this priority.

The noble Baroness, Lady Sherlock, asked about other countries. I have already made the point that we are on track to halve inflation and continue to support the Bank in delivering the 2% target. We believe that inflation is on a downward trajectory, although I understand that it is stubborn. Even though the reduction is quite small, it is in part thanks to our action to hold down energy bills and freeze alcohol and fuel duty, which is having a direct impact on driving down inflation.

The noble Baroness, Lady Sherlock, and the noble Lord, Lord Palmer, asked about Scope. I am very aware of the report. They have been many studies estimating the cost of disability, including this latest Scope report and previous ones from Scope and other organisations. The common feature of these reports is that their findings vary due to the definitions of disability and methodology being used. Our view is that there is no objective way of deciding what an adequate level of benefits should be, as everyone has different requirements. Beneficiaries are free to spend their benefits as they see fit, and in the light of their individual commitments, needs and preferences.

The noble Baroness, Lady Sherlock, focused on the disabled and support for them, and she made some very important points. I hope she knows that we will be spending around £78.6 billion in 2023-24 on benefits to support disabled people and people with health conditions, which is around 3.1% of GDP. The Government are providing a further disability cost-of-living payment of £150, which is part of the gist of the Statement. The majority of these payments will be made to eligible claimants this week. Indeed, many have been made already.

The noble Lord, Lord Palmer, focused on fuel poverty. I make the point, which he would expect me to make, that advanced economies around the world share the challenge of high inflation arising from the energy shock, and the UK has been affected by those global factors. The energy price guarantee, as he will know, was extended at the same level for an additional three months, to the end of June 2023, and it will remain in place as a safety net until the end of March 2024. There are some signs that energy costs are reducing, but again, we are not complacent.

The noble Lord, Lord Palmer, asked a focused question about the use of food banks. He will know that we have some recent data from the latest Family Resources Survey. The Government are using that data to better inform them about the use of food banks. We are well aware that food banks are being used as never before—we are very aware of that.

The noble Lord, Lord Palmer, makes a very good point about repossessions. At the moment, although we are not complacent, repossessions remain at a lower rate than before the pandemic. We are not complacent because of course we see the pressures around.

2.40 pm

Lord Young of Cookham (Con): My Lords, unlike others, I find much to welcome in the Statement, not least the increase in the maximum payments of 50% to those on universal credit for childcare, which will help them find work. However, is my noble friend confident that the childcare market will be able to respond to the increased demand that is likely to result from this increased beneficence from the department?

Viscount Younger of Leckie (Con): My noble friend makes a good point about childcare, and the House will be aware of the announcements that were made recently. We are determined to support as many families as possible with access to high-quality affordable childcare, which is why the Spring Budget announced these significant new investments to expand free early education entitlements from 2024-25, together with uplifts in 2023-24 and 2024-25 for the existing entitlement offers.

On his specific question about demand versus supply, that is a very good point. We are confident that supply will meet demand, but we are also aware—certainly I am aware of some anecdotal evidence—that demand is going up, and we want to be sure that demand meets supply. Although I do not have any figures, I reassure my noble friend that we are aware of this particular matter.

The Lord Bishop of St Edmundsbury and Ipswich: My Lords, we recognise the value of the immediate and urgent provision that is being suggested and those points being argued for. However, in the light of our experience of the deepening crisis, I wonder whether, because of the interlocking nature of so many factors, now is the time to be looking at a comprehensive anti-poverty strategy.

Viscount Younger of Leckie (Con): We have already taken a number of initiatives, which the right reverend Prelate will be aware of, to look at poverty. As I say, this is a particularly difficult time. Although I cannot comment on a particular poverty strategy, the important point is that we have a number of initiatives across government to address specific aspects of poverty. That includes families and children, and of course it includes those who are homeless, who we are very aware of, as well as the increasing homelessness issue.

Baroness Hollins (CB): My Lords, at the same time as the cost of living crisis, local authorities' social care budgets are under pressure. I have heard from some disabled people who have a personal budget that they are being asked to make an increased contribution, thus significantly reducing their direct payments. I do not think the proposed new payment will eliminate even those increased contributions, let alone really help with the cost of living situation.

Viscount Younger of Leckie (Con): As I said earlier, the £150 should be taken at face value, and I think I made the point that there are a number of other initiatives to help those who are disabled. It is important, as the Minister in the other place said on Tuesday, to look at the total package, including the £150, that we have in place to help those who are disabled.

Baroness Armstrong of Hill Top (Lab): My Lords, I thank the Minister for repeating the Statement. However, neither his remarks this morning nor the Statement acknowledge the real size of the problem that we now have. I am almost sorry for him that so many things have happened since the Statement was first made on Tuesday, one of which was yesterday's Joseph Rowntree Foundation report showing that 5.5 million people in lower-income households did not have food last year—they skipped meals and had poor meals, which of course affects their health—while 4.5 million lower-income households are now in debt, many of them to people who will then demand very high rates of interest and so on. They cannot get credit in the way that he and I could get it, at lower interest

[Baroness Armstrong of Hill Top]
rates—although all the interest rates are going up now. These are really scary numbers, and the JRF has shown that this is now embedded across our society.

I talked this morning for an hour and a half with organisations in the north-east that are working with the most vulnerable families. I came off that call really scared about the future, because of the numbers involved. Does the Minister understand that this is far more serious than the way we have paid attention to it so far suggests? We really need a serious, overarching strategy to tackle poverty and improve public services, so that the most at risk get the best and the most help, which they cannot get at the moment.

Viscount Younger of Leckie (Con): I hope the House will recognise that I am certainly not playing down the seriousness of the position at the moment. I am very aware, as the House is, of the further interest rate rise today. The Government absolutely recognise the pressures that people are facing and have acted, providing total support of over £94 billion, which I mentioned earlier, over 2022-23 and 2023-24. I have already mentioned the uprating, which I will not go over again, and that we will be making further cost of living payments totalling £900.

However, there is more to say, given the noble Baroness's question. I have already mentioned that the Chancellor is meeting mortgage lenders tomorrow to see what more can be done, but he has already met the Competition and Markets Authority, to be sure that there is fair competition between the supermarkets so that we make sure that food prices come down. As we are all aware, food inflation is still far too high. It was 19% last month; it has now nudged down a bit but it is still far too high. That is really important, particularly for those who are the most vulnerable. I reassure the noble Baroness that we really do take this seriously. I think we all know that it is a defining moment.

Lord Bilimoria (CB): My Lords, I remind the Minister that, in February 2021, when I was president of the CBI, I asked Rishi Sunak, when he was Chancellor, if he was worried about inflation, because I was worried about it then. Today, we have the highest inflation in the G7, while the United States of America is already at 4% inflation—less than half our rate. Today, our interest rate is at 5%, the highest in 15 years, and we have the highest level of tax burden in seven decades. Today, we have a debt to GDP ratio of 100%; the last time it was at that level was over six decades ago. Does the Minister acknowledge that two of the Prime Minister's five priorities are growth and halving inflation? Given the situation we are in now, where households are struggling to make rental and mortgage payments, which are increasing as a proportion of their income, is a recession likely? What are the Government's plans to help people deal with their mortgage and rental payments, because there is a crisis looming in front of our eyes?

Viscount Younger of Leckie (Con): I hope I can help the noble Lord. As I have already mentioned, inflation really is one of the Prime Minister's key priorities. He has made it clear, as we have, that reducing inflation is absolutely key. He also speaks about growth, while making it clear that growth comes as a secondary item to inflation. However, it is also important that the economy grows. In previous answers, I have made it clear that we are doing as much as we possibly can to look at what more banks can do to be helpful. One thing which I have not said is that we are working closely with the Bank of England, while making it clear that the Bank is independent in also working as hard as it is in the fight to bring down inflation. It is not just us in the UK; as others have said, there are similar issues in other countries, particularly in Europe. However, I realise that in the UK we still have a lot of work to do.

Baroness Kramer (LD): My Lords, the Minister looks to a negotiation with the banks to provide better terms to mortgage holders who are under pressure. He must surely accept that the banks will offer those terms to those they deem their most attractive customers, not to low-income house owners, who cannot take the required flexibility of interest-only or a long extension to their mortgage's life. That is the group, surely, which needs to be served by an emergency mortgage fund to rescue this situation. Surely he could find the money to support those who will see their mortgages rise by more than 10% of their disposable income and take the money back from the banks, which are seeing bumper profits off the back of rising interest rates.

Viscount Younger of Leckie (Con): I certainly note what the noble Baroness has said. I have mentioned already that the Chancellor is meeting the banks. I do not want to pre-empt the outcome of those discussions. What is important are the initiatives we have taken already to help people. There is support for people who have mortgages. We have increased the generosity and availability of the support for mortgage interest scheme, meaning that those on universal credit can apply for a loan to help cover interest repayments after three months rather than nine and can now receive support while working.

A new Financial Conduct Authority customer duty, coming into effect next month, will ensure that firms put customers first, delivering fair value and ensuring good outcomes for those in financial difficulty. The noble Baroness raises a very important point and I hope that further measures can be produced. We await the outcome of discussions.

Lord Liddle (Lab): My Lords, I have a great deal of personal sympathy for the noble Viscount in having to make this Statement to the House on this of all days. I do not doubt his personal commitment to ensuring fairness and help for the people in the most desperate situations in our society, but I would like him to respond to two observations.

First, the main problem we have, which my noble friend Lady Armstrong referred to, is the number of families who can no longer afford the basics of life. In thinking about policy as it goes forward, we have to think harder about the generational distribution of impacts. I am a wealthy pensioner. I got the generous support for energy bills. Is that right, when families are in such desperate need?

Secondly, Conservative Back-Benchers need to stop talking about the urgent need for tax cuts. The fact is that we face desperate pressures on public services and benefits. We have debt at 100% and there are no proposals coming forward from the Government for credible reductions in public spending. The consequence of tax cuts is that there would be a tension between the monetary policy of the Bank, which is trying to deal with inflation through interest rates, and the fiscal policy. We would be at risk of prolonging high interest rates if we went ahead with irresponsible and unfunded tax cuts.

Viscount Younger of Leckie (Con): I think the noble Lord made three points altogether. I can only reiterate that I am aware of the impact on households, particularly those at the vulnerable end of society. I have already mentioned a number of initiatives and points that are being made outside government, particularly what the supermarkets are doing. At the end of the day, it is the basics that count. That includes, as the noble Lord alluded to, where the next meal is going to come from.

The noble Lord made a good point about the generational aspect, which ought to be in all of our minds. Whatever is happening now, we need to think about the next generation and generations after that, helping children and looking at the educational side and the health aspects of children. Of course, I understand that the current situation does not particularly help.

Finally, on the noble Lord's point about tax cuts, we have made it clear that we on this side wish to make tax cuts but are not in a position to do so. It is important to make the point again that tackling inflation is by far the biggest challenge. Although there are some signs that it will come down—we have the predictions and forecasts—there is a lot more work to do. But that is the most important point, and No. 10 made it as well.

Baroness Thornhill (LD): My Lords, the Minister mentioned homelessness, and the best model currently available for that predicts 300,000 more homeless people over the next year. The group in that category that I believe is most vulnerable is low-income earners in the private rented sector. Of course, evictions in the private rented sector have more than doubled in the last year. As rents have risen, their benefit, based on the local housing allowance, has been frozen at 2018 levels—we all know that a lot has happened since then. So have the Government given any thought to unfreezing the local housing allowance, even if only temporarily?

Viscount Younger of Leckie (Con): We keep it under review, but we are not looking at that at the moment. I understand the point that the noble Baroness makes about the LHA, but she will know that we have the discretionary housing payments, which are currently being delivered through local authorities to the most vulnerable. I reassure the noble Baroness that we keep a close eye on that to be sure, and to get the feedback, that these payments are being given and are helping those at the vulnerable end of society. Echoing the noble Baroness's point, I am very aware that rents are very high—far too high—in the private rented sector, and seeing what more can be done is certainly very high among the Government's priorities.

Baroness Donaghy (Lab): As my noble friend Lord Liddle said, some of us are sympathetic to the noble Viscount's predicament. It cannot be easy when the Bank of England has just announced a 0.5% increase in Bank interest rates. He said seven times—I counted—"We are not complacent", and I know that he is sincere; he is much respected by this House. It would have helped if the Statement from the Government had not been quite so complacent. The reference to "global factors" does not seem to take any account of government responsibility over the last 12 or 13 years. Do the Government take any responsibility whatever for trashing the economy? Did Prime Minister Truss actually exist? If she did not, does that mean that she will not be able to put forward any peerages to this House? It would be interesting to know what precise responsibility the Government take for the current predicament: that our inflation rate is higher than in any other country in the G7, as the noble Lord, Lord Bilimoria, said.

The Minister himself said that 3.1% of GDP is not that high for helping our most vulnerable. Why will the Government not consider uprating some of these benefits to assist them? Even the 10.1% rate for pensioners scales into insignificance when the rate of inflation is 8.7%. It is probably still going up—the Minister said that it was going down, but that is slightly misleading, if he does not mind me saying so. Inflation is going not down but up. I think he is referring to the rate of increase slowing down, which is a very different matter. In view of the urgent situation, will the Government not think of more emergency uprating for some of these benefits?

Viscount Younger of Leckie (Con): There are a number of points from the noble Baroness, who I respect very much, but I will not be drawn into some of the political points that she started off by making. What I will say—and this was in the Statement—is that a lot of what we are facing is to do with the post-pandemic issues that have arisen. As the House will know full well, the war in Ukraine has certainly been quite a factor in that.

I remind the noble Baroness—I think she said it herself—that the uprating of 10.1% we have made to a number of benefits was, we felt, generous. Others would say that we should have done more, but we felt that it was generous at the time. To go back to the beginning of her remarks about the Statement itself, whatever she made of the Statement, as I have said before, we are continuously looking at what more we can do to help those people at this particular time.

3.01 pm

Sitting suspended.

Online Safety Bill

Committee (10th Day) (Continued)

3.04 pm

Clause 146: OFCOM's report about researchers' access to information

Amendment 230

Moved by ***Lord Knight of Weymouth***

230: Clause 146, page 128, line 35, leave out from "publish" to end of line 36 and insert "an interim report within the period of three months beginning with the day on which this section comes into force, and a final report within the period of two years beginning on the day on which the interim report is published."

Member's explanatory statement

This amendment seeks to accelerate the process relating to Ofcom's report on researchers' access to information. Instead of simply requiring a report within two years of Clause 146 being brought into force, this amendment would require an interim report within three months, with a final report to follow two years after that.

Lord Knight of Weymouth (Lab): My Lords, my noble friend Lord Stevenson, who tabled this amendment, unfortunately cannot be with us today as he is off somewhere drinking sherry, I hope.

This is an important set of amendments about researchers' access to data. As I have previously said to the Committee, we need to ensure that Ofcom has the opportunity to be as trusted as possible in doing its job, so that we can give it as much flexibility as we can, and so that it can deal with a rapidly changing environment. As I have also said on more than one occasion, in my mind, that trust is built by the independence of Ofcom from Secretary of State powers; the ongoing and post-legislative scrutiny of Parliament, which is not something that we can deal with in this Bill; and, finally, transparency—and this group of amendments goes to that very important issue.

The lead amendment in this group, Amendment 230 in my noble friend Lord Stevenson's name, seeks to accelerate the process relating to Ofcom's report on researchers' access to information. Instead of simply requiring a report within two years of Clause 146 being brought into force, this amendment would require an interim report within three months with a final report to follow two years later. Although it is the lead amendment in the group, I do not think it is the more significant because, in the end, it does not do much about the fundamental problem that we want to deal with in this group, which is the need to do better than just having a report. We need to ensure that there really is access by independent reporters.

Amendments 233 and 234 are, I think, of more significance. These proposed new clauses would assist independent researchers in accessing information and data from providers of regulated services. Amendment 233 would allow Ofcom itself to appoint researchers to undertake a variety of research. Amendment 234 would require Ofcom to issue a code of practice on researchers' access to data; again, this is important so that the practical and legal difficulties for both researchers and service providers can be overcome though negotiation and consultation by Ofcom. Amendment 233A from the noble Lord, Lord Allan, which I am sure he will speak to in a moment, is helpful in clarifying that no data protection breach would be incurred by allowing the research access.

In many ways, there is not a huge amount more to say. When Melanie Dawes, the head of Ofcom, appeared before the Joint Committee on 1 November 2021—all that time ago—she said that

"tightening up the requirement to work with external researchers would be a good thing in the Bill".

It is therefore a disappointment that, when the Bill was finally published after the Joint Committee's consideration of the draft, there was not something more significant and more weighty than just a report. That is what we are trying to address, particularly now that we see, as an example, that Twitter is charging more than £30,000 a month for researchers' access. That is quite a substantial rate in order for researchers to be able to do their work in respect of that platform. Others are restricting or obscuring some of the information that people want to be able to see.

This is a vital set of measures if this Bill is to be effective. These amendments go a long way towards where we want to get to on this; for the reasons I have set out around ensuring that there is transparency, they are vital. We know from the work of Frances Haugen that the platforms themselves are doing this research. We need that out in the open, we need Ofcom to be able to see it through independent researchers and we need others to be able to see it so that Parliament and others can continue to hold these platforms to account. Given that the Minister is in such a positive mood, I look forward to his positive response.

The Deputy Chairman of Committees (Baroness Barker) (LD): My Lords, I must advise the Committee that if Amendment 230 is agreed to then I cannot call Amendment 231 because of pre-emption.

Lord Allan of Hallam (LD): My Lords, we are reaching the end of our Committee debates, but I am pleased that we have some time to explore these important questions raised by the noble Lord, Lord Knight of Weymouth.

I have an academic friend who studies the internet. When asked to produce definitive answers about how the internet is impacting on politics, he politely suggests that it may be a little too soon to say, as the community is still trying to understand the full impact of television on politics. We are rightly impatient for more immediate answers to questions around how the services regulated by this Bill affect people. For that to happen, we need research to be carried out.

A significant amount of research is already being done within the companies themselves—both more formal research, often done in partnership with academics, and more quick-fix commercial analyses where the companies do their own studies of the data. These studies sometimes see the light of day through publication or quite often through leaks; as the noble Lord, Lord Knight, has referred to, it is not uncommon for employees to decide to put research into the public domain. However, I suggest that this is a very uneven and suboptimal way for us to get to grips with the

impact on services. The public interest lies in there being a much more rigorous and independent body of research work, which, rightly, these amendments collectively seek to promote.

The key issues that we need to address head-on, if we are actively to promote more research, lie within the data protection area. That has motivated my Amendment 233A—I will explain the logic of it shortly—and is the reason why I strongly support Amendment 234.

A certain amount of research can be done without any access to personal data, bringing together aggregated statistics of what is happening on platforms, but the reality is that many of the most interesting research questions inevitably bring us into areas where data protection must be considered. For example, looking at how certain forms of content might radicalise people will involve looking at what individual users are producing and consuming and the relationships between them. There is no way of doing without it for most of the interesting questions around the harms we are looking at. If you want to know whether exposure to content A or content B led to a harm, there is no way to do that research without looking at the individual and the specifics.

There is a broad literature on how anonymisation and pseudonymisation techniques can be used to try to make those datasets a little safer. However, even if the data can be made safe from a technical point of view, that still leaves us with significant ethical questions about carrying out research on people who would not necessarily consent to it and may well disagree with the motivation behind the sorts of questions we may ask. We may want to see how misinformation affects people and steers them in a bad direction; that is our judgment, but the judgment of the people who use those services and consume that information may well be that they are entirely happy and there is no way on earth that they would consent to be studied by us for something that they perceive to be against their interests.

Those are real ethical questions that have to be asked by any researcher looking at this area. That is what we are trying to get to in the amendments—whether we can create an environment with that balance of equity between the individual, who would normally be required to give consent to any use of their data, and the public interest. We may determine that, for example, understanding vaccine misinformation is sufficiently important that we will override that individual's normal right to choose whether to participate in the research programme.

My Amendment 233A is to Amendment 233, which rightly says that Ofcom may be in a position to say that, for example, vaccine misinformation is in the overriding public interest and we need research into it. If it decides to do that and the platforms transfer data to those independent researchers, because we have said in the amendment that they must, the last thing we want is for the platforms to feel that, if there is any problem further down the track, there will be comeback on them. That would be against the principle of natural justice, given that they have been instructed to hand the data over, and could also act as a barrier.

3.15 pm

The fact that I am raising these concerns is because it is not far-fetched; however well-intentioned somebody is and however well they think they are doing data security, the reality of today's world is that there are data breaches. Once you have given the data over, at some point some independent researcher is going to have a dataset compromised, and Ofcom itself may be in possession of data that is going to be compromised. Amendment 233A seeks to clarify that, in those circumstances, we are not going to go after the company.

People may be aware of a case involving my former employer and a company called Cambridge Analytica, and if you look at the fallout from that case, some of the decisions that were made pointed to the notion that the first party which originally collected the data can almost never say that they are no longer liable; any transfer to a third party carries their liability with it. That is reasonable in most cases; if, for commercial reasons, you are passing data on to somebody else, that is fine. However, in the circumstances where we have said the regulator is going to insist that they provide the data for a valid public purpose, I do not think we should be holding them liable if something goes wrong downstream—that is the rationale for Amendment 233A.

That brings me on to Amendment 234, which is a good way of trying to address the problem more generally. Sometimes there is an assumption that research is good and companies are bad: "Hand over the data and good stuff will happen". There is a variable community of companies and a variable community of researchers, in terms of the confidence we can have in them to maintain data security and privacy. Having some kind of formal mechanism to approve researchers, and for researchers to sign up to, is extraordinarily helpful.

I refer noble Lords to the work done by the European Digital Media Observatory—this is one of those declarations of interests that is really a confession of expertise. I was on the board of the European Digital Media Observatory, for which I had no remuneration as it was done as a bit of penance having worked in the sector. As part of my penance, I felt I should be helping bodies that try to deal with the misinformation issue. The European Digital Media Observatory is a European Commission-sponsored body trying to deal with these exact questions, asking how we enable more research to happen, looking at misinformation in the context of the EU. It did some excellent work led by Dr Rebekah Tromble, an academic at George Washington University, who convened a working group which has come up with a code of practice that is going through the EU process. As long as we are not divergent from the general data protection regulation, it would have significant applicability here.

The real benefit of such an approach is that everyone knows what they are supposed to do, and we can objectively test whether or not they are doing it: the party that collected the data and handed it over; and the party that receives the data and does the research—everyone has very clear roles and responsibilities. By doing that, we unlock the flows, which is what we want

[Lord Allan of Hallam]
to do collectively in these amendments: we want the data to flow from the regulated services to the independent researchers.

I am not arguing that this will necessarily solve all the problems, but it will certainly flush out whether, when services say they cannot provide data for research, that is a "cannot" or "will not". Today, they can say they cannot for data protection legal reasons—I think with some justification. If we have the code of conduct in place as proposed in Amendment 234, and the researchers are approved researchers who have signed up to it and committed to doing all the right things, then it is much more reasonable for us to say "Platform, meet researcher; researcher, meet platform—you all know your responsibilities, and there are no legal barriers", and to expect the data to move in a way that will meet those public interest obligations.

This an important set of amendments which we are coming to quite late in the day. They touch on some issues that are being dealt with elsewhere, and I hope this is one example where we will feel comfortable learning from the EU, which is a little bit ahead in terms of trying to deal with some of these questions, working within a framework which is still, from a data protection law point of view at least, a pretty consistent framework between us and them.

Baroness Fox of Buckley (Non-Afl): My Lords, Amendments 233 and 234 from the noble Lord, Lord Knight of Weymouth, were well motivated, so I will be brief. I just have a couple of queries.

First, we need to consider what the criteria are for who is considered worthy of the privileged status of receiving Ofcom approval as a researcher. We are discussing researchers as though they are totally reliable and trustworthy. We might even think that if they are academic researchers, they are bound to be. However, there was an interesting example earlier this week of confirmation bias leading to mistakes when King's College had to issue a correction to its survey data that was used in the BBC's "Mariana in Conspiracyland". King's College admitted that it had wildly overestimated the numbers of those reading conspiracy newspaper, *The Light*, and wildly overestimated the numbers of those attending what it dubbed conspiracy demonstrations. By the way, BBC Verify has so far failed to verify the mistake it repeated. I give this example not as a glib point but because we cannot just say that because researchers are accredited elsewhere they should just be allowed in. I also think that the requirement to give the researchers

"all such assistance as they may reasonably require to carry out their research"

sounds like a potentially very time-consuming and expensive effort.

The noble Lord, Lord Allan of Hallam, raised points around "can't" or "won't", and whether this means researchers "must" or "should", and who decides whether it is ethical that they "should" in all instances. There are ethical questions here that have been raised. Questions of privacy are not trivial. Studying individuals as specimens of "badthink" or "wrongthink" might appear in this Committee to be in the public interest but without the consent of people it can be quite damaging. We have to decide which questions fulfil the public interest so sufficiently that consent could be overridden in that way.

I do not think this is a slam-dunk, though it looks like a sensible point. I do not doubt that all of us want more research, and good research, and data we can use in arguments, whatever side we are on, but it does not mean we should just nod something through without at least pausing.

Lord Bethell (Con): My Lords, I declare an interest as a trustee of the International Centre for the Study of Radicalisation at the War Studies department of King's College London. That is somewhere that conducts research using data of the kind addressed in this group, so I have a particular interest in it.

We know from the kind of debates that the noble Lord, Lord Knight, referred to that it is widely accepted that independent researchers benefit hugely from access to relevant information from service providers to research online safety matters. That is why my Amendment 234, supported by the noble Lords, Lord Clement-Jones and Lord Knight, aims to introduce an unavoidable mandatory duty for regulated platforms to give access to that data to approved researchers.

As the noble Lord, Lord Knight, said, there are three ways in which this would be done. First, the timeframe for Ofcom's report would be accelerated; secondly, proposed new Clause 147 would allow Ofcom to appoint the researchers; and, thirdly, proposed new Clause 148 would require Ofcom to write a code of practice on data access, setting up the fundamental principles for data access—a code which, by the way, should answer some of the concerns quite reasonably voiced by the noble Baroness, Lady Fox.

The internet is absolutely the most influential environment in our society today, but it is a complete black box, and we have practically no idea what is going on in some of the most important parts of it. That has a terrible impact on our ability to devise sensible policies and mitigate harm. Instead, we have a situation where the internet companies decide who accesses data, how much of it and for what purposes.

In answer to his point, I can tell the noble Lord, Lord Allan, who they give the data to—they give it to advertisers. I do not know if anyone has bought advertising on the internet, but it is quite a chilling experience. You can find out a hell of a lot about quite small groups of people if you are prepared to pay for the privilege of trying to reach them with one of your adverts: you can find out what they are doing in their bedrooms, what their mode of transport is to get to work, how old they are, how many children they have and so on. There is almost no limit to what you can find out about people if you are an advertiser and you are prepared to pay.

In fact, only the companies themselves can see the full picture of what goes on on the internet. That puts society and government at a massive disadvantage and makes policy-making virtually impossible. Noble Lords should be in no doubt that these companies deliberately withhold valuable information to protect their commercial interests. They obfuscate and confuse policymakers,

and they protect their reputations from criticism about the harms they cause by withholding data. One notable outcome of that strategy is that it has taken years for us to be here today debating the Online Safety Bill, precisely because policy-making around the internet has been so difficult and challenging.

A few years ago, we were making some progress on this issue. I used to work with the Institute for Strategic Dialogue using CrowdTangle, a Facebook product. It made a big impact. We were working on a project on extremism, and having access to CrowdTangle revolutionised our understanding of how the networks of extremists that were emerging in British politics were coming together. However, since then, platforms have gone backwards a long way and narrowed their data-sharing. The noble Lord, Lord Knight, mentioned that CrowdTangle has essentially been closed down, and Twitter has basically stopped providing its free API for researchers—it charges for some access but even that is quite heavily restricted. These retrograde steps have severely hampered our ability to gather the most basic data from otherwise respectable and generally law-abiding companies. It has left us totally blind to what is happening on the rest of the internet—the bit beyond the nice bit; the Wild West bit.

Civil society plays a critical role in identifying harmful content and bad behaviour. Organisations such as the NSPCC, the CCDH, the ISD—which I mentioned—the Antisemitism Policy Trust and King's College London, with which I have a connection, prove that their work can make a really big difference.

It is not as though other parts of our economy or society have the same approach. In fact, in most parts of our world there is a mixture of public, regulator and expert access to what is going on. Retailers, for instance, publish what is sold in our shops. Mobile phones, hospitals, banks, financial markets, the broadcast media—they all give access, both to the public and to their regulators, to a huge amount of data about what is going on. Once again, internet companies are claiming exceptional treatment—that has been a theme of debates on the Online Safety Bill—as if what happens online should, for some reason, be different from what happens in the rest of the world. That attitude is damaging the interests of our country, and it needs to be reversed. Does anyone think that the FSA, the Bank of England or the MHRA would accept this state of affairs in their regulated market? They absolutely would not.

Greater access to and availability of data and information about systems and processes would hugely improve our understanding of the online environment and thereby protect the innovation, progress and prosperity of the sector. We should not have to wait for Ofcom to be able to identify new issues and then appoint experts to look at them closely; there should be a broader effort to be in touch with what is going on with the internet. It is the nature of regulation that Ofcom will heavily rely on researchers and civil society to help enforce the Online Safety Bill, but this can be achieved only if researchers have sufficient access to data.

As the noble Lord, Lord Allan, pointed out, legislators elsewhere are making progress. The EU's Digital Services Act gives a broad range of researchers access to data, including civil society and non-profit organisations dedicated to public interest research. The DSA sets out a framework for vetting and access procedures in detail, as the noble Baroness, Lady Fox, rightly pointed out, creating an explicit role for new independent supervisory authorities and digital services co-ordinators to manage that process.

Under Clause 146, Ofcom must produce a report exploring such access within two years of that section of the Bill coming into effect. That is too long. There is no obligation on the part of the regulator or service providers to take this further. No arguments have been put forward for this extended timeframe or relative uncertainty. In contrast, the arguments to speed up the process are extremely persuasive, and I invite my noble friend the Minister to address those.

3.30 pm

To anticipate the Minister, I will just say that the skilled persons reports created in Clause 94 give Ofcom the helpful power to appoint a skilled person to provide a report, assisting Ofcom to identify and assess a failure by a regulated service. This will be an essential tool for Ofcom to access external expertise. However, it does not create a broader ecosystem of inspection, study and accountability that includes academics and civil society institutions with the capability and expertise to reach into the data and identify the harms of the platforms and their broader effects on society. That is why these measures need to be in the Bill. Given the Minister's good mood today, I invite him to adopt wholesale these amendments in time for Report.

Baroness Kidron (CB): My Lords, I too want to support this group of amendments, particularly Amendment 234, and will make just a couple of brief points.

First, one of the important qualities of the online safety regime is transparency, and this really speaks to that point. It is beyond clear that we are going to need all hands on deck, and again, this speaks to that need. I passionately agree with the noble Baroness, Lady Fox, on this issue and ask, when does an independent researcher stop being independent? I have met quite a lot on my journey who suddenly find ways of contributing to the digital world other than their independent research. However, the route described here offers all the opportunities to put those balancing pieces in place.

Secondly, I am very much aware of the fear of the academics in our universities. I know that a number of them wrote to the Secretary of State last week saying that they were concerned that they would be left behind their colleagues in Europe. We do not want to put up barriers for academics in the UK. We want the UK to be at the forefront of governance of the digital world, this amendment speaks to that, and I see no reason for the Government to reject it.

Finally, I want to emphasise the importance of research. Revealing Reality did research for 5Rights called *Pathways*, in which it built avatars for real children and revealed the recommendation loops in action. We could see how children were being offered self-harm, suicide, extreme diets and livestream porn within moments of them arriving online. Frances Haugen has already been mentioned. She categorically proved

[Baroness Kidron]
what we have been asserting for years, namely that Instagram impacts negatively on teenage girls. As we put this regime in place, it is not adequate to rely on organisations that are willing to work in the grey areas of legality to get their research or on whistleblowers—on individual acts of courage—to make the world aware.

One of the conversations I remember happened nearly five years ago, when the then Secretary of State asked me what the most important thing about the Bill was. I said, "To bring a radical idea of transparency to the sector". This amendment goes some way to doing just that.

Baroness Harding of Winscombe (Con): My Lords, I, too, support Amendments 233 and 234, and Amendment 233A, from the noble Lord, Lord Allan. As the noble Baroness, Lady Kidron, said, it has been made clear in the past 10 days of Committee that there is a role for every part of society to play to make sure that we see the benefits of the digital world but also mitigate the potential harms. The role that researchers and academics can play in helping us understand how the digital world operates is critical—and that is going to get ever more so as we enter a world of large language models and AI. Access to data in order to understand how digital systems and processes work will become even more important—next week, not just in 10 years' time.

My noble friend Lord Bethell quite rightly pointed out the parallels with other regulators, such as the MHRA and the Bank of England. A number of people are now comparing the way in which the MHRA and other medical regulators regulate the development of drugs with how we ought to think about the emergence of regulation for AI. This is a very good read-across: we need to set the rules of the road for researchers and ensure, as the noble Baroness, Lady Kidron, said—nailing it, as usual—that we have the most transparent system possible, enabling people to conduct their research in the light, not in the grey zone.

Lord Clement-Jones (LD): My Lords, as the noble Baroness, Lady Kidron, said, clearly, transparency is absolutely one of the crucial elements of the Bill. Indeed, it was another important aspect of the Joint Committee's report. Like the noble Lord, Lord Knight—a fellow traveller on the committee—and many other noble Lords, I much prefer the reach of Amendments 233 and 234, tabled by the noble Lord, Lord Bethell, to Amendment 230, the lead amendment in this group.

We strongly support amendments that aim to introduce a duty for regulated platforms to enable access by approved independent researchers to information and data from regulated services, under certain conditions. Of course, there are arguments for speeding up the process under Clause 146, but this is really important because companies themselves currently decide who accesses data, how much of it and for what purposes. Only the companies can see the full picture, and the effect of this is that it has taken years to build a really solid case for this Online Safety Bill. Without a greater level of insight, enabling quality research and harm analysis, policy-making and regulatory innovation will not move forward.

I was very much taken by what the noble Baroness, Lady Harding, had to say about the future in terms of the speeding up of technological developments in AI, which inevitably will make the opening up of data, and research into it, of greater and greater importance. Of course, I also take extremely seriously my noble friend's points about the need for data protection. We are very cognisant of the lessons of Cambridge Analytica, as he mentioned.

It is always worth reading the columns of the noble Lord, Lord Hague. He highlighted this issue last December, in the *Times*. He said:

> "Social media companies should be required to make anonymised data available to third-party researchers to study the effect of their policies. Crucially, the algorithms that determine what you see—the news you are fed, the videos you are shown, the people you meet on a website—should not only be revealed to regulators but the choices made in crafting them should then be open to public scrutiny and debate".

Those were very wise words. The status quo leaves transparency in the hands of big tech companies with a vested interest in opacity. The noble Lord, Lord Knight, mentioned Twitter announcing in February that it would cease allowing free research access to its application programming interface. It is on a whim that a billionaire owner can decide to deny access to researchers.

I much prefer Amendment 233, which would enable Ofcom to appoint an approved independent researcher. The Ofcom code of practice proposed in Amendment 234 would be issued for researchers and platforms, setting out the procedures for enabling access to data. I take the point made by the noble Baroness, Lady Fox, about who should be an independent accredited researcher, but I hope that that is exactly the kind of thing that a code of practice would deal with.

Just as a little contrast, Article 40 of the EU's Digital Services Act gives access to data to a broad range of researchers—this has been mentioned previously—including civil society and non-profit organisations dedicated to public interest research. The DSA sets out in detail the framework for vetting and access procedures, creating an explicit role for new independent supervisory authorities. This is an example that we could easily follow.

The noble Lord, Lord Bethell, mentioned the whole question of skilled persons. Like him, I do not believe that this measure is adequate as a substitute for what is contained in Amendments 233 and 234. It will be a useful tool for Ofcom to access external expertise on a case-by-case basis but it will not provide for what might be described as a wider ecosystem of inspection and analysis.

The noble Lord also mentioned the fact that internet companies should not regard themselves as an exception. Independent scrutiny is a cornerstone of the pharmaceutical, car, oil, gas and finance industries. They are open to scrutiny from research; we should expect that for social media as well. Independent researchers are already given access in many other circumstances.

The case for these amendments has been made extremely well. I very much hope to see the Government, with the much more open approach that they are demonstrating today, accept the value of these amendments.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, the Government are supportive of improving data sharing and encouraging greater collaboration between companies and researchers, subject to the appropriate safeguards. However, the data that companies hold about users can, of course, be sensitive; as such, mandating access to data that are not publicly available would be a complex matter, as noble Lords noted in their contributions. The issue must be fully thought through to ensure that the risks have been considered appropriately. I am grateful for the consideration that the Committee has given this matter.

It is because of this complexity that we have given Ofcom the task of undertaking a report on researchers' access to information. Ofcom will conduct an in-depth assessment of how researchers can currently access data. To the point raised by the noble Lord, Lord Knight, and my noble friend Lord Bethell, let me provide reassurance that Ofcom will assess the impact of platforms' policies that restrict access to data in this report, including where companies charge for such access. The report will also cover the challenges that constrain access to data and how such challenges might be addressed. These insights will provide an evidence base for any guidance that Ofcom may issue to help improve data access for researchers in a safe and secure way.

Amendments 230 and 231 seek to require Ofcom to publish a report into researchers' access to data more rapidly than within the currently proposed two years. I share noble Lords' desire to develop the evidence base on this issue swiftly, but care must be taken to balance Ofcom's timelines to ensure that it can deliver its key priorities in establishing the core parts of the regulatory framework that the Bill will bring in; for example, the illegal content and child safety duties. Implementing these duties must be the immediate priority for Ofcom to ensure that the Bill meets its objective of protecting people from harm. It is crucial that we do not divert attention away from these areas and that we allow Ofcom to carry out this work as soon as is practicable.

Further to this, considering the complex matter of researchers' access to data will involve consultation with interested parties, such as the Information Commissioner's Office, the Centre for Data Ethics and Innovation, UK Research and Innovation, representatives of regulated services and others—including some of those parties mentioned by noble Lords today—as set out in Clause 146(3). This is an extremely important issue that we need to get right. Ofcom must be given adequate time to consult as it sees necessary and undertake the appropriate research.

3.45 pm

Amendments 233 to 234 would introduce a framework for approving independent researchers' access to data and require Ofcom to issue a code of practice about it. Again, I am sympathetic to the intention, but it is vital that we understand and can fully mitigate the risks of mandating researchers' access to data which are not publicly available before implementing such a framework. For example, there will be questions of privacy, the protection of personal data, user consent and the disclosure of commercially sensitive information. As the noble Baroness, Lady Fox, pointed out, there are challenges involved in defining who is an independent researcher, particularly as we seek to ensure that such a framework could not be exploited by bad actors.

Exempting service providers from data protection legislation for the purposes of facilitating researcher access to information poses a number of risks. Making derogations from data protection legislation, outside that legislation itself, risks undermining the coherence of the data protection framework. Ofcom's report on researchers' access to information will develop the evidence base on current access to information, the challenges associated with accessing it and how these challenges might be overcome.

As we have discussed previously in Committee, researchers will already have access to the publicly available transparency reports which major platforms will be required to publish annually. They may use these data to conduct research into online harms. Additionally, Ofcom will be required to undertake research into UK users' opinions and experiences relating to regulated services and will have the power to undertake online safety research more broadly. This will help Ofcom and the wider public to understand the experiences of users online and will help to inform policy-making. Ofcom will have wide-ranging powers to require information from companies to support its research activities. Companies will not be able to withhold relevant online safety data when they are required of them by Ofcom. If they do, they will face enforcement measures, including significant fines and the liability of senior managers.

As noted by noble Lords, Ofcom will also have the power to require a report from a skilled person about a regulated service. Ofcom may appoint an independent researcher as the skilled person. This power may be used to assist Ofcom in identifying and assessing non-compliance and, where Ofcom considers there to be a risk of failure, to develop its understanding of the risk. Amendment 234 requires Ofcom to issue a code of practice on researchers' access to data. I reassure the Committee that following the publication of its report, Ofcom will have the power to issue guidance to providers and researchers about how to facilitate data sharing for research in a safe and responsible way.

In summary, the regulatory framework's focus on transparency will improve the data which are publicly available to researchers, while Ofcom's report on the issue will enable the development of the evidence base before further action is considered. At the risk of disappointing noble Lords about the more open-minded attitudes today—

Lord Knight of Weymouth (Lab): Before the Minister succeeds in disappointing us, can he clarify something for us? Once Ofcom has published the report, it has the power to issue guidance. What requirement is there for platforms to abide by that guidance? We want there to be some teeth at the end of all this. There is a concern that a report will be issued, followed by some guidance, but that nothing much else will happen.

Lord Parkinson of Whitley Bay (Con): It is guidance rather than direction, but it will be done openly and transparently. Users will be able to see the guidance

[Lord Parkinson of Whitley Bay]
which Ofcom has issued, to see whether companies have responded to it as they see fit and, through the rest of the framework of the Bill, be empowered to make their decisions about their experiences online. This being done openly and transparently, and informed by Ofcom's research, will mean that everyone is better informed.

We are sympathetic to the amendment. It is complex, and this has been a useful debate—

Baroness Kidron (CB): I wonder whether the Minister has an answer to the academic community, who now see their European colleagues getting ahead through being able to access data through other legislation in other parts of the world. Also, we have a lot of faith in Ofcom, but it seems a mistake to let it be the only arbiter of what needs to be seen.

Lord Parkinson of Whitley Bay (Con): We are very aware that we are not the only jurisdiction looking at the important issues the Bill addresses. The Government and, I am sure, academic researchers will observe the implementation of the European Union's Digital Services Act with interest, including the provisions about researchers' access. We will carefully consider any implications of our own online safety regime. As noble Lords know, the Secretary of State will be required to undertake a review of the framework between two and five years after the Bill comes into force. We expect that to include an assessment of how the Bill's existing transparency provisions facilitate researcher access.

Lord Allan of Hallam (LD): I do not expect the Minister to have an answer to this today, but it will be useful to get this on the record as it is quite important. Can he let us know the Government's thinking on the other piece of the equation? We are getting the platforms to disclose the data, and an important regulatory element is the research organisations that receive it. In the EU, that is being addressed with a code of conduct, which is a mechanism enabled by the general data protection regulation that has been approved by the European Data Protection Board and creates this legal framework. I am not aware of equivalent work having been done in the UK, but that is an essential element. We do not want to find that we have the teeth to persuade the companies to disclose the data, but not the other piece we need—probably overseen by the Information Commissioner's Office rather than Ofcom—which is a mechanism for approving researchers to receive and then use the data.

Lord Parkinson of Whitley Bay (Con): We are watching with interest what is happening in other jurisdictions. If I can furnish the Committee with any information in the area the noble Lord mentions, I will certainly follow up in writing.

Lord Clement-Jones (LD): I have a question, in that case, in respect of the jurisdictions. Why should we have weaker powers for our regulator than others?

Lord Parkinson of Whitley Bay (Con): I do not think that we do. We are doing things differently. Of course, Ofcom will be looking at all these matters in its report, and I am sure that Parliament will have an ongoing interest in them. As jurisdictions around the world continue to grapple with these issues, I am sure that your Lordships' House and Parliament more broadly will want to take note of those developments.

Lord Clement-Jones (LD): But surely, there is no backstop power. There is the review but there is no backstop which would come into effect on an Ofcom recommendation, is there?

Lord Parkinson of Whitley Bay (Con): We will know once Ofcom has completed its research and examination of these complex issues; we would not want to pre-judge its conclusions.

Lord Clement-Jones (LD): Again, that would require primary legislation.

Lord Parkinson of Whitley Bay (Con): With that, if there are no further questions, I invite the noble Lord to withdraw his amendment.

Lord Knight of Weymouth (Lab): My Lords, this was a short but important debate with some interesting exchanges at the end. The noble Baroness, Lady Harding, mentioned the rapidly changing environment generated by generative AI. That points to the need for wider ecosystem-level research on an independent basis than we fear we might get as things stand, and certainly wider than the skilled persons we are already legislating for. The noble Lord, Lord Bethell, referred to the access that advertisers already have to insight. It seems a shame that we run the risk, as the noble Baroness, Lady Kidron, pointed out, of researchers in other jurisdictions having more privileged access than researchers in this country, and therefore becoming dependent on those researchers and whistleblowers to give us that wider view. We could proceed with a report and guidance as set out in the Bill but add in some reserved powers in order to take action if the report suggests that Ofcom might need and want that. The Minister may want to reflect on that, having listened to the debate. On that basis, I am happy to beg leave to withdraw the amendment.

Amendment 230 withdrawn.

Amendment 231 not moved.

Clause 146 agreed.

Amendments 232 to 234 not moved.

Clause 147 agreed.

Amendments 235 to 241 not moved.

Amendment 242

Moved by ***Baroness Merron***

242: Before Clause 148, insert the following new Clause—

"General procedure

(1) An appeal to the Upper Tribunal under section 148 or 149 must be commenced by sending a notice of appeal to the court.

(2) The notice of appeal must set out the grounds of appeal in sufficient detail to indicate—

(a) under which provision of this Act the appeal is to be brought;

(b) to what extent (if any) the appellant contends that the decision against, or with respect to which, the appeal is brought was based on an error of fact or was wrong in law; and

(c) to what extent (if any) the appellant is appealing against OFCOM's exercise of its discretion in making the disputed decision.

(3) The Upper Tribunal may give an appellant leave to amend the grounds of appeal identified in the notice of appeal."

Member's explanatory statement

This amendment introduces additional procedural steps to be followed when the Upper Tribunal considers an appeal under Clauses 148 and 149.

Baroness Merron (Lab): My Lords, I am pleased to speak to Amendments 242, 243 and 245, which have been tabled in the name of my noble friend Lord Stevenson. The intention of this group is to probe what we consider to be an interesting if somewhat niche area, and I hope the Minister will take it in that spirit.

To give the Committee some idea of the background to this group, when Ofcom was originally set up and was mainly dealing with mobile and fixed telephony cartels, it had a somewhat torrid time, if I can describe it that way. Just about every decision it took was challenged in the courts on the so-called merits of the respective cases and on its powers, as the companies taking it to court had many resources they could call upon. That very much held up Ofcom's progress and, of course, incurred major costs.

Prior to the Digital Economy Act, the worst of the experiences of this period were over, but Ofcom managed to persuade the Government that challenges made by companies in scope of Ofcom would in future be based on judicial review, rather than on merits. In other words, the test was whether Ofcom had acted within its powers and had not acted irrationally. An area of concern to a number of companies is who can challenge the regulator, even if it is acting within its powers, if it gets it wrong in the eyes of said companies. Perhaps the Minister will reflect on that.

This group of amendments is intended to provide better protections for service providers, their users and the wider public, alongside processes that should mean fewer delays and greater efficiency. The Competition Act 1998 permits appeals of Ofcom's decisions to be made additionally on account of an error of fact, an error of law or an error of the exercise of its discretion.

4 pm

The current wording of the Bill permits challenge only by way of judicial review of Ofcom's decisions, which habitually leads to somewhat prolonged and drawn-out litigation in a process that, through judicial review, could take some nine to 18 months. That means an inability for a challenge by any party of the evidence or existence of a factual error. In light of their sensitive nature and the significant impact that detection orders may have on a large number of users of any particular service, these amendments would be something of a proportionate step to permit challenge on an extended basis. I look forward to hearing the response from the Minister, and I beg to move.

Lord Clement-Jones (LD): My Lords, I congratulate the noble Baroness on having elucidated this arcane set of amendments. Unfortunately, though, it makes me deeply suspicious when I see what the amendments seem to do. I am not entirely clear about whether we are returning to some kind of merits-based appeal. If so, since the main litigators are going to be the social media companies, it will operate for their benefit to reopen every single thing that they possibly can on the basis of the original evidence that was taken into account by Ofcom, as opposed to doing it on a JR basis. It makes me feel quite uncomfortable if it is for their benefit, because I suspect it is not going to be for the ordinary user who has been disadvantaged by a social media company. I hope our brand spanking new independent complaints system—which the Minister will no doubt assure us is well on the way—will deal with that, but this strikes me as going a little too far.

Baroness Kidron (CB): My Lords, I enter the fray with some trepidation. In a briefing, Carnegie, which we all love and respect, and which has been fantastic in the background in Committee days, shared some concerns. As I interpret its concerns, when Ofcom was created in 2003 its decisions could be appealed on their merits, as the noble Lord has just suggested, to the Competition Appeal Tribunal, and I believe that this was seen as a balancing measure against an untested regime. What followed was that the broad basis on which appeal was allowed led to Ofcom defending 10 appeals per year, which really frustrated its ability as a regulator to take timely decisions. It turned out that the appeals against Ofcom made up more than 80% of the workload of the Competition Appeal Tribunal, whose work was supposed to cover a whole gamut of matters. When there was a consultation in the fringes of the DEA, it was decided to restrict appeal to judicial review and appeal on process. I just want to make sure that we are not opening up a huge and unnecessary delaying tactic.

Viscount Camrose (Con): I thank all those who have spoken, and I very much appreciate the spirit in which the amendments were tabled. They propose changes to the standard of appeal, the standing to appeal and the appeals process itself. The Government are concerned that enabling a review of the full merits of cases, as proposed by Amendments 243 and 245, could prove burdensome for the courts and the regulator, since a full-merits approach, as we have been hearing, has been used by regulated services in other regulatory regimes to delay intervention, undermining the effectiveness of the enforcement process. With deep-pocketed services in scope, allowing for a full-merits review could incentivise speculative appeals, both undermining the integrity of the system and slowing the regulatory process.

While the Government are fully committed to making sure that the regulator is properly held to account, we feel that there is not a compelling case for replacing the decisions of an expert and well-resourced regulator with those of a tribunal. Ofcom will be better placed to undertake the complex analysis, including technical analysis, that informs regulatory decisions.

[Viscount Camrose]

Amendment 245 would also limit standing and leave to appeal only to providers and those determined eligible entities to make super-complaints under Clause 150. This would significantly narrow the eligibility requirements for appeals. For appeals against Ofcom notices we assess that the broader, well-established standard in civil law of sufficient interest is more appropriate. Super-complaints fulfil a very different function from appeals. Unlike appeals, which will allow regulated services to challenge decisions of the regulator, super-complaints will allow organisations to advocate for users, including vulnerable groups and children, to ensure that systemic issues affecting UK users are brought to Ofcom's attention. Given the entirely distinct purposes of these functions, it would be inappropriate to impose the eligibility requirements for super-complaints on the appeals system.

I am also concerned about the further proposal in Amendment 245 to allow the tribunal to replace Ofcom's decision with its own. Currently, the Upper Tribunal is able to dismiss an appeal or quash Ofcom's decision. Quashed decisions must be remitted to Ofcom for reconsideration, and the tribunal may give directions that it considers appropriate. Amendment 245 proposes instead allowing the Upper Tribunal to

"impose or revoke, or vary the amount of, a penalty … give such directions or take such other steps as OFCOM could itself have given or taken, or … make any other decision which OFCOM could itself have made".

The concern is that this risks undermining Ofcom's independence and discretion in applying its powers and issuing sanctions, and in challenging the regulator's credibility and authority. It may also further incentivise well-resourced providers to appeal opportunistically, with a view to securing a more favourable outcome at a tribunal.

On that basis, I fear that the amendments tabled by the noble Lord would compromise the fundamental features of the current appeals provisions, without any significant benefits, and risk introducing a range of inadvertent consequences. We are confident that the Upper Tribunal's judicial review process, currently set out in the Bill, provides a proportionate, effective means of appeal that avoids unnecessary expense and delays, while ensuring that the regulator's decisions can be thoroughly scrutinised. It is for these reasons that I hope the noble Baroness will withdraw the amendment.

Baroness Merron (Lab): My Lords, I am grateful to the Minister. I will take that as a no—but a very well-considered no, for which I thank him. I say to the noble Lord, Lord Clement-Jones, that we certainly would not wish to make him feel uncomfortable at any time. I am grateful to him and the noble Baroness, Lady Kidron, for their contributions. As I said at the outset, this amendment was intended to probe the issue, which I feel we have done. I certainly would not want to open a can of worms—online, judicial or otherwise. Nor would I wish, as the Minister suggested, to undermine the work, efficiency and effectiveness of Ofcom. I am glad to have had the opportunity to present these amendments. I am grateful for the consideration of the Committee and the Minister, and with that I beg leave to withdraw.

Amendment 242 withdrawn.

Clause 148: Appeals against OFCOM decisions relating to the register under section 86

Amendment 243 not moved.

Clause 148 agreed.

Clause 149: Appeals against OFCOM notices

Amendments 244 to 250 not moved.

Clause 149 agreed.

Amendments 250A and 250B not moved.

Clauses 150 to 153 agreed.

Clause 154: Consultation and parliamentary procedure

Amendments 251 to 254 not moved.

Clause 154 agreed.

Clause 155: Directions about advisory committees

Amendments 255 and 256 not moved.

Clause 155 agreed.

Clause 156 agreed.

Clause 157: Secretary of State's guidance

Amendments 257 to 259 not moved.

Clause 157 agreed.

Amendment 260 not moved.

Clause 158 agreed.

Clause 159: Review

Amendments 261 to 263 not moved.

Clause 159 agreed.

Amendment 264 not moved.

Clause 160: False communications offence

Amendment 264A

Moved by ***Lord Clement-Jones***

264A: Clause 160, page 138, line 10, at end insert "including (but not necessarily) by making use of a stolen identity, credit card or national insurance number,"

Member's explanatory statement

This amendment, together with the amendment to page 138, line 12 to which Lord Clement-Jones has added his name, seeks to probe the creation of a specific criminal offence of identity theft.

Lord Clement-Jones (LD): My Lords, even by the standards of this Bill, this is a pretty diverse group of amendments. I am leading the line with an amendment that does not necessarily fit with much of the rest of

the group, except for Amendment 266, which the noble Baroness, Lady Buscombe, will be speaking to. I look forward to hearing her speak.

This amendment is designed to probe the creation of a new offence of identity theft in Clause 160. As I argued in my evidence to the consultation on digital identity and attributes in 2021, a new offence of identity theft is required. Under the Fraud Act 2006, the Identity Documents Act 2010, the Forgery and Counterfeiting Act 1981, the Computer Misuse Act 1990 and the Data Protection Act 2018 there are currently the offences of fraud using a false identity, document theft, forging an identity, unauthorised computer access and data protection offences respectively, but no specific crime of digital identity theft.

4.15 pm

I was strongly influenced by the experience of the performer Bennett Arron, the award-winning writer and stand-up comedian, who had his digital ID stolen over 20 years ago and, as a result, became penniless and homeless. I think he was the first major victim of identity theft in the UK. Years later, he wrote a comedy show, surprisingly, about his experience. It is a disturbingly true yet funny account of what it is like to have your identity stolen. It was critically acclaimed—I know the Minister will appreciate this—at the Edinburgh festival and led to Bennett being asked to direct a documentary for Channel 4 Television. In the documentary, "How to Steal an Identity", Bennett proved, through a series of stunts, how easy the crime of ID theft is to carry out. He also managed to steal the identity of the British Home Secretary—I am not sure which one; that needs further investigation. As he says, having something tangible stolen—your phone, a bike or a car—is awful and upsetting. However, they are replaceable, and their loss is unlikely to affect your whole life. Having your identity stolen is different: you will have great difficulty in restoring it, and the consequences can affect you for ever. He went on to describe his experiences.

Interestingly enough, the ICO has published guidance on identity theft. It says:

"Your identity is one of your most valuable assets. If your identity is stolen, you can lose money and may find it difficult to get loans, credit cards or a mortgage. Your name, address and date of birth provide … information",

and an

"identity thief can use a number of methods to find out your personal information and will then use it to open bank accounts, take out credit cards",

et cetera, in your name. The guidance goes on to talk about what signs you should look for and what you should do in the event of identity theft. However, effectively, it says that all you can do if some documents are stolen is tell the police; it does not tell you whether the police can do anything about it. All the guidance does is suggest that you report physical documents as having been stolen.

I have asked many questions of the Government, who, in response to the consultation on digital identity, proved stubbornly reluctant to commit to creating a new offence. It is not at all clear why. I am just sorry that the noble Baroness, Lady Morgan, is not here. She chaired the Select Committee and its terrific report *Fighting Fraud: Breaking the Chain*, which said:

"Identity theft is a fundamental component of fraud and is routinely used by fraudsters to steal money from legitimate individuals and organisations yet it remains out of scope of criminal offences".

Its recommendation was:

"The Government should consult on the introduction of legislation to create a specific criminal offence of identity theft. Alternatively, the Sentencing Council should consider including identity theft as a serious aggravating factor in cases of fraud".

In their response, the Government said:

"We agree that identity theft is a vector"—

that is a great word—

"used by fraudsters to commit fraud, but current legislation provides an effective avenue to prosecute those committing identity frauds".

That is absolutely not the case. I look forward to what the Minister says about that, but I believe that there is a case for including an identity-theft offence both in the Bill and, later, when we come to the Data Protection and Digital Information Bill, where there will be an even stronger case for it to be included.

I will not be able to wind up on this group because I am speaking to this amendment, but I strongly support my noble friend's Amendments 268AZB and 268AZC. I believe that the Law Commission's intention was very much to create a high bar for the offence of encouragement of self-harm. It says:

"Our aim is only to criminalise the most serious examples of encouragement of self-harm".

However, out there, a lot of the support organisations are worried about the broadness of the offence. They are concerned that it risks criminalising peer-support and harm-reduction resources, and that it may also criminalise content posted by people in distress who are sharing their own experiences of self-harm. That is why I support the amendment that my noble friend will speak to. I beg to move.

Baroness Buscombe (Con): My Lords, I shall speak to Amendments 266 and 267, to which my noble and learned friend Lord Garnier, my noble friend Lord Leicester and the noble Lord, Lord Clement-Jones, have added their names. They are the final two amendments from a group of amendments that were also supported by the noble Lord, Lord Moore of Etchingham, and the noble Baroness, Lady Mallalieu.

The purpose of this Bill is to make the internet a safer place. The new offence of false communications is just one of the important means it seeks to use with the objective of making it an offence to harm people by telling lies online—and this is welcome. It is right that the Bill should focus on preventing harms to individuals. One of the most important guarantors that a person can have of good health and well-being is their freedom to pursue their livelihood unimpeded by illegitimate hostile action. Attacks on people's livelihoods have the potential to wreak unimaginable harm on their mental and physical health, but these attacks are also among the easiest to perpetrate through the internet. My amendments seek to prevent such harms by protecting people who run, or work for, businesses that have been targeted with malicious fake reviews posted to online platforms, such as Google Maps or TripAdvisor. These platforms already fall within scope of this Bill in hosting user-generated content.

[Baroness Buscombe]

By referencing fake reviews, I am not referring to legitimate criticism, fair comment or even remarks about extraneous matters such as the owners' pastimes or opinions, provided that the reviewer is honest about the nature of their relationship with the business. If someone wants to write a review of a business which they admit they have never patronised, and criticise it based on such factors, this would not be illegal, but it would very likely breach the platform's terms of service and be removed. Review platforms are not the proper venue for such discussions; their role is to let people share opinions about a business's products and services, but policing that is up to them.

The malicious fake reviews that I am referring to are those that are fundamentally dishonest. People with grudges to bear know that the platforms they use to attack their victims will remove any reviews that are clearly based on malice rather than a subjective assessment of quality. That is why they have come to adopt more insidious tactics. Without mentioning the real reason for their hostility towards a business and/or its staff, they purport to be customers who have had bad experiences. Of course, in almost every case, the reviewer has never so much as gone near the business. The review is therefore founded on lies.

This is not merely an abstract concern. Real people are being really harmed. Noble Lords will know that in earlier debates I used the prism of rural communities to amplify the objective of my amendments. Only yesterday, during Oral Questions in your Lordships' House, there was an overwhelming collective consensus that we need to do more to protect the livelihoods of those working so hard in rural communities. My simple amendments would make a massive difference to their well-being.

The Countryside Alliance recently conducted a survey that found innumerable instances of ideologically motivated fake reviews targeted at rural businesses; these were often carried out by animal rights extremists and targeted businesses and their employees who sometimes participated in activities to which they objected, such as hosting shoots or serving meat. In April this year, the *Telegraph* reported on one case of a chef running a rural pub whose business was attacked with fake reviews by a vegan extremist who had verifiably never visited the pub, based initially on the man's objection to him having posted on social media a picture of a roast chicken. The chef said these actions were making him fear for his livelihood as his business fought to recover from the pandemic. He is supporting my amendments.

Amendment 266 would therefore simply add the word "financial" to "physical" and "psychological" in the Bill's definition of the types of harm that a message would need to cause for it to amount to an offence. This amendment is not an attempt to make the Bill into something it was not designed to be. It is merely an attempt to protect the physical and mental health of workers whose businesses are at risk of attack through malicious fake reviews. It may be that the victim of such an attack could argue that a fake review has caused them physical or psychological harm, as required under the Bill as currently drafted—indeed, it would likely do so. The reason for adding financial harm is to circumvent the need for victims to make that argument to the police, the police to the Crown Prosecution Service and then the prosecutors in front of the jury.

That links to Amendment 267, which would enlarge the definition of parties who may be harmed by a message for it to an amount to an offence. Under the Bill, a message must harm its intended, or reasonably foreseeable, recipient; however, it is vital to understand that a person need not receive the message to be harmed by it. In the case of fake reviews, the victim is harmed because the false information has been seen by others; he or she is not an intended recipient. The amendment would therefore include harms to the person or organisation to which the information—or, in reality, disinformation—contained within it relates.

My principal objective in bringing these amendments is not to create a stick with which to beat those who wish harm to others through malicious fake reviews; rather—call me old-fashioned—it is about deterrence. It is to deter this conduct by making it clear that it is not acceptable and would, if necessary, be pursued by police and through the courts under criminal law. It is about seeing to it that malicious fake reviews are not written and their harm is not caused.

I am aware that the Government have responded to constituents who have contacted their MPs in support of these amendments to say that they intend to act through the Competition and Markets Authority against businesses that pay third parties to write fake disparaging reviews of their competitors. I must stress to my noble friend the Minister, with respect, that this response misunderstands the issue. While there is a problem with businesses fraudulently reviewing their competitors to gain commercial advantage—and it is welcome that the Government plan to act on it—I am concerned with extreme activists and other people with ideological or personal axes to grind. These people are not engaged in any relevant business and are not seeking to promote a competitor by comparison. It is hard to see how any action by the Competition and Markets Authority could offer an effective remedy. The CMA exists to regulate businesses, not individual cranks. Further, this is not a matter of consumer law.

If the Government wish to propose some alternative means of addressing this issue besides my amendments, I and those who have added their names—and those who are supporters beyond your Lordships' House—would be pleased to engage with Ministers between now and Report. In that regard though, I gently urge the Government to start any conversation from a position of understanding—really understanding—what the problem is. I fully appreciate that the purpose of this Bill is to protect individuals, and that is the key point of my amendments. My focus is upon those running and working in small businesses who are easy targets of this form of bullying and abuse. It is entirely in keeping with the spirit and purpose of the Bill to protect them.

Finally, I must be clear that the prism of what happens in our rural areas translates directly to everything urban across the UK. A practical difference is that people working in remote areas are often very isolated and find this intrusion into their life and livelihood so

hard to cope with. We live in a pretty unpleasant world that is diminishing our love of life—that is why this Bill is so necessary.

Lord Garnier (Con): My Lords, I wish to add to what my noble friend Lady Buscombe has just said, but I can do so a little more briefly, not least because she has made all the points that need to be made.

I would disagree with her on only one point, which is that she said—I am not sure that she wanted to be called old-fashioned, but she certainly wanted to have it explained to us—that the purpose of our amendment was to deter people from making malicious posts to the detriments of businesses and so forth. I think it is about more than deterrence, if I may say so. It is about fairness and justice.

It is very natural for a civilised, humane person to want to protect those who cannot protect themselves because of the anonymity of the perpetrator of the act. Over the last nearly 50 years, I have practised at the media Bar, including in cases based on the tort of malicious falsehood, trade libel or slander of goods. Essentially, my noble friend and I are trying to bring into the criminal law the torts that I have advised on and appeared in cases involving, so that the seriousness of the damage caused by the people who do these anonymous things can be visited by the weight of the state as the impartial prosecutor.

4.30 pm

I say to my noble friend on the Front Bench that this is not just a complaint by those who like eating meat, those who earn a living through country pursuits or those who wish to expand their legal practices from the civil sphere to the criminal. It is a plea for the Government and Parliament to reach out and protect those who cannot help themselves.

Now, there will be evidential difficulties in getting hold of anonymous posters of malicious comments and reviews. It may be said that adding to the criminal law, as we would like to do through amending Clause 160, will interfere with people's Article 10 rights. However, Article 10 does not permit you to make malicious and deliberately false remarks about others. Section 3 of the Defamation Act 2013, which provides for the defence of honest opinion, is not affected by the criminalisation of false and malicious posts about other people's businesses or services.

We have a very simple remedy here, which goes with the grain of British fair play, the need for justice to be done and a Government who care for the people they govern, look after and make sure do not fall victim unwittingly and unknowingly—unknowingly in the sense that they do not know who is trying to hurt them, but they know what has happened to them because their profits, turnover and ability to feed their families have been grossly affected by these malicious, dishonest people. This amendment needs careful consideration and deserves wholehearted support across the House.

Lord Moylan (Con): My Lords, as the noble Lord, Lord Clement-Jones, said, this is a very broad group, so I hope noble Lords will forgive me if I do not comment on every amendment in it. However, I have a great deal of sympathy for the case put forward by my noble friend Lady Buscombe and my noble and learned friend Lord Garnier. The addition of the word "financial" to Clause 160 is not only merited on the case made but is a practical and feasible thing to do in a way that the current inclusion of the phrase "non-trivial psychological" is not. After all, a financial loss can be measured and we know how it stands. I will also say that I have a great deal of sympathy with what the noble Lord, Lord Clement-Jones, said about his amendment. In so far as I understand them—I appreciate that they have not yet been spoken to—I am also sympathetic to the amendments in the names of the noble Baroness, Lady Kennedy of The Shaws, and the noble Lord, Lord Allan of Hallam.

I turn to my Amendment 265, which removes the word "psychological" from this clause. We have debated this already, in relation to other amendments, so I am going to be fairly brief about it. Probably through an oversight of mine, this amendment has wandered into the wrong group. I am going to say simply that it is still a very, very good idea and I hope that my noble friend, when he comes to reflect on your Lordships' Committee as a whole, will take that into account and respond appropriately. Instead, I am going to focus my remarks on the two notices I have given about whether Clauses 160 and 161 should stand part of the Bill; Clause 161 is merely consequential on Clause 160, so the meat is whether Clause 160 should stand part of the Bill.

I was a curious child, and when I was learning the Ten Commandments—I am sorry to see the right reverend Prelate has left because I hoped to impress him with this—I was very curious as to why they were all sins, but some of them were crimes and others were not. I could not quite work out why this was; murder is a crime but lying is not a crime—and I am not sure that at that stage I understood what adultery was. In fact, lying can be a crime, of course, if you undertake deception with intent to defraud, and if you impersonate a policeman, you are lying and committing a crime, as I understand it—there are better-qualified noble Lords than me to comment on that. However, lying in general has never been a crime, until we get to this Bill, because for the first time this Bill makes lying in general—that is, the making of statements you know to be false—a crime. Admittedly, it is a crime dependent on the mode of transmission: it has to be online. It will not be a crime if I simply tell a lie to my noble and learned friend Lord Garnier, for example, but if I do it online, any form of statement which is not true, and I know not to be true, becomes a criminal act. This is really unprecedented and has a potentially chilling effect on free speech. It certainly seems to be right that, in your Lordships' Committee, the Government should be called to explain what they think they are doing, because this is a very portentous matter.

The Bill states that a person commits the false communications offence if they send a message that they know to be false, if they intend the message to cause a degree of harm of a non-trivial psychological or physical character, and if they have no reasonable excuse for sending the message. Free speech requires that one should be allowed to make false statements, so this needs to be justified. The wording of the offence raises substantial practical issues. How is a court meant to judge what a person knows to be false?

[Lord Moylan]
How is a committee of the House of Commons meant to judge, uncontroversially, what a person knows to be false at the time they say it? I say again: what is non-trivial psychological harm and what constitutes an excuse? None of these things is actually defined; please do not tell me they are going to be defined by Ofcom—I would not like to hear that. This can lead to astonishing inconsistency in the courts and the misapplication of criminal penalties against people who are expressing views as they might well be entitled to do.

Then there is the question of the audience, because the likely audience is not just the person to whom the false statement is directed but could be anybody who subsequently encounters the message. How on earth is one going to have any control over how that message travels through the byways and highways of the online world and be able to say that one had some sense of who it was going to reach and what non-trivial psychological harm it might cause when it reached them?

We are talking about this as if this criminal matter is going to be dealt with by the courts. What makes this whole clause even more disturbing is that in the vast majority of cases, these offences will never reach the courts, because there is going to be, inevitably, an interaction with the illegal content duties in the Bill. By definition, these statements will be illegal content, and the platforms have obligations under the Bill to remove and take down illegal content when they become aware of it. So, the platform is going to have to make some sort of decision about not only the truth of the statement but whether the person knows what the statement is, that the statement is false and what their intention is. Under the existing definition of illegal content, they will be required to remove anything they reasonably believe is likely to be false and to prevent it spreading further, because the consequences of it, in terms of the harm it might do, are incalculable by them at that point.

We are placing a huge power of censorship—and mandating it—on to the platforms, which is one of the things that some of us in this Committee have been very keen to resist. Just exploring those few points, I think my noble friend really has to explain what he thinks this clause is doing, how it is operable and what its consequences are going to be for free speech and censorship. As it stands, it seems to me unworkable and dangerous.

Lord Garnier (Con): Does my noble friend agree with me that our courts are constantly looking into the state of mind of individuals to see whether they are lying? They look at what they have said, what they have done and what they know. They can draw an inference based on the evidence in front of them about whether the person is dishonest. This is the daily bread and butter of court. I appreciate the points he is making but, if I may say so, he needs to dial back slightly his apoplexy. Underlying this is a case to be made in justice to protect the innocent.

Lord Moylan (Con): I did not say that it would be impossible for a court to do this; I said it was likely to lead to high levels of inconsistency. We are dealing with what is likely to be very specialist cases. You can imagine this in the context of people feeling non-trivially psychologically harmed by statements about gender, climate, veganism, and so forth. These are the things where you see this happening. The idea that there is going to be consistency across the courts in dealing with these issues is, I think, very unlikely. It will indeed have a chilling effect on people being able to express views that may be controversial but are still valid in an open society.

Lord Allan of Hallam (LD): My Lords, I want to reflect on the comments that the noble Lord, Lord Moylan, has just put to us. I also have two amendments in the group; they are amendments to the government amendment, and I am looking to the Minister to indicate whether it is helpful for me to explain the rationale of my amendments now or to wait until he has introduced his. I will do them collectively.

First, the point the noble Lord, Lord Moylan, raised is really important. We have reached the end of our consideration of the Bill; we have spent a lot of time on a lot of different issues, but we have not spent very much time on these new criminal offences, and there may be other Members of your Lordships' House who were also present when we discussed the Communications Act back in 2003, when I was a Member at the other end. At that point, we approved something called Section 127, which we were told was essentially a rollover of the dirty phone call legislation we had had previously, which had been in telecoms legislation for ever to prevent that deep-breathing phone call thing.

4.45 pm

It went through almost on the nod, and then it turned out to become a very significant offence later. Noble Lords may be aware of the Twitter joke trial, the standout trial that people have followed, where an individual was prosecuted for saying something on Twitter which was originally taken very seriously as a bomb threat. Later, on appeal, the prosecution was found to be invalid. The debate around Section 127 and its usage has gone backwards and forwards.

There is a genuine question to be asked here about whether we will be coming back in a few years and finding that this offence has been used in ways that we were not expecting or intending. I think we all know what we are trying to get at: the person who very deliberately uses falsehoods to cause serious harm to others. That has been described by the noble Baroness, Lady Buscombe, and the noble and learned Lord, Lord Garnier. However, you can see how the offence could inadvertently capture a whole load of other things where we would either collectively agree that they should not be prosecuted or have quite different opinions about whether they should be prosecuted.

I used to sit in judgment on content at a platform, and people would often say to us, "Why are you allowing that content? It's false". We would say, quite rightly, that we had no terms of service that say you cannot lie or issue falsehoods on the platform. They would say, "Why not?", and we would dig into it and say, "Let's just deal with some falsehoods". For example, "The earth is flat"—I think most of us would agree

that that is false, but it is entirely harmless. We do not care; it is a lie we do not care about. What about, "My God is the only true God"? Well, that is an opinion; it is not a statement of fact—but we are getting into a zone that is more contested. As for, "Donald Trump won the election", that is an absolute and outright lie to one group of people but a fundamental issue of political expression for another. You very quickly run into these hotly contested areas. This is going to be a real challenge.

We have often talked in this debate about how we are handing Ofcom a really difficult job across all the measures in the Bill. In this case, I think we are handing prosecutors a really difficult job of having to determine when they should or should not use the new offence we are giving them. I think it will be contested, and we may well want to come back later and look at whether it is being used appropriately. I am sure the noble Baroness, Lady Fox, will have something to say about this.

If we do anything, we should learn from previous experiences. I think everyone would agree that Section 127 of the Communications Act 2003, which has been in place for 20 years, has not been an easy ride. We have moved our view on that around considerably. One good thing is that these new offences replace it—we are replacing this thing we rushed through then with a different version—but we need to test very carefully whether we have got it right.

Moving away from that offence to the new offence of the encouragement of self-harm, which the Minister will introduce shortly, I have two amendments which are quite different from each other, and I want to explain each of them. The first, Amendment 268AZC, seeks to test the threshold for prosecutions under this offence—so, again, it is about when we should or should not prosecute. It follows concerns raised by my noble friend Lord Clement-Jones. Legitimate concerns have been raised by a coalition of about 130 different individuals and organisations supporting survivors of self-harm. The question, really, is what the Government's intention is. I hope the Minister can put something on the record which will be helpful later in terms of the Government's intention for where the threshold should lie.

We can see clear instances where somebody maliciously and deliberately encourages self-harm. There are other issues around the way in which systems encourage self-harm, which I think are tackled in other parts of the Bill, but here we are talking about an individual carrying out an action which may be prosecuted. We can see those people, but there is then a spectrum: people who support victims of self-harm, people who provide educational and support materials—some of which might include quite graphic descriptions—people who run online fora, and indeed the individuals themselves who are posting self-harm content and documenting what they have done to themselves.

What I am looking for, and I think other noble Lords are looking for, is an assurance that it is not our intention to capture those people within this new offence. When the Minister outlines the offence, I would appreciate an assurance about why those fears will not be realised. We have suggested in the amendment to have a bar involving the Director of Public Prosecutions. I am sure the Minister will explain why that is not the right gating mechanism—but if not that, what is going to ensure that people in distress are not brought into the scope of this offence?

It would be very helpful to know what discussions the Minister is having with the Ministry of Justice, particularly about working with relevant organisations on the detail of what is being shared. Again, we can talk about it in the abstract; I found that specific cases can be helpful. I hope that there are people, either in his department or in the Ministry of Justice, who are talking to organisations, looking at the fora and at the kind of content that people in distress post, applying themselves and saying, "Yes, we are confident that we will not end up prosecuting that individual or that organisation", or, if it is likely that they will be prosecuted, "We need to have a longer discussion about that if that is not the intention".

Moving backwards through the letters, Amendment 268AZB takes us back to a question raised earlier today by the noble Baroness, Lady Kidron, but also on the first day in Committee, way back when—I am starting to feel nostalgic. She proposed an amendment to broaden the scope of this regulation to all online services, whether or not they are in the regulated user-to-user and search bucket for children's protection purposes. I argued against that. I continue to view this legislation as appropriately targeted, and I worry about broadening the scope—but here I have a lot of sympathy. The noble Baroness raised a specific scenario, which again is a real one, of an individual outside the UK jurisdiction—let us imagine that they are in the US, because they will have first amendment protections. They run a blog, so it is not user to user, which is targeting people in the UK and saying, "You should harm yourself. You should commit suicide". That individual is doing nothing wrong in their terms. They are now, under the terms of the Bill, committing a criminal offence in the UK, but there is virtually no prospect that they will ever be prosecuted unless they come to the UK. The amendment is seeking to tease out what happens in those scenarios.

I do not expect the Minister to accept my amendment as drafted—I thought it was cheeky even as I was drafting it. It says that for the purposes that we want, we will apply a whole bunch of the Online Safety Bill measures—the disruption, the blocking, the business disruption measures—to websites that promote this kind of content, even though they are not otherwise regulated. I am sure that the Minister has very good legal arguments in his notes as to why that would not work, but I hope he will tell us what else the Government can do. I do not think that people will find it acceptable if we go to all the trouble of passing this legislation but there is a category of online activity—which we know is there; it is real—that we can do nothing about. They are breaking our criminal law; we have taken all this time to construct a new form of criminal law, and yet they are sitting there beyond our reach, ignoring it, and we can do nothing. I hope the Minister can offer some suggestions as to what we might do.

I see that the noble Baroness, Lady Finlay of Llandaff, is in her place; she asked me to raise questions around the extent to which we have been using the powers we have today, but I will not as I think she will do so herself.

[Lord Allan of Hallam]

The core question that motivates the second amendment is that of what the Government think we might do if there are individuals who are not user-to-user or search services and are therefore outside the regulated bucket, who persistently and deliberately breach this new offence of encouragement to self-harm and yet are outside the UK jurisdiction. I hope the Minister agrees that something should be done about that scenario, and I look forward to hearing his suggestion about what may be done.

Baroness Kennedy of The Shaws (Lab): My Lords, I have two amendments in this grouping. I am afraid that I did not have time to get others to put their names to them, but I hope that they will find some support in this Committee.

For almost the whole of 2021, I chaired an inquiry in Scotland into misogyny. It was about the fact that many complaints were being made to the devolved Government in Scotland about women's experiences not just of online harassment but of the disinhibition that the internet and social media have given people to be abusive online now also visiting the public square. Many people described the ways in which they are publicly harassed. I know that concerns people in this House too.

When I came to the Bill, I was concerned about something that became part of the evidence we heard. It is no different down here from in Scotland. As we know, many women—I say women, but men receive harassment online too—are sent really vicious, vile things. We all know of parliamentarians and journalists who have received them, their lives made a misery by threats to rape and kill and people saying, "Go and kill yourself". There are also threats of disfigurement—"Somebody should take that smile off your face"—and suggestions that an acid attack be carried out on someone.

In hearing that evidence, it was interesting that some of the forms of threat are not direct in the way that criminal law normally works; they are indirect. They are not saying, "I'm going to come and rape you". Sometimes they say that, but a lot of the time they say, "Somebody should rape you"; "You should be raped"; "You deserve to be raped"; "You should be dead"; "Somebody should take you out"; "You should be disfigured"; "Somebody should take that smile off your face, and a bit of acid will do it". They are not saying, "I'm going to come and do it", in which case the police go round and, if the person is identifiable, make an arrest—as happened with Joanna Cherry, the Scottish MP, for example, who had a direct threat of rape, and the person was ultimately charged under the Communications Act.

Our review of the kinds of threat taking place showed that it was increasingly this indirect form of threat, which has a hugely chilling effect on women. It creates fear and life changes, because women think that some follower of this person might come and do what is suggested and throw acid at them as they are coming out of their house, and they start rearranging their lives because of it—because they live in constant anxiety about it. It was shocking to hear the extent to which this is going on.

In the course of the past year, we have all become much more familiar with Andrew Tate. What happens with these things is that, because of the nature of social media and people having big followings, you get the pile-on: an expression with which I was not that familiar in the past but now understand only too well. The pile-on is where, algorithmically, many different commentaries are brought together and suddenly the recipient receives not just one, or five, but thousands of negative and nasty threats and comments. Of course, as a public person in Parliament, or a councillor, you are expected to open up your social media, because that is how people will get in touch with you or comment on the things you are doing, but then you receive thousands of these things. This affects journalists, Members of Parliament, councillors and the leaders of campaigns. For example, it was interesting to hear that people involved in the Covid matters received threats. It affects both men and women, but the sexual nature of the threats to women is horrifying.

The Andrew Tate thing is interesting because only yesterday I saw in the newspapers that part of the charging in Romania is about the way in which, because of his enormous following, and his encouragement of violence towards women, he is being charged, among many other things that are directly about violence to and the rape of women, for his incitement to these behaviours in many of his young male followers. In the report of the inquiry that I conducted, there are a number of recommendations around offences of that sort.

To specifically deal with this business of online threats, my amendments seek to address their indirect nature—not the ones that say, "I'm going to do it", but the encouragement to others to do it or to create the fear that it will happen—and to look at how the criminal law addresses that.

5 pm

I started out with the much lesser suggestion of inserting that the threat be either by the person who is sending the message or another individual, but the more I reflected on it the more it did not seem to me that that went far enough to deal with what one was seeking to address here. This is why I have an alternative, Amendment 267AB.

Noble Lords will see that it says:

"A person commits an offence if they issue a communication concerning death".

I have written "concerning death" rather than "a threat to kill" because the former can include someone saying, "You should kill yourself", "You should commit suicide" or "You should harm yourself". The amendment also refers to "assault (sexual or otherwise)", which could include all manner of sexual matters but also self-harming and "disfigurement". I was shocked at the extent to which disfigurement is suggested in these kinds of abusive texts to all manner of people—even campaigners. Even a woman who campaigns on air pollution after the death of her child from a fatal asthmatic attack receives the most horrible threats and abuse online. When people do this, they know the impact that it is going to have. They do it, as my amendment says,

"knowing it will cause alarm or distress to a specific person or specific people",

rather than making generalised threats to the world.

As the Minister will know, I wrote to him wondering whether his team might put their great legal minds to this because we have to find a way of addressing the fact that people are encouraging others to make threats. We have to look at the effect that this has on the recipients, who are often women in public life in one way or another; the way in which it affects our polity and women's participation, not just in public life but in politics and civil society generally; and the way in which it deters women from living their lives freely and equally with menfolk.

I hope that the Committee will think on that and that the Minister can come back to me with some positive things, even if he does not accept the particular formulation that I sought to devise. It may be that a different formulation could be sought, perhaps to include that it is done "recklessly". I am prepared to consider its impact on people, but I think that it is done with knowledge of the impact that it will have, and where it is foreseeable that there will be an impact.

I urge the Committee to consider these matters. As I just heard one of my colleagues in the Committee suggest, this is a moment to seize. You can be sure that we cannot encapsulate everything, but we should be trying to cover as much as possible and the horrors of what is now happening on social media.

Baroness Finlay of Llandaff (CB): My Lords, I will address my remarks to government Amendment 268AZA and its consequential amendments. I rather hope that we will get some reassurance from the Minister on these amendments, about which I wrote to him just before the debate. I hope that that was helpful; it was meant to be constructive. I also had a helpful discussion with the noble Lord, Lord Allan.

As has already been said, the real question relates to the threshold and the point at which this measure will clock in. I am glad that the Government have recognised the importance of the dangers of encouraging or assisting serious self-harm. I am also grateful for the way in which they have defined it in the amendment, relating to it grievous bodily harm and severe injury. The amendment says that this also

"includes successive acts of self-harm which cumulatively reach that threshold".

That is important; it means, rather than just one act, a series of them.

However, I have a question about subsection (10), which states that:

"A provider of an internet service by means of which a communication is sent, transmitted or published is not to be regarded as a person who sends, transmits or publishes it".

We know from bereaved parents that algorithms have been set up which relay this ghastly, horrible and inciteful material that encourages and instructs. That is completely different from those organisations that are trying to provide support.

I am grateful to Samaritans for all its help with my Private Member's Bill, and for the briefing that it provided in relation to this amendment. As it points out, over 5,500 people in England and Wales took their own lives in 2021 and self-harm is

"a strong risk factor for future suicide".

Interestingly, two-thirds of those taking part in a Samaritans research project said that

"online forums and advice were helpful to them".

It is important that there is clarity around providing support and not encouraging and goading people into activity which makes their self-harming worse and drags them down to eventually ending their own lives. Three-quarters of people who took part in that Samaritans research said that they had

"harmed themselves more severely after viewing self-harm content online".

It is difficult to know exactly where this offence sits and whether it is sufficiently narrowly drawn.

I am grateful to the Minister for arranging for me to meet the Bill team to discuss this amendment. When I asked how it was going to work, I was somewhat concerned because, as far as I understand it, the mechanism is based on the Suicide Act, as amended, which talks about the offence of encouraging or assisting suicide. The problem as I see it is that, as far as I am aware, there has not been a string of prosecutions following the suicide of many young people. We have met their families and they have been absolutely clear about how their dead child or sibling—whether a child or a young adult—was goaded, pushed and prompted. I recently had experience outside of a similar situation, which fortunately did not result in a death.

The noble Lord, Lord Allan, has already addressed some of the issues around this, and I would not want the amendment not to be there because we must address this problem. However, if we are to have an offence here, with a threshold that the Government have tried to define, we must understand why, if assisting and encouraging suicide on the internet is already a criminal offence, nothing has happened and there have been no prosecutions.

Why is subsection (10) in there? It seems to negate the whole problem of forwarding on through dangerous algorithms content which is harmful. We know that a lot of the people who are mounting this are not in the UK, and therefore will be difficult to catch. It is the onward forwarding through algorithms that increases the volume of messaging to the vulnerable person and drives them further into the downward spiral that they find themselves in—which is perhaps why they originally went to the internet.

I look forward to hearing the Government's response, and to hearing how this will work.

Baroness Fox of Buckley (Non-Afl): My Lords, this group relates to communications offences. I will speak in support of Amendment 265, tabled by the noble Lord, Lord Moylan, and in support of his opposition to Clause 160 standing part of the Bill. I also have concerns about Amendments 267AA and 267AB, in the name of the noble Baroness, Lady Kennedy. Having heard her explanation, perhaps she can come back and give clarification regarding some of my concerns.

On Clause 160 and the false communications offence, unlike the noble Lord, Lord Moylan, I want to focus on psychological harm and the challenge this poses for freedom of expression. I know we have debated it

[Baroness Fox of Buckley]
before but, in the context of the criminal law, it matters in a different way. It is worth us dwelling on at least some aspects of this.

The offence refers to what is described as causing

"non-trivial psychological or physical harm to a likely audience".

As I understand it—maybe I want some clarity here—it is not necessary for the person sending the message to have intended to cause harm, yet there is a maximum sentence of 51 weeks in prison, a fine, or both. We need to have the context of a huge cultural shift when we consider the nature of the harm we are talking about.

J.S. Mill's harm principle has now been expanded, as previously discussed, to include traumatic harm caused by words. Speakers are regularly no-platformed for ideas that we are told cause psychological harm, at universities and more broadly as part of the whole cancel culture discussion. Over the last decade, harm and safety have come no longer to refer just to physical safety but have been conflated. Historically, we understood the distinction between physical threats and violence as distinct from speech, however aggressive or incendiary that speech was; we did not say that speech was the same as or interchangeable with bullets or knives or violence—and now we do. I want us to at least pause here.

What counts as psychological harm is not a settled question. The worry is that we have an inability to ascertain objectively what psychological harm has occurred. This will inevitably lead to endless interpretation controversies and/or subjective claims-making, at least some of which could be in bad faith. There is no median with respect to how humans view or experience controversial content. There are wildly divergent sensibilities about what is psychologically harmful. The social media lawyer Graham Smith made a really good point when he said that speech is not a physical risk,

"a tripping hazard … a projecting nail … that will foreseeably cause injury … Speech is nuanced, subjectively perceived and capable of being reacted to in as many different ways as there are people."

That is true.

We have seen an example of the potential disputes over what creates psychological harm in a case in the public realm over the past week. The former Culture Secretary, Nadine Dorries, who indeed oversaw much of this Bill in the other place, had her bullying claims against the SNP's John Nicolson MP overturned by the standards watchdog. Her complaints had previously been upheld by the standards commissioner. John Nicolson tweeted, liked and retweet offensive and disparaging material about Ms Dorries 168 times over 24 hours—which, as they say, is a bit OTT. He "liked" tweets describing Ms Dorries as grotesque, a "vacuous goon" and much worse. It was no doubt very unpleasant for her and certainly a personalised pile-on—the kind of thing the noble Baroness, Lady Kennedy, just talked about—and Ms Dorries would say it was psychologically harmful. But her complaint was overturned by new evidence that led to the bullying claim being turned down. What was this evidence? Ms Dorries herself was a frequent and aggressive tweeter. So, somebody is a recipient of something they say causes them psychological harm, and it has now been said that it does not matter because they are the kind of person who causes psychological harm to other people. My concern about turning this into a criminal offence is that the courts will be full of those kinds of arguments, which I do not think we want.

5.15 pm

One problem I have is that the Bill does not give any explicit protection in the public interest or for the purposes of debate around the use of such harm, even if, as has been indicated, false allegations are being made. People use hyperbole and exaggeration in political argument. Many of the big political questions of the day are not agreed on, and people accuse each other of lying all the time when it comes to anything from Brexit to gender. I am worried that inadvertently—I do not think anyone is trying to do this—Clause 160 will institutionalise and bake into primary legislation the core of cancel culture and lead to a more toxic climate than any of us would want.

I have some reservations about Amendment 267AB. I recognise and am full of admiration for the intention of the noble Baroness, Lady Kennedy, but the wording seems to make it an offence to issue

"a communication concerning death, rape, assault (sexual or otherwise) or disfigurement, knowing it will cause alarm or distress".

I query how we would prove that someone knows it will cause offence, an issue that was slightly danced around. Also, a lot of content such as news websites, podcasts and various other communications could be said purposefully to cause alarm, offence or distress, perhaps because the intention is to shock people into realising what a war or a famine is like, or into understanding the dangers of groomers or suicide sites—the kind of things we have been discussing. During lockdown, the nudge unit explicitly issued communications about potential death that caused a great deal of alarm and distress. It had a public interest defence, which was that it was important that people were frightened into complying with the rules of lockdown, whatever one thinks of them. I do not see how that will not be caught up in this.

Amendment 267AA extends the offence to include encouraging someone else to commit harm. I understand that this is an attempt to deal with indirect misogynistic abuse that is not quite incitement but on the other hand seems to be A encouraging B—an indirect threat. I worry that if A encourages another person and that person does something as a consequence, it will lead to a "he told me to do it" defence and an abdication of responsibility. I have that qualm about it. The Member's explanatory statement makes things even more difficult, using the phrase,

"if an individual sends a message which potentially encourages other individuals to carry out a harmful act".

That is going to be wide open to abuse by all sorts of bad-faith complainants.

I say all this as someone who is regularly piled on. I noticed when I started to speak that the noble Baroness, Lady Stuart, is in her place. I remember my shock and horror when I saw the abuse she got some seven years ago and subsequently—really vicious, vile,

horrible abuse for her political stance. Such abuse often takes a very sexualised form if you are a woman. So I can say from my lived experience that I know what it feels like to be on the receiving end of vile, horrible, misogynistic pile-ons, and so do Joanna Cherry, Rosie Duffield and a lot of people involved in contentious political issues. We need to make politics more civil by having the arguments and the debates and not mischaracterising, delegitimising or demonising people. I am just not sure that a criminal intervention here is going to help. I think it might make matters worse.

Baroness Bennett of Manor Castle (GP): My Lords, as the noble Lord, Lord Clement-Jones, said in introducing this group some time ago, it is very diverse. I shall comment on two aspects of the amendments in this group. I entirely associate myself with the remarks of the noble Lord, Lord Allan, who really nailed the problems with Amendment 266, and I very much support the amendments in the name of the noble Baroness, Lady Kennedy of The Shaws; I would have signed them if I had caught up with them.

The noble Baroness, Lady Fox, talked about causing alarm and distress. I can draw on my own experience here, thinking about when someone randomly starts to post you pictures of crossbows. I think about what used to happen when I was a journalist in Bangkok, when various people used to get hand grenades posted into their letterbox. That was not actively dangerous—the pin was not pulled; it was still held down—but it was clearly a threat, and the same thing happens on social media.

This is something of which I have long experience. In 2005, when I was the founder of the feminist blog Carnival of Feminists, I saw the kinds of messages that the noble Baronesses have referred to, which in the days before social media used to be posted as comments on people's blogs. You can still find the blog out there—it ran from 2005 to 2009—but many of its links to other blogs will be dead because they were often run by young women, often young women of colour, who were driven to pull down their blogs and sometimes were driven off the internet entirely by threatening, fearsome messages of the type that the noble Baroness, Lady Kennedy, referred to. We can argue about the drafting here—I will not have any opinion on that in detail—but something that addresses that issue is really important.

Secondly, we have not yet heard the Government's introductions to Amendment 268AZA, but the noble Lord, Lord Clement-Jones, provided us with the information that it is an amendment to create the offence of encouraging or assisting self-harm. I express support for the general tenor of that, but I want to make one specific point: so far as I can see, the amendment does not have any defence or carve-out for harm-reduction messages, which may be necessary.

To set the context here, figures from the Royal College of Psychiatrists say that about one in 10 young people self-harm at some stage in their youth, and the RCP says those figures are probably an underestimate because they are based on figures where medical professionals actually see them so the number is probably significantly higher than that. An article in the *Journal of Psychiatric and Mental Health Nursing* from 2018 entitled "Self-cutting and harm reduction" is focused on in-patient settings, but the arguments in it are important in setting the general tone. It says that

"harm reduction in all its guises starts from the premise that the end goal"—

that is, to end self-harm entirely—

"is neither necessarily nor inevitably abstinence",

which cannot be the solution for some people. Rather,

"the extinction of some particular form of behaviour may not be realistic for, or even desired by, the individual".

So you may find messages that say, "If you are going to cut yourself, use a clean blade. If you do cut yourself, look after the wound afterwards", but there is a risk that those kinds of well-intentioned, well-meaning and indeed expert messages could be caught by the amendment. I googled self-harm and harm reduction, and the websites that came up included Self Injury Support, which provides expert advice; a number of mental health trusts and healthcare trusts; and, indeed, the royal college's own website.

The noble Lord, Lord Allan of Hallam, was trying to address this issue with Amendment 268AZC, which would allow the DPP to authorise prosecutions, but it seems to me that a better approach would be to have in the government amendment a statement saying, "We acknowledge that there will be cases where people talk about self-harm in ways that seek to minimise harm rather than simply stopping it, and they are not meant to be caught by this amendment".

Baroness Merron (Lab): My Lords, as the noble Baroness, Lady Bennett, said, it seems a very long time since we heard the introduction from the noble Lord, Lord Clement-Jones, but it was useful in setting this helpful and well-informed debate on its way. I am sure the whole Committee is keen to hear the Minister introducing the government amendments, even at this very late stage in the debate.

I would like to make reference to a few points. I was completely captivated by the noble Lord, Lord Moylan, who invoked the 10 commandments. I say to him that one can go to no higher order, which I am sure will support the amendments that he and his colleagues have put forward.

I will refer first to the amendments tabled by my noble friend Lady Kennedy. At a minimum, they are interesting because they try to broaden the scope of the current offences. I believe they also try to anticipate the extent of the impact of the government amendments, which in my view would be improved by my noble friend's amendments. As my noble friend said, so many of the threats that are experienced online by, and directed towards, women and girls are indirect. They are about encouraging others: saying "Somebody should do something terrible to you" is extremely common. I feel that here is an opportunity to address that in the Bill, and if we do not, we will have missed a major aspect. I hope that the Minister will take account of that and be positive. We can all be relaxed about whether the amendments need to be made, but the intent is there.

That part of the debate made a strong case to build on the debate we had on an earlier day in Committee about violence against women and girls, which was led by the noble Baroness, Lady Morgan, and supported

[Baroness Merron]
by noble Baronesses and noble Lords from all sides of the House. We called upon the Minister then to ensure that the Bill explicitly includes the necessary amendments to make it refer to violence against women and girls because, for all the reasons that my noble friend Lady Kennedy has explained, it is considerably greater for them than for others. Without wishing to dismiss the fact that everybody receives levels of abuse, we have to be realistic here: I believe that my noble friend's amendments are extremely helpful there.

This is a bit in anticipation of what the Minister will say—I am sure he will forgive me if he already has the answers. The noble Lords, Lord Clement-Jones and Lord Allan, referred particularly to the coalition of some 130 individuals and organisations which have expressed their concerns. I want to highlight those concerns as well, because they speak to some important points. The groups in that coalition include the largest self-harm charity, Self Injury Support, along with numerous smaller self-harm support organisations and, of course, the mental health charity Mind. Their voice is therefore considerable.

To emphasise what has already been outlined, the concern with the current amendments is that they are somewhat broad and equivalent to an offence of glamorising self-harm, which was rejected by the Law Commission in its consultation on the offence. That followed concern from the Magistrates' Association and the Association of Police and Crime Commissioners that the offence would be ambiguous in application and complex to prosecute. It also risks criminalising people in distress, something that none of us want to see.

In addition, the broadness of the offence risks criminalising peer support and harm reduction resources, by defining them as capable of "encouraging or assisting" when they are in fact intended to help people who self-harm. This was raised by the noble Baroness, Lady Finlay, today and in respect of her Private Member's Bill, which we debated very recently in this Chamber, and I am sure that it would not be the Minister's intention.

I would like to emphasise another point that has been made. The offence may also criminalise content posted by people who are in distress and sharing their own experiences of self-harm—the noble Baroness, Lady Finlay, referred to this—by, for example, posting pictures of wounds. We do not want to subject vulnerable people to litigation, so let us not have an offence which ends up harming the very people it aims to protect. I shall be listening closely to the Minister.

5.30 pm

There are a number of mitigations which would help, such as the introduction of defences excluding peer support and harm reduction resources, as well as content which has been posted with a view to reducing one's own serious self-harm. In addition, there could be a mitigation, which I hope we will see, requiring consent from the DPP for any prosecution to occur. That was also suggested by the Law Commission and was picked up by the noble Lord, Lord Allan. There is also the potential for mitigation by including a requirement of malicious intent. This would ensure that offences apply only to instances of trolling or bullying.

I will leave the Minister with a few questions. It would be helpful to hear what consultation there has been with self-harm specific organisations and how the government amendments differ from the broader "glamorisation" offence, which was rejected by the Law Commission. It would also be helpful to hear examples of content that are intended to be criminalised by the offence. That would be of interest to your Lordships' Committee and the coalition of very key organisations and individuals who are keen, as we all are, to see this Bill end up in the right form and place. I look forward to hearing from the Minister.

Lord Parkinson of Whitley Bay (Con): My Lords, this has been a broad and mixed group of amendments. I will be moving the amendments in my name, which are part of it. These introduce the new offence of encouraging or assisting serious self-harm and make technical changes to the communications offences. If there can be a statement covering the group and the debate we have had, which I agree has been well informed and useful, it is that this Bill will modernise criminal law for communications online and offline. The new offences will criminalise the most damaging communications while protecting freedom of expression.

Amendments 264A, 266 and 267, tabled by the noble Lord, Lord Clement-Jones, and my noble friend Lady Buscombe, would expand the scope of the false communications offence to add identity theft and financial harm to third parties. I am very grateful to them for raising these issues, and in particular to my noble friend Lady Buscombe for raising the importance of financial harm from fake reviews. This will be addressed through the Digital Markets, Competition and Consumers Bill, which was recently introduced to Parliament. That Bill proposes new powers to address fake and misleading reviews. This will provide greater legal clarity to businesses and consumers. Where fake reviews are posted, it will allow the regulator to take action quickly. The noble Baroness is right to point out the specific scenarios about which she has concern. I hope she will look at that Bill and return to this issue in that context if she feels it does not address her points to her satisfaction.

Identity theft is dealt with by the Fraud Act 2006, which captures those using false identities for their own benefit. It also covers people selling or using stolen personal information, such as banking information and national insurance numbers. Adding identity theft to the communications offences here would duplicate existing law and expand the scope of the offences too broadly. Identity theft, as the noble Lord, Lord Clement-Jones, noted, is better covered by targeted offences rather than communications offences designed to protect victims from psychological and physical harm. The Fraud Act is more targeted and therefore more appropriate for tackling these issues. If we were to add identity theft to Clause 160, we would risk creating confusion for the courts when interpreting the law in these areas—so I hope the noble Lord will be inclined to side with clarity and simplicity.

Amendment 265, tabled by my noble friend Lord Moylan, gives me a second chance to consider his concerns about Clause 160. The Government believe that the clause is necessary and that the threshold of

harm strikes the right balance, robustly protecting victims of false communications while maintaining people's freedom of expression. Removing "psychological" harm from Clause 160 would make the offence too narrow and risk excluding communications that can have a lasting and serious effect on people's mental well-being.

But psychological harm is only one aspect of Clause 160; all elements of the offence must be met. This includes a person sending a knowingly false message with an intention to cause non-trivial harm, and without reasonable excuse. It has also been tested extensively as part of the Law Commission's report *Modernising Communications Offences*, when determining what the threshold of harm should be for this offence. It thus sets a high bar for prosecution, whereby a person cannot be prosecuted solely on the basis of a message causing psychological harm.

The noble Lord, Lord Allan, rightly recalled Section 127 of the Communications Act and the importance of probing issues such as this. I am glad he mentioned the Twitter joke trial—a good friend of mine acted as junior counsel in that case, so I remember it well. I shall spare the blushes of the noble Baroness, Lady Merron, in recalling who the Director of Public Prosecutions was at the time. But it is important that we look at these issues, and I am happy to speak further with my noble friend Lord Moylan and the noble Baroness, Lady Fox, about this and their broader concerns about freedom of expression between now and Report, if they would welcome that.

My noble friend Lord Moylan said that it would be unusual, or novel, to criminalise lying. The offence of fraud by false representation already makes it an offence dishonestly to make a false representation—to breach the ninth commandment—with the intention of making a gain or causing someone else a loss. So, as my noble and learned friend Lord Garnier pointed out, there is a precedent for lies with malicious and harmful intent being criminalised.

Amendments 267AA, 267AB and 268, tabled my noble friend Lady Buscombe and the noble Baroness, Lady Kennedy of The Shaws, take the opposite approach to those I have just discussed, as they significantly lower and expand the threshold of harm in the false and threatening communications offences. The first of these would specify that a threatening communications offence is committed even if someone encountering the message did not fear that the sender specifically would carry out the threat. I am grateful to the noble Baroness for her correspondence on this issue, informed by her work in Scotland. The test here is not whether a message makes a direct threat but whether it conveys a threat—which can certainly cover indirect or implied threats.

I reassure the noble Baroness and other noble Lords that Clause 162 already captures threats of "death or serious harm", including rape and disfigurement, as well as messages that convey a threat of serious harm, including rape and death threats, or threats of serious injury amounting to grievous bodily harm. If a sender has the relevant intention or recklessness, the message will meet the required threshold. But I was grateful to see my right honourable friend Edward Argar watching our debates earlier, in his capacity as Justice Minister. I mentioned the matter to him and will ensure that his officials have the opportunity to speak to officials in Scotland to look at the work being done with regard to Scots law, and to follow the points that the noble Baroness, Lady Bennett, made about pictures—

Baroness Kennedy of The Shaws (Lab): I am grateful to the Minister. I was not imagining that the formulations that I played with fulfilled all of the requirements. Of course, as a practising lawyer, I am anxious that we do not diminish standards. I thank the noble Baroness, Lady Fox, for raising concerns about freedom of speech, but this is not about telling people that they are unattractive or ugly, which is hurtful enough to many women and can have very deleterious effects on their self-confidence and willingness to be public figures. Actually, I put the bar reasonably high in describing the acts that I was talking about: threats that somebody would kill, rape, bugger or disfigure you, or do whatever to you. That was the shocking thing: the evidence showed that it was often at that high level. It is happening not just to well-known public figures, who can become somewhat inured to this because they can find a way to deal with it; it is happening to schoolgirls and young women in universities, who get these pile-ons as well. We should reckon with the fact that it is happening on a much wider basis than many people understand.

Lord Parkinson of Whitley Bay (Con): Yes, we will ensure that, in looking at this in the context of Scots law, we have the opportunity to see what is being done there and that we are satisfied that all the scenarios are covered. In relation to the noble Baroness's Amendment 268, the intentional encouragement or assistance of a criminal offence is already captured under Sections 44 to 46 of the Serious Crime Act 2007, so I hope that that satisfies her that that element is covered—but we will certainly look at all of this.

I turn to government Amendment 268AZA, which introduces the new serious self-harm offence, and Amendments 268AZB and 268AZC, tabled by the noble Lords, Lord Allan and Lord Clement-Jones. The Government recognise that there is a gap in the law in relation to the encouragement of non-fatal self-harm. The new offence will apply to anyone carrying out an act which intends to, and is capable of, encouraging or assisting another person seriously to self-harm by means of verbal or electronic communications, publications or correspondence.

I say to the noble Baroness, Lady Finlay of Llandaff, that the new clause inserted by Amendment 268AZA is clear that, when a person sends or publishes a communication that is an offence, it is also clear that, when a person forwards on another person's communication, that will be an offence too. The new offence will capture only the most serious behaviour and avoid criminalising vulnerable people who share their experiences of self-harm. The preparation of these clauses was informed by extensive consultation with interested groups and campaign bodies. The new offence includes two key elements that constrain the offence to the most culpable offending; namely, that a person's act must be intended to encourage or assist the serious self-harm of another person and that serious self-harm should amount to grievous bodily harm.

[Lord Parkinson of Whitley Bay]
If a person does not intend to encourage or assist serious self-harm, as will likely be the case with recovery and supportive material, no offence will be committed. The Law Commission looked at this issue carefully, following evidence from the Samaritans and others, and the implementation will be informed by an ongoing consultation as well.

Lord Clement-Jones (LD): I am sorry to interrupt the Minister, but the Law Commission recommended that the DPP's consent should be required. The case that the Minister has made on previous occasions in some of the consultations that he has had with us is that this offence that the Government have proposed is different from the Law Commission one, and that is why they have not included the DPP's consent. I am rather baffled by that, because the Law Commission was talking about a high threshold in the first place, and the Minister is talking about a high threshold of intent. Even if he cannot do so now, it would be extremely helpful to tie that down. As the noble Baroness and my noble friend said, 130 organisations are really concerned about the impact of this.

Lord Parkinson of Whitley Bay (Con): The Law Commission recommended that the consent, but not the personal consent, of the Director of Public Prosecutions should be required. We believe, however, that, because the offence already has tight parameters due to the requirement for an intention to cause serious self-harm amounting to grievous bodily harm, as I have just outlined, an additional safeguard of obtaining the personal consent of the Director of Public Prosecutions is not necessary. We would expect the usual prosecutorial discretion and guidance to provide sufficient safeguards against inappropriate prosecutions in this area. As I say, we will continue to engage with those groups that have helped to inform the drafting of these clauses as they are implemented to make sure that that assessment is indeed borne out.

5.45 pm

Amendment 268AZB aims to apply business disruption enforcement measures to any internet service that "persistently fails to prevent", or indeed allows, the illegal encouragement of self-harm. As I mentioned earlier in Committee, the Bill significantly reduces the likelihood of users encountering this material on internet sites. It requires all user-to-user services to remove this content and search services to minimise users' access to it. I hope that that reassures the noble Lords in relation to their amendments to my amendment.

Lord Allan of Hallam (LD): I completely accept that, yes, by requiring the regulated services to prevent access to this kind of content, we will make a significant difference, but it is still the case that there will be—we know there will be, because they exist today—these individual websites, blogs or whatever you want to call them which are not regulated user-to-user services and which are promoting self-harm content. It would be really helpful to know what the Government think should happen to a service such as that, given that it is outside the regulation; it may be persistently breaking the law but be outside our jurisdiction.

Lord Parkinson of Whitley Bay (Con): I will follow up in writing on that point.

Before I conclude, I will mention briefly the further government amendments in my name, which make technical and consequential amendments to ensure that the communications offences, including the self-harm offence, have the appropriate territorial extent. They also set out the respective penalties for the communications offences in Northern Ireland, alongside a minor adjustment to the epilepsy trolling offence, to ensure that its description is more accurate.

I hope that noble Lords will agree that the new criminal laws that we will make through this Bill are a marked improvement on the status quo. I hope that they will continue to support the government amendments. I express my gratitude to the Law Commission and to all noble Lords—

Baroness Finlay of Llandaff (CB): Just before the Minister sits down—I assume that he has finished his brief on the self-harm amendments; I have been waiting—I have two questions relating to what he said. First, if I heard him right, he said that the person forwarding on is also committing an offence. Does that also apply to those who set up algorithms that disseminate, as opposed to one individual forwarding on to another individual? Those are two very different scenarios. We can see how one individual forwarding to another could be quite targeted and malicious, and we can see how disseminating through an algorithm could have very widespread harms across a lot of people in a lot of different groups—all types of groups—but I am not clear from what he said that that has been caught in his wording.

Secondly—I will ask both questions while I can—I asked the Minister previously why there have been no prosecutions under the Suicide Act. I understood from officials that this amendment creating an offence was to reflect the Suicide Act and that suicide was not included in the Bill because it was already covered as an offence by the Suicide Act. Yet there have been no prosecutions and we have had deaths, so I do not quite understand why I have not had an answer to that.

Lord Parkinson of Whitley Bay (Con): I will have to write on the second point to try to set that out in further detail. On the question of algorithms, the brief answer is no, algorithms would not be covered in the way a person forwarding on a communication is covered unless the algorithm has been developed with the intention of causing serious self-harm; it is the intention that is part of the test. If somebody creates an algorithm intending people to self-harm, that could be captured, but if it is an algorithm generally passing it on without that specific intention, it may not be. I am happy to write to the noble Baroness further on this, because it is a good question but quite a technical one.

Baroness Finlay of Llandaff (CB): It needs to be addressed, because these very small websites already alluded to are providing some extremely nasty stuff. They are not providing support to people and helping decrease the amount of harm to those self-harming but seem to be enjoying the spectacle of it. We need to differentiate and make sure that we do not inadvertently

let one group get away with disseminating very harmful material simply because it has a small website somewhere else. I hope that will be included in the Minister's letter; I do not expect him to reply now.

Lord Moylan (Con): Some of us are slightly disappointed that my noble friend did not respond to my point on the interaction of Clause 160 with the illegal content duty. Essentially, what appears to be creating a criminal offence could simply be a channel for hyperactive censorship on the part of the platforms to prevent the criminal offence taking place. He has not explained that interaction. He may say that there is no interaction and that we would not expect the platforms to take any action against offences under Clause 160, or that we expect a large amount of action, but nothing was said.

Lord Parkinson of Whitley Bay (Con): If my noble friend will forgive me, I had better refresh my memory of what he said—it was some time ago—and follow up in writing.

Lord Clement-Jones (LD): My Lords, I will be extremely brief. There is much to chew on in the Minister's speech and this was a very useful debate. Some of us will be happier than others; the noble Baroness, Lady Buscombe, will no doubt look forward to the digital markets Bill and I will just have to keep pressing the Minister on the Data Protection and Digital Information Bill.

There is a fundamental misunderstanding about digital identity theft. It will not necessarily always be fraud that is demonstrated—the very theft of the identity is designed to be the crime, and it is not covered by the Fraud Act 2006. I am delighted that the Minister has agreed to talk further with the noble Baroness, Lady Kennedy, because that is a really important area. I am not sure that my noble friend will be that happy with the response, but he will no doubt follow up with the Minister on his amendments.

The Minister made a very clear statement on the substantive aspect of the group, the new crime of encouraging self-harm, but further clarification is still needed. We will look very carefully at what he said in relation to what the Law Commission recommended, because it is really important that we get this right. I know that the Minister will talk further with the noble Baroness, Lady Finlay, who is very well versed in this area. In the meantime, I beg leave to withdraw my amendment.

Amendment 264A withdrawn.

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, I now have to go through a mass of amendments that are not to be the subject of debate today as they have been debated previously. I will proceed as swiftly as I can.

Amendments 265 to 267 not moved.

Amendment 267A

Moved by ***Lord Parkinson of Whitley Bay***

267A: Clause 160, page 138, line 25, leave out from "liable" to end of line 27 and insert "—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both);

(b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both)."

Member's explanatory statement

This amendment sets out the penalties for the false communications offence in Northern Ireland, since the offence is now to extend to Northern Ireland as well as England and Wales.

Amendment 267A agreed.

Clause 160, as amended, agreed.

Clause 161 agreed.

Clause 162: Threatening communications offence

Amendments 267AA and 267AB not moved.

Amendments 267B and 267C

Moved by ***Lord Parkinson of Whitley Bay***

267B: Clause 162, page 139, line 38, after "conviction" insert "in England and Wales"

Member's explanatory statement

This amendment adds a reference to England and Wales to differentiate the provision from the similar provision applying to Northern Ireland (see the next amendment in the Minister's name).

267C: Clause 162, page 139, line 39, at end insert—

"(aa) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);"

Member's explanatory statement

This amendment sets out the penalties for the threatening communications offence in Northern Ireland, since the offence is now to extend to Northern Ireland as well as England and Wales.

Amendments 267B and 267C agreed.

Clause 162, as amended, agreed.

Clause 163: Interpretation of sections 160 to 162

Amendment 268 not moved.

Clause 163 agreed.

Clause 164: Offences of sending or showing flashing images electronically

Amendment 268A

Moved by ***Lord Parkinson of Whitley Bay***

268A: Clause 164, page 142, line 30, leave out subsection (14)

Member's explanatory statement

This is a technical amendment about extent - the extent of the epilepsy trolling offence in clause 164 is now dealt with by amendments of clause 210 (see the amendments of that clause in the Minister's name).

Amendment 268A agreed.

Clause 164, as amended, agreed.

Amendment 268AZA

Moved by ***Lord Parkinson of Whitley Bay***

268AZA: After Clause 164, insert the following new Clause—

"Offence of encouraging or assisting serious self-harm

(1) A person (D) commits an offence if—

(a) D does a relevant act capable of encouraging or assisting the serious self-harm of another person, and

(b) D's act was intended to encourage or assist the serious self-harm of another person.

(2) D "does a relevant act" if D—

(a) communicates in person,

(b) sends, transmits or publishes a communication by electronic means,

(c) shows a person such a communication,

(d) publishes material by any means other than electronic means,

(e) sends, gives, shows or makes available to a person—

(i) material published as mentioned in paragraph (d), or

(ii) any form of correspondence, or

(f) sends, gives or makes available to a person an item on which data is stored electronically.

(3) "Serious self-harm" means self-harm amounting to—

(a) in England and Wales and Northern Ireland, grievous bodily harm within the meaning of the Offences Against the Person Act 1861, and

(b) in Scotland, severe injury,

and includes successive acts of self-harm which cumulatively reach that threshold.

(4) The person referred to in subsection (1)(a) and (b) need not be a specific person (or class of persons) known to, or identified by, D.

(5) D may commit an offence under this section whether or not serious self-harm occurs.

(6) If a person (D1) arranges for a person (D2) to do an act that is capable of encouraging or assisting the serious self-harm of another person and D2 does that act, D1 is to be treated as also having done it.

(7) In the application of subsection (1) to an act by D involving an electronic communication or a publication in physical form, it does not matter whether the content of the communication or publication is created by D (so for example, in the online context, the offence under this section may be committed by forwarding another person's direct message or sharing another person's post).

(8) In the application of subsection (1) to the sending, transmission or publication by electronic means of a communication consisting of or including a hyperlink to other content, the reference in subsection (2)(b) to the communication is to be read as including a reference to content accessed directly via the hyperlink.

(9) In the application of subsection (1) to an act by D involving an item on which data is stored electronically, the reference in subsection (2)(f) to the item is to be read as including a reference to content accessed by means of the item to which the person in receipt of the item is specifically directed by D.

(10) A provider of an internet service by means of which a communication is sent, transmitted or published is not to be regarded as a person who sends, transmits or publishes it.

(11) Any reference in this section to doing an act that is capable of encouraging the serious self-harm of another person includes a reference to doing so by threatening another person or otherwise putting pressure on another person to seriously self-harm.

"Seriously self-harm" is to be interpreted consistently with subsection (3).

(12) Any reference to an act in this section, except in subsection (3), includes a reference to a course of conduct, and references to doing an act are to be read accordingly.

(13) In subsection (3) "act" includes omission.

(14) A person who commits an offence under this section is liable—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);

(b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);

(c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);

(d) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both)."

Member's explanatory statement

This amendment inserts a new offence of encouraging or assisting another person to seriously self-harm, with intent to do so, by means of verbal or electronic communications, publications or correspondence.

Amendment 268AZA agreed.

Amendments 268AZB and 268AZC not moved.

Amendment 268AA not moved.

Clause 165: Extra-territorial application and jurisdiction

Amendments 268B to 268F

Moved by ***Lord Parkinson of Whitley Bay***

268B: Clause 165, page 142, line 32, leave out subsections (1) and (2)

Member's explanatory statement

This amendment omits provisions which relate to offences that extended to England and Wales only, as the offences in question are now to extend to Northern Ireland as well.

268C: Clause 165, page 142, line 38, leave out "Section 164(1) applies" and insert "Sections 160(1), 162(1) and 164(1) apply"

Member's explanatory statement

This amendment, regarding extra-territorial application, is needed because of the extension of the offences in clauses 160 and 162 to Northern Ireland.

268CA: Clause 165, page 142, line 44, at end insert—

"(4A) Section (Offence of encouraging or assisting serious self-harm)(1) applies to an act done outside the United Kingdom, but only if the act is done by a person within subsection (4B).

(4B) A person is within this subsection if the person is—

(a) an individual who is habitually resident in the United Kingdom, or

(b) a body incorporated or constituted under the law of any part of the United Kingdom."

Member's explanatory statement

This amendment provides for the extra-territorial application of the new offence proposed by the amendment in the Minister's name to be inserted after clause 164.

268D: Clause 165, page 143, line 1, leave out subsection (5)

Member's explanatory statement

This amendment omits a provision which relates to offences that extended to England and Wales only, as the offences in question are now to extend to Northern Ireland as well.

268E: Clause 165, page 143, line 4, after "section" insert "160, 162 or"

Member's explanatory statement

This amendment, regarding extra-territorial jurisdiction, is needed because of the extension of the offences in clauses 160 and 162 to Northern Ireland.

268EA: Clause 165, page 143, line 7, at end insert—

"(6A) Proceedings for an offence committed under section (Offence of encouraging or assisting serious self-harm) outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, at any place in the United Kingdom.

(6B) In the application of subsection (6A) to Scotland, any such proceedings against a person may be taken, and the offence may for incidental purposes be treated as having been committed—

(a) in any sheriff court district in which the person is apprehended or is in custody, or

(b) in such sheriff court district as the Lord Advocate may determine.

(6C) In subsection (6B) "sheriff court district" is to be construed in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act)."

Member's explanatory statement

This amendment is required in order to give courts in the United Kingdom jurisdiction to deal with the new offence proposed by the amendment in the Minister's name to be inserted after clause 164, if the offence is committed outside the United Kingdom.

268F: Clause 165, page 143, line 8, leave out subsection (7)

Member's explanatory statement

This is a technical amendment about extent - the extent of clause 165 is now dealt with by amendments of clause 210 (see the amendments of that clause in the Minister's name).

Amendments 268B to 268F agreed.

Clause 165, as amended, agreed.

Clause 166: Liability of corporate officers

Amendments 268FA to 268G

Moved by ***Lord Parkinson of Whitley Bay***

268FA: Clause 166, page 143, line 10, leave out "or 164" and insert ", 164 or (Offence of encouraging or assisting serious self-harm)"

Member's explanatory statement

This amendment ensures that clause 166, which is about the liability of corporate officers for offences, applies in relation to the new offence proposed by the amendment in the Minister's name to be inserted after clause 164.

268FB: Clause 166, page 143, line 22, at end insert—

"(2A) If an offence under section (Offence of encouraging or assisting serious self-harm) is committed by a Scottish partnership and it is proved that the offence—

(a) has been committed with the consent or connivance of a partner of the partnership, or

(b) is attributable to any neglect on the part of a partner of the partnership,

the partner (as well as the partnership) commits the offence and is liable to be proceeded against and punished accordingly.

(2B) "Partner", in relation to a Scottish partnership, includes any person who was purporting to act as a partner."

Member's explanatory statement

This amendment ensures that clause 166, which is about the liability of corporate officers for offences, applies to Scottish partnerships.

268G: Clause 166, page 143, line 23, leave out subsection (3)

Member's explanatory statement

This is a technical amendment about extent - the extent of clause 166 is now dealt with by amendments of clause 210 (see the amendments of that clause in the Minister's name).

Amendments 268FA to 268G agreed.

Clause 166, as amended, agreed.

Clause 167: Sending etc photograph or film of genitals

Amendments 269 and 270 not moved.

Clause 167 agreed.

Amendment 271 not moved.

Clause 168: Repeals in connection with offences under sections 160 and 162

Amendments 271A and 271B

Moved by ***Lord Parkinson of Whitley Bay***

271A: Clause 168, page 144, line 17, after "Wales" insert "and Northern Ireland"

Member's explanatory statement

This amendment ensures that section 127(2)(a) and (b) of the Communications Act 2003 is repealed for Northern Ireland as well as England and Wales (because the false communications offence in clause 160 is now to extend to Northern Ireland as well).

271B: Clause 168, page 144, line 22, at end insert—

"(3) The following provisions of the Malicious Communications (Northern Ireland) Order 1988 (S.I. 1988/1849 (N.I. 18)) are repealed—

(a) Article 3(1)(a)(ii),

(b) Article 3(1)(a)(iii), and

(c) Article 3(2)."

Member's explanatory statement

This amendment amends the specified Northern Ireland legislation in consequence of the extension of the false and threatening communications offences to Northern Ireland.

Amendments 271A and 271B agreed.

Clause 168, as amended, agreed.

Clause 169: Consequential amendments

Amendment 271BA

Moved by ***Lord Parkinson of Whitley Bay***

271BA: Clause 169, page 144, line 25, at end insert—

"(1A) Part 1A of Schedule 14 contains amendments consequential on section (Offence of encouraging or assisting serious self-harm)."

Member's explanatory statement

This amendment introduces a Part of Schedule 14 containing consequential amendments related to the new offence proposed by the amendment in the Minister's name to be inserted after clause 164.

Amendment 271BA agreed.

Clause 169, as amended, agreed.

Schedule 14: Amendments consequential on offences in Part 10 of this Act

Amendments 271C to 271F

Moved by ***Lord Parkinson of Whitley Bay***

271C: Schedule 14, page 231, line 33, leave out from "2003" to "after" in line 34 and insert ", in the list of offences for England and Wales,"

Member's explanatory statement

This amendment makes it clearer that changes to the Sexual Offences Act 2003 in paragraph 2 of Schedule 14 to the Bill relate to England and Wales only (since the next amendment in the Minister's name makes equivalent amendments for Northern Ireland).

271D: Schedule 14, page 231, line 38, at end insert—

"2A_ In Schedule 5 to the Sexual Offences Act 2003, in the list of offences for Northern Ireland, after paragraph 171H insert—

"171I_ An offence under section 160 of the Online Safety Act 2023 (false communications).

171J_ An offence under section 162 of that Act (threatening communications).""

Member's explanatory statement

This amendment concerns offences relevant to the making of certain orders under the Sexual Offences Act 2003. Now that the false and threatening communications offences under this Bill are to extend to Northern Ireland, this amendment updates the references in Schedule 5 to the Sexual Offences Act that relate to Northern Ireland.

271E: Schedule 14, page 232, line 14, after "sending" insert "or showing"

Member's explanatory statement

This amendment makes a minor change to the description of the epilepsy trolling offence so that the description is more accurate.

271F: Schedule 14, page 232, line 14, at end insert—

"Part 1A

AMENDMENTS CONSEQUENTIAL ON OFFENCE IN SECTION (ENCOURAGING OR ASSISTING SERIOUS SELF-HARM)

Children and Young Persons Act 1933

4A_ In Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons with respect to which special provisions of Act apply), after the entry relating to the Suicide Act 1961 insert—

"An offence under section (Offence of encouraging or assisting serious self-harm)(1) of the Online Safety Act 2023 (encouraging or assisting serious self-harm) where the relevant act is an act capable of, and done with the intention of, encouraging or assisting the serious self-harm of a child or young person."

Visiting Forces Act 1952

4B_(1) The Schedule to the Visiting Forces Act 1952 (offences referred to in section 3) is amended as follows.

(2) In paragraph 1(b), after paragraph (xv) insert—

"(xvi) section (Offence of encouraging or assisting serious self-harm) of the Online Safety Act 2023;".

(3) In paragraph 2(b), after paragraph (iv) insert—

"(v) section (Offence of encouraging or assisting serious self-harm) of the Online Safety Act 2023;".

Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.))

4C_ In Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968 (offences against children and young persons with respect to which special provisions of Act apply), after the entry relating to the Criminal Justice Act (Northern Ireland) 1966 insert—

"An offence under section (Offence of encouraging or assisting serious self-harm)(1) of the Online Safety Act 2023 (encouraging or assisting serious self-harm) where the relevant act is an act capable of, and done with the intention of, encouraging or assisting the serious self-harm of a child or young person."

Criminal Attempts Act 1981

4D_ In section 1 of the Criminal Attempts Act 1981 (attempting to commit an offence), in subsection (4), after paragraph (c) insert—

"(d) an offence under section (Offence of encouraging or assisting serious self-harm)(1) of the Online Safety Act 2023 (encouraging or assisting serious self-harm)."

Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/ 1120 (N.I. 13))

4E_ In Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (attempting to commit an offence), in paragraph (4), after sub-paragraph (c) insert—

"(ca) an offence under section (Offence of encouraging or assisting serious self-harm)(1) of the Online Safety Act 2023 (encouraging or assisting serious self-harm);"

Armed Forces Act 2006

4F_ In Schedule 2 to the Armed Forces Act 2006 ("Schedule 2 offences"), in paragraph 12, at the end insert—

"(ba) an offence under section (Offence of encouraging or assisting serious self-harm) of the Online Safety Act 2023 (encouraging or assisting serious self-harm)."

Serious Crime Act 2007

4G_(1) The Serious Crime Act 2007 is amended as follows.

(2) In section 51A (exceptions to section 44 for encouraging or assisting suicide)—

(a) the existing text becomes subsection (1);

(b) after that subsection insert—

"(2) Section 44 does not apply to an offence under section (Offence of encouraging or assisting serious self-harm)(1) of the Online Safety Act 2023 (offence of encouraging or assisting serious self-harm).";

(c) in the heading, at the end insert "or serious self-harm".

(3) In Part 1 of Schedule 3 (listed offences: England and Wales and Northern Ireland), after paragraph 24A insert—

"Online Safety Act 2023

24B_ An offence under section (Offence of encouraging or assisting serious self-harm)(1) of the Online Safety Act 2023 (encouraging or assisting serious self-harm).""

Member's explanatory statement

This amendment makes changes which are consequential on the new offence proposed by the amendment in the Minister's name to be inserted after clause 164. Among other things, changes are proposed to the Criminal Attempts Act 1981 and the Serious Crime Act 2007 to ensure that offences of attempt and encouragement etc in those Acts do not apply in relation to the new offence, because that offence is itself an inchoate offence.

Amendments 271C to 271F agreed.

Schedule 14, as amended, agreed.

Clause 170: Providers' judgements about the status of content

Amendments 272 to 283ZA not moved.

Clause 170 agreed.

6 pm

Clause 171: OFCOM's guidance about illegal content judgements

Amendment 283A

Moved by ***Lord Parkinson of Whitley Bay***

283A: Clause 171, page 145, line 43, at end insert ", and

(b) judgements by providers about whether news publisher content amounts to a relevant offence (see section 14(5) and (10))."

Member's explanatory statement

This amendment, in effect, re-states the provision currently in clause 14(11), requiring OFCOM's guidance under clause 171 to cover the judgements described in the amendment.

Amendment 283A agreed.

Amendment 284 not moved.

Clause 171, as amended, agreed.

Clauses 172 to 174 agreed.

Schedule 15 agreed.

Clauses 175 and 176 agreed.

Amendment 284A

Moved by ***Lord Parkinson of Whitley Bay***

284A: After Clause 176, insert the following new Clause—

"Offence of failure to comply with confirmation decision: supplementary

(1) Where a penalty has been imposed on a person by a penalty notice under section 126 in respect of a failure constituting an offence under section (Confirmation decisions: offence)(failure to comply with certain requirements of a confirmation decision), no proceedings may be brought against the person for that offence.

(2) A penalty may not be imposed on a person by a penalty notice under section 126 in respect of a failure constituting an offence under section (Confirmation decisions: offence) if—

(a) proceedings for the offence have been brought against the person but have not been concluded, or

(b) the person has been convicted of the offence.

(3) Where a service restriction order under section 131 or an access restriction order under section 133 has been made in relation to a regulated service provided by a person in respect of a failure constituting an offence under section (Confirmation decisions: offence), no proceedings may be brought against the person for that offence."

Member's explanatory statement

This amendment ensures, among other things, that a person cannot be prosecuted for the new offence created by the new clause to be inserted after clause 125 in the Minister's name if OFCOM have imposed a financial penalty for the same conduct instead, and vice versa.

Amendment 284A agreed.

Clauses 177 to 179 agreed.

Clause 180: Extra-territorial application

Amendments 284B and 284C

Moved by ***Lord Parkinson of Whitley Bay***

284B: Clause 180, page 150, line 23, leave out "Section 121(7)" and insert "Sections 121(7) and 137(11)"

Member's explanatory statement

This amendment adds a reference to clause 137(11) so that that provision (which is about enforcement by civil proceedings) has extra-territorial application.

284C: Clause 180, page 150, line 24, leave out "applies" and insert "apply"

Member's explanatory statement

This amendment is consequential on the preceding amendment in the Minister's name.

Amendments 284B and 284C agreed.

Clause 180, as amended, agreed.

Clause 181: Information offences: extra-territorial application and jurisdiction

Amendments 284D to 284F

Moved by ***Lord Parkinson of Whitley Bay***

284D: Clause 181, page 150, line 29, at end insert—

"(2A) Section (Confirmation decisions: offence) applies to acts done by a person in the United Kingdom or elsewhere (offence of failure to comply with confirmation decision)."

Member's explanatory statement

This amendment gives wide extra-territorial effect to the new offence created by the new clause to be inserted after clause 125 in the Minister's name (failure to comply with certain requirements of a confirmation decision).

284E: Clause 181, page 150, line 31, after "subsection (1)" insert "or (2A)"

Member's explanatory statement

This amendment extends the extra-territorial effect of the new offence of failure to comply with certain requirements of a confirmation decision in the case of senior managers etc who may commit the offence under clause 178(2) or 179(5).

284F: Clause 181, page 150, line 34, leave out "or 101" and insert ", 101 or (Confirmation decisions: offence)"

Member's explanatory statement

This amendment is required in order to give United Kingdom courts jurisdiction to deal with the new offence of failure to comply with certain requirements of a confirmation decision if it is committed elsewhere.

Amendments 284D to 284F agreed.

Clause 181, as amended, agreed.

Clauses 182 to 184 agreed.

Amendments 285 and 286 not moved.

The Deputy Chairman of Committees (Lord Lexden) (Con): Land is in sight! I call Amendment 286ZA.

Amendment 286ZA

Moved by ***Lord Knight of Weymouth***

286ZA: After Clause 184, insert the following new Clause—

"Artificial intelligence: labelling of machine-generated content

Within the period of six months beginning with the day on which this Act is passed, the Secretary of State must publish draft legislation with provisions requiring providers of regulated services to put in place systems and processes for—

(a) identifying content on their service which is machine-generated, and

(b) informing users of the service that such content is machine-generated."

Member's explanatory statement

This probing amendment is to facilitate a discussion around the potential labelling of machine-generated content, which is a measure being considered in other jurisdictions.

Lord Knight of Weymouth (Lab): My Lords, that was a bravura performance by the noble Lord, Lord Lexden. We thank him. To those listening in the Public Gallery, I should say that we debated most of those; it was not quite as on the nod as it looked.

Amendment 286ZA, in the name of my noble friend Lord Stevenson, seeks to address a critical issue in our digital landscape: the labelling of AI-generated content on social media platforms.

As we navigate the ever-evolving world of technology, it is crucial that we uphold a transparency safeguarding the principles of honesty and accountability. Social media has become an integral part of our lives, shaping public discourse, disseminating information and influencing public opinion. However, the rise of AI-powered algorithms and tools has given rise to a new challenge: an increasing amount of content generated by artificial intelligence without explicit disclosure.

We live in an age where AI is capable of creating incredibly realistic text, images and even videos that can be virtually indistinguishable from those generated by humans. While this advancement holds immense potential, it also raises concerns regarding authenticity, trust and the ethical implications of AI-generated content. The proposed amendment seeks to address this concern by advocating for a simple but powerful solution—labelling AI-generated content as such. By clearly distinguishing human-generated content from AI-generated content, we empower individuals to make informed decisions about the information they consume, promoting transparency and reducing the potential for misinformation or manipulation.

Labelling AI-generated content serves several crucial purposes. First and foremost, it allows individuals to differentiate between information created by humans and that generated by algorithms in an era where misinformation and deep fakes pose a significant threat to public trust. Such labelling becomes a vital tool to protect and promote digital literacy.

Secondly, it enables users to better understand the potential biases and limitations of AI-generated content. AI algorithms are trained on vast datasets, and without labelling, individuals might unknowingly attribute undue credibility to AI-generated information, assuming it to be wholly objective and reliable. Labelling, however, helps users to recognise the context and provides an opportunity for critical evaluation.

Furthermore, labelling AI-generated content encourages responsible behaviour from the platforms themselves. It incentivises social media companies to develop and implement AI technologies with integrity and transparency, ensuring that users are aware of the presence and influence of AI in their online experiences.

Some may argue that labelling AI-generated content is an unnecessary burden or that it could stifle innovation. However, the intention behind this amendment is not to impede progress but to foster a healthier digital ecosystem built on trust, integrity and informed decision-making. By promoting transparency, we can strike a balance that allows innovation to flourish while safeguarding the interests of individuals and society as a whole.

In conclusion, the amendment to label AI-generated content on social media platforms represents a crucial step forward in addressing the challenges of the digital age. By embracing transparency and empowering individuals, we can foster a more informed and discerning society. Let us lead by example and advocate for a digital landscape that values accountability, integrity and the rights of individuals. I urge your Lordships to support this amendment as we strive to build a future where technology works hand-in-hand with humanity for the betterment of all.

In the spirit of the amendment, I must flag that my entire speaking note was generated by AI, as the noble Lord, Lord Allan, from his expression, had clearly guessed. In using this tool, I do so not to belittle the amendment but to illustrate that these tools are already infiltrating everyday life and can supercharge misinformation. We need to do something to ease internet users in trusting what they read.

Lord Clement-Jones (LD): Does the noble Lord agree that the fact that we did not notice his speech was generated by AI somewhat damages his argument?

Lord Knight of Weymouth (Lab): The fact that I labelled it as being AI-generated helped your Lordships to understand, and the transparency eases the debate. I beg to move.

Baroness Kidron (CB): My Lords, I thank the noble Lord, Lord Knight, for laying out the amendment and recognise that there was a very thoughtful debate on the subject of machine-generated content on Amendment 125 in my name on a previous day of Committee.

I appreciate that the concept of labelling or watermarking machine-generated material is central to recent EU legislation, but I am equally aware that there is more than one school of thought on the efficacy of that approach among AI experts. On the one hand, as the noble Lord, Lord Knight, beautifully set out—with the help of his artificial friend—there are those who believe that visibly marking the division of real and altered material is a clue for the public to look more carefully at what they are seeing and that labelling it might provide an opportunity for both

creators and digital companies to give greater weight to "human-created material". For example, it could be that the new BBC Verify brand is given greater validity by the public, or that Google's search results promote it above material labelled as machine-generated as a more authentic source. There are others who feel that the scale of machine-generated material will be so vast that this labelling will be impossible or that labelling will downgrade the value of very important machine-generated material in the public imagination, when in the very near future it is likely that most human activity will be a blend of generated material and human interaction.

I spent the first part of this week locked in a room with others at the Institute for Ethics in AI in Oxford debating some of these issues. While this is a very live discussion, one thing is clear: if we are to learn from history, we must act now before all is certain, and we should act with pragmatism and a level of humility. It may be that either or both sets of experts are correct.

Industry has clearly indicated that there is an AI arms race, and many companies are launching services that they do not understand the implications of. This is not my view but one told to me by a company leader, who said that the speed of distribution was so great that the testing was confined to whether deploying large language models crashed the platforms; there was no testing for safety.

The noble Lord, Lord Stevenson, says in his explanatory statement that this is a probing amendment. I therefore ask the Minister whether we might meet before Report and look once again at the gaps that might be covered by some combination of Amendment 125 and the amendment in front of us, to make certain that the Bill adequately reflects the concerns raised by the enforcement community and reflects the advice of those who best understand the latest iterations of the digital world.

The Communications Act 2003 made a horrible mistake in not incorporating digital within it; let us not do the same here. Adding explicit safety duties to AI and machine learning would not slow down innovation but would ensure that innovation is not short-sighted and dangerous for humanity. It is a small amendment for what may turn out to be an unimaginably important purpose.

Lord Allan of Hallam (LD): My Lords, it is a pleasure to follow the noble Baroness, Lady Kidron. I will try to keep my remarks brief.

It is extremely helpful that we have the opportunity to talk about this labelling question. I see it more as a kind of aperitif for our later discussion of AI regulation writ large. Given that it is literally aperitif hour, I shall just offer a small snifter as to why I think there may be some challenges around labelling—again, perhaps that is not a surprise to the noble Baroness.

When we make rules, as a general matter we tend to assume that people are going to read them and respond in a rationalist, conformist way. In reality, particularly in the internet space, we often see that there is a mixed environment and there will be three groups. There are the people who will look at the rules and respond in that rational way to them; a large group of people will just ignore them—they will simply be unaware and not at all focused on the rules; and another group will look for opportunities to subvert them and use them to their own advantage. I want to comment particularly on that last group by reference to cutlery and call centres, two historic examples of where rules have been subverted.

On the cutlery example, I am a Sheffielder, and "Made in Sheffield" used to mean that you had made the entire knife in Sheffield. Then we had this long period when we went from knives being made in Sheffield to bringing them to Sheffield and silver-plating them, to eventually just sharpening them and putting them in boxes. That is relevant in the context of AI. Increasingly, if there is an advantage to be gained by appearing to be human, people will look at what kind of finishing you need, so: "The content may have been generated by AI but the button to post it was pushed by a human, therefore we do not think it is AI because we looked at it and posted it". On the speech of the noble Lord, Lord Knight, does the fact that my noble friend intervened on him and the noble Lord had to use some of his own words now mean that his speech in *Hansard* would not have to be labelled "AI-generated" because we have now departed from it? Therefore, there is that question of individuals who will want something to appear human-made even if it was largely AI-generated, and whether they will find the "Made in Sheffield" way of bypassing it.

Interestingly, we may see the phenomenon flipping the other way, and this is where my call centres come in. If people go to a popular search engine and type in "SpinVox", they will see the story of a tech company that promised to transcribe voicemails into written text. This was a wonderful use of technology, and it was valued on the basis that it had developed that fantastic technology. However, it turned out—or at least there were claims, which I can repeat here under privilege—that it was using call centres in low-cost, low-wage environments to type those messages out. Therefore, again, we may see, curiously, some people seeing an advantage to presenting content as AI-generated when it is actually made by humans. That is just to flag that up—as I say, it is a much bigger debate that we are going to have. It is really important that we are having it, and labelling has a role to play. However, as we think about it, I urge that we remember those communities of people who will look at whatever rules we come up with and say, "Aha! Where can I get advantage?", either by claiming that something is human when it is generated by AI or claiming that it is generated by AI if it suits them when it was actually produced by humans.

6.15 pm

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow the noble Lord, Lord Allan. He reminded me of significant reports of the huge amount of exploitation in the digital sector that has come from identification of photos. A great deal of that is human labour, even though it is often claimed to have been done through machine intelligence.

In speaking to this late but important amendment, I thank the noble Lords, Lord Stevenson and Lord Knight, for giving us the chance to do so, because, as every speaker has said, this is really important. I should

[Baroness Bennett of Manor Castle]
declare my position as a former newspaper editor. I distinctly recall teasing a sports journalist in the early 1990s when it was reported that journalists were going to be replaced by computer technology. I said that the sports journalists would be the first to go because they just wrote to a formula anyway. I apologise to sports journalists everywhere.

The serious point behind that is that a lot of extreme, high claims are now being made about so-called artificial intelligence. I declare myself an artificial-intelligence sceptic. What we have now—so-called generative AI—is essentially big data. To quote the science fiction writer, Ted Chiang, what we have is applied statistics. Generative AI relies on looking at what already exists, and it cannot produce anything original. In many respects, it is a giant plagiarism machine. There are huge issues, beyond the scope of the Bill, around intellectual property and the fact that it is not generating anything original.

None the less, it is generating what people in the sector like to describe as hallucinations, which might otherwise be described as errors, falsehoods or lies. This is where quotes are made up; ideas are presented which, at first glance, look as though they make sense but fall apart under examination; and data is actively invented. There is one rather famous case where a lawyer got himself into a great deal of trouble by producing a whole lot of entirely false cases that a bot generated for him. We need to be really careful, and this amendment shows us a way forward in attempting to deal with some of the issues we are facing.

To pick up the points made by the noble Lord, Lord Allan, about the real-world impacts, I was at an event in Parliament this week entitled "The Worker Experience of the AI Revolution", run by the TUC and Connected by Data. It highlighted what has happened with a lot of the big data exercises already in operation: rather than humans being replaced by robots, people are being forced to act like robots. We heard from Royal Mail and Amazon workers, who are monitored closely and expected to act like machines. That is just one example of the unexpected outcomes of the technologies we have been exercising in recent years.

I will make two final comments. First, I refer to 19th-century Luddite John Booth, who was tortured to death by the state. He was a Luddite, but he was also on the record as saying that new machinery

"might be man's chief blessing instead of his curse if society were differently constituted".

History is not pre-written; it is made by the choices, laws and decisions we make in this Parliament. Given where we are at the moment with so-called AI, I urge that caution really is warranted. We should think about putting some caution in the Bill, which is what this amendment points us towards.

My final point relates to an amendment I was not allowed to table because, I was told, it was out of scope. It asked the Secretary of State to report on the climate emissions coming from the digital sector, specifically from artificial intelligence. The noble Baroness, Lady Kidron, said that it will operate on a vast scale. I point out that, already, the digital sector is responsible for 3% of the world's electricity use and 2% of the world's carbon emissions, which is about the same as the airline sector. We really need to think about caution. I very much agree with everyone who said that we need to have more discussions on all these issues before Report.

Lord Clement-Jones (LD): My Lords, this is a real hit-and-run operation from the noble Lord, Lord Stevenson. He has put down an amendment on my favourite subject in the last knockings of the Bill. It is totally impossible to deal with this now—I have been thinking and talking about the whole area of AI governance and ethics for the past seven years—so I am not going to try. It is important, and the advisory committee under Clause 139 should take it into account. Actually, this is much more a question of authenticity and verification than of content. Trying to work out whether something is ChatGPT or GPT-4 content is a hopeless task; you are much more likely to be able to identify whether these are automated users such as chatbots than you are to know about the content itself.

I will leave it there. I missed the future-proofing debate, which I would have loved to have been part of. I look forward to further debates with the noble Viscount, Lord Camrose, on the deficiencies in the White Paper and to the Prime Minister's much more muscular approach to AI regulation in future.

Lord Parkinson of Whitley Bay (Con): I am sure that the noble Lord, Lord Stevenson of Balmacara, is smiling over a sherry somewhere about the debate he has facilitated. His is a useful probing amendment and we have had a useful discussion.

The Government certainly recognise the potential challenges posed by artificial intelligence and digitally manipulated content such as deepfakes. As we have heard in previous debates, the Bill ensures that machine-generated content on user-to-user services created by automated tools or machine bots will be regulated where appropriate. Clause 49(4)(b) means that machine-generated content is regulated unless the bot or automated tool producing the content is controlled by the provider of the service.

The labelling of this content via draft legislation is not something to which I can commit today. The Government's AI regulation White Paper sets out the principles for the responsible development of artificial intelligence in the UK. These principles, such as safety, transparency and accountability, are at the heart of our approach to ensuring the responsible development and use of AI. As set out in the White Paper, we are building an agile approach that is designed to be adaptable in response to emerging developments. We do not wish to introduce a rigid, inflexible form of legislation for what is a flexible and fast-moving technology.

The public consultation on these proposals closed yesterday so I cannot pre-empt our response to it. The Government's response will provide an update. I am joined on the Front Bench by the Minister for Artificial Intelligence and Intellectual Property, who is happy to meet with the noble Baroness, Lady Kidron, and others before the next stage of the Bill if they wish.

Beyond labelling such content, I can say a bit to make it clear how the Bill will address the risks coming from machine-generated content. The Bill already deals

with many of the most serious and illegal forms of manipulated media, including deepfakes, when they fall within scope of services' safety duties regarding illegal content or content that is potentially harmful to children. Ofcom will recommend measures in its code of practice to tackle such content, which could include labelling where appropriate. In addition, the intimate image abuse amendments that the Government will bring forward will make it a criminal offence to send deepfake images.

In addition to ensuring that companies take action to keep users safe online, we are taking steps to empower users with the skills they need to make safer choices through our work on media literacy. Ofcom, for example, has an ambitious programme of work through which it is funding several initiatives to build people's resilience to harm online, including initiatives designed to equip people with the skills to identify disinformation. We are keen to continue our discussions with noble Lords on media literacy and will keep an open mind on how it might be a tool for raising awareness of the threats of disinformation and inauthentic content.

With gratitude to the noble Lords, Lord Stevenson and Lord Knight, and everyone else, I hope that the noble Lord, Lord Knight, will be content to withdraw his noble friend's amendment.

Lord Knight of Weymouth (Lab): My Lords, I am grateful to everyone for that interesting and quick debate. It is occasionally one's lot that somebody else tables an amendment but is unavoidably detained in Jerez, drinking sherry, and monitoring things in *Hansard* while I move the amendment. I am perhaps more persuaded than my noble friend might have been by the arguments that have been made.

We will return to this in other fora in response to the need to regulate AI. However, in the meantime, I enjoyed in particular the John Booth quote from the noble Baroness, Lady Bennett. In respect of this Bill and any of the potential harms around generative AI, if we have a Minister who is mindful of the need for safety by design when we have concluded this Bill then we will have dealt with the bits that we needed to deal with as far as this Bill is concerned.

Lord Allan of Hallam (LD): Can the noble Lord confirm whether he generated those comments himself, or was he on his phone while we were speaking?

Lord Knight of Weymouth (Lab): I do not have an invisible earpiece feeding me my lines—that was all human-generated. I beg leave to withdraw the amendment.

Amendment 286ZA withdrawn.

Clause 185 agreed.

Schedule 16 agreed.

Clauses 186 and 187 agreed.

Schedule 17: Video-sharing platform services: transitional provision etc

Amendment 286A

Moved by ***Lord Parkinson of Whitley Bay***

286A: Schedule 17, page 239, line 36, after "19(2)" insert "and (8A)"

Member's explanatory statement

This amendment ensures that, during the transitional period when video-sharing platform services continue to be regulated by Part 4B of the Communications Act 2003, providers of such services are not exempt from the new duty in clause 19 to supply records of risk assessments to OFCOM.

Amendment 286A agreed.

Schedule 17, as amended, agreed.

Clause 188: Repeals: Digital Economy Act 2017

Amendment 286B

Moved by ***Lord Parkinson of Whitley Bay***

286B: Clause 188, page 154, line 1, after "119(10)" insert "and (11)"

Member's explanatory statement

This amendment effects the repeal of a provision of the Digital Economy Act 2017 which solely relates to another provision of that Act being repealed.

Amendment 286B agreed.

Clause 188, as amended, agreed.

Clauses 189 to 196 agreed.

Clause 197: Parliamentary procedure for regulations

Amendments 287 to 289 not moved.

Clause 197 agreed.

Amendment 290 not moved.

Clauses 198 to 201 agreed.

Clause 202: "Proactive technology"

Amendments 290A to 290G

Moved by ***Lord Parkinson of Whitley Bay***

290A: Clause 202, page 166, line 3, leave out "moderation" and insert "identification"

Member's explanatory statement

This amendment re-names "content moderation technology" as "content identification technology" as that term is more accurate.

290B: Clause 202, page 166, line 7, leave out "moderation" and insert "identification"

Member's explanatory statement

This amendment is consequential on the first amendment of clause 202 in the Minister's name.

290C: Clause 202, page 166, line 9, leave out from "analyses" to end of line 11 and insert "content to assess whether it is content of a particular kind (for example, illegal content)."

Member's explanatory statement

This amendment revises the definition of content identification technology so that the restrictions in the Bill on OFCOM recommending or requiring the use of proactive technology apply to content identification technology operating on any kind of content.

290D: Clause 202, page 166, line 12, leave out "moderation" and insert "identification"

Member's explanatory statement

This amendment is consequential on the first amendment of clause 202 in the Minister's name.

290E: Clause 202, page 167, line 4, leave out "moderation" and insert "identification"

Member's explanatory statement

This amendment is consequential on the first amendment of clause 202 in the Minister's name.

290F: Clause 202, page 167, line 9, leave out "moderation" and insert "identification"

Member's explanatory statement

This amendment is consequential on the first amendment of clause 202 in the Minister's name.

290G: Clause 202, page 167, leave out lines 15 to 18

Member's explanatory statement

This amendment is consequential on the first amendment of clause 202 in the Minister's name.

Amendments 290A to 290G agreed.

Clause 202, as amended, agreed.

Clause 203: Content communicated "publicly" or "privately"

Amendment 290H

Moved by ***Lord Parkinson of Whitley Bay***

290H: Clause 203, page 167, line 38, at end insert ", or

(ii) users of another internet service."

Member's explanatory statement

This amendment concerns the factors that OFCOM must particularly consider when deciding if content is communicated publicly or privately. The change ensures that one such factor is how easily the content may be shared with users of another service.

Amendment 290H agreed.

Clause 203, as amended, agreed.

Clause 204: "Functionality"

Amendments 291 to 293 not moved.

Clause 204 agreed.

Clause 205: "Harm" etc

Amendments 294 and 295 not moved.

Clauses 205 agreed.

Clause 206 agreed.

Amendment 296 not moved.

6.30 pm

Clause 207: Interpretation: general

Amendment 297

Moved by ***Baroness Kidron***

297: Clause 207, page 170, line 13, leave out from "means" to end of line 14 and insert "any system of checking age or age range (including age estimation and age verification);

"age estimation" includes reference to an age range or an age expressed in years;

"age verification" means the exact age of a person in years, months, and days or an established date of birth;"

Member's explanatory statement

This amendment defines the meaning of age assurance in the Bill to recognise it includes any test of age including but not limited to verification. Age verification means the exact age of a person in years, months, and days or a date of birth. Age estimation may refer to an age range or an age expressed in years. This is a definition of terms only: the intention is that Ofcom will produce guidance of what level of assurance is required in different settings.

Baroness Kidron (CB): My Lords, we already had a long debate on this subject earlier in Committee. In the interim, many noble Lords associated with these amendments have had conversations with the Government, which I hope will bear some fruit before Report. Today, I want to reiterate a few points that I hope are clarifying to the Committee and the department. In the interests of everyone's evening plans, the noble Lord, Lord Bethell, and the noble Baroness, Lady Harding, wish to associate themselves with these remarks so that they represent us in our entirety.

For many years, we thought age verification was a gold standard, primarily because it involved a specific government-issued piece of information such as a passport. By the same token, we thought age estimation was a lesser beast, given that it is an estimate by its very nature and that the sector primarily relied on self-declarations with very few checks and balances. In recent years, many approaches to age checking have flourished. Some companies provide age assurance tokens based on facial recognition; others use multiple signals of behaviour, friendship group, parental controls and how you move your body in gameplay; and, only yesterday, I saw the very impressive on-device privacy-preserving age-verification system that Apple rolled out in the US two weeks ago. All of these approaches, used individually and cumulatively, have a place in the age-checking ecosystem, and all will become more seamless over time. But we must ensure that, when they are used, they are adequate for the task they are performing and are quality controlled so that they do not share information about a child, are secure and are effective.

That is why, at the heart of the package of measures put forward in my name and that of the noble Lords, Lord Stevenson and Lord Bethell, and the right reverend Prelate the Bishop of Oxford, are two concepts. First, the method of measuring age should be tech neutral so that all roads can be used. Secondly, there must be robust mechanism of measurement of effectiveness so that only effective systems can be used in high-risk situations, particularly those of primary priority harms such as self-harm and pornography, and that such a measurement will be determined by Ofcom, not industry.

From my work over the last decade and from recent discussion with industry, I am certain that any regime of age assurance must be measurable and hold to certain principles. We cannot create a situation where children's data is loosely held and liberally shared; we cannot have a system that discriminates against, or does not have automatic appeal mechanisms for, children of colour or those who are 17 or 19, who are at most likelihood of error. Systems should aim to be interoperable and private, not leave traces as children go from one service to another.

Each of the principles of our age-verification package set out in the schedule are of crucial importance. I hope that the Government will see the sense in that because, without them, this age checking will not be trusted. Equally, I urge the Committee to embrace the duality of age verification and estimation that the Government have put forward, because, if a child uses an older sibling's form of verification and a company understands through the child's behaviour that they are indeed a child, then we do not want to set up a perverse situation in which the verification is considered of a higher order and they cannot take action based on estimation; ditto, if estimation in gameplay is more accurate than tokens that verify whether someone is over or under 18, it may well be that estimation gives greater assurance that the company will treat the child according to their age.

I hope and believe that, in his response, the Minister will confirm that definitions of age assurance and age estimation will be on the face of the Bill. I also urge him to make a generous promise to accept the full gamut of our concerns about age checking and bring forward amendments in his name on Report that reflect them in full. I beg to move.

Lord Clement-Jones (LD): My Lords, I associate these Benches with the introduction by the noble Baroness, Lady Kidron, support her amendments and, likewise, hope that they form part of the package that is trundling on its way towards us.

Lord Knight of Weymouth (Lab): My Lords, what more can I say than that I wish to be associated with the comments made by the noble Baroness and then by the noble Lord, Lord Clement-Jones? I look forward to the Minister's reply.

Lord Parkinson of Whitley Bay (Con): I am very grateful to the noble Baroness for her amendment, which is a useful opportunity for us to state publicly and share with the Committee the progress we have been making in our helpful discussions on these issues in relation to these amendments. I am very grateful to her and to my noble friends Lord Bethell and Lady Harding for speaking as one on this, including, as is well illustrated, in this short debate this evening.

As the noble Baroness knows, discussions continue on the precise wording of these definitions. I share her optimism that we will be able to reach agreement on a suitable way forward, and I look forward to working with her, my noble friends and others as we do so.

The Bill already includes a definition of age assurance in Clause 207, which is

"measures designed to estimate or verify the age or age-range of users of a service".

As we look at these issues, we want to avoid using words such as "checking", which suggests that providers need to take a proactive approach to checking age, as that may inadvertently preclude the use of technologies which determine age through other means, such as profiling. It is also important that any definition of age assurance does not restrict the current and future use of innovative and accurate technologies. I agree that it is important that there should be robust definitions for terms which are not currently defined in the Bill, such as age verification, and recommit to the discussions we continue to have on what terms need to be defined and the best way to define them.

This has been a very helpful short debate with which to end our deliberations in Committee. I am very grateful to noble Lords for all the points that have been raised over the past 10 days, and I am very glad to be ending in this collaborative spirit. There is much for us still to do, and even more for the Office of the Parliamentary Counsel to do, before we return on Report, and I am grateful to it and to the officials working on the Bill. I urge the noble Baroness to withdraw her amendment.

Baroness Kidron (CB): I beg leave to withdraw the amendment.

Amendment 297 withdrawn.

Amendments 298 to 304 not moved.

Clause 207 agreed.

Clauses 208 and 209 agreed.

Clause 210: Extent

Amendments 304A and 304B

Moved by ***Lord Parkinson of Whitley Bay***

304A: Clause 210, page 175, line 24, leave out "Except as provided by subsections (2) to (7)" and insert "Subject to the following provisions of this section"

Member's explanatory statement

This amendment avoids any implication that the power proposed to be inserted by the amendment of the extent clause in the Minister's name giving power to extend provisions of the Bill to the Crown Dependencies, and related provisions, are limited in extent to the United Kingdom.

304B: Clause 210, page 175, line 26, leave out subsection (2)

Member's explanatory statement

This amendment omits a provision in the extent clause which is now dealt with by text inserted by the next three amendments in the Minister's name.

Amendments 304A and 304B agreed.

Amendment 304C had been withdrawn from the Marshalled List.

Amendment 304CA

Moved by ***Lord Parkinson of Whitley Bay***

304CA: Clause 210, page 175, line 29, leave out subsection (3) and insert—

"(3) The following provisions extend to England and Wales and Northern Ireland—

(a) sections 160 to 164;

(b) section 168(1)."

Member's explanatory statement

This amendment revises the extent clause as a result of changes to the extent of the communications offences in Part 10 of the Bill.

Amendment 304CA agreed.

Amendment 304D had been withdrawn from the Marshalled List.

Amendments 304E to 304K

Moved by ***Lord Parkinson of Whitley Bay***

304E: Clause 210, page 175, line 35, leave out subsection (6) and insert—

"(6) The following provisions extend to Northern Ireland only—

(a) section 168(3);

(b) section 190(7) to (9)."

Member's explanatory statement

This amendment revises the extent clause so that the amendments of Northern Ireland legislation in clause 168 extend to Northern Ireland only.

304F: Clause 210, page 176, line 2, at end insert—

"(7A) His Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to the Bailiwick of Guernsey or to the Isle of Man.

(7B) Subsections (1) and (2) of section 196 apply to an Order in Council under subsection (7A) as they apply to regulations under this Act."

Member's explanatory statement

This amendment provides a power for His Majesty by Order in Council to extend any of the provisions of the Bill to Guernsey or the Isle of Man.

304G: Clause 210, page 176, line 4, leave out from second "to" to end of line 5 and insert "the Bailiwick of Guernsey or the Isle of Man any amendment or repeal made by or under this Act of any part of that Act (with or without modifications)."

Member's explanatory statement

This amendment has the effect that the power conferred by section 411(6) of the Communications Act 2003 may be exercised so as to extend to Guernsey or the Isle of Man the amendment or repeal of provisions of that Act made by the Bill.

304H: Clause 210, page 176, line 7, leave out "any of the Channel Islands" and insert "the Bailiwick of Guernsey"

Member's explanatory statement

This amendment has the effect that the power conferred by section 338 of the Criminal Justice Act 2003 may be exercised so as to extend to Guernsey (but not Jersey) the amendment of provisions of that Act made by paragraph 7 of Schedule 14 to the Bill.

304J: Clause 210, page 176, line 10, leave out "any of the Channel Islands" and insert "the Bailiwick of Guernsey"

Member's explanatory statement

This amendment has the effect that the power conferred by section 60(6) of the Modern Slavery Act 2015 may be exercised so as to extend to Guernsey (but not Jersey) the amendment of Schedule 4 to that Act made by paragraph 9 of Schedule 14 to the Bill.

304K: Clause 210, page 176, line 13, leave out "any of the Channel Islands" and insert "the Bailiwick of Guernsey"

Member's explanatory statement

This amendment has the effect that the power conferred by section 415(1) of the Sentencing Act 2020 may be exercised so as to extend to Guernsey (but not Jersey) the amendment of Schedule 18 to that Act made by paragraph 10 of Schedule 14 to the Bill.

Amendments 304E to 304K agreed.

Clause 210, as amended, agreed.

Clause 211: Commencement and transitional provision

Amendments 305 and 306 not moved.

Clause 211 agreed.

Clause 212 agreed.

House resumed.

Bill reported with amendments.

Strikes (Minimum Service Levels) Bill

Returned from the Commons

The Bill was returned from the Commons with reasons.

House adjourned at 6.40 pm.

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