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OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Monday 11 December 2023

2.30 pm

Prayers—read by the Lord Bishop of Durham.

Hydrogen Heating

Question

2.36 pm

Asked by ***Baroness Sheehan***

To ask His Majesty's Government what assessment they have made of the finding of the National Infrastructure Commission that there is no public policy case for hydrogen heating, set out in the Second National Infrastructure Assessment published in October.

The Parliamentary Under-Secretary of State, Department for Energy Security and Net Zero (Lord Callanan) (Con): My Lords, heat pumps and heat networks will be the primary means of decarbonising heat for the foreseeable future, and will play an important role in all 2050 scenarios. Of course, we welcome the NIC's input, are carefully considering the analysis and will respond to the report in due course.

Baroness Sheehan (LD): I thank the Minister for his reply. My first question is about the residents of Redcar. Their council leader has written to the Secretary of State to say that they do not want a hydrogen heating trial. Am I correct in saying that they will be allowed to follow the residents of Whitby and veto the proposal? After all, the Minister himself has said as much from the Dispatch Box. Secondly, what assessment have the Government made of recent scientific developments that show that hydrogen leaked into the atmosphere has an indirect global warming impact around 12 times greater than that of carbon dioxide?

Lord Callanan (Con): With respect to the noble Baroness's first question, I think she needs to read the letter from the leader of Redcar Council more carefully. I do not think it supports the analysis she gave. Nevertheless, I have said on numerous occasions that no hydrogen village trial will take place without strong support from local residents. On the noble Baroness's second question, yes, hydrogen does have a high global warming potential, which illustrates the importance of not allowing it to leak at all.

Lord Howell of Guildford (Con): My Lords, is the National Infrastructure Commission's report really welcome? What it says in that report is that hydrogen molecules are just too difficult for 23 million domestic supplies at home. It wants to dig up or close down entirely the existing retail gas distribution system as well, because it thinks it does not fit in with our global aims—and it is absolutely right. And it wants to turn us into an all-electric economy. But have we got the slightest clue where all this extra electricity will come from, how it will be transmitted and delivered, and how that can be done at reasonable cost to the consumer? Until we have a clearer view on those things, it is very hard to just say that we welcome the NIC report.

Lord Callanan (Con): Well, I did not say that we necessarily welcomed the NIC's report; I said that we were studying it, and of course it will provide a useful backdrop to and illustration of the decisions that we will make. To go back to the point of the noble Baroness, Lady Sheehan, we will announce a decision on the trial in Redcar very shortly. I think the noble Lord makes a good point; where does all the extra electricity come from? Of course, there is detailed scenario mapping done on that; we have very exciting and ambitious plans for lots more offshore wind, lots of solar development and lots of nuclear development—so there will be ample supplies of electricity available.

Lord Watts (Lab): Does the Minister agree that it is pointless improving heating systems if many houses are badly insulated? What will the Government do to step up the programme to make sure that people can live in decent homes?

Lord Callanan (Con): I agree with the noble Lord that energy efficiency and insulation are extremely important. That is why we are spending £6.5 billion over this Parliament on insulation, energy efficiency and clean heat measures; but, of course, there is always a lot more to do and we will have more to say on that shortly.

Lord Naseby (Con): Is it not extraordinary that Germany appears to have decided that all its heating for domestic should be in a hydrogen/gas mix, and there are apparently at least four or five other European countries far ahead of us? How is it that the national infrastructure plan can ignore the work that appears to be being done on hydrogen on the ground in this country, with factories being built at the moment for the use of transport and all the extensive work being carried out in trials?

Lord Callanan (Con): I do not think my noble friend is correct about attitudes in Germany. The latest information I have is that 10 homes in Germany—no more than that—are subject to the trial. The issue of blending hydrogen into the gas network is of course a separate issue, and that too is something on which we will have more to say shortly.

Baroness Hayman (CB): My Lords, I declare my interests as set out in the register. Is the noble Lord, Lord Howell of Guildford, not completely right in one respect: that there is confusion about the transition—how it will be funded, how it will come about, how North Sea oil and gas will fit into that, when it will diminish, when it will completely finish being important in our energy mix? Is it not time we got below some of the very high-level aspirations of the Government and into the detail of what a transition plan will actually mean for the country?

Lord Callanan (Con): The noble Baroness is absolutely correct. We have set out in great detail what the transition plan looks like. As I said in my Answer, electrification—heat networks in particular—will play a very important role in the decarbonisation of heat.

Baroness Blackwood of North Oxford (Con): My Lords, among the more controversial recommendations of the report was a very sensible recommendation to

[Baroness Blackwood of North Oxford]
set clear resilience standards and better maintenance practices for all infrastructure sectors. As the Minister's department considers the report, will he pay particular attention to those recommendations?

Lord Callanan (Con): My noble friend makes a very good point. We will of course fully consider those recommendations alongside the views on hydrogen heating.

Lord Lennie (Lab): My Lords, newspaper reports at the weekend suggested that the Government were looking for an entire town to use as a hydrogen heating pilot. Given the difficulties in Whitby and Redcar, referred to by the noble Baroness, Lady Sheehan, which are not yet resolved but will be very soon, and recent scientific developments, which she also referred to, about indirect warming from hydrogen emissions being higher than previously thought, does the Minister think that now is the right time to be pushing ahead with this?

Lord Callanan (Con): The noble Lord will find out whether now is the right time to be pushing ahead with it when we announce the decision. He should not necessarily believe everything that he reads in the newspapers.

Earl Russell (LD): My Lords, the Second National Infrastructure Assessment argues:

"Gas boilers, which currently heat around 88 per cent of English buildings, need to be phased out and replaced by heat pumps. Around eight million additional buildings will need to switch to low carbon heating by 2035, and all buildings by 2050".

Can the Minister tell us how the Government plan to implement these recommendations and make carbon-neutral home heating available in time to meet our net-zero commitments?

Lord Callanan (Con): There is a long and detailed answer to that, but there are a number of different elements to it. We will be consulting very shortly on the future homes standards, which will take advantage of new technology in terms of setting standards for all new developments. Clearly, there is a big challenge with existing, particularly residential, properties. I have said that heat pumps and heat networks will play the majority role in decarbonisation efforts. There could also be a role for renewable heating fuels, where there are some exciting developments.

Lord Whitty (Lab): My Lords, given the growing case against using hydrogen as the main source of domestic and office heating, are the Minister or Ofgem about to stop supplier companies offering so-called "hydrogen-ready" boilers to those who need a boiler replacement? Is the Minister any further ahead on the kind of technology that is going to be used for district heating schemes?

Lord Callanan (Con): I think the CMA is looking into some of the claims. Chancellor, it is a complicated area, because you can blend hydrogen into the existing gas network and that will work perfectly satisfactorily with all existing gas appliances. In that respect, all appliances are hydrogen-ready. But I am sure Ofgem will want to look at the full implications of that as well.

Lord Geddes (Con): When my noble friend helpfully lists forms of alternative renewable energy, could he be kind enough to include tidal?

Lord Callanan (Con): I know my noble friend feels very passionately about this. As I have said, we allocated some contracts for difference in the last round for tidal. I am sure we will want to do so in the next round again, provided the bids are competitive—but it does contribute a relatively small part of our energy mix.

Lord Newby (LD): My Lords, does the Minister agree that part of the answer to the question from the noble Lord, Lord Howell, about hydrogen as an appropriate source of heating is that producing hydrogen in itself uses a tremendous amount of energy? It is one of the least energy-efficient ways of producing an alternative source.

Lord Callanan (Con): The noble Lord is right. Of course, there are two separate issues. Hydrogen will play an important role in the transition; there are lots of industrial processes, such as heavy transportation, for which there is no realistic alternative to hydrogen, and we will be announcing the results of the first hydrogen allocation round shortly—a lot of things are happening in the near future. Hydrogen will play an important role in decarbonisation and long-term energy storage because we principally "waste"—in inverted commas—quite a lot of electricity in curtailment payments because we cannot use it. So, in terms of large-scale storage of energy, it can play an important role, as well as in industrial processes. There will be some important uses for hydrogen. There is a separate question about whether it should play an important role in home heating, about which we will decide shortly.

Banking Hubs

Question

2.47 pm

Asked by ***Baroness Tyler of Enfield***

To ask His Majesty's Government how many banking hubs have been established in response to bank branch closures since January 2022, and whether they are taking steps to facilitate the establishment of a national network of banking hubs.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, since January 2022, the financial services sector has opened 23 banking hubs, with another 27 hubs expected by Easter next year. Following government legislation, last week the Financial Conduct Authority published proposals for a new regulatory regime to protect access to cash. This includes proposals that seek to ensure a timely delivery of services that meet the needs of communities.

Baroness Tyler of Enfield (LD): I thank the Minister for her Answer and welcome the steps being taken to safeguard free access to cash. Does the Minister agree that many people, particularly older people and those with disabilities, need access to physical banking services

which go much further than access to cash? It is about having a real person to talk to. Given that banks and building societies have closed over 6,000 branches since 2015, does the Minister also agree that the rollout of banking hubs has been painfully slow, leaving many communities to become banking deserts? The current plans are totally inadequate for creating a much-needed national network of banking hubs, which some have estimated would require between 800 and 1,000 such hubs.

Baroness Vere of Norbiton (Con): There were many questions there and perhaps I will focus on the last one, which is where the FCA consultation comes to the fore. The proposals set out by the FCA are very detailed and potentially go much further than the voluntary initiatives of banking hubs that have so far been undertaken by the sector. Obviously, that consultation remains open until 8 February, and we will be looking for not only banks to respond but representatives of the vulnerable groups the noble Baroness describes, so that we can get a full view of what the proposals should be.

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, I commend the establishment of banking hubs across the United Kingdom as an alternative to the closure of mainstream banks. Can the Minister set out the criteria for such banking hubs being initiated? Just one has been established in Northern Ireland. Recently, the Ulster Bank decided to close a range of banks across Northern Ireland, leaving many rural areas without physical banking facilities. What are the criteria for the establishment of banking hubs, because there is a need for one in Lisnaskea, south-east Fermanagh?

Baroness Vere of Norbiton (Con): I recognise what the noble Baroness is saying. The criteria currently used to assess whether a community needs a banking hub are set out in consultation with the financial services sector; that is part of the current voluntary arrangement. I point the noble Baroness to the FCA consultation, because the criteria to be set out going forward are far more detailed and focus on the needs of not only local communities but SMEs. The consultation will also look at seasonal fluctuations in the need for cash access and the ability of SMEs to get coins and notes. The FCA is going further than the current voluntary arrangements.

Lord Anderson of Swansea (Lab): As with rural bus services, the loss of banking facilities bears most heavily on the elderly. Does the Minister agree with the principle that the last facility in a community should not be lost until a hub is established?

Baroness Vere of Norbiton (Con): I agree with that in principle, and that is what the FCA set out in its consultation. If the assessment is that a community needs services, it will be beholden upon the designated firms—the banks—to put an alternative service in place before the last bank is closed, or alternative services will need to be put in place within three months if the existing service had somehow disappeared many months or years beforehand and an assessment was made that the community was lacking access to cash.

Baroness Butler-Sloss (CB): Perhaps I may add to what other noble Lords said about the urgency of this. In the part of Devon where I live, it is a desert. In Fleet Street, there used to be two Barclays branches between the law courts and the Old Bailey and now—can you believe it?—there is none; and yet, another set of courts is about to be built. Can the noble Baroness inject some urgency into this?

Baroness Vere of Norbiton (Con): That is why the Government decided that it was time to legislate. We felt that the voluntary initiative was not coming along fast enough, and we legislated in the Financial Services and Markets Act in the summer. The FCA, the key independent regulator, has brought forward its consultation in short order.

Baroness Sater (Con): My Lords, we know that banking hubs should provide the face-to-face communication which is so valuable and important for those who need extra help and support with their finances and may not be equipped with adequate financial understanding and skills. As we know, not all young people are leaving school having had an adequate financial education. Can the Minister assure us that there will be a person at each of these hubs to provide much needed and valuable face-to-face communication?

Baroness Vere of Norbiton (Con): In many circumstances banking hubs have a private room where community bankers can meet customers to discuss their financial requirements. Cash Access UK, the partnership that sets up banking hubs, publishes a list showing where community bankers are available. I should also point my noble friend to other interventions that some banks are using, such as mobile banking services, pods and pop-ups. There are a lot of ways to have face-to-face contact with consumers.

Lord Livermore (Lab): My Lords, the latest figures from the British Retail Consortium show that shopping with cash has risen for the first time in a decade, as household budgets are increasingly stretched. At the same time, almost half of bank branches have closed, while the rollout of banking hubs has been much delayed. Will the Minister agree to match the Labour Party's commitment to work with banks and, where necessary, bring in additional powers for the FCA to guarantee face-to-face banking services, beginning by prioritising areas that currently have no high street banks?

Baroness Vere of Norbiton (Con): I think what the noble Lord has just set out is exactly what the Government are doing. The FCA consultation goes into an awful lot of detail on the criteria that will need to be met for banking services to continue. We accept that, while the use of cash has declined over time, it has possibly reached a plateau. But I reassure noble Lords that, for example, 97% of the urban population is within 1 mile of a free-to-use cash access point.

Baroness Kramer (LD): My Lords, surely the Minister has hit the nail on the head: the weakness of the current banking hub system is its voluntary character. That could be corrected with a relatively simple statutory instrument so that, when a local community applies to Link and is shown to meet the criteria, a banking hub is guaranteed and it does not suffer what happens today—delay or refusal by the banks.

Baroness Vere of Norbiton (Con): I disagree with the noble Baroness. I would not want to put the current arrangements on a statutory footing at all, because they could be better. That is exactly what we are doing: we are looking at the existing voluntary arrangements and saying that we need a regulatory footing, not for where we are now but for where we should be in future. That is why the FCA consultation is so important. But this also builds on FCA guidance, which is already out there and which banks already follow.

Lord Bird (CB): Is there a case for working much more closely with the Post Office, which is doing an enormous amount of work in backing up the lack of banking in certain areas? We are working with the Post Office, and its commitment to filling the gap left by banks is incredible.

Baroness Vere of Norbiton (Con): The noble Lord is absolutely right. The Post Office banking framework has been in place since 2017, and we recognise the really important role post offices can play for people and for small and medium-sized enterprises. The current arrangements are in place until December 2025, when they will of course be looked at again, but we recognise that the more than 11,000 post offices offer a very helpful route to get cash and other services.

The Lord Bishop of Durham: My Lords, I thank the Minister for that last answer. However, in the north-east, only one banking hub has been opened this year and there is a diminishing number of post offices, so it is quite hard to see how the post office network is actually helping in the north-east.

Baroness Vere of Norbiton (Con): I point the right reverend Prelate to figures released by the FCA last week. We know that geographic coverage of the cash access network remains comprehensive, despite some branch closures over a period of time. Of course, we are keeping this under review, which is why we await the response to the FCA consultation. We expect any proposals to be in place by summer next year.

Construction Sector: Cash Retentions

Question

2.58 pm

Asked by ***Lord Aberdare***

To ask His Majesty's Government what progress they are making in determining how to end the practice of cash retentions in the construction sector, and whether they plan to meet the 2025 target date for achieving zero retentions proposed by the Build UK Roadmap and endorsed by the Construction Leadership Council in 2019.

The Parliamentary Under-Secretary of State, Department for Business and Trade and Scotland Office (Lord Offord of Garvel) (Con): I thank the noble Lord for his Question. The Government will add a requirement for reporting on retention payments to the Reporting on Payment Practices and Performance Regulations 2017. Work also continues with the Construction Leadership Council to reduce defects in construction and end the abuse of retentions. This includes supporting a pilot project with the Get It Right Initiative to reduce defects, as well as collaboration with the bodies responsible for construction contractual documentation, to discourage the withholding of retentions.

Lord Aberdare (CB): My Lords, the announcement made last month, which was mentioned by the Minister, is a small step forward but it is too little, too late, and it does not go nearly far enough to end the bane of retentions, which cause huge damage to numerous small construction firms, and indeed to the sector as a whole. What further steps are the Government considering? Let me suggest two possibilities. First, they could ensure that the undesirability of retentions is included in the *Construction Playbook*, which sets out key policies and guidance on how public works projects and programmes are assessed, procured and delivered, but, rather shockingly, makes no mention of retentions. Or, secondly, they could put an effective system of enforcement in place for the measures he has just described when they are eventually implemented. If the Minister does not like those two ideas, I have at least half a dozen more that I could suggest to him.

Lord Offord of Garvel (Con): I thank the noble Lord for that contribution. The Government understand well that the practice of cash retention can create problems in the supply chain, due to late and non-payment. We are committed to improving payment practices, but we have to work with the construction industry in this. The prompt payment and cash flow review report was just published on 22 November, and a key measure includes extending and amending the Reporting on Payment Practices and Performance Regulations, basically to increase transparency in this vital area to allow large businesses to provide data to the smaller companies to see how retention payments are working. We have to work with the construction sector in this.

The Construction Leadership Council has identified some solutions to mitigate cash retention payments. Our long-term aim is to remove the need for retentions altogether and, as I said, we are supporting the Get It Right Initiative and Cranfield University to reduce the rate of defects within the buildings commissioned across the public and private sector. The aim is to establish a quality metric as a viable alternative to the withholding of cash retentions as a form of insurance against defects. There is a lot going on. We are working with the industry and a lot of consideration has been given to this matter, but, ultimately, the construction industry itself needs to come to a consensus on how to improve this area.

Lord Stunell (LD): My Lords, the Minister has just said that the industry needs to come to a consensus. What he is asking for is the greedy lions to sit down with the defenceless lambs and decide what menu is going to be eaten. The reality is that the upper-tier contractors have not just the whip hand but the bank balance. He will know that many of them have a business model that functions only because they retain retentions to which they are not legally entitled. Will he now introduce a simple measure to put the retention money that is levied into an escrow account so that it cannot be used and cannot incentivise upper-tier contractors to use it to fund their business model?

Lord Offord of Garvel (Con): I thank the noble Lord for that question. Indeed, this has been the practice in the building industry for 150 years; it is the standard mechanism to ensure that work is done on time and to the right standard. There is about £4 billion held in cash retentions against a total turnover in the construction industry of about £430 million, so, guess what, that works out at 1%, which is roughly the margin in construction. Various plans have been put forward: there was a plan for insurance, but that did not work because of the Carillion failure and Grenfell Tower, and there have been various plans such as a retention deposit scheme in escrow. We have consulted the building industry, and there is a level of support for banning retentions and a level of support for not changing the system. The construction industry needs to come together and work out how to do this better.

Lord Greenhalgh (Con): My Lords, does my noble friend the Minister accept that this is not a time to assume that the status quo is good enough? The noble Lord, Lord Stunell, is absolutely right: what we see is the big players squeezing the supply chain, and the result is often that the smaller players benefit not one penny and the big players do profit. I pay tribute to the noble Lord, Lord Aberdare, who, when I was in the hot seat, was pushing on cash retentions. We need to do something about this. It is very similar to when we rent a home: the landlord does not get his hands on the deposit; it is held, essentially, at a distance from the landlord who is renting the home. We need to change the system. Does my noble friend also agree that we need to improve the quality of construction? After all, that is something that needs to get better, and then we would not have to worry about retentions.

Lord Offord of Garvel (Con): I thank my noble friend for that contribution. The Reporting on Payment Practices and Performance Regulations 2017 require the larger UK companies to report on a half-yearly basis on payment practices, policy and performance. The onus is increasing on them around transparency. The sector welcomes increasing reporting regulations. Build UK, the leading construction trade body, has been benchmarking construction companies on their payments since 2018, and improvements have been considerable. In 2018, the average time for paying invoices was 45 days, and it is now 32 days; the figure for invoices paid within agreed terms is now 82%, versus 61%, and for invoices paid within 60 days it is now 95% versus 82%. That shows that the construction industry can work positively in this area.

Lord McNicol of West Kilbride (Lab): My Lords, similar to cash retention, late payments are a perennial problem, especially for SMEs and microbusinesses. Over the last 10 years, the Conservative party in government has launched no fewer than seven reviews into late payments. What recommendations have come from those reviews, and what benefits have SMEs seen from those seven reviews?

Lord Offord of Garvel (Con): I thank the noble Lord for that question. As I indicated, the direction of travel has improved considerably, with the construction sector working positively to reduce the amount of late payments. Working with the contractors' umbrella body, Actuate UK, and the new Get it Right initiative, I think we will see some improvements. We are trying to get defects and collection and completion certificates using processes developed by the Get it Right initiative, which are going to be data-based, to try to get a metric system which is more objective and less subjective and which can measure performance and indicate at an early stage whether it has been to the right standard. That will go a long way towards allowing earlier payment on retentions.

Lord Watts (Lab): My Lords, could not the Government introduce legislation that separates any money that is being held and pay the interest to the contractors, rather than the person who is benefiting now?

Lord Offord of Garvel (Con): As the noble Lord from the Cross Benches said, there are many suggestions as to how we go about doing this, and this is another one. On statutory bans on cash retentions, my department is fixated on trying to remove regulation from business, not increase it. We are looking to the industry to come forward with viable plans on how to make this work. Progress is being made and more can be done, but there is still not complete consensus on how to move this forward.

Lord Londesborough (CB): My Lords, can the Minister explain why the Government are dragging their heels over the anti-enterprise practices of cash retentions and late payments, especially as SMEs in the construction sector are running the highest rate of insolvencies of any sector in this economy? Over the last three decades, the SME market share has dropped in new housebuilding from 40% to less than 10%, leaving the big housebuilders to increasingly dominate a sector that continually fails to meet demand. Why is there not more urgency?

Lord Offord of Garvel (Con): I thank the noble Lord for that question. There is urgency, to the extent that we are consulting the industry, which has demonstrated that it can improve these terms. We have put the road map together and it is being worked on, but we need consensus in the industry to do that. I understand the concerns of SMEs, but transparency on data, as well as a metric system which shows more transparency and more independent KPIs on work being delivered, will go a long way, and that is what the road map envisages.

Local Enterprise Partnerships: Funding

Question

3.08 pm

Asked by ***Lord Leong***

To ask His Majesty's Government what assessment they have made of the ending of local enterprise partnerships' funding and the impact on local economic development.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Penn) (Con): The Government are committed to empowering locally elected leaders to drive local economic development. From April 2024, government will support local and

[Baroness Penn]
combined authorities to deliver the core functions currently delivered by LEPs; namely, the functions of strategic economic planning, business representation and ongoing delivery of specific government programmes. Revenue funding will be provided to local and combined authorities in 2024-25 to support this activity.

Lord Leong (Lab): My Lords, Labour's very successful regional development agencies were replaced with local enterprise partnerships in 2011. These will be abolished next year. From micro-businesses to multinationals, businesses cry out for certainty, consistency and competency, but, far from levelling up, all they get from this Government is chaos, confusion and closure. The best way to restore business confidence would be for this Government to shut up shop and call an election. Are these businesses wrong in their assessment?

Baroness Penn (Con): Yes. I also disagree with the noble Lord's assessment of RDAs. I would be interested to know, if they were such a successful way of delivering local growth, whether they would be re-established under future Labour plans. The Government are focused on empowering local leaders over geographies that make sense in local areas to deliver local economic growth. We are working to integrate the roles of local enterprise partnerships into local areas so that we have the best of both worlds, with local democratic accountability and strong business voices to drive economic growth.

Lord Razzall (LD): My Lords, I well understand the arguments that the Minister made regarding the shifting of LEP funding. To return to the Question, which the questioner rather strayed away from and which is whether the Government are satisfied about the impact on local economic development, is the Minister satisfied that the existing schemes, which are often successful, will not be damaged? I am thinking particularly of the very successful work done by a number of combined LEPs on digital poverty and exclusion.

Baroness Penn (Con): I assure the noble Lord that the Government are confident that, in integrating the work done by LEPs into local authority or combined authority areas, we will not lose the benefits of the great work done by LEPs since their establishment. The aim is to integrate that with local democratic accountability. It is part of our broader agenda on devolution and we will continue to see some of that great work delivered over similar areas to now.

Lord Young of Cookham (Con): My Lords, is it not the case that, since the LEPs were set up in 2011, more and more of their functions have been transferred to mayoral authorities and combined mayoral authorities, and have been included in devolution deals, many more of which are still on the way? Is that not a more democratic solution than the unelected LEPs?

Baroness Penn (Con): My noble friend is absolutely right. In taking this decision, we conducted an information-gathering exercise with local authorities and LEPs to understand the impact of our plans. That identified great overlap between some of the functions discharged by LEPs, local authorities and combined authorities, as well as confirming a high level of integration of LEP functions in mayoral combined authorities. That is why we are taking the direction of travel that we are. The Government's view is that there is likely to be scope for both greater join-up and efficiencies, and clarity for the private sector, by these functions being discharged in a joined-up way, and greater local accountability.

Baroness Wolf of Dulwich (CB): My Lords, LEPs and RDAs had in common that, while they referred to "local" and "regional", they were, in fact, Whitehall appointed and Whitehall controlled. If their functions are gradually transferred to mayoral authorities, that will clearly take things closer to local enterprise, but it is not necessarily a great improvement if you move from a Whitehall bureaucracy to a mayoral bureaucracy. What is being done to ensure that these functions respond actively to local enterprises and to local and regional organisations, which are membership organisations and directly represent enterprises, businesses, communities and, indeed, consumers?

Baroness Penn (Con): My Lords, the Government have published guidance for the transfer of LEP functions to local authorities. Further guidance will be issued in January. As part of our devolution settlements in different areas, there are also clear conditions around how business engagement should take place to ensure that the voices of local businesses and their representative organisations are well heard in those areas.

Lord Haselhurst (Con): My Lords, is it not unusual that within local enterprise partnerships, some of those participating were rivals with one another? Is it not best to ensure that, after all this time, we take another look at Redcliffe-Maud and have stronger bodies and authorities, with more competent clerks, to make it a really good and efficient system?

Baroness Penn (Con): One important aspect of moving LEP functions into local authorities and mayoral combined authorities is making sure they cover appropriate economic geographies so they can deliver for those areas. In having proper democratic accountability, it will be clear to local businesses and local people who is responsible for economic development in their area.

Baroness Armstrong of Hill Top (Lab): My Lords, is it not clear that in the Teesside mayoral area, on some of the economic development programmes, we have seen less democratic accountability and less transparency about what is going on? The Government instituted a review that was supposed to report in July on this and we have heard nothing yet. We want more electoral and democratic accountability and more transparency. When is the report going to come out?

Baroness Penn (Con): My Lords, there has been a great deal of success in devolution to Teesside and the mayoral combined authority there. The noble Baroness is right that we have instituted a report into some of the processes that have been undertaken. I do not have a date for her, but we are looking at it very carefully and we will publish the report when we are in a position to do so.

Lord Scriven (LD): My Lords, is the issue here not just talking about structural change to functions but the power of the functions themselves? The clear issue with saying that we are going to have proper regional economic development firing on all cylinders is that, in every country, every indicator shows that fiscal devolution is required, not just the movement of existing functions. Will the Government seriously look at fiscal devolution to ensure that proper economic development can happen in all regions across the country?

Baroness Penn (Con): That is exactly what the Government are doing; they are seeking to combine the devolution of greater power with greater funding and greater responsibility for the funding. There are the trailblazer deals that look to integrate the different streams of funding for local areas into something much closer to a single settlement. That will allow those areas to make decisions at a local level about what should happen in their area.

Lord Kirkhope of Harrogate (Con): My Lords, surely all this bureaucracy and red tape is not the answer for some parts of our country that are in need of development. As one of those involved in the establishment of development corporations in the late 1980s, I think we should be proud of such a model. Frankly, is it not about time we allowed local businesses and local people to have a stronger say in what they want to renovate and rejuvenate zones of that kind?

Baroness Penn (Con): My Lords, by integrating LEPs into local authorities and mayoral combined authorities, we are looking to streamline the processes by which business can engage in their local areas. As a part of our devolution deals, we are also giving combined authorities the power to set up development corporations so they can use the voice of business to drive development and economic progress in their local areas.

Arrangement of Business

Announcement of Recess Dates

3.18 pm

The Lord Privy Seal (Lord True) (Con): My Lords, in the absence of my noble friend the Captain of the Gentlemen-at-Arms, I am able to announce the current plan for recess dates until the start of summer 2024. Before doing so, I express my thanks, and the thanks of many on this side, for the warm expressions of good will to my noble friend, which have come from across the House; they have been much appreciated by my noble friend herself and have all been relayed on to her. I think I speak for the whole House when I say how much we look forward to seeing my noble friend in her place in the new year.

The full list of dates is available in the Royal Gallery in the usual place. There will be a slightly extended Christmas Recess, with the House still rising at the end of business on Tuesday 19 December and returning on Wednesday 10 January, rather than Monday 8 January as previously announced. We will then rise for the February Recess at the end of Wednesday 14 February, and return on Monday 19 February. This reflects the longer Christmas break. I appreciate that this is a shorter February Recess than in some recent years. However, I have committed to the usual channels that there will not be votes that week, so if noble Lords have made plans for February, I hope that they can still be accommodated.

At Easter, the plan is for the House to rise at the conclusion of business on Wednesday 27 March and return on Monday 15 April. We will then rise at the end of business on Thursday 23 May for Whitsun Recess and return on Monday 3 June. Finally, we currently expect the House will rise for the Summer Recess on Thursday 25 July. Also in the Royal Gallery, noble Lords will find the sitting Fridays up to July. There will be an additional sitting Friday in January to debate the situation in Ukraine before Private Members' Bills start in February. As usual, these are subject to the progress of business. Any changes and further recess dates will be announced in the usual way.

Still-Birth (Definition) Bill [HL]

First Reading

3.21 pm

A Bill to amend the definition of Still-Birth to apply from 20 weeks into a pregnancy; and for connected purposes.

The Bill was introduced by Baroness Benjamin, read a first time and ordered to be printed.

Aviation (Consumers) (Amendment) Regulations 2023

Motion to Approve

3.22 pm

Moved by ***Lord Davies of Gower***

That the draft Regulations laid before the House on 16 October be approved. *Considered in Grand Committee on 6 December.*

Motion agreed.

Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2023

Motion to Approve

3.22 pm

Moved by ***Lord Benyon***

That the draft Regulations laid before the House on 26 October be approved.

Relevant document: 1st Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 6 December.

Motion agreed.

Investigatory Powers (Amendment) Bill [HL]

Committee (1st Day)

Scottish Legislative Consent sought.

3.23 pm

Clause 1 agreed.

Clause 2: Low or no reasonable expectation of privacy

Amendment 1

Moved by ***Lord Coaker***

1: Clause 2, page 3, leave out lines 24 to 27 and insert—

"(b) the extent to which information contained within the personal data has been made public as a result of steps deliberately taken by the data subject;"

Member's explanatory statement

This amendment would ensure the definition of a low privacy bulk personal dataset is in line with the definition set out in Schedule 10 of the Data Protection Act 2018.

Lord Coaker (Lab): My Lords, before I get to the specifics of my Amendment 1, I will make some general remarks. I thank the Minister and all his officials for their very helpful briefing and the collaborative way in which they have approached the Bill. As he knows, we support the Bill, but we will seek clarification and further information about a number of clauses and the details in them.

It is important for me to say that this is the Committee stage, so some significant details will be explored that will be helpful to us. Indeed, on my own part, there may be one or two misunderstandings as to the actual meaning of certain parts of the Bill. None the less, it is an important Bill and an important step forward for our country and its security; I think we all want to see it be as successful as it can be.

This group of amendments deals with bulk personal datasets. These include personal data where a large majority of people included will not necessarily be relevant to an intelligence investigation. Currently, all BPD warrants must go through a double-lock process of approval via the Secretary of State and then a judicial commissioner, and must be renewed every six months. Agency heads must also perform certain functions associated with the warrant.

As the importance of data-based intelligence grows, the Bill rightly includes several measures to make it easier and quicker to analyse various datasets. Individual BPDs considered to have a low or no expectation of privacy could be approved by intelligence agency heads if urgent or if they fall into a category approved by a judicial commissioner. For urgent cases, judicial commissioners have three days to review the warrant.

BPD warrants will need to be renewed only after 12 months, instead of six, which seems sensible. Some functions can be delegated from heads of agencies to an official while maintaining overall responsibility. The Bill also ensures that third-party BPDs—mostly commercially held data—are regulated similarly to other BPDs. The double lock of the Secretary of State and the judicial commissioner would remain for all BPDs, apart from ones considered urgent by the Secretary of State. For urgent cases, a judicial commissioner would have three days to review the warrant. Again, much of that is very sensible and improves the current situation.

I tabled my amendments in the spirit of probing what the Government mean, and I will ask some questions for clarity. Amendment 1 probes why the definition of low-privacy datasets differs from existing data protection legislation. Being the sort of person I am, yesterday I read the relevant section of the Data Protection Act 2018. It differs from Clause 2, where the Minister lays out:

"Low or no reasonable expectation of privacy"

for authorisations and the various factors to be taken into account. Given that the Data Protection Act also talks about access to data, about intelligence services having to have consent and about intelligence agencies having various conditions applied to them when seeking authorisations to access data, it would be helpful to the Committee to understand which applies to the authorisations and how the various pieces of legislation interact with each other. Otherwise, we have what is included in this Bill as well as what is included in the Data Protection Act 2018. Amendment 1 seeks to understand where and how the two relate to each other, whether one supersedes the other and whether the Data Protection Act is now irrelevant to the authorisations laid out in the Bill. It would be helpful for us to understand that.

3.30 pm

My Amendment 16 seeks to ensure that the Intelligence and Security Committee is involved in the overall oversight of what is happening. The Government included in new Section 226DA in Clause 2 an annual report, so they have accepted the idea, which my amendment lays out, of having an annual report. But noble Lords will see that my amendment, rather than having the report going just to the Secretary of State as the Government propose in new Section 226DA, seeks to understand why the Government would not want such a report to go to the Intelligence and Security Committee as well. Indeed, my noble friend Lord West has put a similar amendment exploring the same point. It would be useful for the Committee to understand why the Government have excluded the Intelligence and Security Committee from such oversight.

The Minister will know that I was exercised by the role of the Intelligence and Security Committee with respect to the National Security Act during its passage. Again, it is important to understand what role the Government feel the Intelligence and Security Committee has with respect to the changes and amendments included in this Bill. Therefore, at this stage, my Amendment 16 simply probes that. It is a probing amendment; I just want to understand what the Government's view of the Intelligence and Security Committee should be and how they have come to a view, in new Section 226DA in Clause 2, that they feel an annual report is important but that it will go only to the Secretary of State and not to the Intelligence and Security Committee. It seems a bit strange.

Again, because it is important for the Committee to understand what the Government's definition of serious crime is, noble Lords will see that my Amendment 17 to Clause 5 would use the definition of serious crime as in Section 263 of the Investigatory Powers Act 2016. It is just to ensure that we understand the definition of serious crime that we are using in the Bill vis-à-vis the earlier Act. My understanding is that in Section 263 of the Investigatory Powers Act 2016, serious crime is defined as

"an offence for which a person who has reached the age of 18"

in England and Wales, or 21 in Scotland or Northern Ireland,

"and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of 3 years or more",

or if various other conduct such as violence is included. Can the Minister confirm that that is the definition to be used? While he does that, can he just underline whether there is any problem with the difference in age in Section 263—18 in England and Wales, and 21 in Scotland and Northern Ireland—with respect to this? For my own clarity—I apologise to noble Lords if it is obvious to everybody else—how does this Act apply to children under 18 and what are the consequences with respect to that for the changes there?

I have some other specific questions for the Minister. How does the Bill ensure that the sensitivity of information is central to whether a dataset is used, not just whether it has been made public? How does the Bill ensure—within it, not necessarily in guidance—that sensitive information such as facial images and medical information is correctly identified as sensitive information that should go through the double lock? Frankly, there are some questions to be asked about what the access should be to that anyway.

What measures are there to know whether an individual's data has been made public? What will be considered "editorial control"? How can the intelligence community ensure that it does not rely on others to assess data sensitivity? Again, to help us with the definition, what will count as urgent when considering whether a bulk personal dataset should be approved without prior involvement of the judicial commissioner?

As I said to the Minister, we accept the changes the Bill is bringing forward; it will improve the situation. There are much-needed amendments in this group and the others we will discuss, but the clarifications I have asked for should help those who seek to interpret the Bill, and, indeed, those who will use the increased powers in it. With that, I beg to move.

Lord Fox (LD): I rise to speak to Amendment 2 and several others in this group in my name. This amendment probes the extent to which paragraphs (d) and (e) of proposed new Section 226A(3) depart from current privacy laws. Like the noble Lord, Lord Coaker, we seek clarification. Also like the noble Lord, as far as we are concerned the purpose of this Committee is to probe, get information and understand how the Government interpret some of the measures in the Bill.

Bulk personal datasets represent the largest part of the Bill, and this amendment primarily probes the differences in the definitions in the Bill and those set out in Schedule 10 to the Data Protection Act 2018. The Bill creates a new and essentially undefined category of information where there is deemed to be low or no reasonable expectation of privacy: so-called low/no datasets. This is a departure from existing privacy law, in particular data protection law. With regard to low-privacy bulk datasets, the relevant circumstance, in Schedule 10 to the DPA, is that

"information contained in the personal data has been made public as a result of steps deliberately taken by the data subject".

This is a different standard from the expectation of privacy in the new BPD category, whereby information is considered low privacy according to

"the extent to which the data is widely known about"

and if it

"has already been used in the public domain".

As your Lordships will observe, there is a big difference between those two definitions. For example, whereas facial images from public CCTV may be considered low-privacy BPD under the Bill, they would be considered personal data and possibly subject to sensitive processing under the DPA. As the Minister knows, this is a contentious area of law, and a real-life example is Clearview AI's database of 30 billion facial images harvested from social media platforms for highly facial recognition searches. Some could have been classified as low privacy, as the photos have already been made public by the individuals, but the Information Commissioner's Office found Clearview AI in breach of the DPA.

Similarly, a database of all public Facebook or other social media posts could be argued to be a low-privacy database, despite the fact that it will be a comprehensive database of billions of people's social networks, sexual orientations, political opinions, religion, health status and so on. Under the DPA, much of this data qualifies as sensitive personal data, incurring extra protections when it comes to retention and processing, regardless of whether the information can be considered to have been made public.

The DPA would still apply to the intelligence agencies in processing—at least, that is our view, and we would like to like the Minister to comment on that—but under the Bill as drafted the contradictory standards would also apply. How do these two standards work together? I assume the department has looked at the likelihood of possible challenges to this new category of data, and indeed the likelihood of such challenges being successful, so it would be helpful if the Minister could enlighten us in that regard.

Schedule 10 to the DPA sets out circumstances in which the agencies can conduct sensitive processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership; data concerning health or sexual orientation; biometric or genetic data that uniquely identifies an individual; and data regarding an alleged offence by an individual. Does Schedule 10 apply in the case of data identified as "low" or "no" by the Bill?

An example highlighting the potential divergence is data that has been hacked and then leaked out. While not deliberately made public, as per the DPA requirement, it is arguably public and available in the public domain. What is the Minister's view as to how the Bill regards that sort of data in a low/no context? To test this, the amendment seeks to strengthen the condition in proposed new Section 226A(3)(b) by aligning it with the test in the Data Protection Act for sensitive processing. Data protection law is currently constructed according to the sensitivity of information rather than the individual's expectations of privacy concerning personal information. As we know, expectations differ greatly from reality, and from person to person. The central questions this

[Lord Fox]
poses are: why does the new Bill deviate from Schedule 10 to the DPA, and how will the DPA and the IP work together using the new definition of this Bill?

We are debating a small number of quite large groups today which, unfortunately, means that quite a number of my amendments appear one after another. I will speak as briefly as I can, but I am afraid there is quite a lot of detail coming up. I will speak first to Amendments 4, 5, 6 and 7. Amendment 4 probes the purpose for which bulk datasets will be used by the intelligence services. Amendments 5 and 6 probe the circumstances in which an authorisation is urgent and therefore not authorised in advance by a judicial commissioner. Amendment 7 would require the person granting an authorisation in urgent cases to immediately notify the judicial commissioner that they have done so.

These amendments are similar in purpose and spirit to Amendment 3 from the noble Lord, Lord Anderson, which I have co-signed and support. The basic explanation from the Government for proposed new Part 7A has been that these datasets are needed to train tools using machine learning and that they already exist and are being used in the commercial world, but the Part 7 process makes them difficult for the intelligence services to use. If training AI tools is the stated prime mover for Part 7A, the inclusion of urgent data as one of the three types of data clearly indicates it is also needed for ongoing investigations.

In that regard, proposed new Section 226BC refers to a "relevant period" of three working days between the acquisition of the urgent data and the granting of full judicial approval, giving the relevant service three days to work with data and information that might eventually be ruled out of bounds by the judicial commissioner. All the amendments are intended to understand how Part 7A is to be used in operations, rather than tool training, and what urgent circumstances are envisioned that would negate the need for prior JC approval of an authorisation.

Amendment 4 seeks to restrict the application of Part 7A powers to training and learning functions of the intelligence services, meaning that operational purposes would be excluded. This is designed to get the Minister to explain the operational needs which define an urgent need.

Amendment 5 removes the ability of a person to grant an authorisation if there is an urgent need. Clearly, this gives the Minister a chance to justify why such data might be operationally needed. Amendment 6 provides a definition of what might be considered "urgent circumstances". The Minister might want to contribute a different definition, but we feel the definition of "urgent" should be included in the Bill. Amendment 7 provides an additional safeguard by requiring a JC to be notified immediately where an authorisation has been granted in an urgent case. This essentially creates an opportunity to close the potential gap between when the data is deployed and when the JC rules on its admissibility—but not, of course, removing the gap entirely.

3.45 pm

Amendment 8, also in my name, probes the meaning of "reasonably practicable". We need an explanation from the Minister about the meaning of "reasonably practicable" in the context of new Section 226D(2). New Section 226D relates to circumstances where, during the course of the examination of bulk personal datasets, it becomes clear that the data is not in fact of a type where individuals could have no or low reasonable expectation of privacy in relation to the data. At that point, the head of the relevant intelligence service must, so far as is "reasonably practicable", ensure that anything in the process of being done in relation to the bulk personal database stops as soon as possible. Quite simply, can the Minister please explain in what circumstance it would be possible to stop all activity in relation to that particular bulk personal dataset?

Amendment 9 takes that argument a little further. On the face of it, it is intended to ensure that, when an authorisation ceases to have effect or never had effect, the intelligence services must forget the information or knowledge acquired during the period the authorisation was done. This is connected with the previous amendment. As we have already discussed, using urgency as a reason, the new powers in Part 7A could lead to some bulk personal datasets with the lowest safeguards being used for at least three days before a JC rules the dataset out of scope.

So, in the circumstances described when discussing the previous amendment, where there is a realisation that the BPD being examined is not in fact of the kind where it could be authorised, how can we be sure that the intelligence services will essentially forget the information gleaned in the meantime—and similarly if the JC declines to warrant that activity? With this amendment we are giving the Minister a chance to tell us that of course there is no possible safeguard to ensure that the information or knowledge acquired during the time the authorisation was still in effect cannot be used or relied upon for anything once the authorisation ceases to have effect. In other words, once the information is in the consciousness of human beings, it is there and it is impossible to get rid of—so, at the very least, this means that the discussion we had over the preceding amendments is highly relevant. At worst, it indicates that we have an undefined urgency applied to a self-defined low/no dataset and therefore there is a wormhole in the rules allowing unwarranted datasets to be used for three days that would otherwise not qualify for a Part 7A warranty.

I am looking forward to hearing the noble Lord, Lord West of Spithead, on his amendments. In support of the third one, I will say that the latest ISC report into international partnerships recommends that the Prime Minister should provide the ISC with a full copy of the confidential annex of the annual report of the Investigatory Powers Commissioner. I believe this is probably pushing in that direction.

While we are discussing the ISC and a diversion from the Bill, we heard recently Dominic Raab admitting that while he was a Minister he ordered an intelligence-sharing activity that he knew opened up an individual to a real risk of torture elsewhere. I would be grateful if the Minister could confirm that this was the case

and that the policy that excuses Ministers of the Crown when they do this is called the Fulford principle. Can he confirm that? Perhaps the Minister can explain to your Lordships' House—as I say, either now or in writing—how this differs in substance from extraordinary rendition. Can he also explain how this self-confessed activity squares with the UK's obligation under the convention on torture?

Returning to the Bill in hand, Amendment 11

"requires the annual report to include details of the number of authorisations sought and granted under new Part 7A".

Bulk personal data appears to be widely used; 177 warrants were sought and approved in 2021. What is not clear is how many of these would qualify for the new 7A category of approval. It is also not clear from the Bill whether in future we will know the number of annual BPD warrants, as there is no explicit proposal for these to be included in the IPC's annual report. This amendment seeks to make it explicit that they are reported in this way.

I am sure the Minister would agree that it is a reasonable—indeed, modest—request to understand how this permissive legislation is being used, not least because it seems that the application of the existing laws has not been totally smooth. In its most recent report, covering the period of 2020-21, the Investigatory Powers Commissioner's Office, the IPCO, found that the Secret Intelligence Service had retained bulk personal datasets "in error" and "without a warrant", and had "serious gaps" in its

"capability for monitoring and auditing of systems used to query and analyse BPDs",

involving

"several areas of serious concern".

It also found that the agencies were responsible for 29 errors involving BPDs, the second highest area of the investigatory powers for errors. Errors can include, for example, officers accessing an individual's record without reason.

We say again that Part 7A contains extensive new powers. We need appropriate oversight and transparency. This is a small but important amendment to which I hope the Minister would have no difficulty agreeing.

Amendment 14 deals with Clause 5 of the Bill, and relates to third-party bulk datasets, where

"the intelligence service has relevant access … to a set of information that is held electronically by a person other than an intelligence service".

The definition of "relevant access" includes where

"the type and extent of the access available to the intelligence service is not generally available".

With this amendment, we are simply asking the Minister to put on record a more detailed explanation of what type of information this might consist of, and what is meant by "not generally available".

Amendment 18

"is intended to confirm that genomic and genetic data is included in the definition of sensitive data under this section".

It is a simple probing amendment, intended to ensure that our understanding of the Bill is correct. I suggest that the upcoming data Bill will also deal with this, so there are some cross-references we need to establish here before the next Bill arrives. In the Bill, "sensitive personal data" is defined under Section 202(4) of the 2016 Act, which in turn cross-references Section 86(7) of the Data Protection Act 2018. Section 86 of the DPA lists

"genetic data for the purpose of uniquely identifying an individual"

as sensitive personal information, so this amendment seeks to confirm that genomic and genetic data is included in the definition of sensitive personal data that might be included in health records, and that, as such, an application to examine any third-party dataset must explicitly state this.

In conclusion, Amendment 19

"requires the Secretary of State granting an authorisation in urgent cases to immediately notify a Judicial Commissioner that they have done so".

This amendment is similar in intention to an amendment tabled to Clause 2, but this time regarding the powers in new Part 7B. Again, we are trying to understand what the urgent circumstances might be that would require examination of a third-party dataset without waiting for approval from a judicial commissioner, and therefore, as a safeguard, we would like the JC to be immediately notified that an authorisation has taken place. We have debated this to some extent under Part 7A, and I can imagine the crossover, but it would be useful to know if there are any differences between how Part 7A approval and Part 7B approval would be taken under these two circumstances.

Lord Anderson of Ipswich (CB): My Lords, I welcomed this Bill at Second Reading, and the warmth of my welcome has not diminished. However, I am pleased to see so many amendments down to Part 1. As the noble Lord, Lord Fox, has said, the new rules for certain bulk personal datasets do not displace or dilute the currently applicable protections under the Data Protection Act, but they are probably the most operationally significant of the changes that we are looking at, and therefore can only benefit from careful scrutiny of the kind that noble Lords have so enthusiastically invited.

I have one general comment. Despite some of the kind words that were said about my report at Second Reading, I was not asked to design this Bill from scratch, nor to comment on anything as precise as a provisional text. Rather, my task was to assess proposals that were put forward by government and that in some cases evolved during the currency of my review. Although I did run a consultation as part of my review, its value was reduced by the rather limited amount I was able to say about the Part 1 proposals and some of the others. So although I did receive a handful of very helpful responses, there will certainly be points that did not occur to me and to which others were not able to alert me. The Bill is also, of course, in some respects more detailed than my recommendations. I look forward to hearing the Minister's response to the various amendments in this group.

I will say a quick word about each of the amendments in my own name; there are only two. My probing Amendment 3 I offer to the Government as a Christmas present, as I thought it might suit them. If for any reason they do not like it—and I suspect they may not—then that is up to them; we can hardly force it on them. The background is this: it seemed to me that the

[Lord Anderson of Ipswich]
question of whether individuals have a low, or no, expectation of privacy might depend in part on the use to which the datasets will be put. If, for example, an agency were prepared to commit to using a dataset only for training a large language model and not for operational purposes, perhaps that might be one of the factors pointing towards a low/no classification. The agencies and the Government politely explained to me—if I paraphrase correctly—that this was not a very practical suggestion, so I did not push it further, save to mention the point in paragraph 3.51 of my report.

Sure enough, the anticipated use of a dataset is not one of the factors listed in new Section 226A(3), where the factors are set out. But turn over the page to new Section 226BA, which deals with category authorisations, and there you see in subsection (3) that a category authorisation may describe a category of BPDs by reference to—among other things—

"the use to which the data will be put".

My question to the Minister is simply this: if the use to which a dataset will be put can be relevant to the formulation of a category of low/no datasets, then why is it not relevant to the assessment of an individual dataset as low/no or otherwise? The Minister's answer may be that the list in new Section 226A(3) is not exhaustive and that there is no reason why intended use should not be one of the circumstances taken into account under subsection (2) when considering whether a BPD is low/no. In that case, can he explain why intended use is not mentioned in new Section 226A when it is mentioned in new Section 226BA?

4 pm

Is there a risk—I look here at the legal Benches—that the omission from new Section 226A of a factor that is included elsewhere might imply to whoever may have to interpret this new Act that we in Parliament did not wish intended use to be considered under new Section 226A? If we had, the argument would go, surely we would have said so, as we do later. As I said, I am probing only, but I would be glad for anything the Minister could say to help make this clear.

My Amendment 15 is a very minor one. It relates to the third-party bulk dataset regime—what will become Part 7B of the 2016 Act. The effect of Clause 5 of the Bill is to introduce a degree of regulation where there was none before in circumstances where an intelligence agency has relevant access to a third-party bulk dataset. My only point is that I am not clear why that access has to be electronic, as provided for in new Section 226E(2)(c) on page 14 of the Bill. That appears to mean that, if the third-party were to print the dataset off and press it into the eager hands of the intelligence agencies, there would be no relevant access and therefore no regulatory constraints.

Perhaps the Minister will tell me that this is very old-fashioned and that, in practice, in the modern world, access to an electronic dataset will always be electronic. Indeed, the Minister is nodding. In that case, surely my point still stands. If access is always electronic, why is it necessary to specify that access must be electronic before the safeguards kick in? Surely paragraph (c) on page 14 implies that access may be non-electronic and disapplies the safeguards in those circumstances. I am still a bit puzzled. If there is a point in the last line of new Section 226E, I hope the Minister will explain what it is.

Lord West of Spithead (Lab): My Lords, if I suddenly fall over, it is not excitement over my amendments but that I have a brand new starboard knee, which is still slightly wobbly, so I might look a little wobbly at times.

Noble Lords will recall that the Investigatory Powers Act was introduced as a result of the Intelligence and Security Committee of Parliament's 2015 report, *Privacy and Security*, which recommended that a new Act of Parliament be created to

"clearly set out the intrusive powers available to the Agencies, the purposes for which they may use them, and the authorisation required".

However, as the noble Lord, Lord Anderson, recognised in his recent report, which he referred to, there have been a number of changes since the Act was introduced. We now face a very different threat picture from that which we did in 2016, with an increased threat from state actors such as China, Russia and Iran, and a significant rise in internet-enabled crime, including ransomware and child exploitation. The pace of technological change has been incredible. Developments in the fields of data generation, cloud services, end-to-end encryption, artificial intelligence and machine learning have all created challenges, as well as opportunities, for law enforcement and the intelligence community.

The Intelligence and Security Committee, of which I am a member, therefore welcomes the introduction of this Bill. The ISC has considered classified evidence relating to the Bill and questioned all parts of the intelligence community and Ministers on the need for change. However, as ever, the devil is in the detail. The committee considers that there are several areas in which the Bill must be improved and, in particular, safeguards strengthened.

Parliament must ensure that the balance between privacy and security is appropriate, and that there is sufficient independent oversight of the work of the intelligence community, given the potential intrusiveness of its powers. The Bill seeks an expansion in the investigatory powers available to the intelligence services. While this expansion is warranted, any increase in investigatory powers must be accompanied by a concomitant increase in oversight. I have previously spoken about the refusal of the Government to update the remit of the ISC, or to provide the necessary resources for its functioning, such that it has

"oversight of substantively all of central Government's intelligence and security activities to be realised now and in the future",—[*Official Report*, Commons, Justice and Security Bill Committee, 31/1/13; col. 98.]

as was the commitment given by the then Security Minister in the other place during the passage of the Justice and Security Act.

The House has made known its views on this long-standing failure during debates on several recent national security Bills, including the National Security and Investment Act, the Telecommunications (Security) Act and the National Security Act. However, despite repeated attempts by this House to ensure effective oversight, this has been ignored by the Government. The Government cannot continually expand and reinforce

the powers and responsibilities of national security teams across departments and not expand and reinforce parliamentary oversight of those teams as well. The committee expects the Government to take this opportunity to bolster the effective oversight they say they value. If they do not, then they should expect that Parliament will. I therefore call upon the Government once more to update the ISC's memorandum of understanding to ensure sufficient oversight of all intelligence and security activities across government. Indeed, this was the quid pro quo that Parliament expected during the passage of the Justice and Security Act 2013, and I trust that Parliament will take the same view now.

I turn to Amendment 10, which is designed to close a gap in oversight. Proposed new Section 226DA requires that each intelligence service provide an annual report to the Secretary of State detailing the individual bulk personal datasets that they retained and examined under either a "category authorisation" or an "individual authorisation" during the period in question. My amendment would ensure that there is independent oversight of this information, rather than just political oversight. The amendment would provide that the annual report be sent also to the Intelligence and Security Committee of Parliament and the Investigatory Powers Commissioner. IPCO has a degree of oversight included in the Bill already, since judicial commissioners approve both individual and category authorisations at the point of issue and approve the renewal of any authorisations after 12 months. This is not full oversight. Further, there is currently no democratic oversight at all of category authorisation, which is not appropriate. My amendment would ensure that IPCO and the ISC have oversight of the overall operation of this new regime.

Noble Lords will note that I have also tabled an amendment to notify IPCO of any new individual datasets that are added to category authorisations by the intelligence services. That amendment would work alongside this, and the ISC considers that the combination would provide an appropriate balance of real-time and retrospective oversight for these new powers. It is vital that the robust safeguards and oversight mechanisms so carefully considered by Parliament in respect of the original legislation are not watered down by the changes under this new Bill. Instead, they must be enhanced in line with the increasing investigatory powers. This is what the ISC seeks to achieve by the amendments I have tabled today.

Amendment 12 is consequential on the amendments that I have just talked about.

I speak now to Amendment 13. Part 7A of the Bill provides for a lighter-touch regulatory regime for the retention and examination of bulk personal datasets by the intelligence services where the subject of the data is deemed to have a low or no reasonable expectation of privacy. Approval to use such a dataset may either be sought under a category authorisation—which encompasses a number of individual datasets that have similar content or may be used for a similar purpose—or by an individual authorisation, where the authorisation covers a single dataset that does not fall neatly within a category authorisation or is subject to other complicating factors. In the case of a category authorisation, a judicial commissioner will approve the overall description of any category authorisation before it can be used. A judicial commissioner will also approve any renewal of a category authorisation after 12 months and the relevant Secretary of State will receive a retrospective annual report on the use of all category and individual authorisations.

This oversight is all retrospective. What is currently missing from the regime is any form of real-time oversight. Under the current regime, once a category authorisation has been approved, the intelligence services then have the ability to add any individual datasets to that authorisation through internal processes alone, without any political or judicial oversight. This would mean relying on the intelligence service to spot and rectify any mission creep, whereby datasets might be added to a category authorisation in a way that was not consistent with the definition of the original authorisation, which lasts up until the 12-month marker for renewals.

While we have every faith in the good intentions of the intelligence services—and I do not mean that in a joking way, because we have been amazingly impressed by them—no legislation should be dependent on the good will of its subjects to prevent misuse of the powers granted therein, particularly where those powers concern national security. The ISC therefore seeks to fill that very worrying gap.

My amendment proposes a new section in Clause 2—proposed new Section 226DAA—which would ensure that the IPCO was notified whenever a new individual bulk personal dataset was added by the agencies to an existing category authorisation. Notification would simply involve the agencies sending to the Investigatory Powers Commissioner the name and description of the specific bulk personal dataset as soon as reasonably practicable after the dataset was approved internally for retention and examination by the intelligence services.

The amendment would require not that the use of the dataset be approved by the IPCO but merely that the commissioner be notified that it had been included under the authorisation. It therefore does not create extra bureaucracy or process. Indeed, it provides for a flow of real-time information between the intelligence services and IPCO, to allow for the identification of any concerning activity or trends in advance of the 12-month renewal period. Any such activity could then be investigated by the commissioner as part of its usual inspections. The ISC believes that this amendment strikes the right balance between protecting the operational agility of the intelligence services and safeguarding personal data at any level of sensitivity.

Noble Lords have already considered my related amendment, to provide the annual report to the IPCO and the ISC, as well as to the Secretary of State. The committee believes that this combination of real-time oversight through the notification stipulated in this amendment and retrospective oversight, through the involvement of judicial and political oversight bodies, is necessary to provide Parliament and the public with the reassurance that data is being stored and examined in an appropriate manner by the intelligence services.

[LORD WEST OF SPITHEAD]

I repeat my entreaty to the House: the robust safeguards and oversight mechanisms so carefully considered by Parliament in respect of the original legislation must not be watered down by the changes under this new Bill; they must be enhanced in line with the increasing investigatory powers.

Lord Hope of Craighead (CB): My Lords, I have added my name to Amendments 3 and 15 in the name of the noble Lord, Lord Anderson. I have nothing to add to what he said in support of Amendment 15, but I shall add a word about Amendment 3, which was the subject of the Christmas present of the noble Lord, Lord Anderson. It requires one to look a little more carefully at proposed new Section 226A(2), which provides as follows:

"In considering whether this section applies to a bulk personal dataset, regard must be had to all the circumstances, including in particular the factors in subsection (3)".

What the noble Lord, Lord Anderson, is seeking to offer the Minister the invitation to include is the use to which the datasets are to be put. He draws strength for that proposition from what one finds in new Section 226BA(3), in which express reference is made to the use to which the datasets will be put. It can be said in support of this proposal that it seems a little strange not to include the use to which the datasets are to be put, if they are mentioned expressly in new Section 226BA(3). I suppose that one could say that, since new Section 226A(2) is very widely phrased and includes all the circumstances, that the Christmas present of noble Lord, Lord Anderson, is already there as already there as one of the circumstances, but it is probably happier to include it expressly, just for the avoidance of doubt. It is for the avoidance of doubt that the strength can be found in the proposal that he has put forward.

4.15 pm

To return to Amendment 1, what the noble Lord, Lord Coaker, was doing with it, as he explained, was to draw attention to a difference in the wording in Clause 2: the wording to be found in new Section 226A(3)(b) does not follow precisely what we find in Schedule 10 to the Data Protection Act. I respectfully suggest that the wording in the Bill unpacks the wording of the schedule that the noble Lord, Lord Coaker, has reproduced in his amendment. I think that unpacking it in the way that the Bill does is helpful: it identifies two situations in which one could say that the data subject has taken a step, deliberately, to make the information public. One is where the individual does so himself, and the other is where the individual consents to the data being made public.

I think that the Bill achieves greater clarity than did Schedule 10 to the Data Protection Act, and therefore I respectfully suggest that, while the noble Lord, Lord Coaker, is absolutely right to draw attention to the difference in the wording, what we see is improved wording and I would support the wording of the Bill rather than that in the amendment which he has put forward. I hope he will not mind my suggesting that, but it is very helpful that he has drawn our attention to it. To be able to congratulate the Bill on improving on wording is something worth noting.

Lord Murphy of Torfaen (Lab): My Lords, I support my noble friends Lord Coaker and Lord West with regard to the Intelligence and Security Committee amendments. In 2005, when I became the chair of the Intelligence and Security Committee, nearly two decades had passed since the committee originally started life, when people did not really understand what it was all about. It had not been accepted, particularly, by agencies or by the Government, but over those 20 years, it became accepted. After I left, in 2007, even more changes to the powers and responsibilities of the committee were made, to such an extent that the ISC is now a significant and serious part of our constitutional landscape. But I fear that, over the last number of years, that has slightly declined.

I understand, for example, that the ISC has not met a Prime Minister—there have been lots of them, of course—over the last number of years, nearly a decade. Certainly, when I chaired it, we met the Prime Minister every year or so. It is an indication, I suspect, of what the Government think about it if they do not see it as so important as to meet the head of the Government now and again. I hope that is wrong, but I am sure the Minister will enlighten the House later as to what he and the Government think about the importance of the ISC. It is hugely significant; it is serious.

I shall move briefly on to the significance of the ISC with regard to the passage of the original Investigatory Powers Act, some years ago now, in 2015-16. I had the privilege of chairing the Joint Committee of both Houses on that Bill, and the ISC simultaneously was taking a huge interest in what it contained. For example, I met the then chair of the ISC, Dominic Grieve KC, and the committee itself produced a report on how it thought the original Act could be improved. I just hope that this small but important Bill—which I entirely support, by the way—mirrors what happened to the original Bill, so that the Government can indeed meet the ISC, at a ministerial level and at an official level, and have a proper dialogue as to how they see the ISC working after the Bill goes into law. I hope I can get some assurances from the Minister that that will happen.

It is an important Bill, the ISC is an important body, and they should operate together in a very special way. I wholly support the Bill, but I support the amendments from my two noble friends.

Lord Carlile of Berriew (CB): My Lords, it is a pleasure to follow the noble Lord, Lord Murphy, who has served with such distinction on the issues we are discussing this afternoon. I do not want to repeat what I said at Second Reading; I spoke in support of the Bill in general terms, and I remain in support of it. The only additional thing I would say is that we should not allow unnecessary amendment of the Bill to create a sort of legislative game of Dungeons and Dragons in which a bureaucratic labyrinth would be created which can be met in a much more practical way. On the whole, the Bill is pretty practical about a modern problem—a more modern problem than existed, say, 10 years ago—which has to be addressed in real time and sometimes with great urgency in that real time.

I want to say something that follows from what the noble Lords, Lord Murphy and Lord West, said about the ISC. I hope that we can tease a little more information

out of the Minister, who has been extremely helpful to all of us who are interested in the Bill. I can see, and I would be grateful if the Minister would tell us, that there might be some practical problems relating to national security in the way in which the ISC was informed about problems arising under the provisions in the Bill when it becomes an Act. It would be helpful to the Committee if the Minister were to say from the Dispatch Box that the Government certainly do not exclude the involvement of the ISC in the consideration of the Bill. I should also be very grateful if he would say that the Home Secretary would regard it as a duty to inform the ISC on his personal responsibility if issues arose which ought, in the national interest, to be the subject of information to the ISC. Thus, the ISC might be able to report on these issues without too much bureaucracy being involved and any arguments about what is or is not disclosable in a wider way concerning national security.

Baroness Manningham-Buller (CB): My Lords, I do not know whether I can help the noble Lord, Lord Fox, on his question of urgency. One of the things that the Security Service and the other intelligence agencies do is deal with matters of life and death, of imminent terrorist threats, of states pursuing one of their dissidents. There is many an occasion when moving at vast speed outside the hours when IPCO is available is necessary and proportionate. I am out of date, so it is hard to give lots of current examples, but many a time there is an urgent need to move fast to try to save life.

On the point from the noble Lord, Lord Murphy, about the ISC—we will come on to look at these amendments in more detail—as far as my service is concerned, we did not need to get used to the ISC in that we had been demanding its creation for a number of years, with resistance from the Prime Minister of the day until it actually came into being. And when it did, we very much welcomed it.

I have hardly had more pleasure since I have been in this House than from the amendment in the name of the noble Lord, Lord Fox, on seeking to forget stuff. Like some noble Lords, I have difficulty in remembering things—I am sorry, I should speak only for myself—but if I was legislated to forget something, it is almost certain that I would be capable of remembering it.

Lord Fox (LD): That is exactly the case.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I am grateful for the contributions to this debate, which have been very interesting. I thank all noble Lords for the points raised. I shall do my very best to address all of them and apologise in advance for going into significant detail. I also thank everyone in the Committee for their broad support for the Bill.

I will start with the low/no privacy factors on bulk personal datasets, which I will henceforth call BPDs, and the various amendments relating to the test set out in Clause 2, to be applied when an intelligence service is considering whether a particular dataset is one that can be retained, or retained and examined, under new Section 226A in the new Part 7A. This test requires that regard must be had to all the circumstances, and that particular regard must be had to the factors set out in new subsection (3). The list of factors is not exhaustive and other factors may be considered, where relevant.

Schedule 10 to the Data Protection Act is related to Section 86 of that Act, which is concerned with sensitive processing of personal data by the intelligence services. Schedule 10 sets out a list of conditions which must be met for such processing to be lawful for the purposes of the Data Protection Act. There is a risk that applying these words here, in a different context and for a different purpose, may be seen to create a link, albeit fallacious, between the type of datasets that will be retained and examined under new Part 7A and sensitive processing under the Data Protection Act. For that reason, their inclusion here risks doing more harm than good, as the noble and learned Lord, Lord Hope of Craighead, noted.

In any case, the safeguards in new Part 7A are already sufficient to ensure due regard for privacy. Every dataset proposed to be retained, or retained and examined, must be individually authorised. In addition to the test at new Section 226A, as new Section 226B makes clear, an individual authorisation may be granted only if it is both necessary and proportionate.

The factors have been chosen because they are most relevant to the context in which the test will be applied and have been drawn from existing case law. They provide a guide to the decision-maker in reaching a conclusion as to the nature of the dataset. Furthermore, a form of prior judicial approval will apply to all authorisations so that there is independent oversight of the conclusions reached.

Amendment 1, tabled by the noble Lord, Lord Coaker, seeks to replace factor (b) with language drawn from Schedule 10 to the Data Protection Act 2018. Factor (b) is concerned with the extent to which an individual has made public the data in the dataset, or has consented to the data being made public. The Government do not consider the amendment necessary. I am sure the noble Lord's aim is to improve the safeguards in the Bill, and he has drawn inspiration from existing precedent to do so in an effort to bring consistency across statute. However, the amendment fails to achieve that aim, and risks creating an unclear and unnecessary link between this Bill and the Data Protection Act, which I have already explained. I will return to the Data Protection Act in due course.

Amendment 2, tabled by the noble Lord, Lord Fox, probes the inclusion of factors (d) and (e), relating to publicly available datasets that are already widely known about or are already used in the public domain—for example, in data science or academia. As I mentioned, the test in new Section 226A is one in which

"regard must be had to all the circumstances".

The removal of factors from new subsection (3) would not, therefore, fundamentally change the test; it would mean simply that the decision-maker would not be bound to have particular regard to the absent factors. This amendment would, in fact, result in less transparency in the considerations the intelligence services apply when assessing expectation of privacy in relation to Part 7A authorisations.

The Government consider it important that particular regard is had to these factors. I know that noble Lords particularly enjoy the example of the "Titanic"

[Lord Sharpe of Epsom]
manifest. It is a useful example of where such factors would be relevant, as it is a dataset that is widely known about and widely used, and contains real data about real people who would, unfortunately, no longer have an expectation of privacy. I also point to the helpful example in the independent review by the noble Lord, Lord Anderson: the Enron corpus. This is a large dataset of emails that came into the public domain following the investigation into the collapse of the Enron Corporation. Although initially sensitive, the dataset has been available in various forms for almost 20 years and is widely used in data science. It is right that such datasets are in scope of the new regime.

The noble Lord, Lord Fox, asked specifically about the extent to which these factors depart from existing privacy laws. The law concerning the reasonable expectation of privacy is likely to develop over time, and new Section 226A is intended to be sufficiently flexible to accommodate future changes. Rather than departing from the law, new Section 226A is intended to ensure that the intelligence services can continue to apply the law as it develops.

On Amendment 3, I thank the noble Lord, Lord Anderson, for tabling this helpful probing amendment. I am afraid the Government do not think it is necessary in order to achieve what we understand the intended effect of the amendment to be. The amendment does, however, provide an opportunity to better explain the difference between what the Bill calls "individual authorisations" and "category authorisations". An individual authorisation will authorise the retention, or retention and examination, of a dataset under the new Part 7A being inserted into the Investigatory Powers Act—which I will henceforth refer to as the IPA—by this Bill.

All datasets that are to be retained under Part 7A must have an individual authorisation. Individual authorisations are subject to prior approval by a judicial commissioner unless the dataset described falls within an existing category. A category authorisation will not authorise the retention, or retention and examination, of a dataset. Instead, it is a mechanism through which a judicial commissioner's permission may be sought in order to depart from the normal rule on prior approval, but only in respect of datasets that meet a particular description.

4.30 pm

The description of a category may set out the use to which the datasets will be put to assist the judicial commissioner in making their assessment. Once approved, this description is called a "category authorisation". So, as your Lordships will see, although the nomenclature of each type of authorisation is similar, they serve quite different functions.

The noble Lord's amendment is concerned specifically with the test in the new Section 226A. As is clear from the jurisprudence, the test to be applied when determining whether an individual has a reasonable expectation of privacy—and therefore whether a dataset could be authorised under Part 7A—is one that takes into account all circumstances. There is no one-size-fits-all test, but this language ensures that thorough consideration is given to all relevant information in support of each individual authorisation, as reflected in the wording of subsection (2) of new Section 226A.

Of course, the law does not stand still and the jurisprudence in this area will certainly change as society's expectations change. New Section 226A is therefore intended to encapsulate the essence of the jurisprudence while remaining flexible enough to accommodate future changes. That is why the factors are a non-exhaustive list.

I assure the noble Lord, Lord Anderson, that the fact that a relevant consideration does not explicitly appear within the list of factors in subsection (3) does not mean that it cannot and should not also be considered. In fact, quite the opposite is true: subsection (2) of Section 226A makes it clear that regard must be had to all the circumstances, as noted by the noble and learned Lord, Lord Hope. That will include, so far as is relevant, the use to which the intelligence services intend the dataset to be put once it is authorised. Further detail on this is set out in the draft code of practice which was published on GOV.UK last week. I believe that it will be found in paragraphs 4.11 to 4.20.

It is not the case that the Government disagree with the noble Lord's amendment, simply that our view is that the amendment is not necessary for the reasons I have outlined. I trust this has provided the clarity that the noble Lord sought. I ask him to not move his amendment, but I am open to discussing the Government's position further should he not be satisfied by my explanation.

The noble Lord, Lord Fox, via Amendment 4, seeks to probe the purposes for which the datasets—with which Part 7A is concerned—will be used by the intelligence services. It is no secret to say that bulk personal datasets, or BPDs, are used by the intelligence services in multiple ways to support their statutory functions. For example, BPDs play an important role in investigations, notably as "building block" intelligence, where analysts can pull together an assessment of the possible meanings of disparate pieces of fragmentary intelligence.

It is also envisaged that Part 7A will better enable our intelligence services to use BPDs for the purpose of developing the capabilities they need to be able to continue to do their important work, such as the training of machine-learning models, as the noble Lord noted. I note that the review by the noble Lord, Lord Anderson, sets out the many important uses to which BPDs are put.

The amendment proposed would severely and unnecessarily curtail the use to which the datasets may be put and would unnecessarily impede the intelligence services in their ability to carry on their work should the regime not allow for the authorisation of datasets that support the full range of the agencies' functions.

The noble Lord asked about editorial control and public versus private. The question of whether a dataset meets the low or no reasonable expectation of privacy test will be assessed on a case-by-case basis, having regard to all circumstances, including the factors set out in the Bill. The draft code of practice sets out further detail on this, with paragraph 4.16 stating:

"This might be relied upon if the dataset consists of a set of news articles where a level of responsible review and scrutiny has already been applied to the dataset".

Other than that, it would be inappropriate for me to speculate as to how a particular dataset might be dealt with under the proposed regime.

The noble Lord also asked what happens if an officer examining a BPD discovers that it contains more sensitive data. Section 226D of the low/no regime contains a mechanism to ensure that any information of that type or particularly sensitivity is handled appropriately. The code of practice sets out that in the event of an analyst discovering sensitive data, the relevant intelligence service must take certain steps. First, the head of the intelligence service must ensure that anything in the process of being done in relation to that data is stopped as soon as is reasonably practicable—I will come back to that. The intelligence service must then treat that part of the low/no BPD as if the relevant authorisation has been cancelled. The relevant information must be removed from the low/no dataset and either deleted or a Part 7 warrant sought in respect of that information.

I now turn to Amendments 5 to 9 and 19, tabled by the noble Lord, Lord Fox. Proposed new Section 226 (6B) in Clause 2 of the Bill enables the head of an intelligence service to grant an individual authorisation in respect of Part 7A without prior judicial approval, in circumstances in which there is an urgent need to do so. I am sure noble Lords will understand that there are circumstances in which our intelligence services must act urgently, as the noble Baroness, Lady Manningham-Buller, has just noted. There are existing urgency provisions throughout the IPA for that reason. The circumstances in which an authorisation is considered urgent are set out in the draft 7A code of practice, which the Government published on GOV.UK last week. They include where there is a threat to life or of serious harm, or if there is an urgent intelligence or investigative opportunity. These circumstances are well understood in the operational world and there is no need to depart from the established criteria here.

Part 7B, the third-party bulk personal dataset regime, is intended to mirror the well-established urgency circumstances and the Part 7 processes, to the extent possible. To be clear, the urgency provision is not a means by which scrutiny can be avoided or safeguards weakened. As set out at proposed new Section 226B in Clause 2 of the Bill, with further detail in the draft code of practice for Part 7A, a judicial commissioner must review an authorisation within three working days and decide whether to approve the decision to grant it. Of course, it is envisaged that the circumstances in which a Part 7A authorisation is required will be rare. However, as the noble Lord, Lord Anderson, noted in his report, there are operational circumstances where urgent co-operation might be necessary, and it may not be possible to seek prior judicial authorisation in the operational window available, as the noble Lord, Lord Carlile, also observed. We discussed one such case at Second Reading, in which the MoD were co-located with the intelligence services in a hostile environment and were unable to fully collaborate due to the existing restrictions in Part 7. I hope I have set out clearly how the urgency procedures operate and that there may of course be circumstances in which they prove necessary.

Amendment 8 seeks to probe the meaning of the expression

"so far as is reasonably practicable"

in Clause 2, under proposed new Section 226D(2). This form of words is not novel. It is a well-known expression that appears elsewhere on the statute book, including at several places in the 2016 Act. These are important words because without them, the head of the intelligence service would be legally obliged to put a stop to anything that is being done both immediately and without any regard to the consequences of doing so.

Given the nature of the work that our intelligence services do to keep our country safe, I am sure noble Lords will appreciate that there are circumstances in which immediately stopping something that is already in train may not be possible, and if it is possible, it may not be safe to do so. The heads of our intelligence services are accountable for the actions of their respective organisations, as I explained earlier. They are best placed to make decisions of this kind, and it is important that they be able to do so. However, that does not give them carte blanche to do as they please. As I also explained, the Investigatory Powers Commissioner will be obliged to keep Part 7A under review, including compliance with proposed new Section 226D.

Turning to Amendment 9, I am sure noble Lords were as surprised as I was to hear that the noble Lord thinks that the intelligence services ought to "forget" intelligence they have gathered, creating a clear risk that could jeopardise national security and be contrary to their statutory functions, as well as Article 2 of the Human Rights Act, on the right to life.

Lord Fox (LD): If the Minister and indeed the noble Baroness had listened to what I said, they would know that I do not think it is forgettable; I just wanted the Minister to confirm that point.

Lord Sharpe of Epsom (Con): Thank you; point taken.

Section 226D provides a mechanism to achieve what I understand the intent of the amendment to be. It is clear that remedial action must be taken if it is discovered that Section 226A does not apply or no longer applies to part of a dataset authorised under Part 7A. Anything in the process of being done must be stopped as soon as possible, and that part of the authorisation is treated as cancelled. The effect of that part of the authorisation being treated as cancelled is that the data to which it relates must be deleted unless there is some other lawful basis for its retention. It may well be that it is appropriate for the intelligence service to continue to retain the data. That is why subsection (3), in effect, puts that part of the dataset back into the decision-making machinery in Section 220 of Part 7 of the IPA—so that such a decision can be made. We provide a fuller explanation of that in the draft code of practice for Part 7A, at paragraphs 4.26 and 5.39.

[Lord Sharpe of Epsom]

In conclusion on this amendment, if the noble Lord is suggesting that any actionable intelligence that has been identified while the agency was operating on the basis of that retention and examination being lawful under Part 7A should not be acted on, I am afraid I must playfully suggest that it is he who ought to forget his amendment.

I turn now to the various amendments on reporting on BPDs, including several that seek to amend the provisions set out in Clause 2, under Section 226DA, which require the heads of the intelligence services to provide an annual report on Part 7A to the Secretary of State. The first amendment proposed by the noble Lord, Lord Fox, Amendment 11, seeks to mandate that certain statistical information in a given year—specifically, the numbers of authorisations sought and granted—be provided to the relevant Secretary of State. This amendment is not necessary or appropriate. First, those Secretaries of State who are politically accountable for the intelligence services will have in place arrangements to that end and may demand of the relevant intelligence service any additional information he or she feels necessary. This may go beyond the level of detail the noble Lord has proposed be included in the annual report and may be more frequent. This is not a matter for the Bill, because the exact information the Secretary of State requires may evolve over time. Secondly, if this sort of specific reporting requirement is found to be necessary or desirable, it is more appropriate for inclusion in a code of practice, rather than being in the legislation. Indeed, the draft code of practice for Part 7A sets out some relevant details under paragraph 7.4.

I turn now to Amendments 10 and 12, proposed by the noble Lord, Lord West, and I take this opportunity to reassure him and the noble Lord, Lord Murphy. On behalf of the Security Minister, we thank them for their valuable work on the ISC and for the constructive engagement with the Bill Committee to date. I am pleased to see the noble Lord, Lord West, in his place today, and I am glad that he is on a more or less even keel.

The amendments the noble Lord has tabled would require the intelligence services to provide the same annual report that they provide to their Secretary of State, on the operation of Part 7A, to the ISC and the Investigatory Powers Commissioner. I do not believe that this additional requirement would provide the enhanced oversight of the regime that the amendments purport to provide. The annual reporting requirement is a formal statutory mechanism by means of which the Secretaries of State will receive information from the intelligence services about their use of Part 7A on an annual basis. This is a mechanism intended to ensure effective political oversight by the Secretary of State.

The ISC is a committee of Parliament. Oversight by the ISC is neither of the same nature as, nor a replacement for, the oversight of the Secretary of State. The ISC, as a committee of Parliament, already has a long-standing and well-established role in the oversight of the intelligence services to which these provisions will apply, and that role will continue here.

Sending the annual report to the Investigatory Powers Commissioner will not increase the level of independent oversight provided, for the following reasons. First, the Investigatory Powers Commissioner will be required to keep this new regime under review, as he does with the current Part 7 regime, and he will continue to report annually on his findings. Secondly, the information these amendments seek to include in the annual report is already information that the draft code of practice will require the intelligence services to keep, as is clear from paragraphs 7.1. and 7.2. The commissioner, and anyone acting on his behalf, has access to all locations, documentation and information systems as necessary to carry out a full and thorough inspection regime. The intelligence services are legally obliged to provide all necessary assistance to the commissioner, or anyone acting on his behalf, including by providing documents and information.

The noble Lords, Lord Fox, Lord Murphy and Lord West, asked about the continued engagement with the ISC. On both the policy proposals informing the Bill and the Bill itself, through a combination of ministerial, operational and official engagement, we have maintained continual engagement, which includes recent sessions with the Security Minister and the agency heads. As I said earlier, we are grateful to the committee for its engagement and scrutiny of the Bill. We will continue to involve it throughout the Bill's passage, and I am more than happy to take the noble Lords' comments back to the Home Office and make sure they are widely understood.

Amendment 13 would see the intelligence agencies notify the Investigatory Powers Commissioner every time an individual authorisation is granted in reliance on a category authorisation. I have already set out the distinct processes for individual and category authorisations under new Part 7A. As I set out earlier, categories will be authorised only with the prior approval of a judicial commissioner. IPCO inspectors will then be able to review the individual authorisation granted in reliance on a category authorisation during their regular inspections of the intelligence services throughout that time. Category authorisations will expire at 12 months and will then need to be renewed and that decision reapproved by a judicial commissioner.

4.45 pm

It is important to remember that the Government are delivering these reforms to ensure that the services have the operational agility they need to effectively carry out their statutory functions. The safeguards in new Part 7A are calibrated to reflect the level of intrusion associated with the dataset to which new Section 226A applies. The intelligence services do not presently notify IPCO when they add a new dataset to a class warrant under the existing Part 7 regime. The Investigatory Powers Commissioner's Office reviews these additions on inspection as part of routine oversight, so there is no need for a more onerous dataset-by-dataset approach here. It would therefore not be appropriate to place greater restrictions where the data in question under the new Part 7A would have a lower expectation of privacy.

Amendment 16, proposed by the noble Lord, Lord Coaker, seeks to insert an annual reporting requirement into the Part 7B regime. Noble Lords will be aware from reading Clause 5 that, as with the rest of the existing Act and the Bill, the Part 7B regime will be subject to stringent and robust oversight by the Investigatory Powers Commissioner. For new Part 7B, this includes the application of the judicial double lock for warrants under this part. The Part 7B regime will also be included within the Investigatory Powers Commissioner's annual report, which will provide further transparency and accountability. To add an extra requirement in the Part 7B regime for a similar report to be produced by the intelligence services for the Investigatory Powers Commissioner and the ISC would be unnecessary and duplicative. For these reasons, the proposed amendments do not provide additional meaningful oversight, and therefore I invite the noble Lord not to move them.

Amendments 14, 15, 17 and 18 all relate to third-party BPDs. The Government cannot agree with Amendment 15, tabled by the noble Lord, Lord Anderson of Ipswich, on the basis that it would damage the overall efficacy of the third-party BPD regime and impair the operational agility of the intelligence services. The Bill introduces safeguards regarding the intelligence services' examination of third-party BPDs on the system of third parties. These safeguards are designed to mirror, to the extent possible, the existing IPA Part 7 regime. Under the existing Part 7 regime, a BPD exists only if it is available electronically for analysis, and it is the general rule that any examination of a BPD would also happen electronically. It does not follow that in this day and age an intelligence service would seek to examine a BPD in hard copy. Such an approach would be astonishingly inefficient given the sheer scale of the data available. It could also increase the intrusion on privacy and would prohibit the intelligence service from overlaying the results against other electronically retained datasets, which in turn would risk intelligence failure and general operational inertia. This is also true of third-party BPDs, as the access and examination of a third-party BPD will always take place electronically, and this concept needs to be clearly reflected in the third-party BPD regime to ensure clarity and consistency around when the third-party BPD regime is engaged and when it is not.

On Amendment 14, tabled by the noble Lord, Lord Fox, as noble Lords are aware, the proposed regime is designed to ensure that the intelligence services' access and examination of third-party BPDs are clearly defined and underpinned by the appropriate level of safeguards and oversight. The inclusion of "not generally available" within the proposed regime sets clear guard-rails for the intelligence services to follow in respect of what does and does not constitute a third-party BPD. For example, if a third party sold or provided access to a dataset to the general public but offered a smaller customer base, such as Governments or law enforcement agencies, the ability to query or access extra data fields, this additional activity would clearly fall within the scope of the third-party BPD regime, as the access is not generally available. Removing this clear test from the proposed regime would seriously inhibit and impede the conduct and operational agility of the intelligence services, as it would bring into scope a much broader range of datasets that would be available to the general public, even going as far as requiring a warrant to undertake activity such as browsing the internet.

I thank the noble Lord, Lord Coaker, for tabling Amendment 17 and am happy to explain why the Government cannot support it. Section 263 of the IPA contains the definition of serious crime that is relied on by the majority of the powers contained in the Act, such as the interception and equipment interference provisions. It is this same definition of serious crime that is relied on in the Part 7B regime. It has been explicitly clear since the IPA came into operation that the definition of serious crime contained in Section 263 applied to the relevant provisions of the Act unless otherwise stated. It would therefore be inconsistent to explicitly reference the Section 263 definition in the Part 7B regime, when the rest of the IPA relies merely on the general definition of Section 263. This would create confusion and inconsistent interpretations around which serious crime definition is being applied.

On Amendment 18, tabled by the noble Lord, Lord Fox, the current definition of "sensitive personal data" contained in Clause 5 draws on the definition of sensitive personal data contained in the existing Part 7 BPDs regime, which in turn relies on provisions in the Data Protection Act 2018. It is therefore illogical to introduce a different definition in one section of the proposed third-party BPD regime in respect of sensitive personal data and to diverge from the Data Protection Act in this way. I also point out that the relevant provisions in the Data Protection Act already refer to genetic data where it is processed for the purposes of identifying an individual. Therefore, it is not necessary to reference it explicitly in Clause 5.

Finally on the subject of the age of children, my understanding is that this relates to the difference in the age of criminal responsibility in the relevant legislature for each devolved area, but I will confirm and write to the noble Lord if that is not correct.

I hope that my rather lengthy explanations—for which I apologise—have provided reassurance to noble Lords. There may be further conversations to be had on certain areas, but I hope that I have given a clear rationale to noble Lords for the Government's position and that they will not seek to press their amendments.

Lord Coaker (Lab): My Lords, that was an extremely helpful response from the Minister and shows the importance of tabling probing amendment sometimes: to get things read into *Hansard* that can be referred to.

With respect to the point around children, I would be grateful for the letter to be made available to other Members of the Committee. Again, that was a helpful point and helpful clarification, should it be needed. I also very much agree with him—to show my point about the importance of things being read into *Hansard*—about my Amendment 17, but it was helpful for the Minister to read into the record the definition of serious crime to be used throughout the Bill, so that there is no ambiguity with respect to that.

I totally agree with what the noble and learned Lord, Lord Hope, said about my Amendment 1. I think the wording in the Bill is better than that contained in Schedule 10 to the Data Protection Act 2018, but

[Lord Coaker]

I wanted that to be read into the record so that we had it there. I agree with his criticism of my Amendment 1, but the reason I tabled it was exactly to get the point that he made in criticising my amendment, which the Minister reinforced—if the noble and learned Lord understands my logic.

The points made by the noble Lord, Lord Anderson, with respect to Amendment 3 raise an issue. The Minister's response to that was, "Well, it's a non-exhaustive list so it's not necessary, but I'm happy to talk to the noble Lord about it". One wonders where that will get to. It will be interesting for the Committee to see the outcome of that. I thought that Amendment 3, of all the various amendments, was particularly useful and again drew out whether the factors listed in Clause 2 are the right ones, or whether they need adding to. It was important that the Minister clarified that it is not an exhaustive list.

There is one area that I think may need to be looked at further, as mentioned by my noble friends Lord Murphy and Lord West, and the noble Lord, Lord Carlile, if I understood his remarks properly. We need to clarify the role of the Intelligence and Security Committee. I note the Minister's reassurances, but what is its role? The clear point of difference between what I would say and what my noble friends Lord Murphy and Lord West and others would say is that we are talking here about parliamentary oversight. The Government have an annual report which goes to the Secretary of State. That is political oversight of a sort but it is not parliamentary oversight. The whole point of the ISC being set up was to give parliamentary oversight to all these sorts of matters. We have a Bill before us called the Investigatory Powers (Amendment) Bill, which deals with all sorts of issues of national security and the powers that the intelligence agencies and others should have on our behalf. It is only right and proper that the Intelligence and Security Committee should have a role that is properly defined within the legislation before us. That is one aspect that I need to reflect on and discuss with other Members of your Lordships' House and with my noble friend Lord West, as our member of that committee.

That is the one area where, to be honest, I was not satisfied with what the Minister had to say. Notwithstanding Amendment 3, and all the other points made to the noble Lord, Lord Fox, and many others, the definitions the Minister has helped clarify and the various ways he has sought to ensure that people understand the Government's intent have been extremely helpful to the Committee. With that, I seek leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendments 2 to 13 not moved.

Clause 2 agreed.

Clauses 3 and 4 agreed.

Clause 5: Third party bulk personal datasets

Amendments 14 to 19 not moved.

Clause 5 agreed.

Clauses 6 to 10 agreed.

Clause 11: Offence of unlawfully obtaining communications data

Amendment 20

Moved by ***Lord Fox***

20: Clause 11, page 30, leave out lines 38 and 39

Member's explanatory statement

This amendment is intended to probe the legal basis for surveillance of the type of data described in new subsection (3A)(e).

Lord Fox (LD): My Lords, Amendment 20 is intended to probe the legal basis for surveillance of the type of data described in new Section 11(3A)(e). This amendment would prevent public authorities—councils, police forces, intelligence agencies, government departments including the DWP and HMRC, the Gambling Commission, the Food Standards Agency, and many more—having "lawful authority" to obtain and use communications data from a telecommunications or postal operator solely because the information is available to the public or a section of the public even if only on a commercial basis.

Communications data is defined in the IPA as data that may be used to identify, or assist in identifying, the sender, recipient, time, duration, type, method, pattern, or fact of a communication, along with the system used to make a communication, its location and the IP address or other identifier of any apparatus used. The broad list of public authorities able to obtain communications data is set out in Schedule 4 to the IPA.

Clause 11 of the Bill before us now amends the Section 11 IPA offence of unlawfully obtaining communications data from a telecommunications or postal operator. Whereas the IPA currently defines an offender as,

"A relevant person who, without lawful authority, knowingly or recklessly obtains communications data from a telecommunications operator",

this Bill would add a list of examples to the Act of what constitutes lawful authority.

5 pm

We are, for example, concerned about one such example, in new subsection (3A)(e), which states that

"where the communications data had been published before the relevant person obtained it … 'publish' means make available to the public or a section of the public (whether or not on a commercial basis)".

I hope that makes the point.

It is not the case in law that data that is available to the public or a section of the public is, as a result, information that can be subject to surveillance, absent a lawful authority. The public or semi-public nature of the information does not provide a lawful authority for intrusive surveillance in and of itself. Accordingly, it is well-accepted that a legal basis is required for various types of "public" surveillance.

This thesis is directly contradicted by the addition of paragraph (e) of new subsection (3A), which states that

"cases where a relevant person has lawful authority to obtain communications data from a telecommunications operator or postal operator"

include situations,

"where the communications data had been published before the relevant person obtained it".

We are uneasy about the change proposed in the Bill to assert that there is a lawful authority to obtain communications data from operators simply on account of the data being publicly or semi-publicly available. This amendment probes that issue to get the Minister to explain to your Lordships where we are on that.

Your Lordships will be pleased to know that there are not quite as many of my amendments in this group, but there are two more to which I shall speak. Amendments 23 and 25 would restrict the changes relating to internet connection records in Clause 14 to use by the intelligence services only. I should say that these amendments are inspired by the report by the noble Lord, Lord Anderson.

Internet connection records, or ICRs, are essentially web logs that

"contain rich data about access to internet services"

and

"can reveal appreciably more about"

individuals "than their telephony records". Can the Minister confirm, for example, that no other European or Five Eyes country has surveillance laws that allow for the compulsory generation and retention of ICRs or web logs?

That stated, this amendment is not seeking to make that no longer the case, because currently ICRs can be obtained under Section 62 of the IPA, where the time and use of a service is known or the person's identity is known. Clause 14 would amend Section 62 of the IPA to add a further purpose for which ICRs can be used for target discovery—that is, generalised surveillance. I think it would be helpful for the Minister to put on record why this change is being made and to perhaps explain how in fact it will "improve target detection" and

"assist in detecting new subjects of interest".

This is an important change and it is important that the reasons around it are fully articulated from the Dispatch Box.

The Explanatory Notes acknowledge the risks of such open-ended powers:

"It is recognised that such queries are highly susceptible to imprecise construction".

The notes also acknowledge the complexity of utilising such broad query powers in practice and the requirement of

"subject matter expertise to formulate appropriate queries to derive the correct subset results".

So the safeguards as they stand are few and essentially rely on the new condition being limited to national security and serious crime.

In his review of the operation of the IPA, the noble Lord, Lord Anderson, recommended that, if ICRs are expanded in the way currently proposed in this Bill, the new conditions should be restricted to the intelligence agencies, at least at first. However, the Bill goes further and provides these new powers to the NCA. We would like the Minister to explain why that decision was taken and why is it proportionate and necessary for the NCA to have these powers. The wider the use of these powers is spread, the more likely it is that the essential expertise that is required will not be available. I believe that was one of the motivations behind the contraction of that use. I beg to move.

Lord West of Spithead (Lab): My Lords, I stand to address the clause stand part notice for Clause 13 and also Amendments 21, 22, 24 and 26. The aim of looking at the clause relates to the communication data disclosure powers. The current IPA wisely restricted the number of public authorities that are able to compel the disclosure of communications data from telecommunications operators, given the potentially intrusive nature of this power. Consequently, authorities such as the Environment Agency or Health and Safety Executive are currently required to take further procedural steps in order to compel disclosure of communications data. They must obtain either an authorisation under the current IPA, a court order or other judicial authorisation, or regulatory powers in relation to telecommunications or postal operators, or they must obtain the communications data as secondary data as part of a valid interception or equipment interference warrant.

However, the Bill before us seeks to remove these restrictions for a wide range of public regulatory authorities and restore their ability to compel the disclosure of communications data from telecommunications operators in service of their statutory regulatory or supervisory functions. The Government's argument for removing these restrictions is that a broader array of communications now fall into the category of communications data, and that a wider number of organisations now constitute telecommunications operators. As a result, the current restrictions prevent some regulatory authorities from acquiring the information necessary to exercise their statutory functions, in a way that was not anticipated at the time of the original legislation.

It is argued that this is particularly relevant to bodies with a recognised regulatory or supervisory function, which would collect communications data as part of their lawful functions but would be restricted under the current Act if their collection was not in service of a criminal investigation. In particular, the change is focused on improving the position of certain public authorities responsible for tax and financial regulation, whose powers were removed in 2018 as a result of the rulings of the European Court of Justice.

Clearly, such bodies must be able to perform their statutory functions effectively, but we have been told that this Bill delivers only "urgent, targeted changes needed". That is not the case here. These sections represent a sweeping restoration of powers across a wide number of public bodies, most of which have no national security or serious crime function.

The original Act was very particular about the purposes for which communications data could be gathered under the legislation and by which bodies. It ensured that this power was tied to national security and serious crime purposes only, to avoid impinging on the right to privacy without very good reason. Clause 13 and its related schedule fly in the face of this very deliberate policy in the original Act, and overturn Parliament's careful deliberation of the point.

Will the Minister confirm which bodies will have their powers restored under this legislation? Which of those bodies have reported a significant reduction in

[LORD WEST OF SPITHEAD]
their ability to perform statutory functions as a result of the IPA? Have some bodies been more effective than others? Might it be possible and appropriate to significantly pare back this list of organisations?

At present, the case has not been made. We need to be satisfied that these powers are given to those bodies which cannot adequately function without them. It cannot be the case that some are simply given these powers back by default. I am prepared not to take this amendment to a vote if the Minister can assure the House the Government will bring forward their own amendment, which restores these powers in a more limited and targeted way.

The next stand part notice is consequential on that one being taken.

I move on to Amendments 21, 22, 24 and 26. These seek to remove the ability of the agencies to internally authorise the use of a new broader power to obtain internet connection records for target discovery. The agencies would instead be required to seek approval from IPCO, thereby creating an element of independent judicial oversight.

As I noted previously, Clause 14 creates a new broader power for the agencies and the NCA to obtain ICRs for the purpose of target discovery. It represents a significant change from the current position, removing the current demand that the exact service used and the precise time of use be known. Instead, the agencies will be able to obtain ICRs to identify which persons or apparatus are using one or more specified internet services in a specified period—a far broader formulation.

After consideration of the relevant classified evidence, the ISC agrees with the intent. However, the newly expanded power is potentially very intrusive. It allows the agencies to obtain ICRs from a range of internet services over a potentially long period of time and could, therefore, potentially intrude on a large number of innocent people. Parliament must therefore ensure that there are appropriate safeguards in place.

The ISC acknowledges that there are safeguards in place relating to the obtaining of ICRs. However, in all cases relating to national security and economic well-being, the agencies are able to authorise use of this newly expanded power internally. They make the assessment as to whether it is necessary and whether it is proportionate. There is no independent oversight of the agencies' assessment.

The Government may argue that the ability of the agencies to authorise use of this power internally replicates the existing provisions when authorising the obtaining of ICRs for target discovery or target development. They will also no doubt refer to how the noble Lord, Lord Anderson, said in his report that "arguably" the potential intrusiveness of this newly expanded target detection power is no greater than the existing provisions for obtaining ICRs.

In the ISC's view, the new provision—which is considerably broader than the existing target discovery power, removing the need to know the exact service used and the precise time of use—is significantly more intrusive than existing provisions. Consequently, greater oversight is required to ensure that the power is always used appropriately. This is not because we expect the agencies to act in bad faith but because independent oversight is essential, acting as a counterbalance to the intelligence community's intrusive powers and providing vital assurance to Parliament and the public.

This amendment and the two linked Amendments 24 and 26 therefore remove the ability of the agencies to authorise use of this power internally. The agencies would instead be required to seek the approval of an independent judicial commissioner from IPCO in order to authorise the obtaining of ICRs under this new broader power.

Incorporating this independent judicial oversight would ensure that use of this power is always necessary and proportionate and strikes the right balance between security and privacy. It also aims to minimise any burden on the agencies. It does not, for example, incorporate the "double lock" mechanism, which is used for the most intrusive powers under the Investigatory Powers Act.

We recognise that the Government may wish to bring forward their own amendment to include provision for urgent cases; therefore, I do not propose to move this amendment to a vote at this stage. It should, however, indicate to the Government the ISC's firm view that independent judicial oversight in this area is essential.

I will say a little more about Amendment 22. This amendment seeks to limit the purposes for which the new, broader target discovery power, which has been introduced under Clause 14, could be used. Clause 14 creates a new, broader power for the agencies, and the NCA, to obtain internet connection records for the purposes of target discovery. Target discovery is a great deal more intrusive than target development, potentially intruding on the privacy of a great number of innocent individuals. This is why we must tread very cautiously in this area and be quite satisfied of the need for the power, and that it is tightly drawn and properly overseen.

Currently, in order to obtain ICRs for target discovery, the agencies must unequivocally know the precise service used and the precise time of use by the unidentified individual. It is, therefore, very tightly drawn. The new target discovery power removes these requirements, allowing the agencies to obtain ICRs to identify which persons or apparatuses are using one or more specified internet services in a specified period. Noble Lords will recognise how potentially broad this is by comparison.

5.15 pm

The ISC agrees with the noble Lord, Lord Anderson, who, in his excellent report reviewing the Government's proposals for this Bill, agreed with the principle behind this change. The ISC has considered the classified evidence and recognises that, due to technological changes, the current power is less useful than envisaged due to the absolute precision it requires. We recognise that the agencies should be able to use ICRs and that this new target discovery power would help them and law enforcement in detecting and disrupting internet-enabled criminal activity.

However, as the noble Lord also recognised, Parliament deliberately imposed a high bar for authorising obtaining internet connection records given their potential intrusiveness. The noble Lord, Lord Anderson, also recommended that the purposes for which this new,

broader target discovery power could be used should be limited to national security and serious crime, as well as limiting the use of such a power to the intelligence community. The Bill departs from the noble Lord's recommendations in both respects. Not only does it include the National Crime Agency as well as the intelligence community but it allows the intelligence community to use the new, broader target discovery power for a third, far less defined purpose of

"the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security".

The ISC recognises that the inclusion of economic well-being in this clause is linked to the statutory functions of the agencies. MI5, for example, is required under the Security Service Act 1989

"to safeguard the economic well-being of the United Kingdom against threats".

Equally, one of the purposes for which SIS and GCHQ can exercise their functions under the Intelligence Services Act 1994 is

"in the interests of the economic well-being of the United Kingdom".

That does not mean, however, that those statutory functions should be transposed automatically. This new, broad power is potentially very intrusive, revealing communications data about how a large group of potentially innocent individuals are accessing the internet. It does not therefore follow that Parliament should permit it to be used for all agency work.

Given the potential intrusiveness of the new power, it must be constrained appropriately. Therefore, in addition to requiring independent judicial oversight, which is the subject of a separate amendment, this amendment would prevent the agencies using the newly expanded power for the purposes of economic well-being. This would restrict use of the power to national security and, in urgent cases, serious crime, thereby preventing the broadly defined and vague concept of "economic well-being" being used as a catch-all justification for its exercise. This seems a more proportionate response and more in line with the recommendations of the noble Lord, Lord Anderson. Perhaps the Minister could explain to the Committee why this purpose is needed—surely national security is what we should be primarily talking about—and indicate whether he will now reconsider this clause.

Lord Anderson of Ipswich (CB): My Lords, I will make a brief comment on two aspects of Clause 14 which have been developed today and which were considered in my report. Amendments 23 and 25 in the name of the noble Lord, Lord Fox, would restrict the changes relating to internet connection records in Clause 14 to the intelligence services only. The noble Lord correctly noticed that, while I support the use of ICRs for the new target detection purpose in condition D1, I mentioned at paragraph 4.18 of my report that it would be

"open to Parliament to require further safeguards"

and suggested that those safeguards include

"making the extra condition available only to UKIC"—

in other words, the intelligence services—

"at least in the first instance".

I pointed out a range of safeguards that already apply to ICRs. These are fully set out in the draft addition to section 9 of the code of practice that was helpfully provided in advance of these debates. I also pointed out, by way of mitigation to my proposal that only UKIC should have access, that

"working arrangements … could facilitate the use of UKIC powers in the service of NCA or CTP in particular".

That is as much as I am told I can say on working arrangements, though noble Lords may be able to use their imaginations.

Clause 14, instead of going for this workaround, opted to give the NCA, though not counterterrorism policing, its own direct access to the new power. It is certainly true that the NCA has primary responsibility for many of the crimes where the new power may prove most useful—in particular, child sexual abuse, where it has strong potential. I will listen to what the Minister says about that, but I think there is no great division of opinion between us on this issue. We are really debating different mechanisms by which the NCA might get access to this material, and although it is not precisely what I suggested, I have no objection to the more direct route taken in the Bill.

I turn to Amendments 21, 24 and 26 in the name of the noble Lord, Lord West of Spithead, which would introduce a requirement for requests by the intelligence services and the NCA to be independently authorised by the Office for Communications Data Authorisations. This would be an exceptional state of affairs for communications data requests by the intelligence agencies. Existing ICR requests are internally authorised and some of those, in particular under condition B and C, will be arguably, as I said in my report, as intrusive as requests under the new condition.

However, the noble Lord has emphasised the undoubted intrusiveness of the new condition and I know from my own correspondence with the ISC that, very much to its credit, it has looked at this issue in considerable detail. Furthermore, I raised the possibility of independent authorisation for such requests in my report. While I said that the full double-lock procedure would be disproportionately burdensome, independent authorisation by OCDA, which is not a possibility on which I commented expressly, sounds as though it could be a more manageable proposition. I have some sympathy with Amendments, 21, 24 and 26. They raise an important issue on any view, and I look forward to hearing what the Minister has to say about them.

Lord Ponsonby of Shulbrede (Lab): My Lords, I thank the three previous speakers in the short debate on this group. There are no opposition amendments in it, so I shall set out some more general questions that arise out of the amendments spoken to.

Why have the Government brought forward the widening powers to obtain communications data when the original Bill did the opposite? Can the Government provide an exhaustive list of the bodies that will be able to use these communications data collection powers? Why are they not in the Bill or the Explanatory Notes? Giving bodies such powers during any criminal investigation appears out of step with the rest of the Bill, which covers investigatory powers for national security or serious crime reasons. Why is this power so broad as to cover any criminal investigation? Given that the double lock exists for most of the powers in

[Lord Ponsonby of Shulbrede]
the Bill, why have the Government given wide-ranging powers for intelligence authorities and the NCA to self-authorise accessing internet connection records while undertaking subject discovery work? How does this compare to the powers for conditions A, B and C, which cover access to ICRs, for more restrictive purposes? Finally, what will the role of the IPC and the ISC be in monitoring how the new powers are used?

I was particularly interested in what the noble Lord, Lord Anderson, said when he was commenting on the two other speakers in this short group. I, too, will listen with great interest to what the Minister has to say on this, but this is all done in the spirit of exploration, as my noble friend Lord Coaker said. I look forward to the Minister's comments.

Lord Sharpe of Epsom (Con): I thank all noble Lords who have spoken in this group. I will first speak to Amendment 20, tabled by the noble Lord, Lord Fox, which would amend Clause 11. I want first to make it clear that Clause 11 does not enable any new activity under the Investigatory Powers Act but places into primary legislation the existing position set out at paragraph 15.11 of the *Communications Data Code of Practice*.

Paragraph 15.11 clearly sets out that it is not an offence to obtain communications data where it is made publicly or commercially available by the telecommunications operator or postal operator or otherwise, where that body freely consents to its disclosure. In such circumstances, the consent of the operator provides the lawful authority for the obtaining of the data on which public authorities can rely. Making this position explicit within primary legislation will provide clarity that acquiring communications data in this way will amount to lawful authority for the purposes of the offence in Section 11. As such, there will be no doubt that acquiring communications data in this way means that an offence will not be committed in such circumstances.

The purpose of new subsection (3A)(e) is not permitting so-called surveillance, as the noble Lord's amendment asserts. Rather, it is about clarifying the basis for lawful access to material which has already been published and should not require additional authority for its disclosure by a telecommunications operator, with the consent of that operator, to a public authority. I can assure noble Lords that telecommunications and postal operators will still need to satisfy themselves that any communications data disclosure is in accordance with the Data Protection Act, and any subsequent processing by public authorities must also be compliant.

The inclusion of this paragraph in the definition of "lawful authority" in the IPA will provide reassurance to public authorities on the basis for which they have lawful authority to acquire communications data where this authority falls outside the IPA itself. Inserting a definition of lawful authority does not remove the offence of knowing or recklessly obtaining communications data without lawful authority; it is still possible to commit this offence if the disclosure by the telecommunications operator is not lawful or if the public authority knowingly or recklessly acquires the communications data without lawful authority. The inclusion of this definition of lawful authority will encourage public authorities to ensure that they have lawful authority before they acquire communications data. I therefore respectfully ask the noble Lord to withdraw his amendment.

I turn to Clause 13 and the proposal from the noble Lord, Lord West, to remove this provision and the associated schedule from the Bill. The purpose of Clause 13 is to ensure that bodies with regulatory or supervisory functions are not inhibited in performing the roles expected of them by Parliament. It restores their important pre-existing statutory powers to acquire communications data in support of those functions. When the IPA was passed in 2016, it made specific provision, at Section 61(7)(f) and (j), for acquisition of communications data for the purposes of taxation and oversight of financial services, markets and financial stability.

As a result of the Tele2 and Watson judgment from the Court of Justice of the European Union in 2016, a number of changes were then made to the IPA. Crucially, not all the changes made at that time were a direct response to the judgment itself, but instead the opportunity was taken to streamline the statute book. This included the removal of the regulatory provisions contained in the IPA because, at that time, those public authorities with regulatory or supervisory functions were able to acquire the data they needed using their own information-gathering powers. At that point, much of the relevant data fell outside the definition of communications data and therefore outside the provisions of the IPA. However, as businesses increasingly move their services online, so many have become, in part at least, telecommunications operators under the definition in the IPA. Therefore, more of the data they collect, and which regulatory and supervisory bodies would have previously been able to access using their own information-gathering powers, now falls within the IPA's definition of communications data, and regulatory and supervisory bodies are, inadvertently, unable to acquire it.

The Financial Conduct Authority, His Majesty's Revenue and Customs and Border Force are all examples of public authorities in Schedule 4 to the IPA and already have the power to acquire communications data using a Part 3 request. However, many of the matters that these bodies regulate or supervise fall short of serious crime, as defined in the Investigatory Powers Act at both Section 263(1) and Section 86(2A), which means that they are unable to acquire a Part 3 authorisation to get the data they need to perform the statutory functions expected of them.

The UK is not alone on this issue; European colleagues have identified similar issues for their equivalent bodies with regulatory and supervisory functions. The functions these bodies perform on behalf of the UK are simply too important to let this situation continue. They go to the heart of our safety in preventing terrorist funding, seeking to ensure financial stability, and the oversight of banking and financial markets, among other matters. For example, the Financial Conduct Authority has responsibility for supervising some 50,000 regulated firms to ensure they have systems and controls in place

concerning the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. Border Force has the responsibility of quickly identifying from the huge volumes of packages crossing our borders each day, those that may contain illegal items such as drugs, firearms and other illicit goods that present a risk to the UK. It is vitally important that these bodies are not inhibited in carrying out their core functions because of the way the world has changed since 2016.

The changes to the IPA brought about by Clause 13 strike an appropriate balance between necessity and proportionality, making clear as it does that the acquisition by these regulatory bodies should only be in support of their civil functions and not used in support of criminal prosecutions. Additional safeguards are provided for within codes of practice governing how this should work in practice. To be clear, this applies to a relatively small cadre of public authorities in support of specific regulatory and supervisory functions; it is not creating a way to circumvent the safeguards of the IPA. It instead ensures that the acquisition routes and associated strong oversight by the Investigatory Powers Commissioner are reserved for those areas where it is most essential.

5.30 pm

In answer to the noble Lord, Lord West, it is not possible to say with certainty how many public authorities have some form of regulatory responsibilities for which they may require data that would now meet the definition of "communications data", but the intention of the amendment is to ensure that departments such as HMRC, which have to meet international obligations, and public authorities such as the FCA, as I have talked about, are able to carry out their core functions. Other bodies include Trading Standards, environmental agencies and the Insolvency Service, which would need to be able to rely on their statutory powers to execute their functions where they are required to provide oversight or administration over their respective areas of interest. I hope that this explanation has provided reassurance and that noble Lords will agree that Clause 13 and the Schedule should stand part of the Bill.

I turn to the amendments concerning internet connection records. Before I speak to the amendments themselves, I note that this group is designed to fill an increasing intelligence gap which results from communications moving from traditional telephony to internet communications such as instant messaging. Amendments 23 and 25, tabled by the noble Lord, Lord Fox, concern the question of access to the new condition D. They would limit access to only the intelligence services, thus prohibiting the National Crime Agency from utilising this condition. As noble Lords will be aware, the NCA leads the UK's fight to cut serious and organised crime, pursuing the most dangerous offenders and developing as well as delivering specialist capabilities on behalf of law enforcement.

The NCA is the national lead in many of the areas where the new capability provided for by this measure will have the greatest impact. This includes child sexual exploitation and abuse, as noted by the noble Lord, Lord Anderson, cybercrime, fraud, money laundering and illicit finance. While the intelligence agencies have a serious crime function and carry out vital work in this area, the NCA is an indispensable part of the work against serious crime in the United Kingdom. As an example of the extent of the task the NCA faces in respect of child sexual abuse and exploitation, the agency estimates that as many as 830,000 people in the UK could pose a sexual threat to children, either through online or in-person abuse. Data from the Internet Watch Foundation shows that the prevalence of the most severe forms of online child sexual abuse has more than doubled since 2020, and an estimated 27 million images have been identified through UK law enforcement investigations of child sexual abuse. It is clear that this is a horrendous crime-type, happening at an unimaginable scale, so it is essential that we do everything in our power to address it.

The NCA has clearly shown that it has the necessary subject matter and technical expertise in respect of ICRs. It is the Government's view that we should support it in its vital work. Access to condition D will significantly enhance its ability to identify serious criminals and protect victims from abhorrent crimes committed online by ensuring that, where there is an appropriate necessity and proportionality case, it is able to require the relevant data to identify offenders. Furthermore, in all but urgent circumstances, the NCA's use of condition D will be subject to prior independent authorisation by the Office for Communications Data Authorisations, providing further assurance on the limitations in place for the acquisition of ICRs.

Turning to Amendments 21 and 22, tabled by the noble Lord, Lord West of Spithead, on the inclusion of economic well-being in the provisions, I start by emphasising that the statutory purpose concerning the economic well-being of the UK is permitted only in so far as those interests are also relevant to the interests of national security, as is the case with the rest of the IPA. Furthermore, the use of intelligence to protect nations from economic threats that are of sufficient scale to affect, or potentially affect, national security is not new. The intelligence produced under the economic well-being provision is highly valued across government and contributes to the formation of financial and energy policy. Including economic well-being, so far as is relevant to national security, provides greater transparency, including to the public, over how the Government use investigatory powers. It also aids consideration of the necessity and proportionality case for activities.

There is also an issue of consistency here. The Intelligence Services Act and the Security Service Act specify economic well-being as a basis for intelligence operations. Article 8 of the European Convention on Human Rights also states that economic well-being is a legitimate basis for interference in individual privacy. It is already the case that data can be acquired under a communications data authorisation for the purpose of economic well-being, including the existing conditions for ICRs. The Government do not see a reason to remove it as a purpose for this provision, as we would not wish unduly to inhibit the intelligence agencies in carrying out their statutory functions.

[Lord Sharpe of Epsom]

Finally, I turn to Amendments 24 and 26, also tabled by the noble Lord, Lord West of Spithead, regarding the internal authorisation of condition D by the intelligence agencies and, where urgent, by the NCA. The proposed authorisation routes in Clause 14 for condition D mirror the existing approach to internal authorisation for communications data in the IPA. As we do not assess that the new condition creates a significantly higher level of intrusion, it is appropriate that the consistency is maintained. The process of having designated senior officers' approval is well-established, with robust oversight from the Investigatory Powers Commissioner's Office. DSOs must be of a certain grade or ranking, and for the intelligence agencies they must be independent of both the operation and the line management chain of the applicant. The intelligence agencies can internally authorise communications data requests where the request is not solely in relation to serious crime. Section 229(1)(b) of the IPA sets out that:

"The Investigatory Powers Commissioner must keep under review (including by way of audit, inspection and investigation) … the acquisition or retention of communications data"

by public authorities under the Act.

For both the NCA and the intelligence agencies, internal approval is permitted for urgent applications where it is reasonably assessed that to follow the independent authorisation route would cause such delay as to place lives in danger. Further details are set out in Chapter 5 of the *Communications Data Code of Practice* on what will amount to "urgent". Even in such circumstances, it is expected that the authorising officer be independent of the investigation, as set out at paragraph 5.17 of this code. In all other cases for serious crime, the requests are considered by the independent Office for Communication Data Authorisations, under the oversight of the IPC.

It is also worth noting that, in its 2021 inspection reports of GCHQ and MI5, IPCO concluded at paragraphs 10.27 and 8.26 respectively that processes used by these organisations to acquire communications data

"were working to a high standard, with applicants' justifications satisfactorily completed and supported by strong internal governance procedures."

I believe that I have set out clearly the Government's position in respect of these important areas. Again, I thank noble Lords for prompting this debate, but I respectfully ask that they do not press their amendments, for the reasons I have set out.

Lord Fox (LD): My Lords, this has been a really worthwhile part of our debate, and I thank those who have tabled amendments and the Minister for his response. I was particularly interested to hear both the substance of and response to the amendments of the noble Lord, Lord West of Spithead. I think it best that we spend some time reviewing this in *Hansard* in deciding what, if anything, needs to come back. With that said, I beg leave to withdraw Amendment 20.

Amendment 20 withdrawn.

Clause 11 agreed.

Clauses 12 and 13 agreed.

Schedule agreed.

Clause 14: Internet connection records

Amendments 21 to 26 not moved.

Clause 14 agreed.

Clause 15 agreed.

Clause 16: Extra-territorial enforcement of retention notices etc

Debate on whether Clause 16 should stand part of the Bill.

Lord Fox (LD): My Lords, in opposing that Clause 16 stand part of the Bill, I shall also speak to the clause stand part notices on Clauses 17 and 20.

This is one part of the Bill that has attracted a huge amount of external interest and deserves some positioning to understand why external parties might be suspicious of what they see. We should recognise that one of the most important security features available to protect personal information, both on a device and in the cloud, is end-to-end encryption. That encryption technology ensures that only users, and not the companies which provide the cloud services, can access their personal data and communications. Computer scientists and cryptographers have argued for many years that there is no safe way to decrypt one person's messages without compromising the whole system's security infrastructure. As soon as a backdoor, as it is called, is created to scan private messages, a security vulnerability is created that can be exploited by bad actors as well as good actors. I assume that that was why the Online Safety Bill left things hanging, waiting for a technological breakthrough, though I was not party to the processes of that Bill.

I remind your Lordships that once the company has created a backdoor key for encrypted systems, even for a single user in a single case, and certainly for any mass scanning, it has created a vulnerability that can eventually be abused by bad actors as well as law enforcement. I also remind your Lordships that the Home Office already can and presumably, on occasion, does require companies to weaken their security apparatus in the interests of law enforcement and national security.

To a great extent, the proximity of this Bill to the debate in the Online Safety Bill, has not helped matters: sensitivities were raised during that debate, and this is a chance for the Minister to try to calm them. As I mentioned earlier, the impending arrival of the Data Protection and Digital Information Bill is also putting people's nerves on edge. There is a deal of management required here.

End-to-end encrypted messaging service providers were vociferous in their concerns during the passage of the Online Safety Bill, yet Section 121 of the Online Safety Act remains. However, Ministers clarified that Ofcom could only require scanning once it becomes technically feasible to do so—that is, when the technology is invented and allows scanning without violating encryption. But Ofcom retains the power to order service providers to use their "best endeavours" to develop that technology.

It is not surprising that some of those same encrypted message service providers were raising flags when it came to some of the clauses in the Bill. The IPA, as it

stands, already enables the Home Office to instruct service providers to remove electronic protection for communications of interest to the police or security services by issuing them with a technical capability notice—a TCN. This effectively empowers the Home Secretary to require the removal of end-to-end encryption on those services across any number of suspects and criminal offences. Currently, for the Home Secretary to issue a TCN to a service provider under the IPA, they have to satisfy a number of considerations, which your Lordships will be pleased to hear I am not going to list. Even if the answers to all those conditions is positive and leads to a TCN, a process of checks and balances sits alongside the request, including informal and formal consultation between the Home Office and a service provider before the TCN is issued, oversight by the independent judicial commissioner assessing the request's proportionality and, of course, recourse for the service provider to request a review of the TCN, allowing it and the Home Secretary to make representations to the judicial commissioner and the technical advisory board for assessment. Crucially, the service provider is not required to start acting on the notice until the review process is concluded.

5.45 pm

The Home Office consulted this year on watering down some of these safeguards. Most notably, the changes now in the Bill would prevent changes being made to a service subject to a TCN immediately, even if the provider seeks to review it and requires some providers to inform the Home Office of any planned changes to their products' safety features that might have a negative impact on advisory powers

"in good time … before relevant changes are implemented".

The Bill will expand the notification requirement to a wider range of unspecified operators, who will be notified by the Secretary of State. Currently, the Secretary of State must navigate important oversight mechanisms before blocking a new product or service. The Bill proposes new authority to block, in secret, the release of a product or service, even before a notice can be reviewed by independent oversight bodies. We should be concerned about how the proposed changes could affect legal users of encrypted message services. In a wider sense, some critics of the encryption provisions argue that the very fact of a provision in the UK law that permits the Government to force decryption is crossing a line that will signal to authoritarian regimes that they should or could follow suit. Perhaps the Minister can comment on that.

Added to this, the IPA already seeks to apply extraterritorially, allowing the Home Office to impose secret requirements on providers located in other jurisdictions, and that apply to their users globally—in other words, foreign operators and their global users. The additional powers proposed here will exacerbate that, giving expanded authority for the Home Office to regulate foreign companies and the ability to pre-screen and block innovative security technologies. As Apple remarked in its consultation submission:

"Under this proposal, it's possible that a non-UK company could be forced to undermine the security of all its users, simply because it has a UK user base".

In effect, the UK seeks authority that no other country has—to prohibit a company from releasing a security feature unless the UK receives advance notice. This new notice regime would create serious conflicts with foreign law. For example, Article 32 of the European Union's general data protection regulation—the famous GDPR—imposes a positive obligation on companies to implement technical and organisational measures to protect the privacy of their users' personal data.

In addition, a notice requiring US companies to maintain the ability to decrypt data for any of its users worldwide would violate the US CLOUD Act and the implementation of the US-UK data access agreement. The CLOUD Act forbids the use of data access agreements to mandate the decryption of user data. The result, inevitably, is that a company must choose whether to subject itself to the preferences of the Home Office or deprive users around the world of critical safety features. While the benefits of pre-clearance to the Home Office are obvious, the danger to human rights activists, journalists and at-risk populations around the globe are also clear.

The sector fears that the Home Office could use the open-ended pre-clearance requirement in combination with the proposed expansion of the extraterritorial scope, and the proposed requirement to maintain the status quo during the review process to thwart the development of end-to-end encryption technology. This affects more than simply commercial interests. This modified process would stifle attempts to innovate encryption technology and would prevent companies responding quickly to growing data security threats—I would emphasise more the latter than the former. It empowers the Secretary of State effectively to issue an unreviewable extrajudicial injunction to prohibit the release of a new technology, and it would force companies to withhold end-to-end encryption features or other new technologies from users, even in the light of evolving threats to their users' data services. I would welcome the Minister's response to that. I hope he will be able to calm the nerves about this part of the Bill, which are very clear and prevalent.

If there are fears and those fears have some grounding, I recommend we turn to the measures in Amendments 27 to 32, which, taken together, propose ways of ameliorating the issues that I just set out. Amendments 27 and 28 would introduce procedural safeguards to the process of referring a notice back to the Secretary of State. They would impose a limit on the length of time that the Secretary of State may take to review a national security notice or a technical capability notice. In other words, they would not stop that happening but they would limit the open-endedness of it. They would also import a serious adverse effect threshold for the imposition of a stay on changes to a telecommunications service, pending the outcome of a review by the Secretary of State.

Amendment 29 seeks to confirm whether the changes to the telecommunications operator definition is intended to include non-UK entities that do not have a connection with the person providing the services in the UK, and non-UK entities in relation to non-UK persons. In other words, it probes the extraterritoriality, which is causing some concern.

[LORD FOX]

Amendments 30 to 32 would ensure that the Secretary of State can impose a technical capability notice on a telecommunications operator in respect of the actions of another telecommunications operator only if it is reasonably practicable for the telecommunications operator receiving the notice to control the actions of the other telecommunications operator. I hope that makes sense. Essentially, it would put an obligation on another telecommunications officer only if they can actually effect that on the third party. Requiring operators to comply with a notice—effectively halting product updates—before the full appeals process is completed, as under Clause 17, would remove an important procedural safeguard that cannot be easily reversed. At a minimum, the Bill should be amended to include a statutory time limit, as I set out, for appeal, to avoid requiring compliance with a notice during, as currently drafted, an indefinite appeals process. In addition, the Bill should articulate a threshold, clearly defining when an operator would have to comply with a notice during the course of review. That is what our amendments to Clause 17 are designed to do.

On our amendments to Clause 18, the Bill extends the extraterritorial reach of the IPA regime and seems to make one company liable for the actions of another, as I just described. The Bill's disproportionate breadth and vagueness, which I hope the Minister can narrow from the Dispatch Box, would create a significant amount of legal ambiguity. It is certainly important for the Minister to explain how these measures relate to the recently signed US-UK data access agreement—an important part of the relationship between the United Kingdom and the US, where the vast majority of the companies that we are talking about reside. Some important detail probably needs to be set out in writing as to how this Bill and that agreement interrelate. The obligations imposed by these changes should and could be clearer in the Bill. This text should make it clear that, to be within the scope of the proposed liability, a company must be directly offering services to customers in the UK. That is what we hope our amendments to Clause 18 will fill out.

Finally, Amendment 34 is a further attempt to place some safeguards into Part 4. Our final amendment to this part would ensure that the decision by the Secretary of State to give notice requiring operators to notify them of system changes is approved by a judicial commissioner. As we know, judicial commissioners play a crucial role in providing the independent oversight of the decisions around notices and other authorisations in this Bill. The 2016 Act essentially ushered in that role. There does not appear to be any good reason why the same safeguards should not apply for notices issued under Clause 20. We have also suggested that such notices be time limited but can be renewed following approval, again from the judicial commissioner. This is an attempt to ensure that there are appropriate safeguards around the Secretary of State's powers in this regard.

Lord Ponsonby of Shulbrede (Lab): My Lords, I will briefly speak to the five amendments in this group in the name of my noble friend Lord Coaker. Amendments 35 and 37 would introduce a double-lock process to notices given under the notification of proposed changes to telecommunications services, bringing it in line with the procedure for the three existing types of notices that can be issued to telecommunications operators. Amendment 36 would add a further factor that the Secretary of State must consider when deciding to give a notice under this section, bringing this type of notice into line with the three existing types of notices that can be issued to telecommunications operators. Amendments 38 and 39, along with the others in my noble friend's name, would introduce a potential double-lock process to the variation of notices given under the notification of proposed changes to telecommunications services, bringing it in line with the procedure for variation of the three existing types of notices that can be issued to telecommunications operators.

In introducing this group, the noble Lord, Lord Fox, set out very comprehensively the concerns of the various tech companies. I have read the same briefings that he has. He was right to see this as an opportunity for the Minister to address those concerns.

I have a few questions arising out of these amendments. First, why have the Government not included a double-lock structure of approval to this new type of notice, given that the three other types of notices that telecom companies can be issued have the same structure, along with many of the provisions in this Bill and the IPA? Further, why does it not have the same review structure as the other notices? What will companies be able to do to challenge this decision? New Section 258A states that companies must respond within "a reasonable time". What would the Government consider a reasonable time to be in this regard? What assessment has been made of what other companies are doing to ensure they are aware of changes that would potentially impact national security? Finally, can the Government be more specific about the types of changes that would be considered relevant for this new notification of the proposed changes?

Lord Sharpe of Epsom (Con): My Lords, once again, I thank noble Lords for their amendments and the points they have raised in this debate. I will do my very best to answer the questions that have been asked. Again, I am afraid I am going to do so in some detail.

The noble Lord, Lord Fox, has proposed removing Clause 16 from the Bill in its entirety. Clause 16 concerns the extraterritorial enforcement of retention notices. Under subsections (9) to (11) of Section 255 of the IPA, any technical capability notice—TCN—is already enforceable by civil proceedings against a person in the UK. Only TCNs that provide for interception and targeted communications data acquisition capabilities are enforceable against a person overseas. Section 95 of the IPA also provides that a data retention notice—DRN—is enforceable by civil proceedings against a person in the UK. DRNs already have extraterritorial applicability within the IPA, meaning that they can already be given to a person outside the UK. However, unlike TCNs, the current legislation does not permit the enforcement of a DRN against a person outside the UK.

Clause 16 therefore seeks to amend Sections 95 and 97 of the IPA to allow extraterritorial enforcement of DRNs to strengthen policy options and the legal

levers available when addressing emerging technology, bringing them in line with TCNs. As technology advances, data is increasingly held overseas. The clause will ensure that, if required, there is a further legal lever to protect and maintain investigatory powers capabilities overseas. This will ensure that law enforcement and the intelligence agencies have access to the communications-related data that they need to tackle serious crime and protect national security. It will also ensure consistency across the regime.

6 pm

Notices issued to overseas operators are subject to the same stringent standards within the IPA, including robust and independent oversight. Notices must be both necessary and proportionate, and subject to the "double lock". If the operator is dissatisfied with the terms of the notice, they have a statutory right to refer the notice, or part of it, to the Secretary of State for review.

The consultation process by the Secretary of State before a notice is given is designed to ensure the notice is a collaborative process and that the operator's concerns are addressed before the point of enforcement is ever reached. Enforcement is seen as a measure of last resort. I hope this reassures the noble Lord of the necessity of Clause 16, and that he will support its inclusion in the Bill.

Clause 17 is vital in ensuring that lawful access is maintained while a notice is being comprehensively reviewed. The review process is an important safeguard, and the right of appeal will remain available to companies. Public safety outcomes, however, must not be pre-empted in the boardrooms of big tech companies. That is not what Parliament intended and companies must respect that process.

Clause 17 ensures operators do not make changes during the review period that will negatively impact existing lawful access. It is important to note that operators will not be required to make changes to specifically comply with the notice, but they will be required to maintain the status quo. This means law enforcement and intelligence agencies do not lose access to operationally relevant data during the review period that they would have been able to access previously. It is critical to our intelligence agencies that this clause remains.

To be clear, companies can make changes to their services during a review. They could choose to roll out new technologies and services while it was ongoing, so long as lawful access was built into them as required. Furthermore, the status quo will apply only to whichever of their systems and services are covered by the notice in question. Anything outside the scope of the notice is naturally unaffected by the requirement.

The Government cannot agree with Amendments 27 and 28 tabled by the noble Lord, Lord Fox. They would constrain and caveat Clause 17 in a way that would fundamentally reduce its effectiveness in achieving its goal: to ensure that lawful access is maintained while a notice is being comprehensively and appropriately reviewed.

When giving a notice for the first time, the Secretary of State has a statutory obligation to engage in a consultation period with the relevant telecommunications operator. Following this consultation, and taking into consideration the views of the operator, the Secretary of State then considers whether to formally give the notice. Should they decide to do so, the notice must then be approved by an independent judicial commissioner and formally given to the company before its obligations become binding on them. If at this point the operator is still dissatisfied with the terms of the notice, they have a statutory right to refer the whole notice, or part of it, to the Secretary of State for review.

Clause 17 will not affect the fundamental process of the review or these current safeguards. The notice must still be approved by both the Secretary of State and a judicial commissioner before it is formally given to the company and its obligations become binding on them. They will continue to have the statutory right to refer the notice, or part of it, to the Secretary of State for review. The Secretary of State must then consult the Technical Advisory Board and an independent judicial commissioner—not the one who originally approved the notice. Both the Secretary of State and the operator are able to make representations to these two bodies to factor into their considerations before the judicial commissioner produces their report.

The review of a notice is a potentially complex process; there are four distinct parties involved, two of whom are independent and required to consider certain factors as laid out already in the IPA. Given the bespoke nature of a notice, it is only appropriate that any possible review of it is equally bespoke. We cannot therefore apply an arbitrary timeline, but we will further consider this point.

The existing formal consultation prior to the notice being given, alongside the introduction of Clause 20, will further strengthen collaborative working opportunities between operators and government. Discussions between operators and government will begin when the operator informs the Secretary of State of a relevant change. If, following this, the Secretary of State initiates a formal consultation period before issuing a notice, this is a further opportunity to work with the operator to discuss how lawful access might be maintained. This means there would have been extensive collaborative opportunities before a notice was issued and it should mitigate the requirement for a notice to be referred to the Secretary of State for a review.

These amendments further propose, in effect, removing the obligation on non-UK based companies which control telecommunication systems used to provide a service in the UK to maintain the status quo during the review period. I fear this underestimates the interconnectedness of telecommunications services. There is no neat delineation of telecommunications systems control at national borders. A person may control a system either partially or entirely from outside the UK, but that person or another may still use it to provide services in the UK. Therefore, this amendment would, in practice, render this vital clause meaningless by providing a ready-made excuse for those who wished to avoid its effect.

On Amendments 29 to 32 to Clause 18, also tabled by the noble Lord, Lord Fox, while we have seen changes in technology over the past seven years, we have also seen a change in how companies structure

[Lord Sharpe of Epsom]
themselves. Clause 18 is necessary to ensure the IPA reflects these complex corporate structures. It does not seek to bring additional companies into the scope of the IPA, but clarifies that large companies are covered in their totality within the context of the IPA. It also does not override the position in the interception code of practice with regards to enterprise services. The definition is being amended out of an abundance of caution to ensure the IPA continues to apply to all those it was intended to and to ensure that any possible loopholes that might be deliberately exploited are closed. This will improve the effectiveness and efficiency of the regimes and the process of issuing notices.

Companies increasingly have multiple subsidiaries across the globe involved in the delivery of their services. We are not proposing to do anything that would affect this flexibility and the freedom that benefits both the UK economy and citizens as customers of these services. However, the IPA needs to reflect these complex corporate structures. It is ultimately a question of who controls the telecommunications system that is used to provide the service to persons in the UK.

For example, an email service could be provided using a telecommunications system controlled by a company that is headquartered in the US but that has multiple subsidiaries across the globe, and one of these subsidiaries could be the one listed in the terms and conditions of a UK user. However, that subsidiary is still not the person controlling the telecommunications system used to provide the email service that the person in the UK is using; the headquarters of the company is. It is that element of the company that this clause will ensure is also covered by the IPA, as well as the subsidiary.

However, this clarification to the definition of a telecommunication operator does not override the position in the interception code of practice with regards to enterprise services. By "enterprises", we mean companies, academic institutions, non-profit organisations, government agencies, and similar entities that pay cloud service providers to store and or process their organisation's electronic communications and other records.

The interception code of practice—which was amended last year following a public consultation—set out our long-standing policy position in formal guidance that must be considered by persons exercising functions relating to the code. The position is that when a cloud service provider is providing such services to an enterprise, an intercepting authority seeking targeted interception of data belonging to the enterprise can often obtain the same data from both the cloud service provider and the enterprise. However, although the Act allows the intercepting authority to serve the warrant on either the cloud service provider or the enterprise, the intercepting authority should—where it is reasonable to do so—always serve the warrant on the enterprise rather than the cloud service provider. There will be some exceptions to this; for example, if serving the warrant on the enterprise would endanger national security. These exceptions are incredibly important and the amendment from the noble Lord makes no allowances for them. Furthermore, as there is no contradiction between our existing position on enterprise and the clarification to the definition of a telecommunications operator, the amendment is unnecessary.

On Clause 20, it is critical that this clause remains in the Bill so that the intelligence agencies can keep the country safe. I will address some of the misconceptions that I have heard in this place and externally, one of which is that this is a backdoor to company services. This is an ill-defined and unhelpful analogy. Our legislation and principles should make it clear that we are not asking for a backdoor to enable unfettered access to communications, nor for an opening that hackers and other malicious actors can exploit. We are asking that technology companies strike a balance in their services between users' privacy and our responsibility to keep citizens safe. Preserving a well-made front door with safeguards offers a better solution for tech companies, the public and Governments.

These concerns are misplaced. The Bill will not introduce significant changes to existing powers, ban end-to-end encryption or introduce a veto power for the Secretary of State regarding the rollout of new technologies and security measures by companies, contrary to what some are incorrectly speculating. The notification requirement is an obligation that can be placed on operators that provide, or may be expected to provide, lawful access of significant operational value to inform the Secretary of State of changes that they are intending to make that could affect existing lawful access capabilities. It is needed to provide the Secretary of State, and by extension operational partners, with time to understand the potential impact of the changes and ensure lawful access can be maintained to keep people safe. It does not give the Secretary of State any power to intervene in the rollout of these changes, nor is the Secretary of State's consent required for the rollout to proceed.

Should the Secretary of State wish to intervene in any way with the change the operator intends to make, they would use the existing notices regimes in the same way that is currently available to them. However, I reassure all noble Lords that it does not automatically follow that any notified change will result in a notice. There is no correlation between the notification notice and the notice review provision in Clause 17. Clause 20 requires only a notification of an intended change, and it will not require the operator to maintain the status quo. If the Secretary of State does wish to intervene, they will initiate the formal consultation process with the operator, required before any notice is issued. If it is necessary for a notice to be issued under the IPA, this will be subject to approval by a judicial commissioner. More generally, the giving of a notification notice and the giving of a technical capability notice, or any other notice, are two distinct processes.

The question of the status quo arises only in the context of the review of a data retention, technical capability or national security notice. It is not applicable to notification notices. The obligation to maintain the status quo also arises only at the time the review of a notice is triggered by the operator. The notifications will be important in giving operational partners time to adjust their ways of working, to ensure the capabilities can be provided throughout the process of, and after, the change taking place. The primary motivation for

this obligation is to create an opportunity for collaborative working, in order to protect capabilities and, as I have said many times, keep people safe.

Overall, the Government's strong preference is to work with operators to achieve common goals. We would always seek collaboration where possible. However, we believe that the public would expect their Government to know in advance if tech companies are proposing to do something that puts public safety at risk. Currently, companies could deliberately avoid disclosing to the Government changes that negatively impact lawful access, in an effort to pre-determine an outcome that is for Ministers and judges to decide, based on necessity and proportionality considerations. An operator does not need to be subject to an IPA notice in order to receive and give effect to an IPA authorisation or warrant that is required to lawfully access data. It is this access to data—where IPA notices are not already in place—that the notification requirement intends to protect.

I reassure noble Lords, once again, that the IPA includes significant and stringent safeguards for the notices regimes, and Clause 20 seeks to replicate the relevant safeguards regarding a notification notice. This includes the notice being issued only where the Secretary of State considers it necessary and proportionate to do so. It also sets out other matters the Secretary of State must take into account, including the likely benefits of the notice, the likely number of users of a service to which a notice relates, the likely cost of complying and any other effect of the notice on the operator.

I turn now to the specific amendments to Clause 20. The Government oppose these on the basis that they do not account for the fundamental differences between the different notices regimes and would impact upon the ability of operational partners to keep the public safe. Amendment 36, tabled by the noble Lord, Lord Coaker, proposes to add the requirement of considering the technical capability of complying with a notice to this list. While this is an important factor for technical capability notices because a notification notice has no technical element to it, its inclusion here would be wholly unnecessary. All other relevant factors have already been replicated in Clause 20.

Furthermore, the Secretary of State must consult the relevant operator before issuing a notification notice. The consultation will result in an individualised and confidential specification. This will be provided as an annex to the notice and will set out applicable telecommunications services and systems, specific to the company to which the notification requirement applies. The operator will be required to provide the Secretary of State with a notification of change on these specific services and systems only where the proposed change will result in a negative impact on lawful access.

Amendment 34, tabled by the noble Lord, Lord Fox, would introduce an expiry date for notification notices, which would require the Secretary of State to renew the notice every 14 days. This proposal would mean that, once a fortnight, the Secretary of State would have to reconsider the necessity and proportionality of the notification notice as agreed with the operator 14 days earlier. Technology moves quickly, but it does not move that quickly, and we cannot foresee any circumstances in which a 14-day renewal would be necessary or proportionate. It would be impractical, burdensome and likely impossible to maintain, for the operator, operational partners and the Secretary of State. It is also a requirement that is not remotely in line with the other notices in the IPA, or even standard warrants and authorisations.

6.15 pm

Amendments 35, 37, 38 and 39, tabled by the noble Lord, Lord Coaker, seek to place the so-called double lock on to notification notices. While the double lock is a vital safeguard to the use of intrusive powers, it is not required for notification notices as they do not intrude on user privacy. This is inherently different from the other types of notices, where there is the potential for interference with user privacy, and therefore the double lock is required to ensure that the necessity and proportionality considerations in this regard are subject to judicial oversight. Notification notices do not facilitate the acquisition of data in the way that technical capability, national security or data retention notices do. The same level of judicial approval is therefore not justified. The Secretary of State will still be required to consider the necessity and proportionality of the notification notice, as well as the other factors laid out in the Bill. As mentioned already, these replicate, as far as is applicable, the factors applied to other types of notice.

The noble Lord, Lord Fox, is mistaken on what the CLOUD Act and the UK-US data access agreement actually state with regard to end-to-end encryption. The CLOUD Act states that

"the terms of the agreement shall not create any obligation that providers be capable of decrypting data or limitation that prevents providers from decrypting data".

What this means in practice is that the UK-US data access agreement needs to be encryption neutral. It does not prevent any domestic regime that could require decryption. The Government are well aware of the importance of the UK-US data access agreement, and nothing is being proposed here that would jeopardise that.

Finally, as noble Lords will have seen, the Government have tabled Amendments 33 and 42 to clarify that the route of judicial redress to the Investigatory Powers Tribunal applies to notification notices. Amendments 40 and 41 ensure consistency across the language used throughout the IPA. I trust that noble Lords will welcome and support those amendments and I ask them, respectfully, not to press their own amendments.

Lord Fox (LD): My Lords, I thank the Minister for an admirably comprehensive response. That was what we were looking for—perhaps not everyone, but certainly our Front Benches. There is a lot to get our heads around, so we will take this away and look into it.

There are a number of observations I would make. First, the Minister emphasised co-operation, collaboration and discussion. Of course, the legislation does not look like that, so it would help if the Government could find some confidence-boosting measures, be they from the code or the draft annexe, or something that enables the Government to signal their continued intention to co-operate and collaborate.

[Lord Fox]

The Minister talked about an interconnected data world—that is exactly the point the operators are making. Because of that interconnection, a hiatus in delivering a service in the UK could also be a hiatus in delivering that service to the rest of the world, given that everyone is using the same service. That is one of the points that was not picked up by the Minister at the time. That interconnectedness is the very issue that some operators have: if they are prevented from doing it in one place, how do they do it elsewhere?

The issue of corporate entities is interesting. What the Minister described was something I used to call "corporate veil", and I am interested to know how robust that is in corporate law. With corporate veil, it became very difficult, even at court level in the United States, to break down the corporate entities and their interconnections. For no other reason than making an observation, I am interested to see how that works. I certainly see why the Government are putting it forward in their legislation.

There is a lot for us to digest, which we certainly will, between now and the next stage; it gives us something to get our teeth into over Christmas. That said, I beg to withdraw my proposal that Clause 16 stands part of the Bill.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I am afraid that the noble Lord is not in a position to do that. This is a clause; one votes for it or against it.

Clause 16 agreed.

Clause 17: Review of notices by the Secretary of State

Amendments 27 and 28 not moved.

Clause 17 agreed.

Clause 18: Meaning of "telecommunications operator" etc

Amendments 29 to 32 not moved.

Clause 18 agreed.

Clause 19 agreed.

Clause 20: Notification of proposed changes to telecommunications services etc

Amendment 33

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

33: Clause 20, page 39, line 5, leave out "as follows" and insert "in accordance with subsections (2) and (3)"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Sharpe of Epsom at page 41, line 14.

Amendment 33 agreed.

Amendments 34 to 39 not moved.

Amendments 40 to 42

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

40: Clause 20, page 41, line 2, leave out "(or description of persons)"

Member's explanatory statement

This amendment and the amendment in the name of Lord Sharpe of Epsom at page 41, line 4 correct an inconsistency in clause 20 by omitting references to a notice under section 258A of the Investigatory Powers Act 2016 being given or revoked in relation to a description of persons.

41: Clause 20, page 41, line 4, leave out "(or description of persons)"

Member's explanatory statement

See the amendment in the name of Lord Sharpe of Epsom at page 41, line 2.

42: Clause 20, page 41, line 14, at end insert—

"(4) The Regulation of Investigatory Powers Act 2000 is amended as follows.

(5) In section 65 (the Tribunal)—

(a) in subsection (5)(czi)—

(i) for "or 253" substitute ", 253 or 258A";

(ii) for "or technical capability" substitute ", technical capability or proposed changes to telecommunications services etc";

(b) in subsection (5)(czl)(iii), for "or 253" substitute ", 253 or 258A";

(c) in subsection (8)(bc), for "or 253" substitute ", 253 or 258A".

(6) In section 67 (exercise of the Tribunal's jurisdiction), in subsection (7)(azc), for "or 253" substitute ", 253 or 258A".

(7) In section 68 (Tribunal procedure)—

(a) in subsection (5)(b), for "or 253" substitute ", 253 or 258A";

(b) in subsection (7)(f), for "or 253" substitute ", 253 or 258A";

(c) in subsection (7)(ha), for "or 253" substitute ", 253 or 258A"."

Member's explanatory statement

This amendment provides for the Investigatory Powers Tribunal to consider complaints about notices given under new section 258A of the Investigatory Powers Act 2016 (proposed changes to telecommunications services etc) in the same way as it considers complaints about other notices given under Part 9 of that Act.

Amendments 40 to 42 agreed.

Clause 20, as amended, agreed.

House resumed.

6.23 pm

Sitting suspended.

Cyber Democratic Influence

Statement

The following Statement was made in the House of Commons on Thursday 7 December.

"With permission, I will make a Statement about attempted cyber interference in British democracy. I know honourable and right honourable Members across this House will recognise the seriousness of this issue.

The Government have long highlighted the threat to the UK and our allies from malicious cyber activity conducted by the Russian intelligence services. I can confirm today that the Russian Federal Security Service, the FSB, is behind a sustained effort to interfere in our democratic processes. It has targeted Members of this House and the other place. It has been targeting civil servants, journalists and non-government organisations. It has been targeting high-profile individuals and entities with a clear intent, using information it obtains to meddle in British politics.

Madam Deputy Speaker, you and parliamentary security have been briefed on the details of that activity. We want to be as open as we can with the House and the British public. Our commitment to transparency stands in sharp contrast to the efforts of the KGB's successors to exert influence from the shadows. What can we confirm today? I want to stress five particular points of our assessments.

First, Centre 18, a unit within Russia's FSB, has been involved in a range of cyber-espionage operations targeting the UK.

Secondly, Star Blizzard, a cyber group that the National Cyber Security Centre assesses is almost certainly subordinate to Centre 18, is responsible for a range of malign activities targeting British parliamentarians from multiple parties.

Thirdly, using those means, the group has selectively leaked and amplified the release of sensitive information in service of Russia's goals of confrontation. In 2020, when he was Foreign Secretary, my right honourable friend the Member for Esher and Walton (Dominic Raab) confirmed to the House that Russia had done that before the 2019 elections with documents related to UK-US trade. I can now confirm that we know Star Blizzard was involved in this operation.

Fourthly, these cyber actors use a combination of targeting, tailoring their operations in a far more sophisticated way than is usually the case with, for instance, commonplace cyber criminals. They typically engage in thorough research and preparation, including via social media and networking platforms. Having thus identified ways to engage a target, they create false accounts, impersonating contacts to appear legitimate, and create a believable approach, seeking to build a rapport before delivering a malicious link to either a document or website of interest. While they have targeted business and corporate emails, the group predominantly targets personal email addresses.

Finally, the targeting of this group is not limited to politicians, but includes public-facing figures and institutions of all types. We have seen impersonation and attempts to compromise email accounts across the public sector, universities, media, non-governmental organisations and wider civil society. Many of those individuals and organisations play a vital role in our democracy. As an example, the group was responsible for the 2018 hack of the Institute for Statecraft, a UK think tank whose work included initiatives to defend democracy against disinformation, and the more recent hack of its founder, whose account was compromised from 2021. In both cases, documents were subsequently leaked.

The Government's assessment is based on extensive analysis from the UK intelligence community and supported by a range of close international partners. Today, allies from the Five Eyes and the Euro-Atlantic region are joining us in illuminating the pervasive nature of this threat to our shared democratic values. I pay tribute to the dedicated public servants, in our own agencies and those of our partners, whose painstaking work has allowed us to expose the reality of the threat we face.

Taken together, the UK Government judge that these actions demonstrate a clear and persistent pattern of behaviour. Russia's attempted interference in political and democratic processes, through cyber or any other means, is unacceptable. I reassure the House that we have identified targeting of parliamentary colleagues and engaged with victims through both the National Cyber Security Centre and the parliamentary authorities.

The Government will continue to expose and respond to malign cyber activity, holding Russia accountable for its actions. To that end, the UK has designated two individuals under the UK's cyber sanctions regime, following a thorough investigation by the National Crime Agency into the hack of the Institute for Statecraft. In doing so we send a clear message that these actions have consequences. This morning, the Foreign, Commonwealth and Development Office has summoned the Russian ambassador to the Foreign Office to convey that message.

We have robust systems in place to protect against the threat from foreign malign influence. The Minister for Security, my right honourable friend the Member for Tonbridge and Malling, Tom Tugendhat, leads the defending democracy taskforce, which drives work to improve our resilience against these threats. Our National Cyber Security Centre, alongside Five Eyes partners, today published a technical advisory to provide guidance to organisations and individuals at risk of being targeted to help defend against such attacks. We will continue to defend ourselves from adversaries who seek to threaten the freedoms that underpin our democracy. It is and always will be an absolute priority to protect our democracy and elections.

A key component of increasing our resilience is supporting the National Cyber Security Centre and parliamentary authorities to deliver an enhanced cyber-security offer to right honourable and honourable Members, and to Members of the other place, that aims to better protect them against this insidious threat and support the resilience of our lively democratic society. We hope that this statement helps to raise awareness of the threat and allows those in public life, in this House and beyond, to recognise how they may be targeted by such operations.

Russia has a long-established track record of reckless, indiscriminate and destabilising malicious cyber-activity, with impacts felt all over the world. In recent years, the Government have, alongside allies, uncovered numerous instances of Russian intelligence targeting of critical national infrastructure, for example. We have worked in close co-ordination with our intelligence partners to expose sophisticated cyber-espionage tools aimed at sensitive targets. The irony of Russia's abusing the freedoms that it denies its own people to interfere in our politics will not be lost on anyone.

Of course, our political processes and institutions have endured in spite of those attacks, but the cyber threat posed by the Russian intelligence services is real and serious. All right honourable and honourable Members should pay careful attention to it in the course of their work and their daily lives. Many in this House may not consider themselves a potential victim. I want to underline to the whole House that the targeting can be extremely convincing. We must all play our part in exercising good cyber practices, using appropriate caution and following the good guidance of the National Cyber Security Centre and others to mitigate the threat. That is how we defend ourselves and our precious democracy. I commend this Statement to the House."

6.45 pm

Lord Collins of Highbury (Lab): My Lords, the Russian intelligence service effort to target Members of the Commons and this House, civil servants, journalists and NGOs is an attack not just on individuals but on British democracy, and I am sure Members across the House will join me in condemning it in the strongest possible terms. My right honourable friend David Lammy reminded the other place that next year will see elections not only in Britain but in the United States, India and the European Union, with more than 70 elections scheduled in 40 countries across the world.

Trust and confidence in our system of democracy will be undermined if we are unable to ensure it is free from such interference. Leo Doherty, the Minister, said that the Statement was made now

"to ensure that its full deterrent effect is properly timed",

and he reminded the House that

"our duty is to remain ever vigilant".

Can the Minister tell us how the Government are working with other countries that share our democratic values to monitor interference and co-ordinate a response to any attempts to influence our democratic processes?

In response to Labour's call for a joint cell between the Home Office and the Foreign Office to speed up decision-making, the Minister in the other place said that he was confident that the Defending Democracy Taskforce, led by the Security Minister, represented a robust and cross-departmental response. However, he did acknowledge that on the wider picture of disinformation, we needed to

"up our game to counter disinformation, call Russia out and better resource and energise our own security posture in the cyber domain".

The use of artificial intelligence and deepfakes to seed false narratives, spread lies and foment divisions through mainstream and social media is an increasing threat, as identified in the other place. Leo Doherty talked of

"an enhanced degree of resource, organisation and political will".—[*Official Report*, Commons, 7/12/23; cols. 491-2.]

Can the Minster give us a little more detail on how this will be done?

Parliament has been united against Putin's imperial aggression in Ukraine. The Opposition and the Government have been as one, and unity is a source of strength and pride. In the face of these threats, this House must remain united. Let me assure the House tonight that the Labour Party will work in partnership and full co-operation with the Government and all relevant authorities to take the necessary steps to address this threat and protect the integrity of our political process from hostile interference.

Lord Wallace of Saltaire (LD): My Lords, I share the sentiment that we all need to work together in defending democracy. I thank the Government for the Statement, but this is not a surprise, as we have known for some years that people in Russia—in previous years in Ukraine—and Belarus have been doing their best to hack into British politics to spread disinformation and to influence what is going on. We also know about the Chinese attempts to do the same.

This is all part of the transformation of election campaigning since the digital revolution and social media have become so important. I look back to the first election in which I took part, in 1966, when achieving an article by my party leader in the *News of the World* was by far the most important thing I did in four weeks. We are now in an utterly different world. Perhaps I should add that this was partly because the article appeared against a half-page picture of the President of Indonesia's fourth wife, who was extremely attractive. At least people will have read "Jo Grimond" in the headline.

I emphasise here wider issues about shared interests and how the Government and other parties should be encouraged to work together. At present, there is, if you look at all the opinion polls, a very low level of public trust in Westminster politics and the lowest level of trust in government as such. That suggests that the Government and other parties should be as transparent as possible about what is being done and as cross-party and non-partisan as possible.

I note that the Electoral Integrity Programme is part of DLUHC. That seems to me odd. It ought to be part of a stronger Electoral Commission. I regret that the Bill—now an Act—last year weakened the Electoral Commission, because this is central to our democracy. We need to have integrity which is guaranteed by a cross-party and non-party institution. Similarly, on a slightly different collection of issues, the Defending Democracy Taskforce was introduced very much as a government initiative without engaging much with the opposition parties. I suggest that, in reassuring the wider public and civil society and rebuilding the public trust which has been lost, some mechanism involving other parties and cross-party organisations with government activity in this field would be useful. It is not for the Executive to defend integrity and democracy—after all, sometimes it is the Executive who undermine democracy; it is for Parliament, the courts and other independent agencies.

I want to make a second wider point. We should not ignore attempts at foreign interference in our democratic processes by non-state actors, as well as state actors. The Minister in the other place, in replying to one of the questions, said:

"I am pleased that in our domestic legislation we have the ability to ensure that countries with malign intent do not use think-tanks or other fronts to influence domestic political discourse in a way that is contrary to the health of our democracy".—[*Official Report*, Commons, 7/12/23; col. 492.]

I agree with that, and I am concerned that there are now a number of extremely well-funded, very right-wing American organisations, on the edge of being anti-democratic, which are doing their best to interfere in British politics and which are putting funds into party factions, into conferences that take place in London and into think tanks. This is non-transparent and, I suggest, ought to be included in the integrity issue of foreign money flowing into British politics.

We have all witnessed the deterioration of American political campaigning and debate in recent years. We have a shared interest in preventing the UK following down that road. That needs to be part of how we prevent that happening, with conspiracy theories creeping into this country and so on. Free and fair elections depend on free and open debate, in which respect for facts and evidence is shared on all sides—a quality that has now been almost entirely lost in American campaigning. We need to make sure it is not lost here.

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): My Lords, I thank both noble Lords for the unified front we are all showing against this appalling attack, recognising that this is just part of a world of increasing insecurity and increasing threats to us.

The noble Lord, Lord Collins, referred to the need to up our game. A few years ago, we all heard about these bot farms that were targeting people in a broad and uncomplicated kind of way. What we have identified with this attack is how highly targeted it is and how it is targeted towards the very heart of our democracy—the values that we all espouse in a free and open society. It is not just parliamentarians who have been attacked; it is the whole variety of different sections of our society, which are at the heart of what makes us a free and open society. They targeted political figures, civil servants, journalists and NGOs, all with the intent to meddle in British political and democratic processes.

We need to understand that Centre 18, a unit within Russia's FSB, has been involved in a range of cyber-espionage operations targeting the UK and that the so-called Star Blizzard, a cyber group that is almost certainly subordinate to Centre 18, is responsible for a range of malign activities targeting British parliamentarians from multiple parties. It is worth noting that that group has selectively leaked and amplified the release of sensitive information in the service of Russia's confrontative goals, and that these cyber actors used a combination of targeting, tailoring their operations in a far more sophisticated way than is usually the case. This targeting is not limited to politicians but includes public-facing figures from all parts of society.

The noble Lord, Lord Collins, talked about how we are working with our international partners. We engage international partners on issues of mutual concern. We are grateful for the support of very many international partners that have provided information, but we obviously will not go into detail on any specific contributions or types of engagement. Noble Lords will have seen the sheer breadth and depth in unity from our like-minded partners and allies who have joined us in calling out this malicious activity. The US is a long-standing ally, as are other Five Eyes members, and we will continue to engage with it on issues of mutual concern. We are grateful for the support the US has provided and will continue to work with it and all partners which seek to protect our democracy.

The noble Lord, Lord Collins, said that, in order to up our game, we have to make sure that we have the resources necessary for our institutions and organisations to protect us. This was a complex operation and we have been working hand in glove with our partners to identify those responsible and hold them to account. The activity announced last week is part of a broader pattern of malign cyberactivity conducted by the Russian intelligence services across the globe. The United Kingdom has been continuing to bolster its resilience since 2018 against both the Russian and wider cyber threats. We continue to invest to bolster our cyber defences in support of our national cyber strategy. His Majesty's Government are investing £2.6 billion in cyber and legacy IT until 2024-25, including a £140 million increase in the national cybersecurity programme.

The noble Lord raised a very important point about the number of elections taking place in those 40 countries—that will be 4 billion people exercising their right to self-determination about who governs them. There is no more fundamental basis for a free society than that, and we want to assist all those countries in any way we can. The level of technical expertise in this country, and our strategy, have been widely acclaimed and have the support of all political parties in this country. We want to make sure that we are sharing that expertise with other countries.

The noble Lord, Lord Wallace, mentioned other countries, and of course we are acute to threats of this type of activity from other countries. He is right to point out how they are reaching the electorate. In elections past, it was a simple matter of the media as the most basic way in which people got information that informed their political views, but now, through social media and the malign intent of certain individuals, people can be led to a false conclusion. We want to make sure that we are transparent and open.

Elections in this country are run by local authorities, and we are doing everything we can to assist them to make sure that their defences are robust, recognising that next year there is an important election. We are supporting them. DLUHC, the department that interfaces with local government, is working with local authorities, but it is a cross-government activity.

The final point the noble Lord made was about non-state actors, and he is absolutely right. We need to have measures in place to fact-check when people are using malign and false content in order to influence people. In certain constituencies, there will be a very few people who can sway that constituency one way or another. If they are being approached in the kind of way that this kind of attack has proved, we want to make sure that we have defences that can be deployed and that we can inform people that they have been the subject of this kind of attack.

7.01 pm

Baroness Stuart of Edgbaston (CB): My Lords, I very much welcome the Minister mentioning local authorities and ensuring that they are robust in the most vulnerable period—when votes are being cast—but

[Baroness Stuart of Edgbaston]
what discussions are being held with the political parties specifically? They hold sensitive data. If I wanted to cause major disruption on polling day, I would be worried about the security of data held by political parties. Can the Minister assure me that thought is being given to that?

Lord Benyon (Con): The noble Baroness was a member of the Intelligence and Security Committee with me. She was very much part of this debate for many years and has great expertise. She is right. Political parties need to be assisted through the National Cyber Security Centre and the national cybersecurity strategy to protect their data. She is right that we have seen elections in other parts of the world—and there have been some suggestions that we had attacks closer to home—in which these kinds of data breaches have resulted in a key moment in an election being difficult to manage. We want to assist every political party. Everyone can have access to it. It is not just Members of both Houses and the staff who work in this place but the political offices and constituency operations run by political parties right across the country that need access to this to be aware, resilient and absolutely sure that their systems are properly protected. It is in all our interests to make sure that we have clean, fair, open elections and that people are protected from this kind of attack.

Lord Lancaster of Kimbolton (Con): My Lords, the war in Ukraine has been significant for a change of approach in UK government policy with regard to intelligence. We have been proactively releasing military intelligence about what we expect Russia to do into the public domain ahead of events, and this has undoubtedly influenced what Russia then does. There are parallels to this area. It is one thing reactively trying to attribute actions to Russia after the event, but would we consider doing exactly the same when it comes to this, hopefully influencing Russia and preventing it acting in the first place?

Lord Benyon (Con): Our response to this attack is quite clear. The Russian ambassador was called in to the Foreign Office, and we have sanctioned two individuals who worked for this organisation. The investigation is ongoing, and we will take all steps necessary to make Russia understand that it is not worth its while doing this kind of work. We know that actions of misinformation are as old as the Soviet Union, and go right back to many activities happening in the days of the old KGB. What the FSB and organisations within it are now doing is absolutely an extension of that. They are using their technology to target us in different ways.

The UK has worked with Ukraine to increase its resilience in cyberspace over several years. This has included measures to enhance its incident response, forensics and assessment processes. We are providing £6.35 million in cyber support to Ukraine as part of the UK's Conflict, Stability and Security Fund. This includes technical assistance to the MFA to protect its websites from distributed denial-of-service attacks and provide daily cyber threat intelligence. Increasing resilience is an ongoing process, and we are committed to increasing our efforts. We cannot go into further details of the support we are providing, but we are working with all our allies to make sure that countries such as Ukraine can withstand a relentless attack, not just physical kinetic warfare but in cyberspace as well.

Universal Declaration of Human Rights

Question for Short Debate

7.06 pm

Asked by ***Baroness Anelay of St Johns***

To ask His Majesty's Government what steps they are taking to promote the principles of the Universal Declaration of Human Rights which was adopted by the United Nations General Assembly in 1948.

Baroness Anelay of St Johns (Con): My Lords, the final draft of the Universal Declaration of Human Rights was presented to the General Assembly of the United Nations by the Haitian delegate Emile Saint-Lot, a descendant of slaves. It was a late-night session on 10 December 1948. Monsieur Saint-Lot said it was

"the greatest effort yet made by mankind to give society new legal and moral foundations".

It was a watershed moment reflecting the determination of members of the United Nations General Assembly, first, to prevent a repetition of the horrors inflicted during World War II, when millions were massacred and deliberately worked and starved to death, the Holocaust being the most abhorrent manifestation of such dehumanisation; secondly, to affirm the inherent dignity of every individual; and, thirdly, to establish a solid foundation for peace, justice and freedom in the world.

The UDHR is founded on the principle of universality, applying to everyone everywhere. Article 1 proclaims that:

"All human beings are born free and equal in dignity and rights".

The declaration set out, for the first time, fundamental human rights to be protected universally. It was the precursor to more than 80 human rights conventions and treaties, including the European Convention on Human Rights, which was agreed just two years later. It provided the basis for our current international human rights framework.

The 30 articles listed in the declaration became the cornerstone of international, regional and national law. For example, they encompass: the right to life, liberty and a fair trial; freedom of religion, expression, assembly and association; the right to marriage and family; the right to work, including equal pay for work; and the right to education. They also encompass the prohibition of slavery, torture, arbitrary arrest, detention and exile.

Today, UDHR rights are at the heart of the United Nations sustainable development goals, which seek to create a better world by 2030 by, inter alia, ending poverty and hunger, but one has to question whether such a declaration would be achievable today. Multilateralism is under attack from those who want to redraw the international order to their own individual

advantage. Russia and China often block human rights-related motions in the United Nations. Russia seeks imperial expansion of its territory. China seeks economic domination. Both countries seem to have scant regard for human rights.

The 75th anniversary of the UDHR gives us the opportunity to consider how far the world has come, while acknowledging that there is still a long way to go, with many continuing to suffer appalling human rights violations. We should call out flagrant violations and actively push back against those who seek to sow doubt about the universality or relevance of human rights. It is important to demonstrate solidarity with those being persecuted or punished for trying to exercise their rights, and to do all we can to recognise the work of human rights defenders, some of whom face considerable personal risk and death.

When I was the Minister for human rights at the FCDO, and the then Prime Ministers Cameron and May's Special Representative on Preventing Sexual Violence in Conflict, I had the privilege of meeting many brave people who were victims of human rights abuses, and many who were valiant human rights defenders. When I listened to accounts of their lived experience, whether it was in south-east Asia, central or South America, Africa, the Middle East or the western Balkans, the theme was the same throughout. There was a lack of bitterness; there was dignity, and the impassioned request that the UK take action internationally to ensure that others might not suffer as they had and as their children so often had.

As parliamentarians, we have a key role in promoting the UDHR, its principles and the rights enshrined within it by ensuring, of course, our own Government's compliance and holding them to account if standards slip, and by helping to generate the necessary political will to bring about positive change, both at home and overseas.

Can my noble friend the Minister update the House today on how the Government have recently challenged, both publicly and privately, serious violations committed by state and non-state actors? Can she tell the House what more the FCDO will do to ensure that the promotion and protection of rights is embedded in their decision-making processes for bilateral and multilateral trading agreements, so that the UK cannot be complicit in serious human rights abuses—for example, when engaging in security partnerships? For example, what action do they take on a cross-departmental basis to monitor the export of surveillance equipment to ensure that it cannot be diverted by authoritarian Governments to target dissidents and human rights defenders?

I note that the human rights guidance in the FCDO's document *Overseas Security and Justice Assistance* has not been updated since 2017, when I left my ministerial role at the Foreign Office and went to DExEU instead. Will the Minister consider updating that guidance soon, and does she agree with me that a review of its provisions should involve meaningful consultation with stakeholders, including civil society organisations and non-governmental organisations?

I have a final request: will my noble friend ensure that the FCDO does more to support human rights defenders overseas, including environmental, land and indigenous rights defenders, who may so often face criminalisation, enforced disappearance and sexual violence?

Earlier this month, the UK made a joint statement with Denmark to the ministerial council of the Organization for Security and Co-operation in Europe. The statement recognised that although "great strides" had been made in recent decades to advance human rights and fundamental freedoms, it had

"become more evident than ever that the fight for freedom, gender equality, justice and democracy is far from over, and that their defence requires our ongoing vigilance and principled action".

I agree.

7.14 pm

Baroness Chakrabarti (Lab): My Lords, I am so grateful to the powers that be for allowing me the enormous privilege of following the noble Baroness, Lady Anelay of St Johns. I congratulate her on bringing to the House such an important debate on the near anniversary of perhaps the greatest achievement in the history of international statecraft. I also congratulate her on a career rich with similar ambition for the

"inherent dignity and … the equal and inalienable rights of all members of the human family"

as

"the foundation of freedom, justice and peace in the world".

She continues to do enormous credit to the tradition of Churchill and Maxwell Fyfe, to her party, to her country and to your Lordships' House.

Sadly, I cannot continue my short remarks in quite such a positive vein while knowing how some of the most senior members of His Majesty's current Government will have spent the actual 75th anniversary of the signing of the Universal Declaration of Human Rights. A frantic phone-around to shore up petty performative political legislation, designed not so much to stop the boats as to undermine the courts in their vital role of safeguarding rights at home and internationally, is hardly the best way to promote the values in the declaration, still less to show the United Kingdom as a continuing force for upholding rights, freedoms and the rule of law in our shrinking, interconnected and troubled world.

The Safety of Rwanda (Asylum and Immigration) Bill dishonours the great work of the generation that established the declaration and the subsequent treaties, to which the noble Baroness referred, that were always intended to protect its values with binding law. It is not so much the elephant in the room as the woolly mammoth in your Lordships' Chamber. It is a post-fact instrument of post-truth politics, literally seeking to alter an evidential reality unanimously found by our highest court: that Rwanda is not currently safe for asylum seekers and refugees. It attempts domestically to disapply treaties designed to implement UDHR values to which we are bound internationally, demonstrating bad faith on the world stage. It breaches the European convention that was the legacy of those seeking to rebuild our continent after World War II. Accordingly, it imperils the Good Friday agreement and our new relationship with the European Union, and it abrogates even the rule of law on which human rights depend in seeking to attack judicial scrutiny by putting Ministers above the reach of the courts.

[Baroness Chakrabarti]

As I speak, Members in the other place will still be hunkered down in tortuous media spinning of a document that would have the principal drafters of the post-war settlement spinning in their graves.

7.18 pm

Baroness Falkner of Margravine (CB): My Lords, I declare an interest as chair of the Equality and Human Rights Commission, the UK's national equality and human rights body. I will make some remarks in a personal capacity, but first I will speak for a moment or two about the work of the EHRC. Before I do, I join the noble Baroness, Lady Chakrabarti, in expressing gratitude that in this House today we have somebody of the stature of the noble Baroness, Lady Anelay, to lead and open this debate for us; we are fortunate indeed.

We are frequently reminded that the Universal Declaration of Human Rights is the most translated document in the world. We know that it attempts to set a common standard of achievements for all peoples and all nations, the most basic of which is life, liberty and security for all. However, too many countries do not observe the basic, fundamental aspirations of the universal declaration. The EHRC plays an active role in holding the Government's feet to the fire. Having said that, I do not intend to go into the many different areas that parliamentarians who receive our legislative briefings will be well aware of. On the back of Covid and the difficulties of continuity of data across our national institutions and research bodies, we are very pleased to have produced the *Equality and Human Rights Monitor,* which is a comprehensive account looking at five to 10 years of data on the state of equality and human rights in Britain. We found both progress and challenges in compiling that. I urge noble Lords to review it. It is a reference tool. It is not something you will read or use only today; it covers the whole ground of protected characteristics as they have progressed or regressed over this period. I hope it will continue to inform debates over the next few years.

I want now to share some personal reflections, not so much about the universal declaration itself but about the composition and structure of the Human Rights Council. It is a relatively newly formed council—we have to remember that it was formed only in 2006, in response to the General Assembly's acceptance that the previous body, the Office of the High Commissioner for Human Rights, was not working as effectively as it might. This was an attempt by the General Assembly to achieve some sort of coherence in having more regular elections, staggered elections and elections by region, to get 47 places on the council.

Over the intervening two decades, we have come to know that elections to the council are dogged by controversy every year, as a third of places come up. The world is divided by the council into regional blocs, replicating the UN system itself. While the EU and NATO no longer split Europe, for example, into eastern and western Europe, the UN still does, giving us the possibility, on a regular basis, of electing Russia into the eastern Europe category. This year was a near miss, as Albania managed to get on with Bulgaria, but Russia did garner a significant number of votes. Asia gives us such joys as Kyrgyzstan—again, not a standout respecter of human rights—following in Russia's wake in most of its rulings. In Latin America and the Caribbean, the region is now represented by Cuba, where standards of freedom bear only a passing relationship with any conception of human rights. Then we have the "western Europe and others" grouping—such a bizarre way to express countries with differences as significant as those between Luxembourg and the US. But such differences are only differences of scale, whereas the election of China is truly perverse. China, as ever, is able to buy its way on to the council, mainly through the use of threats, coercion, soft loans, hard loans—through its so-called development strategy of belt and road—and so on.

Surely now, 75 years later, we need to recognise that we will never achieve the aims of the universal declaration when we allow for the most egregious violators of human rights to hold sway over the decisions of our only international body meant to uphold standards. Has the United Kingdom or the FCDO given any thought to what comes next? Seventy-five years in, what are we looking for? If members are still violating the treaty of Westphalia several hundred years later, or the strictures of the Congress of Vienna, by invading other sovereign countries, surely we must pause to reflect on trying to deliver a better kind of system. It is not universal. It does not deliver human rights. Above all, it lets down the people in countries where the most egregious violations take place.

7.24 pm

The Lord Bishop of Durham: My Lords, I add my thanks to the noble Baroness, Lady Anelay of St Johns, for securing this debate, and for the way in which she has stood for these issues for many years.

The United Nation's adoption of the Universal Declaration of Human Rights was a milestone in the history of our world. It marked a global commitment to put human beings above conflict, above the politics of division and above economic gain, granting each individual dignity without discrimination. Though we are 75 years on, promoting the human rights laid out in the declaration remains as vital today as it was in 1948.

The principles and values of human rights lie in the conviction that each human being is unique, made in the image of God and loved by God. Each person is valuable for who they are, not what they are able to do. Thus it applies to every infant and child, and to every frail elderly person, as much as to those who are regarded as wholly fit and able.

In the first place, if we are to promote human rights globally, it is essential that we uphold them in our own nation. Article 16 of the UN declaration states:

"The family is the natural and fundamental group unit of society and is entitled to protection by society and the State".

As raised in the debate last Friday in this Chamber, brought by my friend the most reverend Primate the Archbishop of Canterbury, family is crucial to our flourishing as humans. However, this is regrettably not reflected in all our Government's policies. The two-child limit, for example, continues to push families into poverty, withholding support for children due simply to the number of siblings they have.

I now raise my concerns regarding the recent decision by the Government to override their commitments to global human rights agreements. Although the Universal Declaration of Human Rights is not totally legally binding, it is a declaration of the core values that underpin the human rights agreements that the UK has since committed to in a range of international agreements and in the foundations of many of our laws.

Rwanda is a country that is close to my heart. I have visited it 20 times since 1997. It has a deeply painful history of suffering, yet I have observed at first hand how, as a nation, it has rebuilt itself in the past 30 years, bringing those who violated the human rights of others in the past to justice. It demonstrated to the world a remarkable way of handling this, at all levels of society, through its Gacaca courts. However, given reports from Human Rights Watch, as well as the United States Government, on the violation of human rights within Rwanda in recent years, questions are now being raised that our Government can simply rule that the country is indeed safe for refugees and asylum seekers to be sent to.

On the face of the Safety of Rwanda (Asylum and Immigration) Bill lies a declaration from the Home Secretary that he is unable to state whether the Bill is compatible with the UK's human rights obligations. In producing such a Bill, we are disregarding the humanity of asylum seekers as fellow human beings—fellow human beings who are equal in dignity and possess the same freedoms as ourselves.

I remind the House that this is not an issue of boats; it is an issue of people. As a nation, we have a proud history of upholding and promoting human rights across the globe. Rightly, these human rights apply no matter the nationality a person is born to, no matter their method of travel or entry to a country, and no matter how many siblings they have.

Human rights also always imply human responsibility for one another. If we each want these rights, then we also each must defend them for others. We cannot decide to remove rights from others without diminishing ourselves and accepting that we thus remove those rights from ourselves. We have been at the forefront since 1948 of promoting human rights. Will His Majesty's Government commit to continuing to lead the way, rather than, as currently appears, stepping backwards from that leading role?

7.29 pm

Baroness Helic (Con): My Lords, I am grateful to my noble friend Lady Anelay for securing this debate. It is my honour to follow her and the other speakers, who know much more about human rights and who are experts in this area. In particular, I thank my noble friend for all the work she has done on the Preventing Sexual Violence in Conflict initiative and for speaking so generously about the survivors. They never express bitterness—just a desire for respect, dignity and some element of justice, which I hope we can help secure. I am also grateful to my noble friend for reminding us of the basic tenets of the Universal Declaration of Human Rights.

It is down to each generation not only to uphold but to improve and push the boundaries in securing our common humanity. Yet we often fall short in defending even the basics. We see the universal declaration's principles receiving lip service from those who transgress them, but also from those who believe themselves to be their defenders—sometimes our closest allies. Human rights should be more than mere rhetoric in speeches and interviews; they ought to form the very essence of our policies, both domestically and internationally. When we neglect these principles, we not only neglect those who are suffering, by failing to speak and act in support of them, but we also compromise our own standing, security and moral authority. Human rights protect us all; there is no point protecting only here but not over there.

Consider just one example: our rightful support for Ukraine. It is there that the ideals of a free and stable Europe are defended: the supremacy of sovereignty; the protection of borders; and the fundamental idea of human rights. However, we are often challenged that we apply one rule in Ukraine and another elsewhere. We rightly support and show solidarity to our Ukrainian friends and allies, but we have not shown remotely similar support for the people of Tigray or Sudan, or for Palestinian civilians. When we abandon Afghanistan and those who fought shoulder to shoulder with us, disregard atrocities in Darfur, or offer uncritical support to our friend and ally Israel, our commitment to human rights is questioned. Let us be candid with ourselves: do we champion human rights consistently or only when it aligns with our short-term interests?

In some cases, the accusation is that we do not care. In the face of atrocities or human rights violations, inaction is unacceptable. Back in August, the Minister of State for International Development noted the

"growing body of evidence of serious atrocities against civilians being committed in Sudan".

Despite recognising this, four months on, collectively we have little to show by way of concrete action or concerted diplomacy to try and prevent further atrocities. Similarly, the contrast between our warm welcome to Ukrainians and our hostility towards refugees from other parts of the world has been striking.

It is sometimes suggested that worrying about our standing and the appearance of consistency is self-indulgent or naive, or both, or that those who believe and stand up for human rights have been captured by the wokerati. It is true that foreign policy is often about trade-offs and finding the least bad solution. But when we ignore our commitments, it gives other countries cover to do the same. Persuasion and alliance building are crucial aspects of foreign policy. It is certainly the case that the appearance of double standards has weakened our ability to make the case for supporting Ukraine to many countries.

There is a wider relevance as well. Many global challenges rely on trust if they are to be solved. Negotiations at COP, for example, rely on trust between countries that we will keep our word and that we will act in the interests of our own but also the wider good. The appearance of double standards undermines that trust and our ability to find solutions to some of the most pressing challenges we face.

Values upheld domestically ought to extend beyond our shores. Human rights must be an inseparable part of our Government's policy, woven through every

[Baroness Helic]
strand of our diplomacy, including support for international institutions and treaties, which very often have been drafted by British legal experts. This is a moral duty. It is also a route to a safer and more stable world, and it is in our national interest too.

7.35 pm

Lord Alton of Liverpool (CB): My Lords, few people in your Lordships' House have had such personal experience of the consequences of when human rights are violated as the noble Baroness, Lady Helic. It is always a privilege to participate in debates in which she is involved. It is also a privilege to speak in a debate initiated by the noble Baroness, Lady Anelay, which she introduced with her characteristic knowledge but also showing how long-standing her commitment has been to international affairs and human rights.

As the noble Baroness, Lady Anelay, said, this 75th anniversary of the Universal Declaration of Human Rights is a watershed moment. It was also this weekend 75 years ago that the new United Nations promulgated the convention on the crime of genocide. My fifth Private Member's Bill on the genocide convention was given a First Reading last Monday. I hope that this time the Government will give it time to proceed. The genocide convention and universal declaration are inextricably linked, but it was the UDHR that provided the benchmarks—the tell-tale signs—that disrespect for human rights, especially of minorities, could morph so easily into atrocity crimes and genocide.

In framing the UDHR, Eleanor Roosevelt, René Cassin, Charles Malik and others, some notably from smaller and less powerful nations, were a determined group of enlightened people who drew on many cultures, beliefs and faiths. Peng-chun Chang, the vice-chair of the drafting commission was deeply influenced by traditional Confucian Chinese concepts of human dignity, saying the task was to "subdue people with goodness". This led to "a spirit of brotherhood" being added to Article 1.

The Chinese Communist Party might reflect on Chang's insistence that the UDHR has universal application, not least as China has ignored at least 11 of the 30 articles in the UDHR in relation to Hong Kong. The CCP is also accused of genocide in Xinjiang—I refer to my non-financial interests in the register—while, perversely, as the noble Baroness, Lady Falkner, touched on, taking a place on the United Nations Human Rights Council. China's blocking of a UN debate on the High Commissioner for Human Rights' report on the situation in Xinjiang is a disgrace. Now that the FCDO has accepted a decision by a German court that a genocide took place against the Yazidis in 2015, does this mean it will now accept determinations made by other competent courts in the case of Uighurs, for instance?

In 1948, the principle of universality was agreed with no dissenting voices, although the Soviet bloc joined Saudi Arabia and apartheid South Africa in abstaining. Although in today's world, with its dangerous axis of authoritarians and dictators, that consensus has been smashed to smithereens, the dictators—Xi, Putin, Kim, Khamenei and the rest—will not necessarily have the last word. The universal declaration has been and can be a touchstone for the sorts of grass-roots movements that toppled totalitarianism in eastern Europe, saw off apartheid, emboldened the civil rights movement of Dr Martin Luther King and, in much of the world, replaced colonialism with independence.

The UDHR also spurred religious leaders to reassess their place in a plural society with, for instance, the historic Catholic promulgation of Dignitatis Humanae in 1965, the 2016 Islamic Marrakesh declaration of more than 250 Muslim religious leaders, Heads of State and scholars, and Indonesia's Nahdlatul Ulama. Today's Article 18 of the UDHR, about the right to believe, not to believe or to change your belief, was framed against the backdrop of the Holocaust, and religious persecution is systematically honoured in the breach to this day, notwithstanding that declaration. Think, for instance, of the Uighur Muslims, Rohingya Muslims, Nigerian Christians, Iranian Baha'is, Falun Gong, Hazaras, Yazidis and other minorities. Think of the denial of rights to Afghan girls and women, the rape and violation of women in Sudan and Tigray—touched on by the noble Baroness, Lady Helic—and the bleak denial of justice in so many places.

Let me put some specific questions that, following the debate, perhaps the Minister can ensure receive answers. In the case of the Uighurs, will we join the French in trying to have the Security Council veto removed when recommendations for referral of atrocity crimes are laid before it? In the first instance, perhaps the UK should secure support in the General Assembly. Ten years ago, a commission of inquiry into human rights violations in North Korea found crimes against humanity, but fear of a Chinese or Russian veto has prevented a referral to the ICC. Meanwhile, in breach of the 1951 refugee convention, China forcibly repatriates hundreds of North Korean escapees; incarcerates in jail Zhang Zhan, the young woman journalist who asked the right questions about the origins of Covid-19; and holds in prison the British citizen Jimmy Lai and 1,200 pro-democracy prisoners in Hong Kong. Why has the Foreign Secretary not called for their release?

Perhaps the FCDO could also tell us why in August it mysteriously removed from its website the listing of Darfur among the previous genocides. I have recently raised questions concerning Afghanistan, Tigray and Nigeria, and I would be grateful if the Minister could ensure that they receive replies. Cases such as these demonstrate why the UDHR matters so much and why we need to breathe new life into it on behalf of those whose rights are violated.

7.41 pm

Baroness Fox of Buckley (Non-Afl): My Lords, I too welcome the aspiration of the noble Baroness, Lady Anelay, to use the 75th anniversary of the Universal Declaration of Human Rights to rejuvenate and promote its principles. However, this task faces some contemporary challenges.

One of the main legacies of the declaration is that human rights discourse is now so ubiquitous that it is possibly losing any meaning. In one recent school debate I was involved in on whether mobile phones should be banned in classrooms, the outraged pupils claimed that it breached their human rights to be

denied access to social media. More seriously, we have an expansive transnational human rights industry with an endless array of lawyers, NGOs, commissions, consultants et cetera who certainly talk the talk. But my first concern is the danger that this ever-growing body of experts is discrediting human rights ideals among many voters by their disdain for democratic decision-making.

Because human rights claim to embody universal human dignity per se, they are often treated as sacrosanct and unchallengeable. Their adherents assume a high-handed, self-righteous, imperious manner, disdainful of the views, wishes and demands of national populations. In the UK we have seen legitimate attempts at changing how the country manages its asylum system run into the unyielding moral high ground of human rights walls, used to constrain elected legislators and limit the scope of the country's political policy. But when human rights are used to undermine voters and national sovereignty, does that not betray the UDHR's original 48 aims, conceived at a time in which self-governance of all sovereign nation states was itself embodied in principles of non-intervention and universal equality?

My second concern is the pick-and-mix approach to which human rights principles matter. I will give a couple of examples. When I first read the Online Safety Bill and realised that so much of it threatened free speech, I assumed the Chamber would be full of the usual human rights experts queueing up to cite Article 19, which states:

"Everyone has the right to freedom of … expression; this right includes freedom to … seek, receive and impart information and ideas"

of all kinds, either orally, in writing or print, or "through any media" of his choice. In the event, there was a resounding silence and empty Benches, even though the legislation tears up Article 19 as a principle. Similarly, the year before, when a mere handful of noble Lords raised problems with the assault on civil liberties associated with many lockdown regulations, with citizens confined to their homes and the elderly, disabled, sick and dying denied access to families et cetera, I assumed that the human rights industry would be up in arms. No. Zilch. More silence.

Such silence speaks volumes, none more shocking than in response to the 7 October anti-Jewish pogrom in Israel. This was particularly tragic and ironic as the UN declaration was precisely conceived in the shadow of the Holocaust, in which 6 million Jews were annihilated because they were Jews—a fact worth stating as polling reveals that a fifth of the young think the Holocaust a myth. Now that "never again" is now, you would expect the human rights community to leap into leading denunciations of the worst display of anti-Jewish bloodlust since the Nazi regime. But despite filmed evidence of Jews raped, beheaded, burned alive and worse, the UN human rights organisations stayed silent for almost two whole months before condemning Hamas's gruesome butchery, and they remain tight-lipped about the remaining 130 hostages.

A few weeks ago there was a cartoon in the *Yedioth Ahronoth* newspaper depicting an Israeli woman in bloody and torn clothes, saying "Me too", while a panel of three UN women were shown—one covering her ears, one her eyes, another her mouth. Shameful. Conversely, we must ask why the UN human rights organisations have been anything but silent about Israel's alleged human rights violations in relation to Gaza, labelling the undoubted brutality and suffering caused by war—arguably a just war—as genocide of Palestinians, which is a misnomer. In doing so, human rights advocates relativise the specific meaning of genocide, reducing it to a meme, a placard, a slogan—too often deployed by western activists as an anti-Semitic slur against our Jewish fellow citizens.

How can we defend the UN human rights leadership, which only this year appointed the UN ambassador for the Islamic Republic of Iran to chair a UN conference on human rights, representing a country whose morality police violently assault and lock up brave Iranian women who dare show their hair in public? It is a country where you can be hanged for insulting the Prophet Muhammad and belittling the Koran. It is a brutal regime that, in the immediate aftermath of 7 October, celebrated the Hamas terrorist atrocities.

I am afraid that such selective double standards in terms of whose human rights deserve attention and whose we ignore undermine the principles of the UDHR. Some of the problem lies at the heart of the human rights industry. I suggest to the Minister that for the principles of the declaration to be promoted genuinely we must stop looking the other way when human rights are reduced to partisan weapons for politicised ends, and human rights advocates are sometimes the problem.

7.47 pm

Lord Harries of Pentregarth (CB): The Universal Declaration of Human Rights signed by the UN Assembly was a remarkable achievement. It is right that we should mark its 75th anniversary and I am so glad that the noble Baroness, Lady Anelay, has given us a chance to do so. The original agreement was signed by 48 nations, and now all 192 member states of the UN have signed in agreement with it. Despite terrible failures in implementation, it shows that there are human aspirations in common across political and cultural boundaries.

It is fashionable in some quarters to espouse different types of moral relativism, to think that values simply reflect a particular group, and in particular the power of that group in a world of perpetual conflict. But the UN declaration disabuses that. At its heart is the value of the individual and therefore the need to protect the life and liberty of every person, whoever they are, not least from the state. Although there was hugely significant input into the declaration from Church leaders and Christian sources, there was also influence from Confucian and other sources. As the noble Baroness, Lady Anelay, emphasised, a feature of this is the declaration's universality. There is something to be celebrated still today because of having this universal standard and benchmark.

Against that, of course, we have to point out that the failures of implementation of this universal standard are massive. In far too many countries, as sketched out by the noble Lord, Lord Alton, who has been indefatigable in pursuing these issues, there are ghastly human rights violations—as so many debates in this House reveal.

[Lord Harries of Pentregarth]

What steps, as the noble Baroness puts it, are His Majesty's Government taking to address this? First, I suggest that the Government should continue to draw attention to violations whenever and wherever they occur. Whatever the pressures of realpolitik, and whatever the necessity to continue trading with countries that have repressive regimes, they should not be allowed to forget their heinous crimes. It may not always be possible to build this into a trade agreement, although we should certainly try to do so—but at least to the country with which we trade it should be made quite clear what our view is.

More specifically, we should continue to support the International Criminal Court. Individuals, especially Heads of State and warlords, need to know that there is a body which will in the end hold them accountable. Connected with that, we should continue to pursue the regime of sanctions where it is justified, not least in relation to Russia, and where appropriate in response to the Magnitsky Act.

Furthermore, we should continue to support the universal periodic review, in which member states are given the opportunity to have their human rights record reviewed by their peers. Of course, this is taken up only by those states which take human rights seriously in the first place, but it is important for every country to show willingness. If you show such willingness, at least you are trying to indicate that you yourself might be blind to certain violations of human rights in your own culture. From the point of view of the authenticity and reality of our commitment, we need to do this, not least in relation to our own country.

Finally, there are many countries in the world where human beings are denied their basic rights, with ghastly things happening at the moment in Iran, and in China, which is a surveillance state, as well as in Russia and so on. But I end by mentioning one which sadly is not on the world's agenda, but where there are massive violations: the occupation of West Papua by Indonesia. Why does not the world know about this? It is, quite simply, because Indonesia does not allow any NGOs or any press to go in—yet Indonesia has occupied that country for three or four decades, and massive human rights violations are going on in it about which the world does not yet know fully. Will His Majesty's Government press the Indonesian Government to allow access to the UN commissioner for human rights to visit that country? The world needs to know what is happening there.

We celebrate this Universal Declaration of Human Rights, which needs to be reaffirmed in every generation, and lament the fact that there are still so many countries in the world that are in gross violation of it.

7.53 pm

Lord Thomas of Gresford (LD): My Lords, it is a great privilege to follow the passion of the noble and right reverend Lord, and to congratulate the noble Baroness, Lady Anelay, on securing this debate. It is a particular pleasure to recall that we were appointed to this place by Sir John Major some 27 years ago, and we are still fighting our corner.

On the day when the Universal Declaration of Human Rights was signed in Paris, the world was in turmoil. In China, the civil war was coming to an end as the United States began to waver in its support of Chiang Kai-shek. The communists won decisively the following year. The Cold War was in full swing, with the Berlin airlift on a clear day carrying 60,000 tonnes of material over the Iron Curtain. There was talk of a western union and of the creation of a European assembly. The North Atlantic pact was being negotiated. Palestine, following a war with Egypt, was in flames; a year earlier, following the end of the British mandate, the UK had abstained on the United Nations resolution for partition and a two-state solution. Only the Liberals were in favour.

It was the Liberal Member of Parliament, Frank Byers, on the return of Parliament after the Christmas Recess in 1949, who asked Mr Attlee what changes the Government proposed to make to bring British legislation into line with the declaration's principles. Mr Attlee said that the declaration was an aspirational statement and not a legally binding covenant—but that

"at home and in the British Commonwealth we approach more nearly to reaching these ideals than does any other country in the world".—[*Official Report*, Commons, 18/1/1949; col. 17.]

Lord Byers, as he became, was Leader of the Liberal Party in this House for many years. I remember him well, and his forthright Liberal principles can be heard today in the speeches of his grand-daughter, Lisa Nandy MP. In March 1949, subsequently, the Liberal Party assembly at Hastings passed a resolution endorsing and promoting the universal declaration, and it was the cornerstone of our manifesto in the 1950 general election.

While not creating international law in itself, the universal declaration became the basis of a number of legally binding conventions, including the European covenant of human rights. Perhaps the most apposite on this day, today, is the UN Convention relating to the Status of Refugees. The introductory note to the convention states in terms:

"Grounded in Article 14 of the Universal Declaration of human rights 1948, which recognizes the right of persons to seek asylum from persecution in other countries, the United Nations Convention relating to the Status of Refugees, adopted in 1951, is the centrepiece of international refugee protection today".

Article 14 of the Universal Declaration of Human Rights simply states:

"Everyone has the right to seek and to enjoy in other countries asylum from persecution".

The very first recital to the refugee convention reads as follows:

"Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination".

There in that first recital is a full statement of the position. Article 16 of the convention proclaims:

"A refugee shall have free access to the courts of law on the territory of all Contracting States"

and

"the same treatment as a national in matters pertaining to access to the Courts, including legal assistance".

Article 32 states:

"The expulsion of … a refugee shall be only in pursuance of a decision reached in accordance with due process of law … the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority".

That is what the convention says. However, this Government would argue that the people coming over in boats are asylum seekers and not refugees—and they think that, if they act quickly enough, as this current Bill envisages, or if the hearing of asylum applications can be delayed for months or even years, asylum seekers can be parcelled off to another country before they get the protected status of refugees. Are these human beings enjoying fundamental rights and freedoms? I do not think so.

The legality of the Rwanda proposals is for a later date—and no doubt I shall enjoy sharing that debate with the noble Baroness, Lady Chakrabarti. But let us consider the morality of it. Is it compatible with the spirit of the universal declaration? Is it compatible with the long-held values of this country? I assert that the answer is a resounding no. On the 75th anniversary of the signing of the universal declaration, its fundamental principles are being violated in front of our eyes—and for what? Is it just an attempt to keep a failed Government in office? It is un-British—or, as they say in my part of the world, it is out of order—and this 75th anniversary reminds us why.

8 pm

Lord Collins of Highbury (Lab): My Lords, I too congratulate the noble Baroness, Lady Anelay, on marking Human Rights Day and the 75th anniversary of the Universal Declaration of Human Rights; it is really good that this Chamber has the opportunity to mark these important events. The declaration makes it clear that universal human rights are part of what it means to be human, not gifts granted by the state. As we have heard, the declaration is not formally binding on UN member states, but it did inspire the European Convention on Human Rights and, let us not forget, our own Human Rights Act. My noble friend Lady Chakrabarti and other noble Lords, including the right reverend Prelate the Bishop of Durham, are absolutely right to draw attention to the contradictions and tensions inherent in saying one thing and then doing something else.

It is important to understand that the UN, despite all its faults and all the problems, is an important part of our multilateral system. It deserves to be recognised as the place where we can raise our concerns about human rights violations and abuses. As we have heard, we are a member of the UN Human Rights Council, but there are other important forums where human rights can be raised, not least the General Assembly, ECOSOC and the Security Council, with all their imperfections, but also the UN Commission on the Status of Women. These are vital in terms of hearing voices in the international forums that are not necessarily heard. I pay tribute to the Government for leading debates at the HRC, and for raising issues and tabling resolutions concerning Syria, Sudan, South Sudan—the noble Baroness played a prominent part in those—and of course Sri Lanka. They have been incredibly important in tabling and voting on resolutions and in building a difficult consensus. It has not been easy, but we have been leading on that, including on Ukraine, Russia, Afghanistan and Iran.

I also pay tribute to the Government for ensuring that the mandate of the Independent Expert on Sexual Orientation and Gender Identity was renewed. That is very important. When the declaration was first signed, oppressing people because of their sexuality was very common. We made huge progress because we engaged in those forums, and we have led the way. The noble and right reverend Lord, Lord Harries, is absolutely right: one of the most important mechanisms of the HRC is the process of peer-led reviews. Universal periodic reviews help shine a light on those abuses. We live in an imperfect world and we cannot necessarily effect the change we want to effect; but shining a light and raising concerns, constantly reminding people of acting in bad faith, if you like, is very important.

Noble Lords have heard me say before that the ingredients of a healthy democracy are not limited to politicians and Parliaments: an active civil society is vital. When nations fail in their most important task of providing safety, security and freedom for their people, it is always civil society that leaps first to their defence. The Government's integrated review committed to promote open societies and work with human rights defenders as a priority, but how is this priority being translated into action? July's FCDO *Human Rights and Democracy Report* stressed the importance of civil society. I would like to know just how many Ministers have been involved in that recently; I hope the noble Baroness can tell us. How have Ministers engaged with civil society groups to support their role as guardians of human rights?

Another area I am always very disappointed about is the FCDO's failure to even recognise the role of trade unions in defending human rights. They are vital not only in supporting changes in society, but also in protecting people. I certainly know that the previous Labour Government strongly supported trade unions' international activities, and I hope the noble Baroness will respond on that.

Finally, I turn to the comments of the noble Lord, Lord Alton. Last Friday marked British citizen Jimmy Lai's 76th birthday, but also his spending 1,073 consecutive days in prison. Of course, he is one of the most important defenders of human rights in Hong Kong and one of the most outspoken critics of the Chinese Communist Party. His trial may start next week, and I hope the noble Baroness can reassure this House that we will be closely monitoring it and making sure that a British citizen is not left alone.

8.06 pm

Baroness Swinburne (Con): My Lords, I have a large number of notes here, in the hope that I can do this debate justice by responding to as many noble Lords as possible. I thank my noble friend Lady Anelay of St Johns for getting this debate on the schedule in such a timely manner, celebrating this 75th anniversary, and for her extensive work on human rights over many years, as many in the Chamber have acknowledged. I also thank all noble Lords for their thoughtful contributions.

The Universal Declaration of Human Rights is the foundation stone upon which we have built an enduring framework of rights and freedoms—a framework for freedom, equality, opportunity and justice that provides agreed benchmarks to hold all states to account. As reinforced by my noble friend Lord Ahmad in his

[Baroness Swinburne]
intervention at the UN in Geneva today, the Government put promoting and protecting human rights at the heart of what we do. That means working with allied countries, institutions and civil society to protect and bolster the international human rights architecture and advance our human rights priorities. My noble friend Lord Ahmad met with a large number of civil rights individuals—150, I believe—on Thursday of last week at a celebration event for this 75th anniversary. This means taking action in public and in private when states fail to live up to their obligations. It also means making sure that our development work and broader diplomacy strengthens human rights in our contested and fast-evolving world.

We publish an annual Human Rights and Democracy Report, which sets out actions we have taken to tackle key concerns and to advance human rights, with a particular focus on our 32 priority countries. These countries are where we judge we can make a real difference through long-term, determined and sustained engagement.

On the UN Human Rights Council, we remain one of the most active and influential states working within the international human rights architecture. The noble Baroness, Lady Falkner, made an important point about some of the issues of some council members. We use our influence: for example, we have isolated Russia in the system of late, particularly with regard to elections for the HRC. As my noble friend Lady Anelay said in her opening remarks, as leading members of the UN Human Rights Council, we have taken robust action to hold Russia to account for its actions in Ukraine and for repression at home. I say to the noble and right reverend Lord, Lord Harries of Pentregarth, and the noble Lord, Lord Alton of Liverpool, that we continue to call out wrongs. We have called out China for its treatment of Uighurs and democracy activists in Hong Kong, and we will continue to do so. Let me reassure my noble friend Lady Helic that we have led on resolutions establishing or removing UN accountability mechanisms for Syria, South Sudan and Sudan, among other states, as mentioned by the noble Lord, Lord Collins of Highbury.

We have broadened our human rights sanctions regime to punish those responsible for human rights violations in a range of priority countries. Indeed, if I consider some of the actions taken, in part through the ongoing and long-serving work done by my noble friend Lady Anelay, we have embedded human rights in all our gender equality and development work. Our international development White Paper sets out how we will continue to work with countries to protect human rights through peacebuilding and supporting justice and strong institutions.

Gender equality is one of our priority issues that sits at the nexus of our diplomacy and development work. We are pursuing the three Es outlined in our international women and girls strategy: educating girls, empowering women and girls by championing their health and rights, and ending gender violence. In response to the attempted rollback of the rights of women, girls and LGBT+ people in many parts of the world, we have sanctioned 15 individuals and entities during the last year alone for gender-based violence and acts of sexual violence in conflict. We are also working with countries such as the United Arab Emirates to secure a UN Human Rights Council resolution on girls' education and climate change.

Trade was raised by a number of noble Lords. We are increasing the debt and poverty partnerships to enable the UK to achieve positive human rights impacts. For example, seeking to establish and secure growing trade relationships increases the UK's influence and facilitates open conversations. We therefore raise human rights concerns during these conversations to ensure that our trading agreements continue to promote and protect rights.

In response to my noble friend Lady Anelay, the Government's overseas security and justice assistance policy and guidance provide that rigorous assessment of whether UK engagement may contribute to a violation of human rights or international humanitarian law prior to any justice or security sector assistance being provided. I can reassure my noble friend that the guidance will be updated shortly and will reflect the views of a broad range of shareholders.

A number of noble Lords raised attacks on human rights in conflict zones. We have also prioritised support for accountability mechanisms. The UK-led referral of the situation in Ukraine to the International Criminal Court was the largest in the court's history. We are also supporting Ukrainian war crimes investigators, and we are working with the International Court of Justice and the International Criminal Court to prevent atrocities and hold perpetrators to account in Ukraine and elsewhere.

I shall try to answer some of the very diverse questions that noble Lords have put. My apologies if I do not reach all of them; if I do not, I pledge that we will write so that noble Lords can have the detailed answers that all the questions deserve.

I say first to the noble Baroness, Lady Falkner, that the UK has a long-standing tradition of ensuring that rights and liberties are protected, and of abiding by the rule of law, both domestically and internationally. We do not believe it is necessary to leave the ECHR in order to deliver on our major priorities, including tackling illegal immigration.

Baroness Falkner of Margravine (CB): I am sorry to interrupt the noble Baroness's flow, but I want to make it very clear and put on the record that I never advocated leaving. I suggested that the UK Government might consider what else they could do to expand the universality of human rights.

Baroness Swinburne (Con): I certainly did not mean to mislead the House in any way over those comments. There is clear agreement that we believe the ECHR is delivering at this point in time, although there are always improvements that can be made.

On what the noble Baroness, Lady Chakrabarti, said about Rwanda, I am sure that we will have a very long debate as soon as the Bill comes to this House and that those issues will be raised. In the interests of time, I do not have much I can go into tonight, but it is fair to say that it has always been important to both Rwanda and the UK that our rule of law partnership

meets the highest standards of international law, and it places obligations on both the UK and Rwanda to act lawfully. It is really important that the Rwanda partnership and the Illegal Migration Act will deliver the changes necessary to take away the incentive for people to risk their lives through illegal crossings, while complying at all times with international obligations.

I defer to the right reverend Prelate the Bishop of Durham's extensive knowledge of Rwanda, but the Box has prepared some remarks for me regarding the state that Rwanda is currently in. I can assure him that we are committed to upholding human rights everywhere, including in countries that we work closely with. Rwanda, of course, is deemed a safe and secure country with respect to the rule of law. It is a state party to the 1951 UN refugee convention and the seven core UN human rights conventions. The migration partnership fully complies with all national and international law, including the UN refugee convention and the European Convention on Human Rights. With all international partnerships we have thorough, ongoing dialogue in which we will raise concerns, including on topics such as human rights. Our close co-operation with Rwanda on a range of issues, including climate, development and the Commonwealth, enables us to raise these concerns at the highest levels.

I turn to the comments from the noble Lord, Lord Alton of Liverpool, regarding human rights in China in particular. It is really important to stress that we have led international efforts to hold China to account on its human rights violations in Xinjiang. We were the first country to lead a joint statement on China's human rights record there at the UN, and our leadership has sustained pressure on China to change its behaviour. There were a number of other questions from the noble Lord that we will follow up in detail in writing.

I will write to the noble and right reverend Lord, Lord Harries, about Indonesia. There is nothing in my pack on it, and I am afraid we did not have a chance to respond in the time we had, but I appreciate him raising it in the House and we will certainly do what we can to follow up in writing.

The noble Baroness, Lady Fox, raised the current situation in Gaza and Israel. I understand her frustration. Hamas can have no future in Gaza after its appalling terrorist attacks. It must release all hostages without delay, stop endangering the lives of Palestinians, and surrender them. Together with the US, the UK has targeted Hamas with a new tranche of sanctions in an effort to disrupt the group's acts of terror. As the Prime Minister has said, we must work with our allies to provide the serious, practical and enduring support needed to bolster the Palestinian Authority.

On the other side of that coin, Israel, of course, has a right to defend herself. The Foreign Secretary has been clear that Israel's actions must comply with international humanitarian law and that it must take every step to minimise harm to civilians. The Prime Minister has pressed Israel to ensure that its campaign is targeted against Hamas fighters and military objectives. The Foreign Secretary discussed this with the Israeli President during his recent visit.

There are, no doubt, some other questions that I have not got to, but I have 10 seconds to conclude. The 75th anniversary of the UN's universal declaration falls at a significant juncture in the protection and promotion of human rights. After decades of progress, increased authoritarianism is a growing threat to human rights, and at a time when we face the greatest challenges in a decade, from ever more complex forms of conflict to far-reaching technological developments, the principles enshrined in the universal declaration—freedom, equality, opportunity and justice—provide the right path to navigate these new challenges, which is why the Government work relentlessly in support of human rights and remain as committed to the universal declaration today as our predecessors were on the day they signed it.

Baroness Falkner of Margravine (CB): My Lords, before the Minister sits down, I am afraid I must insist on clarifying the remarks she has attributed to me. I intentionally did not go anywhere near the European Convention on Human Rights. I spoke only in broad terms about the Universal Declaration of Human Rights—in other words, the UN's founding document. I want to put it on the record that I said to the House—and I think *Hansard* will confirm it—that I was not going to get into current controversy. I want to make that very clear.

Baroness Swinburne (Con): That is totally understood. I will make sure that the record reflects that.

House adjourned at 8.20 pm.

Grand Committee

Monday 11 December 2023

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Geddes) (Con): I am obliged to advise the Grand Committee—although I think it is singularly unlikely that we will have a Division—that if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Pedicabs (London) Bill [HL]

Committee

3.45 pm

Clause 1: Power to regulate pedicabs

Amendment 1

Moved by ***Lord Berkeley***

1: Clause 1, page 1, line 2, leave out "Transport for London" and insert "The Secretary of State"

Member's explanatory statement

This and related amendments in the name of Lord Berkeley empower the Secretary of State (rather than Transport for London) to make pedicabs regulations.

Lord Berkeley (Lab): This is a long group of amendments but, in my case, they all say the same thing, which is probably just as well. I wish to speak to Amendments 1, 6, 10, 13, 27, 29, 30, 37 and 41. These are all to do with the regulatory framework for pedicabs and what I would call a national one.

At Second Reading in your Lordships' House, a lot of colleagues talked about the difference between the rules governing pedicabs in London and those in the rest of the country. There was general agreement that the London situation needs changing but that it must not be changed to the extent that it prevents legal pedicabs from operating in a safe and sustainable way. We have to learn from the experience of some other cities, such as Oxford, Salisbury and York, where the pedicabs have effectively been put out of business by the taxi crowd. I am sure the Minister would agree that the purpose of all these things is to make the operations of pedicabs as close as possible to the way that taxis operate around the country, bearing in mind that pedicabs are smaller and lighter than taxis, as well as being safer, I think. However, they all need to live together.

My purpose in tabling what is effectively one amendment is that it would be better if the Secretary of State were responsible for all the secondary legislation. While I have great faith in what Transport for London is trying to do, things can change. We may find in a few years' time that even those of us who love pedicabs will be badly affected if a different council in London decides to make life so difficult for pedicabs that there would be none left. That would be an equal shame.

I know that the Minister has a couple of amendments down on the same thing and I look forward to debating those. The key for me is that the Secretary of State should take ultimate responsibility for the regulations under the Bill, just to make sure that those regulations are fit for purpose and have a common fairness in how they deal with pedicabs and taxis across the whole of England. The Bill applies only to London, as we have been told many times, but if it then became a model for change in other cities later, if the local authorities wanted it, that would be good too. That is my reason for suggesting that it would be good if the Secretary of State were the person by whom the regulations were applied, so that he or she were in charge. I beg to move.

Lord Leigh of Hurley (Con): My Lords, my name is attached to two amendments in this group. Amendment 2 is a probing amendment to simply ask my noble friend the Minister why the draftsman uses "may" in some instances and not "must". I would have thought that these are "musts" that we want to see. In his Amendment 44 in this group, my noble friend has helpfully chosen a "must", but that is the other way round, requiring that TfL

"must obtain the approval of the Secretary of State".

He will see why I want it in the direction that I have requested.

Baroness Randerson (LD): My Lords, my contribution to this group of amendments is in having given notice of my intention to oppose the Question that Clause 6 stand part of the Bill. In doing so, I take a contrary view to that of all the amendments about how this issue should be dealt with. All the amendments have a centralising thrust, whereas my thrust is for decentralisation. In one aspect, I agree with the noble Lord, Lord Berkeley, that these regulations need to be used to improve the services provided by pedicabs and not to kill them off entirely. We need to use this opportunity to turn the negative into a positive so that they enhance rather than damage the tourism offer in London.

I tabled my notice of intention to oppose Clause 6 standing part of the Bill to probe why the scrutiny of regulations made by Transport for London is to be undertaken by Parliament and not the London Assembly. The legal situation in England is that, outside London, pedicabs can be licensed as taxis. Taxi and PHV licensing is undertaken across England by 262 lower-tier and unitary authorities of a vast range of sizes. The taxi legislation therefore gives licensing authorities significant discretion in vehicle requirements. A taxi driver must be deemed fit and proper to hold a licence, must have held a car driving licence for the last 12 months and must not be disqualified on immigration grounds, which is covered by the right-to-work check.

Some authorities, such as Herefordshire, York and South Lakeland, have policies that detail specific requirements for pedicabs, whereas other authorities state in their licensing policies that they do not license pedicabs. There have been complaints since 2006 about pedicabs in London, but all that time other local authorities have had the powers to deal with this and design and implement their own regulations. That is a satisfactory approach. As I said, there have been complaints over 20 years, but successive Governments have not considered this issue important enough to deal with or they have not had time in the parliamentary timetable to do so.

[Baroness Randerson]

Now we have this Bill, which has broad support but is, in parliamentary terms, a bit of a sledgehammer to crack a nut. From the point of view of residents in London who complain long and hard about the noise, nuisance and danger of the current situation, regulation and control of pedicabs cannot come into force quickly enough. A single day of delay will annoy them. Why are the Government so intent on delaying things even more by ensuring that Parliament must approve Transport for London regulations?

Across the UK, local authorities consider issues of detail where local knowledge is essential. I would argue that Parliament is definitely not the place to decide the adequacy of regulations that might, for example, stipulate the location of cab ranks. We should not be sitting here saying that a cab rank should not be on this street corner but on another one. That is not the level of detail we should be going into. That sort of thing requires local knowledge and should be scrutinised by the GLA.

It is also essential that we do not clutter our timetable—the Government are always saying they do not have parliamentary time, particularly in relation to transport—with things that can be done better at a different level of government. I argue that Clause 6 should not be part of the Bill.

Lord Moylan (Con): My Lords, in this exciting ideological divide I find myself, curiously, much on the same side as the noble Baroness, Lady Randerson, rather than the side of the noble Lord, Lord Berkeley, or even the Government.

We have been here before. In 1514, we enacted a Bill to regulate the fares charged by water taxis on the Thames and it ran into exactly the same problem that the suggestion made by the noble Lord, Lord Berkeley, will run into, which was that there was nobody to enforce it. Who in the Department for Transport will turn up and enforce the regulations made by the DfT if TfL, which has an enforcement department, is cut out of it?

The Act of 1514 became, in effect, a nullity. Undeterred, Parliament returned to the subject in 1555 to have another go and this time more sensibly. We delegated the power of setting these fares and enforcing them, as far as river-borne traffic was concerned, to what were known as the rulers of what became the Company of Watermen and Lightermen. The regulation of horse-drawn traffic in London, including things like cabs and taxi meters, has—as far as I am aware, and until the creation of Transport for London under the GLA Act of 1999—always been the responsibility of the Metropolitan Police. Again, that is a local body and one well acquainted with enforcement.

Now, for the first time in at least half a millennium of legislation, we appear to have the notion from the noble Lord, Lord Berkeley, that all regulation should be set by the Government and from the Government the not terribly dissimilar notion, as was pointed out by the noble Baroness, Lady Randerson, that while Transport for London should be allowed to draft, in effect, the statutory instruments and must submit them immediately—"immediately" is the word used—to the Secretary of State, the Secretary of State, with no time limit, requirement or obligation on him or her, then has to approve, amend, change or reject them. Why? What is the advantage to the Government or to the travelling passenger of doing this? Why are the Government not under the same obligation to act immediately, or at least within set time limits, in dealing with the SIs sent to them by Transport for London?

4 pm

We should learn our lessons from history. This sort of regulation and enforcement is best done at local level. We have a body in place in the form of Transport for London, which has considerable experience of regulating the analogous taxi trade, so why would we want this to be done by the Department for Transport, as proposed by the noble Lord, Lord Berkeley, and why do the Government feel that they need to bring these provisions before Parliament, when they do not expect taxi fares to be set in a like manner? What is the objective here?

When I raised this at Second Reading, I thought it might give a friendly hint to the Minister perhaps to moderate or withdraw that clause. Far from doing so, it appears to have alerted him to what he considers to be a lacuna in the Bill and he has come back with a government amendment to make the department's grip on this process even tighter. The Government should think about this again and the noble Lord, Lord Berkeley, should think about the practical effects of his proposal.

Lord Borwick (Con): My Lords, I declared my interests in full at Second Reading. I declare them again, only as they are in the register.

I entirely agree with the noble Baroness, Lady Randerson. This seems a strange way of regulating the pedicab industry. I am not sure why my noble friend is regulating in this complex way. As I understand it, Transport for London will form the regulations, then the Secretary of State will turn them into statutory instruments. They will enter a new queue here to be given the time to be dealt with.

I have had problems in the past with statutory instruments from the Department for Transport. The Public Service Vehicles (Accessible Information) Regulations 2023 were debated in the Moses Room on 16 May this year. It took five years from consultation before they were promulgated here. I am not sure what was achieved in those five years, because the regulations were not changed. The only thing that happened was delay.

I think we all agree that the Bill is urgent, important and should be done immediately. As my noble friend Lord Moylan mentioned, it is good news that the Government, in their Amendment 46, use the word "immediately":

> "Transport for London must, immediately after making pedicab regulations, send the statutory instrument containing them to the Secretary of State".

Should we not volunteer to propose the regulations as statutory instruments immediately? I understand that, even then, there would be a queue, but the word "immediately" does not seem to have produced the urgency that is truly required.

This is a very good Bill. I disagree slightly with the noble Lord, Lord Berkeley, who said that the taxis are regulated by the Secretary of State. I think he will find that they used to be, a long time ago in the old and hallowed days when they were regulated through the police force—and very much better they were, too—but, in recent years, they have been regulated by Transport for London. It can change things and get new regulations through much faster than would be implied by this structure. So, not only are they closer, as my noble friend Lord Moylan mentioned; they are also altogether faster than the system, which is inevitable with a big department.

I thank noble Lords. I hope that the Bill gets through as soon as possible because these vehicles are a small but dreadful scourge on the streets of London.

Lord Liddle (Lab): My Lords, I find myself, in my position speaking for the Opposition, in favour of devolution on this issue. I agree with what the noble Baroness, Lady Randerson, said; I do not know why she thought that I would disagree but I agree totally with what she said.

Baroness Randerson (LD): I did not say that.

Lord Liddle (Lab): The noble Baroness did.

Baroness Randerson (LD): I did not—at least, I did not intend to imply that.

Lord Liddle (Lab): In that case, I apologise, but I agree completely with what the noble Baroness said. I disagree with my noble friend Lord Berkeley and agree with the noble Lords, Lord Moylan and Lord Borwick, on this issue. It is the responsibility of Parliament to set the framework to empower Transport for London to make these regulations, but their detail should be a matter for it and it should be given the power to do this. One of the amendments I have tabled suggests that we push ahead quickly with this and that TfL should be given the power to get on with it as quickly as possible. I suspect that the real argument one ought to have concerns whether this is a Westminster borough issue or a London-wide one, but it makes the most sense for TfL to have the legal responsibility. I am sure that the borough of Westminster will be consulted by it on this matter very thoroughly.

This is certainly an important principle. If we want speedy action in this area, it should be supported across the Committee. With great respect to civil servants in the Department for Transport, it is also ridiculous that they should spend their time monitoring these, which are, frankly, of minor significance in the overall scope of their responsibilities. I therefore urge the Government to think again on this matter, otherwise, we might have a bit of an argument on Report.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, I am grateful for noble Lords' consideration of the Bill and very much welcome the scrutiny of those here today as it continues its parliamentary passage.

This first group of amendments covers the process for secondary legislation made under the Bill. Before moving on to the amendments tabled by noble Lords, I will explain the purpose of the two government amendments that have been tabled. Amendments 44 and 46 are intended to provide clarity on the parliamentary procedure for the secondary legislation that will come forward to regulate London's pedicabs. Let me take them in turn. Amendment 44 makes it explicit that Transport for London would have to obtain approval from the Secretary of State to make a pedicab order; this should assure the Committee that there will need to be consensus between the Government and Transport for London.

On Amendment 46, convention dictates that only Ministers may lay orders in Parliament, and Transport for London would therefore be unable to do this. Again, this amendment is intended to be explicit on this point, making it clear that Ministers would be responsible for laying a pedicab order. This is the right approach. The Bill will require that pedicab regulations be subject to parliamentary scrutiny via the negative resolution procedure. This strikes an appropriate balance between conferring a discretion on Transport for London to consult and design pedicab regulations, and a scrutiny role for Parliament in their approval. The opposing amendments from the noble Baroness, Lady Randerson, and the noble Lord, Lord Berkeley, seem to suggest that the Bill's drafting and procedure is in the right place. As I set out, it will be subject to the negative procedure. The point raised my noble friends Lord Borwick and Lord Moylan on the immediate response by the Secretary of State has been taken on board, and we will go back and look at it.

Some noble Lords challenge this notion, pointing to Transport for London's experience regulating London's taxis and private hire vehicles, and the fact that London cab orders are not subject to parliamentary scrutiny. However, the taxi industry is well established and the Bill marks the first legislation specifically targeted at the pedicab industry. It is right that there is a role for Parliament. Although the Government understand that Transport for London has no intention to ban pedicabs outright and is primarily committed to making the industry safer, these amendments should provide noble Lords with assurance that Transport for London will not be able to unilaterally prohibit pedicabs from operating.

That leads me to Amendments 1, 6, 10, 13, 27, 29, 30, 37 and 41, tabled by the noble Lord, Lord Berkeley. They seek to replace Transport for London with the Secretary of State, meaning that the Secretary of State would consult on and design pedicab regulations, as well as holding responsibility for matters such as setting licence fees and imposing civil penalties. I have already set out the rationale for Parliament having a role in pedicab regulations. These amendments would represent a fundamental shift in the Bill's approach. Transport for London is best placed to consult on and design pedicab regulations that meet its needs. In recognition of what will become a newly regulated industry, the Bill provides a clear role for Parliament.

The Clause 6 stand-part notice addresses the point raised by the noble Baroness, Lady Randerson, who has indicated an intention to probe why Parliament has a role in scrutinising pedicab regulations made by Transport for London, instead of the London Assembly.

[Lord Davies of Gower]
So too does Amendment 45, tabled by the noble Lord, Lord Liddle. I hope my comments have provided clarity on this matter.

Lord Liddle (Lab): The only real justification the Minister offered for Parliament retaining this degree of control is the possibility that the Greater London Authority and TfL might want to ban pedicabs altogether. What is his evidence that there is even the slightest possibility of this on the horizon? The present mayor has no intention of doing that—he wants them properly regulated—so is the Minister saying that the Conservative candidate for the mayoral election next year will come out for banning pedicabs altogether? What is the justification for retaining this power? Remember: all this stuff about Parliament retaining the power is nonsense. We know that we have very little control over what happens and over the content of statutory instruments, although we debate them. The power rests with the Minister and the department. Why on earth should the overworked Department for Transport want to spend its time messing around with the detail of whether pedicabs have mirrors and what the level of fines on them should be?

Lord Moylan (Con): My Lords, it might be helpful if I briefly ask my noble friend a question. As I understand it, statutory instruments fall within the Government's code on consultation, so it would be normal for them to consult on a draft statutory instrument before it is laid. Does my noble friend believe that these statutory instruments will fall under that code of consultation, and that consultation by the Government will be required? How does he envisage that meshing with the public consultation that will have been carried out by Transport for London in preparing the draft statutory instruments?

4.15 pm

Baroness Randerson (LD): In the interests of efficiency, before the Minister replies, I will get in a third intervention because it is along the same lines. He said that this could be done by Parliament rather than the London Assembly because this was the first time that regulations had been produced for pedicabs, but that is not in practice the case. Local authorities across England outside London have—maybe not after long debate in the House, but certainly in practice—been given the power to regulate pedicabs. As I said, they have done so in a number of cases. I have made inquiries. The Department for Transport does not keep records of how many local authorities have these regulations in place, but it is aware of a number of places that do. They exist; they have had time to be trialled.

Lord Davies of Gower (Con): In answer to the noble Lord, Lord Liddle, I can only repeat that convention dictates that only Ministers can lay orders in Parliament. Therefore, Transport for London would be unable to do so. The amendment is intended to be explicit on that point, making it clear that Ministers would be responsible for laying a pedicab order.

We do not consider that the Government would have to consult. Transport for London would have to consult prior to bringing pedicab regulations forward.

Amendments 2 and 15 in the name of my noble friend Lord Leigh of Hurley seek to impose a statutory requirement on Transport for London to make pedicab regulations, and would require pedicab regulations to make provisions under the matters covered by Clause 2(6). It is right that the Bill provides Transport for London with a discretion to determine how pedicab regulations are designed. Clause 2(6) provides that flexibility, and Transport for London has indicated that it will introduce regulations covering matters under that subsection. In any case, those regulations will need to be consulted on and, as I have set out, a consensus will be needed between the Government and Transport for London.

Transport for London is supportive of the Bill and the need to regulate London's pedicabs. As such, the Government expect Transport for London to commence work to bring forward pedicab regulations following the Bill's passage. I emphasise that Transport for London has been asking for the Bill, so we expect it to be industrious in the forming of the legislation.

Lord Berkeley (Lab): My Lords, I am grateful to all Members of the Committee who have spoken to this group of amendments. There is a big variety of opinions, from "The Department for Transport should do everything", to "Transport for London should do everything"—I am sure that we will come to that later.

I would like the Minister to reflect on the equivalent structure that the Government might propose if and when we ever get some legislation on electric scooters, which we have all been asking for but are not allowed to talk about on this Bill, because electric scooters are used more widely than in London. However, they are a new form of transport, authorised in certain towns and cities by the Department for Transport with the local authorities' blessing. When it comes to producing legislation on electric scooters, which anyone can buy, own and use, how does the Minister propose that it is done? Would it be by each local authority, the Department for Transport or a combination of both? What would be the quickest way to get it to work? I leave the Minister with my comments and views on that, on which I am sure he will come back at some stage. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2 not moved.

Amendment 3

Moved by ***Baroness Anelay of St Johns***

3: Clause 1, page 1, line 7, after "passengers" insert "including in a cargo box with seating attached to the front of the pedal cycle"

Member's explanatory statement

This amendment is to probe whether Clause 1 omits cargo bikes adapted for passenger use from the scope of the Bill.

Baroness Anelay of St Johns (Con): My Lords, in moving Amendment 3, I shall also speak to Amendment 4 in my name. The objective of both is to highlight the importance of having a clear definition of pedicabs and their use, so that the Bill can deliver its objectives effectively and fairly.

At Second Reading, I made it clear that I support the Bill but was concerned that the current drafting means that it could unintentionally exclude from its

remit activity that really is a business and yet, at the same time, trap activity that clearly is not a business. I tabled Amendments 3 and 4 to give the Government the opportunity to take action to remedy what appear to be defects in the Bill.

Amendment 3 probes whether the definition of "pedicab" fails to cover cargo bikes adapted for passenger use. At Second Reading, I asked the Minister, at col. 778 of *Hansard,* whether the Government intended to include in the definition of "trailer" a bike that has a cargo box attached at the front which has been adapted for passenger use, since the existing drafting appeared to fail to do so. That would give an open sesame to those in the business of driving or operating pedicabs, which have trailers, suddenly to switch to using seating for passengers attached to the front of the bike to circumvent the legislation. At that stage, my noble friend was not able to give an assurance on this matter.

I was therefore pleased last week to receive the letter sent by the Minister to all who had spoken at Second Reading and to see that the Government had tabled Amendments 43 and 50, which deal with the issue I raised. The government amendments appear to resolve the problem I identified, because they ensure that the meaning of "trailer" now includes a sidecar or seating for passengers attached to the front of the vehicle.

I look forward to hearing later from the Minister his explanation for tabling Amendments 43 and 50 and his response to Amendment 42 from the noble Lord, Lord Liddle, because that also supports the position I took at Second Reading. However, I anticipate giving my full support to the Minister's amendments.

I tabled Amendment 4 to seek clarification about the implications of the word "reward" in Clause 1(2). I was concerned that it could unintentionally bring within the remit of the Bill activity that cannot be considered a business. The example I gave at Second Reading is the transport of a child or baby to school, nursery or perhaps to a doctor's appointment, when somebody doing that transporting is not the parent. I am not talking about a parent doing it, but cases where the parent cannot—they could be at work—and a neighbour, friend or relative does it in their place. As we reach Christmas, there may be times when one gives a present—a small gift, perhaps a box of chocolates—to the person who has been helping out. My concern is that the lack of definition of "reward" in the context of the Bill makes it possible that the act of a good Samaritan could be brought within its remit.

In his response at Second Reading, my noble friend said:

"As I understand it, the Bill is intended to cover pedicabs plying for hire".—[*Official Report*, 22/11/23; col. 790.]

However, Clause 1(2) does not refer to plying for hire. That phrase appears in the Bill only in Clause 2 and does not address the problem I have raised, because subsection (7)(a) refers to a power to impose regulations that may

"prohibit drivers from using pedicabs for standing or plying for hire"

in certain circumstances.

I was going round in circles mentally at this stage, so I decided that the only thing to do was table Amendment 4 to seek further reassurance from my noble friend the Minister. In his letter of 6 December, he stated that a scenario

"where an individual receives a gift as a thank you, is unlikely to be captured under this Bill's provisions".

However, that leaves open the fact that it might be captured by the Bill's provisions. He went on to say that,

"where a formal arrangement is in place for an individual to transport other people's children on a daily or regular basis in return for a pre-agreed payment, this might be caught by the Bill's provisions".

I absolutely see the logic in that because, as a business, it should be within the remit of this Bill. He went on to say that

"it will be for TfL to take a view on such matters in designing the regulations"

and that

"TfL could choose to exercise their regulatory powers in a manner that takes certain types of pedicab usage outside the scope of the regulations".

This means that the good Samaritan is left in limbo, not knowing whether they are likely to be covered by the Bill in future. We have just had a discussion about who will have the final authority. I can operate only on the basis that the Bill will go forward unchanged because, as we know, amendments can be made here only with the agreement of all Members; if there is a vote, it cuts the Grand Committee dead. I must work on the basis that the Government's position at the moment will continue until Report, at the very least.

My questions concern how people will know what is going on. Will the Government ensure that regulations impacting those who are not operating a business and who receive small gifts only occasionally will not be imposed? As the Bill stands, the Government could decline to make TfL's brought-forward regulations. Might the Government then say no to TfL? After all, their Amendment 44 gives them the power to refuse TfL's regulations. If my noble friend cannot give me the assurance I seek today, can he say how, in these circumstances, the Government and/or TfL will make the public in London aware of what really happens if a good Samaritan decides that it is not worth a candle for them to carry on in case they get caught by regulations and have to go through all the processes—good processes—to check that they are a fit and proper person to carry a friend's child in their trailer, whether it be a front, side or back trailer? I beg to move.

Lord Berkeley (Lab): My Lords, I warmly support these amendments in the name of the noble Baroness, Lady Anelay of St Johns. I also support the amendment in the name of the noble Lord, Lord Blencathra, who cannot be here today.

In moving her amendment, the noble Baroness gave some good examples of the concern that this Bill may get the wrong people as well as the right ones, if I can put it that way. I have an example: a relation of mine, who is in his 20s, works for a firm that delivers baby food around London on the back of a trailer. I do not know whether it is electric or pedal-driven—that does

[Lord Berkeley]
not really matter—but it is a trailer. On some occasions, he might want to take a passenger with him. His business is doing quite well—it is a business—but he does not really want to get caught up in all the TfL regulations concerning what we normally call pedicabs.

We have to somehow improve the definition. The noble Baroness has made a good start on this; we should have another chat about it, I hope with the Minister, and see what exactly we are trying to stop. Removing the words "or reward" is certainly a good start, but it does not go far enough.

4.30 pm

Baroness Randerson (LD): My Lords, this is a changing scenario. As the vehicles change slightly in how they are powered and so on, people dream up new and useful purposes for them. I support the noble Baroness, Lady Anelay, and the noble Lord, Lord Blencathra, in their amendments, because it is essential that the Government are entirely clear. This is an opportunity for them to put this on the record—which, of course, has legal implications in itself.

The Government need to be entirely clear about the purpose of the Bill. If there is uncertainty, it will serve to undermine efforts to encourage active travel. For example, parents across London are often seen with their children in trailers at the back of their bikes. It is important that that kind of healthy, active travel is encouraged, not discouraged.

Lord Liddle (Lab): My Lords, it is our earnest hope that the Government listen carefully to the common sense of the points made on these amendments. The noble Baroness, Lady Anelay of St Johns, spoke with typical common sense. The Government need to take account of what she said and bring forward amendments to reflect her concerns. I also agree with what the noble Baroness, Lady Randerson, and my noble friend Lord Berkeley said on that subject.

With our amendments in this group, we are trying to make sure that there is a flexible mechanism in the Bill so that the definition of a pedicab can be changed in the light of experience. That is sensible so that it can be done quickly to counter any attempts that people may make to escape the Bill's provisions or get round them in some way. I hope the Minister will be sympathetic to that concern in his reply.

Lord Davies of Gower (Con): My Lords, this second group of amendments focuses on the definition of a pedicab. I will open my remarks by addressing the Government's amendments first.

The Government listened carefully to the points raised at Second Reading and have tabled Amendment 50 with the purpose of expanding the definition of "trailer", for the purposes of the Bill, to include sidecars or vehicles pushed by a pedal cycle. This will ensure that pedicab drivers and operators cannot circumvent the intent of the Bill and future regulations by transporting passengers in a separate vehicle to the side or front of a pedicab. The other government amendment in this group, Amendment 43, is consequential to this change.

These government amendments address Amendments 3 and 42, tabled by my noble friend Lady Anelay of St Johns and the noble Lord, Lord Liddle. The amendment tabled by my noble friend seeks to expand the definition of "pedicab" to include

"a cargo box with seating attached to the front of the pedal cycle".

Similarly, the amendment tabled by the noble Lord seeks to add "affixed carriage" to the definition so that the Bill captures scenarios where passengers are carried to the side or in front of the driver. As I mentioned, the government amendments have, hopefully, addressed any potential loophole here.

On the amendment tabled by my noble friend, the Government completely agree that passengers sitting in a cargo box should be subject to regulation. Under the current text of the Bill, this would be the case. This is because nothing in legislation defines a cargo box or cargo bike. A cargo box fixed to a bike with seating would form part of "a pedicab". This is not a separate wheeled vehicle like a trailer; it is a pedal cycle adapted for the carrying of passengers, as per the definition in Clause 1(2). The Government hope their amendments have effectively addressed the issues raised by both noble Lords and satisfied my noble friend that those not in business will not be affected.

I will address Amendments 4 and 5—tabled by my noble friends Lady Anelay and Lord Blencathra—together, as they relate to linked issues. My noble friend Lady Anelay's amendment seeks to probe whether "reward" captures minor gifts and to clarify the Bill's intention towards those carrying passengers but not operating a business. My noble friend Lord Blencathra's amendment seeks to exclude trailers designed for the carrying of babies and small children from the Bill's scope. The Government understand that these amendments seek to achieve similar goals. To be clear, the Bill defines pedicabs in terms of being

"made available with a driver for hire or reward".

This excludes from the scope of pedicab regulations the possibility of, for example, parents transporting their children using a pedal cycle.

The Government reflected on my noble friend Lady Anelay's comments at Second Reading and are content that "reward", as referenced in Clause 1(2), is unlikely to capture the giving of minor gifts. Instead, the Bill's intent is instances where the reward is agreed in advance of a service being provided. However, the Bill's provisions might feasibly capture instances where there is a formal agreement for an individual to transport other people's children on a daily or regular basis in return for a pre-agreed payment. Such an individual would be providing a service, and it is not clear that this would be sufficiently different to the type of services the Bill intends to regulate to warrant exclusion from it. Ultimately, it will be for Transport for London to take a view on such matters in designing the regulations. It may choose to take certain types of pedicab usage outside of the regulations' scope.

Lord Liddle (Lab): I am rather thrown by what the Minister said at the end of his remarks, which implied that he thought the transport of children to school would be counted as a pedicab and therefore subject to this regulation. Please can he clarify this?

Lord Davies of Gower (Con): For clarification, the Bill's provision might feasibly capture instances where there is a formal agreement for an individual to transport other people's children on a daily or regular basis in return for a pre-agreed payment. I can only repeat what I said: it is not clear that this would be sufficiently different to the type of services the Bill intends to regulate to warrant exclusion from it.

Lord Berkeley (Lab): What is wrong with the amendment suggested by the noble Baroness, Lady Anelay, to remove the word "reward"? If a pedicab is for hire then it is for hire; that is quite clear, but "reward" is not. Someone might pay their au pair a reward to take their kids to school in the back of such a vehicle, or they might be paid by someone else to take their kids. The thought of these wonderful parents in west London who are trying to be green and trying to work out whether they are obeying the law or have to apply to TfL for a licence is a bit worrying.

Lord Davies of Gower (Con): "Hire or reward" is a recognised legal term in taxi and private hire vehicle regulations. The Bill intends the plain meaning of the word "reward". A scenario where an individual receives a gift as a thank you is unlikely to be captured under the Bill's provisions. The reference to a pedal cycle or power-assisted pedal cycle being made available with a driver for "hire or reward" is focused on instances where the reward has been agreed prior to the service being delivered.

Baroness Anelay of St Johns (Con): My Lords, I am grateful to noble Lords who have supported my attempt to clarify matters. Having spoken to Amendment 4 and heard colleagues speak, I think I have encouraged the Minister to be less clear rather than more—although I appreciate that he is doing his best to clarify the position on what "reward" means. The base of this is that it can mean different things in different circumstances, and we need to focus on what it means within the circumstance of the Bill.

A moment ago, my noble friend the Minister repeated his point about the activity of someone who has not made a prior agreement for payment to carry someone. For example, my neighbour might agree to carry my grandchild, if I had one, without us making a prior agreement that there will be payment or reward for it—I might be sick and just ask them to do it for me. That, to me, is an instance that should not be caught by any regulation. I know that my noble friend the Minister is doing his best to explain why it should not come within the range of the Bill, but what he has to say in order to give leeway is that it is unlikely to be captured by the provisions of the Bill.

I appreciate that drafting legislation must be a nightmare. Having seen a raft of Bills over the years from three Governments—the coalition and Conservative Governments—and having been Chief Whip for seven years, I appreciate that it is a heck of a job. Often, legislation cannot clearly prescribe rules for every instance. I am really asking my noble friend the Minister: if we end up somewhere where we cannot be clear that a good Samaritan will not be clobbered by these regulations, can we at least make it clear to them that they might be clobbered and that they need to take that into consideration? I would be grateful if the Minister might consider that between now and Report. I am not expecting that to be in the form of an amendment, but it would be helpful if we had further explanation about the relationship there will be between the Government and TfL in terms of how and when regulations are brought forward and what kind of process goes on within the Department for Transport when it considers whether to say yea or nay to those regulations. Clearly, as the Minister said, this is new territory—I know the noble Baroness, Lady Randerson, does not agree with that and says there is existing territory around the country to provide for this—but we want to be sure that those who are doing a kindness to others do not find themselves having to go through Criminal Records Bureau checks. That is the old term of course; there is different terminology for those now.

In the meantime, I am grateful to my noble friend the Minister for trying to tease this out. It would be helpful to know from him a little more, in future, about how the Department for Transport will handle what will, to start off with, be quite a difficult interface between TfL and the department: both will want to get this right, but they may have a different definition of what "right" means. I beg leave to withdraw Amendment 3.

Amendment 3 withdrawn.

Amendments 4 to 6 not moved.

4.45 pm

Amendment 7

Moved by ***Lord Berkeley***

7: Clause 1, page 1, line 10, leave out "whoever it considers appropriate" and insert "—

(a) representatives of organisations whose interests Transport for London believes may be affected by the regulations;

(b) other persons who Transport for London considers appropriate."

Member's explanatory statement

This amendment clarifies that, before making pedicab regulations, Transport for London must consult with representatives of organisations whose interests may, in Transport for London's opinion, be affected by the regulations.

Lord Berkeley (Lab): My Lords, we are on to the third group and I will speak to Amendments 7 and 9 in my name. To some extent, Amendment 7 follows on from what the noble Lord, Lord Moylan, who is not in his place, said about consultation. It is important that we have confidence that TfL will consult whomever it considers appropriate when drawing up the pedicab regulations. I am particularly interested in people who cycle or walk and, maybe in the future, go on scooters. Amendment 7 suggests that TfL should consult the representatives of those whose interests it believes may "be affected" by the regulations, as well as anyone else—it is quite simple. I hope the Minister will be able to say that it would do that anyway and that he would like it to, or something like that.

[Lord Berkeley]

I have reflected a lot with people on Amendment 9 and on what the point is of putting in objectives for these regulations. There was some interesting wording in a briefing on the King's Speech a few weeks ago, which said that the regulations will

"pave the way for a sustainable pedicab industry that is safer for passengers, pedestrians, and other road users in London … making it fairer for passengers and taxpayers by enabling Transport for London … to introduce fare controls".

I note that it mentions fare controls, not the level of fares. To some extent, the Minister responded, saying that the Government agree with all this.

However, I suggest to the Minister that the list in Amendment 9 is a useful summary of the balance that needs to be addressed between the different people who like, hate or do not very much mind pedicabs. It proposes looking at the environment, the safety of drivers and passengers, danger and disruption to the public, and the level of fares, which will affect how many people hire them. We heard some pretty horrific stories at Second Reading about high fares being charged, to foreign tourists in particular. The list also includes licensing, which, again, needs to be proportionate. I will ask the Minister about one thing I have not put in this amendment: is there any geographical limit to where these TfL-licensed pedicabs may go? Presumably, there is some limit around London, but it would be good to know exactly what it is and what might happen to riders who go outside it.

Can the Minister confirm that the objective of all this legislation is not to discourage people from using pedicabs, or to put them out of business, but to make them into a safe and balanced alternative to other means of transport, enjoyed by Londoners and visitors alike? I beg to move.

Lord Hunt of Kings Heath (Lab): My Lords, I have tabled a stand part notice in this group. First, I will support my noble friend Lord Berkeley. I particularly welcome his Amendment 9, which sets a sensible context in which TfL can take forward its work in pedicab regulation. In Amendment 7, he could have listed the organisations but chose to take a light touch, simply requiring that TfL looks carefully at the organisations that it consults and making sure that it covers the interests that he suggested. That seems eminently sensible and I hope that the Minister will feel able to accept it.

I have tabled my stand part notice for a reason that follows on from something that my noble friend said in his winding-up speech on the first group. I am still puzzled about why the legislation is so narrowly limited to pedicabs and not to e-bikes or e-scooters. I am also puzzled about why there are two transport Bills going through at the same time, and why we could not have had a rather more comprehensive Bill in which we could have been allowed wider input. Perhaps that is why we have two limited Bills—to prevent us having such input. It seems an extraordinarily bureaucratic way to deal with two very limited pieces of legislation.

Dockless e-bikes have had huge growth, unique to London. They are an unregulated market and pose significant traffic and pavement obstruction issues, with some health and safety concerns. There are similar issues with e-scooters. We now have an estimated 28,000 dockless e-bikes in London—up 180% from 2021. It is likely to increase still further in the next few years, which raises a number of issues. First, on-street parking of dockless e-bikes is unregulated, so they can be left anywhere. We have all seen the results of that, strewn around the streets: often, they have either fallen over or someone has thrown them over. They look unkempt and are accessibility and traffic obstruction issues. I understand that dockless e-bike operators are not subject to any procurement rules, so they do not have to adhere to minimum operational standards. I acknowledge that some bike operators have entered memoranda of understanding with specific boroughs, but they are not enforceable and can vary, so there can be inconsistency in crossing from one London borough to another.

Campaigners on disability issues have highlighted and alerted me to the challenges that an increase in e-scooter use may pose for pedestrians with disabilities. I think we have all experienced that. I refer the Committee to a paper published by Policy Exchange's liveable London and crime and justice units, which has revealed a significant increase in the usage of public hire e-bikes and e-scooters, particularly around Westminster, making pavements impassable as a result of their regularly being abandoned by users at the end of their journey. Again, I think that many noble Lords will have experienced that.

E-scooters fall within the legal definition of a motor vehicle. That means that it is normally illegal to use them on public roads unless they comply with the legal requirements to do so, or are rented as part of an official trial. Concerns have also been raised that the batteries in e-scooters have been linked to fires. In 2021, London Fire Brigade was called to 130 fires related to lithium batteries, 28 of which have been directly linked to e-scooters.

The Government published an evaluation of the scooter trials in December 2022. According to the Library's briefing, this was followed up in May 2023 with a question from the House of Commons Transport Committee, which was answered by Jesse Norman from the Minister's department. He said that the Government were

"considering the fact that, since they were initially introduced, trials had shown that e-scooters primarily displaced active travel rather than travel in private vehicles".

He also acknowledged the safety concerns around their use and

"said that the government planned to lay regulations … under existing rules rather than pass primary legislation. He said the government would also consider legislation on 'light electric vehicles'. In July 2023 the government said it intended to introduce legislation on micromobility vehicles, which would encompass e-scooters, 'when parliamentary time allows'".

Well, we have all used that phrase before. I gently suggest to the Minister that, if his department has the energy to take two Bills through at the same time, parliamentary time would definitely have allowed it to bring provisions in relation to e-scooters and dockless e-bikes.

Getting some regulation here has huge support from the boroughs, TfL and the GLA. Indeed, one of the providers of dockless e-bikes in London, Dott, is

also calling for regulation for dockless bikes. The case is overwhelming. I hope that the Minister might be a bit sympathetic and at least give us some indication of when the Government will bring this to fruition.

Lord Storey (LD): My Lords, first, I apologise for not being present at Second Reading.

I have added my name to Amendment 16, which is about safeguarding. It follows what the noble Lord, Lord Berkeley, said at the beginning about how we want to encourage people to use pedicabs but also to ensure that they are safe. We must be aware that many vulnerable people, such as young children or young women, use pedicabs. This amendment says that the operator should have an enclosed Disclosure and Barring Service certification, formerly known as a CRB. There are three types of DBSs: basic, standard and enhanced. This amendment suggests enhanced. It is not expensive—it costs £20 and the renewal cost is £4—but it shows quite clearly to anybody who is an operator of these vehicles that the person who is driving or cycling one of them has no criminal convictions for rape, murder, sexual assault, cruelty to persons aged under 16, sexual intercourse with somebody aged under 16 or the possession or distribution of inappropriate images of children. If we want to ensure that pedicabs are safe, this requirement should happen.

Lord Leigh of Hurley (Con): My Lords, I will speak to my Amendment 12, which seeks to give TfL some help and guidance. In my opinion, it does not contradict Amendment 9 in the name of the noble Lord, Lord Berkeley; in fact, it complements it. In any event, that amendment suggests that "regard" should be had to his suggestions, whereas mine would require the reference to the Licensing Act to be incorporated into deliberations.

I have had to table the amendment because the licensing authority, TfL, is not covered by the Licensing Act, which is of course mainly to do with food and drink. For the benefit of those of your Lordships who do not recall them instantly, let me outline the licensing objectives in the Licensing Act 2003. They are very simple; there are just four of them: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. I can see no reason why one would not want to include them in this Bill to give TfL guidance on what we want it to do.

I declare an interest in the stand part notice proposed by the noble Lord, Lord Hunt of Kings Heath: I am regular user of dockless e-bikes. I used one this morning, and they have definitely changed their modus operandi. One cannot leave a bike anywhere on the street; in most, not all, of Westminster, they have to be in designated areas. That seems a sensible move. I cannot quite see how we can get e-scooters and e-bikes into this Bill, but I suspect that this might just be a probing debate.

5 pm

We may be able to put more pressure on the e-bike community. This is very easy to control because, at the moment, if you leave an e-bike outside the designated area, it will not allow you to end the trip. I do not know if any noble Lord has tried that; the first time is very frustrating but, once you get the hang of it, it is fine. If you cannot end your trip, you run the risk of someone jumping on your e-bike at your expense and cycling all round London, which would not be satisfactory. That was a slight digression.

On this group, I want to talk about Amendment 47 tabled by the noble Lord, Lord Berkeley, to which he did not refer in his speech. It requires a consultation on the safety of power-assisted pedicabs. This is extremely sensible. The idea of pedicabs being power assisted is pretty frightening. They go at a fair speed at the moment but, power assisted, they could easily go at 20 miles an hour, if not more if not restricted. Then they will become even more dangerous than they are now. I strongly support his very mild suggestion—it could have been a lot stronger.

Viscount Goschen (Con): My Lords, I speak only to pick up the point that my noble friend Lord Leigh made a moment ago on electric-powered or electric-assisted pedicabs. In his round-robin letter to those who spoke at Second Reading, the Minister was kind enough to refer to the concern that I raised then that, in essence, an e-bike type of power system within one of these vehicles has the potential to move it at a greater speed than if powered purely by foot.

I am concerned that the definition of "pedal cycle" in the Bill includes a "power-assisted pedal cycle". We are all with the parliamentary draftsmen as far as that goes, but what about if the vehicle is not powered by pedals? What if they are disconnected? We see many electric bicycles—a well-known delivery company seems to specialise in them—powering around London at relatively high speed, which do not use the pedals all the time. There are ways to circumvent them, so that these vehicles can be operated purely by a throttle-type control to become, in essence, electric-powered vehicles and not pedal cycles.

My question to the Minister, therefore, is: do we need some more specific wording, because the Bill refers only to pedal cycles? What if there are no pedals? I think we all share the same consideration: there could well be a blurring between pedal cycles and electric-powered vehicles. When does a pedicab stop being a pedicab? That is my question.

Lord Foster of Bath (LD): My Lords, I back up the call from the noble Lord, Lord Hunt, to try to persuade the Government to find a way to include e-bikes and e-scooters in the Bill. Like many of the pedicabs that we are dealing with, e-scooters and e-bikes are powered by lithium ion batteries which, incorrectly used, can cause huge damage. In fact, the number of fires that have taken place in London from lithium ion batteries powering light forms of mobility has been growing dramatically and, since 2020, has cost millions of pounds-worth of property damage, and caused many injuries and, tragically, the loss of 13 lives.

Incorrectly used, a lithium ion battery can develop a fire of over 600 degrees that is almost impossible to put out using any of the current known technology. We also know that it sends out huge amounts of really toxic gasses. So we need regulation around the lithium ion batteries that are used in all forms of light powered mobility, including pedicabs. I prepared a Private Member's Bill that covered these issues, although it

[Lord Foster of Bath]
sadly did not come up in the ballot; I had enormous support on this issue from Electrical Safety First, which has worked on this for many years.

It is interesting to note that the London Fire Brigade said that it had had more fires up to the beginning of September than in the whole of the previous year—the number of fires is growing. Even more recently, on 11 September, a London coroner took the unusual step of calling for tougher legislation on e-bike batteries after the death of a father of two. We need action and this Bill provides an opportunity to do something about it.

I have raised these issues on a number of occasions. Several months ago, in June, I asked a Question in your Lordships' House on the Government's action. The noble Lord, Lord Offord of Garvel, who responded on that occasion, told me that his officials were

"proactively seeking the input and expertise of stakeholders".—[*Official Report*, 27/6/23; col. 569.]

He also talked about work that was "under way". However, much more recently, at the end of last month, I took part in a debate on light powered vehicles. The noble Lord, Lord Davies, responded to my points, particularly in the letter that he subsequently wrote to those who participated in the debate. In it, he drew our attention to annexe IV of EU Regulation 3/2014; incidentally, that was not at all helpful because it talks mainly about avoiding electric shocks from big electric cars—but never mind. The Minister went on to say:

"Fire prevention, fire detection and fire fighting in connection with electric vehicles is a developing area and the government reviews its guidance and regulations in step with the development of best practice".

We seem to be going backwards: in June, I was told that work was under way but we are now told that guidance may come out in due course.

I hope that the Minister will take note of the concerns raised by the noble Lord, Lord Hunt, and recognise that he will not get new legislation in, but there is some here and he could use it as a vehicle for addressing these particular issues. I hope he does.

Baroness Stowell of Beeston (Con): My Lords, as the Committee knows, I am supportive of this Bill because it brings in provision for the regulation of pedicabs. I will leave it to my noble friend the Minister to respond on why it is not possible to include e-scooters and e-bikes; I guess that it is probably because the Bill is called the Pedicabs (London) Bill and the Government would not be able to cover them in it. However, I share a lot of the concerns raised about e-scooters and e-bikes. Although I did not say anything in support of those who made these points at Second Reading, that was probably because this issue started getting raised after I spoke.

I am pleased that we have pedicabs legislation, which has always been my focus. I want to raise e-scooters with my noble friend none the less. Because there has been no legislation, as has been pointed out, I am really alarmed that the Government are extending their trial of rental e-scooters for a further two years, to May 2026. What really concerns me about this—I have raised it on several occasions in different contexts and debates—is that, at the moment, it is illegal for private e-scooters to be on our roads outside those rental schemes. The longer this trial goes on, the more the take-up increases. I do not think I have ever seen anyone tackled. As I have said before in this Room, I have even witnessed somebody come on to the Parliamentary Estate on an e-scooter, past the policemen on the gate, and not be challenged at all. When I asked a police officer on the gate, "Why haven't you stopped that person riding a vehicle that's not permitted on the road?", they shrugged their shoulders at me.

If this is to continue, something has to be done about enforcement around these vehicles. They cause so much distress to people, as has been described, and are dangerous because of the batteries used. It is not good enough for a lack of parliamentary time to be raised as an excuse when the use of them, in an illegal fashion, is growing all the time.

Lord Hunt of Kings Heath (Lab): My Lords, by keeping on extending the trials, the Government are in effect implicitly making e-scooters legal because it will be impossible for them at some point to say, "We're going to stop the trials. This is now an illegal activity". In essence, it is a nod and a wink to say that it is okay to run them. They have done the evaluation so why do they need more trials? It is difficult to see how this is going to come to a satisfactory ending.

Baroness Stowell of Beeston (Con): I agree. Their legal use is being made possible by stealth, basically. That is why people continue to use them with impunity. They know—or, presumably, they assume—that nobody will bother to challenge them in the first place.

Lord Berkeley (Lab): My Lords, I support this little debate that we are having, in particular the comments made by the noble Lord, Lord Foster of Bath, about the fire risk. I, too, have been studying this. It seems that not only are we accepting that e-scooters and some e-bikes are in effect legal because nobody is stopping them, as noble Lords have said; there are still no manufacturing standards to give one any confidence. If these bikes or scooters—or even cars—are not manufactured properly, they could set themselves on fire. That is where we are starting from.

It seems extraordinary that we have got this far. We are not allowed to bring the batteries into some places but, much more seriously, we have seen three big fires this year. There was a report in the press this week about several cars catching fire. Luton Airport car park had a fire; I am told that the fire brigade is absolutely certain that it was not caused by lithium ion but it has not produced any evidence to support that. Looking at the way the fire transmits itself from one car to the next—the worst gases and fire go downwards rather than upwards and then along, obviously, because they hit the deck—I will be very suspicious until I see some independent resource and authority which says that these things are 100% safe. I may have mentioned before that a ship sank off the coast of the Netherlands in the summer with several hundred new lithium ion battery cars in it. One of them apparently set itself on fire, which happens occasionally. Luckily, nobody was

hurt, but the ship sank eventually because there is no way of putting out the fire, as other noble Lords have said.

Whether it is a scooter, bike, car or something else, is it not about time that we had a manufacturing standard before these things are allowed to be imported at all? In the meantime, perhaps the Minister and his colleagues could give us some advice as to how not to set ourselves on fire.

5.15 pm

Baroness Randerson (LD): My Lords, this has been a very significant debate. My contribution to this group is Amendment 48, which I will come to in a moment.

I point out that this is a rapidly evolving scenario. When complaints were first made about pedicabs in London, just after the turn of the century, there were no e-bikes. It is therefore a huge mistake for the Government to have limited the scope of this legislation, which is written so tightly that it cannot be expanded to take in new technology. I agree wholeheartedly with the noble Lord, Lord Hunt, about the missed opportunity of having two random transport Bills and a lack of joined-up thinking on these issues.

At Second Reading, we had an impassioned debate, led in part by the noble Lord, Lord Blencathra, who is not here today, about the urgent need to deal with the much more widespread problems of e-scooters and e-bikes that noble Lords have talked about—their danger both to users, who are mostly young, especially with e-scooters, and to pedestrians. I commend to the Minister the report on this issue of the Parliamentary Advisory Council for Transport Safety. I declare an interest as an officer of that group.

The rising death and injury toll has been mentioned by others. There is a prevalence of head injuries because of the centre of gravity of e-scooters, which is different from that of ordinary push bikes. There is a complete inconsistency and lack of joined-up thinking in the Minister and his Government's thinking on this, given the existence of electric pedicabs.

The noble Lords, Lord Blencathra and Lord Hunt, and I all tried, without success, to expand the scope of this Bill. Amendment 48 is my pale imitation of other bolder attempts to do this that were rejected. The reference in my amendment to the need for a review in 12 months is my effort to ask the Government to bring this back in 12 months' time and expand it, in the interests of a broader outlook.

Many noble Lords across the House raised issues around safety, which the Government have said is at the heart of the case for the Bill. As my noble friends Lord Storey and Lord Foster referred to, it is about the safety both of those operating the pedicabs and of the batteries. Also mentioned this afternoon was the safety of e-bikes in terms of their stopping distance—they are often modified to be able to go faster than they were originally designed to do. We must bear in mind that, if you add the extra weight of passengers and a cab at the back, their stopping distance is often very poor. They are therefore dangerous.

The noble Baroness, Lady Stowell, rightly and justifiably drew attention to the dangers and risks associated with yet another extension to the so-called trials on e-bikes. This Christmas, thousands more e-scooters and e-bikes will be bought. Unsafe practices are becoming so entrenched: riding without helmets, for example, and there are many other issues. These unsafe practices will be impossible to reverse suddenly through regulation in a couple of years' time, so I support all noble Lords who have spoken on this group of amendments.

Lord Liddle (Lab): My Lords, before I get on to the points in this group on e-scooters and e-bikes, including the clause standing part, I will deal briefly with the others. The points made by the noble Lord, Lord Berkeley, on Amendments 7 and 9 seem sensible. I can think of no reason why something on those lines could not be incorporated in further government amendments. On Amendment 16, the noble Baroness, Lady Stowell, and my noble friend here spoke on the need for the strict regulation of people who are licensed. Again, we strongly support that.

The main question that people have raised is about e-powered pedicabs, e-scooters and e-bikes. On this side of the Committee, we were hoping that the Government were going to live up to their promise to produce a comprehensive transport Bill, which would have covered rail and bus licensing, and all these other issues. They have completely failed to do that and decided just to go for two relatively minor issues: pedicabs and autonomous vehicles. These have merits in themselves, of course, but it is disappointing that the Government have not given us the opportunity for a comprehensive look at transport regulation.

I hope the Minister will listen to the strength of feeling that has been expressed in this Committee about the Government's failure to come up with a credible policy on e-scooters and e-bikes. I think he must realise that this is not a party question; it is a question of public safety on which people are looking for action. Maybe this Bill has been drawn up such that it cannot offer that action but, on Report, the House is entitled to expect a full statement from the Government on their intentions to regulate in this area. I ask the Minister quite bluntly: is it his intention that he will come forward with that statement before we come to Report?

Lord Davies of Gower (Con): My Lords, this third group of amendments has covered a range of policy matters. I will again endeavour to address the issues raised in turn, but I point out at the outset that the noble Lord, Lord Berkeley, referred to the intentions of the Government to restrict. It is really not the intention of the Government to restrict the use of these pedicabs. We understand that they are enjoyed by visitors; the intention is solely to ensure that they are safe and properly licensed.

Amendment 7 in the name of the noble Lord, Lord Berkeley, seeks to place requirements on who Transport for London must consult before making pedicab regulations. The Government understand the intention behind this amendment, but it is not immediately clear that this would have a practical impact. Transport for London is fully supportive of this Bill and has a clear interest in its provisions being applied correctly through regulations. It consults frequently on a wide

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range of issues and is well versed in conducting public consultations of this nature. In fact, it has already indicated that a pedicab consultation would be extensively publicised and promoted to the pedicab industry, members of the public and stakeholders, including the police, London boroughs and resident and business groups. I hope this provides the noble Lord with some reassurance.

The noble Lord asked about where they can operate. It is clear that regulations may be made for the purpose of regulating pedicabs in London. Practically, pedicabs operate in Westminster and central London hotspots, and Clause 2(1) will also allow Transport for London to place conditions on their licences.

Lord Berkeley (Lab): The Minister said that they operate in London—what is the definition of London? I met some people today who were talking about pedicabs in Paris. Apparently, there is a big problem with them around Charles de Gaulle Airport. I do not know whether that is within the definition of Paris. These people may suddenly decide to sort things out at Heathrow or Gatwick, so is there a geographical limit to which these regulations will apply?

Lord Davies of Gower (Con): I venture to suggest to the noble Lord that this is a matter for Transport for London when it forms the regulations. It is not for me to suggest, but it might decide that they will apply within the London boroughs.

Amendment 9, also tabled by the noble Lord, Lord Berkeley, seeks to define objectives to which Transport for London must have regard in making pedicab regulations. Transport for London has confirmed that, in establishing a licensing regime for pedicabs, public safety will be its primary concern. Beyond this, it has stated that it recognises the need for regulations to tackle issues such as noise nuisance, street and pavement congestion and excessive charging. This should offer comfort to the noble Lord about Transport for London's intentions. These matters are likely to form part of the public consultation and continue to inform Transport for London's thinking as regulations are developed. Furthermore, issues raised by this amendment such as safety, fare control and licensing are covered by provisions contained in the Bill. Therefore, at this stage, it is not appropriate to constrain or pre-empt the consultation or pedicab regulations by being overly prescriptive in the Bill.

The noble Lord, Lord Hunt of Kings Heath, is seeking to probe why e-scooters and e-bikes are not covered in Clause 1, as mentioned by other noble Lords. The Bill is limited in scope and focused on addressing the legal anomaly relating to London's pedicabs. As such, practically, it extends to Greater London only and its focus is pedal cycles used for transporting passengers for hire or reward. The inclusion of e-scooters and e-bikes would appear at odds with this scope. E-scooters and e-bikes are generally used by individuals to undertake personal travel. They are not used to transport passengers for hire or reward. Consequently, the issues that this Bill seeks to address do not appear to apply to e-scooters or e-bikes.

There is also national legislation, not limited just to Greater London as this Bill is, that applies to e-scooters and e-bikes. E-bikes are already regulated by the Electrically Assisted Pedal Cycles Regulations 1983, while e-scooters are considered motor vehicles under the Road Traffic Act 1988. As such, e-scooters are illegal to use anywhere other than on private land or as part of government trials unless they meet the requirements of motor vehicles in terms of technical requirements, insurance, registration and so on.

The Government recognise that there are issues with e-scooters that we need to address, but this Bill is not the appropriate place to do so. As has been mentioned, we recently extended the e-scooter trials until 31 May 2026 to continue to gather evidence on how best to legislate for micromobility, including e-scooters, in future. Given the pressure on legislative time, that legislation will not come forward in this Session, unfortunately. Ahead of that, the Government intend to consult on the detailed approach for regulating e-scooters; I believe that that consultation and the future legislation will be the appropriate place for noble Lords' points to be addressed.

5.30 pm

Baroness Stowell of Beeston (Con): That being the case, is there any instruction, guidance or request that the Government can make of the police in the intervening period to enforce the law around the private use of e-scooters on public roads?

Lord Davies of Gower (Con): It is a matter for the police to administer in terms of any offences that may be caused, but I take my noble friend's point. I will take her point back to the department.

Lord Liddle (Lab): The Minister mentioned a forthcoming consultation on e-scooters. I realise that this is a difficult issue for him, by the way; I am not trying to be difficult. Can he give us any indication of when it might take place and whether a consultation paper on this subject will be produced in the next month or two? If he cannot do so this afternoon, will he come back to us quickly on the Government's plans for this consultation? He must recognise that there is tremendous strength of feeling on this issue and that the Government will have to do something to assuage the strong feelings in this House.

Lord Davies of Gower (Con): I understand the strength of feeling. I will certainly ensure that we write with any information regarding a forthcoming consultation.

I turn to Amendment 12 in the name of my noble friend Lord Leigh of Hurley, which seeks to require Transport for London to carry out its pedicab licensing functions with a view to promoting the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. Although the Government agree that these are important aims, the Licensing Act 2003 focuses on the licensing of the sale of alcohol and tobacco, as well as the provision of entertainment. Taxi and private hire vehicle licensing is not included in the scope of the 2003 Act. This means that these objectives do not apply to pedicabs outside London, where they are regulated as taxis. In fact, the taxi and private hire vehicle legislation that applies in England, as well as what applies in London specifically, does not explicitly

state the objective of licensing as it was introduced for the protection of the public through regulation. Therefore, the approach proposed by my noble friend does not seem appropriate in this case. I instead point to the relevant statutory duties and requirements placed on Transport for London as a public body overseeing services to the public.

I turn to Amendment 14 in the name of the noble Lord, Lord Liddle. It seeks to expand Clause 2(4) so that pedicab licensing fees could be set at a level that enables investment in wider transport infrastructure in Greater London. The Government feel that this amendment would impose an unfair burden on pedicab drivers and operators—one that goes beyond the established principles on how licensing fees are set by local authorities. It would result in a different approach to pedicab licensing compared to taxis, which pedicabs are licensed as outside of London, and private hire vehicles. The Government's intention in enabling Transport for London to regulate pedicabs is to help the emergence of a sustainable and well-regulated sector. This amendment may discourage reputable pedicab drivers and operators from continuing to ply their trade.

Lord Liddle (Lab): I apologise for forgetting to mention that amendment in my speech. What made us put it forward is the fact that there are a lot of problems with pedicab parking. They may require adjustments to roads and pavements, which can be quite expensive for local authorities; I know that as a former member of one. It seems only reasonable to us that such costs should be recoverable.

Lord Davies of Gower (Con): I understand where the noble Lord is coming from but I am afraid that it does not alter my response to his submission.

I move next to Amendment 16 in the names of the noble Lords, Lord Liddle and Lord Storey, which I will address alongside Amendment 31, also in the name of the noble Lord, Lord Liddle. These amendments relate to enhanced Disclosure and Barring Service checks for pedicab drivers and operators. Amendment 16 would make these checks compulsory and Amendment 31 would require the Government to bring forward the necessary regulations within 90 days of this Bill receiving Royal Assent.

Amendment 16 would bring parity for London's pedicab drivers with taxi and private hire vehicle drivers—including pedicab drivers outside London, where pedicabs are regulated as taxis. Transport for London has been clear that an effective licensing regime must be underpinned by enhanced Disclosure and Barring Service checks, and has raised the associated risks of bringing forward regulations without this requirement in place. This is a matter that the Government are actively looking into. We have requested that Transport for London submit evidence clearly making the case for these checks; this will be assessed in due course.

However, making pedicab drivers in London subject to enhanced Disclosure and Barring Service checks will, following the passage of this Bill, require changes to the Police Act 1997 (Criminal Records) Regulations 2002, as amended, and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. There is no guarantee that this can be done in parallel with the Bill.

Amendments 47 and 48 have been tabled in the names of the noble Lord, Lord Berkeley, and the noble Baroness, Lady Randerson. They seek to add a statutory requirement for there to be consultation or a review period for pedicab regulations.

Amendment 47 proposes to add a further consultation requirement six months after the Bill comes into force. Its purpose is to assess whether pedicabs should be prohibited in London or have conditions placed on their operations based on safety concerns.

Amendment 48 proposes that a 12-month review of pedicab regulations becomes a statutory requirement, its purpose being to assess the necessity of further regulations. The Government understand that the intention of the noble Lord, Lord Berkeley, and the noble Baroness, Lady Randerson, is potentially to broaden the scope of the Bill so that e-scooters and e-bikes fall within it. As I have set out, the Government are continuing to gather evidence to support further policy development in this area, which noble Lords have already discussed. The Bill's scope is narrow and focused on addressing the legal anomaly relating to pedicabs in London.

As regards a review, the Government agree that, as this legislation paves the way for the first regulatory regime designed specifically for pedicabs, the impact of regulations will need to be reviewed. The timescales proposed by these amendments would not allow sufficient time to assess the impact of regulation adequately, as there will no doubt be a need for regulations to bed in and sufficient time will be needed to gather evidence. However, the Government are committed to undertaking a voluntary review of the policy five years post implementation and would work with Transport for London to conduct this assessment.

Lord Berkeley (Lab): Amendment 47 has nothing to do with e-bikes or e-scooters; it is about power-assisted pedicabs. It suggests that TfL must consult

"persons as they consider to have an interest … on whether to prohibit … the use of power-assisted pedicabs in Greater London on grounds of safety".

Many noble Lords have spoken about the safety risks, including me. This is purely about power-assisted pedicabs and whether there should be a review of the safety of the power bit—obviously—of pedicabs. It is nothing to do with e-scooters or e-bikes. I would be grateful if the Minister could either respond to it now or write to me about the grounds of safety of power-assisted pedicabs in the review.

Lord Davies of Gower (Con): I take the noble Lord's point; I will have to come back to him in writing on that.

I turn to Amendment 52, the final amendment in this group, in the name of the noble Lord, Lord Liddle. It seeks to bring forward the commencement of this Bill to immediately after it receives Royal Assent. The two-month period is a standard convention for government Bills. A benefit of this approach is that it provides sufficient time for the pedicab industry, in particular reputable operators, to prepare for the introduction of licensing and a regulated industry. In this case, there appears to be no practical advantage to

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the Bill coming into force immediately. During the two-month period between Royal Assent and the Bill's provisions coming into force, Transport for London will be able to undertake preparatory work such as developing its consultation.

I turn to the points made by the noble Lords, Lord Berkeley and Lord Foster, on batteries, which we will cover a little later on in consideration of this Bill.

Viscount Goschen (Con): My Lords, when the Minister comes to address Amendment 47 in the name of the noble Lord, Lord Berkeley—he said he would write to him about that—would he mind also addressing the point about pedicabs that are no longer powered by pedal? By what regulations are they then caught? We are seeing bicycles surreptitiously masquerading as bicycles when they are in fact motor vehicles. If he could address that point, that would be very helpful, but he does not need to do so now.

Lord Davies of Gower (Con): I apologise for not addressing that but I will ensure that it is addressed in letter form.

Lord Berkeley (Lab): My Lords, we have had a wide-ranging debate on this group of amendments. I am sure that we all have a lot to think about. On some things, I hope that the Minister will come back to us with some answers; for others, we will probably have to wait for another Bill—under another Government, even. However, on that basis, I beg leave to withdraw Amendment 7.

Amendment 7 withdrawn.

Amendments 8 and 9 not moved.

Clause 1 agreed.

Clause 2: Licences, fares and other matters

Amendment 10 not moved.

5.45 pm

Amendment 11

Moved by ***Baroness Randerson***

11: Clause 2, page 1, line 18, leave out subsection (2)

Member's explanatory statement

This amendment seeks to probe why existing legislation is not sufficient to cover immigration status and right to work checks.

Baroness Randerson (LD): My Lords, Amendment 11 is in my name. I want to preface my remarks by making it absolutely clear that I am in no way arguing that people who are not legal immigrants should be able to ply this trade. I am simply surprised to see this statement in the legislation, because it is unusual to have something saying that nobody who has not been legally accepted as an immigrant can do this work. This is the type of statement where, when it is put forward in an amendment by the Opposition, the Government reject that provision because they say that it is already adequately stated in other legislation, therefore there is no need to say it again. Their argument goes along these lines: if we included a statement such as this, it would bring forward questions about other conditions that need to be included, and which we all take for granted in relation to a particular occupation, as well as similar issues that are not being restated in the legislation. However, all legislation takes into account previous legislation and what exists as conditions stated in that legislation.

Let us look at the Government's reasoning in this. They appear to say that there is a prevalence of illegal immigrants involved in this occupation. I fear that that is simply a result of the fact that it has gone unregulated for more than two decades; as a result, it has been a free-for-all. When it comes under much-needed and long-overdue regulation, it will be treated in the same way as we treat taxi drivers: they have to be a fit and proper person; they have to be legally allowed to work; they must have no criminal convictions of a designated type; and they must have a driving licence. I do not understand why we cannot just take that approach here.

If the Minister thinks that it is necessary to have this subsection, as I am sure he will say, can he tell us whether it will become a standard provision in all legislation that involves people's professions and occupations? Whatever we look at—whether it is teaching or medicine, for example—will we start off by saying, "No one who isn't a legal immigrant can do this job"? Otherwise, I do not understand why we are saying it here.

The other amendments in my name in this group include Amendment 17, which has cross-party support—I am very grateful for that—and stresses the importance of regulations on noise; Amendment 18 in the name of the noble Lord, Lord Blencathra, is similar. The evidence is that complaints about noise from pedicabs have become increasingly frequent since the pandemic. Basically, what has happened is this: during the pandemic, in this industry—as in so many—there was a crisis and there is increasing competition between pedicab operators. The way they draw attention to and advertise themselves is noise. In fact, noise is the No. 1 complaint of local residents, as opposed to that of the people who take pedicabs. They appear to be immune to it; otherwise, they would not choose the one making it, I suppose. This issue desperately needs some attention. Can the Minister assure us that the regulations will cover noise?

My Amendment 23 relates to the need for a cap on the numbers of pedicabs—I know that local residents think that this is also a good idea. As competition has got fiercer, the numbers of pedicabs operating from inappropriate positions have become an increasing problem. Throughout the UK, it is common for there to be a regulation on the numbers of taxis given permission to operate; the same approach would seem sensible for pedicabs.

Finally, Amendment 26 suggests that the regulations must also cover the issue of cab ranks. Once again, the theme here is the convenience of local residents and their peace and quiet. Because there is noise and so on, the ranks are very intrusive. We have cab ranks for taxis, so there should also be appropriately designated places for pedicabs.

I will make a special plea. The problems associated with the closure of Hammersmith Bridge, which have gone on for years, are very serious for local residents.

Let us turn a negative into a positive: pedicabs offer an opportunity for local residents to hire one to cross the bridge, which would be really useful. The local MP, Sarah Olney, has been running a campaign to encourage the Department for Transport to consider this and to designate cab ranks on either side of the bridge to enable that to happen. My simple request is for the Minister to agree to meet me and the local MP to discuss this issue and its appropriateness. I would be grateful for his consideration of that.

Baroness Stowell of Beeston (Con): My Lords, I have added my name to Amendments 17 and 18, in the names of the noble Baroness, Lady Randerson, and my noble friend Lord Blencathra, both of which relate to noise. I add that I am sympathetic to the noble Baroness's Amendment 26 and the points she raised about cab ranks—I do not mean those to do with Hammersmith Bridge specifically. She makes an interesting argument about the provision for ranks for pedicabs.

As I said on the other group, I am grateful to my noble friend for his letter to all Peers. In Transport for London's note, which was attached to his letter, it was encouraging to see that it proposes to introduce regulations that will cover, as part of the conduct of drivers, the playing of loud music and causing a disturbance. As I said at Second Reading, the loud music played and amplified by pedicabs is the greatest concern that gets raised by business owners and residents—the noble Baroness, Lady Randerson, is right about that.

I was a little concerned that, in the note TfL prepared, it suggests that some noise offences are already covered by existing legislation. When I read this, I thought that, in that case, either the existing laws are inadequate, or—to return to enforcement—the enforcement of them is not good enough. I acknowledge that, in his letter, my noble friend pointed out that Westminster City Council and the Metropolitan Police have issued penalty notices that have raised around £30,000 in fines over the last two years.

However, I am concerned that the focus on noise will be about night-time noise. It is not only at night that pedicabs and the playing of loud, amplified noise is a problem; it is a serious problem during the day as well. In my noble friend's opening speech at Second Reading, he referred to the problem of

"blasting loud music at all hours of the night".—[*Official Report*, 22/11/23; col. 768.]

In his closing remarks, he referred to the fines issued by the Metropolitan Police or Westminster City Council, saying specifically that these were for the playing of music "after 9 pm".

One of the reasons I am keen to see noise added to the relevant clause in the Bill is that noise and the playing and loud amplification of music is the most significant concern that people have about pedicabs, as I said at Second Reading. I am also concerned to ensure that TfL will take an approach that ensures that the loud amplification of music will not be allowed at all hours, not just after 9 pm. I would be grateful for my noble friend's response to that.

Lord Foster of Bath (LD): My Lords, I will pursue some of the issues I raised in the debate on a previous group of amendments about the safety of the lithium ion batteries that power many pedicabs, including those that have loudspeakers to provide the noise we have just heard about.

Many noble Lords may not be aware that a fully charged lithium ion battery contains as much energy and potential energy as the equivalent of six hand grenades. If something goes wrong, it can lead to a thermal runaway, which can lead to temperatures reaching over 600 degrees centigrade, as I mentioned earlier. It can release toxic gases that can seriously damage a human's lungs. The fires are very difficult to put out because they create their own oxygen, which means that special techniques have to be used.

Having said all that, a properly designed and constructed lithium ion battery is inherently pretty safe, unless people do stupid things with it, such as charging it with the wrong charging system, banging it and not being concerned about any damage that they might see, and so on. That is the problem. I do not want to say that lithium ion batteries are bad because, frankly, we desperately need them for many of the developments in transportation and other areas. It is therefore vital that we think about regulations for how we use them, to avoid those problems occurring. Although it is not covered in these amendments, I also hope consideration is given to how we dispose of them when they are no longer in use.

6 pm

Amendments 21 and 22 in my name and those of the noble Lords, Lord Berkeley, Lord Hunt and Lord Blencathra, address two particular issues: the charging of those batteries and the batteries themselves. The real concern over the charging of the batteries is that there is currently no set of standards for lithium ion battery chargers and therefore no way for us to check them. If you connect the wrong charger—one not designed for your particular battery—it can power it too quickly or too slowly, possibly leading to damage which can, in turn, cause a problem. There is also the issue of where you charge it so that it is in a safe environment, and so on.

Following the advice of my noble friend Lady Randerson, I would not dream of saying what precisely the regulations should be—that is for Londoners to decide for themselves—but I imagine they would include reference to the charging location in relation to the chargers used, the displaying of signs for safe charging and so on. Amendment 21 basically says that we need a set of regulations on this.

Amendment 22 is about the battery itself. It is bizarre that fireworks, for instance, are covered by a number of safety regulations, with independent bodies checking whether the required standards have been met, but the same does not apply for lithium ion batteries. The same ought to apply, which is why the amendment says that the CE or UKCA mark should be applied and that a conformity assessment body should be set up to establish that they are there. It is really important that action is taken on the charging of batteries and on the batteries themselves. As I have said, I would prefer that to be widened out to cover e-bikes and e-scooters, but we have had that debate. However, these are two important issues that we should address for pedicabs.

[Lord Foster of Bath]

I end with a point that I hope the Minister will take back to discuss with his officials. Even if we do some of these things for the batteries, such as giving them the appropriate markings, there will still be a real problem. My noble friend Lady Randerson mentioned the number of batteries in e-bikes that will be bought over Christmas. As she will be well aware, many of those will be bought online. Lithium ion batteries are also often bought online, not least in conversion kits that might be used to turn pedicabs that are currently not powered into ones that are. There are not the same support mechanisms, back-up and control systems for purchasing electrical goods online that there are for purchasing such things in a shop. That is another issue with these batteries, both for pedicabs and in other cases, that I hope the Government will look at.

Together, these two amendments will improve the safety of pedicabs. They will not address noise or other issues that have been raised, but they are important to consider.

Viscount Goschen (Con): My Lords, I lend my support to Amendment 17 in the name of the noble Baroness, Lady Randerson, and Amendment 18 in the name of my noble friend Lord Blencathra.

I spoke about this at Second Reading, when I was very clear that it is one of the most important issues. It is probably the reason we are considering the Bill and why it was brought forward. The operation of pedicabs undoubtedly causes a very substantial noise nuisance. If those who operate them had a self-denying ordinance and turned the music down, we probably would not be sitting here today—but the fact is that they do not.

I regularly walk in the evening from your Lordships' House to where I stay in central London, and one sees and hears these vehicles causing a great disturbance. One is very sympathetic to those who, for example, operate businesses—a restaurant, gallery or any other business premises—in central London near where the pedicabs congregate. The sound of a collection of them competing with each other for custom with very loud, amplified music that can come from a boom box that costs £200, or something of that nature, is significant.

We have heard arguments that some of this is caught by existing regulations, and that extremely modest amounts of fines have been raised, but that has clearly not been effective, which is why we are debating the Bill today. I strongly believe that there ought to be a specific instruction in the Bill—or, at the very least, a facilitation—that allows specific regulations to be brought on the broadcasting of amplified noise in the context of these vehicles.

Lord Strathcarron (Con): My Lords, I have added my name to Amendments 17 and 18 about noise, but I do not think that there is anything useful for me to add about them.

I have also added my name to Amendment 24 about pedicabs using cycle lanes. I am a frequent and enthusiastic renter of e-scooters and find that they are the most wonderful way of travelling around London. However, there is a contradiction between the TfL policy about cycle lanes and pedicabs and the policy note we all got. The TfL website definitely says that only bicycles of any kind and e-scooters "can use cycle lanes"; but the policy note, under "cycle lanes", says that pedicabs are allowed to use them.

There are three routes that I most commonly use when I rent e-scooters. The first is west to east across Kensington Gardens and Hyde Park. A pedicab on those cycle lanes would need at least one wheel in the park and not on the cycle lane, so would completely obstruct any bicycles or e-scooters coming the other way. Secondly, from Waterloo to either the Red Lion or the College Green so-called parking area, it would simply be too narrow for pedicabs. Anyone who has tried to bicycle over any of the bridges will know that the cycle lanes are not very wide, so pedicabs simply would not fit. Thirdly, from here to Soho, e-scooters or bicycles can go—as can pedicabs—the whole way on bus lanes. To solve the contradiction, I hope that we can come down on the side of the TfL website, which says that no pedicabs are allowed in cycle lanes, rather than the policy briefing we all had, which says that they could.

I will say a few words about e-scooters, e-bikes and power-assisted pedicabs, because e-scooters have got a rather bad write-up around here. However, if any noble Lords would like to meet me at either College Green or the Red Lion one sunny day, we could go on a very enjoyable scoot around one of the royal gardens; I am sure that they would be convinced that it is a wonderfully safe and slow way to get around. The term "e-bikes" covers a very broad range of vehicles. For example, the Brompton e-bike of the noble Lord, Lord Berkeley, and my VanMoof e-bike do not work until you start pedalling. But we have all seen, especially for delivery vehicles, bicycles now with token pedals which are entirely electrically operated. When we talk about e-bikes, we need to bear that in mind.

I have never driven a pedicab, unlike an e-bike or e-scooter, but I imagine that, when fully loaded with up to three passengers, moving off from a red light without power assistance would be dangerous, because it would be so slow. Some kind of electrical assistance is therefore needed. It is important that we stipulate that it is electrical assistance like that of the Brompton of the noble Lord, Lord Berkeley, or of my VanMoof; in other words, one has to shove on the pedal for it to kick in, rather than just press a button.

Incidentally, that is easy to override with an app. It is supposed to be limited to 25 kilometres or 15.5 miles an hour, but anyone can buy an app, say you are living in Canada or something, and the whole thing is bypassed. I appreciate that this is a separate subject, but I would like some clarification about cycle lanes, because it could be easily solved.

Lord Leigh of Hurley (Con): My Lords, I added my name to Amendment 18, which I am speaking to in the absence of my noble friend Lord Blencathra. I agree with all the amendments that seek to amend Clause 2(6). I remind your Lordships, and particularly the Minister, that this subsection includes the word "may". Unless my amendment returns on Report with the word "must" in it, it will not have any bite. As much as I welcome all these amendments going through, they must go through with mine.

My noble friend Lord Strathcarron did not mention his excellent Amendment 19, requesting

"a prominently displayed registration plate with a distinct number".

Unless we have that, the authorities really will be toothless, because how can someone report a pedicab that has breached the rules without some sort of identification of it? There is no point telling the police, "It's the one with the blue lights and the red lights", because that does not limit the field. I hope my noble friend does not mind me speaking to his amendment.

I have reservations about e-scooters. I admire my noble friend enormously for being brave enough to take one. I run regularly on much the same routes—20 miles a week, since you ask—and e-scooters are a menace for runners, frankly, particularly because they do not obey the rules of the Royal Parks.

Lord Liddle (Lab): My Lords, a great diversity of points has been raised on this group of amendments, most of which strike us as sensible. It is therefore up to the Government to see whether they could strengthen the references in the Bill to the issues on which TfL should consider regulating. The consensus that there should be a specific reference to noise is very strong, as this is a major cause of nuisance.

I fully support the reference to the need for pedicab ranks and stands, but it goes back to Amendment 14 in my name, from the previous group, which talks of charging for the costs of putting these things in place. They will require some changes in infrastructure that will cost money, which the local authority and TfL will be reluctant to spend.

Lord Berkeley (Lab): Before my noble friend leaves that point, can I ask him whether he would like to see the same rule applied to taxis? Should the taxi community have to pay for its ranks?

Lord Liddle (Lab): In principle, I personally do not see why not.

Lord Tunnicliffe (Lab): It is not necessarily our policy though.

Lord Liddle (Lab): Frankly, I have no idea what our policy is on this subject, but I am personally in favour of charges being related to costs.

The noble Lord, Lord Strathcarron, made some valid points about cycle lanes. You clearly cannot have one rule in place for the whole cycle lane network; you would need some restrictions.

On the more controversial points raised, I am very sympathetic to the need to ensure that batteries are of the necessary technical standard. If there are to be battery-powered pedicabs, they would have to meet the best standards.

The only point of disagreement is on the checks on immigration status, criminal records and all that. There has been a sufficient number of cases of abuse in the pedicabs sector, to my mind, to justify the ability to check these things more thoroughly than in other areas.

6.15 pm

Lord Davies of Gower (Con): My Lords, this fourth group covers operational matters. I will now address each amendment in the group.

Amendment 11, in the name of the noble Baroness, Lady Randerson, seeks to probe why existing legislation is not sufficient to cover immigration status and right-to-work checks. The Government's expectation is that, as in the taxi and private hire vehicle industries, the majority of pedicab drivers will be self-employed. Self-employed individuals are not subject to right-to-work checks undertaken by employers under the Immigration, Asylum and Nationality Act 2006. The Immigration Act 2016 made immigration checks mandatory and embedded safeguards into existing licensing regimes across the UK. In London, this was achieved through amendments to the Metropolitan Public Carriage Act 1869 and the Private Hire Vehicles (London) Act 1998. Clause 2(2) intends to ensure parity between a pedicab licensing regime in London and taxis and private hire vehicles. Its exclusion would create a gap, leading to the sector potentially being exploited by those who intend to work illegally.

Pedicab ranks, which were raised by the noble Baroness, Lady Randerson, will be a matter for Transport for London to identify and establish. With regards to the Hammersmith Bridge issue that she mentioned, I am happy to meet but I suspect that, again, Transport for London will have to decide on that.

Amendments 17 and 18 have been tabled in the names of a number of noble Lords and relate to noise nuisance caused by pedicabs. I will therefore respond to them together, if I may. The Government are very aware of the concerns held by noble Lords and share them. The Government assure the Committee that they are taking this issue seriously and have sought assurance from Transport for London over its policy intentions. Transport for London has confirmed that pedicab regulations would cover the conduct of drivers, including playing loud music and causing disturbances.

Given Transport for London's clear intention and the scope of Clause 2(6), which confers broad powers on to Transport for London, this would seem sufficient to address noble Lords' concerns. However, the Government welcome the views shared in the Committee, and noble Lords will be pleased to hear that the question of whether this matter requires specific provision in the Bill remains open.

Baroness Stowell of Beeston (Con): My Lords, I am hugely grateful to my noble friend for what he just said and welcome it very much. In considering whether this should be added to the Bill would he share with us whether, given my concern that noise is not only out of bounds after certain times but an issue 24 hours a day, that is something the Government can also take account of?

Lord Davies of Gower (Con): My noble friend raises a very valid point and something that we will take into account.

Amendment 19, in the names of my noble friends Lord Blencathra and Lord Strathcarron, Amendment 20, in the name of the noble Lord, Lord Liddle, and Amendment 21, in the names of my noble friend

[Lord Davies of Gower]

Lord Blencathra and the noble Lords, Lord Berkeley, Lord Hunt of Kings Heath and Lord Foster of Bath, all relate to Clause 2(6) of the Bill, so I will address them together.

The matters listed under Clause 2(6) are intended to provide a discretion for Transport for London to determine what is most appropriate in bringing forward pedicab regulations following a consultation. This is not an exhaustive list; it rather provides flexibility for Transport for London. However, the Bill is clear that pedicab regulations could cover matters such as the quality and roadworthiness of pedicabs; safety and insurance requirements; the equipment that must be carried on pedicabs; their appearance or markings; and testing requirements. The Government consider that this gives Transport for London sufficient scope to address issues, such as those covered by these amendments in pedicab regulations.

Amendment 22, in the names of my noble friend Lord Blencathra and the noble Lords, Lord Berkeley, Lord Hunt of Kings Heath and Lord Foster of Bath, seeks to require the batteries in power-assisted pedicabs bear the marking UK conformity assessed or the European equivalent—CE or conformité Européenne. These markings denote conformity with statutory requirements. I note that the requirement for power-assisted pedicabs to meet suitable product regulation is covered by existing law and therefore this amendment is not necessary; I will explain why this is the case.

As is the case with all e-cycles and e-scooters, power-assisted pedicabs need to comply with several product safety regulations. These include the Supply of Machinery (Safety) Regulations 2008. These regulations set out essential health and safety requirements for how the product must be designed and constructed.

Power-assisted pedicabs, as a whole product, are regulated under these regulations. These require manufacturers to ensure that pedicabs meet essential health and safety requirements and that the relevant conformity assessment procedure is undertaken. The manufacturer would then affix the UKCA or the CE marking before the product could be sold in the UK. To be sold lawfully on the UK market, power-assisted pedicabs must already have this marking. If they do not, they are in breach of the regulations.

Noble Lords may point to examples of pedicab drivers or operators adapting their power-assisted pedicabs after they have been purchased. Product regulations would not be relevant here; however, I again point to Clause 2(6) of the Bill, which provides scope for TfL to set out the expected standards for pedicabs through the regulations.

Pedicab batteries are not subject to a regime that requires the UKCA marking to be affixed to them, but the Office for Product Safety and Standards is in the process of reviewing the position with regard to these batteries. Once that review has taken place, my friend the Minister in the other place, Minister Hollinrake, will assess what appropriate and targeted action should be taken.

While pedicab batteries are not subject to an independent regime that requires the UKCA marking to be affixed to them, they must comply with the Batteries and Accumulators (Placing on the Market) Regulations 2008. This restricts the substances used in batteries and accumulators and sets out requirements for their environmentally friendly end of life.

Amendment 23, in the name of the noble Baroness, Lady Randerson, seeks to allow Transport for London to place a cap on the total number of pedicabs operating in London. As the Committee is aware, the Bill will regulate the industry for the first time. The introduction of licensing is likely to see a short-term reduction in the number of pedicabs, as drivers exit the industry rather than apply for a licence. Over time, it is likely the industry will find a natural level in response to passenger demand.

The Government's intention is to support the emergence of a safer, fairer and sustainable pedicab industry. This amendment could undermine the role of competition in that process. Competition benefits consumers by incentivising operators to give value for money to innovate and improve service standards. The existing powers in the Bill, which enable Transport for London to place limitations on pedicab operations under Clause 2(7)—including restricting the number of pedicabs operating in specified places or at specified times—are therefore considered sufficient to manage London's pedicabs.

Amendment 24 in the name of the noble Lord, Lord Liddle, seeks to prohibit pedicabs being driven in cycle lanes. As I have set out, Transport for London will be able to place limitations on where and when pedicabs can operate, under Clause 2(7) of the Bill. Transport for London has indicated that it will consider prohibiting pedicabs operating on major roads and tunnels, as it does already for cycles, in the interests of public safety. This will be an aspect of Transport for London's consultation, prior to making pedicab regulations.

Amendment 25 in the name of the noble Lord, Lord Berkeley, proposes to empower the relevant traffic authorities—in this case, Transport for London and London boroughs—to designate pedicab ranks. Amendment 26 in the name of the noble Baroness, Lady Randerson, similarly relates to pedicab ranks, specifically seeking to make provision for Transport for London to designate them.

Transport for London has confirmed that it will give proper consideration to the question of dedicated road space for pedicabs, taking into account the needs of pedicab drivers, passengers and other road users. This approach draws on Transport for London's significant experience in this area through managing taxi ranks. As I mentioned, proposals brought forward by Transport for London will be subject to a consultation and will likely require collaboration across relevant parties, including London boroughs and industry groups. Amendment 51 in the name of the noble Lord, Lord Berkeley, is consequential to Amendment 25.

Excessive fares can spoil a visitor's trip to London, leaving a sour taste and affecting London's reputation as a global hub for tourism. That is why Clause 2(5) of the Bill has been included. It confers powers on Transport for London to determine what fares pedicabs charge, and when and how passengers are informed of fares. Transport for London has been clear that it sees

pedicab regulations as a chance to address disproportionate fares, as well as other negative impacts associated with pedicabs.

Regarding fines, Clause 3 sets out the suite of enforcement tools available to Transport for London in bringing forward pedicab regulations. These have been drafted to provide flexibility in the design of an effective regulatory regime. There is also the ultimate sanction, under Clause 2(1)(b) of the Bill, of revoking a licence for rogue pedicab operators or drivers. The Government consider the scope of these enforcement powers sufficient to tackle excessive fare charging.

Baroness Randerson (LD): I thank the Minister for his detailed response. We have had plenty of detail, which we can think about between now and Report.

I want briefly to pick out a couple of points that have been made. I re-emphasise the salutary point made by my noble friend Lord Foster about comparing the level of regulation on fireworks with the treatment of lithium batteries. It is part of a pattern that we see in so many fields: you get a build-up of public concern and statistics of incidents that lead to legislation, and the social change to go along with it. I hope that the Minister will take that message back to his colleagues.

The noble Lord, Lord Strathcarron, raised an important and complex issue around cycle lanes. It emphasises why these decisions need to be made at a local level where people understand exactly the issues, such as where one cycle lane is ridiculous and another is perfectly acceptable.

I thank the noble Lord, Lord Liddle, for his comments, which underline the way in which this sector has been neglected over decades.

It comes to my mind that there is, of course, the London Pedicab Operators Association. Has the Minister met it and taken any of its views into account? If he has not, it is referred to in briefings that we have been given as Members of this House; the fact that it exists and that it represents the sector suggests that there is real hope that regulation will improve things and could do so more rapidly than we might think.

I beg leave to withdraw my amendment.

Amendment 11 withdrawn.

6.30 pm

Amendments 12 to 27 not moved.

Amendment 28

Moved by ***Lord Berkeley***

28: Clause 2, page 2, line 34, leave out subsection (10)

Member's explanatory statement

This amendment is intended to probe the intended meaning and impact of subsection 2(10).

Lord Berkeley (Lab): My Lords, I shall be brief. Amendment 28 in my name is a probing amendment because I do not understand something. Clause 2(10) says:

"Pedicab regulations may … confer a discretion on Transport for London"

and

"confer power on Transport for London to authorise others to carry out functions under the regulations on their behalf".

One could be very suspicious about that, or it may just be something that allows TfL to subcontract things. However, I would be pleased if the Minister could explain which it is because "discretion" can cover a wide variety of things.

I will speak briefly to Amendments 38 and 39 in my name, which are to do with consistency between the powers to immobilise and seize pedicabs and those available for motor vehicles. Clause 3(6) allows for pedicab regulations to authorise the

"immobilisation, seizure, retention and disposal of pedicabs that contravene, or are used in contravention of, the regulations".

Of course, I do not object to any of that, but I hope that it will be taken by the Government and TfL as the sanctions being available only in serious cases. In theory, a pedicab could potentially be confiscated for minor offences, including those that might be committed unwittingly—you can see TfL doing that to a taxi driver who has contravened the regulations unwittingly. I hope the Minister will give me some comfort on that.

I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, this is the first chance I have had to speak in this debate as I was involved in other business in another part of the House. I am delighted to be here at all since I was meant to travel yesterday; I think I must have reached a record in that three trains I was booked on were cancelled. I am just delighted to be here to discuss pedicabs—if I had taken a pedicab from the north of England, it might have been quicker to get here, but then I would not have been insured.

I welcome this Bill but, as the debates on earlier groups of amendments have shown, it does not go far enough in its current form. I will speak to Amendments 32, 35 and 36 in my name. I believe that these amendments are necessary because, on a reading of the Bill—in particular Clause 3(2)(a)—the penalties are simply not strong enough to reflect the gravity of a casualty that could occur through the use of a pedicab.

I may be raising points made earlier; I apologise that I could not be here for debates on earlier groups. When I did arrive, I listened very carefully to my noble friend, whom I congratulate on his new position, which is a very welcome role for him. He stated that existing legislation applies to e-scooters. I put it to him that the existing legislation is not being applied to e-scooters, e-bikes and regular bikes. I pray in aid the tragic case of Kim Briggs, the wife of Matt Briggs, who was simply crossing the road when an illegal bike with no brakes fitted at all knocked her down and killed her. At the moment, there are insufficient penalties. The offender was successfully prosecuted for her death, which was a direct result of the injuries that she sustained, but he could not be put away for anything other than the current minuscule offences in the Road Traffic Act.

Avid readers of the Order Paper will have noted that in the last three parliamentary Sessions I have tried to bring forward a Private Member's Bill to plug that gap. The closest I came, sadly, was in the year when we were dealing with so many regulations relating to Covid that, as noble Lords will recall, no Private

[Baroness McIntosh of Pickering]
Members' Bills were covered at all. Is my noble friend really satisfied that the existing regulations that apply to e-scooters, e-bikes and bikes are being applied? Why is it that on a daily basis in London, which is the remit of this Bill, and other parts of the country, people are being knocked down, sustaining serious injuries and in some cases being killed on pavements—which is strictly illegal for e-bikes, e-scooters and regular bikes?

The regulations are not being respected. If we stick with these pitiful, woeful enforcement measures in Clause 2, can my noble friend tell the Committee—I pay tribute to his years of service in the police force—who will monitor this? Will TfL have agents on the street to ensure that, for pedicabs, which are covered by this Bill, the measures that will be covered by these woeful, small penalties will be enforced? Who will it be? If it is not TfL—I hazard a guess that it will not be; it will be the British Transport Police or the Met Police—and they will not apply the regulations that already apply to e-bikes, e-scooters and regular bikes, who on earth imagines that they will apply them to pedicabs? Who is telling them to do this? I know this was mentioned earlier and I regret that I was not here to participate in that debate, but why are the Government not taking charge for this Bill, as I understand they did for other aspects of road traffic Acts in the past?

Clearly, the regulations that currently apply to e-bikes, e-scooters and bikes are not working. My noble friend said that there was no legislative time to bring in the next raft of regulations that will apply to them. Here we have it; we have a Bill before us today that is going through the House very quickly, with one day in Committee. Why, pray God, can we not attach it to this Bill, to prevent any further accidents and casualties on our pavements and other parts of the road?

My noble friend pointed out that you have to be licensed and insured to drive an e-scooter on private land, as is currently the case. I understand the level of casualties to be high—unfortunately I was not organised enough to bring the reply from my noble friend Lord Sharpe in this regard—but the Government do not keep the figures, so we simply do not know how many fines or penalties have been issued for that category.

I welcome the fact that pedicabs will be licensed; that will make a big difference. Can my noble friend tell me what the case is for Deliveroo drivers? They seem to be the bane of my life in London, particularly those who drive regular scooters for months, if not years, with L-plates on. Is there not a category of time beyond which you have to pass a test? Who is monitoring whether they are not actually learner drivers but simply have no intention of passing a test? Who is checking whether they are legally able to work here and to drive said scooters? Has anybody asked whether they have even read the Highway Code and are they tested on it?

With those few remarks, I praise the Government for bringing forward the Bill, but I hope that my amendments show what is required to make sure the Road Traffic Act brings in these changes, which I tried but failed to do through my Private Member's Bill. I hope my noble friend will look kindly on those suggestions.

Viscount Goschen (Con): My Lords, clearly the enforcement of the provisions of the Bill and the consequent regulations, however they are drafted by TfL, will be critical. My noble friend has made some pertinent points about the current enforcement of other forms of bicycles, e-bikes, scooters and so forth. My question to him is: what message can he send and what confidence can he give the Committee that the enforcement of whatever regulations eventually emerge will be taken seriously?

I quite agree with my noble friend that there seems to have been an abandonment, certainly in central London, of enforcement for contraventions of the Highway Code and traffic regulations by bicycles, e-scooters and the like. I guarantee that, if I were to walk to central London from your Lordships' House, I would see vehicles without lights cycling the wrong way up streets. In fact, this morning as I was walking here, a delivery rider parked their e-scooter on the pavement of Jermyn Street at 90 degrees to the direction of flow of pedestrians, locked it like that and went in to deliver their goods.

That is wide of what we are talking about on the Bill today, but there is no point making regulations if they are not going to be enforced. Any law that is not enforced brings the Government, governance and law into disrepute. Perhaps my noble friend can say a word or two about how he sees this likely to be enforced in practice and say something a bit more broadly about the enforcement of motoring other than by camera, which is the default setting. We have seen the withdrawal of the police from enforcing what they may see as trivial road traffic regulations in central London in favour of things that are easier to do, such as putting up cameras, yellow box junctions, generating fines and so forth.

I appreciate that this might go slightly wide of the question under specific consideration today, but the noble Lord, Lord Berkeley, and his amendments on enforcement raised very important considerations on the seizure of these vehicles. Nobody will take a blind bit of notice unless enforcement is taken seriously.

6.45 pm

Lord Liddle (Lab): My Lords, I will follow up on the points about enforcement and penalties. I hear very much what the noble Baroness, Lady McIntosh, and the noble Viscount, Lord Goschen, said. My remarks will focus on something specific to pedicabs and their regulation: the level of fines that could be imposed on them. My Amendments 33 and 34 are relevant to this.

It seems that there is well-attested abuse, by a minority of pedicab drivers, of vulnerable customers, who are overcharged—vast amounts of money in some cases. Yet, as I understand it—I stand to be corrected if this is not the case—the maximum fine is at level 4, which is £2,500, rather than £5,000. I put it to the Government that unscrupulous people will regard a fine of £2,500 as a business expense, thinking they

can pay the fine and continue to behave as badly as they do. Therefore, I believe there should be provision for a higher level of fines to deal with unscrupulous pedicab drivers.

Lord Davies of Gower (Con): My Lords, we come to the final group of amendments, focusing on enforcement. Amendment 28, in the name of the noble Lord, Lord Berkeley, seeks to probe the intention and meaning of Clause 2(10). The Bill intends to give Transport for London a level of flexibility in designing pedicab regulations that are workable and meet its needs. This will be central to shaping a robust and effective regime. In achieving this aim, Transport for London has been clear that, as with taxi and private hire vehicle enforcement, it must be able to authorise others to carry out functions under the regulations on its behalf, such as enforcement activities. Clause 2(10) provides for this.

Amendments 32, 35 and 36, tabled by my noble friend Lady McIntosh, seek to add to the Bill provision covering death or serious injury caused by the careless, inconsiderate or dangerous use of pedicabs, with accompanying penalties. Of course, any death on our roads is a tragedy. Although we have some of the safest roads in the world, the Government are committed to making our roads even safer. The Government agree that dangerous cycling puts lives at risk. This is why there are already strict laws in place for cyclists, and the police have the power to prosecute if they are broken. They include laws to prosecute cyclists who cause bodily harm under Section 35 of the Offences against the Person Act 1861, which carries a maximum punishment of two years' imprisonment. They also include cycling offences under the Road Traffic Act 1991 for careless cycling, with a maximum fine of £1,000, and dangerous cycling, with a maximum fine of £2,500. Furthermore, I am sure my noble friend will welcome the Department for Transport's response to the consultation on death or serious injury by dangerous cycling, which will be published in due course.

However, we do not consider these amendments necessary. Pedicabs will be treated in the same way as pedal cycles, and their drivers will be treated as cyclists for the purpose of dangerous cycling offences. The exception would be if a pedicab is deemed a motor vehicle, in which case it would be subject to motoring offences.

My noble friend Lady McIntosh asked about enforcement; the noble Viscount, Lord Goschen, touched on this as well. Transport for London will have its own enforcement officers who work together with the police on this. I hear what the noble Viscount had to say about enforcement—or perhaps a lack of it. It is an operational matter for police and what he said is disappointing, but I certainly hear it loud and clear. As I said, it is for the police to respond to.

On the question that my noble friend Lady McIntosh raised, the figures, fines and penalties are an issue that lie with the Home Office. As for the Deliveroo L plate drivers and whether they are legally here, again, that is a policing matter. I am not too sure whether they can remain with L plates forever; we will have to write back to her on that. Certainly, that is a point well made.

Amendment 33 in the name of the noble Lord, Lord Liddle, seeks to increase the level of fines for offences committed under pedicab regulations from level 4 to level 5. This would mean that there would be no upper limit to the fines issued. The enforcement tools in the Bill are comprehensive, providing Transport for London with the scope to design an enforcement regime that can effectively target the rogue operators which have profited from a lack of regulation for too long. Clause 3(2), which this amendment seeks to change, is part of a suite of tools in the Bill.

Pedicab regulations will be able create offences providing for the giving of fixed-penalty notices or the imposition of penalties. These powers are supplemented by the ability to seize, immobilise, retain and dispose of pedicabs. There is also the ultimate sanction of stopping a pedicab driver or operator conducting business by revoking their license under Clause 2(1)(b). The Government expect Transport for London to take a view on how best to regulate the industry, subject to engagement with stakeholders and a public consultation. As the Committee is aware, pedicab regulations will be subject to approval by the Secretary of State. This should provide assurance to any noble Lords concerned by the scope of these powers.

Amendment 3, in the name of the noble Lord, Lord Berkeley, seeks to provide parity with civil enforcement powers applicable to contraventions committed by drivers and riders of motor vehicles. The power to impose civil penalties through pedicab regulations is explicitly tied to offences under Clause 3(1). These are not motoring offences; they relate to the provision of false or misleading information in connection with licences and the failure to comply with requirements, prohibitions and restrictions imposed by pedicab regulations. We therefore consider this amendment unnecessary.

I will address Amendments 39 and 49 together, which have again been tabled by the noble Lord, Lord Berkeley. These seek to place limitations on the immobilisation and seizure of pedicabs by making equivalent provisions to those relating to motor vehicles under Section 59 of the Police Reform Act 2002. This would amend Clause 3(6), which is intended to provide Transport for London with flexibility in designing pedicab regulations. The ability to immobilise, seize, retain and dispose of pedicabs that are illegal, or used illegally, and to target rogue operators will help establish a more sustainable and reputable pedicab industry in London. Limiting Transport for London's powers in the manner proposed in this amendment could potentially remove the possibility of pedicabs that are not roadworthy, unsafe or are being used consistently in contravention of the regulations, being removed from London's streets. However, the powers under Clause 3(6), are subject to safeguards in the Bill.

Lord Berkeley (Lab): I hear what the Minister says about the impounding of pedicabs and things like that. It may be quite necessary and justified. Are there similar powers available now in respect of TfL and taxis? It should be proportionate, should it not?

Lord Davies of Gower (Con): I hear what the noble Lord says, but I am not sure that it should be proportionate. If he is concerned about the powers,

[Lord Davies of Gower]
I was going on to say that the powers under Clause 3(6) are subject to safeguards in the Bill. They are achieved by Clause 4(3), which provides a right to request that a decision to immobilise, seize, retain, and dispose of a pedicab is reconsidered and a right to appeal the decision at a magistrates' court. I also note that the Bill paves the way for a separate pedicab licensing regime. The intention of this amendment to make equivalent provision to powers to immobilise and seize vehicles under another regime is therefore not likely to be the most appropriate course of action.

Amendment 49 is consequential to Amendment 39, and I have addressed that in my remarks.

I will now move to Amendment 40, the final amendment of this group and the last one that I will address in Committee. It is in the name of my noble friend Lord Blencathra and seeks to expand the list of bodies that could exercise powers contained under Clause 3(6). As I have set out, this subsection contains an important power in the suite of enforcement tools that will be available through pedicab regulations. Transport for London has been clear that it will work with the Metropolitan Police and London boroughs to conduct enforcement. Powers contained in the Bill already allow Transport for London to confer functions on to other authorities, as it deems necessary, to support an effective enforcement regime.

That draws my remarks to a close. I thank noble Lords for taking the time to discuss the Bill today. The diligence that the Committee has shown has allowed for a thorough examination of the Bill and its purpose. I am grateful for this and look forward to continuing to discuss the Bill with noble Lords during its parliamentary passage.

Lord Liddle (Lab): Before the noble Lord sits down, I thank him for his comprehensive response, which we can examine at our leisure. The one part of it that I find unsatisfactory is the point about fines. I must say to him that, unless the Government move on this issue, we will raise this matter on Report.

Lord Davies of Gower (Con): I understand the noble Lord's concern. It is something that we will discuss back in the department, but whether it will change is another matter.

Lord Berkeley (Lab): I am grateful to all noble Lords who have spoken on this fifth group of amendments. We have had some very useful discussions and I shall read *Hansard* with great interest tomorrow. We will see whether we come back on this on Report or have some further meetings. I am sure that the Minister will be open to meetings—he has already said he would be. On that basis, I beg leave to withdraw this amendment.

Amendment 28 withdrawn.

Amendments 29 to 31 not moved.

Clause 2 agreed.

Clause 3: Enforcement

Amendments 32 to 40 not moved.

Clause 3 agreed.

Clause 4: Appeals

Amendment 41 not moved.

Clause 4 agreed.

Clause 5: Exclusion from private hire vehicles legislation

Amendment 42 not moved.

Amendment 43

Moved by ***Lord Davies of Gower***

43: Clause 5, page 4, line 19, at end insert "(and for this purpose "trailer" has the same meaning as in the Pedicabs (London) Act 2024 (see section 7 of that Act))"

Member's explanatory statement

This is consequential on my amendment to clause 7.

Amendment 43 agreed.

Clause 5, as amended, agreed.

Clause 6: Procedure for pedicab regulations

The Deputy Chairman of Committees (Viscount Colville of Culross) (CB): We come to Amendment 44.

Amendment 44

Tabled by ***Lord Davies of Gower***

44: Clause 6, page 4, line 20, at end insert—

"(A1) Transport for London must obtain the approval of the Secretary of State before making pedicab regulations."

Member's explanatory statement

This amendment requires Transport for London to obtain the approval of the Secretary of State before making pedicab regulations.

Lord Liddle (Lab): We wish to oppose this amendment.

Lord Tunnicliffe (Lab): At page 143, paragraph 8.111 of the *Companion* says:

"The proceedings and forms of words for amendments and clauses in Grand Committee are identical to those in a Committee of the whole House save that no votes may take place. Normally only one bill per day may be considered in Grand Committee. Amendments, which may be tabled and spoken to by any member, are published and circulated as for Committee of the whole House".

Paragraph 8.112 says:

"As divisions are not permitted in Grand Committee, decisions to alter the bill may only be made by unanimity. Thus when the Question is put, a single voice against an amendment causes the amendment to be negatived".

I am that single voice.

The Deputy Chairman of Committees (Viscount Colville of Culross) (CB): Can we adjourn the Committee for a moment, please?

7.02 pm

Sitting suspended.

7.10 pm

Amendment 44 not moved.

Amendments 45 and 46 not moved.

Clause 6 agreed.

Amendments 47 and 48 not moved.

Clause 7: Interpretation

Amendment 49 not moved.

Amendment 50

Moved by ***Lord Davies of Gower***

50: Clause 7, page 5, line 2, at end insert—

""trailer" , in relation to a pedal cycle, includes a sidecar or a vehicle pushed by a pedal cycle."

Member's explanatory statement

"Pedicab" is defined by clause 1 to mean a pedal cycle, or a pedal cycle in combination with a trailer, that is constructed or adapted for carrying one or more passengers etc. This amendment provides that "trailer" includes sidecars or vehicles pushed by pedal cycles.

Amendment 50 agreed.

Amendment 51 not moved.

Clause 7, as amended, agreed.

Clause 8: Commencement

Amendment 52 not moved.

Clause 8 agreed.

Clauses 9 and 10 agreed.

Committee adjourned at 7.13 pm.