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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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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 30 November 2016

3 pm

Prayers—read by the Lord Bishop of Chester.

Brexit: Immigration Policy

Question

3.06 pm

Asked by ***Lord Green of Deddington***

To ask Her Majesty's Government when they plan to outline their objectives for the negotiations concerning the immigration regime for European Union citizens, following the United Kingdom's withdrawal from the European Union.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Prime Minister has said that Article 50 will be triggered before the end of March 2017. We are still forming our negotiating position and are not going to offer a running commentary. It would be wrong to set out timelines before entering a negotiation. We want to get the right deal for Britain, not just the quickest one.

Lord Green of Deddington (CB): My Lords, I thank the Minister for that response, and I declare a non-financial interest as chairman of Migration Watch. I entirely understand the Government's reluctance to set foot on what is likely to be a fairly slippery slope, but does the noble Baroness agree that it is going to be really difficult for the Government to stick out for three or four months with nothing more to say than, regrettably, she was able to say today? Will she therefore study the 10 key objectives that we published today to see whether they provide a suitable framework for this absolutely key aspect of the forthcoming negotiations?

Baroness Williams of Trafford: I thank the noble Lord for that. I have read the report and the recommendations, and I welcome the report. The Government have been clear that as we conduct our negotiations it must be a priority to regain more control of the numbers of people who come here from Europe. It would not be right, therefore, for us to give a running commentary on negotiations.

Viscount Hailsham (Con): My Lords, in the context of immigration, may I remind my noble friend of the needs of the agricultural and horticultural industries in constituencies such as my former one? They are dependent on labour from abroad, most notably from eastern Europe, and if they are denied that resource they will face very considerable problems.

Baroness Williams of Trafford: I acknowledge what my noble friend says and I hope it will reassure him that we are talking to all sectors, not just the agricultural sector but sectors such as social care, because these things are very important as we move forward.

Lord Reid of Cardowan (Lab): My Lords, of course we do not expect a running commentary, but as the Government are assiduously forming their views on this matter, could the Minister perhaps give us a hint as to whether they allow any difference, in their crystallising thoughts, between the free movement of persons, as enshrined in Article 3 of the Treaty of Rome and confirmed at Lisbon and Maastricht, and the free movement of labour? It is, perhaps, an important distinction.

Baroness Williams of Trafford: The noble Lord, as always, makes a very good point. Yes, we must control the numbers of people coming to Britain from Europe but, as he says, we must ensure a positive outcome for those who wish to trade in goods and services.

Baroness Smith of Newnham (LD): My Lords, further to the debate in the name of the noble Lord, Lord Lucas, and the Minister's letter in response to that debate, can the noble Baroness give any indication of whether Her Majesty's Government are thinking about the situation for European Union students in the event of our leaving the European Union? At present they have the same rights as home students; in future they would fall within the immigration flows and therefore be capped within the tens of thousands unless there is a mutually beneficial deal for the EU and the United Kingdom. I refer the House to my interests listed in the register.

Baroness Williams of Trafford: As I think I have said to the House before, we remain absolutely committed to attracting the brightest and best students to the UK. There is currently no cap on the number of international students who come to this country because they help make our education system one of the best in the world. We have a competitive post-study work offer for graduates seeking to undertake skilled work after their studies.

Lord Forsyth of Drumlean (Con): Does my noble friend agree that the biggest concern among the business community about our leaving the European Union is that Europeans who have come to this country should be able to remain and continue to work here? Would not the right response to Chancellor Merkel and Mr Tusk be that we do not negotiate with people's lives in this country? Why can we not make it absolutely clear and end the uncertainty that those people will be allowed to remain here?

Baroness Williams of Trafford: The Prime Minister has been very clear that she wants to protect the status of EU nationals already living here and that the only circumstance in which that would not be possible is if British citizens' rights in EU member states were not protected in turn. She said today that it was right to give reassurances to both sets of citizens:

"I think the reaction that we have seen shows why it was absolutely right for us not to do what the Labour party wanted us to do, which was simply to give away the guarantee for rights of

[Baroness Williams of Trafford]
EU citizens here in the UK. As we have seen, that would have left UK citizens in Europe high and dry".

Lord Tomlinson (Lab): My Lords, will the Minister now reply to the very pertinent question asked by my noble friend Lord Reid, which she did not answer? He invited her to draw a clear distinction of understanding between freedom of movement of persons and freedom of movement of labour. On which of the two principles is the government policy currently based?

Baroness Williams of Trafford: I thought I had explained it quite clearly.

Baroness Ludford (LD): Do the Minister and the Government accept that there is cross-party support for the Government to give a unilateral guarantee to EU nationals? We just heard the noble Lord, Lord Forsyth, and the noble Viscount, Lord Hailsham, saying publicly on her Benches that that would give that stability and is the morally right thing to do. By setting an example, it would give us the good will and make it impossible for the 27 countries not to reciprocate for British nationals in their countries. It would cut the Gordian knot and it is the right thing to do.

Baroness Williams of Trafford: My Lords, I think I have just explained why that might be a foolish position.

Lord Stirrup (CB): My Lords, recent reports have criticised the efficacy of the methods used to estimate the emigration from and immigration to the United Kingdom, casting doubt on the accuracy and usefulness of the figures themselves. Can the Minister reassure the House that when we are discussing these issues, we will have data on which we can rely?

Baroness Williams of Trafford: My Lords, for the moment the ONS figures are the figures that we use. As we develop the figures around exit checks, once they have had a bit of time to bed in, they will add to the mix of estimating the migration figures.

Social Security: Claimants

Question

3.14 pm

Asked by ***Baroness Lister of Burtersett***

To ask Her Majesty's Government whether, in the light of the public debate around the film "I, Daniel Blake", they plan to set up a review of the treatment of claimants in the social security system.

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): We aim to keep all our policies under constant review to ensure that they continue to function effectively and fairly. The film is one person's interpretation of the benefit system. I make it clear that our staff, who work incredibly hard day in and day out, are committed to supporting the most vulnerable and helping people who are able to find work to get a job.

Baroness Lister of Burtersett (Lab): My Lords, I fear that Ministers have missed the point of this powerful and well-researched film, summed up in the final words of Daniel Blake's demand for respectful treatment:

"I am a citizen, nothing more, nothing less".

What will the Government now do to transform a culture of suspicion and sanctions, the costs of which are highlighted in today's damning National Audit Office report, to a culture of citizenship for the sake of both claimants and staff?

Lord Freud: The staff of the DWP, who I think are effectively being attacked in that Question and by its implications, have really transformed the way that they approach this. With the work coach transformation they are tailoring requirements to the needs of individuals, following a thorough discussion with them on what their needs are in order to get them to play an economic part in this country.

The Countess of Mar (CB): My Lords, despite my years of trying to persuade the Department of Work and Pensions to recognise the severity of CFS/ME, is the Minister aware of how utterly demoralised people who have to undergo assessments feel if they are not believed? Even when the derogatory assessment has been overturned by a tribunal, it takes them months and months to regain their self-esteem. Can the Minister please get this matter in hand once and for all?

Lord Freud: I thank the noble Countess for that question. We have been working on this issue with her and her group for some years now, and I am under the impression that we have made a lot of progress on ensuring that the illness is thoroughly recognised.

Baroness Sherlock (Lab): My Lords, the film shows people being sanctioned for a number of reasons which are clearly not serious. For example Katie, a single mum, is moved to Newcastle when she is made homeless and because she is a few minutes late in getting to the jobcentre, because she cannot find it in a new city, her benefits are sanctioned. Can the Minister tell the House that that would not happen in real life? He normally comes here and tells us that sanctions are very rare and a last resort but we discovered from today's NAO report that over the last five years, 24% of all JSA claimants were sanctioned. Is it any wonder that our food banks are filling up with people using them who are sanctioned for trivial or unjust reasons? Is this not a disgrace?

Lord Freud: There were a whole load of statements there that are simply not true. In the example which the noble Baroness uses, there would clearly be a good reason for someone not being able to fathom the transport in a new place. There are an enormous number of protections for people in the sanctioning process, which has about seven or eight steps: there is a

check by the work coach; it goes to the decision-maker; there is provision of information back to the person, who can challenge it with the decision-maker; it can go to dispute resolution, mandatory consideration and then the tribunal. This is not the easy process that is implied. Sanctions are treated very seriously. They are an integral part of the system and are treated with all due seriousness.

The Lord Bishop of Newcastle: My Lords, given that the National Audit Office has today said that there is limited evidence that benefit sanctions work but rather that they result in "hardship, hunger and depression", can the Minister update the House as to whether Her Majesty's Government will now commit to a substantial review of the use and implementation of sanctions?

Lord Freud: I congratulate the right reverend Prelate the Bishop of Newcastle on her first question. I hope they will not all be as painful in future as this one. I cannot make that commitment. As is said in the report, the reality is that sanctions work. There is a lot of external evidence of sanctions having a substantial impact on employment uptake, whether you are looking at the evidence from Switzerland, the Netherlands, Denmark or Germany. Our own survey shows that people on both JSA and ESA are more likely to accept the rules of the system with the sanction system behind it.

Lord Kirkwood of Kirkhope (LD): My Lords, does the Minister accept that if the National Audit Office is about anything it is about looking for value for money? Will he confirm that one of the important findings of the NAO is that in the fiscal year 2015 there were, for example, DWP sanction benefits savings, so called, just shy of £100 million net of hardship payments? However, the NAO came to the conclusion that the department had done no overall assessment of any kind of the downstream consequential impacts on other public services, so it is impossible to know whether the prosecution of sanctions as currently carried out by the department is effective value for money.

Lord Freud: I am in a difficult position because we are about to make our response to the NAO report, which is a formal process, so I do not have that response. Clearly the NAO concentrates on value for money. It wants more evidence and the department will be looking at providing it with some of that evidence in reply.

Baroness Jones of Moulsecoomb (GP): My Lords, the Minister must know that the Government's own review of mandatory workfare shows that a young person is twice as likely to find work if they drop out of the scheme and three times as likely to find work if they do not participate in the first place. Will the Minister accept that the Government's review has validity and update social security practices accordingly?

Lord Freud: If the question is about how the benefit system works for the young, we are now running one of the lowest levels of inactivity we have seen for young people. In the benefits system as a whole, we are looking at the highest-ever employment rate and one of the lowest levels of poverty since the 1980s. Household incomes at an all-time high, we have the lowest levels of children in workless households since records began and the lowest income inequality. If the noble Baroness is saying that the system is not working, how do these figures stand up? We are transforming the system and producing real results.

Disabled People: Employment

Question

3.23 pm

Asked by ***Baroness Deech***

To ask Her Majesty's Government, in the light of the Work, Health and Disability Green Paper, what steps they are taking to ensure that local authorities use their powers to remove the barriers that stop disabled people getting to work.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, local authorities are required to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations under Section 149(1) of the Equality Act 2010. In relation to the transport barriers that can hinder disabled people getting to work, this Government are committed to ensuring that disabled people have the same access to transport and opportunities to travel as everyone else.

Baroness Deech (CB): My Lords, it is not enough to be committed. The Green Paper sets out complicated inducements and a target for reducing disability unemployment which is for ever receding into the distance. Right now, the Government could require local authorities to, for example, mandate disability training for bus and taxi drivers and have a certain percentage of accessible taxis available for disabled people. They could make sure that local authorities revoke licences where taxi drivers will not take guide dogs. These simple issues will enable people to get to work.

Lord Ahmad of Wimbledon: My Lords, the Government are taking action, as those who participated in—for example—the recent Bus Services Bill will have witnessed. Practical actions are being taken on improving accessibility for disabled people, and that Bill, which has left your Lordships' House, will initiate a very practical programme of changes. The noble Baroness is right to raise the important issue of accessibility in taxis. In the country as a whole, only 56% of taxis are accessible, but the Government are looking at specific schemes, including one in Birmingham which provides the kind of training she alluded to. On the issue of those refusing access to the disabled or to those who require guide dogs, the Government are specifically looking at Sections 165 and 167 of the Equality Act. We will consider this very carefully and consult on the guidance to ensure that anyone who discriminates in this way against disabled people is covered. We will look at sanctions under the law, including making it a criminal offence.

Lord Pearson of Rannoch (UKIP): My Lords, declaring my interest as the father of a Down's syndrome daughter who lives and works in a Camphill community, could I suggest that the Government encourage local authorities to support many more such places, which are care effective and cost effective, and which can provide a complete way of life, including daily work elsewhere? Surely the Government must agree that this sort of life is often just not available under other forms of care in the community, which can be very lonely and unfulfilling, not to mention very expensive.

Lord Ahmad of Wimbledon: Of course the Government are concerned about ensuring a joined-up approach. The noble Lord may be aware that there is a specific consultation within the Department for Work and Pensions, for example, and that a Green Paper has been issued looking at the joined-up approach to work health to ensure that all systems across the board are joined up. We are also looking at the Total Transport initiative specifically across 37 rural areas in England, to see how we can ensure that transport is effective and easily accessible to those in hard-to-reach areas in the country.

Baroness Thomas of Winchester (LD): My Lords, will the Minister also speak to his colleagues in the DWP about the fact that the accessibility of public transport was not mentioned in the Green Paper on halving the disability employment rate? It should be a vital part of the whole infrastructure of getting disabled people into work. The Access to Work scheme is very good, but it cannot do everything.

Lord Ahmad of Wimbledon: I am of course happy to do that along with my colleagues from the DWP; the very diligent Minister in this House from the DWP will take note of that. I assure the noble Baroness that the Green Paper is there to be consulted on. If there are practical suggestions as to how this can be improved, the Government are of course listening.

Lord Marlesford (Con): My Lords, what are the Government doing about London transport, where there are far too many Underground stations where less able people have no access to the platforms, either by escalator or elevator? That is really appalling as far as getting to work is concerned.

Lord Ahmad of Wimbledon: According to the statistics on passenger accessibility, London is much better than other parts of the country, but my noble friend raises important issues about the accessibility of platforms in certain parts of the London transport network. TfL has a programme to ensure that that can be delivered in accordance with the needs of all the travelling public, including those who need to travel to work and suffer from disabilities.

Baroness Finlay of Llandaff (CB): My Lords, the Independent Living Strategy Group has identified and reported that one in four people has experienced a decrease in paid work or volunteering because of cuts to local authorities' independent living support in the last 12 months. What are the Government doing to ensure that local authorities have the resources to address this important barrier to work?

Lord Ahmad of Wimbledon: The noble Baroness raises an important point. There are other departments besides the Department for Transport that would input into that, and once I have ascertained that information I will write to her.

Lord Rosser (Lab): The Minister referred to the improvements that, frankly, we secured to the Bus Services Bill to make bus services more accessible to disabled people. Bearing in mind that he has cited that as an example of what he believes the Government are doing, even though they were heavily pushed from this side, why can they not do more in respect of other forms of transport to ensure likewise that they become more accessible to disabled people?

Lord Ahmad of Wimbledon: The noble Lord is being less than magnanimous on the Government's position during the passage of the Bus Services Bill, but I will let others be the judge of that on reading *Hansard*. With regard to other modes of transport, various consultations are under way and I have alluded to one or two of them. I suggest to the noble Lord that he participates fully in those.

Disabled Children: Tax Credit

Question

3.30 pm

Asked by ***Lord Low of Dalston***

To ask Her Majesty's Government what plans they have to compensate families looking after disabled children who lost the opportunity to claim the higher rate of tax credit between 2011 and 2014 due to an administrative error.

Lord Young of Cookham (Con): My Lords, claimants were able to claim the higher rate of tax credits and many did so at the time. Although it is the claimant's responsibility to inform HMRC of their eligibility, HMRC's back-up practice was to take information from DWP to update awards automatically. Last week, we announced that HMRC would issue lump-sum payments to families affected by a breakdown in this back-up to cover what they would have received from 6 April 2016 and ensure that they get their entitlement in future.

Lord Low of Dalston (CB): My Lords, I thank the Minister for that reply, but I am sure he would agree that we are dealing here with a major injustice: some 28,000 low-income families with disabled children have lost up to £4,400 a year for five years, all because, between 2011 and 2014, the DWP omitted the box from the relevant form for people to indicate whether or not they received tax credits. As the law currently stands, as the Minister has said, the onus is on the claimant to claim what they are entitled to. However,

the system of tax credits is extremely complicated for anyone to understand. Does the Minister agree that the law should be changed to place the onus on the Revenue to pay claimants what they are entitled to, so long as they provide the right information about their circumstances? Will he give serious consideration to this?

Lord Young of Cookham: I am grateful to the noble Lord for that suggestion. HMRC will be contacting the 28,000 families directly, automatically adjusting their award and by the end of January making a lump-sum payment backdated to April 2016. I am sure his suggestion of a future change to the law will be looked at sympathetically in order to try to streamline the system and to avoid the problems that he has identified in his Question.

Lord Davies of Oldham (Lab): My Lords, the Government acknowledge the administrative error in the failure to pay the full entitlement for five years. I want to know, as I am sure does the House, on what principle the decision was taken by the Government, knowing that the families have no recourse to law, that the Treasury should shoulder something less than 10% of the total cost and the families should bear 90%.

Lord Young of Cookham: That is a question that I asked myself earlier this morning. The answer is that HMRC cannot by law backdate beyond the present tax year except in exceptional circumstances, and the circumstances where someone has failed to claim do not qualify. So there would be a risk of legal challenge were HMRC to compensate people in the way that the noble Lord has suggested.

Baroness Hollis of Heigham (Lab): My Lords, when people have been denied five years of benefit and the Government are willing to backdate that for only six months, who would make that challenge, should HMRC do what is right?

Lord Young of Cookham: I understand the problems of these 28,000 families, by definition with a disabled child and on low incomes, who have failed to get up to £5,000 a year. All I can say is that, if I were still in another place and one of those 28,000 families came to see me at my advice bureau, and I knew there was a legal problem, my advice to them would be to refer the matter to the Parliamentary Ombudsman.

Baroness McIntosh of Pickering (Con): My Lords, does my noble friend agree that this is precisely the type of case for which the ombudsman was set up? I hope those who, like the Minister and myself, have served in the other place as Back-Bench MPs—although my noble friend has come to high office once again—will take note. This is just the type of case that any Back-Bench MP could present to the ombudsman, and I hope the Treasury—my noble friend has certainly shown himself to be a man of honour—will abide by the ruling of the ombudsman in such a case.

Lord Young of Cookham: I am grateful to my noble friend. I have probably gone way beyond my negotiating remit already, but if it were to be referred to the Parliamentary Ombudsman, I suspect it would be resisted by the Treasury or DWP on the grounds that they were complying with the law but, were the Parliamentary Commissioner to uphold the complaint then, following precedent, I imagine that the government department would then honour the compensation proposed.

Lord Wigley (PC): My Lords—

Baroness Butler-Sloss (CB): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Cross Benches.

Baroness Butler-Sloss: My Lords, is the noble Lord, Lord Low, correct to say that a box was omitted from the form? If a box was omitted that should have been there, it seems to me that the department was at fault and therefore a question of law preventing compensation would not arise.

Lord Young of Cookham: The noble Baroness knows much more about the law than I do. It was indeed the case that, when a parent applied for DLA for a disabled child, they could tick a box indicating whether they were claiming tax credit. If they ticked the box, HMRC was automatically told and the benefit was automatically uprated. That is described as a back-up cover, and the law is quite clear that none the less, notwithstanding the box, it is still the responsibility of the claimant to notify HMRC of the change in circumstances. When you apply for tax credit, it says on the form that if your circumstances change you should advise HMRC. I have looked at this extensively this morning. I have given the reply that I have about the Government's ability to make compensation for earlier years and the advice that they cannot under the legislation; and I have suggested in good faith a way through that might meet the injustice that many noble Lords feel has occurred.

Arrangement of Business

Announcement of Recess Dates

3.37 pm

Lord Taylor of Holbeach (Con): My Lords, it may be for the convenience of the House if I make a short Statement about recess dates for the next year. As usual, to save Members reaching for their diaries, I should say that dates are listed at the back of this week's edition of *Forthcoming Business* and a separate note is available in the Printed Paper Office. In a bid to be helpful to the House, we have gone slightly further ahead this year, in terms of the dates for next year, than we have in recent years. I should therefore particularly stress the usual caveat that the planned recesses are provisional and subject to the usual progress of business.

For Easter, we expect to adjourn at the end of business on Thursday 6 April and return on Monday 24 April. The May Day bank holiday is Monday 1 May, and we

[Lord Taylor of Holbeach]
will adjourn at the end of business on the previous Thursday, 27 April. For Whitsun, we expect to adjourn at the end of business on Thursday 25 May and return on Tuesday 6 June.

Lord Grocott (Lab): My Lords, I apologise to the Government Chief Whip for not giving him advance notice of this question, and I do not need an immediate reply, but what consultation has there been with the Commons to marry, so far as is possible, the recesses of the two Houses? He will recall that, in the most recent recess, we had what to me, at any rate, seemed a most absurd situation where we sat on the Wednesday when the Commons did not and they came back on the following Monday when we were still in recess. A bigger brain than mine may have worked out that that is the best way of doing things, but it is not immediately apparent, and it is for the convenience of both Houses if, as far as possible, the recess dates of the two Houses marry with one another.

Lord Taylor of Holbeach: I am grateful to the noble Lord for mentioning that point. He will know that, in fact, the dates have not been announced in the other place up to now, but I anticipate that they will be made available to Members of the House of Commons shortly. I think he will find that they will coincide with our own, because we in this House are the trend-setters, as noble Lords know.

Policing and Crime Bill

Report

3.40 pm

Relevant document: 3rd Report from the Joint Committee on Human Rights

Clause 3: Collaboration agreements: specific restrictions

Amendment 1

Moved by ***Lord Paddick***

1: Clause 3, page 3, line 15, at end insert—

"( ) Section 2 does not require a police body to enter into a collaboration agreement with a fire and rescue body unless—

(a) the relevant emergency services are services for the same area, or

(b) the police area is the same as the area of more than one fire and rescue authority taken together."

Lord Paddick (LD): My Lords, Amendment 1 is in my name and that of my noble friend Lady Hamwee. Clause 3 covers specific restrictions that apply to collaboration agreements between police, fire and ambulance services—the emergency services—and we welcome government Amendment 2, which adds having an adverse effect on public safety to the existing restriction, if collaboration would result in an adverse effect on efficiency and effectiveness. While I am in a generous mood—it will not last—we also welcome the Government responding to the issues raised in Committee by my noble friend Lady Hamwee and the noble and learned Lord, Lord Hope of Craighead, around variations in existing agreements and replacement of those agreements with a new agreement, which is government Amendment 3.

We of course support innovative arrangements that are appropriate to the area and develop organically; there are examples across the country where this is happening. However, this is not unqualified support. In Yeovil, Somerset, for example, it has just been announced that the four-storey police station with cells is to be closed and police operations moved to the fire station, which is about a quarter of the size and has very limited parking. Whether the police vehicles or the fire appliances will have to use the nearby public car park is yet to be seen.

Amendment 1 places an additional restriction on collaboration agreements where the emergency service areas are not coterminous or where the boundaries of the police area do not coincide with the area covered by one or more fire and rescue service. The degree of complexity involved, were this not the case, would make such collaboration extremely difficult. On the first day of Committee, the noble Baroness, Lady Scott of Bybrook, gave a good example of the issues:

"In Wiltshire, we would have loved to have joined both fire and police under our PCC. That would be the best use of public resources, not just financial, but people and assets as well. But we cannot do that now, because Wiltshire fire and rescue, earlier this year, joined with Dorset fire and rescue. Dorset police work with Cornwall and Devon. Wiltshire police work in collaboration on major crimes with Avon and Somerset and Gloucester. There are two PCCs—the whole thing is a muddle. The barrier is that there is no coterminosity between different public service authorities and this is, I think, probably getting worse".—[*Official Report*, 14/9/16; col. 1469.]

For there to be effective collaboration to the degree envisaged by the Government, there needs to be coterminosity. I beg to move.

3.45 pm

Baroness Chisholm of Owlpen (Con): My Lords, Amendment 1, moved by the noble Lord, Lord Paddick, seeks to limit the duty to collaborate so that police bodies would be required to collaborate with fire and rescue services only where they share coterminous boundaries. I see no reason why collaboration should be limited by geographical borders. The Government require there to be coterminous boundaries where a change of governance for fire is proposed, as the core approach of those provisions is to introduce greater democratic accountability by giving a directly elected individual responsibility for both services, with a clear mandate from the electorate in their area. However, collaboration between two bodies does not invoke such issues. Further, the duty, as currently drafted, would ensure that areas where the services are not coterminous, such as Devon and Cornwall, can still maximise the benefits outside a governance change if there is no appetite to adjust boundaries locally.

As the noble Lord, Lord Paddick, mentioned, existing examples of collaborative working between police forces show the benefits that closer working can provide, regardless of geographical proximity. For instance, Cheshire Police collaborates with Northamptonshire

and Nottingham police forces on back-office functions, including payroll, accounting, purchasing and HR, via the Multi-Force Shared Service. West Midlands Police led the largest ever police and emergency service collaborative procurement exercise, which includes 26 territorial forces, two non-territorial forces and five fire and rescue services. Together, the services will buy 3,000 vehicles over the next two years, with forecasted savings of up to £7 million over the period of the contracts.

Government Amendments 2 and 3 respond to points raised in Committee by the noble Lord, Lord Rosser, the noble and learned Lord, Lord Hope of Craighead, and the noble Baroness, Lady Hamwee, in respect of collaboration agreements. Amendment 2 explicitly provides that no relevant emergency service will be required to enter into a collaboration agreement where it would have an adverse effect on public safety. This has been the Government's policy intention since conception of the Bill. Indeed, as I set out in Committee, the Government believe that the impact on public safety will be assessed by an emergency service whenever considering the effect of a proposed collaboration on its efficiency or effectiveness. None the less, for the avoidance of any doubt, this amendment makes it explicit in the Bill that no relevant emergency service will be required to enter into a collaboration agreement that would negatively impact public safety.

Amendment 3 clarifies the process for varying a collaboration agreement. We agree that parties to an agreement should also be able to straightforwardly vary terms of an existing agreement, where all parties are in agreement. Parties will also still be able to replace an existing agreement with a new agreement, again with the consent of the parties concerned.

I hope that, having heard my explanation, the noble Lord will be content to support the government amendments in this group and withdraw Amendment 1.

Lord Paddick: In my opening remarks, I welcomed the government amendments and suggested that we would support them. The examples that the noble Baroness gave of collaboration between police forces were to do with requisition and back-office functions. The real issues arise where there is collaboration on operational issues—for example, the sharing of buildings, and particularly where the Government want to encourage police and crime commissioners to take over the running of fire and rescue authorities, as we will hear later this afternoon. That is where the coterminosity issue is most stark. Therefore, while I accept that for requisition and back-office functions the forces do not need to be geographically co-located, real problems can arise on the operational front in these circumstances, and if the PCC has to take over. However, I will consider carefully what the noble Baroness has said and, at this stage, beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2

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

2: Clause 3, page 3, line 18, after "effect" insert "on public safety or otherwise have an adverse effect"

Amendment 2 agreed.

Clause 4: Collaboration agreements: supplementary

Amendment 3

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

3: Clause 4, page 4, line 38, leave out subsection (8) and insert—

"(8) A collaboration agreement may be—

(a) varied with the agreement of all of the parties to the agreement, or

(b) replaced by a subsequent collaboration agreement."

Amendment 3 agreed.

Clause 6: Provision for police and crime commissioner to be fire and rescue authority

Amendment 4

Moved by ***Lord Rosser***

4: Clause 6, leave out Clause 6

Lord Rosser (Lab): My Lords, I will speak also to our other amendments in this group: Amendments 12, 14 and 18. First, I acknowledge that the Government have moved, through amendments of their own, to improve the very weak and, frankly, in parts non-existent consultation arrangements provided for in the Bill, where a police and crime commissioner seeks to become the fire and rescue authority. We welcome that there is now a requirement to consult with those representing employees affected by the proposals.

However, the Government have not gone far enough to ensure that consultation is meaningful and that gaps do not exist through which a maverick PCC could seek unjustifiably to restrict or curtail the process—and neither are all the considerations covered that a PCC should be required to address if they wish to become the fire and rescue authority. Accordingly, we have put down Amendments 12, 14 and 18 to government Amendments 11, 13 and 17, and we regard our amendments as being part of a single group.

Government Amendment 11 places a requirement on a police and crime commissioner to,

"publish, in such manner as the commissioner thinks appropriate, the commissioner's response to the representations made or views expressed in response to those consultations".

In reality, that means that the commissioner could publish very little about the nature of the representations made and views expressed to him or her under the consultation—perhaps not least by those with strong reservations about the PCC becoming the fire and rescue authority. In being required only to publish a response, the commissioner could be very brief and not actually respond to the specific points and arguments made under the consultation.

Our amendments provide for the commissioner to publish, among other things, copies of each representation made and a summary of views expressed under the consultation on the proposal to become the fire and rescue authority. The amendments also provide for the commissioner to set out why the benefits claimed by becoming the fire and rescue authority cannot be

[Lord Rosser]
achieved by other forms of collaboration, bearing in mind the emphasis placed in the Bill on improving collaboration between services, which we support.

The government amendments provide that consultation on a proposal from the police and crime commissioner also to be the fire and rescue authority should be carried out in such manner as the relevant police and crime commissioner thinks appropriate. Our amendments seek to be a bit more specific, since there may well be very differing views among police and crime commissioners on what constitutes an appropriate manner in which to consult. Presumably there must be some minimum requirements, and our amendments provide for a period lasting not less than 56 days and a requirement before the start of consultation to produce a draft public proposal, a schedule of public meetings and an invitation to make written submissions.

The government amendments provide for the Secretary of State to publish the independent assessment of a proposal from a PCC to become the fire and rescue authority. Our amendment provides, in addition to what the government amendment says, that it should be published at least one month before an order under Section 4A is made, to make sure that it is published a reasonable period of time before the order is made rather than very close to or even after the order is made.

Of course, I hope that the Government will accept the amendments to which I have referred. However, in the event that that is not their intention, I very much hope that the Government, having heard the points I have made and the concerns that lie behind them, and thus the amendments we have put down, might be prepared to reflect further on this matter and consider whether they could at least come some of the way to addressing some, if not all, of the concerns we have raised by putting down further amendments of their own.

We still have Amendment 4, which seeks to delete the clause that enables a police and crime commissioner to be the fire and rescue authority. I want to make it clear that our opposition to this enabling power in the Bill still stands. I do not wish to detain the House longer than necessary by repeating in detail all the points that we made in Committee and that have led us to our view—but those points still stand. Included among them is the fact that fire and rescue service boundaries are not always in line with PCC areas, and the provision for PCCs to become the fire and rescue authorities assumes that the police organisational structure is, and will be in the future, the most appropriate for the fire and rescue service when already evidence exists that that is not considered to be the case in at least some areas. In our view, the emphasis should be on closer collaboration, which is provided for in the Bill, and not on potentially hostile takeovers.

However, what I want to raise in a bit more detail is the potential impact on fire and rescue service personnel and members of a police force if the PCC becomes the fire and rescue authority and, in particular, the implications if the single-employer model is introduced. I have been told—as opposed to knowing it for a fact myself—that the Staffordshire police and crime commissioner has already prepared a business case, at least in draft, for becoming the fire and rescue authority. As I understand it, that involves adopting the single-employer model and harmonising terms and conditions of service. Apparently, the target date for the takeover of responsibility for the relevant fire and rescue service in this case is April next year—namely, in just over four months' time. If that is the target date, it immediately raises questions about the consultation process that is likely to be adopted—concerns which I have already sought to express in more generalised terms in what I have said so far.

The terms and conditions of service for firefighters are covered by a national agreement; national bargaining applies. Those terms and conditions are set out in what I believe is referred to as the Grey Book, and they cover not just issues relating to pay and hours but disciplinary arrangements and procedures, as well as pensions. What assurances can the Government give—either now or subsequently in correspondence—that, single-employer model or not, the terms and conditions for firefighters will continue to be determined through the current bargaining procedures and that they will continue to be national terms and conditions, including in a situation where the PCC is also the fire and rescue authority?

When the coalition Government presented their Bill providing for the introduction of police and crime commissioners, the key argument they advanced was that nobody knew who was on the then police authorities, what their responsibilities were or how to contact them. The Government argued that PCCs would be visible, accessible and accountable in a way that did not apply to police authorities. If the intention now is that PCCs who become the fire and rescue authority should be able, if they choose, to move away from national terms and conditions of employment under a single-employer model, that is not a power, role or responsibility which, as I recollect it, the Government cited when making their case for the introduction of PCCs.

I hope that the Minister, as well as giving what I hope will be a helpful response to the three amendments to which I referred earlier, will be able to clarify the position in relation to a PCC who becomes the fire and rescue authority—and, in particular, where they propose to set up a single-employer model, what the position will be in relation to the national conditions of service that currently apply for both firefighters and members of the police force.

4 pm

Lord Paddick: My Lords, I support the amendments proposed by the noble Lord, Lord Rosser. The government amendments in this group do not go far enough—for example, in publishing the results of any consultation in full and on the process of the consultation itself, which we believe simply cannot be left in the hands of a police and crime commissioner. We also oppose in principle that police and crime commissioners should be allowed to take over fire and rescue authorities, for many of the reasons that the noble Lord, Lord Rosser, gave this afternoon and in Committee, particularly, as we dealt with in Amendment 1, the issue around coterminosity. We also share the concerns about the employment implications of merging police services and fire and rescue services in a single employer model under a police and crime commissioner.

My noble friend Lady Hamwee and I have Amendment 19 in this group. The amendment would require that the Secretary of State cannot make an order to provide for the police and crime commissioner to be the fire and rescue authority under new Section 4A unless this has been agreed by all relevant local authorities. This amendment is supported by the Local Government Association.

In Committee, the Minister seemed to want to have her cake and eat it—to use a topical phrase. When these issues were discussed, she said at one point that,

"the Government are not mandating the transfer of fire and rescue authorities to police and crime commissioners. These provisions are locally enabling and acknowledge that local leaders are best placed to assess what would work … in their areas".

But then later she said:

"Where there is clear merit in a transfer taking place that could benefit local communities, it would be wrong to allow vested local interests to stand in the way".—[*Official Report*, 14/9/16; col. 1520.]

Local authority councillors are democratically elected to represent local people. One of their responsibilities is the fire and rescue service. Police and crime commissioners have been democratically elected to oversee policing, based on a manifesto that covers only policing. I believe that the Minister was right to say that local leaders are best placed to assess what would work best in their areas, and wrong to describe as "vested local interests" the democratically elected local authority councillors who do not agree with their police and crime commissioner about the PCC taking over local fire and rescue services. Our amendment is in line with the Minister's initial comment in Committee, rather than her later comment.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government came into office with a clear manifesto commitment to enable fire and police services to work more closely together and to develop the role of our elected and accountable police and crime commissioners. The provisions in Part 1 of the Bill, including those in Clause 6, give legislative effect to that commitment.

It is clear that better joint working can strengthen our emergency services, deliver significant savings to taxpayers and, most importantly, enable the emergency services to better protect the public. While there are many excellent examples of collaboration between the emergency services across the country—I draw noble Lords' attention to the excellent overview of such collaboration recently published by the Emergency Services Collaboration Working Group—the picture of collaboration remains patchy and more needs to be done to make collaborative working the norm. The directly accountable leadership of PCCs can play a critical role in this by securing better commissioning and delivery of emergency services at a local level. This is not about a merger or a police takeover; nor is it an erosion of the brand identity of the fire service. By overseeing both services, PCCs can strengthen the services by maximising the opportunities for innovative collaboration between policing and fire, and ensure that best practice is shared.

It has been said many times before, but I should stress again, that the provisions in Clause 6 providing for PCCs to take on responsibility for fire and rescue are totally locally enabling. A one-size-fits-all approach would clearly be inappropriate and it should be up to local communities to have a say in how their services are provided. PCCs will be able to take on responsibility for fire and rescue only where a strong local case is made that it is in the best interests of either efficiency, economy or effectiveness, on the one hand, or public safety, on the other, and where they have consulted the relevant local authorities and the public. Removing the provisions from the Bill that enable PCCs to take on governance of fire and rescue denies PCCs the opportunity to drive forward local reform. In a number of areas—for example, Essex, Northamptonshire and Hertfordshire—we know that PCCs are already working closely with their fire and rescue authorities to consider the local case.

Requiring there to be local agreement before a transfer of governance can take place, as proposed by the noble Lord, Lord Paddick, would introduce unnecessary and unjustifiable barriers that serve to inhibit positive collaboration taking place at a local level. If there are valid reasons for a local authority's opposition to a PCC's proposal, these will be identified in the independent assessment process and the Home Secretary will approve a transfer only where a case has been made that it is in the interests of local communities. It would not be right to let parochial local interests—to take up what the noble Lord said—get in the way of reform where there is a clear benefit to the public.

In Committee, I was clear that the Government's intention is for the process by which a PCC brings forward a business case for the transfer of responsibility for fire to be as robust and transparent as possible. It is important that this process commands the confidence of all parties and that local views are properly taken into account. To provide even greater assurances on this point, the Government have put forward a number of amendments which strengthen the consultation and transparency duties on PCCs. These amendments respond to a number of helpful and important points raised by noble Lords during the earlier stages of the Bill.

First, Amendment 9 will replace the existing duty on PCCs to seek the views of people in their police area with a duty that requires them to consult them. This strengthening of the duty makes explicit the Government's expectation that PCCs will take local views into account when developing their business case and responds to concerns that the existing duty to seek views is not strong enough. In addition, Amendment 10 places an explicit duty on PCCs to consult with persons representing the views of employees and of members of the police force who may be affected by their proposal. I would expect this to include trade unions and staff associations such as the FBU, Unison and the Police Federation.

Amendment 16 will additionally require the PCC to submit a summary of the responses to such consultation to the Home Secretary to inform her decision on the proposal where the PCC does not have local agreement. It remains appropriate that it is for the PCC to determine the manner in which they should consult local authorities, the public and employee representatives, and Amendment 13 makes that clear. In the interests of transparency, Amendments 11, 15 and 17 will also

[Baroness Williams of Trafford]
require the PCC to publish the outcomes of their local consultation and the Secretary of State to publish the independent assessment that she secures of a PCC's business case, where they do not have the agreement of the relevant local councils.

The noble Lord, Lord Rosser, tabled further amendments to these provisions, which seek to further prescribe the process by which a PCC consults on his or her proposal and the requirements on the Home Secretary to publish an independent assessment. As I have already set out, I am very keen, like the noble Lord, to make sure that the process by which a PCC seeks to take on the responsibilities of a fire and rescue authority is as robust and transparent as possible. However, I hope the noble Lord would agree that many of the points that he has raised are properly a matter for guidance rather than for primary legislation. The circumstances of each local consultation will be different, so we should not unduly fetter local flexibility to put in place proportionate arrangements that recognise the nature of each local business case. The amendments, while well intentioned, risk cutting across the local accountability of PCCs and risk Whitehall dictating matters that should rightly be left to local leaders.

In response to the noble Lord's important concerns, however, I can be very clear about the Government's expectation that the PCC's consultation will be undertaken in an appropriate manner and be of an appropriate duration to allow local people to express their views and for the PCC to have them taken into account. Further, we would expect the PCC's response to the consultation to cover the matters that the noble Lord has listed in Amendment 12. The Home Office will work closely with the Association of Police and Crime Commissioners and the Association of Police and Crime Chief Executives to ensure that their guidance on the development of PCC business cases incorporates these points. However, I should stress again that it is for the PCC to determine locally how to achieve such outcomes based on the nature of the case, its complexity and its understanding of the best ways to engage with local communities.

Furthermore, government Amendment 17 will ensure that the independent assessment is published as soon as is practicable after the Home Secretary has made a determination. In practice, this will ensure that all parties have sufficient time to consider the findings before an order is made. Adding in what amounts to a statutory one-month pause in the process in every case again strikes me as unduly complicating the procedure for making these orders and risks increasing local uncertainty as the process is drawn out. I might add that having received the independent assessment, there is no assumption that the Home Secretary would necessarily approve a PCC's proposal. She will base her decision on the evidence presented. I hope that noble Lords will agree that the government amendments set out a clear expectation that there should be a comprehensive consultation, that the process will be transparent, and that local views will be properly taken into account.

I also indicated in Committee that I would give further consideration to the points raised by the noble Lord, Lord Rosser, regarding public safety. As I set out during that debate, public safety is a core function of the emergency services and we consider that any assessment of the impact of a proposed transfer of governance on effectiveness would include an assessment of its impact on public safety. None the less, I am content to make provision on the face of the Bill that puts this matter beyond any doubt. Government Amendments 5, 6 and 35 explicitly provide that the Secretary of State may not make an order transferring responsibility for fire and rescue to a PCC or implementing the single employer model under either a PCC or a combined authority mayor where it would adversely affect public safety.

I shall deal with the other government amendments in this group. As the Bill is currently drafted, when a PCC implements the single employer model and so delegates fire functions to a single chief officer, schemes that may be made by the Secretary of State transferring property, rights and liabilities from an FRA or the PCC-style FRA to that chief officer are one way only. On the terms and conditions for police and fire and rescue personnel, when staff are transferred from an FRA to the PCC, and under the single employer model from the PCC to the chief officer, they would be covered by the principles of the Cabinet Office code of practice entitled *Statement of Practice of Staff Transfers in the Public Sector*, taking into account the considerations associated with bringing two workforces closer together. For example, we propose that under the single employer model, complaints, conduct and death and serious injury matters for both the police and the fire service are treated on a consistent basis. PCCs will need to consider how to best reflect a more closely aligned workforce locally when preparing their business case, including consultation with the relevant unions where necessary, as I said previously.

On the question whether the proposals will take firefighters, emergency fire control staff and fire support staff out of national pay and conditions, pensions and other arrangements, the terms and conditions of firefighters and control staff are negotiated on a UK-wide basis via the National Joint Council for Local Authority Fire and Rescue Services. The NJC has no statutory basis and it is for PCC FRAs to decide whether to remain members. PCC-style FRAs will also have the same ability as FRAs to negotiate changes to terms and conditions at local level, while remaining members of the NJC, but PCCs would need to approach the NJC if they wished to become members.

4.15 pm

Ongoing engagement on implementation with both policing and fire partners, including the Police and Crime Commissioners Treasurers' Society and the Fire Finance Network, has identified merit in enabling flexibility to transfer property rights and liabilities back from the chief officer to the PCC-style FRA. This is consistent with the nature of delegation envisaged under the single employer model: the PCC remains the FRA and is ultimately responsible for the exercise of its functions. Amendments 7 and 8 provide for such two-way transfers under PCCs and Amendment 36 makes corresponding provision for combined authority mayors.

Finally, Amendments 20 to 22 make it clear that where a PCC is also a fire and rescue authority, he or she is able to prepare a joint plan setting out their priorities for both policing and fire. Within such a joint plan, they would be able to take a holistic view of their priorities across both functions and reflect the nature of collaborative working within their area.

We have listened very carefully to the concerns raised in Committee about the provisions in the Bill enabling a PCC to assume the responsibilities of the fire and rescue authority in their area. The package of amendments the Government have brought forward, which will be further augmented by guidance, significantly strengthens the transparency of the process by which a PCC puts forward a proposal, and ensures that the local community and affected staff are properly consulted. With these changes, I hope that the noble Lord, Lord Rosser, and indeed the whole House, will accept that these locally enabling provisions should remain part of the Bill. There is nothing to fear from these provisions. Our common objective is to deliver a more efficient, effective and accountable policing and fire and rescue service for the benefit of communities. These measures will do just that. Given my explanation, I hope that the noble Lord feels content to withdraw his amendment.

Lord Paddick: Before the Minister sits down, could she clarify something? She described the amendments proposed by the noble Lord, Lord Rosser, as unnecessary interference in what should be a locally determined matter—the nature of the consultation process. However, when it comes to deciding whether the police and crime commissioner should take over the fire and rescue authority, against the wishes of the democratically elected local councillors, that is not seen as an unnecessary interference in local decisions.

Baroness Williams of Trafford: I hope I have outlined clearly that the Home Secretary would take a view on this issue and on all representations that have been received when making her decision.

Lord Rosser: I, likewise, ask the Minister for some clarification of what she has just said. Am I right in saying that under the single employer model and the harmonising of conditions—if there is to be such—we could end up with different rates of pay, different conditions of service and different disciplinary procedures for firefighters and members of police forces in different PCC areas: that there could no longer be national rates and national conditions of service? That is what I have read into the Minister's response, because it depends on whether a PCC decides to continue to have conditions of employment determined by the national bargaining body, or whether the police and crime commissioner who has become the fire and rescue authority decides he or she wants to bargain with their own employees in the fire and rescue service and, presumably, the police service, if it is harmonising conditions. Is that a fair interpretation of what the Minister said?

Baroness Williams of Trafford: Before Third Reading I will write to the noble Lord and to all noble Lords who have taken part in the debate, and distribute that response to the House. What I said was the terms and conditions of firefighters and the control staff are negotiated on a UK-wide basis via the National Joint Council, but the NJC has no statutory basis and it is for the PCC-style FRAs to decide whether to remain members. I will write to the noble Lord before Third Reading to outline more detail on what that might look like.

Lord Rosser: I take it that the noble Baroness is going to write, and I am very grateful to her for saying that, if necessary, that means we could come back to this issue on Third Reading. I also ask, genuinely for clarification, and I am sorry I did not pick up the Minister's response on Amendments 12, 14 and 18 first time, but on Amendment 12, which sets out a number of requirements relating to consultation over what documents should be published and why the benefits could not be achieved through other forms of collaboration, did I hear correctly the Minister say that those requirements would be included in guidance? I do not know whether that will be guidance or regulations.

Baroness Williams of Trafford: I did say guidance.

Lord Rosser: So what I have laid down in Amendment 12 will be included in guidance.

Baroness Williams of Trafford: I agreed that the matters that the noble Lord listed would be covered in guidance.

Lord Rosser: As I understood it, the Minister did not extend that to the items I covered in Amendments 14 and 18. I am seeking to clarify, not to pursue the argument again, that that statement of what would be covered in guidance relates to what I have in Amendment 12. As I understood what the Minister said, that did not extend to Amendments 14 and 18. I am simply trying to clarify what was said.

Baroness Williams of Trafford: I certainly gave that commitment on Amendment 12. I now have all my pages completely out of kilter, but I do not think I gave that commitment on—was it Amendment 14?

Lord Rosser: It was Amendments 14 and 18.

Baroness Williams of Trafford: Amendment 18 is a matter for the Home Secretary.

Lord Rosser: Am I also right—I am genuinely seeking clarification—that what the Minister helpfully said on Amendment 12 did not apply to Amendment 14?

Baroness Williams of Trafford: Unfortunately, I cannot find Amendment 14 here, but we have undertaken to work with the Association of PCCs to address in guidance the issues raised by the noble Lord in Amendment 12. Amendment 18 is a matter for the Home Secretary.

Lord Rosser: I would be more than happy if the Minister wishes to write to me to confirm. I am genuinely seeking clarification, rather than trying to reopen the debate.

Baroness Williams of Trafford: The issues raised in Amendments 12 and 14 will be addressed in guidance.

Lord Rosser: So there is an issue of a period over which consultation shall last. The other matters will be covered in guidance. Is that guidance that will go through this House in the form of regulations, or is this guidance that we will not see until it is published?

Baroness Williams of Trafford: I think that this may be one area of detail that I could discuss and correspond with the noble Lord over between now and Third Reading. He and I can meet before Third Reading.

Lord Rosser: That is a helpful response and I take it in the spirit in which it was said. I hope that the Minister will accept, bearing in mind that she has indicated—I do not want to make things difficult—that it appears to apply to Amendments 12 and 14. To put it bluntly, if that does not prove to be the case we can come back at Third Reading.

Baroness Williams of Trafford: Yes, and I hope that it would never be interpreted that I will not follow through on something I say at the Dispatch Box, because I most certainly will meet the noble Lord and discuss the finer detail of the guidance before Third Reading.

Lord Rosser: I assure the Minister that she is about the last person that I would ever suggest would appear at the Dispatch Box and make a statement that she did not mean or which was misleading.

In light of what has been said, I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Schedule 1: Provision for police and crime commissioner to be fire and rescue authority

Amendments 5 to 10

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

5: Schedule 1, page 189, line 13, at end insert—

"(5A) The Secretary of State may not make an order under this section in a case within subsection (5)(a) if the Secretary of State thinks that the order would have an adverse effect on public safety."

6: Schedule 1, page 195, line 8, at end insert—

"(5A) The Secretary of State may not make an order under this section in a case within subsection (5)(a) if the Secretary of State thinks that the order would have an adverse effect on public safety."

7: Schedule 1, page 195, line 27, at end insert ", or

(b) from that chief constable to the fire and rescue authority to which the order applies."

8: Schedule 1, page 195, line 28, leave out "(1)" and insert "(1)(a)"

9: Schedule 1, page 202, line 10, leave out "make arrangements to seek the views of" and insert "consult"

10: Schedule 1, page 202, line 11, at end insert—

"(c) consult each of the following about the proposal—

(i) persons appearing to the commissioner to represent employees who may be affected by the proposal;

(ii) persons appearing to the commissioner to represent members of a police force who may be so affected"

Amendments 5 to 10 agreed.

Amendment 11

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

11: Schedule 1, page 202, line 11, at end insert ", and

"(d) publish, in such manner as the commissioner thinks appropriate, the commissioner's response to the representations made or views expressed in response to those consultations."

Amendment 12 (to Amendment 11) not moved.

Amendment 11 agreed.

Amendment 13

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

13: Schedule 1, page 202, line 11, at end insert—

"(2) Each consultation under sub-paragraph (1) is to be carried out in such manner as the relevant police and crime commissioner thinks appropriate."

Amendment 14 (to Amendment 13) not moved.

Amendment 13 agreed.

Amendments 15 and 16

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

15: Schedule 1, page 202, line 13, leave out "and (3)" and insert "to (4)"

16: Schedule 1, page 202, line 24, after "proposal," insert—

"(ca) a summary of the views expressed about the proposal by persons consulted under paragraph 3(1)(c),"

Amendments 15 and 16 agreed.

Amendment 17

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

17: Schedule 1, page 202, line 32, at end insert—

"(4) The Secretary of State must publish the independent assessment—

(a) as soon as is reasonably practicable after making a determination in response to the proposal, and

(b) in such manner as the Secretary of State thinks appropriate."

Amendment 18 (to Amendment 17) not moved.

Amendment 17 agreed.

Amendment 19 not moved.

Amendments 20 to 22

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

20: Schedule 1, page 219, line 28, leave out "Subsection (5B) applies" and insert "Subsections (5B) to (5E) apply"

21: Schedule 1, page 219, line 33, at beginning insert "Subject to subsection (5E),"

22: Schedule 1, page 219, line 41, at end insert—

"(5C) A police and crime plan which the police and crime commissioner is required to prepare may be prepared jointly by the commissioner and the fire and rescue authority.

(5D) If the police and crime commissioner and the fire and rescue authority prepare a joint police and crime plan, the plan must also set out the fire and rescue authority's priorities and objectives, for the period of the plan, in connection with the discharge of the authority's functions.

(5E) Subsection (5B)(b) does not apply to a joint police and crime plan."

Amendments 20 to 22 agreed.

Clause 7: Involvement of police and crime commissioner in fire and rescue authority

Amendment 23

Moved by ***Lord Paddick***

23: Clause 7, page 6, leave out lines 20 to 30

Lord Paddick: My Lords, I shall also speak to the other amendments in this group. These amendments, taken together, are designed to allow police and crime commissioners to attend and speak at committees or sub-committees appointed by local authorities wholly or partly for the purposes of discharging the functions of a fire and rescue authority but not to allow police and crime commissioners to vote at those meetings.

Local authority councillors are democratically elected to represent local people on a range of issues, including fire and rescue services. Police and crime commissioners have been democratically elected to represent local people in overseeing the police force for which they are responsible. They have no democratic mandate to vote on issues relating to fire and rescue services, as the noble Lord, Lord Bach, said so persuasively in Committee, at col. 1489. If the police and crime commissioner has persuasive points, the committee that he is present and speaking at will be persuaded, and if his points are not persuasive, he should not be allowed to use a vote to push those views through. The "real influence" that the Minister referred to in Committee, at col. 1544, should come from the strength of the police and crime commissioner's arguments, not from having a vote to back them up. I beg to move.

4.30 pm

Baroness Chisholm of Owlpen: My Lords, Clause 7 enables police and crime commissioners to request to be represented on fire and rescue authorities within their police areas where they do not take responsibility for the governance of the fire and rescue service. This is what we have described as the representation model. Where a fire and rescue authority accepts such a request, we have set out that PCCs will be treated as if they were a member of the authority for the purposes of bringing agenda items, receiving papers and so on, and have full voting rights to ensure that they can take part in the business of the fire and rescue authority in a meaningful and effective way.

The noble Lord's amendments seek to remove these provisions, which would be a great shame, as we want the PCC's representation to be meaningful and on an equal footing with existing members of the FRA. To deny PCCs the ability to vote would reduce their scope for influence and I fear that opportunities for fostering greater collaboration would be missed. As my noble friend Lady Williams explained in Committee, in response to a group of similar amendments, we want police and crime commissioners and fire and rescue authorities to consider the representation model as a viable option for promoting greater collaboration between the two services. These amendments would hinder that.

The amendments would also remove the necessity for a fire and rescue authority to publish its decision and reasoning in considering the PCC's request for membership. I am concerned that to do so would remove transparency and accountability from the process. These provisions enable PCCs to seek representation where they wish to do so, while respecting local fire governance arrangements. The final decision on representation rests with the fire and rescue authority, although we fully expect that in the majority of instances the fire and rescue authority would accept the PCC's request and, if it did not, its reasons should be made clear to both the PCC and the public. This ensures that the process is fully transparent and open to effective scrutiny.

The provisions in the Bill allow for the representation model to be considered as an opportunity to foster greater collaboration outside of pursuing other governance models. I hope I have been able to persuade the noble Lord of the merits of the approach taken in the Bill and that he will be content to withdraw his amendment.

Lord Paddick: I am grateful to the Minister. I am still struggling to understand why a police and crime commissioner, who is elected on the basis of a manifesto to do with policing, should have full voting rights on a fire and rescue authority. I am not sure that "It would be a great shame" is a particularly powerful argument against my proposal. The Minister said that the police and crime commissioner should be on an equal footing with other members of the fire and rescue authority but did not actually say why. Yes, the final decision rests with the fire and rescue authority but, given the fact that this is in legislation, it would be difficult, certainly following the Minister's remarks, for fire and rescue authorities to resist a move by a police and crime commissioner to take those voting rights. Greater collaboration surely does not necessarily depend on the police and crime commissioner having a vote on the fire and rescue authority. None the less, I beg leave to withdraw the amendment.

Amendment 23 withdrawn.

Amendments 24 to 30 not moved.

Clause 8: Combined authority mayors: exercise of fire and rescue functions

Amendments 31 to 36

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

31: Clause 8, page 12, line 22, at end insert—

"(2A) Before making the request the mayor must publish, in such manner as the mayor thinks appropriate, the mayor's response to the representations made or views expressed in response to any consultations on the proposal."

32: Clause 8, page 12, line 23, leave out "and (5)" and insert "to (5A)"

33: Clause 8, page 12, line 24, leave out "has made" and insert "makes"

34: Clause 8, page 12, line 41, at end insert—

"(5A) The Secretary of State must publish the independent assessment—

(a) as soon as is reasonably practicable after making a determination in response to the proposal, and

(b) in such manner as the Secretary of State thinks appropriate."

35: Clause 8, page 12, line 46, at end insert—

"(6A) The Secretary of State may not make an order under section 107EA(2) in a case within subsection (6)(a) of this section if the Secretary of State thinks that the order would have an adverse effect on public safety."

36: Clause 8, page 13, line 23, after "constable" insert ", or

"( ) from the chief constable to the combined authority,"

Amendments 31 to 36 agreed.

Schedule 2: The London Fire Commissioner

Amendment 37

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

37: Schedule 2, page 224, line 19, at end insert "or any other local authority within the meaning of sections 1, 2 and 3A of the Local Government and Housing Act 1989."

Baroness Williams of Trafford: My Lords, the government amendments in this group respond to some very well-made points in Committee about the provisions in the Bill establishing the office of the London fire commissioner.

Amendments 37, 156, 195 and 205 will ensure that no locally elected councillor will have to resign their council position if they are appointed as deputy mayor for fire or deputy mayor for policing and crime in London. In Committee the noble Lord, Lord Harris, made a compelling case for this change with reference to two London borough councillors who had had to resign their council positions when appointed to the position of deputy mayor for police and crime because, when appointed, they were treated as an employee of the Greater London Authority and therefore became politically restricted. I have listened to the case made by the noble Lord and agree that no locally elected councillor should be placed in a situation where they would have to give up their seat to become the deputy mayor for fire or the deputy mayor for policing and crime.

Amendments 38 to 40 are drafting amendments which correct erroneous references to the assembly's fire and emergency "panel" rather than "committee". I am again grateful to the noble Lord, Lord Harris, for spotting them. Finally, Amendments 41 and 42 respond to one tabled in Committee by the noble Baroness, Lady Hamwee, relating to the functions of the fire and emergency committee. These amendments will ensure that there is appropriate scrutiny of the actions and decisions of the deputy mayor for fire, and allow the committee to investigate and prepare reports about any other matters the assembly considers to be of importance to fire and rescue services in London. I beg to move.

Lord Harris of Haringey (Lab): My Lords, I thank the Minister for responding to the points I made in Committee and introducing these amendments. I suspect that this is a refinement and clarification of the law which is of interest to a tiny handful of citizens of the United Kingdom. None the less, the anomaly created was slightly strange.

However, at the risk of prolonging this only a moment, I seek a little clarification. The amendments, as I understand them, would enable a deputy mayor in these circumstances to be an elected councillor. Does that also remove the restriction on those individuals placed by the Local Government Officers (Political Restrictions) Regulations 1990, which among other things do not allow such a person to hold office in a political party or to canvass for one? It might be a boon to anyone in this position if they were allowed to be elected and stand for election but not to canvass on their own behalf.

It is difficult to disentangle what are three interlocking Acts of Parliament, not all of which seem in the public references to have been updated by subsequent legislation. It seems to me that the Local Government Officers (Political Restrictions) Regulations 1990 might still apply to these individuals, even though the specific issue of election to a local authority has been removed. Having said that, I am sure that the Minister will be able to clarify it entirely to my satisfaction and I am very grateful to her and her officials for responding to this allegedly minor issue.

Baroness Williams of Trafford: I hope it is not going to be another letter because, from my dim and distant memory of local government officers' political restrictions, I recall that up to a certain level of officer, you are free to canvass and engage in political activity. You are also free to stand for elected office in an authority other than your own. I think I may have to write, now that the noble Lord is heading for the door, on the matter of elected office for local authority officials because that will be looked at in the regulations.

Lord Paddick: My Lords, I thank the Minister for listening to the points raised by the noble Lord, Lord Harris of Haringey, and to the issues raised by my noble friend Lady Hamwee. She cannot be in her place

today, but she has asked me to pass on her thanks for the amendments that the Government have brought forward in this group.

Amendment 37 agreed.

Amendments 38 to 42

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

38: Schedule 2, page 229, line 7, leave out "panel" and insert "committee"

39: Schedule 2, page 229, line 8, leave out "panel" and insert "committee"

40: Schedule 2, page 229, line 35, leave out "panel" and insert "committee"

41: Schedule 2, page 230, line 24, at end insert ", or

(e) any other matters which the Assembly considers to be of importance to fire and rescue services in Greater London."

42: Schedule 2, page 230, line 24, at end insert—

"(3A) The Assembly may investigate, and prepare reports about, the actions and decisions of the Deputy Mayor for Fire."

Amendments 38 to 42 agreed.

Amendment 43

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

43: After Clause 11, insert the following new Clause—

"Fire Safety inspections

(1) The Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541) is amended as follows.

(2) In article 2 (interpretation), in the definition of "fire inspector"—

(a) after "inspector"" insert ", in relation to Wales,";

(b) for "section 28" substitute "section 28(1)".

(3) In article 27 (powers of inspectors), after paragraph (4) insert—

"(5) This article applies to a person authorised by the Secretary of State under article 25(1)(e) in relation to premises in England as it applies to an inspector; and article 32(2)(d) to (f), with the necessary modifications, applies accordingly."

(4) In article 28 (exercise on behalf of fire inspectors etc of their powers by officers of fire brigades)—

(a) in paragraph (1)—

(i) omit ", or any other person authorised by the Secretary of State under article 25(e),";

(ii) for "and (3)" substitute "to (4)";

(b) after paragraph (1) insert—

"(1A) The powers conferred by article 27 on an authorised person (by virtue of paragraph (5) of that article) are also exercisable by an employee of a fire and rescue authority in England when authorised in writing by such an authorised person for the purpose of reporting to him or her on any matter falling within the authorised person's functions under this Order; and articles 27(2) to (4) and 32(2)(d) to (f), with the necessary modifications, apply accordingly.";

(c) in paragraph (2), for ", or other person authorised by the Secretary of State," substitute "or authorised person";

(d) after paragraph (2) insert—

"(3) In this article, "authorised person" means a person authorised by the Secretary of State under article 25(1)(e) in relation to premises in England.""

Baroness Chisholm of Owlpen: My Lords, Amendments 44, 45 and 105 are essentially technical amendments to ensure that the strengthened powers of an inspector of Her Majesty's Inspectorate of Constabulary and the powers of an inspector of fire and rescue authorities in England, as provided for in the Bill, work as intended.

Both inspectors have powers to obtain information and to access premises of the relevant organisation which they are inspecting and of persons providing services for that organisation. The amendments ensure that any person providing services or carrying out any of the activities of either organisation by virtue of an enactment, including where there is no contractual agreement, come within the inspection framework. This would, for example, cover police or ambulance staff who are undertaking fire functions as part of a local agreement—an approach which is growing across many police forces and fire and rescue authorities. These amendments will ensure that both police and English fire and rescue inspectors have sufficient powers covering all individuals who are fulfilling an activity which needs to be inspected. The powers to access premises and require information are long-standing and widely used, with established safeguards that will apply to these amendments.

Amendment 43 concerns the enforcement of fire safety in Crown-owned or Crown-occupied premises for the purpose of ensuring compliance with the Regulatory Reform (Fire Safety) Order 2005. Presently, the 2005 order defines an enforcement authority with reference to inspectors under Section 28 of the Fire and Rescue Services Act 2004. In the light of the fire inspection provisions in the Bill, it is now desirable to break the link between the inspection of fire and rescue authorities by an English inspector appointed under the amended Section 28 of the 2004 Act and enforcement of fire safety in Crown-owned and Crown-occupied premises under the 2005 order.

We do not consider it appropriate for those charged with responsibility for inspecting the efficiency and effectiveness of fire and rescue authorities in England under Section 28 of the 2004 Act, as amended, to have any powers in relation to enforcing fire safety provisions in Crown-owned or Crown-occupied premises for the purpose of ensuring compliance with the 2005 order. The skill set is entirely different, with fire safety enforcement officers requiring a high level of technical competence in building construction and fire safety management.

However, to deliver this objective we need to amend the 2005 order to ensure that any persons authorised, under Article 25(1)(e) of the 2005 order, by the Secretary of State to enforce the provisions of the 2005 order in Crown-owned and Crown-occupied premises are able to access the powers of enforcement that are necessary to enable them to perform their function effectively.

Without this amendment, any persons subsequently authorised to enforce the provisions in Crown-owned or Crown-occupied premises who were not also appointed as English fire inspectors or assistant inspectors would not, in law, be able to perform their function. I beg to move.

Amendment 43 agreed.

4.45 pm

Schedule 3: Schedule to be inserted as Schedule A3 to the Fire and Rescue Services Act 2004

Amendments 44 and 45

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

44: Schedule 3, page 247, line 17, at end insert—

"(e) any other person who is, by virtue of any enactment, carrying out any of the activities of a fire and rescue authority in England."

45: Schedule 3, page 248, line 19, after "England," insert "or

(iii) any other person who is, by virtue of any enactment, carrying out any of the activities of a fire and rescue authority in England,"

Amendments 44 and 45 agreed.

Clause 25: Bodies who may make super-complaints

Amendment 46

Moved by ***Lord Paddick***

46: Clause 25, page 40, line 13, after "subsection" insert "(1), "

Lord Paddick: My Lords, in moving Amendment 46 I will speak also to the other amendment in the group, Amendment 47. Both are in my name and that of my noble friend Lady Hamwee. This is a straight rerun of the amendments we had in Committee in relation to police super-complaints, which bodies can make them and the authorised persons who can ask the Secretary of State to add or remove bodies from the list of bodies that can make them. In Committee, we argued that the Secretary of State should be required to consult on the regulations that designate which bodies can make super-complaints. These regulations will contain the criteria that will be applied to decide which bodies can bring police super-complaints. New Section 29B, inserted by Clause 25, requires the Secretary of State to consult when she makes or revokes a designation but does not require her to consult on the criteria that she applies in deciding whether to make or revoke a designation. That is the intended effect of Amendment 46.

Amendment 47 relates to the "authorised persons" who can ask the Secretary of State to make or revoke a designation under new Section 29B(2)(b) of the Police Reform Act 2002. Contrary to what the Minister took as our intention in Committee, Amendment 47 sets out a list of bodies that the Secretary of State should specify as authorised persons who can ask the Secretary of State to make or revoke a designated body under new subsection (2)(a), not a list of designated bodies that can make police super-complaints.

Just to be clear, there will be two lists of bodies in relation to police super-complaints. There are authorised persons, who are bodies who can ask the Secretary of State to designate or remove a body from the list of those able to make police super-complaints, and there are bodies that are designated as being able to bring police super-complaints. We believe that the list of authorised persons should include the Law Society, the National Council for Voluntary Organisations and Citizens Advice, and others that should be listed in the Bill. I beg to move Amendment 46.

Lord Kennedy of Southwark (Lab): My Lords, as the noble Lord, Lord Paddick, said, these matters were discussed in Committee. I am very supportive of Amendments 46 and 47. As we have heard, designated bodies will get the power to make super-complaints to Her Majesty's Chief Inspector of Constabulary, and these complaints can be made where, in the opinion of the designated body, a feature of policing may be harming the public and needs looking at. It is based on a system that works in the private sector and this is the first time it will be used in the public sector. Only designated bodies will be able to make super-complaints, and the process for designating these bodies will be set out in regulations.

When the noble Baroness, Lady Williams of Trafford, responds to this debate, it would be helpful if she said something about the timescale for the consultation processes, and when she expects these regulations to be laid before Parliament and come into force. I should also say that I am happy for the negative procedure to be used in respect of the regulations; perhaps the noble Baroness could bring that fact to the attention of the noble Lord, Lord Hyde of Ashton, who is of the opinion that I would never agree to the negative procedure being used for regulations in this House.

The proposals in this section of the Bill are a welcome move and will be a positive benefit to organisations and individuals that have legitimate concerns to raise. We are supportive of them and of these amendments.

Baroness Williams of Trafford: My Lords, I am grateful to the noble Lord, Lord Paddick, for the opportunity to address the misunderstanding over Amendment 47, which was previously tabled in Committee. However, I am again going to have to disappoint the noble Lord as the Government cannot support either of these amendments. The Bill provides for the delegation of the ability to authorise those who can be designated bodies for the purposes of the new super-complaints system.

I welcome the noble Lord's suggestions of who should perform this function but I do not agree that this task can be performed by bodies that might themselves want to raise super-complaints, or by multiple agencies. For the system to have legitimacy, we need to avoid a conflict of interest in this role. That is why the Bill creates this distinct role, as we do not consider it appropriate that HM Inspectorate of Constabulary designates the bodies that can come to it with super-complaints.

All three bodies put forward by the noble Lord could potentially add significant value as designated bodies, should they wish to apply. It would be a shame if, for example, Citizens Advice were precluded from raising issues through the super-complaints system. In the interests of a smooth and speedy process, I suggest that this role should be undertaken by an individual or single body, not by a committee.

The critical point here is that the criteria for designation are clear and unambiguous so that authorisation is a simple and objective process. That is why we will consult widely on the criteria in due course, and I encourage all those who have an interest to feed in their views. The noble Lord, Lord Kennedy, asked about timing: it will be in the coming months.

Having consulted to establish clear criteria, we believe it is unnecessary to subsequently consult on any list of bodies deemed to have met the criteria, as required by the noble Lord's Amendment 46. This risks slowing the whole system down, delaying designation and further delaying the point at which bodies can submit super-complaints to HMIC.

I reiterate the Government's commitment to consulting widely on the criteria. As part of that process, we would welcome the input of noble Lords on bodies or organisations that may be suitable for designation or for the role as the authorised person. I hope the noble Lord, having considered the Government's arguments, will feel free to withdraw his amendment.

Lord Paddick: I am grateful to the noble Lord, Lord Kennedy, for his support for these amendments and for the explanation given by the Minister. Obviously I am disappointed that she felt she could not support them. Clearly there would have to be a distinction between the role of authorised persons and the role of designated bodies. The suggestions we made were on the basis that these organisations had vast knowledge of the voluntary bodies and third party organisations that work in their areas. There would have to be a distinction if they were appointed as authorised persons, and they would not be able to be designated bodies themselves, but that is something that the Government could make a decision on.

I am grateful for the reassurance around the consultation that will take place over the criteria that will be used in order to decide which bodies should be designated. On that basis, I beg leave to withdraw the amendment.

Amendment 46 withdrawn.

Amendment 47 not moved.

Amendment 48

Moved by ***Baroness O'Neill of Bengarve***

48: After Clause 26, insert the following new Clause—

"Inquiry into complaints alleging corrupt relationships between police and newspaper organisations

(1) Within one month of the condition in subsection (3) being satisfied, the Prime Minister must commission an independent inquiry under the Inquiries Act 2005 into the operation of the police complaints system in respect of allegations of corrupt relationships between the police and newspaper organisations.

(2) The inquiry's terms of reference must include, but are not to be limited to—

(a) how adequately police forces have investigated complaints about police officers in dealing with people working within, or connected to, newspaper organisations;

(b) the thoroughness of any reviews by police forces into complaints of the type specified in paragraph (a);

(c) in those cases where a complaint of the type referred to in paragraph (a) led to a criminal investigation, the conduct of prosecuting authorities in investigating the allegation;

(d) whether and to what extent, if any, police officers took illegal payment to suppress investigations of complaints of relationships between police officers and people working within, or connected to, newspaper organisations;

(e) the implications of paragraphs (a) to (d) for the relationships between newspaper organisations and the police, prosecuting authorities, and relevant regulatory bodies, and recommended actions in that respect.

(3) The condition in this subsection is that the Attorney-General determines that the inquiry, if conducted effectively and fairly, would not be likely to prejudice any ongoing relevant criminal investigations or court proceedings cases.

(4) The Attorney-General must consider and reach a decision on the matter specified in subsection (3) within one month of this section coming into force, and if necessary must reconsider the matter each month until the Attorney-General is able to make a determination as set out in subsection (3)."

Baroness O'Neill of Bengarve (CB): My Lords, this amendment is also in the names of the noble Lord, Lord Paddick, and the noble and learned Lord, Lord Falconer of Thoroton. The second part of the Leveson inquiry was promised by the former Prime Minister in order to investigate allegations of collusion—above all, corrupt collusion—between the press and the police. An undertaking was made to victims of press and police corruption, including those who had lost loved ones at Hillsborough and were then smeared, among many other victims.

The noble Lord, Lord Strathclyde, when he was Leader of the House, read out the former Prime Minister's Statement on this matter to this House on 29 November 2012—almost exactly four years ago. He said:

"When I set up this inquiry, I also said there would be a second part, to investigate wrongdoing in the press and the police, including the conduct of the first police investigation. This second stage cannot go ahead until the current criminal proceedings have concluded, but we remain committed to the inquiry as it was first established".—[*Official Report*, 29/11/12; col. 338.]

But there has been a shift, and the Government are apparently no longer so committed to Leveson part 2 happening once the criminal proceedings are finished. The noble Baroness, Lady Neville-Rolfe, answered a Written Question on Leveson 2 on 15 June this year. She wrote:

"Criminal proceedings connected to the subject matter of the Leveson inquiry, including the appeals process, have not yet completed. We have always been clear that these cases must conclude before we consider part 2 of the inquiry".

So now it is just to be considered, not undertaken.

This is not what was promised to the Hillsborough families or to other victims of press and police collusion or corruption. In the light of the conviction of Mazher Mahmood, the findings of the Hillsborough Independent Panel, the finding that *News of the World* executives lied to a Select Committee and the apparent continuation of what we might, kindly, call business as usual at some larger newspaper corporations, I do not think we

[Baroness O'Neill of Bengarve]
can say that we are sure that the need for Leveson 2 has diminished. The Hillsborough Family Support Group worked with the shadow Home Secretary, Mr Andy Burnham, to table an amendment to the Bill on Report in the Commons which would have recommitted the Government to going through with Leveson 2. It is that amendment that I have agreed to move today.

The Government could have begun proceedings for Leveson 2 weeks ago, when the relevant trials had finished. Doing so would help draw a line under Hillsborough, Orgreave, Daniel Morgan and countless other scandals involving both the police and the press.

I do not think this is a trivial matter. A commitment was made to Leveson 2; the victims want it; the public want it; and, for democracy to function well, we all need it. The Government should get on with what they promised in 2011 and 2012 and begin Leveson 2 now. I beg to move.

Viscount Hailsham (Con): My Lords, despite the eminence of the noble Baroness, I hope the Government will be robust in resisting the amendment. I have one general principle about it. Over a long time in Parliament, I have been involved directly and indirectly with a very large number of inquiries; I have participated in some. There is a proportionality rule: is the likely outcome of the inquiry and the chances of its recommendations being implemented sufficient to justify the cost of setting it up and the bureaucracy involved? In the majority of cases in which I have been involved, the answer to that question is no, and I strongly suspect that this time the answer is no again.

All of us who have been in public life know full well that there has always been collusion between the police and journalists—certainly ever since I was first in the House of Commons, nearly 40 years ago. It is lamentable, but it has been the case. I doubt that anything else that will be turned up in this inquiry would justify the initial cost.

I have one further point. It is absolutely right that police officers who take money for supplying confidential information—that is, are bribed—should be the subject of criminal procedure. But that is also, in the generality of cases, true of the journalists. What we are dealing with when a journalist pays a police officer is a criminal conspiracy to do an unlawful thing.

Occasionally, there will be instances where the public interest is genuinely involved. But one thing I have noted in recent months and years is the unwillingness of juries to convict journalists for doing this, because quite specious claims of public interest are always invoked. In general, it is public curiosity, not interest, which justifies the process. I very much doubt that we will get juries to see the rightness of what I have been saying, so there may have to be another way forward.

I very much hope that the press industry—editors in particular—recognises the impropriety in the generality of cases of journalists paying police officers for information. The fact that juries will not convict for these purposes is neither here nor there. I would hope that senior journalists would incorporate into the contracts of employment with their journalists a prohibition on doing what I have just described, and that editors and proprietors would be willing to enforce that prohibition.

Reverting to my first point, I am sorry, but I cannot support the noble Baroness's very eloquent submission to your Lordships' House.

5 pm

Lord Paddick: My Lords, I rise to support the amendment moved by the noble Baroness, Lady O'Neill of Bengarve. I should declare three interests. First, I was a police officer for more than 30 years, retiring with an exemplary record in 2007 as a deputy assistant commissioner, the equivalent of a deputy chief constable outside London. Secondly, I was a victim of phone hacking. Thirdly, I was party to a judicial review of the Metropolitan Police Service in 2011. This review concluded that the police had failed in their duty to protect my and others' Article 8 rights to a private and family life under the Human Rights Act, because they had failed to tell us that we were the targets of phone hacking by the press. I was a senior police officer in the Metropolitan Police at the time of the phone hacking. The noble Lord, Lord Prescott, another party to the judicial review, was the Deputy Prime Minister at the time his phone was hacked.

To take up the point of the noble Viscount, Lord Hailsham, I accept the question of proportionality but the difference here is that the Government promised the victims of phone hacking that Leveson 2 would take place. The former Prime Minister promised that this inquiry would take place and that, I am afraid, rather trumps the noble Viscount's arguments around proportionality. The inquiry was set up to explore and resolve a number of areas but, in the interests of brevity, as no doubt these points will be covered by other noble Lords, I will focus on just one element.

I discovered that I had been the subject of interest to the private detective employed by News International to carry out phone hacking, Glen Mulcaire, when I was told through my solicitors by the *Guardian* in 2011. My solicitors contacted the Metropolitan Police, who said that there was no record of my having been the victim of phone hacking. The *Guardian* sources insisted that I was and the Metropolitan Police eventually admitted that I had been involved as a target. They subsequently disclosed pages from Mulcaire's notebook which had my name, details of my then partner, our home address and phone numbers and other personal details and that these documents were in their possession and had been in their possession since before 2006. The police also subsequently disclosed an internal memo which indicated that "Commander Paddick" was a target of phone hacking. I was a commander from 2000 to 2003, when I was promoted.

My point is that the Metropolitan Police knew that there was widespread phone hacking and did nothing to investigate it or to warn the victims that their phones were being hacked, even when one of those victims was the Deputy Prime Minister and another was one of its own senior police officers, who was working in the same building as the detectives who had uncovered the scandal. At around the same time, it appears that members of the press whose phones were being hacked by rival newspapers were warned that their phones were being hacked.

There has been no satisfactory explanation of why the police behaved in this way—we need to know why. Leveson 2 should be initiated to find that out. I say that there has been no satisfactory explanation of the police conduct because it has been suggested that the initial investigation, where the Royal Family had been among the victims and which had been carried out by the Counter Terrorism Command as a result, had other priorities. We can imagine that the counterterrorism branch did have other priorities. If that was the reason for not taking the matter further, there was no reason why the police could not have informed other victims to take precautions against using their mobile phones and that no further action would be taken. Indeed, that was the conclusion reached by the judge who heard the judicial review.

Once the royal connection had been dealt with, the case could, and should, have been transferred to the Specialist Crime Directorate of the Metropolitan Police, the most appropriate department at Scotland Yard to investigate such matters, where a scandal of such proportions could have been given the resources required to investigate matters properly. Instead, it was only after the *Guardian* discovered the extent of the scandal that the Metropolitan Police acknowledged that an investigation was needed and applied the resources required. We have not got to the bottom of the relationship between the Metropolitan Police and the media at that time. That is why we need the inquiry proposed by this amendment.

If a public inquiry is needed and the Government have promised one, it should take place. The sudden deployment of a wholly unnecessary consultation is, or appears to be, a device to give cover to the Government reneging yet again on a promise made regarding the phone hacking issue. If I am wrong and the Government decide after all to recommit to Leveson 2, I am sure this House will simply agree to the later removal of the amendment. In the meantime, it is our insurance policy against the Government letting us down again, and we on these Benches will support it if the noble Baroness divides the House.

Lord Blair of Boughton (CB): My Lords, I am most grateful to the noble Lords who tabled this amendment. I listened to the explanation of the noble Lord, Lord Paddick, the chronology of which I understand, but which may be difficult for others to understand. I totally accept the passion with which he spoke on that issue. I support the amendment but make it clear that I am one of the few Members of the House who gave evidence to Leveson in person and on oath. I support the amendment precisely because it fulfils the previous government commitment. As I was the commissioner at the time the first phone hacking case appeared to arise, which concerned the royal household and to which the noble Lord, Lord Paddick, referred, it would not be appropriate for me to say in this House that I do not accept any further scrutiny of the Metropolitan Police or other police forces over this matter. Therefore, I very much support the idea that Leveson 2, in whatever form, or whether it is through this amendment, should be introduced.

However, given that I gave evidence to the inquiry, I need to make it clear that I shall be very surprised—at this point, I move towards the position adopted by the noble Viscount, Lord Hailsham—if a new inquiry uncovers anything involving major corruption in recent years. To that end, I ask the House's indulgence to allow me to read one paragraph—paragraph 49—of my statement to Leveson, which I made in 2012, which set out my position on the question. It refers to the Met and only to events post-2000. Therefore, it does not refer to Morgan or Hillsborough as that was the question I was being asked: what had I done since I had been the deputy commissioner and the commissioner? It was submitted in spring 2012 and says:

"Whilst I therefore accept that current enquiries may reveal that a small number of relatively junior officers took bribes from the press, I do not believe that corruption in monetary terms lies at the heart of any major problem in the relationship between the",

Metropolitan Police Service and the press. We can now say that a number of junior police officers were convicted, and rightly so. I continued:

"I believe that where that problem may have become significant is that a very small number of relatively senior officers … became too close to journalists, not I believe for financial gain but for the enhancement of their reputation and for the sheer enjoyment of being in a position to share and divulge confidences. It is a siren song. I also believe that they based this behaviour on how they saw politicians",

behaving with the press,

"and that they lost sight of their professional obligations. The MPS did not have adequate defences against this behaviour and in previous decades would probably not have needed it".

In short, what will be revealed by such an inquiry, which I still say is necessary, is behaviour that was wrong, reprehensible and unprofessional, but largely not criminal.

Lord Deben (Con): My Lords, many of us wish that we were not having this debate at all. I will ask three questions of the noble Baroness who will reply. The first is: will she not agree that there is a promise, and that it is a serious thing not to carry that promise through? That is particularly true given the circumstances in which we live, where large numbers of people have ceased to believe in the integrity, the impartiality and, if I may use a non-word, the upstandingness of those in authority. Therefore when a promise has been made, to renege on it is always harmful but particularly harmful at this time, when not only in this country but elsewhere there is clearly a fundamental feeling among large numbers of people that they have not been dealt with properly by those who are in power, have authority and are able to change the lives of others. Therefore, first, there is the promise.

Secondly, there is the need. Will my noble friend explain why it is not necessary to clear the reputation of the police, and particularly the Metropolitan Police, given that so much has been said about them and so much is thought about them? As somebody who lives much of the time in London, I have to say that the Metropolitan Police's reputation is not good, has not been good for some time, and needs to be improved. Therefore one has to ask why this would not be a valuable way to ensure that that happened. The noble Lord, Lord Blair, said precisely that—there is a need for that.

There is also a need for the press to face up to the fact that it, too, has perhaps the worst reputation in this country that it has had, certainly in my lifetime,

[LORD DEBEN]
which is getting embarrassingly long. This is a very unhappy time, when we think of the purveying of hate that has been on the front pages of so many newspapers, and the attacks on our institutions and their independence, which we have seen latterly. We therefore have to say to ourselves that this is an opportunity for the press, too, to clear that part of its name which is clearable. For my noble friend Lord Hailsham to stand up today and say that he expects the press kindly to arrange in future that it will sign up to not doing bad things suggests that he has not followed the news over the past months. This is not the mood of a press that is largely owned outside this country, by people who have little commitment to this country, and now has standards wholly different from those which perhaps we might have expected.

My third question to my noble friend Lady Williams is as follows. If the noble Baroness's amendment is not agreed—or, more importantly, if it is not accepted—and if there is no alternative that we see as satisfactorily meeting the very powerful statement that she made, does my noble friend not agree that the public will think that we have not taken these steps due to the power of the press and our closeness to the constabulary, which leads me back to my first point? That is extremely dangerous at any time and particularly dangerous at the moment. The amendment attacks neither the press nor the police; it suggests that perhaps this is the moment to clear both of unfair allegations and to reveal real allegations, which seems to me a not unreasonable position to take. I hope that my noble friend will enable me to support her in the Lobbies by giving me an alternative to this amendment that meets those obligations.

5.15 pm

Lord Clinton-Davis (Lab): I speak following the very courageous and relevant speech that we have just heard. I do not think that there can be any possible objection to strengthening the law, which is what is proposed. There can be no dispute at all that corrupt relationships between the police and newspapers are highly damaging to both, and they are unacceptable to the public, who must be able to trust both. In a democratic society, which I hope we are, it is absolutely vital that there should be trust in both, and the amendment simply seeks to bolster that position. I can see no objection at all to the purpose of the amendment. I ask anybody here to say what damage it could do to the law. In fact, I think that strengthening the law in this way is absolutely vital, and there should be no question about that.

For many years I practised in the criminal courts. I came across decent police officers who did not bend the truth at all, but I also came across certain police officers who were quite prepared to do exactly that, and in our society that is absolutely unacceptable. I hope that the Minister will appreciate how strongly those of us who have experience in this field feel about this.

I am pretty old now but I still attend this House, although some, including my wife, have some reservations about that. But I was particularly concerned about this issue. Everything which concerns the police is relevant to a democratic society. In my view, it is an absolute necessity as far as this is concerned. There is a gap at the moment, or there may be, that ought to be cured. Many people who have experience in this area recognise that. There should be no question about it.

Lord Rosser: My Lords, I will not detain the House for too long. As has been said, the amendment would require the Prime Minister to commission an independent inquiry into the operation of the police complaints system in respect of allegations of corrupt relationships between the police and newspaper organisations. It also provides that the inquiry would proceed only once the Attorney-General has determined that the inquiry, if conducted effectively and fairly, would not be likely to prejudice any ongoing relevant criminal investigations or court proceedings cases.

As has already been pointed out, in November 2012 the then Prime Minister reminded the victims of press intrusion that when he set up the Leveson inquiry he had also said that there would be a second stage to investigate wrongdoing in the press and the police, and that the Government remained committed to the inquiry as it was first established. However, real doubts about the Government's willingness to honour that promise have arisen—hence this amendment. Those doubts have been increased by the Government's recent decision to consult, including on whether to stick by the promises previously given by the then Prime Minister that there would be a Leveson stage 2.

Police and press relations is a significant area still to be addressed. Briefings by the police in the immediate aftermath of the Hillsborough tragedy had a profound adverse impact on the families who had lost loved ones, and on the thousands who had been at the match and returned home in a state of some trauma, only to read a few days later that the police were blaming them for the deaths of their friends and family. The media were also manipulated in the case of the Shrewsbury 24, and part 1 of the Leveson inquiry found unhealthy links between senior Met police officers and newspaper executives—links which led to resignations. There is also, on occasion, an issue around the nature of relationships between the police and the press at a more local level, where sometimes prior information appears to have been provided about a particular person to be arrested or a particular search carried out.

Honouring a repeated undertaking given by a Government through a Prime Minister, to victims in particular, and with all-party support, is the issue that this amendment seeks to address. If, having heard the Government's response, the noble Baroness, Lady O'Neill, decides to seek the opinion of the House, we shall be voting in favour of the amendment.

Baroness Williams of Trafford: My Lords, I thank the noble Baroness, Lady O'Neill, for explaining the purpose behind her amendment. I also thank the noble Lords, Lord Paddick and Lord Blair, who spoke of their own experiences around this issue. As the noble Baroness explained, Amendment 48 would require the Prime Minister to proceed with what is colloquially referred to as the Leveson 2 inquiry into the relationships between the police and the media.

It is of course vital that the police take seriously their role, both in maintaining their own reputation and integrity and in protecting the community that they are meant to serve. However, given the extent of the criminal investigations related to this issue that have taken place since the Leveson inquiry was established—as the noble Lord, Lord Blair, referred to—and given the implementation of the recommendations following part 1, including reforms within the police and the press, the Government must now consider whether proceeding with part 2 of the inquiry is appropriate, proportionate and in the public interest. The Government are therefore seeking the views of the public and interested parties, including those who have been the victims of press abuse, through the public consultation that commenced on 1 November. The consultation seeks views on whether proceeding with part 2 of the Leveson inquiry is still appropriate, proportionate and in the public interest. As the last of the relevant criminal cases has recently concluded, the Government believe that it is now time to take stock and seek views on the various options. Submissions received from this consultation will consequently help to inform the Government's thinking. The consultation closes on 10 January. Given the ongoing consultation, I respectfully suggest to the noble Baroness that this is not an appropriate matter for further legislation.

The Government will reach a view on the way forward having regard to the views expressed in response to the consultation. If we conclude that the inquiry should go ahead in its current or a modified form, the Inquiries Act already provides the mechanism for this, so again this amendment is unnecessary.

Noble Lords will also want to take into consideration the fact that part 1 of the Leveson inquiry cost £5.4 million. We can expect part 2 of the inquiry, should it go ahead with its current terms of reference, to cost a similar amount, so this amendment has very real financial implications, as my noble friend Lord Hailsham said.

My noble friend Lord Deben talked about three issues—the promise, the necessity, and the power of the press and its closeness to the constabulary. In terms of the promise, the Government delivered the cross-party agreement by establishing the Press Recognition Panel by royal charter, and legislating for the incentives in the Crime and Courts Act 2013. The time is now right to consult further on these specific areas of part 2 of the inquiry and Section 40, given the time that has elapsed since the Leveson inquiry was set up and the changes that have taken place. It would not be fair to the victims of press intrusion to take a decision based on facts and a situation from five years ago without reflecting on the position today, to make sure that we get the right result and that there are the right protections. We will need to see what comes out of the consultation, as I have said, but ultimately, it is for the Government to take decisions on both matters.

Parliament will clearly need to be involved if the proposed way forward were to repeal Section 40, but we need to wait and see the responses to the consultation. On part 2 of the inquiry, we will of course consult the chair of the inquiry, Sir Brian Leveson, before any decision is made on the future of the process.

In conclusion—

Lord Clinton-Davis: Will the Minister indicate how long she envisages the inquiry will take and how many witnesses will come forward?

Baroness Williams of Trafford: The consultation finishes on 10 January. In terms of anything going forward, we will of course be informed and guided by the consultation and I would not at this point wish to put a timescale on the inquiry.

Baroness O'Neill of Bengarve: I thank the Minister for her reply. She suggests that we have yet to consider whether it is appropriate, proportionate or in the public interest to proceed with this amendment and that we should await the outcome of the consultation. That outcome is nicely timed to be rather too late for this legislation, where the proposed new clause fits very well. It has nothing to do with the commencement of Section 40 of the other legislation, so that one we can set aside. But this one is really a matter of honour for the Government. These were commitments made in public and there were real and identifiable victims, and while of course cost is an issue and the Government would perhaps wish to think about how to contain them, surely it is useful that some of the criminal cases that have been tried have actually done the work of finding out what happened in certain cases. The cost issue is not the same as it might have seemed in advance because some of that has already been sorted. I wish to test the opinion of the House.

5.29 pm

Division on Amendment 48

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Amendment 48 agreed.

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5.45 pm

Clause 27: Investigations by the IPCC: whistle-blowing

Amendment 49

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

49: Clause 27, page 41, leave out lines 9 to 19

Baroness Chisholm of Owlpen: My Lords, the Government are committed to ensuring that those working for the police have the confidence to come forward to report concerns of malpractice and misconduct within the service. Clause 27 inserts new Part 2B and new Schedule 3A into the Police Reform Act 2002. This will provide the Independent Police Complaints Commission with a new power to carry out independent whistleblowing investigations. It gives police officers and staff a new route to raise their concerns directly with the IPCC. As a result, it will give police officers and staff a greater level of assurance around discretion and objectivity by strengthening the protections for whistleblowers, including anonymity.

Amendments 49 and 50 respond to points raised in Committee by the noble Lords, Lord Paddick and Lord Kennedy. The amendments will provide greater clarity about when a whistleblowing investigation can be considered by the IPCC. The amendments modify the definition of a whistleblower in two ways. The first modification is to enable whistleblowers to raise concerns about matters which occurred before they joined the police. The second modification will remove the need for the IPCC to consider whether to start a new whistleblowing investigation where it is already conducting an investigation under Part 2 of the Police Reform Act 2002, or where there is an ongoing whistleblowing investigation.

There will also be no requirement for the IPCC to consider whether to open a new investigation when the concern raised is already being dealt with as a super-complaint. These modifications will provide further clarity on the definition of a whistleblower, ensuring that the new Part 2B provisions will not interfere with the progress of these existing investigations. This will also support the IPCC to effectively implement its duties under the new provisions.

Amendments 51, 55, 63, 64 and 69 are technical amendments to ensure that, as with concerns which involve conduct matters, where the IPCC identifies a concern as relating to a "death or serious injury" matter as defined in Part 2 of the 2002 Act, the matter must be handled under that part. In such circumstances, the whistleblower's identity will continue to be protected by modifications to Schedule 3 to the 2002 Act specified in regulations. I beg to move.

Lord Paddick: My Lords, I am very grateful to the Minister and to the Government for listening to the concerns we raised around whistleblowing in Committee. We certainly support the government amendments in this group.

Lord Kennedy of Southwark: My Lords, there was a very useful debate in Committee on whistleblowing. The noble Lord, Lord Paddick, and I raised a number of issues; we are very grateful that the Government have listened and tabled these amendments and we are very supportive of them.

Amendment 49 agreed.

Amendments 50 to 53

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

50: Clause 27, page 41, line 26, at end insert—

"(3A) For the purposes of this Part, a person is a "whistle-blower" if—

(a) the person is, or was at any time, under the direction and control of a chief officer of police,

(b) the person raises a concern that is about a police force or a person serving with the police,

(c) the matter to which the concern relates is not—

(i) about the conditions of service of persons serving with the police, or

(ii) a matter that is, or could be, the subject of a complaint by the person under Part 2, and

(d) at the time the Commission first becomes aware of the concern, the matter to which it relates is not—

(i) under investigation under the direction of the Commission in accordance with paragraph 18 of Schedule 3,

(ii) under investigation by the Commission in accordance with paragraph 19 of that Schedule,

(iii) being dealt with as a complaint under section 29A under regulations under section 29C (regulations about super-complaints), or

(iv) under investigation under this Part."

51: Clause 27, page 41, line 28, after "2)" insert "and to section 29FA (which deals with the position where the concern is a DSI matter for the purposes of that Part)"

52: Clause 27, page 41, line 40, after "Part," insert "except where otherwise provided,"

53: Clause 27, page 42, line 35, at end insert—

"29FA Special provision for "DSI matters"

(1) Before deciding whether to carry out an investigation under section 29D(2), the Commission must consider whether the concern is about a death or serious injury matter ("a DSI matter") for the purposes of Part 2 (see section 12(2A)).

(2) If the Commission determines that the concern is about a DSI matter for the purposes of Part 2—

(a) it may not carry out an investigation under section 29D(2), and

(b) it must notify the appropriate authority in relation to the DSI matter.

(3) Where the appropriate authority in relation to the DSI matter is notified under subsection (2), it must record the matter under paragraph 14A of Schedule 3 to this Act as a DSI matter.

(4) The Secretary of State may by regulations make provision modifying Schedule 3 in relation to a DSI matter that, in accordance with subsection (3), is recorded under paragraph 14A of that Schedule but only for the purpose of making provision for the protection of the anonymity of whistle-blowers.

(5) In this section, references to the appropriate authority in relation to a DSI matter have the same meaning as in Part 2 (see section 29)."

Amendments 50 to 53 agreed.

Schedule 6: Schedule to be inserted as Schedule 3A to the Police Reform Act 2002

Amendments 54 and 55

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

54: Schedule 6, page 278, line 29, leave out "15(5)" and insert "15(5B)"

55: Schedule 6, page 278, line 40, at end insert—

"Procedure where DSI matter is revealed during investigation

4A_(1) If, during the course of an investigation under section 29D(2), it appears to the person in charge that the matter may be a DSI matter, the person must make a submission to that effect to the Commission.

_(2) If, after considering the submission, the Commission determines the matter is a DSI matter, it must—

(a) notify the appropriate authority in relation to the DSI matter, and

(b) send to it a copy of the submission under sub-paragraph (1).

_(3) Where the appropriate authority in relation to the DSI matter is notified under sub-paragraph (2), it must record the matter under paragraph 14A of Schedule 3 to this Act as a DSI matter.

_(4) Where a matter is, in accordance with sub-paragraph (3), recorded under paragraph 14A of Schedule 3 as a DSI matter—

(a) the person in charge of the investigation under section 29D(2) must (subject to any determination made by the Commission under paragraph 15(5B) of Schedule 3) continue the investigation as if appointed or designated to investigate the DSI matter, and

(b) the other provisions of Schedule 3 apply in relation to that matter accordingly (subject to regulations under sub-paragraph (5)).

_(5) The Secretary of State may by regulations make provision modifying Schedule 3 in relation to an investigation that, in accordance with sub-paragraph (3), is recorded under paragraph 14A of that Schedule as a DSI matter but only for the purpose of making provision for the protection of the anonymity of whistle-blowers.

_(6) In this paragraph, references to the appropriate authority in relation to a DSI matter have the same meaning as in Part 2 (see section 29)."

Amendments 54 and 55 agreed.

Clause 32: Office for Police Conduct

Amendment 56

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

56: Clause 32, page 54, line 24, after "the" insert "Independent"

Baroness Chisholm of Owlpen: My Lords, I hope that this, too, will be good news for your Lordships. This Government's policing reforms have strengthened the role of the Independent Police Complaints Commission to ensure that it can fulfil its crucial function as a strong police watchdog. The Bill will further enhance the IPCC's powers and independence. It is important that the organisation can carry out its enhanced role efficiently and effectively and the Bill therefore also provides for the reform of the IPCC's corporate structure and for it to be renamed the Office for Police Conduct.

In Committee the noble Lord, Lord Rosser, tabled an amendment to include "Independent" in the new name. A number of noble Lords spoke in support of that amendment, highlighting the value of the word in securing public confidence that the organisation is not part of the police. My noble friend Lady Williams of Trafford agreed to reflect on the points that noble Lords made so well in the debate.

The Government remain of the view that the reformed IPCC needs to command public trust, and demonstrate its impartiality and independence, through the quality of its work. The IPCC is independent, and the reformed organisation will continue to be independent. However, the Government also recognise the argument that although the legislation provides for the organisation's independence from the police, it is important to signal this in its title as well. These amendments therefore provide for "Independent" to be included in the reformed IPCC's new name, with the effect that it will be called the Independent Office for Police Conduct. I beg to move.

Lord Bach (Lab): My Lords, the Government, particularly the Ministers, deserve real congratulation on making this amendment. I think all Members of the House, wherever they sit, will be really pleased that this has happened. It will certainly, in a small way, make my life as a police and crime commissioner easier. Having "Independent" in the name of the new body will make it easier to explain how the complaints system works. I congratulate the Government and I am very happy to support the amendment.

Lord Kennedy of Southwark: I, too, thank the Government and the Minister for listening. A number of Members, including noble Lords who had been senior police officers, made the point about how important this is to enable police officers to do their job. I am very pleased that the Government have listened.

Amendment 56 agreed.

Amendments 57 and 58

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

57: Clause 32, page 54, line 28, after "The" insert "Independent"

58: Clause 32, page 54, line 33, after "the" insert "Independent"

Amendments 57 and 58 agreed.

Amendment 59

Moved by ***Lord Paddick***

59: Clause 32, page 55, line 8, leave out paragraph (b)

Lord Paddick: My Lords, Amendment 59 is in my name and that of my noble friend Lady Hamwee. I, too, thank the Government for the change that they have made regarding the word "Independent". This amendment tries to ensure that that is not simply a cosmetic change and that the new body will be even more independent.

The amendment would change the current position where a member of the Independent Police Complaints Commission cannot be someone who holds or who has held office as a constable in any part of the United Kingdom or someone who has worked under the direction or control of a chief officer or equivalent office in Scotland or Northern Ireland. The current legislation specifically excludes anyone making decisions on casework or investigations, for obvious reasons. The public are not reassured about the independence of the police complaints investigation body if those making such decisions are either former police officers or those who have worked for the police.

The amendment would prevent other members of the new body being serving or former police officers or those who formerly worked for the police. In Committee the Minister said:

"We do not think that there should be statutory restrictions on those who are members of the office—in effect, the board of the reformed organisation. The core functions of the office are set out clearly in the Bill and include ensuring the good governance and financial management of the organisation. These functions are quite distinct from the functions of the director-general. The director-general, as the single executive head, will be solely accountable for all casework and investigation decisions, not the board. It is not right that a suitably qualified individual could not be appointed to a corporate governance role as a member of the board simply because he or she once worked as a police civilian, perhaps for just a short period many years previously".—[*Official Report*, 26/10/16; col. 258.]

There is very little trust or confidence in the IPCC among many who bring complaints against the police and many others, including me, because we do not believe it is independent enough. How will having members of the board of the new body—the rebranded body—who are former employees of the police service improve that trust and confidence? It certainly does not do it for me. Although the Minister says that the director-general will be solely accountable for all casework and investigation decisions, in practice he will not be making all those decisions—unless he works 24 hours a day, seven days a week. Even if the board members are there to ensure good governance and financial management, their decisions could be crucial to the effective investigation of serious complaints by deciding the way the rebranded organisation operates, its structure and so forth, and the way resources are apportioned.

The Government keep saying how important it is to bring people with different skills and experience into the police service. If the police service is in such desperate need of new blood, because the Government believe it does not have enough talent of its own, why are the Government so keen for those from the police service to be part of the new body that will be investigating the most serious complaints against the police? Barring those previously employed by the police service from holding crucial positions within the rebranded Office for Police Conduct—with or without "Independent" stuck on the front of it—would be a small price to pay for providing reassurance that it is truly independent. I beg to move.

Baroness Williams of Trafford: My Lords, the Independent Office for Police Conduct will have a vital role in securing and maintaining public confidence in the reformed police complaints system. That is why the Bill provides for an absolute bar on the new single executive head of the organisation—the director-general—ever having worked for the police. The Government do not believe it is appropriate for the Bill to impose further statutory restrictions on membership of the office beyond the post of director-general.

The corporate structure of the IOPC is radically different from the existing commission model. The new board—the office—will have a majority of independent non-executive members, and its functions are set out clearly in the Bill. These include ensuring good corporate governance and financial management. Importantly, the board's functions do not include responsibility for investigations and casework decisions, for which the director-general alone will be accountable. This is in contrast to the current position, where commissioners undertake such investigative functions.

If a highly suitable individual applies for a non-executive role, perhaps as a finance expert, it would be wrong to reject them automatically simply because many years previously they worked for a short period as a police civilian, perhaps in a relatively junior role. To ensure that the organisation can deliver high-quality and timely investigations—the predominant driver of

[Baroness Williams of Trafford]
confidence—the director-general will wish to ensure that the organisation has a diverse mix of people. As part of this, the director-general may wish to employ a number of people who have valuable policing experience, as the IPCC does now.

Under the new model, investigations and casework decisions will be undertaken by employees, all of whom will be working in a single line management chain reporting to the director-general. The Government fully expect the director-general to decide that certain employee roles, including some senior operational and public-facing positions, should not be filled by those with a police background, but those decisions should be a matter for the director-general.

We recognise that confidence is also driven by the perception of the organisation as impartial and independent from the police. That is why the Bill provides the director-general with an explicit power to determine the functions and roles that are not open to former police officers. This means that the director-general can go further than the current legislation, which requires only that a minimum of six people cannot have worked for the police—namely, the chair and a minimum of five other members of the commission. The Bill also strengthens existing arrangements in relation to transparency by setting out a requirement on the director-general to publish a statement of policy on the exercise of these particular powers of recruitment.

6 pm

But ultimately the director-general will be guided, as the IPCC is now, by the overarching principle to secure and maintain confidence in the complaints system. It is this principle driving the organisation's current recruitment policy, not a statutory bar, which means that around 80% of the IPCC's staff have never worked for the police. In addition, as I mentioned in Committee, there is as now a backstop power for the Secretary of State to set out restrictions in regulations on which persons may be appointed to carry out investigations, including those with a police background.

In conclusion, the Government believe that the Bill strikes the right balance by: first, placing core elements of the corporate structure of the Independent Office for Police Conduct on the face of the legislation; secondly, providing the DG with operational flexibilities to manage and structure the organisation as he or she sees fit; and, thirdly, requiring greater transparency of recruitment decisions on the designation of restricted posts.

I hope that the noble Lord, Lord Paddick, is reassured of the Government's intention for the reformed corporate structure of the IOPC and that he will be content to withdraw his amendment.

Lord Paddick: My Lords, I am grateful to the Minister for her explanation. I of course acknowledge the Government's intention in drafting the legislation as they have. If we were starting with a completely new body with no previous track record, I would be more willing to agree with the Minister. However, this is all about public confidence and perception, and the fact is that under the previous legislation the Independent Police Complaints Commission had six commissioners, all of whom were barred by law from having been employed by the police or having held the office of constable, and now there will be only one. In theory, the rest of the new body could be formed of previous police officers. Now, I understand that that is not likely, but there is the potential for those critics of the police complaints system to point out that there has been a reduction in the number of people statutorily barred from serving on the new body—it has gone down to one.

I accept that there is an explicit power for the director-general to designate certain posts that should not be open to former police officers, but, as I say, this is all about perception. While we are grateful that "Independent" has been shunted on to the front of the description of the new body, we feel that this change—reducing the number of people who are barred statutorily from holding positions in the body—will undermine public confidence in that independence. However, I beg leave to withdraw the amendment.

Amendment 59 withdrawn.

Amendment 60

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

60: Clause 32, page 55, line 14, after "the" insert "Independent"

Amendment 60 agreed.

Schedule 9: Office for Police Conduct

Amendments 61 to 100

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

61: Schedule 9, page 298, line 39, after "The" insert "Independent"

62: Schedule 9, page 304, line 22, after second "the" insert "Independent"

63: Schedule 9, page 304, line 28, after "General" insert "of the Independent Office for Police Conduct"

64: Schedule 9, page 305, line 3, at end insert—

"44A(1) Section 29FA (special provision for "DSI matters") (as inserted by this Act) is amended as follows.

(2) For "Commission", in each place, substitute "director-general".

(3) In subsection (2), for "it", in both places, substitute "the director-general"."

65: Schedule 9, page 305, line 25, after "the" insert "Independent"

66: Schedule 9, page 305, line 28, after "the" insert "Independent"

67: Schedule 9, page 305, line 31, after "the" insert "Independent"

68: Schedule 9, page 305, line 34, after "The" insert "Independent"

69: Schedule 9, page 311, line 7, at end insert—

"( ) In paragraph 4A(1)—

(a) for "it appears to the person in charge" substitute "the director-general determines";

(b) for "the person must make a submission to that effect to the Commission" substitute "the director-general must proceed under sub-paragraph (2)".

( ) For paragraph 4A(2) substitute—

"( ) The director-general must—

(a) prepare a record of the determination,

(b) notify the appropriate authority in relation to the DSI matter, and

(c) send to it a copy of the determination prepared under paragraph (a).""

70: Schedule 9, page 311, line 25, after "The" insert "Independent"

71: Schedule 9, page 311, line 39, after "The" insert "Independent"

72: Schedule 9, page 312, line 3, after "The" insert "Independent"

73: Schedule 9, page 312, line 7, at beginning insert "Independent"

74: Schedule 9, page 312, line 12, after "the" insert "Independent"

75: Schedule 9, page 312, line 15, after "substitute ""insert "Independent"

76: Schedule 9, page 312, line 21, after "the" insert "Independent"

77: Schedule 9, page 312, line 25, after "the" insert "Independent"

78: Schedule 9, page 312, line 34, after "substitute ""insert "Independent"

79: Schedule 9, page 313, line 3, after first "the" insert "Independent"

80: Schedule 9, page 313, line 14, after "the" insert "Independent"

81: Schedule 9, page 313, line 15, after "The" insert "Independent"

82: Schedule 9, page 313, line 19, after "the" insert "Independent"

83: Schedule 9, page 313, line 25, after "the" insert "Independent"

84: Schedule 9, page 313, line 29, after first "the" insert "Independent"

85: Schedule 9, page 313, line 41, after "the" insert "Independent"

86: Schedule 9, page 314, line 7, after first "the" insert "Independent"

87: Schedule 9, page 314, line 20, after "the" insert "Independent"

88: Schedule 9, page 314, line 25, after "the" insert "Independent"

89: Schedule 9, page 314, line 31, after "the" insert "Independent"

90: Schedule 9, page 314, line 34, after "the" insert "Independent"

91: Schedule 9, page 314, line 39, after "the" insert "Independent"

92: Schedule 9, page 314, line 40, after "The" insert "Independent"

93: Schedule 9, page 315, line 3, after "substitute ""insert "Independent"

94: Schedule 9, page 315, line 6, after "the" insert "Independent"

95: Schedule 9, page 315, line 12, after second "the" insert "Independent"

96: Schedule 9, page 315, line 18, at beginning insert "Independent"

97: Schedule 9, page 315, line 22, after second "the" insert "Independent"

98: Schedule 9, page 315, line 26, after second "the" insert "Independent"

99: Schedule 9, page 315, line 33, column 1, at beginning insert "Independent"

100: Schedule 9, page 316, line 4, column 1, at beginning insert "Independent"

Amendments 61 to 100 agreed.

Amendment 101

Moved by ***Baroness Jolly***

101: After Clause 33, insert the following new Clause—

"Forces maintained otherwise than by local policing bodies

After section 26(3)(b) of the Police Reform Act 2002 (forces maintained otherwise than by local policing bodies) insert—

"(c) the Royal Military Police;

(d) the Royal Air Force Police; and

(e) the Royal Navy Police.""

Baroness Jolly (LD): My Lords, the purpose of this amendment is to enable service men and women to make complaints about their service police to the IPCC rather than to the service police—the Royal Military Police, the Royal Air Force Police or the Royal Navy Police. I submitted this amendment after a really interesting and valuable meeting that I had with the Minister and her officials, which helped my thinking and allows me to ask for clarification about the service police and the IPCC. I am grateful to her for her time.

The Minister and I discussed the issues of the competence, culture and trust of or in the service police and the capacity of the IPCC to take over some of its functions. I remind noble Lords that Her Majesty's Inspectorate of Constabulary—HMIC—recommended that oversight of the Royal Military Police, the Royal Air Force Police and the Royal Navy Police should be brought within the competence of the IPCC. I understand that, at the moment, the IPCC is undergoing some change and is not able or willing to look at meeting the amendment's desired outcome in the immediate future. I also understand that the service police are aware of their shortcomings and are working to address them.

Can the Minister give some indication of the Government's current thinking about the future, and about which milestones might indicate progress? If there are any recent pronouncements from the MoD on this issue, that would also be helpful. Our service men and women deserve a process for complaints against their service police that is modern, run professionally, fit for purpose and future-proofed. I hope that the Minister can help, and I beg to move.

Baroness Chisholm of Owlpen: My Lords, I would like to reassure the noble Baroness, Lady Jolly, that the Government and the service police are fully supportive of the need for independent oversight of the service police. There is already statutory independent oversight of the complaints made against the service police, where those complaints are made through the service complaints process. That process is overseen by the independent Service Complaints Ombudsman and is available to all serving personnel. Veterans and other civilians are not able to use that process and rely solely on the service police complaints procedures, which do not currently have independent oversight. However, I should mention that, since the recommendation in Her Majesty's Inspectorate of Constabulary's 2014 report, the service police forces have adopted a tri-service investigations protocol, which supplements their existing complaints procedure and provides for another force to investigate certain complaints where there could be a conflict of interest or allegations of criminal activity.

There is clearly further work to do on a mechanism for introducing independent oversight into complaints made against the service police. There are a number of options for doing this, including oversight by an existing body or setting up a separate new body to provide it, but a number of logistical and jurisdictional issues need to be addressed. For example, incidents requiring investigation might arise in any part of the UK or indeed anywhere in the world, including dangerous operational theatres, and clearly we would want our oversight arrangements to cater for those occasions.

[Baroness Chisholm of Owlpen]

The Government are therefore considering interim arrangements that will introduce independent oversight of complaints against the service police from veterans and non-service personnel, this being the gap which currently exists. We expect to be able to announce further information about this shortly. The Government remain committed to implementing a single mechanism that will provide for the independent oversight of all complaints against the service police. This aspiration is shared by each of the service police provost marshals, and we intend to update the House on progress in the first half of next year.

On a broader note, I should mention that each of the service police forces has done much in recent years to forge a culture within its organisation that aims to promote faith in its integrity and professionalism within the Armed Forces, military community and beyond. They have each implemented codes of conduct that highlight the expectations placed upon service police personnel both on and off duty. These are akin to those produced by the College of Policing and support the single service's values and standards and leadership codes, which apply to all service personnel. In addition, all members of the service police are now required to swear an oath which declares that they will always act with fairness, integrity, diligence and impartiality. The Government are determined to ensure that, in both the short term and the long term, there can be independent scrutiny of any instances where those values are called into question. On this basis, I ask the noble Baroness to withdraw her amendment.

Baroness Jolly: My Lords, I thank the Minister for the clarification and for the meeting. I look forward to recommendations coming out very soon, as she said. In the meantime, I am happy to beg leave to withdraw the amendment.

Amendment 101 withdrawn.

Clause 34: Public records

Amendments 102 to 104

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

102: Clause 34, page 57, line 24, at beginning insert "Independent"

103: Clause 34, page 57, line 26, after second "the" insert "Independent"

104: Clause 34, page 57, line 32, after second "the" insert "Independent"

Amendments 102 to 104 agreed.

Clause 35: Powers of inspectors to obtain information, access to police premises etc

Amendment 105

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

105: Clause 35, page 59, line 37, after "functions," insert "or

(iv) any other person who is, by virtue of any enactment, carrying out any of the activities of a police force,"

Amendment 105 agreed.

Clause 37: Powers of police civilian staff and police volunteers

Amendment 106

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

106: Clause 37, page 66, leave out lines 1 to 18

Lord Kennedy of Southwark: My Lords, Amendment 106, which is tabled in my name and that of my noble friend Lord Rosser, would delete the provision that would allow police civilian staff and volunteers to use CS spray or PAVA spray. We had an interesting, if somewhat confusing, debate on this subject in Committee. I think this is a step too far and that the public will be rightly concerned about who is authorised to use these incapacitating sprays.

PCSOs have specific duties and have performed them very well. I pay tribute to them and the work they do. This provision enables civilian staff and volunteers to be designated as PCSOs to use these weapons, which can kill and have unfortunately done so. Equipping volunteers and staff with such weapons, giving them some limited training and authorising them to use those weapons against members of the public is a huge leap and one we need to be very careful about. I do not believe that the Government have made a convincing case about why it is necessary to take this route.

We have heard very little in these debates about special constables, who have the powers of police officers and undertake extensive training. Surely greater recruitment and use of special constables would be a better option if the Government want more officers on the street supporting the full-time police service. I will listen carefully to the debate and, in particular, to the response from the Minister. I beg to move.

Viscount Hailsham: I propose to be brief. This amendment, as has been very fairly pointed out by the noble Lord, removes the substance of new subsection (9B) of the Firearms Act. It is therefore relevant to look at the new subsection to see the extent to which it is acceptable. I am content with one bit of it, welcome another bit of it and remain very concerned about a third bit of it, and I shall deal with each rather briefly.

6.15 pm

The bit with which I am content is the bit on which the noble Lord focused. Many years ago, I was a special constable—I will come to that briefly on the next group—and I know full well that special constables and, indeed, designated persons can get involved in confrontational situations. This part of the new subsection is about giving them defensive devices. I am not against that; I am actually in favour of that because they do face confrontational situations. I accept that the devices can be injurious. Clearly these people need training and there needs to be a proper disciplinary framework, but whether you should deprive them of these devices is a different question to which I say robustly that the answer is no. They should have them subject to a proper regulatory regime. So I am content with that part of new subsection (9B).

The second part I welcome because—I admit that this falls slightly outside new subsection (9B)—it uses the affirmative resolution procedure. All my life in Parliament, I have been against the negative resolution. It is an abuse. Whenever I have the opportunity, I welcome and endorse the affirmative resolution. Its use here is good news, and I welcome it.

So where do I grumble? I grumble with this bit. If one looks clearly at new subsection (9B), what one actually sees is the ability of the Secretary of State to authorise weapons by, it is true, affirmative resolution. Once those weapons are authorised, they can be used by designated persons at the discretion of the chief officer. My query is: what is the weapon in mind? If you look at the primary legislation, you will see quite plainly that a weapon can be a firearm of the usual kind as defined in the Firearms Act, so what in fact we are saying is that the Secretary of State by affirmative resolution can authorise designated persons to carry and use firearms.

On the face of it, that is a fairly bold proposition, so I went to the Explanatory Notes. They are very useful things to look at. They are normally unintelligible, but they are quite useful on this occasion. They actually refer to self-defence devices. That is what the Explanatory Notes tell us we are talking about, but go to the Bill: do you find any restriction on the nature of the weapon? No. The weapon is defined just as a weapon, not as a self-defence weapon.

Therefore, let us be absolutely clear about what we are being asked to do. It is to allow chief constables to authorise designated persons to carry and use firearms—in the ordinary use of that word—if authorised by affirmative resolution. Speaking for myself, I am extraordinarily cautious about that. I have practised at the Bar on and off for 40 years, I have been a Minister for the police, I was a Member of Parliament for 31 years, and do I trust the police usually—always—to behave well with firearms? I most certainly do not, and I am very cautious about extending the range of people who have the right to carry and use them.

If the Minister will say something to me in her most charming manner—or she can write, if she likes—to the effect that the Government will change the legislation so that we are dealing exclusively with self-defence devices, I will be a great deal happier with what is now being proposed, but so long as we are dealing with an unrestricted class of weapon she will not have my support.

Lord Hope of Craighead: Before the noble Viscount sits down, can he be a bit more specific about what he has in mind as a self-defence device? If you have a weapon which is capable of inflicting injury, it all depends on the mind of the user. I understand the point he is making, but I am not quite sure that one could have such a category.

Viscount Hailsham: I think one can. I think a Taser is a self-defence device. I know there is a dispute about that and that many take the view that it is unduly dangerous, but I take the view that it is self-defence. I take the view that pepper spray and things of that kind are self-defence. I take the view that a revolver is not. It is that sort of distinction.

Lord Blair of Boughton: My Lords, I am sorry that I missed the noble Lord, Lord Kennedy, opening this discussion, but I was somewhere else and I came here as soon as I could. My concern over this is with the concept of volunteers. As the noble Viscount, Lord Hailsham, says, there is a range of defensive systems here, including the truncheon itself, but I am concerned about giving volunteers Tasers. If you give a volunteer a Taser, all the volunteer has to do once it has gone off is to say that they do not want to be a volunteer anymore and disappear into the distance. Then you have nothing unless you have a criminal inquiry into what happened. My sense is that this set of clauses needs a lot more specificity.

My view is that the police could bring in some designated persons as firearms officers: they could recruit people from the Army and deploy them only to be firearms officers, which would be a logical and a budget-saving thing to do. The idea that we have to have fully trained constables standing outside embassies has always struck me as odd when we could recruit them much more cheaply. But with all those cases, you have a financial arrangement between the chief constable and that person, and they can therefore be disciplined and so on. Obviously if you shoot somebody, you have a criminal inquiry, but that is not the point here. We need to take this piece of the Bill and look at it again, to make sure we have the different types of defensive and offensive weapons, and the people who can use them, categorised. At the moment it feels that we will be opening a door we might find very difficult to close subsequently.

Lord Paddick: My Lords, I start by agreeing wholeheartedly with the noble Lord, Lord Blair, that this seems too broad in what it could allow. As the noble Viscount, Lord Hailsham, says, it could result in volunteers being equipped with revolvers. I also have the same concerns that the noble and learned Lord, Lord Hope of Craighead, has about a self-defence weapon being used in an aggressive as opposed to a defensive way.

We support the amendment proposed by the noble Lord, Lord Kennedy of Southwark. My noble friend Lady Hamwee and I have Amendment 107 in the group, which says that Clause 38 should not stand part of the Bill and seeks to achieve the same end as Amendment 106, which is to prevent police community support officer volunteers from being provided with CS spray or any other firearm that the Secretary of State might authorise by regulation in the future. My understanding, contrary to that of the noble Viscount, Lord Hailsham, is that special constables can be equipped with CS spray at the moment, and will continue to be, so I do not think that the changes in the Bill will have the effect he suggests.

The only remarks that I would add to those already made by noble Lords are that police volunteers carry out excellent work and are a valuable addition to the police family. However, with reservations already being expressed about whether paid police community support officers should be using force, and in the absence of any paid PCSO having been authorised to use CS spray by any chief constable anywhere in the United Kingdom—if I remember the debate in Committee

[LORD PADDICK]
correctly—changing the law to allow chief constables to give CS spray to volunteer PCSOs seems both unnecessary and unreasonable.

Secondly, as alluded to by the noble Viscount, Lord Hailsham, if chief constables need additional volunteers who can exercise the use of force, including with CS spray, because they do not have the resources any more to pay full-time police officers, whatever the rights and wrongs of that, there is a route open to them, which is to recruit more special constables, who have all the powers of a regular police officer and who are paid only expenses. We on these Benches will support the Labour amendment on this issue.

Baroness Williams of Trafford: My Lords, these amendments return us to an issue that was debated at length in both the other place and in Committee in this House, namely whether it is ever right for designated members of police staff, or the new category of designated volunteers, to carry CS or PAVA sprays for defensive purposes—I stress the point that this is for defensive purposes.

I should point out to the House that, although most of our debates have been about whether it is right for volunteers to carry defensive sprays, Amendment 106 as drafted would also prevent chief officers equipping their existing paid staff, such as PCSOs, with such sprays. I assume this is not intention of the noble Lord, Lord Kennedy, but it would be helpful if he could clarify this when winding up.

When we debated this issue in Committee, a number of noble Lords expressed the view that the use of force is somehow incompatible with the PCSO role, and even more so for volunteers. For example, the noble Lord, Lord Paddick, said that the appropriate route for an individual who wishes,

"to volunteer to get involved in the use of force in the exercise of police powers",

is,

"to become a special constable".—[*Official Report*, 26/10/16; col. 267.]

I think he said that again today. However, it is important to put on record that, given the long-standing tradition of policing by consent, I would hope that no one who wishes to help with the policing of their community, as a police officer or a member of staff, whether paid or as a volunteer, does so with a view to using force against their fellow citizens. There are of course myriad roles which police officers, staff and volunteers perform regularly that do not involve the use of force.

Indeed, as we have discussed, the primary role of a PCSO across England and Wales is to engage with members of the public and to carry out low-level interventions such as dealing with anti-social behaviour. However, as was discussed in the House of Commons earlier this month, it is a sad fact of life that both police officers and PCSOs are assaulted and injured on duty. For example, in 2015-16, 270 assaults were reported by PCSOs in England and Wales, and those figures do not include the British Transport Police. It should be noted that this figure includes only assaults that officers report to their health and safety or human resource teams. In some cases, officers will choose not to report cases, as it is usually not compulsory to do so. Therefore, in reality, this figure is likely to be much higher.

We must therefore ensure that chief police officers are able to use their operational experience to make judgments as to the necessary level of defensive equipment and self-defence training that they make available to their officers and PCSOs. The only other option for chief police officers would be to withdraw their PCSOs from areas where there was a threat to their safety, potentially making disorder more likely if members of the community were unable to engage with a familiar face in uniform.

The situation is in essence no different from that of special constables, who are themselves volunteers. They have all the powers of a police officer, and a significant number are trained in the use of defensive sprays. I also point out that a small proportion of specials are trained in the use of public order tactics, so the use of force by appropriately trained police volunteers is not a new idea.

The noble Lord, Lord Paddick, has tabled Amendment 107, which would remove Clause 38 from the Bill. The change to Section 54 of the Firearms Act 1968 made by Clause 38(2) is consequential on the provisions in Clause 37 enabling designated volunteers to be given access to defensive sprays. It therefore follows that if Amendment 106 were agreed to, Clause 38(2) would be unnecessary. However, Clause 38(3) deals with a separate point, making it explicit that special constables are members of a police force for the purposes of the Firearms Act 1968 and therefore do not require a certificate or authorisation under the 1968 Act when equipped with a defensive spray. Accordingly, the amendment goes wider than I believe the noble Lord intends.

A question was asked about the most appropriate route for an individual who wishes to perform front-line policing to join the specials. I think I have already addressed that point but I add that there might be reasons why an individual who wants to volunteer to help to make his or her community safer chooses not to join the specials. These reforms will enable those who wish to help to keep their communities safe to do so even where they are unable to meet the requirements for being a special—the time commitment, for example, or they may be in an occupation where they are prevented from being a special, such as being a Border Force officer, but still have skills or experience that could be of value.

My noble friend Lord Hailsham asked about the order-making power in Clause 37(6) enabling the Home Secretary to make regulations that would allow police staff and volunteers to use a firearm. The power is primarily intended as a form of future-proofing. Should, for example, a new form of defensive spray that uses substances other than CS come on to the market—

Viscount Hailsham: I do not want to press my noble friend too hard on this as she may want to indulge in correspondence on the matter. However, the Explanatory Notes state, with reference to sub-paragraphs (b) and (c):

"This enables the issue of appropriate self-defence devices in future, once such a device has been tested and authorised".

What is there in the Bill that confines the weapon to be authorised to a self-defensive device? It is open-ended, so it includes offensive weapons.

6.30 pm

Baroness Williams of Trafford: My noble friend is right that it would theoretically be possible to use the power to enable a firearm in that way. However, the power is subject to the affirmative procedure, as he has said, so it would require the unlikely agreement of the Home Secretary, both Houses of Parliament and at least one chief constable to decide that a staff member or volunteer should be given a gun. I leave it to my noble friend, with his vast experience, to judge whether that would be likely to happen. I take the point that he was making but I want to point out the hoops that would have to be jumped through for that to be achieved.

The noble Lord, Lord Blair, talked about the order-making power for defensive weapons. There is no such thing in the Firearms Act as a "defensive weapon". It is not the nature of the weapon that is important but how it is used; a baton or a truncheon could be used offensively while a pistol could be used defensively. The consultation was clear that only police officers should use pistols or Tasers, and we think the Bill delivers that.

I shall finish with a quote from Chief Constable David Jones, the national policing lead for Citizens in Policing. He says:

> "This is a very positive development … The proposals will open up new opportunities for people to use statutory powers who would like to be part of the volunteering police family but who are unable to commit to the rigorous and intensive selection and training requirements associated with the special constabulary. The proposals will empower Chief Constables to have a much more flexible resource platform … Chief Officers are best positioned to decide how to police their local area most effectively through the empowerment of their workforce, through their understanding and knowledge of the needs of their local communities".

As I have said at previous stages of the Bill, no chief officer has yet made a decision to designate their staff with the power to carry and use a defensive spray. However, we believe that if a chief officer, using their professional judgment and experience, were to reach the view that it was necessary to issue such sprays to their PCSOs, after they have been well-trained in their use, they should be able to do so irrespective of whether those PCSOs are employees of the force or volunteers. On that basis, I invite the noble Lord, Lord Kennedy, to withdraw his amendment and perhaps to address the question that I first put to him.

Lord Kennedy of Southwark: My Lords, I thank all noble Lords who have spoken in this debate. A number of points have been raised. I say to the noble Viscount, Lord Hailsham, that my concern all along has been the placing of these weapons in the hands of people without sufficient training.

I agree very much with the points made by the noble Lord, Lord Blair. We have to be very careful about the extension of these powers. As we have heard, so far no chief constable has empowered their present PCSOs to have these powers. The power is there already for PCSOs to be designated but no one has decided to do that yet.

The Government have not made a convincing case for the further extension of these powers. As the noble Lord, Lord Paddick, said, this is a broad power that we are now taking on board. I concur with his remarks about the fantastic contribution made by volunteers to the police service.

In response to the Minister, Clause 37 grants the extension of powers to police civilian staff and police volunteers. This extension is to those other staff who are not PCSOs but are volunteers or other designated staff. I do not see why, if they have not yet been tested on designated PCSOs, they should be extended at this stage. On that basis, I wish to test the opinion of the House.

6.36 pm

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6.48 pm

Clause 38: Application of Firearms Act 1968 to the police: special constables and volunteers

Amendment 107 not moved.

Clause 46: Power to make regulations about police ranks

Amendment 108

Moved by ***Lord Paddick***

108: Clause 46, leave out Clause 46

Lord Paddick: My Lords, the amendment in my name and that of my noble friend Lady Hamwee asks that Clause 46 not stand part of the Bill. Clause 46 gives power to the Secretary of State to make regulations that specify the ranks that may be held by police officers other than chief officers of police.

We have been here before—in 1993—with the Sheehy review into police responsibilities and rewards. Among other recommendations of that review was the abolition of the ranks of chief inspector and chief superintendent. After an expensive process of offering chief inspectors early retirement, that decision was reversed, leaving the police service with a deficit of suitably qualified and experienced chief inspectors. One consequence was that overnight—or, perhaps I should say, over the weekend—I went from being a uniformed chief inspector with no experience as a detective to being a detective chief inspector in charge of CID at Notting Hill.

Another recommendation of that report was to abolish the rank of chief superintendent. Instead, in the Metropolitan Police, we had grade 1 and grade 2 superintendents, one in charge and the other a deputy. They were both called "superintendent", they both wore the same badge of rank, but one was more senior than the other. Such nonsense did not last long, and the rank of chief superintendent was subsequently reinstated. More recently, some police forces have decided significantly to reduce or not appoint officers to particular ranks, as suits the local circumstances of each force.

History has shown us, and present practice continues to demonstrate, that we do not need the Secretary of State to designate which ranks may be held by members of police forces; it is far better to allow chief constables to decide for themselves which ranks they need and which they do not. By all means let the Secretary of State or the College of Policing issue guidance to chief officers as to factors they should take into account when deciding which ranks to have. But, please, let us not make the same, very expensive—in terms of both money and loss of experience—mistake again. I beg to move.

Baroness Williams of Trafford: My Lords, policing needs a greater say in how it structures its own organisations. It was the College of Policing's leadership review that initially recommended a review of rank structure. It recognised that the rank structure as set out in the Police Act 1996 and the Police Reform and Social Responsibility Act 2011 was not serving the needs of all forces. To support this police-led reform, Clause 46 will give the college the power to recommend regulations setting out what the rank structure should be. Chief Constable Francis Habgood, who is leading the review of the rank structure, is working with the National Police Chiefs' Council to develop proposals that will work across all forces.

Having some commonality across forces is essential. The public have the right to expect the same high standards of service from every force and there needs to be clarity for the public around the exercise of significant police powers that can impact on civil liberties. Indeed, the Police and Criminal Evidence Act 1984, and other legislation, expressly requires certain decisions to be taken by an officer of a specified minimum rank, very often an inspector or superintendent. I note that the amendment of the noble Lord, Lord Paddick, on pre-charge anonymity specified that an application to a court to waive anonymity has to be made by an officer of at least the rank of inspector. Such key protections for the citizen cannot operate meaningfully without a national rank structure. Furthermore, the Government are committed to a national pay framework for police officers, where again there must be consistency across forces. A consistent rank structure also makes interforce collaboration easier, which is a critical consideration given the many complex challenges facing modern policing that require forces to work together.

This is not to say that every force must have officers of every rank. The Metropolitan Police has, for example, recently announced that it is to do away with the rank of chief inspector and it is open to other forces to follow suit. As I said in Committee, the Government make no presumption about the rank structure that may be proposed by the College of Policing in future. I believe that we should let the work of Chief Constable Francis Habgood continue and not constrain police leaders in how forces should be organised. Parliament will have the opportunity to examine the proposals for changes to the rank structure once the College of Policing has made its recommendations, as these will need to be set out in regulations which will be subject to the affirmative procedure.

I agree that decisions are best taken locally wherever possible, but there are circumstances where we need a clear national framework. This is one such case, albeit one where the reforms provided for in Clause 46 will afford chief officers a measure of local flexibility. With those words, I hope that the noble Lord feels content to withdraw his amendment.

Lord Paddick: My Lords, I thank the Minister for that explanation which, unless I have got completely the wrong end of the stick, seems to me to be completely contradictory. The noble Baroness says that there needs to be commonality across police forces, yet then gives the example of how the Metropolitan police service is not going to appoint anybody to the rank of chief inspector.

The noble Baroness says that it is necessary to have a clear national framework—we have a clear national framework in existing legislation, which specifies the ranks. So I really do not see why we need the Secretary of State to be given the power to make regulations about what ranks there should and should not be. For example, were the Secretary of State, by regulation, to say that there must be officers of the rank of chief inspector, where would that leave the Metropolitan Police if it has decided not to have any chief inspectors, as it apparently has?

[Lord Paddick]

The noble Baroness also talked about how it was important for the public for there to be commonality across all forces. If the Commissioner of the Met can decide not to appoint somebody to a rank that the Home Secretary has, in regulations, said that there should be, there will not be commonality across the country. I accept what the noble Baroness says in terms of the need for a national structure—which currently exists. What does not need to be done is for that system to be changed; what is needed is for chief constables to be given guidance as to which ranks they need, which will vary from force to force. The Metropolitan Police, in its chief officer ranks, for example, has a completely different rank structure to other forces. Yet, the Government do not seem to want to change that. Commanders do not exist anywhere other than in the Metropolitan Police and the City of London Police. Deputy assistant commissioners do not exist in any other force. So there is not commonality now and there is no move by the Government to enforce commonality across the country when it comes to chief officer ranks.

I find the Minister's explanation incomprehensible. However, at this stage, I beg leave to withdraw the amendment.

Amendment 108 withdrawn.

The Deputy Speaker (Baroness Stedman-Scott) (Con): My Lords, if Amendments 108A or 108B are agreed to, I cannot call Amendment 109 by reason of pre-emption.

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

Amendment 108A

Moved by ***Baroness Harris of Richmond***

108A: Clause 61, page 77, line 34, leave out "of 28 days" and insert "specified by a police officer of the rank of inspector or above (and not exceeding 28 days), "

Baroness Harris of Richmond (LD): My Lords, before I move my amendments, some of which are also in the name of the noble Lord, Lord Blair, I remind your Lordships of my policing interests, which are addressed in the register. Through these amendments —108A, 108B, 109, 112A, 112B, 113, 113A, 113B and 114—which all address the same issue, I seek to encourage the Government to accept the arguments put forward in Committee to extend the time limit for the duration of bail from 28 days to not exceeding 56 days.

The Police Superintendents' Association of England and Wales, through its vice-president, Chief Superintendent Paul Griffiths, has persuaded me that its professional opinion and that of the College of Policing and, without doubt, the academic work undertaken by professors Hucklesby and Zander, ought properly to be taken into account in this matter. Notwithstanding the helpful, but discouraging, letter from the Minister, for which I thank her, I believe that their concerns are rather more convincing than those of a senior civil servant in her department, however well intentioned.

7 pm

The police service is concerned with the period of up to 28 days for the first bail period. The bail pilot conducted by the College of Policing identifies that the average bail length is 53 days. The aforementioned professors, experts in this field, have both suggested a longer first bail period to avoid considerable adverse impact on a number of players within the system such as victims, suspects, legal representatives et cetera. The police service itself is united on this issue—a most unusual event in my opinion—between the employers and the staff associations. So I respectfully suggest that these are important amendments for your Lordships to consider.

The service welcomes the intention of the Bill relating to pre-charge bail to reduce the number of people subject to bail; the presumption of release without charge; and the placement of greater oversight and scrutiny. Its main concern is solely what it believes will be an adverse effect on the people I mentioned previously if the Bill imposes a 28-day review period when the evidence supports a period of up to 56 days. If the time is extended, inspectors can make an informed decision on any bail period based on the additional investigative work that may be required—for instance, service-level agreements with third-party forensic and digital providers—which is outside the control of the police service and which can regularly take more than six weeks to complete.

However, if the amendment is accepted, and the inspector believes that any further investigative work can be completed more quickly than the allotted time, they could reduce the period of time for those not requiring the 56 days. At the moment, this cannot happen and it means that suspects and their legal representatives will be needlessly attending police stations to be rebailed, this time by a superintendent. The Government say that 29% of bail cases can be resolved in 28 days—which is to be commended, and the amendment still allows that—based on the decision of the inspector. However, that still leaves 71% of bail cases which will need further rebailing beyond the 28-day period. All that can be foreseen during the initial arrest and custody case.

I realise that it is now unfashionable to take the merits of a case on experts' advice, but I urge the Government to look again at this because the pilot run by the College of Policing has indeed found the flaw in the argument as it interprets newer and more accurate information about bail duration. The vast majority of cases could be resolved within the 56 days I recommend. This would improve the efficiency of the system for victims, suspects and legal representatives, criminal justice agencies and, of course, the police themselves.

If the Government's proposals in the Bill are accepted, what will happen is that, for example, a person is arrested for an offence for which there is insufficient evidence to charge at that stage. An inspector makes a decision that it is necessary and proportionate to place the suspect on bail. The inspector must then bail the suspect for exactly 28 days. On the 28th day, the suspect will return to the police station and can then be further bailed for a maximum of three months from

the time of arrest on the authority of a superintendent. The superintendent must be satisfied that this is both necessary and proportionate.

This means that an inspector cannot make a decision to reduce the period of bail if, for example, the investigating officer requires only seven days to make further inquiries. Further, an inspector cannot make a decision to bail an individual for a period exceeding 28 days, despite knowing that forensic or digital analysis will take six weeks until evidence from third parties can be provided. So what I seek from the Government is the flexibility within these amendments.

At this point I must apologise to your Lordships for missing another reference in the Bill to 28 days, which should have been included in my later amendments. It appears on page 78, line 35. It is highly likely that I may have missed other crucial references to the same time period, which comes from not reading the Bill as thoroughly as I ought to have done. I hope that noble Lords will accept my apologies; it is a rather large Bill. I beg to move.

Lord Blair of Boughton: My Lords, I support all the amendments in this group from the noble Baroness, Lady Harris of Richmond—including the one that she did not put forward. My name is attached to some of them but they came in quite a hurry in the last 24 hours and I think I missed some of them as they went through. I am sure that neither the noble Baroness nor I will press an amendment at this stage of the evening. However, I hope that I may be able to persuade the Minister to table an amendment at Third Reading.

I accept that the use of police bail has hitherto been seriously underregulated. I further accept that it has been used far too frequently and without the supervision of more senior officers. I agree with the tenor of this set of proposals. I also accept that in a number of cases police bail has been used in a sloppy, unthinking and unfortunate way. However, it is a well-known dictum that hard cases make bad law—and what is being proposed here is simply bad law. The argument put forward by those supporting this proposal is that the number of police bail cases will reduce. I absolutely agree; they will reduce. But police bail will be used in the most difficult cases because, without it, you cannot impose conditions on the suspect you are releasing. There are times when you need to require that the defendant does not approach the alleged victim—including children. There are times when you will want to impose residential or reporting requirements or the surrender of passports. These are the cases in which police bail will be used.

A drop in the overall number of police bail cases will not reduce this number of serious cases. As the noble Baroness, Lady Harris, suggested, these serious cases are the very cases that require, for example, forensic examination or the interrogation of computer databases. This will be done by third parties outside the police service. When all that has been done, these cases will require detailed consultation with the Crown Prosecution Service, which is also outside the police service. These bodies will handle only these sorts of cases, so they will already have a heavy workload to set against limited resources.

These cases will be investigated specifically by experienced detectives, who will deal only with these kinds of cases and will themselves have a high case load, in which each case will have a police bail clock ticking. We are talking about putting a huge amount of pressure on a system without the resources that would be necessary to complete these cases in 28 days. These cases—79% of the total—just will not be completed in 28 days, which will necessitate a return to the police station for a review by a superintendent, which will be a bureaucratic and unnecessary procedure for a suspect and his or her legal advisers. Furthermore, the 28-day limit will set up false hopes for victims—who will be told about it—that their case will be resolved within 28 days. Those hopes will be dashed.

It is fair to say that the noble Baroness and I have scarcely had time to confer over this matter, although I used the same joke in my speech about the fact that some people do not like experts. However, I know from my own correspondence and from a letter I have seen from the Minister to the noble Lord, Lord Paddick, which has already been discussed, that the Minister herself knows that all the police professional bodies—the National Police Chiefs' Council, the Police Superintendents' Association and the Police Federation—have advised in the strongest terms that the provisions may simply be unworkable. So has the College of Policing, which the Minister praised for its work during the debate on the last amendment. If the College of Policing is saying that this is unworkable, why are we proceeding with it? I just suggest that, if possible, the Minister might listen to this and table a government amendment at Third Reading to raise the provision to 56 days. Even if that does not happen—that is the main thing we want to happen—the idea that the inspector's police bail can only be 28 days, not 27 or seven, is simply absurd. It is simple: what if the 28th day is Christmas Day? The Government should bring forward that amendment: in the inspector's bail there should be the same phrase of "up to 28 days", not "28 days", as that will cause major mayhem.

My first point is: why not listen to the people who really know how the system will work in serious cases? There are many serious cases where it is simply impossible to persuade the forensic companies and the people who understand the nature of digital records to provide this information in time for 28 days, and for it to have been discussed by the Crown Prosecution Service. This is bad legislation, and I urge that it be reconsidered at Third Reading.

Lord Paddick: My Lords, I support what the noble Lord, Lord Blair, and my noble friend have said on this subject. My noble friend Lady Hamwee and I have Amendment 115 in this group; I will not say that it is a compromise, but it is another option.

As my noble friend Lady Harris of Richmond said today and as I raised in Committee, academics, practitioners and the College of Policing all claim that an initial 28-day limit on police bail is impractical, and a government impact assessment, which allegedly takes into account the academic research, says that a 28-day initial limit is workable. I say "allegedly" because, as the noble Lord, Lord Blair, just said, the academic research and the impact assessment come to different

[LORD PADDICK]
conclusions about the workability of an initial 28-day limit. Our amendment effectively suggests that the Government give the new 28-day limit a trial period of two years and then allow Her Majesty's Inspectorate of Constabulary to assess whether the new provision is working effectively or not; that is, whether the academics, the practitioners and the College of Policing are right, or the Home Office civil servants are right. Of course, we support much stricter limits on police bail, but they must not impede police effectiveness.

Lord Blair of Boughton: I point out that Amendment 115 would work if it was 56 days as well. In other words, you could have a two-year experiment with 56 days as well as a two-year experiment with 28 days.

Lord Paddick: Of course.

Lord Bach: My Lords, I declare my interest as the police and crime commissioner for Leicester, Leicestershire and Rutland and say in passing what a pleasure it was to host the Minister in Leicestershire the other day. I know that this matter was briefly raised with her, but neither I nor the chief constable talked about it for long. It was a great pleasure to have her there, and her visit went down very well.

There is a need to reform the present system of pre-charge bail. We all know of cases—of course, none in Leicestershire that I know of—where individuals, to put it mildly, have been carelessly treated by the present system. I personally know of one recent case where the delay has been truly shocking. However, the more the principle is right, the more vital it is that the practical way of putting it into effect is correct too. It is important that the change should work, without causing serious difficulties—the kind of difficulties that both the noble Baroness, Lady Harris, and the noble Lord, Lord Blair, mentioned—and unnecessary disruption for the police.

7.15 pm

Certainly in Leicestershire, and I am sure that this is true around the country, there are far fewer senior officers now—that is, in the role of superintendent and above—than there were a few years ago. Of course, the amount of work they have to do is no less; it may well be more. I respectfully ask whether the Government have thought through how this will work in practice. That is the issue. My fear is that even though there is quite an easy way in which this important reform could be a success and a feather in the cap of the Government, who have brought it forward, in practice it will cause a lot of problems, and we will not have to wait two years to find that out. I cannot guess whether those issues will become public, but the reality is that it would be unnecessary increased pressure on police forces, taking senior officers' time away from their vital work.

I end by repeating that I support absolutely the amendment that the noble Baroness, Lady Harris, moved so well. I cannot speak for the College of Policing or for other forces, but I can speak for the force for which I have the privilege of being police and crime commissioner and which I work alongside. Its view is exactly as has been described: although reform is necessary, the way it will be put into practice if it stays as it is in the Bill is unfortunate and will cause a lot of extra and unnecessary work. I therefore support the amendment.

Lord Harris of Haringey: My Lords, we can all understand what the Government are trying to achieve with this set of clauses. There have been a number of instances where police bail has been erroneously applied, extended far too long, and the results have been unfortunate for the individuals concerned. The question is whether the solution that the Government have come forward with will work. Every other speech so far has highlighted some of the problems that would arise. The Government are also in danger of contradicting their own objectives in other areas. We heard a lot from the previous Home Secretary, who is now in a more exalted position, about the work that had been done to reduce the bureaucracy within the police force. However, we can say now with certainty that this measure will deliver more bureaucracy and waste more time.

I understand that at any one time there are about 80,000 cases where people are on police bail. Because of problems within the forensic services and problems with the CPS, most of those will probably take longer than 28 days to resolve. The Government are saying, "We know there are these problems over here"—I will not suggest that the problems in the forensic service are anything to do with the decisions of the Government in the last Parliament, but they may well have had an impact. The issues around the Crown Prosecution Service and its ability to review and make decisions on cases are also well known. Therefore a significant proportion of those 80,000 cases will have to go for review.

The Government have two choices at this point. They can say, "Ah, yes. Those cases which come up for review will not be time-consuming". If that is the case and it is a box-ticking exercise—"Superintendent, please sign this form" and that is it—it is of no value whatever. The reality has to be that if you put a break in the system at a certain point, it has to be a real break that takes a proper amount of time. A submission has to be prepared for the superintendent; the superintendent must have time to consider it; and, of course, if one is brought in to answer police bail and have it renewed, that also involves time for the witnesses concerned.

Either this provision is a complete red herring and will not do anything—in which case one has to ask why we are doing it, because it will not solve the problem—or it will impose a significant burden. I would have thought that a possible sensible solution would be for the Government to bring forward an amendment not necessarily to change the system but so that after two years there will be a review of how well it is working, and for the intervening two years to be spent trying to resolve the problem of the length of time it takes to get forensic evidence and the length of time it takes for the Crown Prosecution Service to do its job.

I have some examples of cases that have necessarily taken a significant amount of time. I know I am sometimes criticised for being too London-centric, so these are from Cumbria. One example concerns an individual who was arrested for stalking—a serious offence of harassment. This person was arrested on

15 August and bailed until 24 October but then had to be rebailed to 18 November, which, as noble Lords will notice, is a period substantially longer than the 28 days required in the Bill. That was because the individual's mobile phone and computer had to be examined by the high-tech crime unit. The phone was analysed in that period but the computer sat in a queue because there were even more egregious and serious cases to be dealt with.

That is not uncommon. Indeed, I have three or four more examples from Cumbria Constabulary alone and I am sure that, if I sought them, I could obtain plenty of others. The number of such delays will increase the more there is a reliance on evidence that requires the analysis of a mobile phone or a computer because there are simply not enough resources available to the police to deal with the analysis. There is another example where the bail lasted for 55 days while awaiting the forensic analysis of a breath test. There may be some internal procedural issues relating to when the laboratories deal with samples but, again, it is a practical issue not in the control of the police. Surely, if we are to resolve the general difficulty, we have to address why these delays are occurring—and occurring outside the hands of the police.

I hope the Government will take this issue away and look at it again. I think we all accept that the worst cases need to be resolved and that things need to improve to make sure that people do not hang around on police bail unnecessarily for lengthy periods. At the same time, imposing an arbitrary limit or process which will either be a complete mirage or fiction, or where a substantial input of resources will be required for something that cannot be achieved because the resources are not available in the forensic services or the CPS, is simply ridiculous.

Lord Elystan-Morgan (CB): My Lords, I wholeheartedly support the amendment. It seems to me that the arguments that have been adduced are utterly overwhelming. The current situation is restrictive, and unnecessarily so. I was greatly impressed by what one might call the testimony of my noble friend Lord Blair, who speaks with an abundance of authority and experience on this matter. It is a nonsense to cling to the present restrictions, which are wholly unjustified. Everything that I saw in the 25 or so years that I served as a judge and a recorder supports that.

Lord Berkeley of Knighton (CB): My Lords, listening to this debate, I found myself wondering, like the noble Lord, Lord Harris, exactly what the Government were hoping to achieve. To be generous, I imagine that they were trying to assist with the rights of the defendant as well as help the police. I can understand if that was the aim but, from what we have heard, neither of those objectives will be secured in this way. Therefore, I hope that the noble Baroness will be able to give a positive reply and that perhaps the Government will put forward their own amendments, as my noble friend Lord Blair suggested.

Lord Kennedy of Southwark: My Lords, the noble Baroness, Lady Harris of Richmond, in moving Amendment 108A, has made a compelling case. No one wants anybody to be on pre-charge bail any longer than is absolutely necessary. Her amendments seek to take account of the realities on the ground in local police forces, and the Government should accept them and the flexibility that they offer to police forces. She gave detailed figures to support her argument, and my noble friends Lord Bach and Lord Harris of Haringey spoke about the realities on the ground and the risk of a significant burden on police forces.

We should of course set the number of days that an individual can be on pre-charge bail before the matter is reconsidered at a maximum that is necessary, reasonable and proportionate. There should not be a target date, which in the majority of cases will not be met. The noble Baroness suggests in her Amendment 109 that 56 rather than 28 days is a more realistic target to work towards. There appears to be little to be gained from bringing people back only to be rebailed because the inquiries have not been completed—often, as we heard from the noble Lord, Lord Blair, and my noble friend Lord Harris, because other agencies have not completed their work on behalf of the police within 28 days.

Amendment 115, in the name of the noble Lord, Lord Paddick, would place a duty on the Secretary of State to commission, two years after the passing of this Bill, a report on the impact of the 28 days. That strikes me as a very wise thing to do and I hope that the Government will accept it. We want to ensure that Parliament and Government are informed with proper data before coming to a decision.

Amendment 116 in this group, which has not yet been referred to, is in the name of the noble Baroness, Lady Williams of Trafford. It responds to the case made by the noble Lord, Lord Marlesford, who is not in his place at the moment. The Government listened to that case and I welcome the fact that they have put forward an amendment today.

Baroness Williams of Trafford: My Lords, I hope that what I say will assuage some of the concerns expressed by noble Lords—through Amendments 109, 113 and 114—about the proposed 28-day period of bail being too short.

In Committee, the noble Lord, Lord Paddick, pointed to research conducted by Professor Hucklesby and Professor Zander to justify extending the initial period of pre-charge bail from 28 to 56 days. I point out from the outset that, as part of our reforms, there is a presumption that a suspect who has been arrested will be released without bail—that is, there is a presumption against bail. As the noble Lord, Lord Blair, rightly said, even though he does not agree with the Government's position, bail has been overused and not used correctly. Over time, there has been a sloppy use of bail, if I may paraphrase what he said. Therefore, in a sense, we start from that position.

In reaching our view, we took full account of the research findings referred to by the noble Lord, Lord Paddick. As I said in Committee, the 28-day period set out in the Bill was not arrived at by chance; we carefully considered the initial period of bail, taking into account the research in drawing up our proposals. We acknowledge that the research concludes that many cases will not be dealt with within 28 days. That is why

[Baroness Williams of Trafford]
the system allows for extensions in such cases, but only where such extensions can be justified. We consider that the involvement of superintendents at this stage would enable them to review the cases under investigation within their force and to chase any cases where required. I stress again that a central feature of these reforms is that there is a presumption that a suspect who has been arrested will be released without bail—where there is no bail, no 28-day or any other limit is in operation.

7.30 pm

I should also say that Professor Hucklesby submitted her research to the Home Office in response to the consultation in 2014-15, and both she and Professor Zander have presented their findings to the PACE strategy board. That group is chaired by a senior official from the Home Office's Policing Directorate, with members from across the criminal justice system and the statutory PACE consultees, including bodies such as the Law Society and Liberty. I am glad to see the noble Baroness, Lady Chakrabarti, a civil libertarian, in her seat.

The noble Baroness, Lady Harris of Richmond, has refined the amendments that she tabled in Committee to enable the setting of time limits up to 28 or 56 days, rather than a fixed period. As will be apparent from government Amendments 110 to 112, we agree that the police should have the flexibility to set an earlier bail return where a charging decision is likely. As the noble Lord, Lord Blair, pointed out, there could be ridiculous consequences of setting a fixed 28-day bail period. The Bill as drafted provides a fixed 28-day bail period, which is then extendable by a superintendent to three months in total, and then further extendable by the courts in further periods of three months.

Following the debate in Committee and our ongoing discussions with the national policing lead, we are aware of the issue of individuals who are currently bailed for only a few days to await the outcome of limited inquiries. Amendments 110 to 112 would confer flexibility on the police in this scenario so that they can set a bail period within the statutory maximum. The police have indicated to us that such a change would have twin benefits, in dealing with such cases more quickly and in offsetting some of the resource implications of these provisions by not needing to bring bail dates forward. These amendments, therefore, deliver the same outcome to that sought by the noble Baroness, Lady Harris, in Amendments 108A, 112A and 113A.

However, I stress to your Lordships that the Government remain firmly of the view that 28 days is the correct initial bail period, with the discretion set out in Amendments 110 to 112 to set an earlier date where appropriate. As I have said before, we accept that the new system will cause additional work for the inspecting and superintending ranks compared to the current position. However, the Government do not look at that extra work as unnecessary administrative work. Historically, the lack of senior, intrusive supervision is one reason why people have been on bail for unnecessary periods, which itself causes additional work for the police to process. The reforms in this part of the Bill will ensure that pre-charge bail is used appropriately and that investigations are progressed diligently and swiftly. I hope I have provided some reassurance, addressed some of the rightful concerns that noble Lords have raised and shown that the 28-day initial bail period is based on solid evidence.

On HMIC inspections, Amendment 115 seeks to address this issue from another direction. The noble Lord, Lord Paddick, appears to accept the initial 28-day limit on pre-charge bail as a starting point, but argues for a review after two years to be conducted by HMIC. This is a welcome change of approach from the noble Lord, and of course we should keep these provisions under review. However, I argue that we do not need to write it on to the face of the Bill, and I will tell the noble Lord why.

First, as I set out in my letter of 22 November to the noble Lord, Lord Paddick, I am happy to put on the record that we have agreed with HMIC that, as part of its rolling joint programme with the Inspectorate of Prisons to inspect all forces' custody facilities and processes, it will look at the way that bail reforms work in practice. As they do in other areas, such as the safety of police cells, these inspections will identify any common issues that need addressing, either by forces or by the Government. These inspections will begin as soon as the reforms come into force, as part of HMIC's recent review of the custody inspection process. Therefore, they have the potential to identify any issues well before the proposed thematic review would begin, two years after implementation.

The second reason why the amendment is unnecessary is that, as the House will be aware, the Government remain committed to the principle of post-legislative scrutiny, where the relevant government department—in this case the Home Office—submits a memorandum on the operation of new legislation to the relevant Select Committee of the House of Commons. That Select Committee will then decide whether to conduct an inquiry. Given the interest in bail shown by the Home Affairs Select Committee over the last two years, together with some of the other subject matter in this Bill, I would be very surprised if the committee did not decide to conduct a review of this legislation. Normally this would be five years after Royal Assent, but it is entirely in the hands of the Home Affairs Select Committee to bring this forward should it wish to do so.

I can also say to the House that we will continue to work closely with the relevant national policing lead so that we can keep the operation of the new arrangements under ongoing review. Should the changes be more burdensome than we expect, we will of course consider what changes, if any, are needed. However, for now, I say to noble Lords that the approach taken in the Bill is well founded and we should proceed with these important reforms on that basis.

Lord Paddick: Before the Minister sits down—and with the leave of the House, as one would normally intervene to seek clarification from the Minister—I wish to correct what she said about people on these Benches accepting the 28-day limit. That is not the case.

Baroness Williams of Trafford: Perhaps I worded it clumsily, but what I was trying to say is that it would be a sunset provision and reviewed after two years.

Lord Harris of Haringey: Before the Minister sits down, will she address the question of whether or not, as part of their response to this, the Government will take some action to support the improvement of forensic services and the speed at which forensic cases are dealt with? What steps are the Government going to take to improve the resources available to the CPS so that it might deal with cases more quickly? That is a major reason why the 28-day period would be under pressure.

Baroness Williams of Trafford: The noble Lord makes a very good point, and there are in fact other reasons outside the police's control why 28 days might prove difficult. It is for that reason that we will not only keep it under review but look at any blockages to the 28 days being fulfilled that are outside the police's control.

Baroness Harris of Richmond: My Lords, I thank the Minister for her response and all noble Lords who spoke in support of the amendments. I guarantee to the Government that the exercise of this will be far more burdensome than they expect and that we will come back to this. These ideas will haunt the Government, because—

Baroness Williams of Trafford: My Lords, may I be completely rude and intervene on the noble Baroness? I completely forgot to speak to government Amendment 116. Will she indulge me, while I outline that amendment very briefly?

Amendment 116 responds to a point raised by my noble friend Lord Marlesford in Committee, and to which the noble Lord, Lord Kennedy, alluded, when he argued that written notification should be given in all cases where the police decide to take no further action. Amendment 116 complements Clauses 65 and 66, ensuring that notification of a decision to take no further action is always given, whatever the circumstances of a case. I commend the government amendment to the House and apologise for interrupting the noble Baroness.

Baroness Harris of Richmond: My Lords, it is quite all right.

I want to take up the point made by the noble Lord, Lord Blair. Have the Government taken into account what will happen if the 28-day period falls over Diwali, Christmas Day, Easter Sunday, the Sabbath, Ramadan, Eid or other religious festivals? This will cause real concern as there is no flexibility to respect these dates.

What about medical appointments, pre-arranged holidays, job interviews, caring responsibilities, academic examinations, funerals? The list is endless. There may be a case for a breach of human rights; certainly it could cause a corrosive relationship between the police and the public because of the length of time and the lack of flexibility. I hope that the Government will look again very closely at what many noble Lords have been proposing. At this stage there does not seem much point in dividing the House, so I beg leave to withdraw the amendment.

Amendment 108A withdrawn.

Amendments 108B and 109 not moved.

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

Amendments 110 to 112

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

110: Clause 62, page 78, line 13, after "(3)" insert "or (3A)"

111: Clause 62, page 78, line 21, at end insert—

"(3A) This subsection applies where the custody officer believes that a decision as to whether to charge the person with the relevant offence would be made before the end of the applicable bail period in relation to the person."

112: Clause 62, page 78, line 22, after "(3)" insert "or (3A)"

Amendments 110 to 112 agreed.

Amendments 112A to 115 not moved.

Amendment 116

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

116: After Clause 75, insert the following new Clause—

"PACE: duty to notify person interviewed that not to be prosecuted

After section 60A of the Police and Criminal Evidence Act 1984 insert—

"60B Notification of decision not to prosecute person interviewed

(1) This section applies where—

(a) a person suspected of the commission of a criminal offence is interviewed by a police officer but is not arrested for the offence, and

(b) the police officer in charge of investigating the offence determines that—

(i) there is not sufficient evidence to charge the person with an offence, or

(ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.

(2) A police officer must give the person notice in writing that the person is not to be prosecuted.

(3) Subsection (2) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.

(4) In this section "caution" includes—

(a) a conditional caution within the meaning of Part 3 of the Criminal Justice Act 2003;

(b) a youth conditional caution within the meaning of Chapter 1 of Part 4 of the Crime and Disorder Act 1998;

(c) a youth caution under section 66ZA of that Act.""

Amendment 116 agreed.

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

Amendment 117

Moved by ***Baroness Walmsley***

117: Clause 79, page 105, leave out lines 2 to 31 and insert—

"136A Prohibition on using police stations as places of safety

(1) A person may not, in the exercise of a power to which this section applies, be removed to, kept at or taken to a police station as a place of safety.

(2) The powers to which this section applies are—

(a) the power to remove a person to a place of safety under a warrant issued under section 135(1);

(b) the power to take a person to a place of safety under section 135(3A);

(c) the power to remove a person to, or to keep a person at, a place of safety under section 136(1);

(d) the power to take a person to a place of safety under section 136(3).

(3) In this section "person" means a person of any age.

(4) The Secretary of State may by regulations made by statutory instrument appoint a date on which this section comes into force.

(5) 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: My Lords, we now move to issues relating to the interaction between the police and people with mental health problems. This amendment would ban the use of police cells for adults detained under Sections 135 and 136 of the Mental Health Act 1983 in the same way as this Bill now bans it for children under 18.

I am very encouraged by the 53% reduction in the use of police cells as places of safety during 2015-16. The police, mental health services, local authorities and voluntary sector partners deserve our congratulations on that. However, that still left 2,100 people taken to police cells—a situation that will have led inevitably to exacerbation of their mental health crisis. I listened very carefully to what the Minister said in response to a similar amendment that we discussed in Committee. I thank the Minister for the meeting that we had at the Home Office to discuss it. I am encouraged by the clearly expressed intention of the Government eventually to reduce the use of police cells to zero, and I hope that the Minister will feel able to accept this modified amendment, which takes account of her concerns.

We got rid of discriminatory mental health legislation only a few years ago, and we are on a journey towards parity of esteem between physical and mental health. The Mental Health Act 1983 is now over 30 years old, and we need further to update how we treat people with mental health problems and enshrine that in statute. At least two police forces have now managed to reach the desirable target of zero use, which proves that use of police cells can be avoided even in exceptional circumstances, so we are not asking for something that has been shown to be impossible; we are asking for something that has been shown to be possible. But we appreciate that it requires the provision of more health-based places of safety, more training, better regulation, better partnership working and more diversionary strategies such as street triage.

That is why subsection (4) of the new clause, which my amendment would insert into the Bill, makes provision for delayed implementation until such time as the Secretary of State is convinced that everything is in place to ensure that there is no longer any need to take people in mental health crisis to a police cell for their assessment to be done. I appreciate that this was not strictly necessary, as implementation is dealt with elsewhere in the Bill, but I included it to make clear what I am asking for. I suggest that an implementation date of April 2019 is quite achievable.

When you are in a crisis, you need compassion and understanding and, with the best will in the world, the police are not the people to give that. That is why the police themselves are keen that the objective of my amendment is achieved as soon as possible. A mental health crisis is a mental health car crash. Nobody who broke their leg in a road accident would expect to be taken to a police station for triage; they would be taken to a health-based place of safety for their needs to be assessed and treated—in other words, an A&E department in hospital. We cannot say that we have achieved parity of esteem between physical and mental health if we continue to treat mental health emergencies in a different way from the way we treat physical emergencies. People detained in this way are not criminals and yet they are treated as such and feel distressed and confused, making it even more difficult to help them get well.

7.45 pm

One example is Declan. At the age of 21, he had depression, anxiety and suicidal thoughts. One night, after being out with friends, he decided to walk home, experienced a dissociative episode and found himself alone on a motorway bridge. Police arrived and took him to a cell after finding several crisis suites full. Declan said:

"My laces were removed ... and my possessions were taken off me, including my phone … it made me feel alone, isolated, and hopeless. I hadn't done anything wrong – and didn't see why I couldn't keep my things … No one knew I was there. I felt like a criminal".

This should not happen—ever.

I am grateful to the noble Baroness, Lady Chisholm of Owlpen, for her letter of 25 November following our meeting at the Home Office. She accepted that the police station should be used only in exceptional circumstances, but also accepted that in some areas this happens too frequently and for reasons not consistent with the term "exceptional". She therefore described as promised the scope of the new regulations that are being developed to define those specific circumstances. She said that the regulations would cover a series of considerations which an officer must take into account in each case when making a judgment as to whether to take the person to a police cell. The regulations will also make clear that certain situations do not justify use of a police station and also how a person should be cared for at a police station.

These are all very welcome and in the short term will certainly help further to reduce the use of police cells. This is all good, but if I were a practitioner, manager or commissioner, the reality is that in the current climate if someone tells me to do X except in exceptional circumstances, this would not be on the top of my agenda. But if it is included in the Bill, even with delayed implementation, it will move to the top of my agenda to sort out because I will know that, before long, I will not be able to do it at all.

I am grateful to the noble Lord, Lord Patel of Bradford, who is unable to be in his place today, for his support for this amendment based on his practical experience visiting almost 20 police custody suites and talking to police and other staff there. It is their experiences and feedback that have led him to the conclusion that no one, regardless of their age, should be taken to a police cell as a place of safety. In the notes that he shared with me, the noble Lord quotes the Royal College of Psychiatrists, HM Inspectorate of Constabulary, HM Inspectorate of Prisons, the Care Quality Commission and Healthcare Inspectorate Wales all saying the same thing—that police cells should never be used. They do not fulfil the requirement of the 1983 Act that people should be taken to a place of safety. A police cell is not a place of safety if the mental health of the person is going to deteriorate there, which it is. NICE guidance also states that:

"If a service user with a mental health problem becomes aggressive or violent, do not exclude them from the emergency department. Manage the violence or aggression … do not use seclusion. Regard the situation as a psychiatric emergency".

Putting someone in a cell cannot be regarded as anything but exclusion and is therefore contrary to NICE guidance.

I accept that there is a cost to this. It has been calculated that 33 additional beds are needed across England and Wales to achieve the zero target. This would cost a total of £96.4 million and would save the police £16 million over 10 years, and who knows how much in the way of on-costs for the NHS. But it is not just more beds that are required. The interviews conducted by the noble Lord, Lord Patel, brought out a number of problems in addition to the shortage of beds. Other reasons given were insufficient staff at the health-based places of safety, the person being turned away because they had consumed alcohol, and the person displaying violence or having a history of violent behaviour. Sometimes people stayed in a police cell longer than was desirable because of difficulties in accessing approved mental health professionals to make the assessment, particularly out of hours and at the weekend, which might have a great deal to do with cuts to local authority funding. All of these things are linked. However, it is not rocket science to put them right and to put them right within a very few years.

Does the Minister think it is beyond the capability of various government departments to put them right by April 2019? Surely if it is possible in Merseyside and Hertfordshire, it is possible anywhere. I beg to move.

Baroness Howe of Idlicote (CB): My Lords, I would like to support Amendment 117, moved by the noble Baroness, Lady Walmsley, which would eradicate the practice of police cells being used as a place for safety for people in crisis. It is an important amendment, both because people who are experiencing a mental health crisis and being detained under the Mental Health Act have committed no crime and because, for those in such a distressed state, being linked into health support is critical.

People who are picked up by the police under the Mental Health Act are detained because of a real risk of harm to themselves or others. Regardless of their age, no one should be made to feel like a criminal simply for being unwell; these people are in need of help and support. They are detained in order that a mental health assessment can be made and for any further treatment and care to be put in place. When you are in a mental health crisis, you are likely to feel overwhelmed and extremely distressed. Your behaviour may seem aggressive and threatening to others, but nevertheless you still need support and compassion. In fact, the people who display the most challenging behaviour are often the most vulnerable—those most in need of health support.

Health-based places of safety need to be equipped to manage someone's challenging behaviour, and areas such as Merseyside and Hertfordshire are able to do this, where police cells have not been used at all for the past year. This amendment acknowledges that achieving a total ban on the use of police cells in some areas is not yet possible, so it gives the Secretary of State the power to determine a date for implementation. This is important because it sends the message loud and clear that all parties agree that people who are extremely unwell should never be taken to a cell. The amendment will be a lever to ensure that health-based places of safety are invested in and that staff are trained to manage challenging behaviour.

Police cells are clearly never appropriate for people in crisis, and we need to challenge the assumption that sometimes they are. We have already come some way in improving the lives of those with mental health problems, so ending the outdated practice of taking someone in crisis to a police cell is an obvious, achievable and important next step. I hope that the Minister can accept the excellent amendment in the name of the noble Baroness, Lady Walmsley.

Baroness Meacher (CB): My Lords, first I must apologise that I was not involved in the earlier stages of this Bill due to a family health problem. However, I want to speak briefly but very strongly in support of Amendment 117, moved by the noble Baroness, Lady Walmsley.

This House was responsible for ensuring that parity of esteem between mental and physical illness is enshrined in law—a point already referred to by the noble Baroness. This was rightly heralded as an important advance which, over time, should transform attitudes to mental illness and change the treatment of those suffering from mental health problems. Is it conceivable that we would send a patient with a severe physical illness, perhaps cancer or a heart problem, to a police cell because no suitable bed was available locally? Of course not. We would all regard that as utterly inhuman.

But to send a patient in a mental health crisis to a police cell is even more inhuman than doing that to someone who is capable of understanding what is

[Baroness Meacher]
going on. The patient will probably be frightened enough by their own thoughts and the voices going on in their head. They may not understand what is happening to them. Handcuffs and strange people in uniform will be even more terrifying to such patients than they would be to a physically ill person. I do not know the figures, but I do know about the extreme distress that these situations generate and I have no doubt that a good proportion of those who survive—not everyone does—will end up with post-traumatic stress disorder.

I draw on my experience of mental health services over many years and my supervision of investigations into deaths in custody during my years with the Police Complaints Authority. I want to refer to a couple of cases from that time that come to mind in the context of this amendment. A young man of about 20 years old was detained under Section 136 with no mental health professional available to him. The plan was to take him to a police cell. The police had been warned that the young man could be violent, so a firearms officer was made available, which is perfectly reasonable. The patient had delusions that the people around him were all dead and that he was the only one who was alive. He said to the police officers, "You are dead", who took this comment to be a threat to life. The firearms officer took out his pistol and shot the young man, who died.

The other case I want to refer to involved a very unwell man taken, again I am pretty sure under Section 136, to a police station, where he was restrained on the floor. We do not know what terrible thoughts the patient had in his mind, but the more he was restrained the more he struggled to get free, and understandably the more force was used by the officers to control him. The patient died on that floor. These patients would probably have recovered reasonably well over a period of a few weeks and might have lived full lives for many decades. We can imagine the feelings of their relatives.

The police officers suffered terribly during the lengthy investigations. I have to confess that those investigations were always lengthy and I am sure that they still are. They did not know whether they would be found guilty of murder or manslaughter. That is an appalling thing to happen to a young man who had gone to work that day assuming that he would do his duty as always, but without the mental health skills he needed to deal with the challenges confronting him. This situation is not fair either to patients or to police officers.

Along with other Peers, I very much welcome the ban in this Bill on the use of police cells for those aged under 18 and the plan to reduce their use for adults. Without Amendment 117, my fear is that it could be many years before the aspiration to end the use of police cells as so-called places of safety is actually achieved. The noble Baroness, Lady Walmsley, has been sensitive to the resource pressures, which I certainly understand, in proposing that April 2019 should be the date by which this aspiration must be achieved. This is a modest amendment that simply reinforces the direction of travel of the Government, which I applaud. I hope that the Minister will give it the serious consideration it deserves and bring forward an amendment at Third Reading.

8 pm

Lord Rosser: My Lords, I do not wish to repeat all that has been said, but I would like to raise one or two points. The first refers to the statistics on the use of Section 136 of the Mental Health Act in 2015 and 2016 to which the noble Baroness, Lady Walmsley, has already referred. They show some surprising discrepancies between police force areas on Section 136 cases. For example, Hertfordshire and Merseyside are the two police force areas in which there has been zero use of police cells under Section 136. However, in Lincolnshire, police cells were used under the Section 136 powers on 173 occasions during 2015-16, in the context of a total usage under Section 136 on just 368 occasions. That is a staggeringly high percentage. Equally, one could go through the whole list and point to considerable discrepancies. Surprisingly, although one might have thought that the figure for the Metropolitan Police would be pretty high, the number of occasions in 2015-16 on which people were placed in police cells under the powers in Section 136 was apparently 17, in the context of a total figure of 3,693.

I cannot understand why we have these discrepancies, and I would appreciate it if the Minister commented on that. Is it really about suitable places being available in these areas, or a lack of co-ordination or willpower, or a lack of priority being given to avoiding the need to use police cells? Some response from the Government on that point would be extremely helpful, and extremely interesting.

I want to refer to the letter of 25 November 2016 that the noble Baroness, Lady Chisholm of Owlpen, sent to the noble Baroness, Lady Walmsley, to which the latter has already referred. It would be helpful—to me, at least—to have some clarification of what parts of the letter mean. It states:

> "It is … our intention that the regulations make clear that certain situations, in and of themselves, do not justify use of a police station, for example, because there is no health based place of safety available at that time. Our expectation, which will be reinforced in the guidance that will support the regulations, is that there should be local plans in place to deal with this and other contingencies".

What does the reference to,

"local plans in place to deal with this and other contingencies",

mean? Does that mean that places have to be provided, or something else? The letter continues:

> "A police station will only be used as a place of safety if it is considered to be the best and safest way to manage a particular individual in the interests of all concerned".

But what happens if no health-based place of safety is available at that time? Does the sentence I quoted mean that in that situation, if no such place of safety is available, a police cell can be used? Other references in the letter suggest that that would not be the case, and that, in effect, a police cell could be used only when the individual was considered to be a danger to themselves or to others. Again, it would be very helpful to have some clarification.

I may not have heard the noble Baroness, Lady Walmsley, properly—I am afraid I am all too good at that—but I thought, and I may be doing her a disservice, that she said that the Government had indicated that they intend to reduce to zero the use of police cells.

If so, may I have confirmation of that, because I do not think the letter of 25 November 2016 says that? Of course, the statement:

"A police station will only be used as a place of safety if it is considered to be the best and safest way to manage a particular individual in the interests of all concerned",

still leaves open the possibility of using a police cell, and would not be consistent with the Government's intention, if it is their intention, in the long term—one hopes in rather less than the long term—to reduce to zero the use of police cells.

I would like to raise two or three other points related to treating people in a situation of mental health crisis. Clause 80 would reduce the permitted period of detention in any place of safety—not just police cells—from 72 hours to 24 hours. Of course, one could argue that 24 hours is still quite a lengthy period for individuals to be detained prior to an assessment of their mental health, wherever they are detained. The proposals do provide for a further 12-hour extension of that detention period. As has already been pointed out, individuals with urgent mental health needs have just as much right to acute and emergency health care as anyone else. If any other forms of emergency health care were provided within a window of only 24 to 36 hours, it would probably provoke some highly adverse comment. Did the Government consider bringing the time limit down further, to 12 hours, say, with the possibility of extending detention by up to a further 12 hours on the authority of, for example, the registered medical practitioner responsible for the person in question's examination under the Mental Health Act?

I want also to refer to the position—or lack of it—of independent mental health advocates. As I understand it, subject to other powers in the Mental Health Act, they are available to provide independent advocacy and advice to individuals such as those liable to psychiatric detention, or those who have received community treatment orders. Among other important functions, independent mental health advocates help individuals to obtain information about their detention or treatment, and support them in understanding what is happening to them. But as I understand it, individuals detained under Sections 135 and 136 of the Mental Health Act do not have a right to an independent mental health advocate. Surely, detention in any place of safety is a feature of the mental health regime, and one in which independent advocacy, advice and assistance are desirable, if not required. Why is it that individuals convicted of no crime but detained for their own safety can have no access to the independent advocacy and assistance to which they would be entitled during other mental health interventions but not under Sections 135 and 136? A related point is that the PACE codes of practice lay down a requirement to have access to an appropriate adult, but on too many occasions, this does not happen as the code of practice indicates it should.

Finally, for the purposes of the police and criminal evidence arrangements, a police intervention under Sections 135 and 136 is treated as an arrest, and any police involvement in taking a person to a place of safety generates information held by police as to that person's mental health history, including the recording of a police intervention by way of Sections 135 or 136. The Disclosure and Barring Service provides a system whereby an individual's criminal record may be checked and, where relevant, disclosed to prospective employers. Ordinary DBS checks result in cautions and convictions being revealed, where permitted, but under enhanced DBS checks, other information held by the police as to their involvement with that individual may be disclosed as well, where the officer responsible reasonably believes it to be relevant and that it ought to be disclosed. Police will hold information as to any arrest they conduct and any involvement they have in taking a person to a place of safety under Section 135 or Section 136. The mere fact of police intervention in response to a person's mental health crisis is therefore liable to be disclosed. It could therefore have quite significant adverse consequences when it comes to seeking employment.

I understand that since August last year new guidelines have been enforced, requiring constables to disclose as part of such checks only records they reasonably believe to be relevant. There is guidance given relating to Section 135 that indicates that the fact of detention under Sections 135(1) and 136 of the Mental Health Act is unlikely in itself to be sufficient to justify disclosure. Sections 135 and 136 provide the police with powers to remove a person to a place of safety when the person is believed to be suffering from a mental disorder and in need of care or control. Such a detention under the Mental Health Act does not constitute a criminal investigation and should therefore be treated with great caution when considering relevance for disclosure. But, of course, police officers are not mental health professionals. There is nothing to require them to seek the advice of such professionals before making a decision as to the relevance of a person's mental health.

There is surely a real danger that the police will continue to disclose mental health records. Where a person is processed through the criminal justice system, information relevant to criminal matters may be disclosed as part of an enhanced EBS check. However, the disclosure of an individual's medical history is an entirely different matter. Will the Government impose a ban on the disclosure of Sections 135 and 136 detentions under criminal records checks? I hope the response to the points I have raised, if not available tonight, might be available subsequently.

Baroness Chisholm of Owlpen: My Lords, I am grateful to the noble Baroness, Lady Walmsley, for giving your Lordships' House a further opportunity to debate the continued use of police stations as places of safety for adults. I think we all agree on the importance of taking someone experiencing a mental health crisis to a place of safety that will best meet their particular needs. We can also agree that, almost always, that should not be a police station, irrespective of the person's age. But where we have not previously quite agreed is on removing outright the option of using a police station for an adult in those very rare cases where it is the judgment of the police officer on the scene that a police station is the safest place—at least initially—not just for the patient but for the public, health professionals or anyone else at risk from the extreme behaviour of the individual.

[Baroness Chisholm of Owlpen]

Let me make it plain that while the Government's position is that it would be wrong and potentially very dangerous to ban outright the use of police stations as places of safety for adults, we have no intention of leaving police officers without support in making the judgment that a particular situation is of such severity that this would be the correct response. The regulation-making powers in Clause 79 will be used to set out factors relevant to the decision on whether circumstances merit the use of a police station. We envisage that these will cover a range of issues, such as how dangerous an individual's behaviour is and how serious a risk of harm to themselves or others they represent. We will also look to include provisions to give the officer the opportunity to consult with mental health professionals if it is safe and practicable to do so.

Equally importantly, if the decision is made to use a police station, we must make sure that the individual receives all the appropriate healthcare and treatment they need while they are there. This, too, will be covered in the planned regulations. The regulations will further provide for a regular review of the individual's condition so that they can be moved to a more appropriate place of safety if the circumstances change—for example, if their behaviour has moderated and the move is in their best interest and can be achieved without delaying the mental health assessment.

I expect that, once these provisions come into force, we will see a further substantial reduction in the use of police stations as a place of safety for adults. But it would be wrong, in our view, to assume that we can reach a point over the next few years when we can say with absolute certainty that there will never be circumstances where the use of a police station as a place of safety for an adult is an appropriate option because their extreme behaviour cannot safely be managed in an alternative place of safety. That being the case, we do not believe that the proposed new clause is an appropriate way forward. However, I want to reach the position whereby police stations are used as a place of safety only in specific, "exceptional" circumstances —and, when they are used, the person taken there must be given the right medical care.

Lots of points were raised during the debate. The noble Lord, Lord Rosser, asked why there were discrepancies in the use of police cells across police forces. There is a range of reasons why this happens. It may include different policies on accepting violent behaviour, but it is also about the fact that, as the noble Lord pointed out, in London, for instance, they are not used as widely as they are in Lincolnshire, which has seen a high rise in the use of police cells. Often that is because Lincolnshire is more rural and there are not so many places of safety available, whereas there are more in London. So there are several reasons why that could be the case.

8.15 pm

Lord Rosser: Most people regard Dorset as quite rural, but the number of Section 136 detentions in police cells it had was just 10 out of a total of 429 uses of Section 136. Does that not rather knock on the head the argument that it is something to do with how rural an area is?

Baroness Chisholm of Owlpen: I was pointing that out as just one of the reasons why it might be—but we have to remember that, as we know, mental health is going through a huge change at the moment. As I said in a debate on Monday, I am afraid that we are going from a very low base. We have to be aware that it will take time for these places of safety to be there to ensure that we have an increased number of beds or places of safety for these people to be taken. That is part of the reason for the discrepancy.

To go back to further points raised on mental health, the noble Lord, Lord Rosser, raised an issue related to the respective changes to police powers under Sections 135 and 136 of the Mental Health Act. The noble Lord suggested that the maximum detention period should be reduced further to 12 hours. We are confident that the Bill reduces the maximum detention period by the appropriate amount—from 72 hours to 24 hours. The Government have seen evidence that the average assessment under Section 136 is conducted in under 11 hours. Furthermore, we fully support the target set by the Royal College of Psychiatrists for assessments to commence within three hours. However, there are some cases when it is not possible, due to the condition of the person detained, to conduct a meaningful assessment within 12 hours: for example, if they are intoxicated through alcohol or drugs.

The noble Lord also mentioned duties on police to consult with mental health professionals, with detainees having a right to an independent mental health advocate. The second issue concerned access to independent advice. Clause 78 requires police officers to seek advice from certain specific healthcare professionals, if practical, before making a decision to exercise their powers under Section 136. This is about supporting police officers to make the best possible decisions when they encounter a person who may be experiencing a mental crisis. This provision builds on existing good practice of police forces and local NHS services working together collaboratively, including through street triage schemes. The "if practical to do so" condition will avoid tying the hands of an officer if, in their judgment, they need to use the powers quickly to secure an individual's safety.

On detainees' access to advice, for example from a mental health advocate or an appropriate adult, the guidance supporting the implementation of these provisions will set out the expected support to be provided to any person detained at a place of safety under Section 135 or Section 136. Such support can, in our view, most appropriately be provided by health staff already present, rather than another person in a bespoke role, which would introduce delays and jeopardise professionals' ability to conduct the assessment within 24 hours.

The noble Lord asked whether a person's detention is disclosable if they subsequently apply for a disclosure and barring service check. In 2015 the Home Office published revised statutory guidance on enhanced DBS checks in relation to Section 135 and Section 136 detentions. The guidance now emphasises that the use of these powers in and of itself is unlikely to be sufficient to justify disclosure. The police are now directed to specifically factor in the behaviour of the detained person at the time, and how long they were detained. The Government's position is that we cannot

wholly rule out the possibility that there will continue to be circumstances in the future when a person's behaviour is so extreme that it can safely be managed, at least initially, only in a police station. We are not legislating for some future point when that position will cease to be the case, which is what the amendment suggests.

I hope that, with all the things I have set out, and given our clear shared objective of doing what is in the best interests of all concerned, including their safety, I hope that the noble Baroness will be content to withdraw her amendment.

Baroness Walmsley: My Lords, I thank those who supported my amendment. I was fascinated by the treatise of the noble Lord, Lord Rosser, on other aspects of Sections 135 and Section 136. He is, of course, absolutely right that there is no correlation at all between the use of police cells and the rurality or urbanisation of the area concerned: absolutely none. I have always known that Merseyside is a very special place—because that is where I come from—but apparently in Merseyside there are no "exceptional circumstances", whereas there are in other places. I cannot understand the Government's determination to insist that there will be exceptional circumstances in other places if there are none in Hertfordshire and Merseyside.

It is quite clear that the Government are not going to move on this. However, I have to say that I welcome, of course, what the noble Baroness said about regulations. We will have to keep a very careful eye on how these work and whether they achieve our joint objective of bringing the numbers down as low as possible. I very much hope that that is exactly what will happen over the next few years. The hour being what it is, I beg leave to withdraw the amendment.

Amendment 117 withdrawn.

Amendment 118

Moved by ***Baroness Walmsley***

118: 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 under the age of 18 has been a victim of a sexual offence or other forms of child abuse, the police must refer the child for a mental health assessment by an appropriately trained professional.

(2) The Secretary of State must by regulations made by statutory instrument define the meaning of an "appropriately trained professional".

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

Baroness Walmsley: My Lords, Amendment 118 places a duty on police forces to refer children under 18 who are the victims of a sexual offence or other forms of child abuse for a mental health assessment by an appropriately trained professional. It mandates a currently poorly used referral pathway. I listened carefully to the Minister's response in Committee and have changed the amendment that I bring forward today. I wish to stress that this amendment does not mean that all these children will need a CAMHS intervention or will have a diagnosable mental health condition. It is designed not only to support children who are the victims of these awful crimes but to inform commissioning decision-makers about the magnitude of the problem, so as to ensure that the right services are in place. We cannot rely on the numbers that reach the clinical threshold for intervention, because these thresholds are far too high, given the shortage of child and adolescent mental health services.

The amendment is deliberately not prescriptive as to who "an appropriately trained professional" would be, leaving this to regulations and local flexibility. This person could be a nurse, school councillor, trained social worker, councillor in a sexual assault referral centre or another appropriate local professional. The amendment strikes the right balance between local and national responsibilities. It introduces a national requirement for a referral pathway and assessment, but it does not set out the how and where, which will be up to local areas to determine. This is responsive to the level of need of these children and the evidence we have that they are not receiving the therapeutic support they need for their recovery.

As I said at the outset, the amendment would not mean that all victims of a sexual offence or other forms of child abuse would meet the clinical thresholds. Some may, but some may need other types of support—for example, school or community-based child sexual exploitation support groups, family support services, or support for parents and children to equip them to understand the emotional impact of abuse. The amendment would deliver the recommendation in *Future in Mind*, which the Government are committed to implementing in full, that,

"those who have been sexually abused and/or exploited receive a comprehensive assessment and referral to the services that they need, including specialist mental health services".

The evidence for the amendment is compelling. In the past year the Children's Society has calculated that more than 40,000 crimes of a sexual nature were reported against children. Each of these 40,000 is a child suffering the effects of horrific crimes, which come with a multitude of long-term effects that need to be addressed. We have only to read the recent media accounts of many footballers who were abused as children to understand the lifelong effects of these terrible experiences. They destroy lives and careers. Analysis by the Children's Society of referral pathways for vulnerable groups found that less than half of mental health trusts identify children who have experienced sexual exploitation in referral and initial assessment forms. The NSPCC review of local transformation plans found that only one-third of these plans mentioned provision of services to meet the needs of these children. Yet while these figures are appalling, the experiences of the victims themselves show the need for the amendment even more.

Last week the noble Lord, Lord Kennedy, and I attended a meeting organised by the NSPCC and the Children's Society and I want to share with noble Lords the account of Sarah—not her real name—who told her story. I record my thanks to her for sharing her experiences and her powerful message as to why

[Baroness Walmsley]
this amendment is needed. Sarah was abused from a very young age by a member of her extended family and this had a long-term impact on her life. As her understanding of consensual relationships developed, Sarah realised that what she had experienced was abuse and as a teenager she suffered from clinical depression and was extremely suicidal. She was later referred to counselling and gradually came to terms with what had happened to her. The abuse had a long-term impact on her mental health, including eating disorders, drug abuse, PTSD and abusive relationships. At the meeting Sarah told us that the support she received was invaluable for her recovery. She thought that the amendment would support young people who had experienced sexual exploitation and help them recover more quickly by ensuring a direct referral from the police.

The amendment will also contribute to parity of physical and mental health. Recently, nine ex-Health Secretaries wrote to the Health Secretary to encourage the Government to,

"make good the promise to achieve genuine equality",

between physical and mental health. Parity of esteem was enshrined in law by the Health and Social Care Act 2012, yet examples of this being enacted in policy are still rare. We know that nine out of 10 children who have experienced abuse at an early age will develop a mental illness by the time they are 18. Without assessment, how can we know which 10% will not need help? Issues faced include post-traumatic stress disorder, anxiety, self-harm, depression and, as we have heard, suicide attempts.

This is not a novel idea. There are numerous examples of where preventive public health initiatives have been set up in response to data on the prevalence of certain conditions affecting the physical health of a population. For example, cervical screening is now offered to all women over the age of 25. My first job out of university in the late 1960s was scanning the cervical smears of women with symptoms, so I know how effective screening is at picking up early cancer and pre-cancerous cells so that the patient can be treated early. The current rate of cervical cancer is 12 cases per 100,000 women—0.012%. Since its introduction, the screening programme has led to a decrease in the number of cervical cancer cases by about 7% each year, and it is estimated that up to 5,000 cases of cervical cancer are prevented annually because of cervical screening. That is a terrific record but the prevalence of cervical cancer is a great deal less than nine out of 10.

8.30 pm

Just as screening for cervical cancer does not assume that all those screened need follow-up cancer treatment, so we are saying here that not all children who have experienced abuse will require full-blown mental health support. However, we know that most of them will need something and we know that targeting high-risk groups, which these children are, will identify mental health needs early in much the same way as cancer screening does with physical health.

Amendment 118 mandates a much-needed and underused referral pathway. It requires a young person to be known to the police, which we know that many will not be, but it means that when children are known to the police, services can respond appropriately to their needs and help their long-term recovery, and help and support them while they are engaging with the police to bring their perpetrator to justice, which can only be a good thing.

The effect of child sexual exploitation can have a terrible impact on young people in later life, and therapy or other help gives them a better chance to rebuild their lives. I urge the Government to consider this very modest amendment and accept its recommendations. I beg to move.

Viscount Hailsham: My Lords, I hope we do not go down this road. It seems a thoroughly bad idea. Of course there is a good case for voluntary provision. There may be many cases where assessment is highly desirable but this is coercive. It imposes an obligation on the police officer to do what is set out in the amendment.

Baroness Walmsley: I would like to make it clear that it would be only with the consent of the child, so it would be consensual as far as they were concerned.

Viscount Hailsham: That is not what it says in the amendment. Had it been so, I would not object, but we are talking about a piece of legislation, and it is coercive. If the police officer has to do it, presumably the child has to co-operate. You are not dealing just with young children, either. You are dealing with people up to the age of 18 and I would have thought that there were a substantial number of cases where the child would not want to be assessed and would find it pretty traumatic if he or she was. While there may be a strong case for putting in place a voluntary system for doing it, there is absolutely no case for making it coercive. I really hope that the House will not think of pursuing such a policy.

Baroness Howe of Idlicote: My Lords, I think I will leave aside the contribution of the noble Viscount, Lord Hailsham. I do not really agree with what he said. My name is on this amendment and I support it because it would create a clear and explicit referral pathway for child victims of a sexual offence or other forms of child abuse for an assessment of their mental health needs.

As we have heard, the amendment would deliver on the Government's own commitment in *Future in Mind* and work to put in place policies that go a step towards creating parity between physical and mental health. The Government say that they want to develop:

"A better offer for the most vulnerable children and young people",

including by ensuring that,

"those who have been sexually abused and/or exploited receive a comprehensive assessment and referral to the services that they need, including specialist mental health services".

The amendment would deliver on that ambition.

It is important to recognise that the Government have made welcome steps in this area, in particular through their investment of £1.4 billion over the course of this Parliament in children's and young people's mental health services. However, there is evidence to

show that this is not yet reaching the most vulnerable. According to research from the Education Policy Institute, in the first year of funding, of the expected £250 million only £143 million was released—and of that, only £75 million was distributed to clinical commissioning groups. For 2016-17, £119 million has been allocated to clinical commissioning groups—but this has not been ring-fenced, risking that it will be spent on other priorities.

It is clear from the evidence available and what we have heard today that these young people are at extremely high risk of developing a mental health condition. Lifelong difficulties can result in drug and alcohol abuse, mental ill-health, homelessness, gang affiliation and/or disability if the underlying trauma of their experiences is not met with swift and appropriate intervention. Research has found that up to 90% of children who have experienced abuse will develop a mental illness by the time they are 18. In the spirit of parity between physical and mental health to which we all aspire, in a comparable physical situation people would be screened and have regular check-ups, yet we do not offer the most vulnerable children the same opportunity to receive the help they so vitally need.

National policy is increasingly focused on the social determinants of long-term health. Evidence has shown that adverse childhood experiences are a key risk factor for poor outcomes such as worse health, coming into contact with the criminal justice system and worse employment and educational outcomes over the life course. Children who are victims of a sexual offence are often left without support for their mental health difficulties, which are likely to develop into more entrenched mental health conditions later in life, because they do not meet the thresholds for clinical interventions or because a suitably trained professional does not properly assess their mental health needs.

This amendment would provide national consistency, as we know that the situation across the country is inconsistent and young people are not always getting the holistic assessment they need to meet their needs. Thresholds for mental health clinical interventions are inconsistent across the country and referral routes into CAMHS are varied, with some areas not allowing the local voluntary sector to refer directly. Some sexual assault referral centres refer children for mental health support, but others do not.

In her response in Committee, the Minister mentioned the commissioning framework for adult and paediatric sexual assault referral centre—SARC—services, published in August 2015. However, case-tracking evidence from the Havens in London found that, of the 24 children under 13 who were reviewed, only three were referred to CAMHS and that, of the 56 young people aged 13 to 17 who had their cases reviewed as part of the study, only five were referred. It was acknowledged in the same report:

> "Few children are referred to CAMHS from the Havens, most likely as interventions are generally at the forensic examination stage and it is difficult to determine longer term emotional support needs at this … stage".

It is therefore necessary to ensure that other agencies have a duty to refer for a mental health assessment, in order to guarantee that a young person's holistic mental health needs are assessed after their traumatic experience.

Alongside providing national consistency, this amendment would introduce a referral for an assessment and enable better understanding of the level of support that needs to be provided both by CAMHS and outside CAMHS. This will lead not only to better responses and referral routes for young people but a greater understanding to inform commissioning at local level, so I hope that the Minister will be able to accept this amendment.

Earl Attlee (Con): My Lords, I accept the principle in the amendment of the noble Baroness, Lady Walmsley, in cases of persistent abuse but I am afraid that I am with my noble friend Lord Hogg. There is—

Noble Lords: Viscount Hailsham.

Viscount Hailsham: Do not worry—I answer to any old name.

Earl Attlee: I meant the noble Viscount. I absolutely accept the point made by my noble friend. There is no flexibility in the amendment. After a fleeting grope of a 17 year-old at a Tube station, someone would still be caught by this in totally inappropriate circumstances. So, although I accept the need in serious cases, I am afraid that I cannot advise my noble friend the Minister to accept this amendment because of the lack of flexibility.

Lord Kennedy of Southwark: I am conscious of the late hour and that the next business should be coming on, so I will be very brief. From our Benches, we certainly endorse the amendment in the name of the noble Baroness, Lady Walmsley, who, along with the noble Baroness, Lady Howe, has spoken in great detail on it. I do not intend to speak for much longer than that—but what is being highlighted here is very important. I will make one point: the amendment is not suggesting that all young people need is CAMHS; they need a holistic approach, so that their mental health needs can be properly assessed. It is not quite as stark as the noble Viscount or the noble Earl suggested. We certainly support the amendment on these Benches and I will leave it at that.

Baroness Williams of Trafford: I applaud the noble Baroness, Lady Walmsley, on her intention to ensure that children who have been abused have the proper provision following that abuse, mainly because they are often traumatised by their experiences. I share her desire to ensure that such children receive the support they need, including for their mental and physical health, but I must reiterate my strong belief that the overriding determinant of referral for health services must be clinical need.

Viscount Hailsham: With no coercion.

Baroness Williams of Trafford: With no coercion, as the noble Viscount says. The important thing is that all children and young people, not just those who are victims of sexual offences, get the right care at the right time, based on their needs—not on a non-clinician's

[Baroness Williams of Trafford]
view of their potential needs, based on their experiences. Furthermore, the amendment makes no reference to obtaining consent.

I think that my noble friend Lord Hailsham referred to that. Individuals, including children or their parents or carers, as 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 the relevant personal details to be passed to the health provider. This is the proper course of action, rather than automatically passing personal details and potentially sensitive information about sexual abuse to a third party, even when that third party is a healthcare provider. We know there is more that can be done to meet the health needs of children and we are taking concrete steps to do that.

The Government wholeheartedly agree that mental health services should be available to children and young people who need them. We are investing significant funding to that end—but, as I have indicated, it would be wholly inappropriate for referrals to mental health services to be the responsibility of police officers rather than appropriately trained practitioners. I stand ready to meet the noble Baroness and other noble Lords who have put their name to this amendment to discuss these issues further, but I hope that at this stage the noble Baroness will agree to withdraw her amendment.

8.45 pm

Baroness Walmsley: My Lords, I thank the noble Baroness, Lady Howe, and the noble Lord, Lord Kennedy, for their support. I reassure the noble Viscount, Lord Hailsham, that there is nothing coercive about this. I think there is a misunderstanding because a health issue is being debated in a criminal justice Bill. The reason there is no need to mention anything to do with consent in the amendment is that it is quite unnecessary. Any professional who would be doing the assessment has a professional duty to engage with any patient only with that patient's consent. Indeed, it would be self-defeating even to try to do an assessment because it would not be effective, so it is totally unnecessary to mention consent in that situation. It is perfectly normal that consent is an absolute given in health issues among all health professionals.

I say to the noble Earl, Lord Attlee, that it is not inflexible either because it should not be for a policeman to decide whether a young person has been affected mentally by the situation. It is coercive if you count coercing the police to do the right thing and share the information, but it is not coercive in relation to the children. The police have to share the information, and it is then for the qualified person doing the assessment to decide what level of help—or no help at all—is needed by that child. That is perfectly straightforward and I see no reason why it should not be done.

The fact is that the police sometimes refer children for mental health assessments, but very rarely. Sometimes children go through a lot of barriers before they get to the assessment, and they disengage. They say, "I can't do with having to tell my story over and over again to a whole series of people". What should happen is a referral from a police officer directly to the people who can assess—with the child's consent, of course—as their professional duty, whether that child needs any help at whatever level.

Clearly, I am not going to convince the Minister, but I should like to keep talking to her about this. Indeed, we have a meeting in the diary for next Monday about this very thing, so I would like to do that. Because of that, I beg leave to withdraw the amendment.

Amendment 118 withdrawn.

Amendment 119

Moved by ***Baroness Walmsley***

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

"Disallowing use of Tasers by police officers on psychiatric wards

(1) A police officer may not use a Taser or electroshock weapon during a deployment on a psychiatric ward save in exceptional circumstances.

(2) Any use of a Taser or electroshock weapon on a psychiatric ward is required to be referred to the Independent Police Complaints Commission in such manner as the Commission specifies and not later than the end of the day following the day on which the Taser or electroshock weapon was used.

(3) The Secretary of State may by regulations made by statutory instrument define "exceptional circumstances".

(4) A statutory instrument containing regulations under subsection (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Baroness Walmsley: My Lords, this is another thing on which I did not succeed in convincing the Government in Committee, but I listened very carefully to what the Government said and have made some changes.

I had been seeking to ban the use of Tasers by police in psychiatric wards, but since the Government feel that their use may sometimes be necessary, my amendment asks the Government to specify very clearly in regulations the exceptional circumstances under which Tasers should be used. Bearing in mind that the use of such a weapon is a very serious issue and has sometimes led to the death of the person who has been tasered, my amendment asks that any use of such a weapon in a psychiatric ward should automatically be referred to the Independent Police Complaints Commission as a matter of course in just the same way as a death in custody is reported and investigated. By that means we would find out in considerable detail what led to such a severe intervention, and that information can be helpful to the police and mental health providers in improving the way they deal with people in great distress who may well have turned to some kind of violence or aggression. The hour is late, and that is all I wish to say. I beg to move.

Viscount Hailsham: My Lords, I agree with the noble Baroness that the hour is late, and therefore I shall be brief. I was here for the debate in Committee on this subject and I was wholly persuaded by the Minister about the undesirability of this amendment. I know full well that Tasers can be very injurious and I know that they are dangerous, but I also know from considerable personal experience that people in psychiatric wards can be extremely dangerous, volatile and violent.

I speak as somebody who was for some years Minister for the special hospitals. There were three mental hospitals in my constituency. I was the Minister for Police for a time and, relatively recently, I was on the monitoring board of a local prison. I know they are different, but in prisons you see many people who ought to be in psychiatric hospitals. The truth is that sometimes there is no choice: people get possession of a weapon and threaten their nurses or pose a very real threat to the other residents on the ward. What is a police officer to do if summoned and faced with a person with a knife? The truth is that in exceptional cases—which I will come to in a moment—a Taser may be necessary. I am certainly not going to go down the road of prohibiting that by statute.

What does "exceptional circumstances" actually mean? I can tell the noble Baroness: when there is a reasonably founded belief that it is necessary in self-defence or in defence of a third party. If I was the Secretary of State and put that into a statutory instrument, so what? Ultimately, it has to be decided by the court. If you look at this amendment and reflect on its consequences for one moment, the police officer is guilty of assault unless he can bring forward the defence. But who is responsible for bringing forward the defence? Does he have to prove that his acts fall within the exceptional circumstances or does the prosecution have to negate their existence? I suspect the latter, but it is extremely difficult for a police officer in those circumstances. It is a legal minefield and good news for lawyers—which is not something I am advocating in this case. It is a thoroughly bad amendment and I hope we hear no more of it.

Earl Attlee: My Lords, I will briefly support the noble Viscount. I would not want to put a police officer in the very difficult position of having to decide whether to get involved in close engagement with someone who is very dangerous or use a conventional firearm, with all the difficulties that that entails.

Baroness Williams of Trafford: My Lords, this amendment brings us back to the use of Tasers. I am grateful to the noble Baroness, Lady Walmsley, for taking on board the points raised when we debated this issue in Committee and coming back with a revised amendment. My noble friends Lord Hailsham and Lord Attlee have given us a flavour of what we discussed then.

Any use of force by police officers in psychiatric wards on patients—or on any member of the public in any setting for that matter—must be appropriate, proportionate, necessary and conducted as safely as possible. When police officers need to attend and use force, they must be able to account for their actions. As the noble Lords, Lord Dear and Lord Rosser, and my noble friend Lord Hailsham indicated in Committee, a blanket ban on the use of Tasers in psychiatric wards would remove this valuable police tactic when they are dealing with potentially very violent situations.

Baroness Walmsley: I am sorry to interrupt—

Baroness Williams of Trafford: I do not usually take interventions on Report, although I will acquiesce to the noble Baroness because she did not speak for very long.

Baroness Walmsley: I will wait until I respond.

Baroness Williams of Trafford: I welcome the fact that the noble Baroness now accepts that there will be exceptional circumstances. My noble friend Lord Hailsham has very clearly outlined what exceptional circumstances would be, and I explained in Committee that it was when all other options for restraint had failed, particularly when the person has perhaps had to be kept at length from the police officer—in other words when going near the person would create a danger for other people.

The Taser was introduced to be used at that intermediate stage. It is to be used where de-escalation at the lower end has already been tried but has failed, and where the officer deems that other options—ranging from the use of lethal force, as my noble friend said, at the higher end—will not resolve the immediate threat in the safest and most proportionate way.

With regard to recording incidents, as the noble Baroness pointed out, each officer who deploys a Taser is required to complete a Taser evaluation form on every occasion where the device is used. The form should be completed prior to the end of each tour of duty, but in any case within 24 hours of the use. The police forces' lead Taser officer is responsible for reviewing, collating and recording all Taser evaluation forms.

In Committee I explained that new police data were being collected on the use of force by officers, including force used in a hospital setting, to further improve the existing system of recording and reporting. Police forces are working to implement this new recording system and we expect data to be published as part of the Home Office's annual data return in summer 2018 to ensure that the use of Tasers is absolutely transparent.

I put it to the noble Baroness that effective scrutiny of the use of Tasers is a better way forward than seeking to legislate. No officer will use a Taser lightly and will seek to argue that there were indeed exceptional circumstances. I have already pointed to the anomaly that this amendment would create in respect of the use of lethal force—no one wants to see that happen—if a safer tactic was unavailable. I hope the noble Baroness will feel happy to withdraw her amendment.

Baroness Walmsley: My Lords, I thank the Minister for her reply. Anyone hearing what has been said in the House tonight would think that I was asking for a ban on the use of Tasers. If noble Lords read my amendment carefully, they will realise that that is not what it would do. It accepts what the Government said in Committee, and during meetings that we had at the Home Office, that there may be exceptional circumstances. That is why I am no longer asking for a ban; I make that absolutely clear to noble Lords who have spoken.

However, it is a very serious matter for a police officer to use a Taser, as the Minister herself has said, in which case I think it would be helpful to the police if the Secretary of State were to specify clearly what is meant by "exceptional circumstances". The noble Viscount, Lord Hailsham, has tried this evening to give a very simple account of what that means, and indeed the Minister has done the same. If it is that simple, why can it not be done? I think it would help the police.

[Baroness Walmsley]

I am aware that, following discussion in another place of an amendment similar to this one, a lot more information is now to be collected about the use of Tasers. I think that is a very good thing, and I look forward to seeing what we can learn from it. However, in this amendment I seek to be helpful to the police and to protect them by making very clear what they can and cannot do, and under what circumstances. But clearly the Government are not going to accept that, so I beg leave to withdraw the amendment.

Amendment 119 withdrawn.

Consideration on Report adjourned.

Tunisia

Question for Short Debate

8.58 pm

Asked by ***Baroness Suttie***

To ask Her Majesty's Government what is their current political strategy towards Tunisia, and what plans they have to further develop economic, security and cultural relations with Tunisia, in particular in the light of the situation in Libya.

Baroness Suttie (LD): My Lords, I thank all noble Lords who have agreed to take part in the debate this evening. In particular, I thank the noble Baroness, Lady Hodgson, and my noble friend Lord Purvis, who participated with me and about a hundred others from the UK and the Maghreb region in the inspirational British Council's annual Hammamet conference in Tunisia last weekend. The noble Baroness, my noble friend and I are all also members of the British Council APPG inquiry into building resilience against violent extremism, which is concentrating on looking into successful projects in the region. I am also very grateful to the British Embassy in Tunis, and in particular to Her Majesty's outgoing ambassador to Tunisia, for the very comprehensive background briefing that I received while I was in Tunis last week. I know that many noble Lords speaking in the debate will also have been regular visitors to Tunisia over the years and will be equally passionate about Tunisia, its beautiful scenery, enormous potential, and the warmth and hospitality of the Tunisian people.

Exactly a week ago, I was attending a dinner with a group of young Tunisian leaders in Tunis. The dinner was organised by UK NGO Forward Thinking, and brought together young activists from NGOs, civic society and young political leaders from the governing parties of Nidaa Tounes and Ennahda. We had a very lively discussion, during which we tackled many of the issues currently facing Tunisia, such as economic reform, corruption, the need for significant reform of the education system and the role of culture and sport in building resilience against violent extremism. Despite the occasionally argumentative nature of our debate around the dinner table, the very fact that we were able to hold such a debate at all is an indication of just how far Tunisia has come since the revolution against Ben Ali's authoritarian regime six years ago.

If the political revolution has been thorough—as illustrated through Tunisia's new progressive constitution—this has not been matched over the same period by economic growth. For many ordinary Tunisians, political and constitutional reform has not resulted in a substantial improvement in their living conditions or the creation of real, sustainable jobs.

When speaking to Tunisian politicians and young people, they often highlight the significant disconnect between the political class in Tunis and the other regions of the country. In some cases, the division between Tunis and the significantly poorer interior regions has worsened since 2011. Much of the country's wealth is distributed to the already affluent coastal towns and cities, and many areas to the south and west of the country continue to face severe social and economic difficulties. Can the UK Government do anything substantial to help bridge the coastal/interior divide in Tunisia—not least as such divisions in the country can provide fertile recruiting ground for Daesh?

On each visit I have made to Tunisia, I have been struck by the highly educated and motivated young people I have met, but Tunisia faces graduate unemployment of more than 30%. Paradoxically, in Tunisia, the more educated someone is, the less likely they are to have a job. There remains a severe mismatch between the education system and the skills required by the labour market. Tunisian companies say that they have vacancies that they cannot fill because of the lack of candidates with the required skills. English language is often a key requirement for employers, and it is clearly an area where the UK can and does play a significant role. Can the Minister give more detail on the Government's strategy to assist Tunisia in reform of the education system over the next few years, as this is clearly an area of key importance?

Such high levels of unemployment among young Tunisians raise not only economic and educational questions but questions of identity: of ensuring that young people believe that they have a stake in the future of Tunisia. A great many hugely valuable UK programmes on the ground in Tunisia use culture, the arts and dance to reconnect people, or are projects facilitating leadership skills and capacity-building to tackle these issues, but it is important to look at ways to ensure greater co-ordination and scale up and increase the outreach of such projects.

One such positive programme is the British Council's Young Arab Voices. This programme, which has now reached more than 100,000 young people across the region since 2010, helps to increase English language skills, promotes confidence in presenting an argument and assists the development of critical and analytical thought. I strongly recommend that on any future visit to Tunisia, the Minister witnesses the programme for herself in one of the Tunisian universities.

Key to Tunisia's future is its economic development. Its current economic model, with its heavy reliance on the public sector, is unsustainable and not delivering for its people. But I believe that there is tremendous economic potential for Tunisia as a service-sector hub for the region, for the development of the renewables sector, and for it to substantially develop its ICT sector. ICT currently accounts for 7% of the Tunisian economy

and, with its younger, highly educated population, Tunisia has very real potential to become extremely attractive to the ICT industry.

Foreign investment is heavily influenced by issues such as absorption capacity, administrative reform and an effective fight against corruption. Assisting Tunisia as it moves to tackle these next stages of reform is going to be key in helping to develop a strong Tunisian economy that attracts and sustains both domestic and foreign investment. This week there is a large-scale investment conference taking place in Tunisia. It was obvious from conversations that I had last week that a large amount of hope for the future was being placed on this event. Clearly such conferences are a part of a process and should not be viewed as an end in themselves but, in the framework of the UK's overall economic strategy towards Tunisia, can the Minister say what concrete measures are being taken to encourage British companies to invest in Tunisia?

The strength of the Tunisian economy is key to so many issues, which brings me on to tourism. If you speak to any Tunisian—in business, politics or civil society—at a certain point they will always bring up the issue of the current UK travel advice, which they perceive as an outright travel ban. Its continued existence in the face of significant security improvements has become a somewhat symbolic issue. In the medina in Hammamet last Saturday evening, a businessman stopped us to say how delighted he was to see British visitors back in the coastal holiday resort. He told us how much he liked the British and how sad he was that British tourists no longer come in any large numbers to Hammamet. Tourism still accounts for about 8% of the Tunisian economy. An increase in tourism equals an increase in employment in many parts of Tunisia. Tourism remains vital to Tunisia.

I am aware that the UK has been significantly assisting Tunisia in helping to improve security measures and training, especially in the hotel sector and in airports, and we were told that great progress is being made in this regard. Can the Minister say when the Government will revisit the issue of the current travel advice and under what conditions they would be willing to change this advice?

In conclusion, I believe that, post-Brexit, the UK needs to review its foreign policy objectives and its strategies for developing increased trade. The Maghreb region offers many possibilities with its young and highly educated populations who are increasingly keen to look to us in the UK for educational and business opportunities. Tunisia was the country where the revolutions in the region began six years ago and remains one of the greatest hopes to lead the way in the region as a democratic model for the future. For this reason, I believe that Tunisia deserves our increased attention and support, most particularly because of the additional challenges that the instability in neighbouring Libya poses. I look forward to hearing the views of other noble Lords during this short debate this evening.

9.08 pm

Lord Patten (Con): That speech was well worth waiting for and I warmly congratulate the noble Baroness on what she said and how she said it. There are three points that I want to turn to: Tunisia in the changing geopolitics of the eastern and central Mediterranean; security; and what the UK can do in the light of Tunisia being more part of the francophone, Mediterranean littoral than of the anglophone sphere of influence. None the less, there is much that we can do.

First, on geopolitics, what seems to be happening at the moment is that we have a period of general disinclination of one great power—the USA—to get more involved on the ground in areas such as this, at the same time as a once-great power—Russia—is ever keener to reassert itself. There is an emerging and growing arc of difficulty where it is doing so, stretching from Tunisia right round the eastern arc of the Mediterranean to Syria and Turkey. The Russians are piling assets and people into the whole region and have now, in Syria, the warm-water, ever-ice-free port that they have sought for centuries.

I do not think that they plan to leave soon—or, indeed, at all. I think the Russians are there to stay in Syria, and we have to get used to that. And their influence will spread further. I may well already be reaching the small country of Tunisia, which is placed geographically at the pivot of the mid-Mediterranean, so it is very strategically located in geopolitical terms. As we have just heard, very few UK tourists—let alone French tourists—go there at the moment. But I am told that the new linchpin of tourism is Russian tourism. The Russians are now coming in increasing numbers to seek sun, sea and Carthage in that country. Russian investment in-country is also greatly increasing in liquefied gas and infrastructure. The Russian Foreign Minister, Sergey Lavrov, showed considerable interest in the place all of a sudden not very long ago. These are very interesting signs of things to come.

Secondly, Tunisia's security is vital. Tunisia's own Defence Minister, Farhat Horchani, said on 6 September this year:

> "We have a large number of … fighters who arrived from Sirte, or from Syria. I can see no strategy, no cooperation between the states".

Getting that co-operation on terrorism in the arc of difficulty from Turkey around to Tunisia is vital, yet it is not easy for the West, including the UK, as we found in next-door Libya a few years back. It is terribly easy to go in and kick the door down with air power and missiles; it is exquisitely difficult thereafter to make change stick on the ground. That is one of the problems we have seen in Libya, and one of the problems we will continue to see in the region.

One great hope is that so far political change has happened in Tunisia, with a Prime Minister's moving without there being rioting in the streets. That happened in a parliamentary way, which I think was an act of considerable political maturity. But we must all be aware that, as we have seen at the eastern end of the Mediterranean arc, elections can be used to bring about a de facto elective dictatorship—for example, President Erdogan in Turkey with his new 1,100-roomed palace, the mass persecution of the media, suppression of dissent and the rest. We do not want to see that in Tunisia under any circumstances.

Thirdly, we have got to do our little bit. I understand that there is about £8 million in the budget this year going forward to be spent in Tunisia. We should do all

[Lord Patten]
we can. It is difficult to deal with the foreign travel advice—but foreign travel advice is there to be listened to. I am amazed that there is not similar advice for many areas in Turkey at the moment, where I think there are considerable dangers. For example, only in August this year, the head of the anti-graft body in Tunisia said that the economy would benefit enormously from help because corruption had reached an epidemic stage—he was not talking about tourism. That is not a happy backdrop for the two-day inward investment conference in Tunisia, which closes tonight.

This is set against the background of some 500 foreign firms having left the country since the Arab spring and the terrible terrorist attacks that happened afterwards, with the graduate unemployment of 30% or more that has been left behind. With a little budget we can do a lot to try to help democratic institutions, NGOs, civic society and anti-corruption bodies and support financial sector reform and entrepreneurship.

In all this, our relatively small embassy in Tunisia has done a very great deal in the face of some terrific security problems. It has met the challenges very well under the leadership of our outgoing ambassador, Hamish Cowell. We hope that the embassy staff will hear what the noble Baroness, Lady Suttie, said about them tonight, including her thanks to them. We should thank them for what they are doing in Tunis.

9.14 pm

Lord Anderson of Swansea (Lab): My Lords, I congratulate the noble Baroness on her initiative and I agree with the noble Lord on his geopolitical reflections, particularly with respect to the Russian incursions into the area.

My theme is simple: Tunisia is the one remaining success of the Arab spring and it is in our mutual interest to support its development. Surely success can be measured only in context and in comparison with neighbouring countries. Certainly, Tunisia has many problems. The suicide of that angry youth in 2011 led to the Arab spring, but for most young people the revolution has not delivered and protests have resumed. Unemployment and corruption remain, and terrorist outrages impact massively on the tourist industry and are a disincentive to investment. Development is clearly unbalanced between the coastal strip with its three main towns and the interior with its relative lack of physical and human infrastructure. No doubt Tunisia is still fragile, but compared with its neighbours it is a success.

For all Arab countries there are deep problems of nation-building derived from the Ottoman and colonial periods, and underlying cultural problems, which are outlined in those remarkable five UNDP human development reports in the 2000s. Neighbouring Algeria is marking time with limited democratic advance, Libya is still torn apart by competing militias and Egypt has undergone transition from the Islamic extremism of Morsi to the iron rule of President Sisi. Tunisia is an exception. There is a climate of questioning and debate and a spirit of compromise, illustrated by the 2014 deal between the secularists and the Islamists. Only at the end of July, its parliament peacefully dismissed its Prime Minister.

Internationally, how should we on the north bank of the Mediterranean respond? The migration threat surely shows that, if we do not go to them, they will come to us. Much is already being done by international organisations, of which we are a member, including countering terrorism, assisting in economic development and in security. Thus NATO has a reach into north Africa. EU aid amounts to over a third of Tunisia's budget deficit, or about 1.35% of GDP. The European Union doubled aid after the revolution and has since released €300 million in EIB loans.

The question is to what extent our aid, in co-operation with our EU partners, will continue after Brexit. At least there must be full co-operation. We will still remain members of the Council of Europe, whose assembly has shown a keen interest in Tunisia and whose Venice Commission has advised on constitutional amendments. Will we be part of a more extended effort to lower tariffs and possibly open our markets more to Tunisia's agricultural exports?

Bilaterally, with the EU and in co-operation with Tunisia, we need co-operatively to identify problems such as unbalanced development, improving the roads and helping to provide opportunities for young people. As is shown by the brief given by the ambassador, we already assist with border security. The British Council has done great work, as the noble Baroness said, with its Young Arab Voices programme to encourage a spirit of debate and questioning, and from the ambassador's brief it seems clear that our targets are the right ones. However, although our aid has doubled, it has done so from a very small base.

My final point is that, unless Tunisia is singled out for greater help, it will be a model no longer. If we do not respond positively, the costs to us across the board will be much higher. If the jasmine revolution is to be allowed to crumble in chaos and strife, the last hope of the Arab spring will be dashed.

9.19 pm

Baroness Hodgson of Abinger (Con): My Lords, I am most grateful to the noble Baroness, Lady Suttie, for introducing this debate and I congratulate her on her excellent introductory speech. This debate comes at a pertinent time: as noble Lords have heard, we have both just returned from Tunisia, where we attended the Hammamet conference organised by the British Council. This brought together emerging leaders and opinion-formers from across north Africa to identify and discuss solutions to critical issues. Specifically, we learned about the challenges that Tunisia currently faces.

Since the end of French colonial rule in 1957, Tunisia has had two Presidents: President Bourguiba and his successor, President Ben Ali—both dictators. However, President Bourguiba was in fact very forward looking in his vision of a society based on more secular values and gender equality. He introduced the Code of Personal Status—a series of laws focused on addressing gender equality in a number of areas. This included giving women the right to work and to open bank accounts and establish businesses without needing permission from their husbands. He also encouraged tourism in the 1960s, which greatly helped the economy,

as, unlike some of its neighbours, Tunisia is not rich in natural resources. However, in the latter years of the dictatorships there was also severe press censorship and oppressive stifling of political opposition.

In 2011, as we have already heard from the noble Lord, Lord Anderson, Tunisia was the source of the Arab spring, or the "Arab source", as one Tunisian woman once described it to me—the revolution that has had such profound historic consequences for much of the Middle East and indeed the wider world. Without ignoring the death and injury that occurred during the initial demonstrations, of the countries affected by the Arab spring Tunisia is the sole political success, as my noble friend Lord Patten has already said. It is the only country not to have descended into wider chaos and civil unrest, and to have transitioned to become a functioning democracy.

Two elections have been held since and power has changed hands smoothly. The country has adopted a constitution introducing stronger human rights protections, mandating for fair, multiparty elections and allowing for greater freedom of speech. More recently, Tunisia held its first ever public hearings with the victims and witnesses of humanitarian violations perpetrated by the country's previous regimes. These testimonies were organised by the state-funded Truth and Dignity Commission and were broadcast live on television and radio for the whole nation to follow. This transitional justice marks an important milestone in a country's quest for openness, transparency and accountability to its people. It is the first time that such an event has taken place in the Arab world.

However, as we have already heard, Tunisia is not without its challenges. We should recognise that western democracy has taken hundreds of years to develop, so Tunisia cannot expect a seamless transition from dictatorship to democracy without some bumps along the way. The clamp-down on freedom of views under Ben Ali had contributed to some young Tunisians leaving to join the fight against the Russians in Afghanistan. In more recent years, Tunisia has in fact become the world's largest exporter of ISIL fighters, with estimates of between 4,000 and 6,000 Tunisians having travelled to Iraq and Syria to fight for Daesh.

With the situation in neighbouring Libya continuing to deteriorate, there is now increasing concern relating to the influence of ISIL and its reach into the country. The first major assault by ISIL in Tunisia took place in March this year in the border town of Ben Guerdane, committed by fighters who had arrived home from Libya. The threat has continued to grow ever since. Of course, we all remember when 20 people were killed last year at the Bardo museum in Tunis, and 39 tourists, most of them British, were killed on the beach in Sousse.

This year, Tunisia made the unprecedented move of building a 125-mile long barrier along the border with Libya, consisting of water-filled trenches and sand-banks. However, there is a widespread thought that the barrier's effectiveness will come down to the capacity of those patrolling it. Prior to the Arab spring, Tunisia enjoyed relative stability, and thus the security forces are unprepared to deal with such major terrorist threats—particularly with the number of jihadists who are now thought to be operating across the border in Libya. That is why it is so important to continue to work with the Tunisians, helping them to enhance security, protect civilians and develop capacity to counter violent extremism.

The economy is, as we have already heard, a particular concern, and economic reform has been slow. Tunisia has struggled to attract investment and unemployment is high. As we have heard, more than 30% of its youth are unemployed—curiously that is higher among graduates—and one-quarter of Tunisian companies say they cannot find people with the required skills. The shootings in Sousse and the ensuing travel warnings have meant that tourism from Europe and the US has almost completely dried up, resulting in many Tunisians having been made redundant. There is also very little private sector activity, as historically the Government employed a huge number of people—an unsustainable model—and cronyism was rife, with big business in the hands of the elite and small business not encouraged.

It is widely acknowledged that poverty is one driver of radicalisation. Therefore, as one considers Tunisia's relative stability and its close proximity to Libya, is there more that the UK can do to help ensure that the situation does not deteriorate? The announcement yesterday of $8 billion in aid and loans to Tunisia over the next four years is very much to be welcomed, but Tunisia also needs inward investment.

Clearly, the travel ban has been devastating to its tourist industry. While we need to protect our citizens, and the memory of Sousse will take a long time to fade, we could still encourage Tunisia to build up more cultural tourism. Carthage is a UNESCO world heritage site and Tunisia has the most fantastic Roman sites, such as Bulla Regia and the wonderful Thysdrus colosseum, built in the 3rd century at El Djem. The UK must also continue to help Tunisia to reform its financial sector and embrace entrepreneurship and private enterprise. Many of the young Tunisians I met last weekend are enthusiastic about looking at new ways of doing business.

In conclusion, Tunisia is a beacon of hope in a troubled part of the world. It is a model to show that a well-functioning democracy is the right way forward for countries across the MENA region. But Tunisia faces challenges, so now is the time for the UK to get alongside and lend our support to help Tunisia achieve full and lasting stability.

9.26 pm

Lord Purvis of Tweed (LD): On 17 December 2010, a 26 year-old Tunisian street vendor, Mohamed Bouazizi, had his goods and equipment confiscated, as he would not bribe a police officer to allow him to continue trading. When he protested, the police slapped him in the face and humiliated him. He went to the regional governor's office to complain and was rebuffed. He then doused himself in fuel and set himself alight. He died 18 days later. One of his visitors in hospital was the then President, Ben Ali. Five thousand people participated in his funeral procession and the protests grew and grew, in size and over a wider geographical area in the region. The President and the Government of Tunisia fell, and the same happened in other countries. A simple, self-destructive act—a result of hopelessness

[Lord Purvis of Tweed]
and humiliation—stimulated what many refer to as the Arab spring, although many, as we have heard, resent that term.

In the subsequent tumultuous six years, Tunisia has undergone widespread change and, in many respects, resisted the pressures from external neighbours. Libya has descended into bloody internal conflict and continues to remain tense, if relatively peaceful, and the MENA region as a whole is at a turning point. This subject is the focus of an inquiry by the International Relations Committee of this House, on which I serve, looking at the changing of sovereignty and of the power balance in the region. Tunisia, as one example of that, gives us many lessons, and it is the particular focus this evening.

I give credit to my noble friend Lady Suttie for bringing Tunisia—its history and opportunities and the pressures that it faces—to the attention of the House. I congratulate her on her foresight. She could not have known when she tabled this Motion a number of months ago how topical it would be, given the recent Hammamet conference I attended with my noble friend and the noble Baroness, Lady Hodgson, the ongoing trade discussions in Tunisia and the focus of the international community. All credit is due to my noble friend for such forward thinking.

The British Council in Tunisia allowed the noble Baroness, Lady Hodgson, my noble friend and myself to interact with young people in Tunisia, across the Maghreb and the wider region and to have an open dialogue about the pressures and opportunities that the region faces. One contributor at the conference said that only the British Council could bring together a session that included an astrophysicist, an academic, a poet, a textile artist, an economist and a Member of the House of Lords to discuss UK and north Africa issues. But the British Council, as well as the British embassy, is doing sterling work in Tunisia, which I will return to in a moment.

In addition to the work on supporting Tunisia, as my noble friend Lady Suttie mentioned, the All-Party Parliamentary Group on the British Council is also carrying out an inquiry into resilience to radicalisation for young people in the region. As the noble Baroness, Lady Hodgson, mentioned, Tunisia is certainly a victim of radicalisation, but, equally, it can show us signs of how we can combat it. One of the most humbling aspects of discussions I had with Tunisian MPs and young people in Tunisia, including in a round table of the International Relations Committee that we conducted last week, was that they were suffering radicalisation but could offer us examples of how to solve the issue. I hope that the Government will respond positively when the inquiry of the British Council APPG concludes its work. From my meetings with delegations from the Egyptian Parliament this week and from the Iraqi Parliament yesterday, I know that we can look to Tunisia in particular for examples of success in combating radicalisation and violence—examples from which we can learn lessons for the region as a whole.

As has been said, Tunisia has not had an easy five years since the uprising and the revolution. The Government in Tunisia are the seventh since 2011. They are currently led by the 41 year-old Youssef Chahed—we wish him well and we wish the stability of Tunisia well. But there is no question that the political instability, as the noble Lord, Lord Anderson, said, has raised considerable concerns within Tunisia. Protests are ongoing and in a way, to pacify protesters, the Government continue to offer more and more public sector jobs. As my noble friend Lady Suttie said in her comprehensive speech opening this debate, private sector unemployment is still high and public sector employment is extremely high. Public sector finances remain perilous. Combined, that shows that considerable economic pressures face Tunisia. We know that the latest statistics show that 23.5% of women are unemployed. We know that the country has a massive underutilisation of a significant part of its economy. With public sector salaries representing half of all government expenditure, we know that the economic situation in Tunisia is fragile.

That is why, as the noble Lord, Lord Patten, and my noble friend indicated, the decision of the British Government not to change their travel advice, which continues to inflict considerable problems on the tourism industry in Tunisia, warrants proper scrutiny. When we were there very recently, I met a trader in the souk in Hammamet who regretted that there were not more British there. The noble Lord, Lord Patten, mentioned the Russians. The trader regretted that there were more Russians there than British tourists. He had learned English not through schooling but through self-tutoring because of the British tourists there. Our Government should clarify their position and I hope that the travel guidance will be reviewed very soon.

One of the reasons why I admire Tunisia is that, when it has gone to the brink with its political and economic difficulties and there has been political cleavage on sectarian grounds, the leaders have stepped back and realised that peaceful and open dialogue is necessary. The global recognition in the form of the Nobel Prize being awarded to the quartet is absolutely justified.

The UK has a significant role to play. I have been to Tunisia three times this year as well as welcoming many of its MPs to the UK, and I have not met a single Tunisian who does not desire much deeper and closer links with the United Kingdom through trade, culture and political support despite all the different pressures that Tunisia faces, including corruption and lack of economic development. I took part in a Westminster Foundation for Democracy process with the Tunisian parliament's anti-corruption committee, which recognises that this is an issue that needs to be tackled, and the UK has much to offer in support of that. The opportunities for the UK to support Tunisia are huge, and we must not let the Tunisian people down.

I turn to a final aspect, which more than anything else shows me the reason why we need to do this work. The British Council Facebook page alone has 203,000 likes posted by Tunisian people who have a desire to learn English, compared with the House of Lords Facebook page with 9,000 likes. There is a massive desire among Tunisians to learn to speak English and deepen links with this country. I hope that the Government will respond positively to this debate and bring the same element of foresight shown by my noble friend Lady Suttie in offering support to Tunisia and showing that country a hopeful and optimistic way forward.

9.35 pm

Lord Collins of Highbury (Lab): My Lords, if I look a little concerned it is not because the noble Lord, Lord Purvis, went over time; it is because I have just heard that Arsenal is losing to Southampton, which makes the evening even more difficult. I thank the noble Baroness, Lady Suttie, for initiating this debate, which is extremely timely. Tunisia is facing a number of challenges: a growing economic crisis and serious security threats that are aggravated by instability across the border in Libya where two rival factions are battling for control, creating a haven for Islamist militants. The major attacks that we heard about last year were organised in ISIL camps just west of Tripoli, close to the Tunisian border.

Unfortunately, the steady progress made on building democracy has not been matched by building up the economy. The 2011 and 2014 elections were both considered to be free and fair, but on the other hand the economy saw the GDP growth rate fall to less than half of what it was before the revolution. Unemployment stood at 15.3% in 2015, up from 12% in 2010. University graduates comprise one-third of jobless Tunisians. As the noble Baroness, Lady Suttie, said, the terrorist attacks have had a major impact on the number of tourists visiting the country. It is worth remembering that in the two years before the attacks, the number of UK tourists going to Tunisia continued to grow, reaching 400,000, which was higher than the pre-revolution numbers.

The FCO advice is based on the information it obtains and of course there is in effect a state of emergency in Tunisia which was imposed after a suicide attack on a police bus on 24 November 2015. As we have read on a number of occasions, most recently on 19 October, the warning has been extended for an additional three months, taking us into January of next year. Since the attacks, as we have heard in the debate, the United Kingdom has been working in co-operation with the Tunisian Government on putting in place additional security measures, gathering intelligence and providing training and support. However, as the FCO says, the intelligence and threat picture has developed considerably, reinforcing the view that a further terrorist attack is highly likely. I too should like to ask the Minister whether she envisages any change to this advice over the next six months. If we are supporting investment in the infrastructure in Tunisia, there needs to be some idea that things will progress, especially given the amount spent on security.

Unlike its oil-wealthy neighbours Libya and Algeria, Tunisia has few natural resources and the years of instability have crimped investment. Economists suggest that other sectors, such as renewable energy, can be a source of growth to compensate for the lost contribution of the tourism sector. As we have heard, the United Kingdom has been running development programmes in Tunisia since the 2011 revolution. To date, our bilateral assistance has been worth around £24 million. As the noble Lord, Lord Patten, said, funding for the 2016-17 programme has increased to £8 million, supporting security, the economy, governance, media and human rights.

In Written Answers to Written Questions from Members of this House, Ministers have stated that the UK Government will,

"continue to encourage Tunisia to set out its plans for economic development and reform, and have particularly underlined the importance of creating jobs for young people".

What assessment have the Government made of the barriers to economic diversification, and have they considered how support might be better directed to addressing these issues?

As we have heard, a failing economy affects the political situation and, as my noble friend Lord Anderson said, it is vital that we do not avoid giving support. If we do—if we limit ourselves—we put at risk the political situation and the economic situation. The two run in tandem, and that is why the United Kingdom's support is so vital.

9.42 pm

Baroness Goldie (Con): My Lords, I, too, thank the noble Baroness, Lady Suttie, for tabling this evening's debate and I welcome the contributions of noble Lords. We may have waited a little time for this debate to take place, but I think we would agree that the wait was well worth while. It was a very important issue to bring before the House and we have all been struck by the nature of the contributions.

Of all the countries that experienced popular uprisings in 2011, only Tunisia has succeeded in making the transition to democracy—a matter commented on by a number of noble Lords. It has undergone a political transformation, with a new constitution, democratic elections and the peaceful transition of power from one Government to another. It is an extraordinary achievement, particularly in light of what happened elsewhere in the region, and immediately next door. The noble Lord, Lord Anderson, spoke powerfully about all this. He addressed the importance of aid, and I hope that my ensuing remarks will not only answer his questions but provide some reassurance.

For much of the same period, the security situation in Libya went from bad to worse. Terrorists and criminal gangs flourished in the security vacuum caused by the Libyan civil war. They sought to destabilise the Tunisian transition by attacking Tunisia's security forces and its tourism industry, with tragic consequences for British and other foreign tourists in the Bardo and Sousse attacks of 2015.

The UK Government's strategy since 2011 has been to support the Tunisian Government's ambition of a stable democracy, not only because it is a worthwhile goal in itself but because Tunisia's success provides a vital counterpoint to the narratives of Daesh and other extremist groups. Our commitment to Tunisia has grown markedly since the revolution—the staffing levels at the British Embassy in Tunis are an illustration of that. The number of UK staff has grown sixfold since 2011 and trebled in the last two years alone. They are drawn from right across Whitehall, highlighting the breadth of our engagement, from aviation security and economic reform to supporting the Tunisian criminal justice system—something to which my noble friend Lady Hodgson referred. Overall, our funding for work in Tunisia has quadrupled in the last two years.

The noble Baroness, Lady Suttie, asked in particular about economic, security and cultural relations, so I will look at each field in turn. While Tunisia has made

[Baroness Goldie]
great progress politically, it continues to face serious economic and social challenges, to which the noble Baroness referred. The economic inequalities, high youth unemployment and social marginalisation that led to the revolution remain unresolved.

Our strategy is to support economic reforms that will encourage foreign investment, remove barriers to private sector growth and increase investment in those parts of the country that have historically been neglected—a feature that arose during the debate. We are designing a package of programmes focused on improving access to finance for small businesses, helping entrepreneurs to succeed in marginalised areas, supporting the fight against corruption and boosting English language skills for school leavers to meet the demands of Tunisian employers.

There is a significant and growing interest in moving towards a more enterprise-friendly economic model and our expanding portfolio of co-operation is increasingly appreciated. I hope that answers the specific enquiry of the noble Baroness, Lady Suttie. She also asked how we can encourage business to invest in Tunisia. The Prime Minister's trade envoy, Dr Andrew Murrison, represented the UK at the opening of the Tunisia 2020 conference yesterday, the aim of which is to further encourage progress on economic reform. We reiterated our commitment to supporting that goal, including through the availability of extensive insurance for potential investments from UK Export Finance. I know that a number of your Lordships raised that issue.

Supporting economic reform is vital for Tunisia's long-term future, but for success to be sustainable it must be underpinned by security. We have dramatically increased our security engagement since the 2015 terrorist attacks to build the capacity of the Tunisian security forces to tackle terrorist threats inside and outside the country, as well as cross-border organised crime and trafficking. My noble friend is absolutely right to stress the relevance of developments in Libya to Tunisia's prospects. That is why border security and managing returning Tunisian fighters are both vital elements of our support.

Of course, we are not doing this alone. After the Sousse attack we established a mechanism with G7 partners to ensure that international security support is co-ordinated and effectively targeted. It has proved successful and we now seek to apply the same formula to support economic reform. I share my noble friend's desire to see British holidaymakers return to Tunisia. We keep our travel advice under constant review as we work with the Tunisian authorities and the tourist industry to improve security and crisis response. It is very important to emphasise that we will lift our advice against all but essential travel when we judge that the threshold for doing so has been met. The safety of British citizens has to be paramount.

We are also keen to strengthen our cultural relations with Tunisia. There is a growing appetite to learn English. Indeed the noble Baroness, Lady Suttie, specifically raised the subject of education. The Tunisian Minister of Education recently announced his wish for English to become the second language taught in schools, ahead of French. This would be a significant change of direction.

Our embassy and the British Council are adjusting their programmes to respond to the increasing demand, which is clear from the 2,000 children and adults who come to learn English every week at the excellent British Council teaching centre in Tunis. Last year, 7,500 UK qualifications were taken by young Tunisians. More than 10,000 young people have been involved in Young Arab Voices, which provides debate training and skills development through more than 60 active debating clubs across 24 governorates in Tunisia—a project now set to go into high schools across the country. The British Council's Hammamet conference, to which the noble Baroness referred and which she attended last week, brings together established and emerging leaders from across north Africa and the UK. It is now in its fifth year and seems to be going from strength to strength, which is commendable and encouraging. I pay tribute to the British Council for its very positive work in Tunisia and in the region.

I shall now turn to the contributions of noble Lords, because a number of very important points were raised. The noble Baroness, Lady Suttie, talked about regional inequality, and indeed that is an issue. Regional disparities remain, with the marginalised interior regions continuing to suffer the highest unemployment levels, up to 30%, with poor basic infrastructure and limited access to public services. We encourage the Tunisian Government to deliver Prime Minister Chahed's promise to tackle regional inequality and will work with Tunisia and our G7 partners to give impetus to economic reforms. The noble Baroness will understand that, in conjunction with what I have already said about our desire to encourage economic reform and assist an enterprise-based economy, this is the most optimistic way forward to resolve these inequalities.

The noble Baroness also specifically raised the issue of travel to Tunisia, as did the noble Lord, Lord Collins. As I have just said, we will keep that under review and work with the Tunisian authorities to support them in improving security. We will lift our advice against all but essential travel, but only when we judge that it is safe to do so. My noble friend Lord Patten raised a number of interesting points, not least the geopolitics of the area, which are very pertinent. Tunisia is strategically highly important and will remain so, by its position and its unique progress on democratic reform in the region. On security, co-operation with our G7 partners, including the US, is strong and our interest in securing the democratic transition in Tunisia is very much shared by these partners.

My noble friend Lord Patten also raised the specific issue of security. He and a number of other noble Lords referred to the situation in Libya. We understand and share noble Lords' concerns about the uncertain situation in Libya and its potential knock-on effects in Tunisia. We are working with the Tunisian Government and other partners in the G7 to help improve the state of border security and so limit the risk of terrorists crossing freely. This will take time but the importance of maintaining Tunisia's stability, both as a bulwark against Daesh and as an example of successful Arab democracy, is paramount.

My noble friend Lady Hodgson made the very important point of how developing constitutional freedoms and new rights and privileges are increasingly

benefiting Tunisian citizens. That is very important and positive. She too articulated concerns about the situation in Libya and I refer her to my response to my noble friend Lord Patten. The noble Lord, Lord Purvis, rightly emphasised the important diversity of young people in Tunisia. He is absolutely correct and I hope that the recognition by the United Kingdom Government of the importance of education and of the wider civic engagement which we are trying to nurture among young people in Tunisia—with the increasing interest in topical affairs and our provision of facilities to get familiar with the form of debates—will make a positive contribution to their ability to participate very positively in the future of their country.

In conclusion, the noble Lord, Lord Collins, raised a number of important points, including travel. I think I have fairly comprehensively covered travel. I will just observe that tourism, while it is a significant part of the Tunisian economy—at the time of the Sousse attack there was certainly a very active tourist industry, particularly between Tunisia and the United Kingdom—Tunisia is not wholly dependent on it. It represented about 7% of GDP before the 2015 attacks, which is on a par with the ICT sector. The noble Lord also raised the issue of barriers to economic diversification. I hope that the responses I have given to other contributors to the debate will reassure him on that front.

Finally, our strategy in Tunisia is clear, targeted and effective. It is a strategy that we are pursuing in close co-operation with the Tunisian Government and international partners, supported by enhanced funding from the new £280 million North Africa Good Governance Fund—the fund for development spending in north Africa, from Egypt to Morocco. We remain absolutely committed to supporting Tunisia's new democracy in the months and years ahead.

House adjourned at 9.55 pm.

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