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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

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House of Lords

Wednesday 2 November 2016

3 pm

Prayers—read by the Lord Bishop of Truro.

Pensions: Women's State Pension Age

Question

3.06 pm

Asked by ***Baroness Bakewell***

To ask Her Majesty's Government what assessment they have made of the concerns of the Women Against State Pension Inequality about changes to the state pension age for women.

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): The Government have no plans to revisit this policy. A substantial concession, worth £1.1 billion, to lessen the impact of increases to women's state pension age is already in place. No women will experience increases of more than 18 months. In fact, for 81% of women, the increase will not exceed 12 months. Introducing further concessions could not be justified given the imperative to focus public resources on helping those most in need.

Baroness Bakewell (Lab): I thank the Minister for that Answer. He clearly does not acknowledge the scale of the injustice and the growing scale of the protest: 2.5 million women have been affected by the botched plans to align the pension ages and it is bringing increasing hardship to women who are now retired and have no income and no pension. These are women who have paid into their pension plan for decades, often since they were in their teens. This summer, the WASPI women, as they are known, held protests in 131 towns. On 11 October, they presented 200 constituency petitions to the Commons, backed by 80 MPs. This campaign is not going away. When will the Government address its cause?

Lord Freud: I can only repeat what the Pensions Minister, Richard Harrington, said, absolutely and explicitly, that,

"no further moves will be made to assist those women, all of whom will benefit in time from the significant increase in the new state pension".—[*Official Report*, Commons, 17/10/16; col. 566.]

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I hear what the Minister says, but the Government must assess the impact of the failure to inform people on their planning for the future. If women did not know, and now face hardship as a result, they should be compensated. Will the Government look to set up a hardship fund?

Lord Freud: Let me go through the communications: 14 million personalised pension estimates have been sent out since 2000; 16 million unprompted forecasts were sent out with information on the raising of the pension age; 1 million letters were sent out between 2009 and 2011; 5 million letters were sent out between 2012 and 2013; and, in the 2012 survey it was discovered that only 6% of women retiring within 10 years thought that the pension age was still 60.

Baroness Pidding (Con): My Lords, can my noble friend confirm that the new state pension provides a boost to women's pension income?

Lord Freud: Many noble Lords took part in debates on this issue in the House. One issue that we discussed was the Green Paper about the new state pension and how that would affect the women involved. We made the concession. But after that we introduced the new state pension, which has been carefully focused on the poorest women. By 2030, 3 million women will be on the full rate and gaining £550 extra each year.

Lord Watts (Lab): Can the Minister give any examples of where thousands of pounds have been taken from medium-income families in one fell swoop? Can he give an example of any other Government who have ever done that?

Lord Freud: This measure was introduced in 1995 to equalise state pensions. There were adjustments in 2007 and 2011 and then in the Pensions Act 2014. The move to equalisation was a consensus policy by both the Conservative and Labour Governments during that time.

Baroness Jones of Moulsecoomb (GP): My Lords, I regret the Government's intransigence on this. Like many parliamentarians I have had a lot of letters from women who have been excluded saying things such as:

"I am 63 and have worked for 42 years full time".

Another says:

"The Government want us to work until we are 66, there are very few jobs for older women".

Does the Minister not accept that this is a case of unfairness and discrimination against a small group of women who are actually quite numerous?

Lord Freud: One of the odd things about this is that we are providing equality between men and women. Men have had to retire at 65 for many decades and we are bringing women's retirement age to the same level. Women actually have longer in retirement, even after 65, because they still live longer. One of the reasons is that we are being blessed by greater longevity. In the period since 1995, men are living longer by four years and women by three years.

Lord McKenzie of Luton (Lab): My Lords, we know that the Government have a poor record of communicating changes to pension arrangements, despite what the Minister has said, as evidenced of course by the confusion over the introduction of the single state pension. The issue here as touched on by my noble friend is not that there was no communication about state pension age changes, but that there was not

[Lord McKenzie of Luton]
effective communication. That is why there is a proper sense of injustice articulated by the WASPI campaign, and why it argues for the promised transitional provisions now to be offered up by the Government. I ask the Minister again, despite what he has said: will the Government reconsider this matter?

Lord Freud: I can only repeat that we have made it clear—and the Pensions Minister went as firmly on the record as he could—that there will be no further moves in this area.

The Earl of Listowel (CB): My Lords, can the Minister help me? Would it help if more fathers were encouraged to work part time so that they spent more time with their children, building stronger families and stronger relationships with their children? At least one result would be that fewer women would be disadvantaged, spending less time out of the work market because they would be sharing the care of their children with their partners.

Lord Freud: One of the transformations in recent times is that women and, indeed, men are paid for caring responsibilities so that their pensions are not affected by that.

Brexit: Article 50

Question

3.14 pm

Asked by ***Lord Tyler***

To ask Her Majesty's Government how their plan to trigger Article 50 relates to the Conservative Party's 2010 manifesto pledge to make "the use of the Royal Prerogative subject to greater democratic control so that Parliament is properly involved in all big national decisions."

Baroness Goldie (Con): My Lords, the Government's position is clear. Triggering Article 50 is a prerogative power and one that can be exercised by the Government. Parliament had its say in legislating for the EU referendum, which it did in both Houses and with cross-party support. Parliament was clear that it was for the people to decide whether to remain in the EU or to leave it.

Lord Tyler (LD): My Lords, I personally regret that this issue has got into the hands of lawyers because I think that it is a matter of political integrity and constitutional principle. Has the Prime Minister now gone back on her decision to endorse this particular statement in the manifesto; or does she now suggest that this is no longer a big national decision; or does she no longer believe that we should take back control in the Westminster Parliament, because we keep being told that Parliament is sovereign; or is it all three of those reasons?

Baroness Goldie: I need hardly tell the noble Lord that the manifesto to which he refers was succeeded by something called the coalition agreement to which his party was privy. In terms of that agreement and the ensuing coalition Government, the only provision that was made in relation to the royal prerogative was to provide for a fixed-term Parliament. I am sure that if the noble Lord was as exercised as he seems to be about this issue, his party would have had other things to say about it during the period of the coalition, but it was mute.

Baroness Hayter of Kentish Town (Lab): My Lords, a personal prime ministerial letter to Brussels triggering Article 50 is a one-way missive with no turning back. Is the noble and Scottish Baroness content that this should be done with no involvement of the Scottish Parliament, the Welsh Assembly, the Northern Ireland Assembly or the London Assembly and with no vote in the Commons? If, as we have heard, we are given the outcome of the court hearing tomorrow, will she agree to come back and report to the House should the judgment be that there should be a vote in the Commons?

Baroness Goldie: Let me try to deal with one or two of the points raised by the noble Baroness. It is the case that the parliament with sovereign authority in relation to the matter of negotiating our withdrawal from the EU is the Westminster Parliament, and it is also the case that the Prime Minister and her ministerial colleagues have been engaging closely with the devolved authorities, which is an entirely proper and welcome thing to do. It does not mean that the devolved Administrations either have a say in triggering Article 50, which they do not, or that they have a veto on the process because, as I say, the responsibility in terms of competence rests with the Westminster Parliament. On her final point, I can clarify for the House that my understanding is that the court judgment will be put up on the court listings tomorrow at 10 am. Until that point, there is little in the way of a commitment that I can give to the House about my future or intended movements.

Lord Tebbit (Con): My Lords, could my noble friend gently explain to the noble Lord, Lord Tyler, that the object of Brexit is for Parliament to regain control of our affairs? The policy of the remainers, of which he is one, is that Parliament should not have control of our affairs but rather that it should be vested in Brussels.

Baroness Goldie: Not for the first time my noble friend has made a very eloquent and pithy point upon which I cannot improve.

Lord Elystan-Morgan (CB): My Lords, can the noble Baroness cite to the House an instance of the exercise of the royal prerogative over the past 50 years in any grave and weighty context? Is it the case that the Government do not regard this issue as being grave and weighty, or is it a possibility that there is a flicker of doubt as to whether they might or might not be able to carry the matter in both Houses of Parliament?

Baroness Goldie: Let me try to cut to the chase for the benefit of the noble Lord. What happened as a result of the EU referendum was that the people of

the United Kingdom delivered an instruction, and that instruction was to leave the EU. Quite simply, the first part of the process, the necessary key that needs to be put into the ignition to start that journey, is triggering Article 50. That is what the Government propose to do.

Lord Pearson of Rannoch (UKIP): My Lords—

Lord Grocott (Lab): My Lords—

Baroness Ludford (LD): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, the noble Lord, Lord Pearson, has been attempting to get in. He will have a short question, then we will try to get a couple more questions in.

Lord Pearson of Rannoch: My Lords, I am most grateful. Is not the founding idea behind the European Union precisely that it should have to deal not with unreliable national democracies and parliaments, but with only their Governments? Why should this change now for Brexit, upon which our sovereign people have spoken?

Baroness Goldie: My Lords, I can only reiterate what I have already said. The most important and overriding feature about all this is the voice of the electorate. The electorate has spoken and the Government have an obligation to attend to the will of the electorate.

Baroness Ludford: My Lords—

Lord Garel-Jones (Con): My Lords—

Lord Grocott: My Lords—

Baroness Evans of Bowes Park: My Lords, please, this is not helping. We know that this is an important issue but we get Questions on it nearly every day. It does not look good for the House. It is the turn of the Liberal Democrats.

Baroness Ludford: Will the Minister please clarify whether the Conservatives still believe in parliamentary sovereignty, or in the radical left notion of popular sovereignty? The terms that the noble Baroness has just used about the instruction from the vote in the referendum, and statement from the noble Lord, Lord Ahmad, that both Houses should respect the will of the people, speak of popular, not parliamentary, sovereignty. Do the Conservatives still believe in parliamentary sovereignty?

Baroness Goldie: My party believes implicitly in parliamentary sovereignty and my party believes in holding Parliament with due respect. I do not see any conflict in holding that position and in the actions already taken by the United Kingdom Government. I might observe to the noble Baroness that the intervening events from the manifesto, to which her colleague the noble Lord, Lord Tyler, referred, are that the Conservatives published another manifesto to prepare for the 2015 general election. There was no reference in that to the royal prerogative and, interestingly, the Conservatives won a majority to form a Government—not a privilege afforded to the noble Baroness's party.

Lord Grocott: My Lords, the noble Lord, Lord Tyler, referred to the importance of what he described as "political integrity". Does the noble Baroness agree that it is clearly a matter of political integrity—when this House and the Commons, both without dissent, voted to have a referendum to determine whether we should remain in the European Union or leave it—that Parliament should abide by and act on that decision?

Baroness Goldie: I thank the noble Lord opposite for, frankly, a very sensible and welcome interjection that gets to the heart of the issue. There is an electoral mandate here. There is an obligation on government to implement that mandate.

Zimbabwe

Question

3.22 pm

Tabled by ***Lord Oates***

To ask Her Majesty's Government what discussions they have had with the Government of South Africa about the economic and political situation in Zimbabwe.

Lord Purvis of Tweed (LD): My Lords, on behalf of my noble friend Lord Oates, and with his permission, I beg leave to ask the Question standing in his name on the Order Paper.

Baroness Goldie (Con): My Lords, the UK and South Africa have a shared interest in a democratic, prosperous and stable future for Zimbabwe. We have a regular dialogue on foreign policy priorities, including the economic and political situation in Zimbabwe.

Lord Purvis of Tweed: In light of the violence and intimidation in the recent Norton by-election in Zimbabwe, is the Minister aware of the concern that the UK did not allow temporary visas to the human rights activists Pastor Evan Mawarire and Patson Dzamara, who were due to inform this Parliament about the egregious human rights and constitutional abuses by the ZANU-PF Administration? As President Zuma is meeting President Mugabe at this moment in Harare, is it not incumbent on the UK, and our Parliament, to offer a much more open invitation to those who wish to inform us of the human rights abuses in Zimbabwe?

Baroness Goldie: If I may take the latter point first, the United Kingdom Government have a very impressive track record of engaging not just with Zimbabwe but with South Africa on the situation in Zimbabwe. There is a record of frequent ministerial exchanges. On visa applications specifically, the noble Lord will understand

[Baroness Goldie]
that I am unable to comment on individual applications. These matters are considered by UK Visas and Immigration, which is required to apply a consistent approach. All visa applications are considered on their merits against immigration rules for visitors.

Lord Anderson of Swansea (Lab): Does the Minister agree that the policies of that aged, sick and corrupt ruler in Zimbabwe have impoverished what was once the bread basket of the region? Is it not clear that, unlike President Mbeki, President Zuma has so many of his own problems at home that he is reluctant to intervene, in spite of the fact that region is being tarnished by the policies of President Mugabe?

Baroness Goldie: South Africa and the United Kingdom have enjoyed regular exchanges and have co-operated on a range of issues. That includes within the South African development community as well as outside, such as with Burundi and Sudan. Increasingly, we have exchanged assessments of Zimbabwe. It is important that the United Kingdom endeavours to maintain diplomatic dialogue, not just with the other African countries but with Zimbabwe itself. As the noble Lord will no doubt be aware, the United Kingdom Government have been instrumental in making important resource available to Zimbabwe by making payments not to the Zimbabwean Government but through the medium of non-governmental organisations and our implementing partners.

Lord St John of Bletso (CB): My Lords, does the Minister agree that the recent disastrous decision to print bond notes in Zimbabwe will re-stoke fears of hyperinflation in the country and lead to another escalation of migration into South Africa? On a day when President Mugabe is meeting Jacob Zuma and at a time when South Africa is not being paid for the electricity supplied by it, what measures can be taken to avert the disastrous impact of an inevitable meltdown in Zimbabwe?

Baroness Goldie: The noble Lord is correct to refer to a grave economic situation in Zimbabwe. That is part of the United Kingdom's general arena of concern, which is regularly relayed in diplomatic engagement. When the decision was made by Zimbabwe to issue the dollar bond notes, it raised memories of the hyperinflation of 2008 which caused a loss of confidence in the banking sector. However, ultimately it is not for the United Kingdom to interfere in either the microeconomic policy of Zimbabwe or its fiscal and financial policy. All the United Kingdom can do is urge Zimbabwe to engage in a much-needed and overdue programme of political, economic, social and governance reform.

Lord Chidgey (LD): My Lords, the Minister will be aware that Zimbabwe is the world's sixth-largest producer of diamonds by volume, yet three-quarters of its population are living in poverty. Apparently some $15 billion-worth of government-owned diamond processing has gone off-budget. In response, the US Government have introduced sanctions and frozen the assets of companies involved for, as they put it, undermining democracy and facilitating corruption. What measures have the United Kingdom Government taken to support these actions, and what has been the outcome?

Baroness Goldie: The noble Lord will be aware that there is a sanctions embargo against Zimbabwe, and active sanctions against President Mugabe, his wife, Grace, and the company Zimbabwe Defence Industries. The UK is party to that EU embargo. As I said in my earlier response to the noble Lord on the Cross Benches, the United Kingdom Government cannot interfere with the internal fiscal or economic policy of Zimbabwe; all we can do is urge and make the case for overdue reform.

Lord Collins of Highbury (Lab): My Lords, the last time we addressed this subject, the noble Baroness described the human rights situation in Zimbabwe as "stable but fragile". Does she not think that the current situation, with the prospect of hyperinflation, will affect that analysis? Does she have a view on what we can do to strengthen sanctions to protect the human rights and dignity of people in Zimbabwe?

Baroness Goldie: There is concern, and the noble Lord, Lord Collins, is right to articulate it. The United Kingdom Government can only offer to support the entitlement of the citizens of Zimbabwe to have their human rights respected, as we do regularly and with insistence. I said earlier that this Government continue to invest in civil society programmes to improve transparency, advocacy and human rights. The UK regularly calls, both bilaterally and in partnership with others, for an end to abuses and the restoration of internationally accepted standards.

Russia: Baltic States

Question

3.29 pm

Asked by ***Lord Robathan***

To ask Her Majesty's Government what assessment they have made of Russia's current strategic objectives in the Baltic states.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, Russia's activity around the territory of our allies, including the Baltic states, is designed to test the responses of NATO members. As set out in the 2015 strategic defence and security review, Russia's behaviour will remain hard to predict. Though highly unlikely, there is the possibility that it may feel tempted to act aggressively against NATO allies. Our response, with NATO and EU partners, includes promoting access to independent Russian language media, enhanced forward presence and air policing.

Lord Robathan (Con): I commend Her Majesty's Government's robust response through NATO, although we should all be rather concerned about seeming

paralysis in the United States because of the presidential election. Those of us who are old enough to remember the Cold War will view the actions of Russia with very real concern, be it the 2008 invasion of Georgia, the Crimean annexation, the intervention in Ukraine, leading to the downing of an aircraft by Russian missiles, the bombing of Syria and Aleppo and, of course, not one mile from here on the streets of London, the murder of Alexander Litvinenko. Given the increasingly aggressive posturing of Russia in the Baltic, does the Minister think we should perhaps revisit last year's SDSR? Perhaps our response, to which he referred, should be to look to increase defence spending, not just in the United Kingdom but particularly across the rest of NATO.

Earl Howe: My Lords, my noble friend has made some very important points and he is right. The UK is leading the way in defence expenditure. We have committed to the NATO 2% target and, during this Parliament, a 0.5% real-terms increase in the defence budget. However, he is right that spending across the alliance is still too low. Having said that, the alliance is making good progress. There are now five allies spending 2% of GDP on defence, an increase from three before the pledge. Twenty allies have increased defence spending in real terms and eight have put plans in place to work towards reaching the 2% guideline for defence spending, which demonstrates a clear political will. The issue now is to translate the political will into actions.

Lord West of Spithead (Lab): My Lords, Russia is actually running a wartime economy. It has the GDP of Italy. Putin is replacing all his strategic triad of nuclear weapons; he is spending an immense amount on arms. He is a revisionist; he believes in spheres of influence. He has espoused the unbelievable policy that he calls "de-escalation"—in other words, if fighting starts you use a tactical nuclear weapon to de-escalate—which I find quite extraordinary. Does the Minister not believe that in this very dangerous period, we must open every channel we can of dialogue with Russia? We must try to have means of access to Russia in order to talk about these issues and have some dialogue about reducing tension and the escalation that is happening right now.

Earl Howe: The noble Lord makes some very telling points. There is a balance here. He is right that it is important that we continue to engage with Russia, to avoid misunderstandings, to make clear where we disagree, to push for change where we disagree, but to co-operate where it is the UK's national interest. We are committed to building stronger links—in particular, between the British and the Russian people. People-to-people exchanges will therefore remain important. Cultural and scientific exchanges are in our long-term interests, so we have to keep that balance as it should be.

Lord Wigley (PC): My Lords, might Russia's strategy be to use economic and ethnic issues to make the Baltic states appear unstable, so that they seem less attractive to the internal Russian Federation population which otherwise might see the Baltic states as a better model than that currently offered by Russia? Therefore, is it not in our interest to do everything we can to help the Baltic states in any economic challenges they have?

Earl Howe: The noble Lord is absolutely right. It is why we are standing by the Baltic states in a number of areas, not least in the sphere of defence. The noble Lord will know that the UK is leading on the enhanced forward presence that we are placing, as from next year, in Estonia, alongside the French and the Danes, to send a very clear message to Russia that it must not exceed its supposed sphere of influence.

Lord Collins of Highbury (Lab): My Lords, the key thing that most people are concerned about is that, as the Minister rightly said, Britain has led the way in Europe on the common security and defence policy and in ensuring that Russia was clearly told what its actions would lead to. What assessment have the Government made of our relationship with Russia in the light of Brexit? What impact will that have on our security?

Earl Howe: My Lords, the UK's decision to leave the EU has not changed our position on Russia. We will continue to protect the UK's interests and those of our allies and partners. We will continue to engage with Russia in key areas of shared interest to promote our values—including the rule of law, human rights, and so on—and to build stronger links between the British and Russian peoples, as I have said. NATO will remain the bedrock of our security.

Lord Wallace of Saltaire (LD): My Lords, cyberattacks of one sort or another have been a frequent way of trying to destabilise the Baltic states. Can the Minister say how closely we are working with the Baltic states in coping with this form of hybrid warfare?

Earl Howe: The noble Lord is right. We are developing a better understanding of the tools and levers that Russia may seek to use. We know more now about how Russia plans, conducts and controls hybrid activity, including the use of cyber. Russia is modifying its approach. We are trying to stay a step ahead. To that end, we are pursuing a coherent approach. We have a long history of effective co-operation and co-ordination with our allies. As the noble Lord will know, we have created the National Cyber Security Centre, and we work closely with our allies in this field.

Investigatory Powers Bill

Commons Reasons

3.37 pm

Motion A

Moved by ***Earl Howe***

That this House do not insist on its Amendment 11, to which the Commons have disagreed for their Reason 11A.

Commons Reason

11A: Because it is consequential on Lords Amendment No. 13 to which the Commons disagree.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, we return to the regulation of the press and the outcome of the Leveson inquiry. Yesterday my right honourable friend the Secretary of State for Culture, Media and Sport launched a 10-week public consultation relating to Leveson part 2 and the commencement of Section 40 of the Crime and Courts Act. The consultation will give everyone with an interest in these matters an opportunity to have their say on this vital issue, which affects each and every one of us in this country. I hope noble Lords will welcome this announcement, which shows the Government's commitment to addressing the issues and recommendations set out in the Leveson report in the most appropriate way.

Before we consider the ins and outs of press self-regulation, it is important that we all remember the context in which we are having this debate: the Investigatory Powers Bill. The Bill's passage has been a long one, from its inception after three independent reviews, through pre-legislative scrutiny by three parliamentary committees to the thorough scrutiny subsequently applied by both Houses. The Government have recognised the need for consensus on legislation of this significance. They have listened and substantially changed the Bill in light of the scrutiny it has received. Both Houses have improved the Bill.

There is consensus on the need for the Bill. It is one of the most important pieces of legislation this Government will take forward. The Bill will provide a world-leading framework for the use of investigatory powers by law enforcement and the security and intelligence agencies. It will strengthen the safeguards for the use of those powers and it will create a powerful new body responsible for oversight of those powers.

I remind the House that the Bill replaces provisions in the Data Retention and Investigatory Powers Act 2014 that will sunset at the end of this year. The loss of those powers would pose a significant threat to the ability of law enforcement and the security and intelligence agencies to protect the public. I must therefore be clear: the Bill is important for our national security. The Government believe that there should be no delay in the passage of this important legislation.

Yesterday, the House of Commons considered the amendments put forward by this House which strengthened the safeguards in this important legislation and added clarity. It unanimously accepted them all. However, the Commons decisively rejected the amendments put forward in relation to regulation of the media—the press.

Lord Wallace of Tankerness (LD): The noble Earl has made the point that we should have no delay in the passage of the Bill. If your Lordships' House should in fact support the amendments tabled today in the name of the noble Baroness, Lady Hollins, and the Bill goes back to the other place, when would the other place intend to debate these amendments and when would we get the opportunity to debate them again? Will it be tonight or tomorrow?

Earl Howe: My Lords, it will not be that soon. My understanding is that it will not be until after the mini-Recess that we would come to debate these matters again, should the House support the noble Baroness.

Many honourable and right honourable Members in the other place spoke of how this vital Bill was not the place to consider the important, but unrelated, matter of the regulation of the press. They were right to do so. I say to the noble Baroness, Lady Hollins, that the issues she has raised are of critical importance. She herself was treated terribly by rogue elements of the media. As the Secretary of State for Culture, Media and Sport acknowledged yesterday in the other place, we know that in the past some elements of the press abused their position and ignored not only their own code of practice but the law. It was clear to all that there needed to be change.

However, a free press is also an essential component of a fully functioning democracy. The press should be able to tell the truth without fear or favour and to hold the powerful to account. A number of those who spoke in the debate in the other place yesterday made the point that the press self-regulatory landscape has changed significantly over the past four years, since the Leveson inquiry reported. It is therefore surely right that the Government now take stock, look at the changes which have already taken place and seek the views of all interested parties on the most effective way to ensure that the inexcusable practices which led to the Leveson inquiry being established in the first place can never happen again. I hope that noble Lords who have spoken so passionately on this issue will take the opportunity to contribute to the consultation in order that we get a broad range of evidence on which to make decisions.

I am the first to acknowledge that the issue of press regulation is a vitally important one. It deserves the fullest consideration, consultation and debate, but the Bill is vitally important as well. It will provide our law enforcement and security and intelligence agencies with the powers that they need to keep us all safe. I contend strongly that this Bill is simply not the place to try to regulate the press. Given the events of yesterday and the new consultation, which is the right way to approach the issue of press self-regulation, I invite noble Lords not to insist on the amendments that have been tabled and not to delay further the passage of this vital and world-leading legislation, which is essential to the safety and security of us all. I beg to move.

Baroness Hollins (CB): My Lords, it is with regret that I return to my initiative one more time. I suggest that we do have time to consider it and I will speak to my Amendments E1, F1 and G1.

The issue at the heart of these debates remains simple: there was a widespread criminal conspiracy involving, it now turns out, more than one newspaper group. It lasted, and was covered up, for many years. It was combined with unexplained failures in police and prosecution action and allegations of political involvement in a cover-up. As a result, there was a public inquiry—the Leveson inquiry—and in 2013 a cross-party agreement was signed, committing Her Majesty's Government to implementing its recommendations. As a result of that agreement, this House withdrew cross-party amendments to the Enterprise Bill and the Defamation Bill.

3.45 pm

The Government have reneged on that agreement by not commencing Section 40 of the Crime and Courts Act 2013. When my amendments went to the other place yesterday, I was heartened to see several Conservative MPs speak in favour of the commencement of Section 40 and of these amendments. That gives me reason to hope that if noble Lords ask the House of Commons to think again—which is our right, our role and, on this occasion, I suggest, our duty—it will do so.

Having listened to criticism of the drafting and the effects of the earlier amendments, I am proposing a slightly different approach in Lords Amendments 15B, 15C, 338B, 339B and 339C. The amendments I am asking noble Lords to send back today are improved, I suggest, for the benefit of the Government in three ways.

First, the amendments can no longer be accused of impinging in any way on other provisions in the Bill, and I am assured that they are in scope. This was a concern of the noble and learned Lord, Lord Keen, on Monday. The compromise proposed is a new version of the Clause 8 statutory tort to follow Clause 8 which is directed to phone and email hacking alone.

There was also a criticism that the amendments did not in practice apply to new phone-hacking claims because the cost rules applied only to actions under the new statutory tort. That led some to question whether it was proportionate to seek to amend the Bill at all. That has now been corrected with the extra words in paragraph (a) of subsection (1) of the second new clause.

In the commencement clause, in Amendment 339C there is a sunset clause of six years. It has been nearly six years since the hacking scandal broke, five and a half years since the Leveson inquiry was set up and four years since it reported, so six years should be enough time for the Government to implement the inquiry report and that of part 2, which I am certain must proceed and, indeed, to complete their consideration of the consultation announced yesterday.

I would like to say something about that new consultation. I would like to give the Government the benefit of the doubt, but my worry is that the consultation proposal amounts to Ministers saying that they will rerun the Leveson public inquiry with politicians sitting in the judge's chair in private, perhaps asking questions that they alone have chosen and considering the responses in private. My fear is that Her Majesty's Government will eventually respond to those responses, back the responses that have come from the industry, as in the past, and conclude that Lord Justice Leveson got it wrong.

We must remember that all sides at Leveson and the report agreed that politicians must not take sides in press regulation, because they tend to side with the press, and should not be involved in press regulation because it creates unhealthy links between the press and those it should be holding to account. Cross-party agreement provided for that separation. The consultation may have been designed to calm the waters, and perhaps big media are cheering, but for victims it is having the opposite effect because this is the one area where any government initiative, however well intended, is anti-policy and counterproductive.

These amendments say to Her Majesty's Government, "If you are going to risk a consultation that will expose you to extraordinary pressure from big media, while you do so please at least protect some small measure of access to justice for victims". That is what these very limited amendments do. I hope noble Lords will support them.

Lord Lipsey (Lab): My Lords, I have some sympathy with the Minister's position that this is not a brilliant place in which to legislate on press matters, but we need to put this in a bit of perspective. In the previous Parliament, there was total agreement in both Houses, among the Government and the Opposition, about what needed to be done to bring Leveson into effect. What happened after the election? Absolutely nothing. It was left to go sour outside the fridge.

The only reason we now have a lively debate on Leveson starting up again is because of the noble Baroness's amendment and the decision of this House, which I was part of, to pass it by an enormous majority. That is the only reason we are talking about Leveson now. We would not have had a Green Paper yesterday without this debate. We would have been stuck in the Whittingdale position of not yet being convinced that the time was right.

It was quite staggering, reading the Commons debate yesterday, to see the number of Conservative MPs in particular who stood up and said, "Well, Leveson's passed; it's a long way behind us now and is not relevant any more. Press regulation has moved on". Why has such a time passed by? Because the Government have done absolutely nothing to further Leveson. Meanwhile, the divides over Leveson have visibly grown.

I feel a deep sense of disappointment that Sir Alan Moses, who as chair of IPSO started off appearing to want to change it, has now become yet another of the press natives, totally defending everything IPSO does. I was disappointed in the IPSO-funded Pilling report, which seemed to me to give meaning to the word whitewash. I am disappointed by the arguments being used by the local press, claiming that the Hollins amendment in some way threatens it. The Hollins amendment is confined to phone hacking, and one thing local papers certainly never do is phone hack. It is completely irrelevant to them, yet they are doing this. This is not a way of moving things forward.

Having said those things quite strongly, I want to make it clear that, from a wholly personal point of view, I am in favour of looking for a compromise on these matters. I am an ex-journalist and know how strongly journalists feel about state interference in the press. I happen to think that these fears are exaggerated in the case of the royal charter disposition, but they do exist. I would be prepared to give some weight to that, if only the press would give some weight to the case against IPSO as it is constituted, which is set out at great length in a good document by Martin Moore, which many noble Lords will have read. Essentially, the proprietors and newspaper companies have IPSO

[LORD LIPSEY]
in an iron grip called finance: they decide what finance it gets and what code is followed. They have IPSO under their control.

Some may feel IPSO is a brilliant regulator as things stand. Some, having read the recent decision in the Kelvin MacKenzie case about the newsreader who read out the news in a Muslim outfit—I will not go into it—may be less convinced that IPSO, as we now have it, is effective. The truth is that the moment it is accepted that IPSO is right, everything is settled and the Government are going to do nothing by bringing in Section 40, IPSO will start to slide back, as press regulators have on every occasion once Parliament's eye is off them.

I would like to see the Government in an active search for a compromise and using the threat of Section 40—it is a threat—to advance that. I think they will do so with a stronger hand if, in the meantime, this House insists on the amendment being made to the Bill, so that the press representatives can see that the time has come to compromise and not insist that they must have their whole way without any concessions of any kind whatever. If we politicians do not stand up to the press, the press will walk all over us. I hope everybody in the House will therefore support the noble Baroness, Lady Hollins, in her attempt to prevent this happening.

Lord Paddick (LD): My Lords, I support wholeheartedly what the noble Baroness, Lady Hollins, and the noble Lord, Lord Lipsey, have said, and will address the comments of the Minister. He talked about a 10-week public consultation on Section 40 of the Crime and Courts Act 2013 together with Leveson 2 showing government commitment to the issues. My understanding is that Cabinet Office guidelines on consultation say that it should be for a minimum of 12 weeks and should not be over a holiday period, which this only 10-week consultation is. I wonder whether that calls into question the Government's commitment.

The noble Earl talked about the context of the Bill and its long passage. If the Government are concerned about the sunset clause, which the Bill addresses, why, if the House passes the amendment this afternoon, is no further consideration to be given to it until 15 November—when it could be further considered either this evening or tomorrow, as my noble and learned friend pointed out?

The noble Earl also said that the Bill is not the place to consider this issue. The Public Bill Office clearly disagrees with the Government because, yet again, it has allowed this amendment to the Bill to be considered.

Yes, we must ensure a free press, but that does not mean a press able to do whatever it wants. We need a press that is also accountable, and that is what the amendment is about.

Lord Pannick (CB): My Lords, I cannot support the amendments of the noble Baroness, Lady Hollins. I declare an interest: I have given advice to a number of newspapers on press regulation issues.

There are different views on the wisdom or otherwise of Section 40 and of Leveson part 2, but the merits or dangers of press regulation should not be allowed to determine the issue before the House today. It is very simple. There are two reasons. First, the Bill is vital to national security. This House has spent hours in Committee and on Report improving the Bill's contents in a non-partisan spirit. Whatever views noble Lords may have on Section 40 and on the failure yet to implement it, that is no justification for the passage of this important Bill to be held hostage by those who wish to further the cause of Section 40. I say to the noble Lord, Lord Paddick, that this is not about whether the amendments are within scope—plainly they are—the point is whether it is justified to hold up a Bill of this nature, a Bill about security, to advance a point of view on press regulation.

The second reason why I cannot support the amendments of the noble Baroness, Lady Hollins, is because whether or not to implement Section 40 is now the subject of a 10-week consultation. I simply cannot understand the objections to the Government having a 10-week consultation. The noble Lord, Lord Paddick, says that it should be 12 weeks; perhaps it should and perhaps it should not, but that is not a substantial point. The noble Baroness, Lady Hollins, and those who agree with her can argue their case about Section 40 and Leveson during the consultation. It is quite indefensible to hold up this vital Bill when the issue about which the noble Baroness is concerned—perhaps rightly—is the subject of active consultation.

Lord Rooker (Lab): My Lords, yesterday, I watched the Secretary of State when she delivered the Statement—the first time I have seen her at the Dispatch Box. I did not see the debate later, but I watched the Statement and all the questions on it. I got the impression that she was really threatening the press about Section 40. The noble Baroness, Lady Hollins, referred to this in another context. I was struck by the number of Conservative Members of Parliament who I would say are people of substance—they were there when I was there; they have been there a long time—who basically threatened IPSO. They made the point that there has to be a different, cheap system of adjudication before going to court. That is what I felt they were pushing for. They will not vote for that today or tomorrow; they will wait for the end of the consultation. I have supported both the noble Baroness and Leveson on more than one occasion, but I think that we should stick to the main issue today, which is Royal Assent for this Bill. I personally do not intend to vote to stop Royal Assent.

4 pm

Lord Butler of Brockwell (CB): My Lords, I have been second to none in this House in supporting the importance of this legislation. I have taken part at various stages and have contributed in a minor way to its improvement. The powers it replaces do not expire until the end of the year. If the House of Commons again rejects —as I expect it will—the amendments that are being passed today and they come back to this House, I will not then support them, because I do not

want to see the Bill delayed. However, this is an opportunity to show that this House believes strongly that the Government mean what they say about a proper consultation on the pursuit of Leveson.

I do not think I am alone in suspecting that the Statement made by the Government yesterday was a diversionary tactic. I hope it was not, but we have an opportunity today to show that this House really believes that this must be pursued seriously and that action must be taken—perhaps on a compromise basis—to achieve the objectives of the Leveson report.

Lord Wallace of Tankerness: To follow the point made by the noble Lord, Lord Butler of Brockwell, I think it important that the other place be given another chance to think about the Bill. To date, it has had only one opportunity to consider it, based on the amendments your Lordships' House passed when the Bill was in this House. There will be another opportunity.

As has been pointed out by the noble Lord, Lord Rooker and noble Baroness, Lady Hollins, a number of Conservative Members yesterday during the questions following the Statement by the Secretary of State at the Department for Culture, Media and Sport indicated that they were not persuaded by the Government's case for not yet implementing Section 40. Dr Andrew Murrison asked whether the Secretary of State agreed, "that it would be reasonable to accept Baroness Hollins' amendments", and Sir Gerald Howarth—not someone I am usually given to quoting with approval—asked:

> "Does she not agree that a great virtue of the Leveson inquiry was that it took this whole contentious issue out of the hands of politicians; that by going for this consultation, which she will respond to, she is in danger of embroiling politicians in the issue again; and that low-cost arbitration has to be part of the solution?".—[*Official Report*, Commons, 1/11/16; col. 806.]

So there is some indication that even on the Government Benches in the Commons, there are Members who are not persuaded of the Government's position. I hope that one might describe it as a consultation of convenience that it came along when it did.

I will come back to that point but, on the point made by the noble Lord, Lord Pannick—which has been addressed by the noble Lord, Lord Butler—we know that the legislation which this Bill as a whole seeks to replace has a sunset clause. That clause is just under two months away; we have heard from the Minister that even if your Lordships vote for the Motion of the noble Baroness, Lady Hollins, today, it will be another two weeks until the House has the chance to consider it again. There is no urgency on the Government's part to get Royal Assent this week.

It is also clear that the content of the Bill is in no way threatened by the amendments proposed by the noble Baroness. They are supplementary and do not detract in any way from the security issues which have been a matter of considerable debate on the part of your Lordships and, indeed, the House of Commons. They seek to address the very specific reasons that were put forward by Ministers and in the other place as to why this was not a suitable amendment. She has sought to, as it were, uncouple these amendments from the other parts of the Bill. They are supplementary and in no way detract from the security issues in the Bill.

As I indicated when we debated this matter on Report, for me what is important is that commitments were made to Parliament—to both the House of Commons and your Lordships' House—back in March 2003, when various amendments were withdrawn: amendments to the Defamation Bill that your Lordships' House had passed and amendments that had been tabled, I believe, to the Enterprise Bill and, in the other place, to the Crime and Courts Bill. They were withdrawn on a clear understanding that certain amendments going forward to the then Crime and Courts Bill would be implemented. I was part of the group who worked on the cross-party agreement, although I was not present when it was reached. Subsequently I also did much on a royal charter so that press regulation would be taken as far away from politicians as possible. The commitments made to Parliament are in jeopardy through the Government not implementing Section 40. More importantly, commitments were made to some of the victims of hacking. We should remember that the amendment we are discussing does not go as far as Section 40: it relates only to phone hacking. Along with the then Deputy Prime Minister, my right honourable friend Nick Clegg, I met the parents of Milly Dowler. Two things that struck me were their great dignity but also the great pain they had suffered. The Prime Minister gave commitments to them and other victims that there would be an inquiry, which took place, and that efforts would be made to ensure that such things did not happen again. These commitments trump any consultation. That is why I support the amendment in the name of the noble Baroness, Lady Hollins.

Lord Prescott (Lab): My Lords, this measure is not only diversionary, it is an attempt to finish off everything that Leveson proposed after an inquiry that lasted years. Everybody agreed that the hacking which occurred was terrible, particularly me as I was one of those who were hacked. I complained to the police, who did not believe me, to the Press Complaints Commission, which did not believe me, and then to all the bodies concerned with the issue, even the Crown Prosecution Office. They did not believe me. Eventually, I had to go to court to find justice on a human rights matter. Only then did all these bodies admit that they were aware of the evidence but did not declare it to me. I do not think the situation has changed. If the Government are saying that something will be different, will they please spell out what that difference is? What would happen if that situation were to occur now? I might add that the Investigatory Powers Bill will allow an awful lot more hacking than we have at present, as that is what it is designed to do. We talk about terrorism but what is to stop the police pursuing the matter, given their new technology, and perhaps not do so properly? Those affected by that action should then have a right to complain. If abuse occurs through the use of the technology, what do you do then? To whom do you complain?

The consultation went on for years under Leveson and those who played a part in it. We do not need any more consultation to work this out. I listened to the debate in the House of Commons and to all those people who agreed to this legislation and to the royal charter, every one of whom is now saying that we

[LORD PRESCOTT]
should start consultation. What happened? This started when Mr Whittingdale told the press that he was not minded to implement Section 40. He did not tell Parliament as by then he had moved on from the office of Secretary of State. This is a step-by-step process to get rid of Leveson's recommendations. That is what it is really about. The next stage is to quash what he said about having a second inquiry into the relations between the police and the press. That is still ongoing. If anybody does not believe that, they can read it in the press every day of the week. The new IPSO, or whatever it is called, not only makes a judgment but also complains in the press. It made a judgment about me a few months ago when I made a complaint. That situation has not changed. Recommendations were made regarding having a new authority, but we have done nothing about it. We are locked in dispute on this. Therefore, to that extent I do not think anything has changed. When the Prime Minister met Murdoch in New York, they might have just thrown it into the conversation whether we should make these changes. It happened before with the previous Prime Minister—meeting secretly and then doing a deal. That is not acceptable. What I find most offensive of all is that we all agreed in this Chamber, and in the other Chamber when I was there, to take action. Admittedly, they wrapped it up in the royal charter. I did not agree with that royal charter argument. I always thought we wanted to keep the Queen out of politics. She is right in the middle of it now, is she not, with the royal charter?

There is a dispute among politicians about what is to be implemented. That is the reason I resigned. I was the only one to resign, apparently, from being a privy counsellor—that is, one who had not been to jail or got caught in some scandalous situation. That was a view of mine about the charter. That was the first weakening of the case for implementing Leveson. That was the first mistake we made.

We now appear to be discussing what we have already passed. We have already agreed it. I listened to the debate yesterday, in which it was said, "This is the wrong Bill". We said it was the wrong Bill in this House; we recognised that. But it is the wrong Bill because the Government did not carry out what is already in legislation. It is there, we discussed it and we voted on it in both Houses. Nobody, as I understand it, voted against it. Then, we were told that the Minister, like all her MPs yesterday, is saying, "This isn't the Bill. This is a serious matter". I understand what they mean by that, but it came about only because they refused to carry out what they had voted for. That is what we are dealing with today. Now we are questioning what we in Parliament are supposed to have made a decision about, and saying that we are going to have a consultation. But it is a consultation to get out of the obligations that this House and the other place agreed to. That is unacceptable.

We have started the battle again about the reality of the press. We talk about freedom of the press, but does anybody complain about the freedom of the victims? No. They have a lot to say but I do not hear their voice. I did not hear them mentioned much in the House of Commons yesterday.

Baroness Jones of Moulsecoomb (GP): You are here.

Lord Prescott: I am here; I am in the other part of Parliament. They did not mention the victims, who were promised justice by every one of us. What do you think those victims feel, reading in the paper now that we are preparing to consult? They were involved in the consultation following incidents in which they suffered press intrusion. I do not believe the situation has changed, and we will have to have a debate about the independence of the complaints system. But I am quite shocked that we are now about to back out of what appeared to be an overwhelming commitment from Prime Ministers and party leaders.

Consultation? It is not consultation. It is leaving via the back door because we do not have the guts to implement a charter that was first agreed to some years ago, and which we all agreed to for good political reasons some months ago. Everybody felt under pressure. Now they feel free to get out of their obligations. That is terrible. It is the start of Parliament reducing its powers. This is a terrible step towards getting rid of the obligation to the individual in our society, who has the right to privacy.

There has been lots of talk about security and about terrorism, but the ordinary person, for whom we all have to be responsible and accountable to, should be protected from such abuse. Frankly, even this Bill is giving more powers to the police. We have seen with the police and the press that it did not stop with Leveson. It is still going on. We have seen what has happened with the police at Hillsborough and Orgreave. All this is a massive way of ignoring our responsibilities in this matter, which we are not carrying out. I agree that it is a diversion, but it is bigger than that: it is a move to get rid of any recommendation to ensure the rights of the individual against the press, in the name of the freedom of the press. I disagree with that, as we all should.

I will support the amendment. If your Lordships really want to settle it, tell the Minister to implement the law and Section 40. That was the will of this House. Let the Government now do what they were supposed to do in agreeing that legislation and carry it out in the name of the freedom of the individual.

Lord West of Spithead (Lab): My Lords, all my experience from three years as Chief of Defence Intelligence and three years as the Minister for Security and Counterterrorism makes me realise how crucial the Bill is for the security of our nation. The Bill has been worked through now over a long period. It has had amazing input, it has amazing cross-party consensus and it is really very important. We have just had 37 minutes of emotive discussion, most of which has nothing to do with the security of our nation. I am very concerned that this amendment might well have an impact against the Bill that none of us intends. I have heard people saying, "There won't be any difficulty", but I am worried. If it does, that will be a problem for us. The Bill is too important for it to be delayed to a state where it is not implemented in time. I hear people saying, "That's not a problem", but all my experience of government and of life is that things suddenly crop up. I will be much happier knowing that the Bill has been put to bed, because our nation will then be much safer.

4.15 pm

Lord Rosser (Lab): The noble Baroness, Lady Hollins, has already reminded us of the cross-party agreement that committed the Government to implementing the recommendations of the Leveson inquiry. Unfortunately, the Government have not seen fit to commence Section 40 of the Crime and Courts Act 2013, even though, crucially, alongside the royal charter, Section 40 was designed to incentivise newspapers to join a recognised self-regulator. Yesterday the Government announced a public consultation on Section 40, despite the clear terms of the cross-party agreement.

There will of course be those who are suspicious of the Government's reasons behind this consultation. Some may even feel that it is designed to give a cloak of respectability to a later decision to go back on the undertakings given and the cross-party agreement reached on Section 40. I do not intend to pursue that line. It is simply very odd for the Government now to commence consultation on whether in effect they should implement their own recent legislation, which was the subject of cross-party agreement, was passed by Parliament, and which still represents the will of Parliament. Is this to be a precedent and to become a feature, with the Government holding regular public consultations on whether they should implement legislation passed by Parliament? Where will it all end?

By the way, I do not share the view that there is not still time to resolve this matter and still ensure the very necessary and vital passage of the Bill within the required time limit. My party, with others, has played a major role in improving it considerably during its passage through Parliament. We will support the amendment moved by the noble Baroness, Lady Hollins, if it is put to a vote. There is no reason not to honour undertakings given and cross-party agreements reached on Section 40.

Earl Howe: My Lords, I first say to those who have supported the amendments in the name of the noble Baroness that I acknowledge the strength of feeling in the House on this emotive issue. As I said in my opening remarks, the Government know how important these matters are to everybody. We need a robust and workable system for media self-regulation, and resolving that is in everybody's interest. However, I am afraid that I remain of the opinion that the Bill is not the means to achieve that. Of course I agree with the noble Lord, Lord Paddick, that the noble Baroness's amendments are procedurally in order; that has never been in question. However, first, the scope of the Bill means it cannot do this subject justice. The amendments we are considering today concern only interception of communications and would not necessarily sit well with whatever broader solution is to follow. Secondly, and more importantly, the public consultation which the Secretary of State for Culture, Media and Sport announced yesterday provides a means for a reasoned, informed and considered public debate—

Lord Strasburger (LD): I thank the noble Earl for giving way. I would like to share with him a direct quotation from one of the six members of the Leveson inquiry—someone with whom I spoke this morning. He said, "The consultation announced this week is just a shabby stunt, probably concocted by Paul Dacre, to defer the betrayal of the victims of press abuse—past and future—until this Bill has been safely put to bed". I would like to offer the noble Earl an opportunity to refute that charge.

Earl Howe: My Lords, I repudiate it completely. The Government have been clear about the timescale of the consultation and have committed to respond in a timely manner. We are taking this matter with proper seriousness. It is important that everyone has an opportunity to take on board and reflect on the changes that have occurred in the years since Lord Justice Leveson made his recommendations. I say again to the noble Lord, Lord Paddick—

Lord Beith (LD): Just to clarify this matter, can the Minister tell us when he was told that the Government were launching a consultation on Section 40?

Earl Howe: I was made aware of it at the beginning of the week, but I am also aware that it was in gestation long before that.

I say to the noble Lord, Lord Paddick, that there is no mandatory period for a public consultation. The Cabinet Office guidelines say that there must be a proportionate amount of time, and I think 10 weeks gives everybody time to look properly at the issues and to submit their views to government. In that light, and for all the reasons I rehearsed earlier, I respectfully ask your Lordships to allow the Bill to pass without these amendments.

Motion A agreed.

Motion B

Moved by ***Earl Howe***

That this House do not insist on its Amendment 12, to which the Commons have disagreed for their Reason 12A.

Commons Reason

12A: Because it is inappropriate to extend civil liability under clause 8.

Earl Howe: I beg to move.

Motion B agreed.

Motion C

Moved by ***Earl Howe***

That this House do not insist on its Amendment 13, to which the Commons have disagreed for their Reason 13A.

Commons Reason

13A: Because it is inappropriate to extend civil liability under clause 8.

Earl Howe: I beg to move.

Motion C agreed.

Motion D

Moved by ***Earl Howe***

That this House do not insist on its Amendment 14, to which the Commons have disagreed for their Reason 14A.

Commons Reason

14A: Because it is consequential on Lords Amendment No. 13 to which the Commons disagree.

Earl Howe: I beg to move.

Motion D agreed.

Motion E

Moved by ***Earl Howe***

That this House do not insist on its Amendment 15, to which the Commons have disagreed for their Reason 15A.

Commons Reason

15A: Because it would not be appropriate to make such provision in relation to claims under clause 8 while consideration is being given to commencing section 40 of the Crime and Courts Act 2013.

Earl Howe: I beg to move.

Motion E1 (as an amendment to Motion E)

Moved by ***Baroness Hollins***

At end insert ", and do propose Amendments 15B and 15C in lieu—

15B: Insert the following new Clause—

"Civil liability for certain other unlawful interceptions

(1) An interception of a communication is actionable at the suit or instance of—

(a) the sender of the communication, or

(b) the recipient, or intended recipient, of the communication, if conditions A to C are met.

(2) Condition A is that the interception is carried out in the United Kingdom. (3) Condition B is that the communication is intercepted in the course of its transmission, by means of a public telecommunications system.

(4) Condition C is that the interception is carried out without lawful authority.

(5) For the meaning of "interception" and other key expressions used in this section, see sections 4 to 6."

15C: Insert the following new Clause—

"Interception without lawful authority: awards of costs

(1) This section applies where—

(a) a claim is made under section (Civil liability for certain other unlawful interceptions) against a person ("the defendant"), or a claim is made for misuse of private information arising from an interception of a communication carried out before the date on which section (Civil liability for certain other unlawful interceptions) comes into force,

(b) the defendant was a relevant publisher at the material time, and

(c) the claim is related to the publication of news-related material.

(2) If the defendant was a member of an approved regulator at the time when the claim was commenced (or was unable to be a member at that time for reasons beyond the defendant's control or it would have been unreasonable in the circumstances for the defendant to have been a member at that time), the court must not award costs against the defendant unless satisfied that—

(a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator, or

(b) it is just and equitable in all the circumstances of the case to award costs against the defendant.

(3) If the defendant was not a member of an approved regulator at the time when the claim was commenced (but would have been able to be a member at that time and it would have been reasonable in the circumstances for the defendant to have been a member at that time), the court must award costs against the defendant unless satisfied that—

(a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator (had the defendant been a member), or

(b) it is just and equitable in all the circumstances of the case to make a different award of costs or make no award of costs.

(4) This section is not to be read as limiting any power to make rules of court. (5) This section does not apply until such time as a body is first recognised as an approved regulator.

(6) Subsections (1) to (3) shall only apply to a claim issued after this section comes into force.

(7) For the purposes of this section "approved regulator", "material time" and "news-related material" shall have the same meaning as in section 42 of the Crime and Courts Act 2013, and "relevant publisher" shall have the same meaning as in section 41 of that Act.""

Baroness Hollins: I beg to move.

4.21 pm

Division on Motion E1

Contents 271; Not-Contents 242.

Motion E1 agreed.

Division No. 1

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4.37 pm

Motion F

Moved by ***Earl Howe***

That this House do not insist on its Amendment 338, to which the Commons have disagreed for their Reason 338A.

Commons Reason

338A: Because it is consequential on Lords Amendment No. 339 to which the Commons disagree.

Earl Howe: My Lords, I beg to move.

Motion F1 (as an amendment to Motion F)

Moved by ***Baroness Hollins***

At end insert ", and do propose Amendment 338B in lieu—

338B: Page 191, line 38, after "(2)" insert ", (2A)"

Baroness Hollins: My Lords, I beg to move.

Motion F1 agreed.

Motion G

Moved by ***Earl Howe***

That this House do not insist on its Amendment 339, to which the Commons have disagreed for their Reason 339A.

Commons Reason

339A: Because it is inappropriate for clauses 8 and 9 to come into force before the other provisions of the Bill relating to interception.

Earl Howe: My Lords, I beg to move.

Motion G1 (as an amendment to Motion G)

Moved by ***Baroness Hollins***

At end insert ", and do propose Amendments 339B and 339C in lieu—

339B: Page 192, line 2, at end insert—

"(2A) Sections (Civil liability for certain other unlawful interceptions) and (Interception without lawful authority: awards of costs) come into force on the day following that on which this Act is passed.

339C: Page 192, line 4, at end insert—

"(3A) Sections (Civil liability for certain other unlawful interceptions) and (Interception without lawful authority: awards of costs) are repealed at the end of the period of six years starting with the day on which they come into force."

Baroness Hollins: My Lords, I beg to move.

Motion G1 agreed.

Policing and Crime Bill

Committee (3rd Day)

4.38 pm

Relevant documents: 3rd and 4th Reports from the Delegated Powers Committee and 3rd Report from the Joint Committee on Human Rights

Clause 51: Arrest elsewhere than at a police station: release before charge

Amendment 180

Moved by ***Lord Kennedy of Southwark***

180: Clause 51, page 70, line 28, leave out "inspector" and insert "sergeant"

Lord Kennedy of Southwark (Lab): My Lords, on behalf of my noble friend Lady Henig I wish to move the amendment tabled in her name and that of the noble Baroness, Lady Harris of Richmond. Clause 51 concerns pre-charge bail and the powers for someone to be released who has been arrested other than at a police station. Amendments 180 and 182 are practical and proportionate and support policing based on greater practitioner autonomy and expertise, which we believe falls in line with the empowerment drive by the Home Office and the College of Policing. Both amendments would reduce the level of the decision-making process from the rank of inspector to sergeant.

Police custody sergeants are well-trained practitioners who have responsibility for the care and treatment of suspects on a 24-hour basis. They make key decisions in line with PACE and other codes of practice. They have the necessary expertise to be able to adjust for a suspect to be released without bail and to apply conditions only where absolutely necessary and proportionate to protect the suspect, victim, witnesses and the wider public.

Amendment 184 concerns the rank of senior officers who can confirm that an investigation either by the SFO or FCA is under way and the applicable bail period. The amendment reduces the rank required of those who can be authorised with these powers from superintendent to inspector. The rank of inspector is a management rank and officers at this level would already be involved in exercising authorising powers and balancing the needs of the suspect. Officers holding this rank are numerous in the police service and are on duty on a 24-hour basis. It should also be noted that there has been a reduction in the number of officers holding the rank of superintendent, with a fall of 28% since 2010.

Officers with the rank of superintendent can take responsibility for any pre-charge reviews beyond the first review and oversee the application process for magistrates' courts. They can also review any decision made by an inspector that is challenged by a suspect or their legal representative.

This group of amendments seeks to set out powers and responsibilities that are commensurate with the rank held and the practicalities of what is needed in particular situations. I beg to move.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, as we discussed at Second Reading, the purpose of the Government's reforms to pre-charge bail is to end up with fewer people on bail for shorter periods of time. Part of the way we will do that is to raise the initial decision to impose bail from the custody officer who currently makes that decision—a sergeant—and to require an inspector to make it. At present, the College of Policing's guidance suggests that an inspector should make a decision to extend bail beyond the initial period. The Bill would instead require a superintendent to make that decision.

The clear implication of these amendments is that the authorisation for pre-charge bail that the Government seek to set is too high, and that instead the current levels are in fact adequate and appropriate. As my right honourable friend the Prime Minister said when she described these reforms as Home Secretary at Second Reading in the House of Commons,

"it is apparent that a significant number of individuals have spent an inordinate amount of time on bail only to end up not being charged or, if charged, found not guilty. Of course, the police and prosecution need time to assemble and test the evidence, particularly in complex cases, before coming to a charging decision, but we need to recognise the stress caused when people are under investigation for prolonged periods, and the disruption to their lives where they are subject to onerous bail conditions … To address the legitimate concerns that have been raised about the current arrangements, the Bill introduces a number of safeguards".—[*Official Report*, Commons, 7/3/16; col. 45.]

As well as setting clear times for the review of pre-charge bail, which we will debate shortly, the increased levels of accountability set out in the Bill, which these amendments seek to reverse, are an important safeguard against the misuse of pre-charge bail. The measures in the Bill significantly enhance the human rights protections for those accused of an offence, including setting a presumption that release pre-charge should be without bail and that bail should be considered regularly by the police—and after three months, by the courts—to ensure that bail is necessary and proportionate and that the investigation is progressed with appropriate speed and urgency.

In proposing these amendments, the noble Baroness, Lady Harris, and the noble Lord, Lord Kennedy, on her behalf suggest that requiring the involvement of inspectors and superintendents is disproportionate, and that there is insufficient capacity within police forces for these officers to carry out their existing duties and to make the bail authorisation decisions required by the Bill. We do not consider that the evidence supports this argument.

4.45 pm

According to most recent police workforce statistics, on 31 March this year, 1,112 chief superintendents and superintendents and 7,116 chief inspectors and inspectors were available for duty in the 43 police forces in England and Wales. If we use the job role proportions set out in those statistics, which record that approximately one-third of all police officers are in investigation roles and would therefore be ineligible to make bail decisions, it would leave some 734 superintendents and 4,697 inspectors available to do so.

[Baroness Williams of Trafford]

From the figures in the impact assessment published alongside the Bill, which set out a worst-case scenario by assuming no reduction in the need for bail in spite of the other reforms in the Bill, those officers would need to make 404,000 initial bail decisions and 118,000 bail extensions, or 86 per inspector and 161 per superintendent over the course of a year. Given the need for increased police supervision of the use of pre-charge bail that I have described, the Government do not consider that these numbers are unmanageable for these ranks of police officer to carry out.

The Government recognise that the introduction of statutory controls on the use of pre-charge bail will entail additional work for the police when compared with the current free-for-all. Introducing effective controls in a situation where none exists at present will always have a cost, which the Government consider is justified by the enhancement to the rights of those who, let us not forget, have not even been charged with an offence, let alone been convicted. As I have described, we consider that the authorisation levels set out in the Bill strike the correct balance between accountability and bureaucracy. I therefore ask the noble Lord to withdraw his amendment on behalf of his noble friend.

Lord Kennedy of Southwark: My Lords, I thank the Minister for her response to this short debate. Neither my noble friend Lady Henig nor the noble Baroness, Lady Harris of Richmond, were able to be here today, so I was happy to propose the amendments on their behalf. I will reflect on the points made, read the debate and talk to my noble friend. I am happy to withdraw the amendment at this stage, but my noble friend may want to return to it on Report.

Amendment 180 withdrawn.

Clause 51 agreed.

Clauses 52 and 53 agreed.

Amendment 181

Moved by ***Lord Marlesford***

181: After Clause 53, insert the following new Clause—

"Lack of evidence to charge

In section 37 of the Police and Criminal Evidence Act 1984 (duties of custody officer before charge), after subsection (6) insert—

"(6A) If a person is—

(a) released without being charged under subsection (2), or

(b) informed, after being questioned under caution, that no further action will be taken against the person,

the custody officer shall, as soon as is reasonably practicable, write to the person to inform him that he has been released, or that no further action has been taken against him, on the grounds that there is a lack of evidence to charge him.

(6B) In the letter referred to in subsection (6A), and any other written record of the decision to release the person without charge under subsection (2) or to take no further action against the person, the custody officer must use the words "lack of evidence" to describe the grounds on which the decision to release the person, or to take no further action against the person, was taken.""

Lord Marlesford (Con): My Lords, Amendment 181 seeks to right, or at least to mitigate, what I see as a wrong. In recent months, we have on many days heard, read or seen reports of individuals being investigated for crimes, particularly sex crimes. There is huge publicity, especially when one of those persons is already a public figure, which must be agony for those concerned.

Sometimes the investigation leads to prosecution and conviction, and then any sympathy one might have had is likely to evaporate or at least diminish. But sometimes it leads to an announcement by the police that there will be no prosecution, and that may be after many months. The phrase used to explain the decision is "insufficient evidence". That is a most tendentious phrase. It implies "no smoke without fire" and is rather similar to the old Scottish "not proven" verdict.

The decision to investigate allegations must always be made by the police, but sometimes investigations come to nothing. There can then be a long period, perhaps a very long period, of waiting, and then there is the announcement of "insufficient evidence". The essence of our system of justice is that criminal cases are tried on the facts, with a jury, with a verdict either of guilty or not guilty. That is how it should be. It is not a matter of mere semantics to object to the phrase which I have quoted. That is why I seek to change the wording in circumstances where the decision is made that there is not the evidence to prosecute from "insufficient evidence" to the much more neutral phrase "lack of evidence". I beg to move.

Viscount Hailsham (Con): My Lords, I support what my noble friend Lord Marlesford has said. He has identified something that has gone seriously wrong in recent years. The phrase "insufficient evidence" suggests the existence of some evidence. In some instances that will, of course, be right, but in other cases it will not be right—for example, in recent cases which will, doubtless, be in your Lordships' minds. My noble friend has put forward a phrase which ought to be acceptable to the Government, but if it is not—and I am no wordsmith—perhaps I might suggest some alternatives. It would be proper to say, for example, "wrong to commence criminal proceedings" or "criminal proceedings are not justified". Other phrases may occur to your Lordships.

What we must not do is to allow the police to come forward with a reason which implies the existence of a fire unsupported by sufficient smoke. That is not a fair state of affairs. My noble friend on the Front Bench may say that this is not a matter for statute. If the Committee is of that view, then advice could be given by ACPO to its members, but I think my noble friend has identified a real point which I hope your Lordships will support, by argument and debate.

Lord Dear (CB): My Lords, I support what both noble Lords have said, the noble Lord, Lord Marlesford, in particular. I am sure I am right in saying that there

is a growing sense of disquiet throughout society, which has swung away from the rampant interest that one saw in recent years in pursuing sex offenders, in particular—the Jimmy Savile case comes to mind immediately—towards beginning to say, "Wait a minute, it has gone too far". I believe that it has gone too far. We live in a world where reputations can be traduced almost within seconds, given the spread of social media—I think the phrase now used is "going viral". That can happen and, worldwide, a reputation is in tatters in a way that was not at risk of happening before.

One has only to look at Members of this House, never mind anyone outside—and outside is in many ways more important than our own membership of your Lordships' House. Lord Bramall comes to mind. The son of the noble and right reverend Lord, Lord Carey, has recently been in the newspapers for reasons I found totally disquieting. So have Sir Cliff Richard, Lord Brittan, Sir Edward Heath and Bishop Bell, who has been the subject of many of our debates recently. I will not take up your Lordships' time except to say that I support what is being said. Whether we should do it by advice, as has recently been said, I do not know, but the Government should take note of this growing tide of disquiet at what is going on. I hesitate to say, and I am sad to say, that the police are front runners in causing this situation. Something should be done and this amendment is a step in that direction. I support it.

Lord Paddick (LD): My Lords, I support the noble Lord, Lord Marlesford. I might go a little further than the noble Viscount, Lord Hailsham, and say that "lack of evidence" is probably exactly the phrase that should be used and it should be made compulsory. Saying that there is a lack of evidence could quite easily mean a complete lack of credible evidence, whereas "insufficient evidence" could imply that there was some credible evidence in cases where there was none. "Lack of evidence" is exactly the right phrase and I look forward to the Minister's response as to how this can be made compulsory.

Baroness Boothroyd (CB): My Lords, I support this very splendid amendment that has been moved by the noble Lord, Lord Marlesford, and spoken to by your Lordships warmly and welcomingly. In many cases, the people we are speaking about here—and I say this in front of many people here who have given great service to the police—have been harassed by the police. On many occasions, they have been pilloried by the press. We were just talking about the press in an earlier debate. Often they do not spoil a good story with the facts. The relations of persons who have been questioned under caution with their immediate relationships have been spoiled and bruised. Their relationships with friends have been harmed. At the end of the day they deserve to be more precisely dealt with. We need precise wording here and more direction—they deserve nothing less. I like the wording of "lack of evidence" and I ask the Minister to either accept this or look at it again, and I say to the noble Lord, Lord Marlesford, that if he puts this to the House for a decision I shall be in the Lobby in support of him.

Lord Campbell of Pittenweem (LD): My Lords, there is a serious risk of agreement breaking out. I will make one point, if I may, as the only Scottish lawyer, I think, in the Committee. It is important to remember that the verdict of not proven occurs after trial and trial takes place only if there is a reasonable prospect of conviction and, of course, it is in the public interest. So the standard is slightly different but that does not in any way undermine my support for what the noble Lord, Lord Marlesford, said. There is absolutely no doubt that inferences can be drawn from "insufficient evidence". Indeed, the way in which the language is sometimes placed in a paragraph or a sentence goes a long way to suggesting that that may have been the conclusion of the prosecuting authorities but the police may feel rather differently. From that point of view, it seems to me that "lack of evidence" provides a pithy and succinct way of dealing with an issue that is all too common, particularly in relation to public figures.

Lord Wilson of Tillyorn (CB): My Lords, I have not spoken before on this Bill but I will speak very briefly in support of the amendment moved by the noble Lord, Lord Marlesford. There is no need to name names. All of us in your Lordships' House know of people who have been mistreated over the past months in the way that their cases have been dealt with and summed up by the police. The reputations of some very distinguished people have been damaged as a result. If those people have been treated in that way, there must be many others who have been treated similarly.

I confess to some doubts about whether legislation is the right way to deal with this. It seems a very large sledgehammer for what should be a small nut but it has been a terribly resistant nut and perhaps we have to use legislation. One would have thought that something like Standing Orders would be sufficient. But if this amendment is put to your Lordships' House, I would support it.

Lord Elystan-Morgan (CB): My Lords, I feel very privileged to add my humble voice to the very distinguished voices that have already spoken on this matter. Many, many years ago, in what was then the old Wales and Chester Circuit, a verdict was returned by a jury in south Wales: "just a little bit guilty". That was in a trial so not dealing with exactly the same issue that is now before the Committee. We must be very careful not to have a wording that suggests that there may be just a little bit of evidence and no more. I am not exactly sure how that should be worded but I am sure that it is not beyond the wit of draftsmen to bring it about. Whether it should be by way of statute or some administrative provision, I leave to the good judgment of those concerned.

Lord Inglewood (Con): My Lords, I intervene briefly to say that I, too, support the principle behind my noble friend Lord Marlesford's amendment. It seems to me that if the principle is that you should be innocent until proved guilty, you should be proved guilty on the evidence and not by innuendo.

5 pm

Lord Kennedy of Southwark: My Lords, Amendment 181 in the name of the noble Lord, Lord Marlesford, would insert a new clause into the Bill concerning the procedures to be followed where a suspect is released without charge or informed after being questioned under caution that no further action will be taken against them. In considering the noble Lord's amendment, I wanted to listen carefully to his reasoning for this proposed new clause, and I think that he has made a compelling case today. The noble Lords, Lord Dear and Lord Paddick, have extensive experience as senior police officers and the House should also take note of their support. I am not sure whether this should be addressed through an amendment to the Bill—I accept that point. There may be some other mechanism to address it, but the noble Lord, Lord Marlesford, has made a compelling case and I thank him for that.

Baroness Williams of Trafford: My Lords, Amendment 181, tabled by my noble friend Lord Marlesford would require a custody officer to do two things once a decision has been made that no further action is to be taken against a suspect because the test for mounting a prosecution, set out in the Code for Crown Prosecutors, has not been met. First, the custody officer would need to notify the person in writing that no further action is to be taken. Secondly, the written notice must use the phrase "lack of evidence" to describe the reasoning behind the decision.

The Government agree with my noble friend that written notification should be given in all cases. We consulted on this in late 2014 and Clauses 65 and 66 would require a written notification to be given to any person arrested on suspicion of a criminal offence, where the police or Crown Prosecution Service subsequently decide not to charge. This applies whether or not the person is on bail following the reforms set out in Part 4 of the Bill. My noble friend's amendment would go one stage further and require the written notification of no further action in those cases where a person is interviewed under caution on suspicion of an offence but not arrested. We know from anecdotal evidence that, since the amendment of PACE Code G in 2012, more cases are being dealt with by the police without arresting the suspect, which may have created a gap in police practice that my noble friend's amendment identifies. In order to give this issue appropriate consideration, I would like to take it away and consider it further before Report.

The second limb of my noble friend's amendment would require that the written notice and any other record used the phrase "lack of evidence", rather than the customary "insufficient evidence" used at present. It may assist the Committee if I remind noble Lords of the evidential test required by the Code for Crown Prosecutors. Paragraph 4.4 of the code states:

"Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be".

The absence of "sufficient evidence to provide a realistic prospect of conviction" could easily be characterised as a "lack of evidence" or as the presence of "insufficient evidence". We could debate for some time the precise difference between the two phrases, which must be very small.

Noble Lords have said that there has been some comment in the media, in the light of recent high-profile cases, that the dropping of cases due to "insufficient evidence" could leave an outside observer thinking that there must have been something there. This reflects the reality of policing: that there has to be sufficient evidence to justify an arrest—that is, reasonable grounds to suspect that an offence has been committed. However, the investigative process in such cases will often end up with insufficient evidence, or, to use my noble friend's phrase, a "lack of evidence", that could still mean there was some evidence, but not sufficient to charge.

The Code for Crown Prosecutors is issued by the Director of Public Prosecutions under Section 10 of the Prosecution of Offences Act 1985. The current version, dating from January 2013, is the seventh edition of the code, and every version since 1986 has stated essentially the same requirement for,

"sufficient evidence to provide a realistic prospect of conviction".

I say to my noble friend and other noble Lords that "insufficient evidence" seems to reflect the wording of the code test rather better and that it is the opinion of the Crown Prosecution Service that the current phrasing has been used for more than 30 years and works well in practice.

While I recognise that the amendment would not change the test itself, to change the way that decisions made under the code are communicated, even to the small degree proposed by my noble friend, could create confusion, as there would be a tendency to ask which test should now be applied and whether it means the same thing. It could also invite doubt in the minds of prosecutors, judges, defence lawyers and others as to the reliability of decisions made against different tests.

I also point out to noble Lords that there are two tests in the Code for Crown Prosecutors that must be met before charges are brought. It is perfectly possible for there to be sufficient evidence to meet the first test, but for it none the less to be contrary to the public interest to charge, for example, where a case is to be disposed of out of court by way of a conditional caution.

While Clauses 65 and 66 set a requirement to notify a suspect that they will not be charged, that notice would need to be given in both scenarios; that is, where there was insufficient evidence and where the evidence was sufficient but charges were not in the public interest. However, under my noble friend's amendment, a suspect would need to be told in all cases that they were not being charged due to a lack of evidence, even though there must be sufficient evidence to charge to get to the point of considering the public interest test.

I can say to my noble friend that the Government are sympathetic to his aim of giving greater certainty to those who are investigated but against whom charges are not brought. We are minded to achieve this by non-statutory means so that prosecutors retain the necessary flexibility in cases where a decision is taken on public interest grounds.

On the issue of written notification of a decision not to charge, the Government consider that Clauses 65 and 66 already require such notification in all cases where an arrest has taken place. However, I would like to give further consideration to the issue of those interviewed under caution without being arrested. I hope that my noble friend will recognise that the precise wording of that notification is an issue best dealt with by non-statutory means and that, having heard my statement, he will be content to withdraw his amendment.

Lord Marlesford: My Lords, I am most grateful to all noble Lords who have contributed with knowledge and experience far greater than mine. I was very gratified that there was so much support for what I had to say. I thank the Minister for what she said. She has gone a long way to accepting what I intend. I am happy to leave it to her to come back to us and tell us exactly what it is proposed to do.

The rather Socratic justification which she gave for the terminology is okay in esoteric circles, but we are concerned with what the people as a whole see, and we are back to the old cliché that justice must be seen to be done. When she says that the difference between my phrase and "insufficient evidence" is very small, I remind her that it was said that at one moment Christendom was divided by an iota.

Having said all that, I am most grateful to my noble friend for her sympathetic approach to what I have said, and I beg leave to withdraw my amendment.

Amendment 181 withdrawn.

Clauses 54 to 56 agreed.

Clause 57: Meaning of "pre-conditions for bail"

Amendment 182 not moved.

Clause 57 agreed.

Clauses 58 to 60 agreed.

Clause 61: Limit on period of bail under section 30A

Amendment 183

Moved by ***Lord Paddick***

183: Clause 61, page 75, line 9, leave out "28" and insert "56"

Lord Paddick: My Lords, in moving Amendment 183, which is in my name and that of my noble friend Lady Harris of Richmond, I will speak to the other amendments in the group, Amendments 186 and 187. My noble friend is unable to be in her place this afternoon.

Amendment 183 seeks to make the initial period beyond which police bail under Section 30A of the Police and Criminal Evidence Act 1984 must then be authorised by a superintendent 56 days instead of 28, as proposed in the Bill. The impact assessment published by the Government on 26 May 2016 alongside the Bill indicates that the 28-day limit is a reasonable one and that the impact on police resources would not be arduous. However, academic research carried out by Professor Anthea Hucklesby of the School of Law at the University of Leeds suggests that an initial limit of 60 days would be necessary to avoid considerable adverse impact on the police service.

That research forms the basis of an article by Professor Michael Zander, the acknowledged expert on the Police and Criminal Evidence Act, in vol. 180 of *Criminal Law and Justice Weekly* entitled, "Not a Good Idea to Ignore the Evidence". I have spoken to Professor Zander about this issue. In the article, he agrees with Professor Hucklesby's conclusion that:

> "A time-limit of 60 days would be proportionate for both suspects and the police. This would allow cases involving routine forensic analysis, which officers in my study consistently reported took an average of six weeks, to be completed".

Professor Zander goes on to say that the Home Office has had this research for "over a year" and that the findings,

> "have now been confirmed by the College of Policing's bail report, *Pre-charge Bail—an Exploratory Study*, September 2016".

My noble friend Lady Harris of Richmond tells me that the Police Superintendents' Association of England and Wales believes that the 28-day limit could have a considerable detrimental effect on the impact of impending changes on inspectors, superintendents and magistrates' courts.

I do not wish to detain the Committee with the detailed reasoning behind the conclusions of the academics, the College of Policing and the Police Superintendents' Association. Suffice to say, we have no doubt excellent number-crunchers in the Home Office on the one hand saying the 28-day limit is doable, and the rest of the world on the other hand claiming that it is not. Of course we support limits on police bail, and we generally welcome the provisions in the Bill in this respect, for the reasons the Minister outlined in response to the first group of amendments. But can the Minister explain how the academics and the practitioners are lined up against the Government on the initial time limit? Amendments 186 and 187 are consequential on the main amendment. I beg to move.

Lord Kennedy of Southwark: My Lords, Amendment 183, moved by the noble Lord, Lord Paddick, and also in the name of the noble Baroness, Lady Harris of Richmond, would delete "28" and insert "56", which would increase the period of pre-trial bail from 28 to 56 days. I think we all agree that bail at any point should be as short as possible, although the point that the noble Lord made needs to be considered carefully by your Lordships' Committee. There seems little point in bringing people back to the police station, only for them to be rebailed because other work has not actually happened. People may be waiting for forensics or other things to be done, so the noble Lord has a good point. If Professor Zander and other academics suggest that this will not be effective, I hope that when the Minister responds she can answer that point. It seems pointless to bring people back just to be sent away again, given the cost of the bureaucracy for the police, the solicitors and the suspect. If she can respond to the points made, that would be very helpful.

5.15 pm

Baroness Williams of Trafford: My Lords, this group of amendments would greatly reduce the effect of the Government's reforms to pre-charge bail by increasing the length of the initial period of bail from 28 to 56 days. As I have said, the purpose of these reforms is to end up with fewer people on bail for shorter periods of time, and thereby significantly enhance the human rights protections of those who have not even been charged with an offence, let alone convicted. As such, requiring each and every person granted bail to be given bail for eight whole weeks would significantly dilute the reforms—reforms that the Liberal Democrats supported strongly when they were proposed by the coalition Government.

The noble Lord said that the intention behind these amendments is to reduce the administrative burden on the police in operating the reformed pre-charge bail system. Although I do not deny that the new system will cause additional work for the police compared to the current position, this is inevitable given that we are reforming a system currently lacking appropriate safeguards. I would also say that the Government do not look at the extra work required as an administrative burden; we see it as requiring an appropriate level of intrusive supervision to ensure that pre-charge bail is used appropriately and that investigations are progressed diligently and swiftly. That goes to the point made by the noble Lord, Lord Kennedy, about people having to return time and again to police stations.

I would also say that the figure of 28 days set out in the Bill was not arrived at by chance; we considered carefully the initial period of bail in drawing up our proposals, seeking to balance the administrative burden on the police with the need to put an end to the practice of people being bailed for months or even years at a time with no external scrutiny.

When we consulted publicly in December 2014 on the proposals, with the full agreement of the Liberal Democrats, who formed part of the coalition Government at the time, we received some 300 responses, two-thirds of which favoured the tightening of pre-charge bail and introduction of judicial oversight. Of the 135 respondents who expressed a preference, 58% favoured the model set out in the Bill, with an initial bail period of 28 days, extendable to three months by a senior officer. There was also strong support for an initial bail period of 28 days from groups as disparate as the Society of Editors, the Birmingham Law Society and the Magistrates' Association. The Committee might also be interested to know that the Howard League for Penal Reform, a well-respected group of campaigners in this area, argued that pre-charge bail should be limited to a single period of 14 days without conditions.

I also draw the Committee's attention to the bail principles published by the College of Policing in October 2013, which stated that:

> "In the first instance, unless there are exceptional circumstances, the bail period should be no more than 28 days".

With the greatest respect to the noble Lord, there is clearly backing for the human rights improvements that would be brought about by a 28-day initial bail period from across the spectrum of public and professional opinion.

I also point out that, as set out in the impact assessment accompanying the Bill, almost one-third of bail cases—29%—are currently resolved within 28 days. We cannot therefore see how it would be either sensible or appropriate in those cases for the police to have a choice of either keeping those individuals on bail for a further four weeks or having to issue paperwork to terminate suspects' bail and call them in for charging.

I also draw the Committee's attention to the other major change these reforms will make: that there will be a presumption in favour of release without bail, with bail being used only where it is both necessary and proportionate. This change in particular will allow the police to release many suspects without the administrative overhead that bail entails. It would also remove much of the stigma and inconvenience of bail from those released in this way. Because of this change, the police resources tied up administering straightforward cases will be freed up to concentrate on those cases where bail is truly necessary.

I have set out why the Government consider that the 28-day initial bail period is an appropriate first period, during which a significant proportion of cases will be resolved. The Government consider it crucial that the unfairness of keeping a person under investigation in "legal limbo" is addressed, as it cannot be right that they can spend months or even years on pre-charge bail with no judicial oversight, as happens at present.

As set out in the coalition Government's response to the consultation, published in March 2015, the negative effects for individuals on bail and their families include emotional or mental trauma and financial implications. I also draw to your Lordships' attention to the fact that, at the end of the coalition, in their 2015 general election manifesto, the Liberal Democrats included a proposal to place limits on the duration and conditions of pre-charge bail. Therefore, it strikes me as odd to hear the noble Lord, Lord Paddick, asking to extend the initial bail period from 28 to 56 days. I recognise his laudable aim to reduce the administrative burden on the police, but extending the initial period to 56 days will, as I have said, either leave a large number of suspects on bail for no reason or require the police to do further work to call them in. For that reason, I ask the noble Lord to withdraw his amendment.

Lord Kennedy of Southwark: Before the noble Baroness sits down, can she comment on some of the academic research around this, which both I and the noble Lord, Lord Paddick, referred to? I think that we are all in agreement that no one wants anybody to go on bail for a day longer than absolutely necessary but it seems a bit odd that, if all the services that the police need to investigate their cases are taking more than 28 days—maybe up to six weeks—we have bail for 28 days. They could bring people back into the police station just to send them away again because the necessary information is not available.

Baroness Williams of Trafford: I draw the noble Lord's attention to the comments that I made about the presumption against pre-charge bail, which I think is compelling in the Government's attempt to reform the system. There will be presumption in favour of release without bail—in other words, do not bail someone

unless there is a good reason to put them on bail, which in many ways would free up the system. Bail should be used only where it is both necessary and proportionate. The fact that almost one-third of people are released within 28 days anyway is, I think, compelling evidence for the arguments that the Government are making.

Lord Paddick: My Lords, I am very grateful for the support of the noble Lord, Lord Kennedy of Southwark, on this matter. As he just said, there is agreement on all sides that we need to protect the human rights of those people arrested and bailed by the police. But there needs to be a balance between the protection of human rights and the practical impact on the police, particularly in the light of the significant cuts in police numbers, the even greater cuts in the number of detectives, who would be mainly involved in investigating these matters—and trying to do so within a 28-day limit—and the reduction in the number of police superintendents, who would have to authorise a further extension. The noble Baroness said that 28 days was not arrived at by chance and that people should not be on bail for years. The amendment suggests 56 days, not years. It is just a proportionate increase to the maximum limit proposed in the Bill.

It is unfortunate that the noble Baroness appears to be trying to argue this on party lines, talking about what the Liberal Democrats did in coalition. Unlike other political parties, the Liberal Democrats like to base their decisions and legislation on the evidence. The evidence from academics that I put forward, which the noble Baroness has not addressed, points in the opposite direction to the Home Office impact assessment. The noble Baroness failed to answer when I asked why there was a difference between the Government's view and the findings of academic research and representations from the Superintendents' Association. She quoted from a 2013 College of Policing report. I quoted from a 2016 College of Policing report, which Professor Zander said backs up Professor Hucklesby's conclusion that 60 days is a far more appropriate period and strikes the right balance between the human rights of those bailed and the practical issues facing the police. Clearly, we will return to this at other stages on the Bill but, at this stage, I beg leave to withdraw the amendment.

Amendment 183 withdrawn.

Clause 61 agreed.

Clause 62: Limits on period of bail without charge under Part 4 of PACE

Amendments 184 to 187 not moved.

Clause 62 agreed.

Clause 63 agreed.

Amendment 187ZA

Moved by ***Lord Kennedy of Southwark***

187ZA: After Clause 63, insert the following new Clause—

"Scrutiny of investigatory capabilities

(1) Police and crime plans produced under Chapter 3 of Part 1 of the Police Reform and Social Responsibility Act 2011 must include an annual assessment of the capability of the police to investigate crimes within the 28-day pre-charge bail time limit.

(2) The assessment must consider any—

(a) changes to the number of suspects released without bail,

(b) resource constraints, including in respect of the number of staff,

(c) safeguarding requirements of victims, witnesses and suspects, and

(d) issues around multiagency work."

Lord Kennedy of Southwark: My Lords, Amendment 187A is very opportune and I hope that the Government will be pleased to see it. It stands in my name and that of my noble friend Lord Rosser and would insert a new clause in the Bill with regard to pre-charge bail. The new clause would place a requirement on police and crime plans to include an annual assessment of the capability of the police to investigate crimes within the 28-day period. Proposed new subsection (2) in the amendment states that the assessment must consider the points as listed, which are,

"changes to the number of suspects released without bail … resource constraints … safeguarding requirements … and … issues around multi agency work".

This list is not exhaustive but all these sorts of things could come into play if the police were able to deal with people on bail within the 28-day period. An annual assessment is a valuable tool in helping to ensure that targets are met and in identifying problems.

The second amendment in this group would give a power to the Secretary of State to make by regulation a requirement for agencies,

"to cooperate promptly with police".

As we said in a previous debate, in seeking to meet the 28-day target, the police need to be confident that other agencies are working to deliver information to them. The amendment would give the Secretary of State the power to require agencies by regulation to assist the police within the 28-day limit. I beg to move.

Baroness Williams of Trafford: My Lords, as the noble Lord, Lord Kennedy, has explained, these amendments seek to test the ability of police forces to complete investigations within the initial 28-day pre-charge bail time limit.

Amendment 187ZA would require police and crime commissioners to make an annual assessment of their force's capability of investigating crimes within this initial pre-charge bail time limit. The Government consider that requiring such an annual assessment will only add an unnecessary bureaucratic burden on PCCs and forces. First, the Police Reform and Social Responsibility Act 2011 requires PCCs to produce new police and crime plans only in the year of an election, so the amendment does not build on an existing process; it requires PCCs to produce something entirely new.

The Government acknowledge that the reforms to pre-charge bail will create a new system and that forces will need to build capacity at first and incorporate changes within their business processes. However, the changes will encourage and enable police forces to resolve cases within a time limit, resulting in a more efficient system for the long term.

[Baroness Williams of Trafford]

Although bail will be limited initially to a period of 28 days, it is important to remember that the Bill's provisions will enable an extension to a total of three months, which can be authorised by a senior police officer in complex cases. Furthermore, the police will also be able to apply to the courts for an extension beyond three months, which will have to be approved by a magistrate. While the police will, of course, aim to resolve cases in fewer than 28 days, they will be able to extend the bail period where it is necessary to do so. The requirement for senior scrutiny of extensions will avoid the issue of the past, where bail has been extended for months, or even years, without scrutiny outside the investigation team.

5.30 pm

Another reason why this amendment is unnecessary is that the efficiency of the performance of all police forces is monitored annually by HMIC's annual PEEL inspection programme, which considers the police's effectiveness, efficiency and legitimacy. Such external scrutiny is, we think, more effective than any assessment such as that envisaged by this amendment. Overall, we consider that the proposed assessments would simply create an unnecessary level of bureaucracy that would not add to the effective scrutiny of police work.

I turn now to Amendment 187ZB. The issue of interagency co-operation in the investigation of crimes was considered in the government consultation on pre-charge bail, published in December 2014, and in this Government's response to that consultation, published in March 2015. The Government recognise, as did many of the consultation responses, that many of the delays in investigations are due to the time taken to secure evidence—particularly witness statements—from other agencies. Two-thirds of the responses to the consultation were in favour of establishing memorandums of understanding between the police and public sector agencies, rather than a regulatory system as proposed by this amendment. Officials at the Home Office are currently working with the police and agencies such as NHS England and the Local Government Association to create the memorandums, as endorsed by the consultation. We recognise that these organisations need to co-operate with the police to conduct investigations in an effective fashion, but there are other ways to set deadlines than by way of regulations.

For example, banking confidentiality means that the police generally need to use production orders to access information held by banks and financial institutions, and the law requires material to be produced within seven days of a production order being made. As another example, police forces have contractual arrangements with their providers of forensic services, so they are able to specify in those contracts the timescales for the provision of evidence.

While I appreciate the intention of the noble Lord, Lord Kennedy, to assist the police in delivering these reforms, we do not believe that these amendments are necessary. I therefore invite him to withdraw Amendment 187A.

Lord Kennedy of Southwark: Before the noble Baroness sits down, in her response to Amendment 187ZA she talked about external scrutiny of the police. Can she say a bit more about that? Is she saying that she expects that external scrutiny to look specifically at the issues here in a broad-brush review? If so, where will they get the data from? I assume that they will be collected by the police.

Baroness Williams of Trafford: My Lords, there will be a number of sources of data within the police, and the annual monitoring by HMIC's PEEL inspection programme, which considers all the police's effectiveness, efficiency and legitimacy, will form part of that external scrutiny.

Lord Kennedy of Southwark: The noble Baroness can check this and come back to me, but I would expect then that the data would actually be collected.

Baroness Williams of Trafford: As the noble Lord says, I will go away and give him more detail on that, either before Report or on Report.

Lord Kennedy of Southwark: I thank the noble Baroness for that response, and at this time I am happy to withdraw the amendment.

Amendment 187ZA withdrawn.

Amendment 187ZB not moved.

Clauses 64 to 66 agreed.

Clause 67: Offence of breach of pre-charge bail conditions relating to travel

Amendment 187A

Moved by ***Baroness Chisholm of Owlpen***

187A: Clause 67, page 88, line 45, at end insert—

"( ) Where an offence under this section is committed by a person released without charge and on bail under Part 4 of the Police and Criminal Evidence Act 1984, the offence is to be treated as having been committed in England and Wales (whether or not the conduct constituting the offence took place there).

( ) Where an offence under this section is committed by a person released without charge and on bail under Part 5 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)), the offence is to be treated as having been committed in Northern Ireland (whether or not the conduct constituting the offence took place there)."

Baroness Chisholm of Owlpen (Con): My Lords, these amendments principally relate to the cross-border enforcement provisions in Chapter 7 of Part 4. Those provisions strengthen the existing cross-border powers of arrest contained in Part 10 of the Criminal Justice and Public Order Act 1994. In particular, these provisions close a gap in the cross-border arrest powers to ensure that a person who commits an offence in one UK jurisdiction can be arrested without a warrant by an officer from the jurisdiction in which the person is found. The provisions in new Section 137A of the 1994 Act include a number of safeguards, one of which is that the arresting officer has reasonable grounds for suspecting that the suspect has committed a specified offence in another jurisdiction—that is, an offence specified in regulations.

In the interests of greater clarity and to ensure that the police are able to exercise these powers as soon as possible after Royal Assent, Amendments 201B, 201C, 201G and 201T insert a list of "specified offences" in the 1994 Act, instead of setting out the offences in regulations. As a consequence of this new approach, Amendments 201D to 201F modify the regulation-making power in new Section 137B of the 1994 Act so that it becomes a power to add an offence to or remove an offence from the list of offences for the time being specified in new Schedule 7A to the 1994 Act. This revised power is necessary to ensure that the list of relevant offences can be kept up to date; for example, to take account of new offences being created or reductions in the maximum penalty for a specified offence such that it is no longer in the interests of justice for it to remain on the list. As befitting a Henry VIII power, the regulations continue to be subject to the affirmative procedure.

The list of relevant offences specified in new Schedule 7A to the 1994 Act includes that in Clause 67: namely, the offence of breach of pre-charge bail conditions relating to travel. The related Amendment 187A to that clause clarifies that if a travel-related breach of pre-charge bail conditions is committed anywhere in the United Kingdom, it will be regarded as having been committed in either England and Wales or Northern Ireland, depending on where the bail was granted. This will ensure that the breach can be prosecuted in the relevant UK courts and will also make sure that the cross-border powers set out in Clauses 105 to 107 are available to enforce the offence.

Amendments 201H to 201S relate to the rights of persons arrested under new Section 137A of the 1994 Act. New Section 137D of the 1994 Act applies certain existing statutory rights to persons arrested under the new power of arrest—for example, in respect of the information to be given to the arrestee—but includes a power to disapply or modify the specified enactments. Again, in the interests of greater clarity, new Schedule 7B to the 1994 Act, which is inserted by Amendment 201U, sets out the necessary modifications in the 1994 Act. As a consequence of this change of approach, the regulation-making power is retained but modified so that it becomes a power to add, remove, alter and disapply statutory rights. Amendment 233A makes a consequential change to the extent clause.

I trust noble Lords will agree that this revised approach will provide greater clarity as to how the new cross-border arrest powers will operate. I beg to move.

Amendment 187A agreed.

Amendment 188 had been withdrawn from the Marshalled List.

Clause 67, as amended, agreed.

Clauses 68 to 72 agreed.

Clause 73: PACE: detention: use of live links

Amendment 188A

Moved by ***Baroness Hamwee***

188A: Clause 73, page 96, line 14, after "understanding" insert "or dealing with"

Baroness Hamwee (LD): My Lords, I hope that this amendment can be dealt with very quickly. It takes us to the provisions for live links with people in detention and, in particular, the definition of a "vulnerable adult". When I read the definition, I was unsure whether the phrase,

"may have difficulty understanding the purpose of an authorisation",

extended to understanding its implications or outcome. It seemed to me that the word "understanding" was rather narrow.

I was asked yesterday by the Bill team whether I could explain what I was getting at. Once I had a look at the drafting, I realised that I had put the words in the wrong place, and I apologise to the Committee for that. However, I was assured that the wording in the Bill extends to understanding the implications or outcome of a decision, and I am moving the amendment simply in the hope that the Minister can confirm that from the Dispatch Box. I beg to move.

Baroness Williams of Trafford: I thank the noble Baroness for her comments. Amendment 188A would amend Clause 73 to alter the definition of a "vulnerable adult" in new Section 45ZA of the Police and Criminal Evidence Act 1984. That new section would enable a superintendent to authorise the extension of pre-charge detention using a live link, rather than being physically present in the police station. In the case of a vulnerable adult, consent to the use of a live link must be given in the presence of an appropriate adult, and the amendment seeks to alter the definition of a vulnerable adult for those purposes.

I understand that the noble Baroness is seeking an assurance that the definition provided for in the Bill would include a person who had difficulty understanding the implications or outcome of a decision by a superintendent to authorise the extension of pre-charge detention from 24 to 36 hours. I am happy to provide such an assurance and, on that basis, I hope that she will be happy to withdraw her amendment.

Baroness Hamwee: Indeed, my Lords. I beg leave to withdraw the amendment.

Amendment 188A withdrawn.

Clause 73 agreed.

Clauses 74 to 78 agreed.

Clause 79: Restrictions on places that may be used as places of safety

Amendment 189

Moved by ***Baroness Walmsley***

189: Clause 79, page 101, line 19, leave out from "patients)," to end of line 21 and insert "for subsection (6) substitute—

"(6) Subject to section 136A, in this section "place of safety" means residential accommodation provided by a local social services authority under Part III of the National Assistance Act 1948, a hospital as defined by this Act, an independent hospital or care home for mentally disordered persons or any other suitable place.""

Baroness Walmsley (LD): My Lords, I shall speak also to Amendments 190 and 191, which are grouped with Amendment 189. We now come to the part of the Bill that deals with the Mental Health Act 1983. Amendment 189 would ensure that no one, regardless of their age, was taken to a police cell under an emergency section of the Mental Health Act. Amendment 190 defines a place of safety, and that does not include a police cell.

The Bill makes some very welcome changes to provisions under the Mental Health Act. It bans the use of police cells for children and young people in crisis; it seeks to reduce the use of police cells as places of safety for adults; and it reduces the length of time that a person can be detained from 72 to 24 hours. These are big, important and very welcome improvements. However, the Bill leaves the door open for police cells to continue to be used for adults in crisis. That should not be continued, and it does not need to happen. We have seen in places such as Hertfordshire and Merseyside, where no police cells have been used for people in crisis in the last year, that with careful planning and co-operation it is entirely possible for people to be supported in health-based places of safety instead of being taken to police cells. I commend the large reduction in the use of police cells that many other police forces have made over the last year across England and Wales.

The limited change to the use of police cells in the Bill is based on an assumption that 4% of people detained under Section 136 need to be taken to a police cell due to "exceptional circumstances". However, these circumstances have not been defined. Clearly, we need further information on the exact situations in which the Government envisage a police cell being an appropriate place for someone in crisis. I do not believe that anyone in crisis should be taken to a cell. That is not a place of safety for someone in crisis. When someone has a mental illness, everything that a public authority does to and for them should help them recover. Putting them in a cell does not achieve this. Indeed, it often achieves the exact opposite. One patient told the charity Mind that, "Being put in a police cell where hardly anyone is trained in mental health issues is not good. To be locked up and isolated made me think I was worthless. All I wanted was to talk".

5.45 pm

Section 136 is for use in an emergency. Can you imagine someone having a heart attack and then waiting for 24 hours in A&E to see a doctor? There would be outrage, and rightly so. We will not get real parity between physical and mental health, to which the coalition Government were committed, until we stop treating people in mental health crisis in this way.

On the other hand, health-based places of safety can support someone who has been detained under Section 136, and of course, if necessary, police assistance can be called upon to support staff in dealing with challenging behaviour. Last year, in England and Wales, over 28,000 people in mental health crisis were picked up by police. While most were taken to a health-based place of safety, 2,100 were taken to a police cell. Although this is a big reduction on the previous year, there is still a long way to go. Those areas that have eliminated the practice have shown the way: where the police work collaboratively with local partners, even the most exceptional cases can be managed.

I would like to finish on this amendment with a point about funding. It is good to see the recognition from government that additional funding is needed to ensure that the number of people taken to police cells due to their mental health issues is reduced. The recent investment of £15 million is welcome, but it is going directly to NHS trusts and police forces and not to local authorities, which do provide residential services that can be regarded as places of safety. That needs correcting.

Areas that achieved zero numbers have shown that significantly more funding would not be required to ensure that no one in mental health crisis—right across the country—is taken to a cell. I understand that only an additional 33 beds would be required across the whole of England and Wales. Yes, there would be a cost, but there would also be a saving—in police costs. I am pleased that there is cross-party support for these amendments. The debate needs to focus on this opportunity for the Government to end completely the outdated use of police cells for people with mental health problems, rather than on the relatively modest cost required. This is crucial if we are to achieve parity of esteem between physical and mental health.

We should also end the discrimination that exists. Liberty has pointed out that Section 136 is the only part of the Mental Health Act 1983 in which one person acting without medical evidence or training has the authority to deprive another person of their liberty. It is also true that the power is used disproportionately for people from black and ethnic minority backgrounds. This discrimination has to stop, and this is our chance to put a stop to it for good.

Passing Amendment 191, also in this group, would prohibit the use of people's homes as places of safety. It is unfortunate that this Bill includes the home as a place of safety under the Mental Health Act. While it might seem safe, there is no real way of knowing whether a person's home would be a safe place for them, and there are many risks. Indeed, it is also important that relatives can feel that their home is a place of safety for them when their relative is having a crisis.

The explicit reference to the home as a place of safety under the Mental Health Act has important and concerning implications for people detained under Section 136. To enter a person's home remains a major intrusion, especially for mental health patients who do not trust the police anyway. People who have lived with the experience told Mind that:

> "I would feel much more vulnerable being detained in my own home … Having a stranger in my home in a time of crisis would destabilise me even further".

Clearly, there are also safety implications. How do we know about the safety of a person's own home unless someone has assessed it? Do the police have the ability to judge the safety of a person's home before arrival? Importantly, a person's home life or their feelings towards their home may be at the core of their crisis in the first place.

This change will put a lot of pressure on a person who is given the choice to decide if home is a safe option for them, so how will it work? Are we to have a policeman bedding down in the living room while the patient is upstairs self-harming? Would the police mount guard outside so that all the neighbours can see, thinking that the person inside is a criminal? What we really need is health-based places of safety, and a person's home is no substitute for that. Without adequate services, people's homes could become the new police cells—the new default for people in crisis. That is a very bad idea.

The noble Baroness, Lady Meacher, who has unavoidably been called away so is not in her place, asked me to say that she is also very supportive of this group of amendments. I beg to move.

Baroness Howe of Idlicote (CB): My Lords, I have added my name to amendments in this group. I will speak specifically to Amendment 190, which we have already heard a fair amount about. It seeks to prohibit anyone detained under Sections 135 and 136 of the Mental Health Act being taken to a police cell. Regardless of their age, no one should be made to feel like a criminal simply for being unwell.

I will focus on the emotional impact that being detained in a cell has on people in crisis and question some of the assumptions about the need for the use of police cells for mental health provision. Those who are picked up by the police under the Mental Health Act are detained because there is a real risk of harm to themselves or others. However, they have committed no crime. These are people in need of health support and are detained so that a mental health assessment can take place.

When in a mental health crisis, one is likely to feel frightened, overwhelmed and extremely distressed. One's behaviour may seem aggressive and threatening to others. That is part of mental illness. Nevertheless, such people still need support and compassion. Health-based places of safety need to be equipped to manage someone's challenging behaviour, and some areas are able to do this already. We heard about Merseyside from the noble Baroness, Lady Walmsley,

The experience of being held in police cells is distressing, and often it is the most vulnerable who end up in a cell; yet being held in a prison cell and treated like a criminal can only make matters worse. The Government's impact assessment on the Bill details the experiences of some of those who have been detained in police cells. Many speak of feeling cold and hungry, being left alone, strip-searched and having their personal possessions removed. Indeed, in one case the light fittings were removed from the cell to prevent self-harming, leaving the person, who was experiencing a mental health crisis, completely in the dark.

Clearly the use of police cells is never appropriate for people with mental health crises and we need to challenge the assumption that sometimes they are. I hope these amendments, so ably moved by the noble Baroness, Lady Walmsley, will persuade the Minister that the use of police cells when dealing with people with a mental health crisis is no longer acceptable and that she will therefore accept the amendments.

Baroness Hamwee: My Lords, my name is on the amendments in this group. My noble friend mentioned the importance of ensuring parity between physical and mental health services, and we will continue to raise that until parity is achieved. She also mentioned stereotyped assumptions as to links between mental health and criminal offending and racial stigma in mental health matters.

It occurs to me that the arrangements for using police stations as a "place of safety"—like others, I put that term in quotation marks—must be very difficult for police officers. They are not health professionals who can deal with physical health problems or mental health problems. We should not expect them to respond to a situation for which, however well intentioned, they are not qualified.

My noble friend also mentioned the question of funding. Inevitably, the reliance on increasingly stretched local authorities is an issue. Given that a place of safety includes residential accommodation provided by local social services, we need to recognise the importance of local authorities' funding for new places of safety. The Government's investment in that is a positive step. As with so many issues, this is not something that can be put in one pigeonhole and left there.

Lord Bradley (Lab): My Lords, this group of amendments addresses the crucial relationship between mental health and the criminal justice system. I make it clear at the outset that I support the objective of banning the use of police cells as a place of safety for adults. My comments are in the context of my own independent report published in 2009, which reviewed people with mental health problems and learning disabilities in the criminal justice system.

In the report I made over 80 recommendations for change, at least two of which are relevant to this debate. First, I recommended the establishment of multidisciplinary liaison and diversion teams composed of people with a variety of skills, including psychiatric nurses, learning disability nurses, drug and alcohol workers and many others, all working alongside the police in police stations to identify and assess vulnerable people and to support the custody staff at the first point of contact with the criminal justice system. This programme is being rolled out nationally. Currently, 55% of the country is covered. Additional money from the Treasury was allocated in July of this year to enable 75% of the country to be covered by 2018-19, with a view to 100% coverage by 2020-21.

Alongside this, and now properly integrated with liaison and diversion teams, is street triage. That is where the police and NHS staff work together in their local communities. It works best where there is a dedicated vehicle and they sit together, often with their separate laptops—we hope to link technology at some point—so that they can immediately assess the needs of vulnerable persons and stop them hitting against the criminal justice system. These are often the people who may be sectioned under Section 136 of the Mental Health Act, and this is where the second recommendation in my report is relevant today. I said then that, "All partner organisations"—by which I meant principally the police and the NHS,

[LORD BRADLEY]

"involved in the use of Section 136 of the Mental Health Act 2007 should work together to develop an agreed protocol on its use. Discussions should immediately commence to identify suitable local mental health facilities as the place of safety, ensuring that the police station is no longer used for this purpose".

The recommendation was accepted by the then Labour Government and each subsequent Government—we are on to the fourth now—have committed to this objective.

6 pm

As we have heard, good progress has been made in many parts of the country with excellent new place-of-safety facilities, often established alongside mental health trusts. The best of these places of safety now extend their facilities as proper crisis centres, so not only people detained under Section 136 but vulnerable people in crisis on our streets are taken to the facility because it is the proper environment in which to make an assessment of their needs. I encourage all noble Lords interested in this to visit some of these excellent new facilities, such as those in south Birmingham where liaison and diversion personnel at the police station and NHS staff in the mental health trust work in an effective way to support the most vulnerable.

Of course the banning of the use of police cells for children in this Bill is another major step forward, but we can and must complete the banning of the use of police cells as soon as possible and bring new momentum to ensure that there is full coverage as regards proper places of safety across the country. I believe that we need a fresh and independent review of places of safety to ensure that every local area can provide such a facility, with an agreed protocol between the NHS, the police and other agencies. The review could look at the good practice that I find when I travel around the country and, crucially, it could identify the gaps which we have heard about in the debate that still exist. We must build up capacity in proper places of safety so that police cells are not required. The Government should initiate such an independent review immediately with an agreed timescale for the development of the final pieces of the jigsaw to ensure comprehensive coverage of places of safety.

I acknowledge that huge progress has been made, but I remember talking at a conference held in the West Midlands where in the previous year police cells had been used as places of safety 4,000 times. After proper consideration of the issue along with dialogue between all the relevant agencies, in the year that I was there the incidence had dropped down to six times. That is what can be done given the will and the commitment. If we put an emphasis on this programme, the final part of it can be achieved, but in the meantime I worry that without proper protocols the default position is to use, for example, A&E departments as places of safety. They are totally the wrong environment for people in crisis and not the right place to make a proper assessment of their needs. There is also no clear view about what the next steps should be for those vulnerable people when they leave the A&E department. So we must and can do better by using liaison and diversion and street triage, along with the progress that has been made on places of safety as the building blocks to ensure comprehensive coverage in the period ahead. I hope that the Government will consider my proposal and be positive in their response. If they want to consider it further, we can discuss this again on Report.

Lord Rosser (Lab): My Lords, as has been said, the Bill bans the use of police cells for those aged under 18 in a mental health crisis, and for those aged 18 and over it states that they may be held in a police station,

"only in circumstances specified in the regulations",

made by the Secretary of State. As I understand it, in 2015-16, 43 children and some 2,100 adults in a mental health crisis and covered by Sections 135 and 136 of the Mental Health Act 1983 ended up in police cells rather than at an appropriate health-based place of safety.

Amendment 190 in the group provides that no person of any age in this situation should be held at a police station as a place of safety, and that is an objective with which no doubt there is widespread agreement. The question that has to be asked, though, is what would happen if the provision in line with this amendment was introduced relatively soon and there were still insufficient non-police-cell appropriate places of safety available and police cells could no longer be used. What would happen to the vulnerable people concerned in those circumstances?

The Bill's objective in relation to children not being kept in police cells is clearly considered to be achievable by the Government, no doubt because, as I understand it, we are talking about fewer than 50 children. However, the figure for adults appears to be some 50 times higher. Can the Government say how the figure of 2,100 adults in police cells in 2015-16, or whatever alternative figure they have, compares with the total number of adults in a mental health crisis who were placed in an appropriate health-based place of safety? I believe that the noble Baroness, Lady Walmsley, mentioned the figure of some 28,000. Can the Government also say how quickly they estimate that the terms of Amendment 190 could be met through the provision of the necessary additional places of safety, what the costs would be, and within what timescale they currently intend to meet the objective of this amendment, since I assume that this is a Government objective too?

Why are there wide variations, as has been said, in the current extent of the use of police cells for people in a mental health crisis, and why do some areas appear not to need to use police cells at all in this situation, but others do? Is it due to poor management, the inadequate provision of suitable health-based places of safety, or a lack of suitably qualified staff? Can the Government also set out in what circumstances they expect to specify that an adult can be kept in a police station as a place of safety under the regulations that can be made by the Secretary of State under Clause 79(6) of the Bill? Finally, along with my noble friend Lord Bradley, I look forward to hearing the Minister's response to the proposal put forward by my noble friend in relation to a fresh and independent review.

Lord Thurlow (CB): My Lords, I rise to support the amendments tabled in the names of the noble Baronesses, Lady Walmsley and Lady Hamwee, and my noble

friend Lady Howe. They mark important steps across the board to bring the treatment of mental ill-health in line with our 21st-century understanding of that arena. I have, perhaps regrettably, close personal experience of dealing with and attempting to cope with people suffering a mental health crisis. I bring to bear that experience as well as the advice offered by the Mental Health Alliance and specifically the charity Mind, both of which have been referred to, in my endorsement of these amendments.

The amendments regarding the use of police cells and homes as supposed places of safety—neither are appropriate, I agree—and concerning the period of detention in those places awaiting a mental health assessment are most important. I acknowledge the positive steps that this Bill in its original form recommended in both of these areas, but they do not go far enough. Perhaps I may reflect for a moment on who it is that these clauses are designed to protect. It is the vulnerable, the needy and those less able to help themselves. We have a special duty to those people in our society. These amendments are an important step of progress in improving their treatment at the hands of the police in times of crisis. That said, I am not criticising the police. I have seen at close quarters the awkward circumstances of the police having to enforce the rules. I admire the sensitivity and empathy I have seen displayed.

When a person is in a mental health crisis there is a very high risk of private anxiety, emotions of distress, confusion, aggression and perhaps threatening behaviour. What is required is probably support and compassion. Confinement in a cell is bound to add to this distress. Surroundings matter.

As we have heard, the Government have begun to dedicate funds to mental health services, improving the provision of suitable places of safety and achieving parity of esteem between mental and physical health. These are important steps and this work must continue. We must step up to this challenge on the behalf of those affected. This disadvantaged group, unlike most in our society, seldom makes its own case for better care. The reality is, of course, that they cannot—they are confused and they are not organised—but we can. They rely on us, and on the charities and other groups that work with them.

We must be sure to try our best to legislate so that the trend continues and relevant investment goes toward providing for those in need. The amendments tabled by the noble Baroness would do exactly that. This is legislation that will help bring the Mental Health Act 1983 into the 21st century. If we think for a minute, that Act was enacted more than 30 years ago. The quantum leaps of progress in medical understanding of mental health issues have been huge. Yet, the Act on the statute book is more than 30 years old. We must take every opportunity we can to improve the terms of the Act wherever we can.

I thank the noble Baronesses for their work in tabling the amendments and request that the Minister accepts them.

Baroness Chisholm of Owlpen: I thank noble Lords for this important debate. As the noble Baroness, Lady Walmsley, explained, these amendments seek to restrict, in different ways, the premises that can be used as a place of safety for persons detained under Sections 135 or 136 of the Mental Health Act 1983.

Of course it is important that people detained at a time of crisis be taken to the most appropriate place of safety for their medical needs. That principle is behind these amendments and also represents the Government's position. Where we differ is on how this should be achieved in terms of the full range of options that should be available to professionals. Amendments 189 and 190 to Clause 79 would completely prohibit the use of police stations as places of safety. The Bill provides that police stations cannot be used as places of safety in the case of children or young people aged under 18. The issue for the Committee is whether this prohibition would also apply to adults.

The noble Baroness and other noble Lords who have spoken are concerned that a police station should never be an appropriate place for a person of any age to be taken at a time of such distress. The Government accept that police stations have been used to detain people under Section 136 far too often. Although much progress has certainly been made to address this, including a 54% reduction between 2014-15 and 2015-16, there is no doubt that police cells are still used inappropriately in some areas.

This will be addressed through regulations governing the circumstances in which a police station can be used for an adult. We have heard from experts that there are occasions when the behaviour of adult detainees can be too violent to be safely managed in a health setting. I expect the regulations to also set out the expected standards of care to be provided to any adult taken to a police station. These decisions will be determined on a case-by-case basis, but I stress that the emphasis is on the exceptional nature of such situations, with health-based places of safety used for the vast majority of cases. The Government have engaged experts and other interested parties in the development of those regulations. I expect to be in a position to say more about our approach ahead of Report.

6.15 pm

The noble Baroness, Lady Walmsley, mentioned the £15 million going only to the NHS, but many of the bids were written in partnerships involving the NHS, social care, local authorities, the police and others through local concordat partnerships.

The noble Lord, Lord Bradley, gave a very interesting speech and brought up a lot of the areas that are so important. He mentioned best practice going on around the country, but as he said, it is still patchy. I will share a brief example that shows how this can be done, rather like in places he mentioned in the West Midlands. In West Sussex, before 2015-16 Sussex Police had repeatedly used police stations as a place of safety to detain Section 136 detainees—more than any other force. However, it has now managed to reduce that by 80% by bringing in a lot of the interventions that the noble Lord spoke about, such as street triage schemes; three crisis care concordat partnerships involving East Sussex, West Sussex and Brighton & Hove; and new health-based places of safety, using local funding and the Department of Health £15 million fund. That shows

[Baroness Chisholm of Owlpen]
how these things can be done, but it is important that all authorities get together to discuss the ways changes can be made.

The noble Lord also talked about a national review. I am not sure that that would be the best way forward, but local areas should be amassing local reviews of what they are doing. The Care Quality Commission is a good starting point for that. We feel it could be better for local authorities to gather together what is going on. That is possibly the way forward.

Amendment 191 separately seeks to prohibit the use of a detainee's private home as a place of safety. I put it to the Committee that, on occasions, a private home is likely to be the most appropriate place to take or, indeed, keep a person detained under Sections 135 or 136, rather than taking the detainee to a health-based or other place of safety. This might be particularly applicable, for example, in the case of a young or elderly person, and where familiarity with surroundings and family support may make a significant difference to their emotional well-being at a time of crisis.

The Bill provides robust safeguards to ensure that a person's home is used as a place of safety only where appropriate. Importantly, the consent of the detainee and any other occupants of that dwelling would be required in every case. It is critical that health and policing professionals decide to use the private home only because it is in the best interests of the detainee. I believe they are well-equipped to make the judgment, but I can reassure the Committee that this will be reinforced in guidance.

We can all agree that the best interests of detainees and the safety of the public must be paramount. I believe that the provisions in the Bill best achieve this outcome. Accordingly, I ask the noble Baroness to withdraw her amendment.

Baroness Walmsley: My Lords, I thank the Minister for her reply. I have a few points to make in response but want first to apologise to the noble Lord, Lord Bradley, for not mentioning his excellent report. I congratulate him and the Government on the recommendations in the report that have been achieved on the ground. The street diversion teams are particularly good and would certainly come into play were a person found to be violent and in danger of hurting themselves or somebody else. The teams have had a fantastic effect and I look forward to their being rolled out universally.

It has been suggested that the amendment is a little premature and that we do not yet have the infrastructure in place to enable us to have a complete ban on the use of police cells. As with every other Bill, it would be perfectly possible for the Government to accept such a measure and then delay its implementation until such time as the review suggested by the noble Lord, Lord Bradley, had taken place and the extra beds had been put in place. That would not be an impediment to the Government accepting my amendment.

The noble Lord, Lord Rosser, asked what would happen if no health-based place of safety was available, the implication being that only use of a police cell was possible. Every local authority has hundreds of care homes and the lucky ones have nursing homes, too. Not all beds are occupied all the time; indeed, a recent report in the media cited instances where the contract with the family concerned stated that after the person in question had died, the family would have to carry on paying for two, three or four weeks while the home found another occupant for that room. That means that vacant rooms will be available. Some of them would be perfectly suitable for some patients, because they are acceptable and legal places of safety. If Hertfordshire and Merseyside can do it in those circumstances, then why not everywhere else?

Baroness Chisholm of Owlpen: Is the noble Baroness suggesting that mental health patients are able to go to care homes as places of safety?

Baroness Walmsley: I beg the Minister's pardon. I should have said that there are care homes in every local authority where staff are specially trained to deal with people with mental health problems.

If Merseyside and Hertfordshire can do it, why not everywhere? Do they not have any patients who are in exceptional circumstances? I am sure they do.

On funding, the Minister suggested that the LGA was incorrect in briefing us that none of the money was going to local authorities. That is where my statement came from, and it should know.

On Amendment 191, about use of the home, it is important that somebody in a mental health crisis be able to see someone who is trained to assess and treat them as soon as possible, and as soon as would happen if they had a physical problem. They will not get that in their home. I do not believe that those choosing to take them home would be in a position to assess whether that home was really safe. Even members of the family would not know whether the home was safe, so getting their agreement is no guarantee that the home is a real place of safety. Many mental health patients have said that they would find it a serious intrusion on their privacy if the police brought them home and stood guard over them while they were there. I accept that it would be for only a short period, but to have a policeman outside the door would have a great effect on how they felt they were seen. As the noble Lord, Lord Thurlow, said, they already feel stigmatised by a link being made between mental health and criminality, which there really is not. We should therefore pursue these issues on Report. Of course, this is Committee stage, so for the moment I beg leave to withdraw the amendment.

Amendment 189 withdrawn.

Amendment 190 not moved.

Clause 79 agreed.

Amendment 191 not moved.

Clause 80: Periods of detention in places of safety etc

Amendment 192

Moved by ***Baroness Walmsley***

192: Clause 80, page 103, line 5, leave out "person arrives at" and insert "constable takes that person into custody (within the meaning of section 137 of the Mental Health Act 1983) in order to remove them to"

Baroness Walmsley: My Lords, the amendment would ensure that people are really only detained under the Mental Health Act for up to 24 hours. To achieve that, the clock needs to start when the decision is made to detain someone and not when they arrive at the place of safety. If the Government want people to be detained only for up to 24 hours, Amendment 192 is needed. This is the only way to ensure that we are not detaining people for longer than 24 hours during what is often a distressing and alienating experience for people in crisis. They may be detained on the street in one of the special vehicles that have been mentioned or in another public place. They may be kept in a police car until a suitable destination is found. Wherever it is, distress will ensue for the person concerned.

We need to look at the position in parallel with that of a person with a physical illness who calls an ambulance. When ambulance services are assessed, the clock starts ticking from the moment the ambulance is called and not from the moment the patient is picked up. This is a matter of parity between physical and mental health.

When discussing these parts of the Bill, it is crucial that we remember that people detained under the Mental Health Act have not committed any crime. They are unwell and require health support. That is why I beg to move.

Baroness Hamwee: My Lords, I support the amendment. From the point of view of the person detained the detention starts at the point described by my noble friend Lady Walmsley. It is not a question of that being some sort of limbo; that must be how it feels. If a person is on the way to a place of safety, they are being detained, held and controlled as much as they would be when they reached their destination.

Viscount Hailsham: My Lords, I have great sympathy with the points just made. The clock should start ticking when a person is taken into custody and not when he or she arrives at the place of safety.

Baroness Chisholm of Owlpen: My Lords, the amendment would provide for the permitted period of detention of a person detained under Section 135 of the Mental Health Act 1983 to commence at the point at which they were removed to, rather than the point at which they arrived at, a place of safety.

The Government wholeheartedly support the aim of minimising the period during which a person is detained under either Section 135 or Section 136 of the 1983 Act. That is why Clause 80 reduces the maximum detention period from 72 hours to 24 hours.

I also agree that every effort should be made to minimise the time taken to remove and transport a detained person to a place of safety. However, I put it to the noble Baroness that securing that outcome cannot best be achieved through legislation. Indeed, the amendment could well have unintended consequences which were detrimental to the best interest of detained persons.

I fear that the practical effect of the amendment would be to penalise those in need of care and the professionals assessing them in circumstances where the detained person needed to be removed from an isolated location, or if it was difficult to remove that person. For example, if someone needs to be removed from a place that is isolated or difficult to access, it may take some time for professionals to be able to get that person to a place of safety. We do not want the police or mental health practitioners to have one eye on the clock in such circumstances.

There is a balance to be struck between taking positive action to keep periods of detention as short as is reasonably possible and giving mental health professionals sufficient time for the necessary arrangements to be made for mental health assessments to be conducted during the 24-hour window provided for in the Bill. We believe that the combination of reducing, by two-thirds, the period of detention and starting the detention clock only when the detained person arrives at the place of safety—which is, incidentally, how the time limits work now—achieves that balance.

In practice, the vast majority of detained persons will be assessed well within 24 hours of their removal, but the legislation needs to allow not just for the generality of cases, where a person can be taken quickly to a place of safety, but also for that small minority of exceptional cases where this may not be possible. I hope that, on reflection, the noble Baroness is persuaded that the approach taken in the Bill is in the best interests of those suffering a mental health crisis and in need of immediate care. I accordingly invite her to withdraw her amendment.

6.30 pm

Baroness Walmsley: My Lords, I thank the Minister for her reply. Obviously, I will consider what she has said very carefully in case there are any unintended consequences, but I confess that up to this point I am not quite convinced. Once a person has been taken into custody they are under the control of the police, their liberty has been taken from them, and I cannot imagine anywhere in this country that you could not get to within 24 hours. Because we are in Committee I will certainly withdraw my amendment and I will think carefully about whether we need to ask for further consideration of this on Report. For the moment, I beg leave to withdraw the amendment.

Amendment 192 withdrawn.

Clauses 80 and 81 agreed.

Amendment 193

Moved by ***Baroness Walmsley***

193: After Clause 81, insert the following new Clause—

"Detention under the Mental Health Act 1983: access to an appropriate adult

(1) A person detained in a place of safety under section 135 or 136 of the Mental Health Act 1983 shall have the right to have access to an appropriate adult.

(2) For the purposes of subsection (1), "appropriate adult" means—

(a) a relative, guardian or other person responsible for the detained person's care;

(b) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police; or

(c) some other responsible adult aged 18 or over who is not a police officer or employed by the police."

Baroness Walmsley: Amendment 193 would ensure that people detained under Section 135 or Section 136 of the Mental Health Act 1983 have access to an appropriate adult. Such access is key to providing people in crisis access to advice while under emergency detention. It is a uniquely distressing and confusing time, as we have heard, and one where independent advice from someone with knowledge and skill who can handle the situation calmly is crucial.

At the moment detained people only have the police, who were involved in detaining them, and the person doing their mental health assessment as their key contacts. Clearly, neither of these can be seen as impartial to their situation. The person doing their assessment, although qualified, is going to be deciding what happens to them next, and so cannot really be described as impartial. There is a huge gap here, since people under most other sections of the Mental Health Act have the right to access an independent mental health advocate. People who are under arrest also have the right to access an appropriate adult. The National Appropriate Adult Network says about people detained or questioned by police:

"While both children and mentally vulnerable adults are required to have an Appropriate Adult under the PACE Codes of Practice, there is only statutory provision for children. As a result many people aged over 17 who are mentally vulnerable do not get the support that they are entitled to. This includes people with mental ill health, learning disabilities and autistic spectrum disorders".

I recognise the concern of local authorities that they are strapped for cash, but I feel that making this provision statutory will put pressure on the Government to provide the necessary resources. The JCHR shares my concerns about this gap, as we read in its third report of the 2016-17 Session. It wrote to Mike Penning MP, then Minister for Policing and Criminal Justice. He replied on 1 July 2016 to the effect that persons detained under Sections 135 and 136 were only there in order to allow for a mental health assessment and he was keen,

"that we do not inadvertently build unintended and unnecessary delay and bureaucracy into this process or as a consequence of having to await the arrival of a formal advocate or independent representative".

He also pointed out that the person could request the presence of a legal adviser or a relative or friend. This did not satisfy the JCHR and it does not satisfy me.

The JCHR said:

"We believe that additional safeguards are required to ensure that a person detained in a place of safety under s 135 or 136 of the Mental Health Act 1983 should have access to an 'appropriate adult', particularly in circumstances where they are detained in their own home".

It drafted an amendment very similar to my Amendment 193, which I think it proposes to bring forward on Report, unless the noble Baroness can satisfy us all this evening. Given the state a person is likely to be in when they are detained, I believe it would be a breach of their human rights not to allow them the right to access an appropriate adult. I beg to move.

Baroness Chisholm of Owlpen: My Lords, it is absolutely right that people detained under Sections 135 or 136 should have the help and support they need to understand what is happening to them, and the current arrangements already allow for that. Detention under Sections 135 and 136 is for a short period of time and for the specific purpose of assessing the need for care and treatment, and making the necessary arrangements for its provision.

This amendment calls for each person detained to have access to an appropriate adult; an issue which was also raised by the Joint Committee on Human Rights in its report on the Bill. It is true that appropriate adults provide an incredibly valuable service, providing support and advocacy for children and vulnerable adults detained in police stations, usually when they are under arrest in connection with a criminal offence. Appropriate adults are not currently required to be provided by the police to support people detained under the Mental Health Act, nor are they trained to meet their particular needs. We must be cautious of the potentially stigmatising effects of conflating the support services provided to people suspected of an offence with those needed by people detained in connection with their mental ill health.

In the majority of cases under Sections 135 or 136, the person will be taken to health-based places of safety, where appropriate adults do not operate, rather than to police stations. In 2015-16 police stations were used in only 7% of Section 136 cases in England and Wales. The provisions in the Bill mean that police stations will be used even less than they are now; in fact, quite rarely, I expect— we hope, not at all. These rare cases require particular attention and I expect that the regulations on the use of police stations as places of safety for adults will give very clear direction about the level of support that will need to be in place.

I recognise that this amendment is about all people who are detained under Sections 135 or 136, regardless of which place of safety they are taken to. It is about supporting them, informing them and speaking for them if necessary. The Government are clear that the mental health professionals involved in the detention and assessment process are best placed to do this. Also, mandating the attendance of an appropriate adult, or some other person with a similar role, could very easily cause avoidable delays in getting on with the mental health assessment that is the proper purpose of a detention under Sections 135 or 136. Given that the Bill reduces the maximum period of detention from 72 hours to 24, it seems unhelpful to then introduce additional requirements that would, in all likelihood, impinge on that reduced period of time.

Guidance is now being developed on the changes the Bill makes to the 1983 Act. It will make clear the expectations on healthcare staff—those whom people detained under Sections 135 and 136 will encounter—to ensure that detainees have the support and advice they need while awaiting and undergoing an assessment. The Government are engaging with a wide range of experts to draw up this guidance. Current practices and the needs of people experiencing a mental health crisis will be carefully considered.

I hope I have been able to persuade the noble Baroness that mandating access to an appropriate adult is inappropriate in the context of a short Section 135 or Section 136 detention, and that, having had this opportunity to debate the issue, she will be content to withdraw her amendment.

Baroness Hamwee: My Lords, I am a member of the Joint Committee on Human Rights and my name is on the amendment. I will make two points. First, the Government's argument is that using the term "appropriate adult" causes some sort of stigma. I cannot speak for the committee or my noble friend whose amendment it is, but you can call that person what you like—it is the job that needs to be done, and that is what the amendment is driving at. Secondly, I wish to draw attention to the provision of subsection (1) of the proposed new clause, which is,

"the right to have access".

Rights should be in legislation.

Baroness Walmsley: I agree with my noble friend on that point and on all the points she made. I thank the Minister for her comments, which I will of course consider between now and Report. I do not agree with her that the person formally doing the mental health assessment can be regarded as the appropriate adult, for the reason that I gave in my opening remarks; that is, that person is in control of what happens next to the person being assessed. It is important that the person has a right—they may not choose to use it—to consult somebody else about whether that is the right thing for them and how they feel about it.

Of course, the Minister is right that the number of people detained in police stations in these circumstances is going down very rapidly. If my Amendment 189 was accepted, it would become zero very quickly. In those few cases—many fewer now—where a person is in that situation, I still think that they should have a right to choose if they feel the need to have somebody else there to advise them. However, this is Committee so I will withdraw the amendment.

Amendment 193 withdrawn.

Amendment 194

Moved by ***Baroness Walmsley***

194: After Clause 81, insert the following new Clause—

"Disallowing use of Tasers by police officers on psychiatric wards

A police officer may not use a Taser or electroshock weapon during a deployment on a psychiatric ward."

Baroness Walmsley: My Lords, Amendment 194 would ban the use of Tasers in psychiatric wards. It must be remembered that a Taser is a firearm and when they were first introduced they were restricted for use by trained firearms officers only. How could it possibly be justified to use a firearm on a person going through a mental health crisis and whose liberty has been removed, especially when you do so in a health-based setting where staff are supposed to be trained in the behaviour management of people suffering a mental health crisis? Could it be that the increased use of Tasers in these settings is an indicator of the shortage of properly trained staff in them?

A *Guardian* freedom of information request on the police response to calls for help from staff at psychiatric units spotlighted the pressures on an overburdened system. The staggering 617 emergency 999 calls by one London trust in the past 12 months indicate a service in crisis. What we are seeing is the health service relying on a forensic solution to meet clinical need, because we have lost more than 4,000 mental health nurses in recent years. This is a health issue as well as a Home Office issue.

It is also a human rights issue. The United Nations Committee Against Torture has stated that Taser X26 weapons provoke extreme pain, constitute a form of torture and in certain cases can also cause death, as shown by several reliable studies and certain cases that have happened after their use. While termed non-lethal, there have been at least 10 known deaths associated with the use of Tasers in the past 10 years, yet Tasers have been used against patients detained in secure psychiatric settings over that same period. But this scandal has come to public attention only recently, due probably to the imbalance of power between those who use them and those upon whom they are used. I would like to know why the CQC and/or the IPCC have not reported on this before.

6.45 pm

When Tasers were first introduced for use by police on the streets, it was understood that they should be used only in extremis, when the people against whom they were used presented a danger to the public, the police or themselves. However, there has been significant mission creep and there is also a very worrying disproportionate use of these weapons against the black and ethnic minority community. This is a moment to stop and think about this very extreme intervention.

This amendment was tabled in another place when the Bill was discussed there, including by my right honourable friend Norman Lamb MP. The Government have taken a long time to respond. Indeed, it was only yesterday that I received copies of letters, dated 1 November, in response to the debate in another place on 13 June. The Home Office now says that it has written to police and crime commissioners, chief constables and the chairs of local mental health crisis care concordat partnerships to ask them to work together to ensure that there is scrutiny of any use of Tasers in mental health settings unless they already have such a mechanism. They have to ensure that the use of Tasers is appropriate.

Although this is welcome and responds to the concerns of some MPs who took part in that debate, it will not do. It is never appropriate to use a firearm on a sick person. The Minister, Brandon Lewis MP, rightly asks for more transparency in these matters and prays in aid the new data-collecting system for recording the police use of force. Welcome though this is, it is recording post hoc something that should never have happened in the first place. Human rights abuses should be stopped, not monitored. I suppose these data may help bring to light the frequency of this sort of use and the circumstances surrounding it. If they do so, I hope the Government will look carefully at these situations and realise that the use of a Taser was probably not the only way of dealing with the case. Better training, sufficient staff and more creative thinking about how the patient could be calmed without interfering with his human rights and dignity are what is needed.

[Baroness Walmsley]

In a civilised society, this situation requires not only data collection and decisions at local level but a national statement from the Government about how we should treat mentally sick people. This should not require the use of firearms. I beg to move.

Viscount Hailsham: My Lords, I hope the Committee does not accept this amendment. Of course, I have every sympathy with the generality of the points made by the noble Baroness, but I hope she will forgive me if I observe that many of the arguments that she has advanced are advanced in general against the use of Tasers, not with particular regard to the use on psychiatric wards. Your Lordships need to keep in mind that some people held on psychiatric wards can be prone to extreme violence. I am not prepared to say that there are no circumstances in which a Taser might not be appropriate in self-defence of the people with responsibility for the persons on the ward or in defence of third parties. That is an extreme position to take and I ask the Committee not to take it.

Furthermore, if the Committee was to accept this amendment it would create an offence on the part of the officer or nurse who used a Taser, who would be guilty of an assault, whereas the circumstances that arose in any ordinary context would justify the use. That strikes me as a very rum thing to do indeed. I hope that we will rely on the ordinary law, which is that a Taser should be used only in wholly exceptional circumstances in appropriate self-defence or in defence of a third party, and we should not try to prohibit its use in very specific circumstances of the kind identified by the noble Baroness.

Lord Dear: My Lords, I echo the words that we have just heard. I have considerable sympathy with the emotions and reasoning behind the amendment of the noble Baroness, Lady Walmsley. I make no comment about staffing in psychiatric wards—I have no knowledge of that—but as I speak against this amendment, we should remember that the Taser was introduced as an intermediate stage. It is intermediate between the use of batons, pepper sprays, CS gas and so on the one hand and firearms on the other. A Taser is not a firearm. It is something akin to it—it looks rather like one—but it is not a firearm within the definition of the Act. It does a different thing altogether. There is a violent interaction; of that, there can be no doubt. It brings immediate incapacity and some discomfort when it is fired but, as is sometimes said, in fact it knocks down the individual completely. That has to be the object of the exercise.

Perhaps I can give the Committee a circumstance which has already been alluded to. On a psychiatric ward a patient, for whatever reason, has become exceedingly violent and probably caused serious injury. They may even have caused death. The police are called; what are they going to do? If this amendment is passed into law, the police cannot use a Taser. They will use either the original, which is the pepper spray and so on, or a firearm. We need to remember that the use of a firearm in those extreme circumstances is justified in law, because there is a threat to life. By taking the Taser out we will in effect open the door, in extremis, to somebody being shot with a real lethal barrelled weapon.

I am all for looking at practice directions and reviewing the use of Tasers. Mission creep has been mentioned and perhaps there is mission creep—I do not know that and have not looked at the figures. However, to have something as extreme and prescriptive as this amendment within statute will certainly expose patients in psychiatric wards to the risk of death rather than anything else. In speaking against this, I am all for looking closely at the use of Tasers and for counselling officers using or thinking of using them to exercise extreme caution, but I would not go so far as the amendment stands.

Lord Rosser: My Lords, my name is attached to Amendment 194 and to a further amendment in this group, Amendment 201SB. As far as Amendment 194 is concerned, as has been said, it provides that a police officer may not use a Taser or electroshock weapon during deployment on a psychiatric ward. The purpose of adding my name to this amendment is to raise concerns that have been expressed to us about what is, in effect, a police response to what one might have thought was a clinical emergency but which has the potential effect of appearing to criminalise highly vulnerable people. I accept, though, that there could be very exceptional circumstances where a police officer might have to use a Taser during deployment on a psychiatric ward.

In response to this debate, perhaps the Government could provide figures on the extent of the use of Tasers or other devices by the police on psychiatric wards over the last 12-month period for which figures are available, and on the varying extent to which the trusts concerned called in the police and why there are such variations. The noble Baroness, Lady Walmsley, clearly has similar information to that which I have been given. I have been told that there are trusts which call in the police literally hundreds of times a year. It would be helpful if the Government could say in response whether they accept that that is true and why they think it happens. If the police are called in on frequent occasions, is the heart of the problem that results in them being called in in that way either inadequate numbers of staff on duty to cope with situations that arise, or is it due in any way to inadequate or insufficient training of staff?

The second amendment which I have in this group calls for a review of Tasers, including in places of custody, and the extent to which there is or is not a disproportionate use of Tasers against black and minority ethnic groups. Once again, this concern has been raised with us—hence the amendment—and it was highlighted following an incident which led to the death of a former well-known footballer. I simply ask: what procedures exist to ensure that there is transparency and scrutiny over the use of Tasers? What information is kept of the details of those against whom Tasers are deployed, including age, gender and ethnicity? What requirement is there for the use of Tasers to be reported immediately and to whom?

Like the noble Baroness, Lady Walmsley, I have just seen the letter sent yesterday to Charles Walker MP from the Minister of State for Policing and the Fire Service on the use of Tasers in mental health settings. No doubt in her response the Minister will seek to

place on record in *Hansard* the thrust of the terms of that letter and the circular that has been sent to police and crime commissioners, chief constables and the chairs of local mental health crisis care concordat partnerships in England. Nevertheless, I hope that the Government will seek to respond to my questions insofar as they can, bearing in mind that the circular states that at present there are no reliable data on the frequency or scale of any Taser use in mental health settings.

Lord Harris of Haringey (Lab): My Lords, I find myself in total agreement with the words expressed by the noble Viscount, Lord Hailsham, and the noble Lord, Lord Dear. When I first saw this amendment I could see what it was trying to achieve: a laudable objective, based on the fact that many mental health units are incapable of dealing effectively with some of the patients they have on their wards, and that the police are called to deal with incidents in an unacceptable number of instances. Quite frankly, I suspect that whatever is going on in some of those mental health settings, they are not finding all the appropriate ways of dealing with and de-escalating violence which one would expect their specialist training to deliver. The number of times that the police are called is of concern.

However, when I saw the amendment I thought it was a silly—fatuous was the word that first came to mind—response to what was proposed. The point is that if there is a very serious incident and a major crime of violence is being committed, the police have to be called. It is then a question of what the most appropriate response is. A few months ago, a mental health nurse was murdered by a patient in a Croydon mental health unit. Is the noble Baroness, Lady Walmsley, suggesting that it would have been inappropriate in the circumstances in which the police were called to that unit not to have found ways of restraining the patient concerned, given that it was necessary to deal with them? Then there was a mental health nursing assistant who was murdered by a patient in Gloucester in 2014, because the patient had returned from authorised leave with a 10-inch kitchen knife. These are serious incidents that require an appropriate and proportional response. What does the noble Baroness think should have been done in those incidents? The situation was that they had got out of hand in both instances and individuals died, presumably as a consequence of the mental health unit not being able to manage the incident. The effect of Amendment 194 would be that had there been a police officer equipped with a Taser in the immediate vicinity, he could not have discharged it. The noble Baroness may think that something other than a Taser should be used.

The argument about where Tasers sit in the spectrum of potential uses of force by the police is one which will no doubt continue. But although there have been instances where someone has died perhaps as a consequence of repeated Taser use, it is also the case that people have died because of the use of other forms of force. Hitting somebody across the side of the head with a baton is also potentially likely to cause death. Indeed, it may be better for the patient or individual concerned to be tasered.

The noble Baroness, Lady Walmsley, talked grandly about the UN saying that these were weapons of torture. The UN definition of the term "torture" is:

"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official".

I fail to see how that UN definition of torture could be applied to the circumstances we are talking about of an emergency in a mental health ward where the police have been called. I understand that the use of the word "torture" related to the particular way in which Tasers—I think we are supposed to call them conductive electric devices or something equally opaque—were issued in a particular unit of the Portuguese police force. I have no idea under what circumstances that particular unit of the Portuguese police force was planning to use Tasers, but I assume that the use of the word by the UN was very specific, bearing in mind its definition of torture.

If we pass this amendment, the only alternative when the police have been called because of a major incident—an assault, somebody at the risk of losing their life or somebody already having lost their life and a danger to others—when a Taser cannot be used would be the use of a real firearm, which would be likely to kill the individual concerned, or a baton, which can be just as damaging, particularly in restricted and difficult circumstances. I do not think that makes any sense at all.

7 pm

Lord Paddick: I was trained in how to deal with these sorts of situations before Tasers were invented. Batons and firearms are not the only alternatives. Using shields, either those specially produced in order to deal with these situations or even NATO-type shields, particularly in the confined space you find on a mental health ward, is an alternative to the batons and guns which the noble Lord seems to suggest are the only alternatives to a Taser.

Lord Harris of Haringey: I, of course, defer to the extensive knowledge of the noble Lord, who was born many decades before the Taser was invented. He is right that of course there are alternative methods, but pinning somebody against a wall and pushing them hard and repeatedly with a NATO shield is also a fairly violent response. We are not talking about nice situations; we are talking about a situation where something major in terms of an intervention is needed to save somebody's life. Under those circumstances, I think a blanket proscription which says you must not use a Taser is a mistake.

There are also questions about why this amendment refers simply to mental health wards. There are violent incidents every night in accident and emergency departments. Are we saying that we would permit the use of a Taser in an incident in an accident and emergency department, but if exactly the same incident

[Lord Harris of Haringey]
occurred in a mental health ward that would not be the case? The noble Baroness may actually be saying that Tasers should not be used at all. That is fine—it is a perfectly legitimate argument, and there is a debate to be had, but it seems a strange anomaly to make a distinction between one type of hospital ward and another.

The issue that has to be addressed is why so many incidents get out of hand in mental health wards. If that can be resolved—and I suspect it will mean staffing and may mean improved training and a lot of de-escalation—concern about the sheer number of times the police are called out to incidents of this sort would be diminished. The fact is that that is the problem, and that is the problem that must be addressed. A blanket ban on Tasers does not solve that problem; it just creates other problems, which is unsatisfactory.

The noble Baroness also referred to the overuse of Tasers elsewhere in the community, the probable discrimination and the fact that black people are more likely to be tasered than others. That is a real concern. I am aware that in London, at least, the mayor's office requires that on every single occasion that a Taser is drawn, an individual is red-dotted when a Taser is pointed at them or a Taser is discharged, the circumstances are recorded and it is reported to the Mayor's Office for Policing And Crime. I assume that the Minister has those figures to hand. It would be very interesting to know—it is quite a substantial number of cases. It is also interesting that often the mere act of red-dotting an individual—pointing the Taser at them—is enough to de-escalate the situation without discharge. It would be interesting to know whether those statistics tell us in how many instances Tasers were used in a mental health ward. I assume that the detail that is collected would enable that; I hope it does. It is certainly important that whenever a Taser or any other force is used, it should be properly recorded together with the circumstances and the ethnicity of the person against whom it was used. I understand that that is included in guidelines which are emerging from the College of Policing. I strongly welcome them because that will enable us to have a baseline to be able to see what is happening and to deal with issues where there is discrimination or overuse of force under whatever circumstances. By "overuse of force", I do not mean just Tasers; I mean all forms of force.

Lord Berkeley of Knighton (CB): My Lords, I do not think any noble Lord wishes to see Tasers used in hospital settings except under the most extreme circumstances. However, I am very persuaded by what I have heard from other noble Lords, including my noble friend Lord Dear. I would like to put the position slightly from the point of view of the patient. When I was a young man, I had quite a lot of experience of psychiatric wards—not, I hasten to add, as an inmate—and they can be terrifying places of extreme violence.

This amendment would mean that police officers could not use a Taser. I can foresee circumstances where somebody gets hold of a kitchen knife, for example, and is in a volatile state—the kind of volatile state that people who have not seen this kind of mania find hard to imagine. It is truly terrifying. We have to give some credit to people who are managing the situation. Given the information we have just heard from the noble Lord, Lord Harris, I would like to think that the police are acting responsibly, so we have to assume that somebody assesses the situation and decrees that it is so dangerous that the best way of not harming the mental patient any further is to use a Taser. I really cannot see how we could stop the police having that possibility at their disposal.

My concern is very much from the point of view of the patient, but there are occasions when a Taser just might be in the best interests of the patient.

Lord Ouseley (CB): My Lords, as a signatory to this amendment, I certainly do not think that it is as crazy as it seems. I certainly support the noble Baroness, Lady Walmsley. She has very eloquently put forward the reasons why the amendment should be supported. I never felt that the amendment would be accepted, for the very reasons that noble Lords have given in speaking against it—and I understand why they said what they said. It is almost out of desperation that an amendment like this appears. Noble Lords have already mentioned the issue that has led to it: the desperation among people working with black and minority communities in such situations. The noble Lord, Lord Harris, mentioned the Care Quality Commission overseeing the way in which the police are involved in such settings and the way in which the Taser has become not just a weapon to stun—which might be necessary in such dangerous situations—but a weapon that has led to fatalities. Those organisations such as Black Mental Health UK that have been raising these issues for the last few years are concerned that no one seems to be listening.

Mental health is in crisis, and you cannot see this amendment in isolation from the other amendments that have been put forward, many of them by the noble Baroness, Lady Walmsley, today. That package of improvements, alongside the improvements that are set out in the Bill, would hopefully get us to a stage that might minimise the need for Tasers to be used in the desperate situations that occur and require intervention. With the number of call-outs that are being made to the police, out of the desperation of staff who cannot cope, the police service is almost becoming an auxiliary to the mental health services in some areas. Part of what has to happen is that we address the deficiencies that exist, including in the quality and number of staff. An amendment such as this brings attention to the problem and brings our concerns to the fore about how we care for desperate people who require health professionals and as far as possible provide them with the care, protection and safety that they need—staff as well as patients. If we had got that right, we would not have put down an amendment such as this, which is one of sheer desperation.

Other amendments are important to improve the service to get us to the point where we would not have to say this. If we had before us all the information that has been asked for by Members tonight, it would enable us to see exactly what the scale of the problem is—rather than it being sensationalised in a way that may not actually be the case—and would guide us towards a sensible situation. As a last resort and in an

emergency, police officers called to and deployed in such situations may have to use a Taser. It should not, because of creep, become something that causes as much concern as it does, but the reality of the use of Tasers in everyday policing and of the discrimination that is inflicted on black and minority-ethnic communities means that this is a real concern which we must address.

Earl Attlee (Con): My Lords, although I have sympathy for everything that has been said in this debate, I support those noble Lords who oppose Amendment 194. We need to consider the position of a police officer who has to deal with an exceptionally violent situation. If this amendment were agreed, the police officer would have to get much closer to someone who is extremely violent. We have technology that we can use and strict controls on how it is used, and we should not deny the police the ability to use Tasers in these circumstances.

Lord Paddick: In her response, could the noble Baroness tell the Committee whether there is any information on the effectiveness of the Tasers used in those situations? Anecdotally and from my own experience, the mental state of some people means that Tasers have no impact. Perhaps she may be able to help the Committee on that point as well.

7.15 pm

Baroness Williams of Trafford: I start by thanking all noble Lords who have taken part in this debate. Although there have been opposing views on the amendment, it has provided a very balanced set of points. This group of amendments includes two proposed new clauses about police use of Tasers. As the noble Baroness, Lady Walmsley, explained, her amendment seeks to bar the use by police officers of a Taser or other electroshock device in psychiatric wards.

Any use of force by police officers in psychiatric wards, or in any other setting, must be appropriate and proportionate—the noble Lords, Lord Harris and Lord Dear, the noble Viscount, Lord Hailsham, and my noble friend Lord Attlee made that point and gave some very good examples this evening. The use of force must be necessary and conducted as safely as possible. Therefore, it is right that if police officers need to attend and use force, they should be expected to account for their actions, as the noble Lord, Lord Harris, said.

It remains the Government's position that the deployment of police officers to mental health settings, and the tactics used, should remain an operational matter for the police force in question. Tasers are an important tactical option for police officers. Unfortunately, some of the most extreme behaviour can occur in mental health settings and can escalate to the point where it can be met only with force—as dictated by the high degree of urgency and grave threat to staff and other patients. I am talking about cases where other de-escalation tactics have probably been tried and have failed. Again, the noble Lords, Lord Harris and Lord Dear, and the noble Viscount, Lord Hailsham, made those points.

A blanket ban on the use of Tasers on psychiatric wards, as proposed by this amendment, would remove this valuable police tactic and therefore potentially reduce the safety of officers, hospital staff and indeed patients. In some extreme cases, it could leave officers with no choice but to use another, potentially more dangerous option as the only means to resolve a violent situation and keep others safe. The same noble Lords made these points. Police officers themselves have made it clear that they would not want their options constrained by a blanket ban on Tasers. Officers have a range of tactics and equipment available, and a Taser is but one of them. In deciding which tactic to use, an officer will assess which is likely to be most effective and proportionate.

The Government accept that more can and should be done to ensure that all uses of force, including of Tasers, are necessary and proportionate. For this reason, the former Home Secretary asked former chief constable David Shaw to lead an in-depth review of the publication of use-of-force data, including data on where force is being used, such as in a hospital setting, to ensure that the use of these sensitive powers is transparent. With the agreement of fellow chief officers, Chief Constable Shaw recommended that every time the police use a significant level of force on an individual, such as the use of Tasers, a range of core data must be recorded. This includes ethnicity, age and location, so that we will be able to identify every time force is used in a hospital or mental health setting. The data will enable thorough scrutiny of proportionality and effectiveness.

That brings in the point that I think the noble Lord, Lord Rosser, made about force seeming to be used more in some places than in others. All forces have worked to implement this new recording system, and I anticipate that the collected data will form part of the 2017-18 Home Office annual data return. I can tell noble Lords that in 2015 there were 10,329 uses of Tasers by police. Actual firings of the device—this is an important point—accounted for 17%. Non-discharges —where the Taser is drawn, aimed, arced or red-dotted— accounted for 81% of Taser use. Red-dotting accounted for 51%—the most common use.

All forces have worked to implement this new recording system and, as I said, it should be in force in 2017-18. The Government have also taken further steps to ensure greater scrutiny of the use of Tasers in mental health settings at local level, where operational decisions are made. Charles Walker MP raised some valuable points on this matter during consideration of the Bill in the House of Commons.

Both Home Office and Department of Health Ministers have in the past few days written to police and crime commissioners, chief constables and the chairs of local mental health crisis care concordat partnerships to ask them to work together to ensure that sufficient local joint scrutiny arrangements are in place. As local leaders with overall responsibility for policing and mental health crisis care, they have been tasked with ensuring that mechanisms are in place in their areas for the joint identification and scrutiny of any use of Tasers in a mental health setting.

I expect this additional scrutiny to lead to all relevant policing and health partners working closely to look at the full circumstances surrounding police officers

[Baroness Williams of Trafford]
being called to attend, the specific circumstances of any use of Tasers, and the lessons they can learn for the future.

As I have said, the Government and police believe that a blanket ban on the use of Tasers in psychiatric settings risks the safety of the police, hospital staff and patients. That said, I agree that more should be done to ensure that any use of Tasers in such circumstances is open to effective scrutiny. That is an important point.

The amendment tabled by the noble Lord, Lord Rosser, goes rather wider in seeking a review of all police use of Tasers—not just in mental health settings. As I just explained, the Government are committed to ensuring that the police use their powers and tools proportionately and are keen that all use of force by the police—including Tasers—be recorded and published.

The benefits of the planned new data collection system will be to enable the police and others to review practice in certain locations, against certain groups, and so on. This will enable deeper examination of the reasons for the use of force and inform adjustments needed to guidance, policy and authorised professional practice, if any. We have asked the police and others to ensure that this happens and, on that basis, I hope the noble Baroness feels able to withdraw her amendment.

Baroness Walmsley: My Lords, I thank the Minister for her reply and the noble Lords, Lord Ouseley and Lord Rosser, and my noble friend Lord Paddick for their support. I am sorry that I have been unable to take the noble Viscount, Lord Hailsham, or the noble Lords, Lord Dear and Lord Harris, along with me. I must say that I felt that in his enthusiasm in making his case, the noble Lord used somewhat unparliamentary language. In 16 years in your Lordships' House, I have never been called silly before. The amendment was certainly not regarded as silly by the mental health patients who have approached us about the issue.

The noble Baroness mentioned that use should be appropriate, but we have had to move the amendment to highlight the issue today because it seems that "appropriate" has become a lot more frequent. We have heard some figures about the number of times that the police have been called in. At least the noble Lord, Lord Harris, was able at the end of his remarks to agree with me that part of the problem is undoubtedly the lack of sufficient properly trained staff in mental health wards, which needs to be addressed.

We will think carefully about what has been said on all sides of the argument between now and Report, but, for the moment, I beg leave to withdraw the amendment.

Amendment 194 withdrawn.

Amendment 195

Moved by ***Baroness Walmsley***

195: After Clause 81, insert the following new Clause—

"Child sexual exploitation: duty to refer

(1) Where the police have a reasonable belief that a child has been sexually exploited or subject to other forms of child abuse, the police must refer the child to a named mental health service.

(2) The Secretary of State must by regulations define "named mental health service" for the purpose of this section."

Baroness Walmsley: The amendment is intended to ensure that children who have been abused or sexually exploited are made known to mental health services in their area. It is beyond the scope of the Bill to mandate what happens next, but it is inconceivable that services to which the child is referred should not provide the necessary assessment and therapeutic services.

However, we know that many thousands of children who have been abused sexually and otherwise have not received any help, despite the fact that up to 90% of children who have been sexually abused develop mental health problems before they are 18. Recent NSPCC and Children's Society research has highlighted that abused children are not routinely getting access to the mental health and therapeutic support they need. They found that traumatic experience of abuse on its own rarely triggers therapeutic support, with abused children reaching high clinical thresholds for services only when they have severe mental health issues and are at crisis point.

Evidence from the Children's Society report, *Access Denied*, said that despite abuse being a major risk factor for mental health issues, less than half of mental health trusts identify children who have experienced sexual exploitation in referral and initial assessment forms, and only 11% of trusts fast-track access to CAMHS for this group. Only 14% of local transformation plans for children's mental health contained an adequate needs assessment for children who have been abused or neglected, and one-third of plans do not mention services to meet the needs of such children at all. Identifying young people who experience sexual exploitation and their needs in the first place can be a particular challenge.

Since I entered your Lordships' House 16 years ago, I have attended many presentations and seminars, but one sticks in my mind from my very first months here. It was with the NSPCC, highlighting the lack of therapeutic help for abused children. Here we are, 16 years later, talking about the same thing, despite all the efforts of my right honourable friend Norman Lamb MP to get more funding for CAMHS.

This morning, I attended the 30th birthday party of ChildLine, and I was discussing the amendment with Esther Rantzen. She, of course, supports it, but she made another relevant point, which was that although ChildLine often refers children to the police—with their permission—it is rarely the other way round. The point is that if the police are having difficulty getting a child to disclose to them about suspected sexual abuse, they should put them in touch with ChildLine, which will not only help them to disclose safely, in the way they should, but will support them through the proceedings that may follow.

The phone number of ChildLine should be on the wall of every police station: 0800 1111. Perhaps this would also remind police to refer children to their local mental health services for an assessment. They know they should, but they do not always do it. That was admitted this morning on Radio 4's "Today"

programme, when Sarah Champion MP, a great champion for abused children, and a senior police officer, discussed this very thing. Although it was accepted that the police's attitude to abused children has improved enormously, it was admitted that there is still some way to go.

There is an opportunity through the Bill to pursue the recommendations set out in *Future in Mind*: that sexually abused or exploited children receive a comprehensive specialist initial assessment and a referral to appropriate services, which can provide evidence-based interventions according to their need. Where victims of child sexual exploitation come into contact with the police or a local authority, the Bill provides an ideal opportunity to state in law that the police must refer them for a psychological assessment, and then we must rely on providers to give them the support they need to recover.

These children are going to cost the NHS a great deal of money unless we act promptly. A report from Public Health Wales this week found that people who have been abused in childhood are three times as likely to contract a serious illness later in life. The Government must see the amendment as prevention of a great deal of expenditure later, and accept it tonight. I call on them to do so and beg to move.

Lord Paddick: My Lords, I rise very briefly to support my noble friend Lady Walmsley's amendment, to which I have added my name. It seems absolute common sense that, if the police are investigating an allegation that a child has been sexually exploited, the needs of the child should be paramount and that referral to appropriate support for the child should be compulsory in those circumstances. I feel that I really need say no more than that.

7.30 pm

Baroness Benjamin (LD): My Lords, I too rise to support my noble friend Lady Walmsley. We were both on the Barnardo's inquiry led by Sarah Champion. When we spoke to abused children, both boys and girls, they all said that they wanted to be treated with respect by the police. I second my noble friend on all the issues that she has brought up and I support her in every way. I hope that the Government will have common sense and show that childhood lasts a lifetime and those children's needs will be looked after, making sure that they do not suffer long-term in the future.

Lord Harris of Haringey: My Lords, I am slightly surprised in fact that it is necessary for the noble Baroness, Lady Walmsley, to move this particular amendment, but the fact that she has moved it means, I assume, that it is necessary. It should be—in the same way as it is incumbent on other professionals—that when the police see an issue that requires the safeguarding and protection of a child, they should take the appropriate action, which, in this particular case, would mean the sort of referral envisaged by this amendment. So on this occasion I wholeheartedly support the noble Baroness.

Lord Kennedy of Southwark: My Lords, Amendment 195, moved by the noble Baroness, Lady Walmsley, and also in the name of my noble friend Lord Rosser and others, would ensure that child victims of sexual abuse receive the mental health support that they need and would address the fundamental problem that, as things stand, victims too often have poor access to the support that they need. The Bill makes welcome provisions in the area of mental health—including by ending the detention under the Mental Health Act 1983 of young people in police cells—but it could go further, in particular, in recognising the mental health needs of children who have been victims of child sexual exploitation.

NSPCC research shows that children who have been abused are more likely to experience depression, anxiety and symptoms of post-traumatic stress disorder as well as self-harming and suicide. The cases of 30 children supported by the Children's Society were analysed in its report *Old Enough to Know Better?*—a third of the cases noted that the young people needed mental health services because of concerns about their well-being, including self-harming episodes, suicide attempts or even episodes of psychosis that required in-patient admissions. The remaining cases also referred to the young people feeling low, depressed, anxious, fearful, or having flashbacks of their abuse. I think that the Government should accept this amendment from the noble Baroness this evening.

Amendment 221 in this group is in the name of my noble friend Lord Rosser. It would place in the Bill a duty for police forces to disclose information about children who are victims of sexual exploitation or other forms of abuse to the relevant health service commissioners. This is an important requirement to ensure that victims of exploitation can have access to the health services that they need.

Baroness Williams of Trafford: My Lords, I am grateful to the noble Baroness, Lady Walmsley, the noble Lord, Lord Kennedy, and the noble Baroness, Lady Benjamin, for their explanation of the amendments. We appreciate that their intention is to ensure that the proper provision is made for vulnerable or traumatised children. We absolutely agree that we must ensure that such children never fall through the gaps between services, but I put it to the noble Baroness, Lady Walmsley, that the overriding determinant of referral for health services must be clinical need. Not all children and young people who have been abused or exploited will develop a mental health problem, and intervening unnecessarily or inappropriately can in itself be harmful.

All that said, it is essential that healthcare practitioners who work with abused children and young people should have the capacity and capability to provide evidence-based treatment where needed. This will be addressed through the emerging workforce strategy, which is being put in place to deliver the key proposals in the Department of Health report on children's mental health. The Department of Health is also introducing routine procedures so that sensitive inquiries are made to establish whether a child undergoing a mental health assessment has experienced neglect, violence or abuse. This will be an important step towards establishing a child's or young person's need for support. The important thing is that children and young people

[Baroness Williams of Trafford]
get the right care at the right time, based on their needs, not on a non-clinician's view of their potential needs based on their experiences.

On amendment 221, it is worth adding that individuals, including children where appropriate, need to consent to receive treatment. Where a person indicates that they would like to avail themselves of any referral, consent can be sought for relevant personal details to be passed to the health provider, which is the proper course of action. It would be likely to be inappropriate, and in breach of data protection, automatically to pass on personal details and potentially sensitive information, even to a health provider. It may be helpful for noble Lords to know that NHS England published a *Commissioning Framework for Adult and Paediatric Sexual Assault Referral Centres (SARC) Services* in August 2015, which outlines the core services in SARCs and referral pathways to other services. They are now being rolled out throughout England.

On the basis of my remarks, I hope that the noble Baroness feels content to withdraw her amendment.

Baroness Walmsley: My Lords, I thank the Minister, though I hardly know where to start. I know that I want to keep my remarks short, as those here for the dinner-hour debate are waiting.

The Minister suggested that not all young people who have been abused require therapeutic help. Bearing in mind the figures that I gave at the beginning of my speech, we will not really know which 10% will not develop mental health problems unless we get them properly assessed. I may have used the wrong word—"refer"—in my amendment, but the point I am trying to make is that the police must ensure that the appropriate mental health commissioners in the area are made aware that a child may need therapeutic help and that an assessment should be done by a qualified person to find out whether they do. That is absolutely essential.

The fact is, we know that it is not always happening and that is why, as the noble Lord, Lord Harris, accepted, I felt it necessary to raise this, and I am not the only one. As I say, ChildLine also very much feels that this would be helpful.

Given the effect on the rest of the lives of these children, as my noble friend Lady Benjamin mentioned, a little bit of over-referral would not necessarily be a bad thing, because it will soon come out in the wash. If they do not need any help, it will soon be found out and the help will stop if it is not needed. The National Health Service is not going to give a whole lot of help to people who do not need it—it does not have the money. But the fact is that most of them do need it and it is not happening. After 16 years, I cannot believe that we are still here.

I will of course consider what the Minister has said and make further inquiries between now and Report stage in case it is not necessary, although I think it is. For the moment, I beg leave to withdraw the amendment.

Amendment 195 withdrawn.

Amendment 195A had been withdrawn from the Marshalled List.

House resumed. Committee to begin again not before 8.38 pm.

Conflict, Stability and Security Fund

Question for Short Debate

7.38 pm

Asked by ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government what assessment they have made of the projects supported by the Conflict, Security and Stability Fund established in 2015.

Lord McConnell of Glenscorrodale (Lab): My Lords, I am very grateful for the timing of this QSD in the dinner break this evening—it was not planned in this way but the timing of our debate coincides with the inquiry by the Joint Committee on the National Security Strategy, which has recently been taking evidence from a variety of organisations and from the Government on the Conflict, Stability and Security Fund. In opening tonight's debate and in posing questions to the Government, I want to say something briefly about the history that lies behind this fund, something about the importance of strategy, and something about the importance of detail and accountability.

The last Labour Government discovered, perhaps because of their international interventions, the vital importance of integrating work on diplomacy, defence and development. The Conflict Pool was established some nine or 10 years ago to bring together some—albeit a very small part—of the spending of the Foreign and Commonwealth Office, the Ministry of Defence and the Department for International Development. At the same time as that work was going on in the United Kingdom, the UK Government were also promoting internationally the need for a more integrated and resolute approach to post-conflict reconstruction and peacebuilding. I spent two very enjoyable years working on that agenda as this country's special representative on peacebuilding. I therefore welcomed the initiatives of the new Conservative Government in 2010 and 2011, when the then Prime Minister established the National Security Council and the National Security Adviser to better integrate, co-ordinate and lead the Government's global peacekeeping, peacebuilding and conflict prevention interventions.

I certainly welcomed the decision of the then Secretary of State for International Development, Andrew Mitchell, who committed 30% of our ODA to combating conflict and fragility. I think we all welcomed the *Building Stability Overseas Strategy* in 2011, although it is interesting to note how much has changed since then. The foreword to that 2011 strategy was signed by then Foreign Secretary William Hague—now the noble Lord, Lord Hague—Secretary of State for International Development Andrew Mitchell, and Dr Liam Fox, who has now returned to the Cabinet but at that time was briefly the Defence Secretary. It opens with the sentence:

"The Arab Spring has demonstrated just how uncertain the world can be".

It certainly did and has done ever since. The strategy was strong as it contained three key pillars, and one was about security and stabilisation but the other two were about prevention. The strategy was widely welcomed by all sectors and by all parties in your Lordships'

House and in the other place. It was shortly followed by the World Bank's report that advocated an international integration of strategy between the World Bank, the UN and other agencies.

All that was very positive. In changing times with the dangerous development of conflict in so many places, the UK has upped its commitment and increased its spending to 50% of ODA, even within the new commitment to 0.7% of our GNI to overseas development assistance. The Conflict, Stability and Security Fund comes out of that commitment. More than £1 billion is now integrated and agreed by government as a whole, involving not just the MoD, DfID and the FCO but other government departments that have a role in conflict prevention and security. This has happened against a backdrop of a strong international commitment to goal 16 of the sustainable development goals on peace and justice. The importance of peace, stability and justice in securing development is recognised, as is the fact that it is not possible to have sustainable peace without development or sustainable development without peace. Therefore, five years on, I wonder why we do not have a more up-to-date strategy and a more transparent fund, and I have questions for the Minister about that.

The *Building Stability Overseas Strategy* had three pillars and said more about prevention than about security and stability. However, since BSOS was agreed, we have seen five years of conflict in Syria and many ups and downs in countries such as Egypt and Libya, which experienced hope, then despair and now have so much instability. We have seen wars emerge, subside and occasionally come back again in the Central African Republic and other parts of Africa. We have seen massive political change in Myanmar and peace agreements in the Philippines and Colombia, although the latter may be in question, at least for a short time. We have seen the emergence of, at the very least, a worry or a threat for those countries bordering Russia, particularly Ukraine. Yet the Building Stability Overseas Strategy has never been updated and is not mentioned in the national security strategy. It was not mentioned in the Statement by the Minister, Mr Ben Gummer MP, back in July, when he announced this year's allocations from the Conflict, Stability and Security Fund. That Statement was repeated in your Lordships' House. It was not mentioned in Her Majesty's Government's evidence to the Joint Committee's inquiry on the Conflict, Stability and Security Fund.

Partly because there are real concerns about the direction of government policy and partly because so much has changed since 2011, I am at a loss to understand why we do not have an up-to-date strategy underpinning this fund. There seems to be no update and no reference point for this huge spending to which the United Kingdom is now rightly committed. My first questions are therefore about that. Will the Building Stability Overseas Strategy be updated at some stage? If not, why not? If so, when will that happen? Will that updated strategy be underpinned by the United Nations commitment through goal 16 to a greater understanding of the relationship between peace and development? Do we retain that commitment to upstream conflict prevention, which is so important in conflicts around the world?

Many announcements have been made this year on how the fund will be spent. We are committing more than £188 million to the Middle East and north Africa, more than £116 million to south Asia, more than £86 million to Africa, more than £53 million to eastern Europe and central Asia, more than £17 million to the western Balkans, more than £10 million to the Americas and just under £7 million to south-east Asia. However, there is no detail anywhere on where this money is going, either last year or this year. Many people have welcomed this new fund and the fact that the larger contracts can provide more stable and better planned interventions. They welcome the fact that many of these contracts are for at least two years rather than just one year, which was the situation under many of the old contracts of the Conflict Pool. They welcome the increased flexibility that seems to be happening in discussions with embassies around the world and they certainly welcome the greater interdepartmental working. However, they do not welcome the fact that the two-year contracts are still too short term. They do not welcome the fact that the country strategies are not published any more and therefore it is hard to plan proper interventions. People worry that there is no clear commitment to upstream conflict prevention and building local civil capacity in these programmes. Therefore, in relation to the fund, will the Government publish the details of expenditure in particular countries on particular projects? If not, why not? If they will do so, will they publish how many there are, where they are and what the money is being spent on? Will they publish the country strategies, even if redacted? We understand that this is not straightforward if important confidential information is involved. Will the priorities for local spending and the prioritisation of local capacity building be properly recognised in those strategies?

I sit as a judge on the international peacebuilding awards for local peacebuilders. We meet again this month to make our annual decisions. The great work that is going on around the world by local civil society organisations in terribly difficult circumstances should be supported by this country, not just that of the big NGOs and the big private contractors, which do so much good work for us. The new Secretary of State says that she is committed to accountability and transparency. Therefore, I hope that she will put this fund at the top of her agenda.

7.49 pm

Baroness Hodgson of Abinger (Con): My Lords, I am grateful to the noble Lord, Lord McConnell, for securing this debate today and for introducing it so eloquently. As we have already heard, the aim of replacing the Conflict Pool with the Conflict, Stability and Security Fund—the CSSF—was to achieve a more secure and prosperous UK, linked to the strategic aims of the UK Government's work to prevent conflict and build stability overseas. Based at the Foreign Office and reporting to the National Security Council, the fund enables closer collaboration between the National Security Council's strategy and action on the ground. That gives greater flexibility in delivering programmes in the most efficient, effective and appropriate way, by responding to changing priorities and needs. I particularly

[Baroness Hodgson of Abinger]
welcome this debate today, which gives us a chance to consider what benefits this change of approach is delivering.

Today, conflict rages in so many countries. According to the Armed Conflict Database, there were 40 armed conflicts in 2015, causing 167,000 fatalities worldwide. Currently there are an estimated 65 million refugees in the world, more than at any other time since World War II. The huge waves of people trying to come to Europe has shocked us all. I visited the Jungle in the summer and was horrified by what I saw and the desperation of the people that I spoke to. Nobody wants to be a refugee or leave their home unless they absolutely have to.

A new study by the Institute for Economics and Peace—the IEP—has revealed that there are only 11 countries in the world that are not involved in some form of conflict, meaning that 151 out of 162 countries are involved in conflict in some way. This startling figure should alert Governments to the fact that building peace is essential for the economic and social progress and well-being of us all.

Building stability overseas is not an easy task. We have only to look at Afghanistan, Iraq and Libya to see that although military interventions have proved effective, creating stability has been elusive. In the civil wars of 2003 to 2010, every one of them was a resumption of a previous civil war. The uncertain situation in so many of these countries in the aftermath of conflict—and the growth of organisations such as Daesh—has shown us that we need to do more to help countries attain sustainable peace, and we need to do it better.

One of the most effective ways of building stability is to prevent conflict in the first place. Does this new fund give enough support to conflict prevention? As the fund is to fulfil national security interests, there is some concern that our conflict prevention funding is tied only to the UK interest and not to need. While conflict prevention and peacebuilding are stated priorities for the CSSF, it is not clear what proportion of the funds is allocated to this work.

Given that one of the purposes of the new CSSF was to create flexibility and respond to changing priorities and needs, are civil society organisations, women's groups and a wide range of actors being included in the development of country strategies? The decision-making appears to be somewhat top down. Is the UK consulting with local people to ensure a strong connection between local expertise and central decision-making for NSC strategies for priority countries?

The sustainable development goals recognise the value of civil society organisations and how they can be transformative in their communities. However, they can find it very difficult to access funding because the application process is often very complicated and time consuming, and they have neither the expertise nor the capacity. As we have already heard, small organisations need long-term funding. Living on a knife edge of whether funding will be received at the end of the year is very debilitating for an organisation.

I understand that, through the Conflict Pool, the embassies held more funds and decision-making power, which is now more centralised through the CSSF. Perhaps my noble friend the Minister can comment on this. The CSSF generally appears to be working through fairly large tenders. Are small organisations getting shut out?

Nowhere is this more important than with women's organisations. In most developing and conflict countries the women are the poorest of the poor, living in patriarchal societies where women's rights are disregarded. Therefore, programmes promoting gender and women's leadership at grass roots are essential. The Preventing Sexual Violence Initiative has helped to throw light on the many inequalities suffered by so many in these countries. I applaud DfID's strategic vision for women and girls, launched in 2014. Do all the countries include gender? Gender-blind strategies give gender-blind funding and are thus less likely to have an impact.

It is recognised that poverty causes conflict, but conflict also causes poverty. Conflict disproportionately affects women, where the rule of law breaks down and violence against women becomes a major problem. In the aftermath of conflict, there is often a rise of female-headed households in countries where it is hard to function without male support. The impact of conflict on women was recognised 16 years ago with the adoption of UN Resolution 1325, yet women in war-torn countries remain mostly ignored and not included in peace processes. Where they are included, the likelihood of achieving peace is much higher. One has only to look at the Syrian peace process, where, despite demanding to be let in, women have not been allowed round the table. UN Security Council Resolution 2242 explicitly acknowledges the need for women's participation to help deliver peace and security for all. So is there funding going to women and women's organisations to enable them to take part?

Today, given the demand for value for money in all areas of government expenditure, with some projects it can be hard to demonstrate cost effectiveness. For example, while it may be possible to show how many children have received education through schools built and teachers trained, it can be harder to demonstrate the benefit of funding civil society organisations which advocate and lobby their Governments. However, to get long-term, sustainable change to help create more peaceful societies this work is essential. How is this addressed in the context of the CSSF?

To conclude, the CSSF offers many opportunities. However, to get the best possible outcome in today's interconnected global world, there is a difficult balance between security and defence, humanitarian and development aid, and peacekeeping and multilateral aid. We need to get that balance right to help deliver a safer and more stable world. I look forward to hearing the Minister's response.

7.56 pm

The Earl of Sandwich (CB): My Lords, the noble Lord, Lord McConnell, again raises questions of fundamental importance, and I pay tribute to him. Another role model for me on this subject was Lord Deedes. He was fearless in visiting countries like Mozambique late in life, and I wish I were more like him, still able to report on places of conflict—once my own profession.

Conflict is even more widespread today, as we have heard, and it is complicated by terrorism. There are 17 states rated highly fragile, so it requires even more people with spirit to understand it. But I content myself with following the affairs of just a few conflict and post-conflict states, including South Sudan, Kosovo, Afghanistan and Nepal. Today I will mention only South Sudan.

I admire the courage of the humanitarian aid workers, who continue to visit Juba following every crisis. However, the doctrine that, where people are suffering, aid workers should always rush in has to be re-examined. The White Helmets in Aleppo are today's angels, and we admire them. But they live there and they know the scene, whereas we are sending so many aid workers to South Sudan who may need months to acclimatise. Besides the obvious dangers, they are also at high risk of personal attack—even murder and rape, as we saw in the Terrain hotel events in July.

The real question before us is whether the new Conflict, Stability and Security Fund, which has £1 billion to spend, is really making a difference to countries like South Sudan. We are committing sizeable sums. We already have a £12 million four-year Community Security and Arms Control project, ending this year. The Minister may know whether it is being extended. Through the CSSF, we have spent almost £1.4 million on conflict resolution and reconciliation. Again, the Minister may know whether we are committing a further £1 million, despite the real risks to these projects.

I have a wider concern, which the noble Baroness may be able to deal with; I discussed it with her briefly. Terrorism is not new, of course, but the language of anti-terrorism is new. Since "9/11" and the "Axis of evil" entered the vocabulary, Governments have been able to pin the words "terrorism" and "security" to almost any conflict in the world. This affects the transparency that we have been discussing.

I am concerned that those who are responsible for aid budgets will also use these words to justify more protection of our own citizens and less protection of the citizens of the country in conflict. I can already see this happening in Afghanistan and north Africa, but it could extend to countries where there is no threat to the UK whatever. The Stabilisation Unit was an admirable exercise in joined-up government because it was intended to recognise what was already happening—the participation of three or more government departments. This meant that the FCO and MoD had access to aid funds, considerably increased following the 0.7% Act, for soft power projects and some of the EU's missions to help manage migration. These seem fine in themselves but I suspect that as soon as "terrorism" and "security" are mentioned, the Home Office and Downing Street will also be involved, and there are wheels within wheels. I look forward to the Minister's comments on that.

In South Sudan there has been another year of considerable strain on the mediators in conflict resolution, with endless negotiations in Addis running into the sand. I know aid workers who have very real doubts about returning to Juba to work. Even the most committed peacemakers must have wondered whether there is any point in propping up such a failing state indefinitely when theoretically it has enough oil revenue to support a standing army.

The Independent Commission for Aid Impact, which we all admire, is conducting a review of five conflict-affected states, one of which is South Sudan. I do not envy it, as it will be a difficult task. I have read through the criteria, and inevitably a high priority will be "fiduciary risk" and the awkward question of whether our aid is reaching its targets. I have noticed that this Government are paying even more attention to value for money and aid effectiveness, not least because of the more critical attitude of the new Secretary of State. The Joint Committee on the National Security Strategy, which was mentioned earlier, has also launched an inquiry, which we look forward to.

No one can argue with the proposition that aid should reach the poorest and most deserving. But in conflict states the risks are enormous, and it is inevitable that aid gets lost, stolen or destroyed. You only have to look at the ReliefWeb map of South Sudan to realise how many roads are now closed as a result of renewed civil war. Only local knowledge will ensure that aid is moved safely. DfID is well aware of these risks and we must be sure that Governments, the Joint Committee and ICAI itself understand the circumstances and background of each conflict, which is always unique.

Any talk of stability in countries like South Sudan is premature. I do not have time to go into other countries, but Afghanistan, the DRC, and even Mozambique are post-conflict countries still in transition, where DfID can still work effectively. In Kosovo and Nepal, which have moved to relative peace, there has been considerable success with development projects in such areas as the rule of law, human rights, forestry and other projects. Yet both countries have a serious background of ethnic cleansing and civil war, and for them a return to stable, democratic government as we know it is still a long way off.

8.03 pm

Lord Judd (Lab): My Lords, my noble friend Lord McConnell has established a formidable reputation for his consistency and effectiveness in following these issues. In thanking him for what he said, I will emphasise one point that he made. The Conservative Government should feel quite proud of the fact that they created the National Security Council. This was long overdue, and it could potentially make a full contribution to handling these matters rationally and sensibly.

I should declare an interest: quite a time ago, I was director of Oxfam; I have served as the chairman of International Alert; and I have served as a trustee of Saferworld. Indeed, my ministerial experience was in defence and overseas development and at the Foreign Office.

All that experience illustrates to me the importance of the subject that is before us tonight. Of course we have to have security and stability—development cannot take place without it—but we have to be careful that it does not run away with the real objective, which is development. It is there to enable development, not to replace it, and that is terribly important. I remember when I was director of Oxfam that we wanted to get on with development projects wherever we were working, and yet in so many countries we could not do this because we were caught up with dealing with

[LORD JUDD]
the consequences of conflicts. That was a long time ago, and the situation has deteriorated gravely since then.

There are difficulties, and we should not dodge them. I was privileged to be part of a discussion once in the earlier stages of the Afghanistan war when it became quite clear that there were tensions between the MoD and DfID. I can understand those tensions. Commanders in the field going in to liberate an area wanted quickly to be able to demonstrate the benefits to the population of having been liberated and to have tangible evidence of that. But the professionalism of DfID was naturally one of cautious assessment: will this be effective in the long run, or will it prove counterproductive? Therefore, an active debate needs to take place, and it is sensible to face up to that and to be certain that we have channels for handling it.

I will take the few moments at my disposal to put some quite specific questions to the Minister. I realise that she will not be able to answer them tonight, but if she cannot do so it would be very good if she could reply later and put a copy in the Library.

What assessment have the Government made of the role of the Conflict, Stability and Security Fund in adequately training Jordanian community police in supporting community police stations in Syrian refugee camps, including ensuring that these community police officers receive suitable training in their role concerning child protection? How have the UK Government used their increased funding through the CSSF to support security sector reform in developing countries, and does this include ensuring child protection training is undertaken by the armed forces, judiciary and police?

Where the CSSF provides funding for technical assistance to border management officials, can the Government confirm whether this includes training for officials on child protection, including identifying potential victims of trafficking, and referring children with particular vulnerabilities to the appropriate authorities? I know that UNICEF UK is particularly preoccupied with questions of that kind.

One more central policy issue, which to some extent follows up what my noble friend said in his introduction, is the importance of recognising that the Secretary of State for International Development's commitment to prioritise transparency and to improve tracking the impacts of UK aid spending must apply to the CSSF itself. What progress is being made in fulfilling the Government's commitment on that score? As an interim measure at least, will country and thematic/sector allocations be made public? What role is DfID playing in the programming of the CSSF's work, including programmes led by the FCO and the MoD? It is critical for DfID to have a role so that programmes effectively address development dimensions—a matter to which I have already referred.

How will the CSSF be reporting on the progress and impacts of its programmes? As far as I can see, no information of this nature has yet been made available. What strategies and policies is the CSSF currently following to guide its work? How is the CSSF addressing the legal commitment in the International Development (Gender Equality) Act 2014 to the UK's aid promoting gender equality? How is the CSSF taking note of the legal commitment in the International Development Act 2002 to the UK's aid achieving poverty reduction, as well as the UK Government's commitment to aid effectiveness principles and their commitment to the sustainable development goals, including that of focusing on the poorest and most marginalised people?

Those are the specific questions which I think it is important to answer. However, I finish by saying that last night we were debating refugees. The refugee problem is going to increase and will be repeated across the world. This issue is central to that and we have to get it right.

8.11 pm

Baroness Northover (LD): My Lords, I too thank the noble Lord, Lord McConnell, for securing this debate. He has great expertise in this area, not least given his role in the Labour Government and, more recently, with PWC, which plays its part in assisting fragile states.

The argument for joining up development, defence, security and foreign affairs across government—in DfID, the MoD and the FCO—became clear in the wake of the interventions in Afghanistan and Iraq. In fact, the Chilcot report highlighted that little thought had been given to the reconstruction of Iraq once Saddam had been removed and the Baath Party dismantled.

Even as we speak tonight, we see some of the possible consequences of that with the rise of ISIS, which may now be being reversed in Iraq, although whether with a plan for reconstruction and development thereafter is less clear. It was Hilary Benn, then Secretary of State for International Development, who sought to join up DfID, the MoD and the FCO to help support fragile and conflict states.

That has been taken further forward over the years, including with the Conflict Pool, which preceded the Conflict, Stability and Security Fund. The FCO led our response when the Arab spring ignited in Egypt. DfID led when the conflict engulfed Libya. Attempts were made there not to repeat the mistakes of Iraq—avoiding, for example, the smashing of infrastructure—but that conflict did not have the necessary follow-through, even though the principles of building stability overseas were supposed to be applied. However, that does not mean that such joining up is not a good idea.

There are risks. The three departments have different cultures and often different aims. Add in the Home Office and the security services and you have a different mix again. Of course, all should be concerned to avoid conflict. Fragile states are the most likely to descend into conflict, and the poor suffer the most. And we may all be affected—for example, as now with Syrian and Iraqi refugees seeking their escape.

Of course, we secured the UK commitment to spend 0.7% of GNI on aid through the Private Member's Bill put through in the last days of the coalition, with wide support in this House, by my colleagues Michael Moore in the Commons and my noble friend Lord Purvis in the Lords. Other departments, including the Treasury, are rumoured to eye that budget with envy.

Tackling fragile states counts as ODA, but we need to be absolutely sure exactly how and why the funds are used. Transparency is of the essence here, and I note with concern some of the comments made in evidence to the Joint Committee on the National Security Strategy.

What research underpins the fund? The International Crisis Group thinks it is insufficient. How do you improve early warning? The Arab spring took us all by surprise, yet the same seeds—youth unemployment, for example—can be seen elsewhere. How is that being thoroughly assessed?

DAI Europe notes that "framing support to countering violent extremism as a solely security-related matter runs the risk of overlooking the benefits of a community- or economic development-based approach to which beneficiaries and stakeholders may be more receptive". It also sees confusion in the decisions as to whether projects should come under the heading of the fund and which department should lead.

Conciliation Resources rightly points out that it is better to address the underlying causes rather than the manifestations of conflict. It also notes the greater difficulty of accessing information than was the case under the Conflict Poo1, and that the language and processes are geared towards the commercial sector. That might seem to neglect the role that civil society organisations, which have long experience in this field, can play.

Mercy Corps rightly identifies "injustice, weak governance, political exclusivity, abuses by security forces" as "prevailing drivers of violence, instability, and displacement" that need a long-term approach. Yet it sees more of a "securitisation" approach, which does not square with that long-term approach. As the noble Baroness, Lady Hodgson, pointed out, women are especially vulnerable in conflict, with the undermining of society that results. Saferworld identifies the involvement of the Home Office and intelligence services as indicating that this redirection is likely to increase. It and others note that decision-making power lies largely in London, moving away from the countries in question, as the noble Baroness, Lady Hodgson, also mentioned. That seems short-sighted and is unlikely to address the real causes of fragility. The noble Lord, Lord Judd, is quite right: we should be achieving security in order to enable development.

ICAI noted the greater need for strategic direction than the Conflict Pool had manifested. But is this what we are seeing, or is it a short-sighted immediate security approach? The noble Lord, Lord McConnell, pointed to a lack of tackling upstream fragility and a lack of transparency. What comes across from the reports to the Joint Committee is that the fund—under the National Security Council and interpreting this area in the light of UK security needs—may well undermine a long-term approach and understanding in the areas in question.

Clearly it is vital to address fragile states before they collapse. I look forward to the noble Baroness's response, but I share many of the concerns expressed by other noble Lords. I also think that there will need to be a further debate when the Joint Committee draws up its report. It needs to be recognised that stability and the reduction of conflict are indeed in everyone's interests, but a limited view of what UK security requires may, in the end, undermine the wider and deeper need for development, which is far more likely to underpin stability.

8.18 pm

Lord Collins of Highbury (Lab): My Lords, I too thank my noble friend for initiating this debate and for his excellent introduction and description of where we are now.

As we have heard, the CSSF is meant to support delivery of the UK's Building Stability Overseas Strategy, as well as the national security strategy and the strategic defence and security review 2015. Its programmes are to deliver against more than 40 cross-government strategies agreed by the National Security Council.

At the end of last year, my noble friend, in the debate on the strategic defence and security review, expressed the view that the descriptions of the purpose, the priorities that are being established and the strategies that will be used are far from clear, and that is the key issue for tonight's debate: the direction of that strategy and what principles are driving its development.

While the Building Stability Overseas Strategy set out a progressive vision for building stability based on legitimate governance and respect for human rights, it is not as yet clear how this is being prioritised under the CSSF and in the broader National Security Council country strategies that guide it. As my noble friend and the noble Baroness, Lady Hodgson, asked, does the CSSF place sufficient strategic emphasis on the long-term prevention, rather than management, of violent conflict and what evidence is there to support this?

As we have heard, in May of this year the Joint Committee on the National Security Strategy launched an inquiry on the fund. I welcome that inquiry so we can be sure that the fund is designed and delivered in a manner that is consistent with the UK's commitments to bring about more peaceful, just and inclusive societies, which the Government actively advocated for in the UN sustainable development goals.

As we have heard in tonight's debate, there is very limited transparency regarding the workings of the CSSF and its priorities, and the analysis underpinning them is patchy. We have had only one ministerial Statement, which simply detailed the main budget headings of the fund, and no information has been released so far on country allocations, thematic and sector allocations, or project progress reports. I repeat what many noble Lords have said tonight: in the light of Priti Patel's recent public statements on prioritising transparency and value for money, when will we see this apply to the CSSF?

In the Government's written evidence to the Joint Committee it states that to ensure compliant and efficient means to deliver CSSF projects, a supplier framework was established with decision-making power resting mainly in London. Between January and August this year, the CSSF Framework let 26 contracts, with a further 40 in progress. There are 75 suppliers eligible to bid for work via the framework, although I accept that contracts are not limited to this group for specified reasons. This marks a shift from the Conflict Pool,

[Lord Collins of Highbury]
where embassies held more funds and decision-making power, towards a more centralised approach. Like my noble friend, I wonder whether redacted versions of NSC country strategies and CSSF programme strategies could be made available, not just for the reasons that my noble friend highlighted but to ensure that help is given to external organisations to tender more effectively and appropriately.

With the inclination towards tendering for fewer and larger contracts, my concern is that the processes will favour the commercial sector over established NGOs, and many noble Lords have highlighted that tonight. What steps will the Government take to redress this imbalance? Could UK staff in country posts have greater autonomy in approving smaller-scale CSSF funding?

The FCO is placing increased importance on freedom of religious belief and its relation to countering violent extremism and building stability in fragile states. Last month we had an excellent conference, hosted at the FCO, exploring how building inclusive, equal and plural societies in which people have freedom to practice their own religious beliefs can help prevent violent extremism. Considering this, how much of the CSSF is being spent on projects related to promoting freedom of religious belief to help build open, plural and, ultimately, more stable societies?

Like the noble Baroness, Lady Northover, I know that this is a matter for the usual channels. However, last December, my noble friend called for an urgent debate on this matter. He asked the Minister, and I repeated his call in this Chamber, for a much more detailed debate. Will the Minister commit tonight to a full debate on this subject once the Joint Committee on the National Security Strategy inquiry on the fund is published?

8.25 pm

Baroness Goldie (Con): My Lords, I thank the noble Lord, Lord McConnell, for securing a debate on this important issue. As others have rightly observed, he has a record of having a profound interest in and knowledge of these matters. I have to say to your Lordships that the noble Lord and I last faced one another across a parliamentary Chamber when he was First Minister of Scotland, and we had a weekly clash at First Minister's Questions. I am glad that our debating debut in this Chamber is on a perhaps more consensual issue. I also thank all other noble Lords for their contributions to this important debate.

The Conflict, Stability and Security Fund, or CSSF, was launched in April 2015 and is rising this year to £1.127 billion. It is a major investment by this Government, not only in countries at risk of conflict and instability but also in this country's national security interests. It is making a real impact in the short term and building impact for the long term. This impact is being felt not just in the countries in which the fund operates. It is also improving how we work across government.

CSSF projects are subject to rigorous oversight. All potential projects are assessed against the objectives of National Security Council strategies for individual countries or regions. These strategies cover the breadth of UK government interests and resources. They provide a framework that enables National Security Council departments to prioritise activity, and they set the objectives that guide our work. Projects that do not contribute to these objectives are not approved.

Once started, projects are assessed on a quarterly basis by ambassador-led implementation boards at our posts overseas. They consider whether projects are delivering against the objectives and giving value for money, as well as the risks and how they are managed. Their findings are passed to regional boards in London, chaired by FCO directors and with representatives from across Whitehall. These boards assess whether the project and its wider programme are still the most effective way to meet the National Security Council objectives and, if not, they can reallocate the funds to other works. All projects and programmes are also reviewed annually against their target outputs and outcomes. The stabilisation unit is a key source of expertise for these reviews. Other larger programmes use independent organisations to ensure thorough monitoring and evaluation.

As I said earlier, the fund has been running for only 18 months but its projects are already making an impact. Let me give your Lordships three examples. In Syria, we are leading international support for the White Helmets, the Syrian-led search and rescue organisation that has saved over 56,000 civilian lives. Our assistance—£32 million to date—provides equipment and training, as well as funds to run their vehicles and support their families. Three-quarters of Lebanon's border with Syria is now secure thanks to support from the fund, and previously there was little control. That secure border is preventing Daesh expanding the Syrian conflict into Lebanon—and stopping Daesh expand is obviously good for Lebanon's security and for our security.

The UK has also bilaterally supported the Colombian peace process, with a range of projects to increase the Colombian Administration's capacity and strategic planning. From this year, in addition to our bilateral work assisting the justice sector to pursue reforms, we also used multilateral implementers such as the United Nations to address challenges of implementation. Through the CSSF, the UK was the first donor to contribute to the United Nations Trust Fund. Importantly, that unlocked funding from other donors. I understand that today, as part of the Colombia state visit, the Prime Minister has announced an additional £7.5 million for the Colombia CSSF programme, which will be used for a range of programmes supporting peacebuilding. In Ukraine, we have delivered defensive military training to around 2,000 Ukrainians to build the capability and resilience of the Ukrainian armed forces. In East Africa, funding expanded the presence of our criminal justice advisers, which enabled the Crown Prosecution Service to play a key role in the largest cocaine seizure in UK history, worth £512 million.

The CSSF has radically changed our approach to delivering international assistance. The rationale behind the fund was to draw on all the national security assets at the UK Government's disposal and to use them in combination. This has led to three outcomes: a clearer sense of UK objectives in fragile and conflict-affected

countries, as opposed to single departmental objectives; greater co-ordination between Whitehall departments overseas, improving the effectiveness of our work; and a deeper understanding of programme delivery in National Security Council departments, beyond the Department for International Development. For example, in Pakistan, the fund has brought together the Department for International Development, the Foreign and Commonwealth Office, the Ministry of Defence, the Home Office, the National Crime Agency and the Crown Prosecution Service. By pooling their different skills and experience, they have developed a single strategic and integrated UK approach to support rule of law reforms.

We have helped the Punjab Government to develop Pakistan's first provincial rule of law roadmap. We are enhancing the capacity and accountability of the Pakistani police, prosecutors, forensics professionals and the judiciary, as well as improving access to justice, especially for the most vulnerable. This work supports Pakistan's capacity to tackle terrorism through the judicial process. It also encourages an approach to organised crime that draws on expertise from all Pakistan's relevant agencies.

I will now try to deal with some of the contributions that arose during the debate. My friend the noble Lord, Lord McConnell, raised the issue of the overall strategy. As I have tried to indicate, there is a strategy: indeed, this fund supports three of the four strands of the UK aid strategy, and he will be familiar with those. I hope that reassures him that there is an overall umbrella plan. He also raised the issue of funding. The CSSF does issue multiyear contracts beyond two years and supports civil society in countries at risk of instability. He raised an important point about transparency that was picked up by other contributors, not least the noble Baroness, Lady Northover. We are looking at how we can publish a redacted version of the strategies and the allocations, recognising that much of the work operates in highly sensitive environments. I hope that gives him some reassurance that we are alert to the understandable desire to know a little more about what is going where, and what is happening.

My noble friend Lady Hodgson made an important point about the number of areas of conflict—something worth reminding ourselves about. That helped to underpin the relevance and effectiveness of the CSS fund. She also mentioned conflict prevention. I hope my noble friend has found my contributions to date helpful in explaining the cross-departmental and joined-up operation of the fund. Clearly, if we harness all these agencies, we can make a very significant contribution to trying to prevent conflict.

My noble friend Lady Hodgson also raised the important matter of women. Gender is the only mandatory theme in CSSF programmes. Indeed, embassies have more control over that funding than they did in the conflict pool. It is a devolved structure whereby the ambassador chairs all departmental meetings in representative countries to oversee the strategy and delivery of the whole programme in that country.

The noble Earl, Lord Sandwich, raised an important point about language. I agree: there is a need to be precise in describing what we seek to address and how we propose to deal with it. On his observation about the fund, the fund is working: it has impact and is making a difference. I hope the cross-departmental approach to the fund, which I explained in some detail in response to other contributors, addresses some of the concerns he raised.

The noble Lord, Lord Judd, made an important point that the fund should enable and not replace development. I hope that some of the examples I have given of what the fund has made possible to some extent reassure him. He raised an important series of specific issues and wisely anticipated that I would be completely unable to answer them. He is absolutely right, but I undertake to write to him and place a copy of the letter in the Library. However, turning to one of the points that he raised, training is provided by the fund to peacekeeping troops, which includes training on the protection of civilians, including children. The CSSF is continuing to support community policing in refugee camps in Jordan.

The noble Baroness, Lady Northover, also raised the issue of the fund's transparency, and I hope my earlier reply to the noble Lord, Lord McConnell, somewhat reassured her. On the issue of women, she will note my response to my noble friend Lady Hodgson. The noble Lord, Lord Collins, also commented on the issue of strategy, and I hope I have managed to outline for him the strategic umbrella under which all this is operating. The issue of transparency, also raised by the noble Lord, is important. He will have heard what I said in response to the noble Lord, Lord McConnell, but I would observe that this is a young fund which has not been on the go for all that long. I hope that the further information I have provided will reassure him.

This has been a helpful debate that has assisted in teasing out some issues about which, understandably, there is a desire for more information. I am not unsympathetic to that point, which I shall take back and look at carefully. Although it is a young fund, the Conflict, Stability and Security Fund is tasked with tackling all conflicts. It is operating in often unstable and dangerous areas. It will not solve these conflicts and bring about stability overnight, but we are delivering projects that have an impact and make a difference: they are contributing to longer term stability and security. That is welcome and is a very positive dividend from our investment.

Policing and Crime Bill

Committee (3rd Day) (Continued)

8.38 pm

Clause 82: Application of maritime enforcement powers: general

Amendment 196

Moved by ***Baroness Chisholm of Owlpen***

196: Clause 82, page 106, line 4, leave out paragraph (f) and insert—

> "( ) a designated NCA officer who is authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a law enforcement officer under this Chapter, or"

Baroness Chisholm of Owlpen (Con): My Lords, government Amendments 196, 199, 200 and 201 are essentially consequential on the provisions in Clause 138 which enable the director-general of the National Crime Agency to designate NCA officers with the powers of general customs officials. The amendments clarify that NCA officers so designated are able to exercise the new maritime enforcement powers in the same way as NCA officers designated with the powers of a constable. As a result, these important new powers will be available to NCA officers investigating customs matters such as the smuggling of drugs and firearms. I beg to move.

Amendment 196 agreed.

Amendment 196A

Moved by ***Lord Rosser***

196A: Clause 82, page 106, line 8, at end insert—

"( ) The Secretary of State must, before making regulations under subsection (3)(g), consult such persons as the Secretary of State considers appropriate."

Lord Rosser (Lab): We have two amendments in this group to which I wish to speak. Clause 82 relates to the application of the maritime enforcement power and the designation of those law enforcement officers who may exercise that power. Clause 82(3) lists a number of persons who are law enforcement officers for the purposes of Chapter 5, while subsection (3)(g) designates as a law enforcement officer,

"a person of a description specified in regulations made by the Secretary of State",

thus creating an unspecified category of person who can be designated as a law enforcement officer, but it leaves that further designation to secondary legislation. Why is this provision in Clause 82(3)(g) needed? What kind of currently unspecified category of person is the Government of the view may need to be designated as a law enforcement officer but cannot be so designated clearly and specifically on the face of the Bill?

The purpose of the first amendment in the group is to make sure that the Secretary of State will at least be required to consult prior to making such a regulation designating an as-yet unspecified person as a law enforcement officer who can exercise the maritime enforcement power. The second amendment is similar and refers to Clause 94, which also relates to the application of the maritime enforcement power and the designation of those law enforcement officers who may exercise the power. Subsection (3) lists a number of persons who are law enforcement officers for the purposes of Chapter 6. However, subsection (3)(e) designates as a law enforcement officer,

"a person of a description specified in regulations made by the Secretary of State".

Again, why is this provision in Clause 94(3)(e) needed? What kind of currently unspecified category of person is the Government of the view may be needed to be designated as a law enforcement officer but cannot be so designated clearly and specifically on the face of the Bill? Clause 94 also has application in Scotland, but as currently worded contains no requirement for the Secretary of State to consult, for example, Scottish Parliament Ministers. Perhaps the Government could comment on that. The purpose of our second amendment in the group is again to make sure that the Secretary of State would at least be required to consult prior to making a regulation designating an as-yet unspecified person as a law enforcement officer who can exercise the maritime law enforcement power.

Perhaps I may also raise a question about the application of the maritime law enforcement powers by law enforcement officers or indeed by the Secretary of State. Clause 82 creates maritime enforcement powers in relation to, among other things, foreign ships in any waters, and Clause 86 gives law enforcement officers the power to,

"require the ship to be taken to a port in England and Wales or elsewhere and detained there".

Why is the reference to "or elsewhere" included, which could cover anywhere else in the world? This power could presumably be used in cases involving foreign ships that are discovered, for example, within our territorial waters to contain or are suspected of containing refugees and others in need of international protection who may be in breach of immigration law. Those in need of international protection have a right not to be returned to situations in which they face a real risk of persecution or other ill treatment, and to have their claims for protection fairly determined before they can be returned. On the face of it, the power to which I have just referred could be used to override those rights. Will the Minister say why my analysis of how these powers could be used is incorrect, as I hope it is? I beg to move.

8.45 pm

Baroness Hamwee (LD): My Lords, my noble friend and I have four amendments in the group. With regard to Amendment 196A, the Minister will not be surprised that we always support consultation—well, almost always. I wondered whether "persons" in the amendment, which would follow on from persons who are "law enforcement officers" as provided for in the clause, means human persons and corporate and other bodies, as I would expect. I was a bit surprised during the passage of—I think—the Investigatory Powers Bill that there had to be a definition of "person" at one point. I assume that the sweeping-up provision in Clause 82(3)(g) is to allow for, for instance, the organisation that came to my mind, the Maritime and Coastguard Agency. Even if that is not intended, perhaps I can ask about it and whether it should have powers. Is that in the Government's mind?

Our four amendments are to Clause 92. Clause 92(1) provides for the Secretary of State to issue a code of practice for law enforcement officers arresting a person under the powers given by the Bill. Clause 92(2) provides that the code must provide guidance as to the information to be given to the person being arrested. We think the code should be wider than this.

Perhaps the most important amendment is the one that would add criteria to be considered by the law enforcement officers before they arrive at a decision to proceed with an arrest. Clearly, this is not something that would be done lightly, but there must be some

scope, whether in this code of practice or elsewhere, as to when these very considerable powers should be thought appropriate to exercise. The amendment to Clause 92(1) is similar, in that it would require officers to think before doing, if I can put it that way, as well as thinking when doing.

Our third amendment would provide in Clause 92(8) that regulations requiring an affirmative resolution should apply in the case of a revision of the code, not just the initial code. We would also remove Clause 92(9). Those two amendments would go together and make the same point. We think that this is a sufficiently serious matter that affirmative resolutions would be appropriate.

Lord Harris of Haringey (Lab): My Lords, I rise notionally to support my noble friend Lord Rosser and his amendment, but first I record that I have recently completed for the Mayor of London a review of London's preparedness to withstand a major terrorist incident. As part of that review I looked at the policing of the River Thames. I became aware of a lacuna—or at least what I understood to be a lacuna—that appeared to exist in the legislation, which these clauses fill and deal with by making it possible for police to stop and search boats on the River Thames. I was therefore delighted to see it. My recommendations on that were couched in those terms.

However, it appears that it is possible for anyone to sail up the River Thames without having any licence or even permit, which seems an extraordinary gap. While we were tidying up some of these matters, I would have thought it useful to tidy up precisely that one. Given that one is expected to have a licence to drive a car, with the car being required to be of a certain standard, it is surprising that there is no such requirement for sending a boat up the Thames.

I come to the specific question that I wanted to ask the Minister—she can answer the first one if she wishes. An hour and three-quarters ago, I received an email from Nigel—I suppose that I am taking a leaf out of the book of my right honourable friend the leader of the Opposition here. Nigel said:

"I'm an old retired police officer"—

so he must have been there with Brian—

"and I may be out of date but back in 1967 when I joined The Met, one bit of legislation they kept drumming into us was Sec 66 of The Metropolitan Police Act and it read police may stop, search and detain any vehicle, vessel, boat, cart or carriage in or upon which anything stolen or unlawfully may be found".

At what point in the various reorganisations of London government and policing legislation was Section 66 of the Metropolitan Police Act repealed or changed? It may still be there, in which case what does this provision add to it? The Minister may not have that information immediately available in her brief, so I would be quite happy to receive a note at a later stage.

Lord Paddick (LD): I can tell the noble Lord.

Lord Harris of Haringey: The noble Lord already has the answer apparently.

Baroness Chisholm of Owlpen: Can we have it?

Lord Paddick: Section 66 of the Metropolitan Police Act was repealed on the basis of the powers to stop and search under the Police and Criminal Evidence Act. The earlier powers were superseded, so it was decided that Section 66 was no longer necessary.

Baroness Chisholm of Owlpen: Well, my Lords, it just shows how marvellous this House is. We have experts who can always answer the questions for us, which is an enormous help.

As the noble Lord, Lord Rosser, explained, Amendments 196A and 200A relate to the power, by regulations, to add to the list of law enforcement officers who may exercise the new maritime enforcement powers in Chapters 5 and 6 of Part 4 of the Bill. Clause 82(3) defines "law enforcement officers" in England and Wales for the purpose of exercising the maritime powers. This includes provision for the Secretary of State to specify in regulations other categories of person who may be allowed to exercise these powers. Clause 94(3) makes equivalent provision for Scotland. The proposed amendments would require the Secretary of State to consult prior to making such regulations.

The noble Lord, Lord Rosser, mentioned foreign ports. Ports in foreign countries are included. Maritime powers can be exercised in international and foreign waters all over the globe. It is a practical and operational necessity that those exercising such powers should be able lawfully to divert a ship to a port and detain it there where the operation in question takes place hundreds or thousands of miles away from England and Wales. I can assure the noble Lord, Lord Rosser—

Lord Rosser: My concern was that "or elsewhere" might be used in cases involving foreign ships which are discovered within our territorial waters to contain, or are suspected to contain, refugees and others in need of international protection who might be in breach of immigration law but who nevertheless have certain rights which, on the face of it, could be overridden if there was a power to divert ships to a port elsewhere—indeed, anywhere in the world. It could mean them being sent back to a place where they would be in danger. It would also mean that they would not have had the right to have their claim for protection fairly determined before they could be returned. The question I was asking is, was my interpretation of the apparent power in the Bill for a law enforcement officer or the Secretary of State to be able to do that correct? If it was not correct—and I said I hoped it was not correct—will the Government explain to me why my analysis was not right?

Baroness Chisholm of Owlpen: My Lords, inspiration has appeared from over my left shoulder. The maritime provisions of the Bill are strictly intended to enable enforcement officers to prevent, detect, investigate and prosecute offences under the law of England and Wales. Any decision to divert a foreign ship that is not in UK territorial waters to a foreign port will require the authority of the Secretary of State. These powers are not intended to be used in a way which is contrary to the Human Rights Act, the 1951 refugee convention or the 1967 protocol.

[Baroness Chisholm of Owlpen]

I can assure the noble Lord, Lord Rosser, that the Home Secretary will consult appropriately before making any such regulations. Such consultation will certainly include any person or body to be specified in the regulations and, in relation to any regulations to be made under Clause 94, the Scottish Government. Indeed, there is an implied duty to consult the Scottish Government and more in Clause 94(6), which requires Scottish Ministers to consent to any regulations under Clause 94(3)(e), which makes devolved provision. Having stated our intention to consult on any such regulations, I hope the noble Lord will agree that it is not necessary to set this out in the Bill.

Amendments 196C, 196D, 197 and 198 relate to Clause 92, which imposes an obligation on the Secretary of State to provide a code of practice for law enforcement officers who use the power of arrest conferred by Clause 88. This code must provide guidance on the information—for example, procedural rights to be given to a person at the time of their arrest. Amendments 196C and 196D seek to amend Clause 92 to extend the scope of the code of practice so that it also addresses the matters which a law enforcement officer must have regard to when considering making an arrest under the maritime powers. We believe that the proper focus of the code is on the information that should be provided to a suspect at the point of arrest, including in relation to their procedural rights. Importantly, the provisions in the Bill in respect of the code of practice closely mirror those in the Modern Slavery Act 2015 and it would be confusing to law enforcement officers to adopt a different approach here.

The power of arrest, like other powers under the maritime provisions, is clearly set out in the Bill. For example, Clause 88 is clear that the power of arrest may be exercised where an enforcement officer has reasonable grounds to suspect that an offence under the law of England and Wales has been, or is being, committed. It will be down to the knowledge, experience and professionalism of the officers concerned as to whether the use of the power is both necessary and appropriate for the purpose of preventing, detecting, investigating and prosecuting offences. The priority for enforcement officers who have apprehended a person on a vessel at sea will be to bring them back to the UK, where they will be processed under PACE in the usual way.

Amendments 197 and 198 relate to the parliamentary procedure for bringing codes of practice into force. The Bill makes provision to bring a new code of practice into law through the affirmative procedure. However, Clause 92(9) provides a choice of procedure for any subsequent revisions to the code. This enables the right level of scrutiny to be provided, proportionate to the revisions being made to the code. For minor or consequential changes the affirmative procedure would, we believe, be disproportionate. Insisting on the affirmative procedure in all cases could cause unnecessary delays in revising the code, with the result that the code would remain out of date in operational terms for longer than necessary. Amendments 197 and 198 would remove this choice, requiring both the first draft of a new code of practice and any revisions to go through the affirmative procedure.

The Delegated Powers and Regulatory Reform Committee recommended in its report on the Bill of 13 July that when using Clause 92(9), the Minister should be,

"bound by the views of the House of Commons Home Affairs Select Committee".

This is similar to the procedure used for revisions to codes of practice for the Police and Criminal Evidence Act 1984. My noble friend's letter of 7 September to the noble Baroness, Lady Fookes, chair of the Delegated Powers Committee, accepted that recommendation, so the choice of procedure provided by Clause 92(9) will be exercised with reference to the views of the Home Affairs Select Committee. We believe that this will provide the best approach to ensuring that the appropriate level of scrutiny is provided for any changes to the code.

I hope I have been able to satisfy noble Lords that these amendments are not necessary and that accordingly the noble Lord, Lord Rosser, will be content to withdraw his amendment.

9 pm

Lord Rosser: I certainly will withdraw the amendment. Unless I was not paying as much attention as I should have been—and I accept that that is a genuine possibility, and I mean that—I am not sure that I got an answer to the question: what kind of current unspecified category of persons do the Government believe may need to be designated as a law enforcement officer that cannot be so designated clearly and specifically now in the Bill? That related to both Clause 82(3)(g) and Clause 94(3)(e).

The only other point I would ask for clarification on, which comes back to the question I raised about how the powers could, on the face of it, be used to override the rights of those in need of international protection, is whether in giving the Government's response the Minister said that it was not intended that the powers be used to override the rights of those in need of international protection, or that they would not be used in that way. The latter is rather firmer than a statement of intent.

Baroness Chisholm of Owlpen: On the noble Lord's first point, these powers are necessary to enable the categories of law enforcement officer who may exercise these maritime enforcement powers to be extended in the light of changing operational requirements. For example, both the Criminal Justice (International Co-operation) Act 1990 and the Modern Slavery Act 2015 confer powers on Armed Forces personnel and there may be an operational case for extending the powers in this Bill to such personnel in future.

Lord Rosser: Is there any clarification—or perhaps the Minister could write to me subsequently—of what was said in relation to the apparent ability to override the rights of those in need of international protection through the facility to divert a ship to a port elsewhere, or indeed anywhere in the world? Was the response that it was not intended that that power should be used to override those rights, or was it a clear statement that it would not be used to override those rights?

Baroness Chisholm of Owlpen: I will write to the noble Lord.

Lord Rosser: I thank the Minister very much indeed. I beg leave to withdraw the amendment.

Amendment 196A withdrawn.

Clause 82, as amended, agreed.

Clauses 83 to 88 agreed.

Amendment 196B

Moved by ***Lord Paddick***

196B: After Clause 88, insert the following new Clause—

"Exercise of maritime enforcement powers

(1) The maritime enforcement powers may be exercised only in the event that there are reasonable grounds to suspect that an offence has been committed which is—

(a) an indictable offence under the law of England and Wales; and

(b) included in a list of offences specified by the Secretary of State in regulations made by statutory instrument.

(2) A statutory instrument containing regulations under subsection (1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Lord Paddick: My Lords, Amendment 196B is in my name and that of my noble friend Lady Hamwee. As we have just been discussing, Chapter 5 of the Bill gives extensive powers to law enforcement officers in relation to maritime enforcement—not just in British territorial waters and not just British vessels but far more extensively—including the power in Clause 86(1) to stop, board, divert and detain the ship,

"if a law enforcement officer has reasonable grounds to suspect that … an offence under the law of England and Wales is being, or has been, committed".

The amendment seeks to probe whether the powers are intended to apply if a law enforcement officer suspects that any offence whatever has been committed. For example, if two crew members are involved in a fight, could these powers then be used,

"to stop, board, divert and detain",

the ship? That would appear rather disproportionate. While two crew members having a fight might not be considered a good example, stranger things have happened at sea, apparently. The amendment works on the basis that imitation is the sincerest form of flattery. It takes its wording from proposed new Section 137B by restricting enforcement powers to "indictable" offences only, and only those offences specified in regulations by the Secretary of State. I beg to move.

Baroness Chisholm of Owlpen: My Lords, as the noble Lord, Lord Paddick, has explained, Amendment 196B seeks to limit the exercise of the new maritime enforcement powers by the police to suspected offences which are "indictable" and specified in the regulations made by the Secretary of State. He indicated that the intention is to limit the use of these powers to serious crimes, so as to ensure a proportionate response to crime that takes place in the maritime context. I do not believe it necessary to limit these powers in this way.

In other contexts the noble Lord, Lord Paddick, has argued that we should put our trust in the operational judgment of chief officers. This is one such area where we should adopt that principle. We should trust in the operational judgment of the police to determine when it is appropriate to commit resources to investigate an offence on a vessel at sea. It is perhaps highly unlikely that resources would be committed to interdicting a vessel for the purposes of investigating a minor summary-only offence, but we should not rule out the possibility that the police would want to exercise these powers in relation to an either-way offence. We do not impose restrictions on the categories of offences that the police can investigate where they take place on other modes of transportation, so I am unclear why we should treat maritime vessels any differently. For these reasons, I ask the noble Lord to withdraw his amendment.

Lord Paddick: I am grateful to the Minister. The reason why this should apply in the case of these maritime powers is that the potential impact of diverting a cargo vessel in the English Channel, for example, is quite significant. While I may have suggested in other contexts that the number of ranks in each police force should be left to the judgment of chief officers, I do not think that the chief constable of whichever force it is will be making the decision as to whether to divert a ship; it will be an officer of relatively junior rank. The Minister also says that the Government should not be restricting the powers to particular offences, in which case I would ask her to explain why proposed new Section 137B does exactly that. But at this stage, I beg leave to withdraw the amendment.

Amendment 196B withdrawn.

Clauses 89 to 91 agreed.

Clause 92: Maritime enforcement powers: code of practice

Amendments 196C to 198 not moved.

Clause 92 agreed.

Clause 93: Interpretation

Amendment 199

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

199: Clause 93, page 111, line 29, at end insert—

""designated NCA officer" means a National Crime Agency officer who is either or both of the following—

(a) an officer designated under section 10 of the Crime and Courts Act 2013 as having the powers and privileges of a constable;

(b) an officer designated under that section as having the powers of a general customs official;"

Amendment 199 agreed.

Clause 93, as amended, agreed.

Clause 94: Application of maritime enforcement powers: general

Amendment 200

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

200: Clause 94, page 113, line 26, leave out paragraph (d) and insert—

"( ) a designated NCA officer who is authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a law enforcement officer under this Chapter, or"

Amendment 200 agreed.

Amendment 200A not moved.

Clause 94, as amended, agreed.

Clauses 95 to 103 agreed.

Clause 104: Interpretation

Amendment 201

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

201: Clause 104, page 118, line 23, at end insert—

""designated NCA officer" means a National Crime Agency officer who is either or both of the following—

(a) an officer designated under section 10 of the Crime and Courts Act 2013 as having the powers and privileges of a constable who is entitled to exercise the powers and privileges of a Scottish constable (see paragraph 11(3) to (5) of Schedule 5 to that Act);

(b) an officer designated under that section as having the powers of a general customs official;"

Amendment 201 agreed.

Clause 104, as amended, agreed.

Amendment 201A

Moved by ***Earl Attlee***

201A: After Clause 104, insert the following new Clause—

"General regulation of construction, use etc

In section 44 of the Road Traffic Act 1988 (authorisation of use on roads of special vehicles not complying with regulations under section 41), after subsection (3) insert—

"(4) Any order made under this section must—

(a) make provision for the notification by an abnormal load haulier to the relevant Chief Constable to be able to be made by data sentence transfer as well as hard copy, e-mail or fax, and

(b) make it clear that the relevant Chief Constable to be notified cannot insist on a notification being made using a particular piece of software.""

Earl Attlee (Con): My Lords, the Committee will recognise that there are legal limits regarding the size and weight of heavy good vehicles operating in the UK. What therefore happens if industry needs to move an abnormally heavy or wide load which, without undue risk or expense, cannot be subdivided into smaller compliant loads? The Secretary of State can make an order under Section 44 of the Road Traffic Act 1988 relaxing all or some of the requirements in the construction and use regulations. Since time immemorial this has been done by an SI known as a special types general order—STGO. STGOs cover the majority of industry's requirements, and I have an interest that I will come to in a moment.

The Committee will not be surprised to hear that STGO has significant provisions for notification of most proposed movements under STGO to the relevant police, highways and bridge authorities. DfT started extensive work on the current STGO in the early 1990s. STGO is drafted so that notifications have to be made in writing, not by telephone. At the time, realistically the only way of making a notification was by letter or fax. It was only much later that notifications started to be made by email, and online activity was in its infancy. STGOs were drafted taking into account the available technology at the time. There were numerous difficulties. Faxes could get lost, and it was difficult to ensure that all authorities were actually faxed. There are a very large number of relevant bridge and highways authorities, and not all are obvious.

A few years ago, to address these problems and others, Cascade Software developed software called AbHaulier to help operators plan their routes and make notifications. I should state that I have no previous involvement with Cascade, other than receiving a briefing at a trade association meeting. The Highways Agency, now Highways England, developed its own system called Electronic Service Delivery for Abnormal Loads—ESDAL. This system allows operators to plan their route and then make all the necessary notifications. I will not weary the Committee with a full description of the functionality of either system.

It is here that I should declare my interest as I own and operate a tank transporter, used under STGO, in conjunction with the REME Museum. Nowadays, I use ESDAL to make all my notifications. While the system still has some glitches, it is pretty good. For a repeat movement, I can now make a notification for an 80-mile journey in about seven minutes. I would like to comment on the ESDAL helpline and its staff. It is really very good and a credit to Highways England and the previous Labour Government who must have agreed to the expenditure. There is debate within industry about which system is better, and I suspect that there are pros and cons for each.

However, apparently Merseyside Police is insisting that operators cannot email notifications and that they have to either use ESDAL or post—I should point out that there is no prospect of me ever having to make a notification to Merseyside Police. This means that hauliers cannot use the Cascade AbHaulier system.

Not only do ESDAL and other systems generate email notifications in the prescribed format but ESDAL has additional functionality for the notifiable authorities, including the police. For instance, in the case of Merseyside Police, rather than manually sorting through a large number of email notifications, only a small proportion of which are of interest and concern, it can now use

ESDAL to set filters so it can properly prioritise its activity. I understand from the Minister's officials that the labour savings in this one force alone are considerable, and of course there are many forces. However, some in the industry claim that ESDAL is slow and takes more time for operators, which costs them money. However, I am deeply concerned that the Merseyside Police action is ultra vires, and might also have an adverse effect on competition and innovation, because it would put Cascade and any other software house in a weak position.

9.15 pm

The problem is that STGO requires notice to be given. As I understand legislation, notice means in writing and not verbally. It is obviously necessary to inform the relevant authorities in writing so that there can be no misunderstanding about what is proposed. As far as I am aware, a notification by email is in writing and meets the requirement of STGO. Of course, email is far better than fax because there is a very good audit trail and an email cannot get lost.

I have several questions for the Minister. First, am I correct in asserting that an email notification to the relevant authority, including the police, is compliant with STGO even if that authority or police force purports not to accept them? Secondly, where in STGO does it say that a relevant authority, including the police, can exclude a certain ubiquitous means of communication? Thirdly, if an operator notifies a police force by email, even though that police force says that it does not accept email notification—although presumably they will negotiate by email—could that operator be in legal difficulties? If so, what?

In answer to my third question, the Minister may say that that is a matter for the courts or that the operator could resort to judicial review. I do not think that would be a good answer. Operators will not want to damage their relationship with the police by deliberately getting a matter into the courts, and judicial review is expensive and disproportionate to the problem. This is a policy matter about how we run a safe and efficient industry, to be determined by Ministers and Parliament, not one for a handful of judges making a decision that either turns on a fine legal point, or where they determine the policy but dress it up to look like the former.

If the Minister decided that at some point in the near future all notifications would have to be made using the ESDAL system only, I would not have a fundamental objection. Obviously, it could be fatal to Cascade's AbHaulier system, and there may well be strong objections from industry. We would also have to recognise that it would be a slightly Stalinist intervention that would tend to stifle innovation because ESDAL and AbHaulier are currently competing products.

However, there may be another way around this. It might be possible for competing solutions such as AbHaulier to automatically send the necessary data to ESDAL so that the notifiable authorities can still access and prioritise notifications online using the ESDAL system. My proposed new subsection 4(a) about data sentence transfer was drafted before I knew that notifiable authorities benefited from ESDAL functionality, so it is not ideal but does point to a solution for the future.

I am sure that my noble friend would like to reach for the "do nothing" option, but it has dangers. Many highways and bridge authorities use a Cascade commercial software package called AbLoads to manage the abnormal load notifications that they receive. My fourth question is: would a highways or bridge authority be able to state that they do not accept an email notification generated by ESDAL, or anything else, and that operators must use that operator's online system, which could be a mixture of AbLoads and AbHaulier, or does ESDAL have some special status? If so, what is it?

In conclusion, Merseyside Police is to be congratulated on increasing efficiency, but what is my noble friend doing to ensure that it is not operating ultra vires? I beg to move.

Lord Kennedy of Southwark (Lab): I think the noble Earl raises an interesting point—I feel that I have learned something. I am not convinced that the amendment should be in the Bill; it is the sort of thing that should be sorted out in guidance or in a letter to the various police forces. If the noble Earl is right, it should be sorted out quite simply.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I begin by declaring that I am not the owner of a tank-carrying vehicle and I therefore hope that I speak from a neutral point of view.

I am grateful to my noble friend for his explanation about abnormal loads and, in particular, the electronic service delivery for abnormal loads, or ESDAL. It is a government-funded portal built for this purpose and free to use. However, some hauliers prefer to use other methods of transmission, as he pointed out, such as fax, email, hard copy or proprietary software.

The decision on which methods to accept lies with individual chief constables. As my noble friend is aware, the provisions for use of abnormal loads are laid out in the Road Vehicles (Authorisation of Special Types) (General) Order 2003, to which he referred. Schedule 5 to the order, which deals with notices to police states:

> "The Notice must be in a form acceptable to the recipient and should be agreed by both parties."

Commercial software owners and hauliers may argue that a chief constable is not complying with the 2003 order if he or she limits the methods for accepting the notification and the haulier does not agree. However, the order makes it clear that the form of notification must be acceptable to the recipient and there is very good reason for that requirement. Obliging chief constables to accept notification in all the forms proposed in the amendment could have negative practical and resource implications for the police. Moreover, as a matter of principle, it would not be appropriate to intervene in operational matters in this way.

I also suggest to my noble friend that this is not an appropriate matter for primary legislation, given that the Secretary of State already has the power to amend the detailed provisions laid out in Schedule 5 to the 2003 order.

Notices to road and bridge authorities are covered separately in Schedule 9 to the 2003 order. Again, it does not specify the form the notice should or could

[Baroness Williams of Trafford]
take, but states that it must be acceptable to the authority to which it is to be given and should be agreed by both parties. So a bridge or highway authority would not be obliged to accept email notification generated by ESDAL if it was not reasonably acceptable to it.

My noble friend asks about the consequences of an operator notifying a police force by a means which is not accepted by the recipient. It is a condition of an operator obtaining authority to transport an abnormal load that it notifies the police in accordance with Schedule 5. If it provides notification in a form which it has been informed is not acceptable to the recipient, it would be difficult for it to claim to have met the conditions set out in the 2003 order.

If an operator has not met these conditions, it will not be authorised to use on the road a vehicle that does not,

"comply in all respects with the standard construction and use requirements".

On that basis, if it were to proceed with an abnormal load movement on a road, it would be committing an offence under the Road Traffic Act 1988. I know that my noble friend will have hoped for a rather different response, but I hope that, having had this opportunity to debate this issue, he will be content to withdraw his amendment.

Lord Kennedy of Southwark: Before the noble Baroness sits down—and I should say that I am not the owner of a tank either—I do not see why it can be said that an electronic means of communication in the 21st century is an unreasonable way of giving this type of notice. Something like this cannot be beyond the wit of man to sort out. If we are just going to rely on the post it really is not a very efficient way of doing things.

Baroness Williams of Trafford: What I have said is that the order specifies that the notice must be in a form that is acceptable to the recipient. If the recipient—Merseyside Police, for example—insists that it is an online application, then that is the form in which it is acceptable. But it should be agreed by both parties—in other words, it is not "must" but "should".

Lord Kennedy of Southwark: Are we saying that it would be acceptable if they insisted on receiving only a letter? That seems ridiculous in the 21st century.

Baroness Williams of Trafford: No, an online application may be acceptable, an email may be acceptable, pigeon post may be acceptable—but it has to be acceptable to the recipient.

Earl Attlee: My Lords, my first question for my noble friend the Minister is, why is an email not acceptable?

Baroness Williams of Trafford: My Lords, it has to be acceptable to the recipient—an email may not be acceptable to the recipient. The order says that it should be acceptable to the recipient.

Earl Attlee: My Lords, it rather seems as if my noble friend cannot explain to the Committee why it is acceptable for the police to say that they will not accept an email notification. It is an extremely reliable system of communication with a good audit record. I think some inspiration might be coming from the Front Bench so I shall sit down.

Baroness Williams of Trafford: I think what is coming from my left is probably what I was going to say anyway, which is that it is entirely a matter for Merseyside Police, for example, on which method it accepts. It is an operational decision for the chief constable.

Earl Attlee: I thank the Minister for that reply but she seems to be struggling on the point of why a police force can say that it will not take an email. I think that Ministers need to be rather careful about teasing noble Lords when they declare an interest; it is vital that we can declare an interest in an issue without being teased by Ministers. This is the second time on this Bill that I have been teased by Ministers regarding declaring an interest.

I want to make it clear to the Committee that I tried to avoid even tabling this amendment, because I knew that it would involve a lot of work within both the Department for Transport and the Home Office. Unfortunately, I could not encourage the Government to deal with this matter offline. That is why I had to table an amendment and speak to it in your Lordships' House.

The Minister said that the police force can determine what the form should be—how the notification is laid out and whether the width and the weight are described. It does not say in the STGO what the means should be, only the form—what it looks like when it comes out of the fax machine or in the email—but not the means. I am not convinced that the system is watertight.

Baroness Hamwee: My Lords, I cannot say that I have followed every detail of this, but the noble Earl seems to be complaining that the Minister is not the recipient. He is putting the burden on the shoulders of the Minister, but she has explained that it is a matter for the recipient as to what form will be acceptable. Is the question not whether the Minister will accept that it should be email but that the regulations should be reconsidered as to whether they say something different?

9.30 pm

Earl Attlee: The noble Baroness is absolutely right: the underlying problem that I tried to explain in my poor way is that the STGO is out of date and does not take into consideration modern means of communication. It does not mention email and certainly does not consider doing things online. It is completely silent on that. Sadly, it seems that the Government want to wash their hands of this and allow bodies such as Merseyside Police to try to become more efficient but without giving them the tools to do so, and leaving them vulnerable to all sorts of legal difficulties and upsetting operators. I have done the best I can with this issue. I do not intend to return to it. It sounds as if industry will have to battle it out itself.

Baroness Williams of Trafford: I apologise to my noble friend. I was attempting to be self-deprecating rather than teasing him. I hope that he did not get that impression.

Earl Attlee: I beg leave to withdraw the amendment.

Amendment 201A withdrawn.

Clause 105: Extension of cross-border powers of arrest: urgent cases

Amendments 201B to 201S

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

201B: Clause 105, page 121, line 14, leave out from "offence"" to "section" in line 15 and insert "has the meaning given by"

201C: Clause 105, page 121, line 16, at end insert—

"(A1) In section 137A, "specified offence" has the meaning given by this section.

(A2) An offence committed in England and Wales is a specified offence if it is—

(a) an offence (including an offence under the common law) that is punishable by virtue of any statutory provision with imprisonment or another form of detention for a term of 10 years or with a greater punishment,

(b) an offence specified in Part 1 of Schedule 7A,

(c) an offence of attempting or conspiring to commit, or of inciting the commission of, an offence mentioned in paragraph (a) or (b), or

(d) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to an offence mentioned in paragraph (a) or (b).

(A3) An offence committed in Scotland is a specified offence if it is—

(a) an offence (including an offence under the common law) that is punishable by virtue of any statutory provision with imprisonment or another form of detention for a term of 10 years or with a greater punishment,

(b) an offence specified in Part 2 of Schedule 7A, or

(c) an offence of attempting or conspiring to commit, or of inciting the commission of, an offence mentioned in paragraph (a) or (b).

(A4) An offence committed in Northern Ireland is a specified offence if it is—

(a) an offence (including an offence under the common law) that is punishable by virtue of any statutory provision with imprisonment or another form of detention for a term of 10 years or with a greater punishment,

(b) an offence specified in Part 3 of Schedule 7A,

(c) an offence of attempting or conspiring to commit, or of inciting the commission of, an offence mentioned in paragraph (a) or (b), or

(d) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to an offence mentioned in paragraph (a) or (b)."

201D: Clause 105, page 121, line 18, leave out from "instrument" to end of line 19 and insert "amend Part 1, 2 or 3 of Schedule 7A so as to add an offence to, or remove an offence from, the offences for the time being specified in the Part."

201E: Clause 105, page 121, line 20, leave out from beginning to "only" and insert "Regulations under subsection (1) may add an offence to a Part of Schedule 7A"

201F: Clause 105, page 121, line 24, leave out "specify it for the purposes of section 137A" and insert "add the offence to the Part"

201G: Clause 105, page 121, line 37, at end insert—

"(6) In this section—

(a) a description of an offence in subsection (A2)(a) or (b) or (A4)(a) or (b) includes such an offence committed by aiding, abetting, counselling or procuring;

(b) a description of an offence in subsection (A3)(a) or (b) includes such an offence committed by involvement art and part or by aiding, abetting, counselling or procuring;

(c) "statutory provision" means any provision of—

(i) an Act or subordinate legislation within the meaning of the Interpretation Act 1978;

(ii) an Act of the Scottish Parliament or an instrument made under such an Act;

(iii) a Measure or Act of the National Assembly for Wales or an instrument made under such a Measure or Act;

(iv) Northern Ireland legislation or an instrument made under Northern Ireland legislation."

201H: Clause 105, page 123, line 12, leave out "regulations under subsection (5)" and insert "the modifications made by Part 1 of Schedule 7B"

201J: Clause 105, page 123, line 17, at end insert—

"(ca) section 31 of the Children and Young Persons Act 1933 (separation of children and young persons from adults in police stations, courts etc);"

201K: Clause 105, page 123, line 22, leave out "regulations under subsection (5)" and insert "the modifications made by Part 2 of Schedule 7B"

201L: Clause 105, page 123, line 26, at end insert—

"(c) section 51 of that Act (duty to consider child's well-being);

(d) section 52 of that Act (duties in relation to children in custody)."

201M: Clause 105, page 123, line 29, leave out "regulations under subsection (5)" and insert "the modifications made by Part 3 of Schedule 7B"

201N: Clause 105, page 123, line 35, at end insert—

"(ca) article 9 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I.9)) (separation of child in police detention from adults charged with offences);"

201P: Clause 105, page 123, line 40, leave out from "instrument" to end of line 47 and insert—

"(a) amend this section so as to add to the provisions that for the time being apply as mentioned in subsection (2), (3) or (4),

(b) amend this section so as to remove any of those provisions that were added by virtue of paragraph (a),

(c) amend Schedule 7B so as to alter the modifications for the time being made by that Schedule, including by adding a modification or removing one,

(d) amend Schedule 7B so as to provide that any of the provisions that for the time being apply as mentioned in subsection (2), (3) or (4) do not apply in cases or circumstances set out in the Schedule."

201Q: Clause 105, page 123, line 47, at end insert—

"( ) The Secretary of State may not make regulations under subsection (5) unless the Scottish Ministers and the Department of Justice in Northern Ireland consent to the making of the regulations."

201R: Clause 105, page 124, leave out lines 4 to 9

201S: Clause 105, page 124, line 9, at end insert—

"(2) After Schedule 7 to that Act insert, as Schedule 7A to that Act, the Schedule set out in Schedule 14A to this Act.

(3) After Schedule 7A to that Act (as inserted by subsection (2) above) insert, as Schedule 7B to that Act, the Schedule set out in Schedule 14B to this Act."

Amendments 201B to 201S agreed.

Clause 105, as amended, agreed.

Clauses 106 and 107 agreed.

Amendment 201SA

Moved by ***Lord Dear***

201SA: After Clause 107, insert the following new Clause—

"Power to remove disguises

In section 60AA(6) of the Criminal Justice and Public Order Act 1994 (powers to require removal of disguises) leave out "that is not practicable," and insert "it is not practicable for an authorisation or direction to be given in writing, it shall be"."

Lord Dear (CB): My Lords, it is with some trepidation that I drag your Lordships' attention from the interesting subjects of tank transporters, pigeon post and emails.

Amendment 201SA stands in my name and those of the noble Lords, Lord Donoughue and Lord Campbell of Pittenweem. The noble Lord, Lord Donoughue, has asked me to say that he is not able to speak to the amendment due to the lateness of the hour but he would have done so, as would the noble Baroness, Lady Mallalieu.

The amendment concerns Section 60AA of the Criminal Justice and Public Order Act 1994, which gives the police powers in some circumstances to require the removal of facial disguises. An authorisation is required under that section. The authorisation is strictly time limited, and is specific in many ways, particularly as regards location and time. It gives a power to uniformed police to require the removal of, among other things, masks, balaclavas and scarves if it is suspected that the purpose of wearing those disguises is wholly or mainly to conceal identity. The authorisation gives the police the power to seize those balaclavas et cetera, and provides that any person who fails to remove them when required commits an offence. A police inspector can authorise the removal of those articles if he or she reasonably believes, first, that offences are likely to be committed and, secondly, that the authority to remove them is expedient. It follows from that that one is dealing with demonstrations and prospective incidents of disorder which are foreseen or advertised to the police. The authorisation has to be in writing, has to be signed by the inspector and has to specify all the grounds—locality, period of time and so on—before it is valid. That brings me to the wording of Amendment 201SA, which seeks to remove "that is not practicable" and insert the words printed in the Marshalled List.

Somebody listening to me or reading the amendment may wonder whether it is splitting hairs. In a sense, it is, but there is a reason for that. As I said, the law as it stands deals with anticipated demonstrations—those that are pre-advertised in one way or another. The police know that such a demonstration is going to take place and can take pre-emptive action by issuing an authority in writing. However, there is a problem—and it has been a problem for some years now. It is what is often called, in popular parlance, "flash demos". These are demonstrations of which the police have had no prior knowledge and which have erupted suddenly and spontaneously—a sort of "hit and run", if you like. There is no doubt that in some cases the people who organise those flash demos—if I may continue to use that phrase—are working on the presumption that they can organise them because of the growth of communication by social media, which makes it much easier. They also know full well that if the police have no prior knowledge, the numbers of police officers available to deal with that intended disorder are likely to be very few. Those police officers on the street, faced with that sudden eruption of violence or disorder, will be faced with a dilemma. Quite simply, in their terms, if they effect an arrest, those two officers—or one officer or whatever—will go off the scene and then nobody is left to deal with the disorder. So one sees a degree of deliberation behind all this.

The point of the amendment is that there is some confusion at the moment in the minds of the police about whether the Act allows the permission to be written ex post facto—in other words, the police officer at the scene faced with the demonstration will usually use the radio to ask an inspector at the base station for permission—and whether or not it is correct within the existing law for the inspector to give the permission and write it when the officer is already dealing with the situation with which he is confronted.

I think that my amendment has full support; I hope that it has. Certainly there is full support for that change from the police service at the top level. From the police's point of view, it will clarify their position, give them a degree of certainty and enable a much speedier response to deal with disorder, either impending or actual. I hope that I can say with some certainty that there is support from all around the House. On that point, we shall learn more in a moment. There have been some discussions with officials, who, without any commitment at all, have indicated a sympathy to discuss this further. I ask the Minister to recognise that and, in the light of whatever is said in this Chamber tonight, to consider taking this issue away and bringing back an amendment at a later stage. On those grounds, I beg to move.

Lord Harris of Haringey: My Lords, the noble Lord, Lord Dear, has raised a potentially important issue, and I think he is right to put it in the terms that he has. Particularly with the growth of social media and the very rapid organisation of demonstrations, there may be an issue here that needs to be addressed. Indeed, if the Minister, having thought about it, agrees to take it back and bring forward a proper amendment which addresses all these points at the next level—which I think is the noble Lord's preferred course of action—there are a number of other issues that perhaps would usefully be addressed at the same time.

We have to be more explicit about what constitutes a disguise and the circumstances in which it happens. You could have a situation in which what would appear to a police officer on the scene as being a disguise might turn out to be a veil worn for religious purposes; or it might turn out to be the fact that it is extraordinarily inclement weather and no sensible people would go out without a scarf wrapped around their face; or it might be that they wear face masks—I have seen this; it is quite common particularly among Japanese tourists, although I am not sure that it is unique—allegedly to protect themselves from the notorious levels of air pollution in our capital city. All I am saying is that the definition of "disguise" that may have seemed to work in the 1994 Act may need to be reviewed and looked at in the context of whether it continues to make sense. There have to be some safeguards with regards to the way in which decisions are taken and recorded, which ensure that the power is not used in any way which could be deemed discriminatory, as that would be extremely unfortunate. I am sure that that is not the intention, but it is important that safeguards are built into this. While the process by which this happens should be able to respond quickly to the sorts of situations that the noble Lord, Lord Dear, outlined, it should also be amenable to ensuring that the power is not misused or used in a way which in retrospect turns out to be highly inappropriate.

The noble Lord, Lord Dear, has identified an issue that should be addressed, but it needs to be developed quite carefully to avoid some potential pitfalls in the future.

Lord Dear: My Lords, can I just put on the record what Section 60AA(2) of the 1994 Act says? To the best of my knowledge, it has not raised any problems in law so far. It says:

"This subsection confers power on any constable in uniform … to require any person to remove any item which the constable reasonably believes"—

those words are a well-known test in law—

"that person is wearing wholly or mainly for the purpose of concealing his identity".

Lord Kennedy of Southwark: Briefly, I agree with my noble friend Lord Harris of Haringey, that the noble Lord, Lord Dear, has raised an important issue. However, it needs careful consideration for the reasons that my noble friend outlined. I therefore hope that the Minister will agree that the Government will take this away and have a look at this issue. We all want to make sure that the police have the appropriate power, but equally, of course, we should ensure that the proper safeguards are built in so that unintended consequences, which no one would want to occur, do not cause problems as well.

Lord Paddick: My Lords, I did not intend to speak on this matter but the issues the noble Lord, Lord Harris of Haringey, raised, particularly around religious dress, need to be considered very carefully. I bear in mind the scenario that the noble Lord, Lord Dear, presented us with where constables on the street, faced with individuals who they interpret as deliberately trying to conceal their identity, are radioing an inspector for authority who is not at the scene and cannot make that assessment himself or herself. That is potentially difficult. I am not a lawyer and I may have misread it, but my reading of the existing legislation was that it allows for a scenario where written authority could be given contemporaneously with the actions of the officers on the ground. Can the Minister therefore help the House by saying whether the Government think that the amendment is necessary? However, I absolutely accept that flash mobs and spontaneous public disorder are becoming an increasing problem, as we saw in the riots in London only a few years ago, which were driven by social media.

Baroness Williams of Trafford: The noble Lord, Lord Paddick, is right that the permission in writing can be given after the event, but we now find that that is not an ideal situation. On what the noble Lord, Lord Dear, proposes, both national policing leads and others would welcome a clarification on this matter. The noble Lord, Lord Dear, answered the question posed by the noble Lord, Lord Harris, for me, but I will repeat it, as it is important. With regard to removing face coverings for religious reasons, for example, the Act states that when an authorisation is in place, a constable can require a person to remove a face covering only if the constable reasonably believes that the person is wearing the item,

"wholly or mainly for the purpose of concealing his",

or her "identity". Of course, it is for individuals to ensure the fair and proportionate use of their powers.

If the noble Lord is content to withdraw his amendment—it sounds as though he is—I will give the matter further sympathetic consideration in advance of Report.

Lord Dear: My Lords, at this late hour I am grateful for the contributions that have been made. I am encouraged by and grateful to the Minister for what she has said, and I beg leave to withdraw the amendment.

Amendment 201SA withdrawn.

Amendment 201SB not moved.

9.45 pm

Amendments 201T and 201U

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

201T: Before Schedule 15, insert the following new Schedule—

"SCHEDULE 14A

SCHEDULE TO BE INSERTED AS SCHEDULE 7A TO THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

"OFFENCES SPECIFIED FOR THE PURPOSES OF SECTION 137A

PART 1

OFFENCES UNDER THE LAW OF ENGLAND AND WALES

1_ Any of the following offences at common law—

(a) false imprisonment;

(b) kidnapping;

(c) indecent exposure;

(d) cheating in relation to the public revenue.

2_ An offence under any of the following provisions of the Offences against the Person Act 1861—

(a) section 20 (inflicting bodily injury);

(b) section 24 (administering poison etc with intent);

(c) section 27 (exposing child whereby life is endangered etc);

(d) section 31 (setting spring-guns etc with intent);

(e) section 37 (assaulting an officer etc on account of his preserving wreck);

(f) section 47 (assault occasioning actual bodily harm).

3_(1) An offence under any of the following provisions of the Sexual Offences Act 1956—

(a) section 10 (incest by a man);

(b) section 11 (incest by a woman);

(c) section 30 (man living on the earnings of prostitution);

(d) section 31 (woman exercising control over a prostitute);

(e) section 33A (keeping a brothel used for prostitution).

_(2) An offence under section 12 of that Act (buggery), other than an offence committed by a person where the other person involved in the conduct constituting the offence consented to it and was aged 16 or over.

_(3) An offence under section 13 of that Act (indecency between men), where the offence was committed by a man aged 21 or over and the other person involved in the conduct constituting the offence was under the age of 16.

4_ An offence under section 4 of the Criminal Law Act 1967 (assisting offenders).

5_ An offence under section 5 of the Sexual Offences Act 1967 (living on the earnings of male prostitution).

6_ An offence under any of the following provisions of the Firearms Act 1968—

(a) section 1(1) (possession etc of firearms or ammunition without certificate);

(b) section 2(1) (possession etc of shot gun without certificate);

(c) section 3(1) (manufacturing, selling etc firearms or ammunition by way of trade or business without being registered as a firearms dealer).

7_ An offence under section 106A of the Taxes Management Act 1970 (fraudulent evasion of income tax).

8_(1) An offence under section 50(2) or (3) of the Customs and Excise Management Act 1979 (improper importation of goods), other than an offence mentioned in subsection (5B) of that section.

_(2) An offence under section 68(2) of that Act (exportation of prohibited or restricted goods).

_(3) An offence under section 170 of that Act (fraudulent evasion of duty etc), other than an offence mentioned in subsection (4B) of that section.

9_ An offence under section 4 of the Aviation Security Act 1982 (offences in relation to certain dangerous articles).

10_ An offence under section 127 of the Mental Health Act 1983 (ill-treatment of patients).

11_ An offence under either of the following provisions of the Child Abduction Act 1984—

(a) section 1 (abduction of child by parent etc);

(b) section 2 (abduction of child by other persons).

12_ An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (prohibition of female circumcision).

13_ An offence under either of the following provisions of the Public Order Act 1986—

(a) section 2 (violent disorder);

(b) section 3 (affray).

14_ An offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child).

15_ An offence under section 2 of the Computer Misuse Act 1990 (unauthorised access with intent to commit or facilitate commission of further offences).

16_ An offence under section 72(1), (3) or (8) of the Value Added Tax Act 1994 (fraudulent evasion of VAT etc).

17_ An offence under either of the following provisions of the Protection from Harassment Act 1997—

(a) section 4 (putting people in fear of violence);

(b) section 4A (stalking involving fear of violence or serious alarm or distress).

18_ An offence under section 29(1)(a) or (b) of the Crime and Disorder Act 1998 (certain racially or religiously aggravated assaults).

19_ An offence under section 38B of the Terrorism Act 2000 (information about acts of terrorism).

20_ An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (sexual activity with a person aged under 18 in abuse of a position of trust).

21_ An offence under section 35 of the Tax Credits Act 2002 (tax credit fraud).

22_(1) An offence under any of the following provisions of the Sexual Offences Act 2003—

(a) section 13 (child sex offences committed by children or young persons);

(b) section 16 (abuse of position of trust: sexual activity with a child);

(c) section 17 (abuse of position of trust: causing or inciting a child to engage in sexual activity);

(d) section 18 (abuse of position of trust: sexual activity in the presence of a child);

(e) section 19 (abuse of position of trust: causing a child to watch a sexual act);

(f) section 40 (care workers: sexual activity in the presence of a person with a mental disorder);

(g) section 41 (care workers: causing a person with a mental disorder to watch a sexual act);

(h) section 52 (causing or inciting prostitution for gain);

(i) section 53 (controlling prostitution for gain).

_(2) An offence under section 25 or 26 of that Act (family child sex offences) where the offence is committed by a person under the age of 18.

_(3) An offence under section 47 of that Act (paying for sexual services of a child), where the offence is committed against a person aged 16 or over.

23_ An offence under either of the following provisions of the Terrorism Act 2006—

(a) section 1 (encouragement of terrorism);

(b) section 2 (dissemination of terrorist publications).

24_ An offence under section 45 of the Serious Crime Act 2015 (participating in activities of organised crime group).

25_ An offence under section 67 of the Policing and Crime Act 2016 (breach of pre-charge bail conditions relating to travel).

PART 2

OFFENCES UNDER THE LAW OF SCOTLAND

26_ Any of the following offences at common law—

(a) culpable homicide;

(b) treason;

(c) rape;

(d) assault, where the assault results in serious injury or endangers life;

(e) assault with intent to rape or ravish;

(f) indecent assault;

(g) abduction with intent to rape;

(h) public indecency;

(i) clandestine injury to women;

(j) lewd, indecent or libidinous behaviour or practices;

(k) sodomy, other than an offence committed by a person where the other person involved in the conduct constituting the offence consented to it and was aged 16 or over;

(l) abduction;

(m) mobbing;

(n) fire-raising;

(o) robbery;

(p) fraud;

(q) extortion;

(r) embezzlement;

(s) theft;

(t) threats;

(u) attempting to pervert the course of justice.

27_ An offence under any of the following provisions of the Firearms Act 1968—

(a) section 1(1) (possession etc of firearms or ammunition without certificate);

(b) section 2(1) (possession etc of shot gun without certificate);

(c) section 3(1) (manufacturing, selling etc firearms or ammunition by way of trade or business without being registered as a firearms dealer).

28_ An offence under section 106A of the Taxes Management Act 1970 (fraudulent evasion of income tax).

29_(1) An offence under section 50(2) or (3) of the Customs and Excise Management Act 1979 (improper importation of goods), other than an offence mentioned in subsection (5B) of that section.

_(2) An offence under section 68(2) of that Act (exportation of prohibited or restricted goods).

_(3) An offence under section 170 of that Act (fraudulent evasion of duty etc), other than an offence mentioned in subsection (4B) of that section.

30_ An offence under section 4 of the Aviation Security Act 1982 (offences in relation to certain dangerous articles).

31_ An offence under either of the following provisions of the Civic Government (Scotland) Act 1982—

(a) section 51(2) (publication etc of obscene material);

(b) section 52 (taking, distributing etc indecent photographs of children).

32_ An offence under section 6 of the Child Abduction Act 1984 (parent etc. taking or sending a child out of the United Kingdom).

33_ An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (prohibition of female circumcision).

34_ An offence under section 2 of the Computer Misuse Act 1990 (unauthorised access with intent to commit or facilitate commission of further offences).

35_ An offence under section 72(1), (3) or (8) of the Value Added Tax Act 1994 (fraudulent evasion of VAT etc).

36_ An offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995—

(a) section 7 (procuring prostitution etc);

(b) section 8(3) (unlawful detention of women and girls);

(c) section 10 (parents etc encouraging girls under 16 to engage in prostitution etc);

(d) section 11(1)(b) (males soliciting etc for immoral purposes).

37_ An offence under section 38B of the Terrorism Act 2000 (information about acts of terrorism).

38_ An offence under section 35 of the Tax Credits Act 2002 (tax credit fraud).

39_ An offence under section 313 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (persons providing care services: sexual offences).

40_ An offence under either of the following provisions of the Terrorism Act 2006—

(a) section 1 (encouragement of terrorism);

(b) section 2 (dissemination of terrorist publications).

41_ Any of the following offences under the Sexual Offences (Scotland) Act 2009—

(a) section 8 (sexual exposure);

(b) section 9 (voyeurism);

(c) section 11 (administering a substance for sexual purposes);

(d) section 32 (causing an older child to be present during a sexual activity);

(e) section 33 (causing an older child to look at a sexual image);

(f) section 34(1) (communicating indecently with an older child);

(g) section 34(2) (causing an older child to see or hear an indecent communication);

(h) section 35 (sexual exposure to an older child);

(i) section 36 (voyeurism towards an older child);

(j) section 42 (sexual abuse of trust);

(k) section 46 (sexual abuse of trust of a mentally disordered person).

42_ An offence under either of the following provisions of the Criminal Justice and Licensing (Scotland) Act 2010—

(a) section 38 (threatening or abusive behaviour);

(b) section 39 (stalking).

43_ An offence under section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (disclosing etc an intimate photograph or film).

PART 3

OFFENCES UNDER THE LAW OF NORTHERN IRELAND

44_ Any of the following offences at common law—

(a) false imprisonment;

(b) kidnapping;

(c) riot;

(d) affray;

(e) indecent exposure;

(f) cheating in relation to the public revenue.

45_ An offence under any of the following provisions of the Offences against the Person Act 1861—

(a) section 20 (inflicting bodily injury);

(b) section 24 (administering poison etc with intent);

(c) section 27 (exposing child whereby life is endangered etc);

(d) section 31 (setting spring-guns etc with intent);

(e) section 37 (assaulting an officer etc on account of his preserving wreck);

(f) section 47 (assault occasioning actual bodily harm).

46_ An offence under section 11 of the Criminal Law Amendment Act 1885 (indecency between men), where the offence was committed by a man aged 21 or over and the other person involved in the conduct constituting the offence was under the age of 16.

47_ An offence under either of the following provisions of the Punishment of Incest Act 1908—

(a) section 1 (incest by a man);

(b) section 2 (incest by a woman).

48_ An offence under section 4 of the Criminal Law Act (Northern Ireland) 1967 (assisting offenders).

49_ An offence under section 106A of the Taxes Management Act 1970 (fraudulent evasion of income tax).

50_(1) An offence under section 50(2) or (3) of the Customs and Excise Management Act 1979 (improper importation of goods), other than an offence mentioned in subsection (5B) of that section.

_(2) An offence under section 68(2) of that Act (exportation of prohibited or restricted goods).

_(3) An offence under section 170 of that Act (fraudulent evasion of duty etc), other than an offence mentioned in subsection (4B) of that section.

51_ An offence under section 4 of the Aviation Security Act 1982 (offences in relation to certain dangerous articles).

52_ An offence under Article 8 of the Homosexual Offences (Northern Ireland) Order 1982 (S.I. 1982/1536 (N.I. 19)) (living on the earnings of male prostitution).

53_ An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (prohibition of female circumcision).

54_ An offence under either of the following provisions of the Child Abduction (Northern Ireland) Order 1985 (S.I. 1985/1638(N.I. 17))—

(a) Article 3 (abduction of child by parent etc);

(b) Article 4 (abduction of child by other persons).

55_ An offence under Article 121 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) (ill-treatment of patients).

56_ An offence under Article 15 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17)) (possession of indecent photograph of a child).

57_ An offence under section 2 of the Computer Misuse Act 1990 (unauthorised access with intent to commit or facilitate commission of further offences).

58_ An offence under section 72(1), (3) or (8) of the Value Added Tax Act 1994 (fraudulent evasion of VAT etc).

59_ An offence under Article 6 of the Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9)) (putting people in fear of violence).

60_ An offence under section 38B of the Terrorism Act 2000 (information about acts of terrorism).

61_ An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (sexual activity with a person aged under 18 in abuse of a position of trust).

62_ An offence under section 35 of the Tax Credits Act 2002 (tax credit fraud).

63_ An offence under section 53 of the Sexual Offences Act 2003 (controlling prostitution for gain).

64_ An offence under any of the following provisions of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I.3))—

(a) Article 3(1)(b) (possession etc of firearms other than handguns without certificate);

(b) Article 3(2) (possession etc of ammunition without certificate);

(c) Article 24(1) (manufacturing, selling etc firearms or ammunition by way of trade or business without being registered as a firearms dealer).

65_ An offence under either of the following provisions of the Terrorism Act 2006—

(a) section 1 (encouragement of terrorism);

(b) section 2 (dissemination of terrorist publications).

66_(1) An offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))—

(a) Article 20 (child sex offences committed by children or young persons);

(b) Article 23 (abuse of position of trust: sexual activity with a child);

(c) Article 24 (abuse of position of trust: causing or inciting a child to engage in sexual activity);

(d) Article 25 (abuse of position of trust: sexual activity in the presence of a child);

(e) Article 51 (care workers: sexual activity with a person with a mental disorder);

(f) Article 53 (care workers: sexual activity in the presence of a person with a mental disorder);

(g) Article 62 (causing or inciting prostitution for gain);

(h) Article 63 (controlling prostitution for gain);

(i) Article 64 (keeping a brothel used for prostitution).

_(2) An offence under Article 32 or 33 of that Order (family child sex offences) where the offence is committed by a person under the age of 18.

_(3) An offence under Article 37 of that Order (paying for sexual services of a child), where the offence is committed against a person aged 16 or over.

67_ An offence under section 67 of the Policing and Crime Act 2016 (breach of pre-charge bail conditions relating to travel).""

201U: Before Schedule 15, insert the following new Schedule—

"SCHEDULE 14B

SCHEDULE TO BE INSERTED AS SCHEDULE 7B TO THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

"RIGHTS OF PERSONS ARRESTED UNDER SECTION 137A: MODIFICATIONS

PART 1

ARRESTS IN RESPECT OF OFFENCES COMMITTED IN ENGLAND AND WALES

1_(1) This Part sets out the modifications mentioned in section 137D(2), that is, modifications of the provisions which apply in relation to persons arrested under section 137A in respect of a specified offence committed in England and Wales.

_(2) Except as expressly provided by this Part, a reference to a constable in any of those provisions is to be read as a reference to a constable of the arresting force.

_(3) In this Part, references to the arresting force and the investigating force have the same meaning as in section 137C (see subsection (8) of that section).

2_(1) Section 56 of the Police and Criminal Evidence Act 1984 (right to have someone informed when arrested) is modified as follows.

_(2) Subsection (1) is to be read as if (instead of referring to the case where a person has been arrested and is being held in custody in a police station or other premises) it referred to the case where a person has been arrested under section 137A and is being detained under section 137C.

_(3) Subsection (2)(a) does not apply.

_(4) Subsection (2)(b) is to be read as if (instead of referring to an officer of at least the rank of inspector) it referred—

(a) in relation to delay during the period of 24 hours beginning with the time of the arrest under section 137A, to an officer of the investigating force of at least the rank of inspector;

(b) in relation to delay during any remaining period for which the person may be detained under section 137C, to an officer of the investigating force of a rank above that of inspector.

_(5) Subsection (3) does not apply.

_(6) The reference in subsection (5)(a) to an indictable offence is to be read as a reference to an offence that is an indictable offence under the law of England and Wales.

_(7) Subsection (5A)(a) is to be read as if (instead of referring to the person detained for the indictable offence) it referred to the person detained under section 137C.

_(8) Subsection (6)(b) is to be read as if (instead of referring to a person's custody record) it referred to the record made by the arresting force in relation to the person's arrest under section137A and detention under section 137C.

_(9) Subsection (8) is to be read as if (instead of referring to a person detained at a police station or other premises) it referred to a person detained under section 137C.

3_(1) Section 58 of the Police and Criminal Evidence Act 1984 (access to legal advice) is modified as follows.

_(2) Subsection (1) is to be read as if (instead of referring to a person held in custody in a police station or other premises) it referred to a person detained under section 137C.

_(3) Subsections (2) and (9)(b) are to be read as if (instead of referring to a person's custody record) they referred to the record made by the arresting force in relation to the person's arrest under section 137A and detention under section 137C.

_(4) Subsections (3) and (5) do not apply.

_(5) Subsection (6)(a) does not apply.

_(6) The reference in subsection (6)(b) to an officer of at least the rank of superintendent is to be read as a reference to an officer of at least that rank in the investigating force.

_(7) The reference in subsection (8)(a) to an indictable offence is to be read as a reference to an indictable offence under the law of England and Wales.

_(8) Subsection (8A)(a) is to be read as if (instead of referring to the person detained for the indictable offence) it referred to the person detained under section 137C.

4_(1) Section 34 of the Children and Young Persons Act 1933 (attendance at court of parent of child or young person charged with an offence, etc) is modified as follows.

_(2) Subsection (2) is to be read as if (instead of referring to the case where a child or young person is in police detention) it referred to the case where a child or young person is being detained under section 137C.

_(3) Subsection (3) is to be read as if (in addition to the information mentioned in paragraphs (a) to (c)) it also mentioned the information set out in section 137D(1)(a) and (b).

_(4) The reference in subsection (9) to a child's or young person's rights under section 56 of the Police and Criminal Evidence Act 1984 is to be read as a reference to that section as modified by this Schedule.

PART 2

ARRESTS IN RESPECT OF OFFENCES COMMITTED IN SCOTLAND

5_(1) This Part sets out the modifications mentioned in section 137D(3), that is, modifications of the provisions which apply in relation to persons arrested under section 137A in respect of a specified offence committed in Scotland.

_(2) Except as expressly provided by this Part, a reference to a constable in any of those provisions is to be read as a reference to a constable of the arresting force.

_(3) A reference to a person in police custody in any of those provisions is to be read as a reference to a person detained under section 137C.

_(4) In this Part, references to the arresting force and the investigating force have the same meaning as in section 137C (see subsection (8) of that section).

6_(1) Section 38 of the Criminal Justice (Scotland) Act 2016 (right to have intimation sent to other person) is modified as follows.

_(2) Subsection (6) applies as if (instead of the provision made by that subsection) it defined "an appropriate constable" as being—

(a) in relation to delay during the period of 24 hours beginning with the time of the arrest under section 137A, an officer of the investigating force of at least the rank of inspector;

(b) in relation to delay during any remaining period for which a person may be detained under section 137C, an officer of the investigating force of a rank above that of inspector.

7_(1) Section 40 of that Act (right of under 18s to have access to another person) is modified as follows.

_(2) Subsection (5) applies as if (instead of the provision made by that subsection) it provided for a decision to refuse or restrict access to a person under subsection (1) or (2) to be taken only by—

(a) in the case of a decision to refuse or restrict access during the period of 24 hours beginning with the time of the arrest under section 137A, an officer of the investigating force of at least the rank of inspector;

(b) in the case of a decision to refuse or restrict access during any remaining period for which a person may be detained under section 137C, an officer of the investigating force of a rank above that of inspector.

8_(1) Section 41 of that Act (social work involvement in relation to under 18s) is modified as follows.

_(2) Subsection (6) applies as if (instead of the provision made by that subsection) it provided for a decision to refuse or restrict access to a person under subsection (4)(b) to be taken only by—

(a) in the case of a decision to refuse or restrict access during the period of 24 hours beginning with the time of the arrest under section 137A, an officer of the investigating force of at least the rank of inspector;

(b) in the case of a decision to refuse or restrict access during any remaining period for which a person may be detained under section 137C, an officer of the investigating force of a rank above that of inspector.

9_(1) Section 42 of that Act (support for vulnerable persons) is modified as follows.

_(2) Subsection (5)(b)(ii) is to be read as if (instead of referring to a person appointed as a member of police staff under section 26(1) of the Police and Fire Reform (Scotland) Act 2012) it referred to a person who performs a function which is equivalent to a function performed at a police station in Scotland by a person appointed as a member of police staff under section 26(1) of that Act.

10_(1) Section 43 of that Act (right to have intimation sent to solicitor) is modified as follows.

_(2) Subsection (1) is to be read as if the list of matters of which a person has a right to have intimation sent to a solicitor—

(a) did not include paragraph (d), but

(b) did include the matters mentioned in section 137D(1)(a) and (b).

11_(1) Section 44 of that Act (right to consultation with solicitor) is modified as follows.

_(2) Subsection (3) applies as if (instead of the provision made by that subsection) it provided for a decision to delay the exercise of the right under subsection (1) to be taken only by—

(a) in the case of a delay during the period of 24 hours beginning with the time of the arrest under section 137A, an officer of the investigating force of at least the rank of inspector;

(b) in the case of a delay during any remaining period for which a person may be detained under section 137C, an officer of the investigating force of a rank above that of inspector.

12_(1) Section 51 of that Act (duty to consider child's wellbeing) is modified as follows.

_(2) Subsection (1) is to be read as if it did not include paragraphs (a), (c) and (d).

PART 3

ARRESTS IN RESPECT OF OFFENCES COMMITTED IN NORTHERN IRELAND

13_(1) This Part sets out the modifications mentioned in section 137D(4), that is, modifications of the provisions which apply in relation to persons arrested under section 137A in respect of a specified offence committed in Northern Ireland.

_(2) Except as expressly provided by this Part, a reference to a constable in any of those provisions is to be read as a reference to a constable of the arresting force.

_(3) In this Part, references to the arresting force and the investigating force have the same meaning as in section 137C (see subsection (8) of that section).

14_(1) Article 57 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (right to have someone informed when arrested) is modified as follows.

_(2) Paragraph (1) is to be read as if (instead of referring to the case where a person has been arrested and is being held in custody in a police station or other premises) it referred to the case where a person has been arrested under section 137A and is being detained under section 137C.

_(3) Paragraph (2)(a) does not apply.

_(4) Paragraph (2)(b) is to be read as if (instead of referring to an officer of at least the rank of inspector) it referred—

(a) in relation to delay during the period of 24 hours beginning with the time of the arrest under section 137A, to an officer of the investigating force of at least the rank of inspector;

(b) in relation to delay during any remaining period for which the person may be detained under section 137C, to an officer of the investigating force of a rank above that of inspector.

_(5) Paragraph (3) does not apply.

_(6) The reference in paragraph (5)(a) to an indictable offence is to be read as a reference to an offence that is an indictable offence under the law of Northern Ireland.

_(7) Paragraph (5A)(a) is to be read as if (instead of referring to the person detained for the indictable offence) it referred to the person detained under section 137C.

_(8) Paragraph (6)(b) is to be read as if (instead of referring to a person's custody record) it referred to the record made by the arresting force in relation to the person's arrest under section 137A and detention under section 137C.

_(9) Paragraph (8) is to be read as if (instead of referring to a person detained at a police station or other premises) it referred to a person detained under section 137C.

15_(1) Article 59 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (access to legal advice) is modified as follows.

_(2) Paragraph (1) is to be read as if (instead of referring to a person held in custody in a police station or other premises) it referred to a person detained under section 137C.

_(3) Paragraphs (2) and (9)(b) are to be read as if (instead of referring to a person's custody record) they referred to the record made by the arresting force in relation to the person's arrest under section 137A and detention under section 137C.

_(4) Paragraphs (3) and (5) do not apply.

_(5) Paragraph (6)(a) does not apply.

_(6) The reference in paragraph (6)(b) to an officer of at least the rank of superintendent is to be read as a reference to an officer of at least that rank in the investigating force.

_(7) The reference in paragraph (8)(a) to an indictable offence is to be read as a reference to an indictable offence under the law of Northern Ireland.

_(8) Paragraph (8A)(a) is to be read as if (instead of referring to the person detained for the indictable offence) it referred to the person detained under section 137C.

16_(1) Article 10 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (duty to inform person responsible for welfare of child in police detention) is modified as follows.

_(2) Paragraph (1) is to be read as if (instead of referring to the case where a child is in police detention) it referred to the case where a child is being detained under section 137C.

_(3) That paragraph is also to be read as if (in addition to the information mentioned in sub-paragraphs (a) to (c)) it also mentioned the information set out in section 137D(1)(a) and (b).

_(4) The reference in paragraph (6) to a child's rights under Article 57 of the Police and Criminal Evidence (Northern Ireland) Order 1989 is to be read as a reference to that Article as modified by this Schedule."""

Amendments 201T and 201U agreed.

Schedule 15 agreed.

Clause 108 agreed.

Clause 109: Eligibility of deputy police and crime commissioners for election

Debate on whether Clause 109 should stand part of the Bill.

Lord Harris of Haringey: I do not intend to hold things up, nor am I necessarily expecting that the Minister will be able to respond—I had not given notice of this—but I hope that she might be able to respond well in advance of Report.

Clause 109 relates to the eligibility of deputy police and crime commissioners for election. Noble Lords may recall that on day 1 in Committee I raised the complexities of the position of the proposed deputy mayor for fire, but I then referred to the complexity of the position of the deputy mayor for policing and crime, it being a politically restricted post. As I understand

it, deputy police and crime commissioners are politically restricted posts, yet here we have a very sensible clause which I believe creates an arrangement whereby deputy police and crime commissioners can stand for election. If deputy police and crime commissioners are politically restricted, we are now creating a situation that goes against that provision by saying that they can stand for election.

Between now and Report—perhaps in good time before Report—can the Minister tell us, first, what the rationale is for deputy police and crime commissioners, let alone deputy mayors for policing and crime, to be politically restricted under certain circumstances; and, secondly, whether this restriction is still necessary and, given that this clause assumes that it is possible for deputy police and crime commissioners to stand for election, whether the original idea that deputy police and crime commissioners should not be politically restricted can be adjusted? I think that this issue needs to be tidied up. It is certainly a matter that I intend to return to on Report unless we succeed in clarifying it before then.

Baroness Williams of Trafford: My Lords, it seems like ages ago but I remember the debate and I remember what I thought at the time, although I cannot for the life of me think of an answer for the noble Lord at such a late hour. However, I said that we would reflect on the points that he raised because at the time—on day 1 of Committee, as the noble Lord said—they seemed very pertinent, and we will respond ahead of Report. I hope that he is happy with that.

Lord Harris of Haringey: Will there be a response on that point?

Baroness Williams of Trafford: Yes.

Clause 109 agreed.

Clause 110 agreed.

Amendment 202

Moved by ***Lord Rosser***

202: After Clause 110, insert the following new Clause—

"Police and crime commissioners: parity of funding at inquests

(1) When the police force for which a police and crime commissioner is responsible is an interested person for the purposes of an inquest into—

(a) the death of a member of an individual family, or

(b) the deaths of members of a group of families,

under the Coroners and Justice Act 2009, the Commissioner has the duties set out in this section.

(2) The police and crime commissioner must make recommendations to the Secretary of State as to whether the individual family or the group of families at the inquest require financial support to ensure parity of legal representation between parties to the inquest.

(3) If a police and crime commissioner makes a recommendation under subsection (2) then the Secretary of State must provide financial assistance to the individual family or the group of families to ensure parity of funding between the individual family or the group of families and the other party to the inquest.

(4) The individual family or the group of families may use funding authorised under this section solely for the purpose of funding legal representation at the inquest.

(5) In this section, "interested person" has the same meaning as in section 47 of the Coroners and Justice Act 2009."

Lord Rosser: My Lords, this amendment and its associated new clause seek to establish the principle of parity of legal funding for bereaved families at inquests involving the police, the lack of which and the associated injustice was highlighted by the sorry saga of the Hillsborough hearings and the extent to which the scales were weighted against the families of those who had lost their lives. But Hillsborough was not a one-off—it was simply that the proceedings received a lot of publicity. Many bereaved families can and do face a similar situation when they go to an inquest and find themselves in an adversarial and aggressive environment where they are not in a position to match the spending of the police or other parts of the public sector in what they spend on their own legal representation. At times, the families feel that they are being made to look like the perpetrators responsible for what happened, rather than the victims.

The public sector is in a position to spend taxpayers' money on hiring the best lawyers to defend its reputation. Bereaved families have to find their own money, sometimes even to the extent of remortgaging their house, to have any sort of legal representation to mount a challenge. Public money should pay to establish the truth, and that surely means parity of arms. If the argument is that an inquest will get at the truth anyway, irrespective of the extent and quality of legal representation, why do the police and the public sector turn up at such inquests with their own array of lawyers?

Margaret Aspinall, who was the chair of the Hillsborough Family Support Group, has told of the lengths to which she and other members of the group had to go to raise money for the legal fund. It is surely not right, and surely not justice, when bereaved families trying to find out the truth, and who have not done anything wrong, find that taxpayers' money is being used by the other side to paint a very different picture of events in a bid to destroy their credibility.

It might also help if we had inquisitorial rather than adversarial inquests. In the case of Hillsborough, the Lord Chief Justice made a specific ruling when he quashed the original inquest: he hoped that, given that the police had tainted the evidence, the new inquest would not degenerate into an adversarial battle. However, that is precisely what happened, and the lies and innuendo about Liverpool supporters at the match were repeated by a lawyer being financed at public expense and presumably acting under instructions from the public body involved.

I hope that the Government will be able to respond in a more helpful way than they did when this matter was debated during the Bill's passage through the Commons. If there is to continue to be an adversarial battle at inquests involving the police, we should at least ensure that bereaved families have the same ability as the public sector to get their points and questions across and, in the light of what can currently happen, to defend themselves and the loved ones they have lost from attack, and, if necessary, to challenge the very

[LORD ROSSER]
way proceedings are being conducted. This is a bigger issue than simply Hillsborough: it relates to the situation that all too often happens to too many families, but without the same publicity as Hillsborough. We surely need to act now to change a process and procedure that appears at times to be geared more to trying to grind down bereaved families than to enabling them to get at the truth and obtain justice. I beg to move.

Lord Paddick: My Lords, I rise briefly to support the amendment to which I have added my name. I declare an interest: I gave evidence for the de Menezes family at the inquest into the death of Jean Charles de Menezes, whom noble Lords will remember was shot by accident by the police, suspecting him to be a suicide bomber. Sadly, I experienced the adversarial nature of inquests at first hand. Indeed, during the lunch break on the day that I gave evidence, the coroner had to warn the legal team for the Metropolitan Police and basically tell them to "cool it".

A very adversarial system operates at the moment, whereas it should be an inquiry after the truth. Having experienced it first hand, I can say that it is absolutely necessary for the families of the bereaved to be as well represented as the police where there has been a death at the hands of the police, or a death in police custody, to use the technical term. For those reasons, I support the amendment.

Lord Harris of Haringey: I speak to my amendment in this group, which is similar except in terms of who ends up paying. I tabled this amendment very much for the reasons mentioned by my noble friend Lord Rosser and the noble Lord, Lord Paddick—the nature of inquests and the importance of creating a level playing field to enable the coroner to get to the truth of what has happened in cases of tragic death. The cases that I have been involved with relate to deaths in custody. For a number of years, I was chair of the Independent Advisory Panel on Deaths in Custody, which was concerned with not only police custody and deaths following police contact, but with deaths in prison and in secure mental hospitals. On a number of occasions, I spent time with the families of those who had died, as far as they were concerned, at the hands of the state.

I remember one family very movingly describing the experience of the inquest. They wanted to know what had happened to their loved one. They were not necessarily looking to apportion blame or for someone's head on a platter. They just wanted to know the facts. They were confronted with a complicated legal system, with everybody else being fully represented—at public expense. They were having to fight for legal representation through the legal aid system.

I do not know how many noble Lords have been in a coroner's court when such matters have been discussed. They are not always the easiest of environments. I remember one person describing that there was one small area for everyone to wait—counsel, witnesses and the bereaved families themselves. There were not sufficient chairs in the waiting room for everyone concerned. They described walking down the corridor and hearing behind them the trundle of wheeled suitcases filled with legal papers being dragged by highly paid legal officials, employed by the state to argue and create confusion around what had happened to their loved one. For that reason, we should consider the proper operation of the inquest to enable the truth to be obtained.

What concerns me about the present system is that when this issue was raised in the past, we were told that families were eligible for legal aid. But it is not as simple as that because there are strict criteria on the income that people can have in order to obtain legal aid. Of course, when a case relates to a family, it is not related to an individual, so before eligibility for legal aid can be established, the financial means of every single member of the family has to be assessed, whether or not they are actively engaged in the process. That can be long and drawn-out, extremely intrusive and not helpful. The reality is that the legal aid pot is tiny, and it becomes increasingly difficult to deal with cases humanely.

The purpose of my amendment is slightly different from that of my noble friend Lord Rosser. Yes, there should be parity of funding, but rather than an off-the-top call on the legal aid fund—therefore diminishing the amount of aid available to people who need it for criminal cases, for example—the agency that had custody of the individual at the time of their death should provide the funding. The agency will almost certainly be paying a substantial number of legal costs. In the case of a death in a police custody suite, it is probable that several police officers were involved, all of whom may be legally represented separately at the expense of the state. The police force itself may be represented separately, and at the expense of the state. Then there is the bereaved family, who may be quite traumatised by what has happened and facing extreme difficulties because they do not know what to do. If it were not for charities like INQUEST, with which I have worked over the years, which provides support for such families and has a panel of lawyers to assist them, many families would essentially go unrepresented at inquests. Yet it is important that those families have the right to challenge the evidence being presented to make sure that they are satisfied that as far as possible, the truth has been obtained at the inquest.

10 pm

The extra costs that would be imposed on the police and crime commissioner in this instance—I would actually like to see this principle applied in other areas where the state has an Article 2 duty—would be small by comparison. That would not draw down the legal aid budget but it would mean that families would get the help they need. There might also be, if you like, an incentive on police services or indeed any other agency in a similar position to go that extra step further to avoid situations in which a death occurs when someone is in their custody.

The purpose of my amendment is to say that where such a death has occurred and an interested family is involved, it should be recognised that the legal costs will be paid by the police and crime commissioner. It may be said that there are no precedents for doing this. I can cite a precedent because I was responsible for it, although it was not exactly the same situation.

Some years ago when I was the chair of the Metropolitan Police Authority, there was an extremely difficult death in custody case which, in the nature of these things, dragged on for many years. An inquest verdict was reached and as a result a challenge was mounted against it on behalf of some of the police officers involved. Because essentially their legal costs would ultimately be borne by the Metropolitan Police Service, the Metropolitan Police Authority, after some considerable deliberation, agreed that it was right and proper that the authority should fund the costs due to the representative of the family to try to resolve the issue, which was then going on to judicial review. So there are precedents, and I think that this is the right principle. There should be equity of funding to ensure appropriate access to representation for the bereaved families in these circumstances, and the right location for taking responsibility for this should lie with the police service or the agency concerned which was responsible for the person at the time of their death.

Baroness Williams of Trafford: My Lords, I believe that we all sympathise with the intention of the amendment. These new clauses draw on the experience of the Hillsborough families, and their fight for justice has been a long time coming. As noble Lords will be aware, the Hillsborough families received public funding for their legal costs at the fresh inquest. That was a bespoke scheme. We need to ensure that any similar action we take in the future is appropriate and proportionate. It is for these reasons that the former Home Secretary commissioned Bishop James Jones to compile a report on the experiences of the Hillsborough families, and the Government believe that it is appropriate that we should wait for his report before considering these issues further.

In relation to the funding of former police officers, this was a decision taken by the police and crime commissioner taking into account relevant case law and guidance on this subject. Separately, the former Home Secretary took a decision to provide a special grant to the South Yorkshire PCC in order to assist with the legal costs incurred as a result of the former officers' legal fees. In arriving at this decision, the former Home Secretary put the concerns and interests of the families at the forefront of her thinking, together with the principle of justice and the continuation of the inquests.

Additionally, in taking her decision on providing a special grant, the former Home Secretary was clear that it was important that justice should not only be done, but be seen to be done. It would have been wrong to leave police and other witnesses vulnerable to claims that justice had not been done because they lacked proper legal representation. The decision was taken specifically in the context of the Hillsborough inquests and should not be seen as setting a wider precedent.

In the light of these issues, it would be premature at this stage to commit to any further legislation, should it be required, before we have received Bishop Jones's report and seen its recommendations. Without prejudice to our consideration of Bishop Jones's conclusions and recommendations, it is important that I put on record that these amendments would place a significant financial burden on the Secretary of State or, in the case of Amendment 203, on PCCs. The cost of the legal representation for the 103 families at the fresh inquest into Hillsborough amounted to £63.6 million. Clearly, the Hillsborough inquests were an exceptional case, but it does at least provide an indication of the level of financial commitment these amendments imply. It is right that your Lordships' House takes this into consideration fully. On Amendment 202, it is also unclear to me why a PCC has a role in making a recommendation to the Secretary of State when the financial implications of that decision fall solely on the Secretary of State.

There are other technical issues with these amendments. For example, how would a PCC be in a position to know the funding available to other interested persons, which can include other public bodies? A PCC has no powers to inquire into the legal costs of the ambulance service or a health trust, for example.

The reference in the amendments to "parity of funding" also requires careful consideration. There will be significant differences between the legal advice required by a police officer or former police officer who could potentially face criminal charges and the family of a victim who are seeking justice. Does parity mean the cost, or the number of solicitors and counsel, or the level of their qualifications, with, for example, both legal teams headed up by a QC?

On Amendment 203, it is not clear to me whether a PCC has discretion to consider the merits of the representations he or she receives, or whether the PCC is bound to provide funding by virtue of the fact that representations have been received.

I accept that these are all detail points, which, while they will need to be addressed, are secondary. As I have said, the Government are firmly of the view that we should wait for Bishop Jones's report and then determine, in the light of it, the most appropriate way forward. On the understanding that this issue is firmly on the Government's agenda, I invite the noble Lord to withdraw his amendment.

Lord Harris of Haringey: My Lords, before my noble friend responds, could we first have clarity as to the scope and terms of reference of Bishop Jones's inquiry and whether it will look not at circumstances where large numbers of families are potentially involved, but at situations where there is one bereft family who are perhaps traumatised by what has happened and then face the full panoply of all this legal representation?

I note that the noble Baroness said very carefully that the former Home Secretary, in agreeing the funding in respect of the Hillsborough inquests, said that she was not setting a precedent. I appreciate that that is what one would do under such circumstances, but Hillsborough was a unique tragedy. I am not trying to gauge the size of tragedies and their impact, but the fact that for every person who died in Hillsborough their families were bereaved, shocked, appalled and in a terrible state does not alter the fact that individual families, perhaps whose 16 year-old son has died in a police cell or whatever else it might be, are suffering just as much as any of the Hillsborough families. Whether parity is the right word, as raised by the

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Minister, is a genuine question. It is quite complicated. However, what is important is the principle that it should be possible for families to seek representation of their choice and for it to be funded. I appreciate that they would be seeking to get to the bottom of what had happened, whereas police officers, who might be subject to criminal charges, would have a different set of objectives, but I hope that the Government, when they have fully considered this, will take on board the principle that those families should have the right to representation.

Baroness Williams of Trafford: My Lords, the Government will see and respond to Bishop Jones's review in due course. He is considering the terms of reference for his review with the families and intends to publish them shortly.

The noble Lord spoke of the suffering. He is absolutely right: it is not just the suffering of one person but the suffering of everybody associated with them, so I do not undermine the noble Lord's point at all; in fact, I share his view. Let us see what Bishop Jones says and the Government will respond in due course.

Lord Rosser: I thank all noble Lords who have participated in this debate and the Minister for her response. I shall not pretend that the response was a tremendous shock, since it was not dissimilar to those given previously. I am not quite sure how the report by the bishop will necessarily address the issue of what could happen at inquests generally where the police are represented, as opposed to the rather special circumstances of Hillsborough. The point that I was trying to make—obviously to no avail—is that this issue is not about Hillsborough; it goes way beyond that to looking at inquests generally where the police are represented, where there is a distinct inequality of arms and the consequences that arise from that. I was disappointed to hear again the issue of the money being raised as a key point. Some might think that if spending that amount of money enabled us at long last to get at the truth over Hillsborough then maybe it was not money badly spent, but clearly the Government have a different view about that.

On the arguments about the technicalities of the amendments and on whether the wording is appropriate or a bit vague in certain areas, if the Government wanted to be serious about doing something they would not put that argument forward. They would say that there were issues with the amendments that my noble friend Lord Harris and I had put down, but that they accepted the principle of what we were trying to achieve and would come back on Report with an amendment of their own, or alternatively that they would have discussions about the appropriate wording. But that has not been the Government's response.

Although I do not want to pretend that I am somehow shocked at the Government's reply, since it is consistent with what has been said previously, I am disappointed with it, since I have not heard any guarantees that the report from the bishop will address the wider issue of inquests generally where the police are represented as opposed to what happened at Hillsborough. There was nothing in the Minister's response to indicate that it would do that. In the meantime, I beg leave to withdraw the amendment. Obviously, we will have to consider whether to bring it back on Report.

Amendment 202 withdrawn.

Amendment 203 not moved.

Clause 111 agreed.

House resumed.

House adjourned at 10.14 pm.