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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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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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THE
PARLIAMENTARY DEBATES
(HANSARD)

IN THE SECOND SESSION OF THE FIFTY-SIXTH PARLIAMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE EIGHTEENTH DAY OF MAY IN THE
SIXTY-FOURTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES **VOLUME DCCLXXXII**

TENTH VOLUME OF SESSION 2016-17

House of Lords

Monday 20 March 2017

2.30 pm

Prayers—read by the Lord Bishop of Leeds.

Social Care in England: Older People
Question

2.37 pm

Asked by ***Baroness Wheeler***

To ask Her Majesty's Government what is their response to Age UK's report on the state of social care in England *The Health and Care of Older People in England 2017.*

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, social care is a priority for this Government. That is why the Chancellor announced that local authorities in England will receive an extra £2 billion for social care in the next three years. This funding will allow councils to support more people, sustain a diverse market and ease pressures on the NHS.

Baroness Wheeler (Lab): My Lords, before I respond, on behalf of the whole House I congratulate Dame Vera Lynn on her 100th birthday. I was not born during the war but as a post-war child I remember how people spoke and felt about her, and I send her our warm thanks.

Back to business. The Age UK report gives a very sobering picture of the scale of the unmet demand and likely future demand for social care, and the Minister knows that the extra £2 billion he spoke of spread over the next three years is the shortest of short-term solutions. I want to focus on the report's assessment that the number of older people with unmet social care needs—defined as whether someone can carry out everyday activities such as washing, dressing, eating and using the toilet—has now grown to 1.2 million. This is an 18% increase since last year and nearly a 50% increase since 2010. It means that one in eight older people is living with some level of unmet need regarding vital everyday tasks. Can the Minister confirm that the Government's Green Paper will acknowledge this level of demand and need, and that their long-term funding solutions will have to address this issue, as well as the provision of long-term care?

Lord O'Shaughnessy: The noble Baroness is quite right that there is a growing need for care for older people because of our ageing and growing population. I am sure she welcomes the additional funding announced in the Budget. It brings to over £9 billion the additional funding announced since 2015 for social care for the next three years, and that will make a big difference to meeting the kinds of care needs that she is talking about. She talked about the difference between the short term and the long term. That is why the other crucial part of the Budget announcement concerned the Green Paper. This will be ambitious in scope, with the intention of creating a fairer and more sustainable system of the kind I am sure she wants to see.

Lord Watts (Lab): My Lords, does the Minister agree that the Government's decision to cut spending to local authorities' care services has created this crisis?

Lord O'Shaughnessy: Much more funding is now going into the social care system to reflect the additional needs of the ageing population. I am looking forwards in thinking about the extra £9 billion that will be provided. We also have over 150,000 more care workers helping people in the system, whether in residential care homes and nursing homes or at home through domiciliary care.

Baroness Brinton (LD): My Lords, after the publication of the Dilnot commission report nearly six years ago, the noble Lord, Lord Lansley, in another role, and the then Chancellor congratulated the commission on its report being a valuable contribution to meeting the long-term challenge of an ageing population. A Green Paper being seen as the beginning of this process six

[Baroness Brinton]
years on is way too late. I repeat the question that I asked the noble Lord last week: can he confirm that the Treasury will specifically be involved in looking at the funding of social care in the future?

Lord O'Shaughnessy: The noble Baroness is quite right to point out that Dilnot was an important move. It is also fair to say that several Governments, including 13 years of a Labour Government, failed to make any significant progress on this issue. We now have a Green Paper coming forward that is, of course, looking at a sustainable and fair care system, and that must also include looking at funding.

Baroness Greengross (CB): My Lords, in spite of what the Minister said, we know that many home care companies say that their biggest problem is the recruitment and retention of carers. The Centre for Workforce Intelligence estimates that at least 2 million more will be needed by 2025, both in home care and in care homes, to cope with the growing demand. Can the Minister tell us how that demand is going to be met?

Lord O'Shaughnessy: There are two distinct issues here: carers and care workers. To attract more care workers into the system we have introduced the national living wage, which will make a difference in pay for about 900,000 people. The noble Baroness is quite right about carers. There are millions of carers in the country, and we will be bringing forward a carers strategy this year, which will address some of the issues she talks about.

Lord Cormack (Con): Will my noble friend first of all associate this side of the House with the warm tributes to Dame Vera Lynn? Will he also tell the House how many care workers are from other countries within the European Union? What are we doing to ensure that we do not have a haemorrhaging of those upon whom our old people depend?

Lord O'Shaughnessy: I of course associate myself with the comments made by the noble Baroness and apologise for not saying so before. However, I am not going to sing in tribute.

Around 17% of the care workforce comes from abroad and some 7% of the total are from the EU. The key is to make sure that we have, as far as possible, a care system that attracts workers domestically. We are doing that through improving the training packages available and through better pay under the national living wage, which I mentioned.

Baroness Pitkeathley (Lab): My Lords, we heard this morning that the domiciliary care scene is under pressure and many domiciliary care agencies are in fact not tendering for contracts. The care home sector is also under pressure. The people who are not giving up, as the Minister points out, are the family carers—6 million of whom are picking up the pieces from an inadequate social care system. May I press him a little more on the carers strategy, please? It was due to be published last September. Has he a date yet?

Lord O'Shaughnessy: On care homes, it is true that some care providers are exiting the system. However, there is the same number of beds and, indeed, there are more nursing homes. So there is churn in the system and there are more home care agencies than there were in 2010. I say that only to point out that it is a changing picture. On carers, she is quite right: this is a long overdue strategy and it will be published shortly.

Baroness Watkins of Tavistock (CB): My Lords, will the Minister explain why the number of mental health and community nurses in England fell between 2010-11 and 2015-16 by 13% to 33,000, as is clearly outlined in the Age UK report? Further, could he explain the recent significant cut in funding at HEE for post-qualifying nurse education, which includes the preparation of district nurses and advanced mental health nurse practitioners? If more people are to be cared for at home, the false separation between social and health care must be acknowledged, particularly if you want to achieve some of what is outlined in the STPs, which we are going to talk about later.

Lord O'Shaughnessy: Changes are going on in the nursing workforce and the noble Baroness is right about the cases she points out. It is also worth pointing out that there has been an increase in the number of nurses with general qualifications who are able to work across both health and care, which is important for integration. She will know that there have been changes in the way nursing training has been funded, both in the way she said and in bursaries. However, we are committed to increasing the number of training places available for nurses.

NHS: Sustainability and Transformation Plans

Question

2.45 pm

Asked by ***Baroness Pitkeathley***

To ask Her Majesty's Government what assessment they have made of the impact of any hospital closures resulting from the implementation of Sustainability and Transformation Plans on Accident and Emergency departments.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, sustainability and transformation plans, or STPs, are about local health stakeholders coming together to make sure that NHS services are placed on a sustainable footing and are being transformed for the future. Any significant changes outlined in the STPs will have to meet the four reconfiguration tests of strong public and patient engagement, a clear clinical evidence base, support for patient choice and support from clinicians.

Baroness Pitkeathley (Lab): I thank the Minister for his reply but, in view of the problems about which we heard in the last Question and the fact that accident and emergency departments and other hospital services deal with many social care needs, does the Minister agree that it is vital that there is sufficient capacity in the community to manage the demands for community

services which closures will inevitably cause, and that this must be established before any closures take place? Will the Minister therefore tell the House specifically when, by whom and how this assessment of the adequacy of community services will take place?

Lord O'Shaughnessy: As the noble Baroness has pointed out, it is important that there is sufficient capacity in the social care service and in the NHS. In fact, the NHS accounts for more of the delayed discharges, for example, than does social care. Simon Stevens, the head of NHS England, has been clear that, in addition to the four reconfiguration tests, any bed closures would need to show that there was redundancy in the system, that there is alternative provision—to come to the noble Baroness's point—and that there is clear potential for efficiency. It is clear that the STPs must be able to plan ahead and provide alternatives if there are going to be changes to A&E or other services.

Baroness Walmsley (LD): My Lords, given that 50% to 60% of patients attending A&E in some hospitals hit the four-hour target, how many more hospitals will hit the target when some adjoining hospitals close their A&E departments? This does not sound like excess capacity.

Lord O'Shaughnessy: The noble Baroness is right to point out that the four-hour target is critical for the NHS and it is committed to making sure that that target is hit. Some A&E closures have been mooted but only seven areas, according to the *Health Service Journal*, have clear proposals, and that is before there has been any public engagement and any application of the reconfiguration test. I point the noble Baroness to the comments of Simon Stevens about the importance of demonstrating alternative provision and that it cannot be a case of closing beds without that being in place.

The Countess of Mar (CB): My Lords, I ask the Minister not to forget people living in rural communities, who are already disadvantaged regarding social care because their carers are not paid for their travelling. If hospitals are to close it will mean that they and their relations will have to travel further. It is therefore important, first, that they do not have to go into hospital unless it is absolutely necessary and, secondly, that they have the right sort of care.

Lord O'Shaughnessy: The noble Countess is right. Additional funding in the Budget will mean that local authorities and the NHS have more resources to account for things such as travel costs and unit care costs for care workers. Some of the STPs are dealing with urban areas and some with more rural areas. All the plans within those configurations have to take account of public engagement. As I have said, there cannot be changes without meeting the reconfiguration tests that we have set out, which must account for local circumstances.

Baroness Altmann (Con): My Lords, can my noble friend assure the House that the reviews of social care will include looking at the impact of the withdrawal by councils of help for those with moderate needs in order to focus social care on those with substantial needs? Has the emergency admission of elderly people who were not given the care that they might have needed had an impact on A&E services in certain areas? Further, will the demographics of ageing populations be taken into account when looking at the closure of A&E departments?

Lord O'Shaughnessy: My noble friend is quite right to bring the attention of the House to the effect of standards. The Care Act 2014 introduced for the first time national standards as well as much greater transparency in the provision of care. What the announcement in the Budget of additional funding for social care allows for is particularly a focus on the interface between the NHS and social care, which is where the issue of delayed transfers can arise. I can provide my noble friend with a reassurance that the Green Paper will be looking at this issue in the round, carrying on from the work done in the Budget to try to address the interface between the social care and health systems.

Baroness Wheeler (Lab): My Lords, what is the Minister's response to the key questions asked in the recent King's Fund progress assessment on how STPs are to be funded and how integrated care is to be delivered in the context of having, in its words, a,

"'workaround' … of the complex and fragmented organisational arrangements that are the legacy of the Health and Social Care Act 2012'",

and when the NHS is under huge pressure to make £22 billion of efficiency savings and to improve performance? Does this not show that the thinking and modelling behind STPs are deeply flawed?

Lord O'Shaughnessy: I am sorry to hear the noble Baroness say that about the STPs, which have received support from the King's Fund and NHS clinical commissioners. I hope that she is also aware that in the Budget the Chancellor announced £325 million of capital spending to support the strongest STPs, those which are capable of providing the kind of integration she has talked about and are delivering the highest levels of performance.

Lord Blunkett (Lab): My Lords, will the Minister share with us whether the department has provided advice or best practice in the localities on the first test of the service reconfiguration? A great deal of disquiet has emerged about a lack of engagement of key partners, never mind mobilising the support of the wider community.

Lord O'Shaughnessy: The noble Lord is quite right to bring up the issue of engagement. Those STPs which have been completed and published in draft form are now going through the engagement process. They are also being stress tested by NHS England and NHS Improvement to provide exactly the kind of scrutiny that he has talked about. Finally, in addition to the tests I have mentioned, there can be no significant service reconfigurations or bed closures without passing those tests and without public consultation to provide precisely the reassurance that these changes are about delivering national standards—they are not about trying to find a way around them.

Brexit: Negotiation Programme

Question

2.53 pm

Asked by ***Lord Spicer***

To ask Her Majesty's Government when they will produce their programme for negotiating the United Kingdom's exit from the European Union.

The Parliamentary Under-Secretary of State, Department for Exiting the European Union (Lord Bridges of Headley) (Con): My Lords, the Prime Minister's speech at Lancaster House on 17 January and the subsequent White Paper articulate our objectives and the rationale for our approach to the forthcoming negotiations. We will trigger Article 50 next Wednesday, 29 March.

Lord Spicer (Con): My Lords, would my noble friend confirm that this is not a planted Question? I had absolutely no idea a month ago that the Government were going to choose this day to announce the date of the application under Article 50. Perhaps I may press him on one issue, which is that of reversibility. I assume that, once the application has been put in under Article 50, it is not reversible.

Lord Bridges of Headley: My Lords, I shall repeat what I have said before. It is a matter of firm policy that, once Article 50 is issued, it will not be revoked, and I can also assure all noble Lords that the Government are indeed intent on delivering the result of the referendum. The United Kingdom will leave the EU and, to quote from the first line of the White Paper:

"We do not approach these negotiations expecting failure, but anticipating success".

Baroness Hayter of Kentish Town (Lab): My Lords, I am sure that the Minister has read the report of the Constitution Committee. He may also have read the IFG report from this morning. In the light of those, could he tell the House something about how we will deal with the great repeal Bill? Will it have pre-legislative scrutiny? Will we need some mechanism for the extra 5,000 statutory instruments that we will be met with? Does he agree with the Institute for Government's assessment that 10 to 15 other pieces of primary legislation could be brought before us?

Lord Bridges of Headley: I am sorry to disappoint the noble Baroness and your Lordships, but I am not going to go into that much detail now. Good things will come to those who wait. As noble Lords would expect, a lot of thought has gone into not just the amount of legislation that will be required, be it primary or secondary, but the need to make sure we get those statutes on to the statute book in time, while balancing the need for effective and proper scrutiny. I have been taking a close interest in this. We will publish a White Paper in due course. I am sure that there will be plenty of debate about that. As always, my door absolutely remains open to any one of your Lordships who may have views on that White Paper.

Baroness Ludford (LD): My Lords, the Brexit Secretary, David Davis, last week told the Brexit committee in the other place that the Government have not carried out a full assessment of the economic impact of the "no deal" pledged—or threatened—by the Prime Minister. He said that he might be able to do it in about a year's time. Does this not show that the Government's brutal Brexit policy, driven by blinkered ideology, is totally incompetent and irresponsible? Does it not reinforce the need for Parliament to be in charge to prevent a plunge off the cliff and for voters to get the final say?

Lord Bridges of Headley: I am very sorry to disappoint the noble Baroness, but I do not think it will come as a great surprise that I disagree entirely with the premise of her question. We are not seeking the kind of outcome that she has just outlined. As I just said, we are seeking success in these negotiations. We are seeking a partnership because we see it as in our and Europe's interests to come to such an agreement. I am entirely of the view that we will come to such a partnership and that we will be able to strike an agreement, so long as both sides enter these negotiations in the spirit in which we will enter, which is one of good faith and good will.

Lord Hannay of Chiswick (CB): My Lords, now that the Minister has told us the date, will he tell us whether the communication on Article 50 will be published and made available to Parliament at the time that it is communicated? Will he say whether the Government have yet appointed a negotiating team to conduct negotiations, which will be starting in slightly over a week, and whether we will be told who they are?

Lord Bridges of Headley: As my right honourable friend the Prime Minister told the Liaison Committee in December, the negotiations will be conducted at a number of levels. She said that she would have a role to play relating to discussions with other European leaders and that my right honourable friend the Secretary of State would have an important role to play. Other technical negotiations and discussions will take place at official level. Regarding the first part of the noble Lord's question, we are indeed looking at the proposals to ensure that, as we have said many times before, Parliament gets the same information as the European Parliament. My right honourable friend the Prime Minister confirmed today that she will make a Statement to Parliament next Wednesday.

Lord Campbell-Savours (Lab): My Lords, the Question asked by the noble Lord, Lord Spicer, was whether Article 50 was reversible, but the Minister said in answering that it would not be revoked. Are they not two completely different issues?

Lord Bridges of Headley: The noble Lord picks me up on an interesting point. We have said that, regardless of the legal position, we do not intend to revoke our notice to withdraw.

Lord Wigley (PC): My Lords, will the noble Lord confirm that the Government have not ruled out the possibility of asking for a specific chapter in the negotiations to deal with the particular problems of Northern Ireland, Scotland and Wales in this context?

Lord Bridges of Headley: My Lords, the noble Lord raises very important points, especially regarding the situation of the island of Ireland. I am not going to get into the structure of the negotiations nor the outcome, but I have to reassure him that we are very focused on that issue.

Lord Howell of Guildford (Con): My Lords, with whom on the other side does the Minister think at this stage we will be negotiating? Will it primarily be with the Commission, with the national capitals or with a mixture of both?

Lord Bridges of Headley: My Lords, the negotiations will be with the Commission, but as your Lordships would expect, the Government have ongoing relationships and conversations with national Governments across the European Union.

Lord Foulkes of Cumnock (Lab): My noble friend on the Front Bench asked the key question. Can I ask the corollary? In view of the huge volume of legislation that will be needed in order to implement Brexit, will there be any time for any other legislation?

Lord Bridges of Headley: My Lords, we have a very full, action-packed manifesto which we are determined to see through as far as possible.

Noble Lords: Oh!

Lord Bridges of Headley: I am sorry, but that is what happens when you get elected: you get elected on a manifesto and then you see it through. That is what we are going to do.

Syria

Question

3 pm

Asked by ***Baroness Cox***

To ask Her Majesty's Government what is their assessment of recent developments in Syria.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, the war in Syria started six years ago. Today, violence continues and the Syrian people are suffering. We urge those with influence on the regime to secure an end to the military campaign and ensure unhindered humanitarian access. We welcome the resumed UN-led talks. Only a political settlement will end the war. We remain at the forefront of international action to help the Syrian people and hold those responsible for atrocities to account.

Baroness Cox (CB): My Lords, I thank the Minister for her reply. Is she aware that the Syrian Government have brought significant benefits to the people of Syria, including the expulsion of ISIS from the iconic city of Palmyra, recovering control from ISIS over Aleppo's water supplies and displacing ISIS from numerous other strategic locations? Is she further aware that the UK Government's support for Islamist-related armed militants is hampering the fight against ISIS? Will she reveal the extent and the nature of the support which the United Kingdom is providing to these Islamist armed militants and the cost to the taxpayer of this very dubious policy?

Baroness Anelay of St Johns: My Lords, we certainly do not see the Assad regime as bringing benefits to the Syrian people. This is a regime which has been found by a series of independent United Nations reports to have used chemical weapons and committed war crimes against the Syrian people. The regime is currently denying humanitarian aid to 1.4 million Syrians living in siege-like conditions. The UN has found it responsible for bombing an aid convoy last September. It simply is not true to say that all armed opposition are terrorists. The opposition fighters in rural Damascus, for example, are not extremists, nor were the vast majority of fighters in eastern Aleppo. The UK provides political and practical support to the moderate opposition. This has included communications and medical equipment, as well as equipment—as the House will understand—to protect against chemical weapons attacks. We do not provide weapons to anyone in Syria. The recipients of UK assistance are always rigorously and continually assessed to ensure that they are not involved in any extremist activity or human rights abuses.

Lord Collins of Highbury (Lab): My Lords, there is no doubt that all sides of the House will be united in seeking peace in Syria, particularly bringing all parties together, but that peace cannot happen without ensuring that the people responsible for war crimes are held to account. My own view and the strongly held view of the Opposition is that all sides have committed atrocities and no one should be able to act with impunity. What steps are we taking to support the UN General Assembly resolution on an accountability mechanism that will ensure that all those who have committed crimes against humanity are properly held to account?

Baroness Anelay of St Johns: My Lords, I entirely agree with the noble Lord that as a member of the international community it is right that we hold to account all those who commit war crimes; that is, both Daesh and the regime, and any of the very extreme groups with which the UK does not have contact as such. Otherwise, there cannot be a long-term solution. Therefore, I can give the noble Lord an assurance that we give our full support to the United Nations, particularly this month of all months because we are chairing the Security Council. We call for all measures to be taken which ensure that the Security Council can move forward on this and avoid having anybody veto any decisions.

Lord Wright of Richmond (CB): My Lords, now that most of Syria's major cities are effectively under the control of the Syrian regime, do the Government have plans to consider reopening a diplomatic presence in Damascus?

Baroness Anelay of St Johns: My Lords, I understand why the noble Lord raises this question—he has diplomatic experience and background in these issues—but as I responded to him a short while ago, we have no faith in the word of Assad because he has broken his word so frequently. Indeed, he is breaking his word now on a ceasefire, for example in east Ghouta. So we do not

[Baroness Anelay of St Johns]
feel that it is right to show our faith or our trust in him, which we cannot have, by opening an embassy in Damascus at the moment.

Lord Risby (Con): My Lords, we all pray for the destruction of Daesh, but is my noble friend aware that some of the more moderate elements in the Syrian opposition to Assad appear to have linked up with a more radical organisation, Tahrir al-Sham, which is linked to al-Qaeda? Is my noble friend aware that this organisation has been responsible for some civilian outrages in Syria and is refusing to participate in the peace process? Can she indicate, or give some clarification of, what she thinks is happening as regards what appear to be some very unwelcome developments?

Baroness Anelay of St Johns: My noble friend is right to raise the fact again that we should stand up against all those who commit outrages, whoever they may be. He is right, too, to point to the fact that the situation among the opposition groups in Syria can indeed be fluid. There can be splintering of those groups and some which appeared in the past to be moderate then change their view and join up with those with whom this country will have no truck. I can give him an assurance that we will not negotiate with those extremists. He also raises the issue of talks. We encourage all the moderate opposition to take part in the talks in Astana. The problem has been, of course, that some chose not to attend because the regime is continuing to break the ceasefire.

Lord Campbell of Pittenweem (LD): My Lords, it has been the policy of the Government that no solution could be arrived at in relation to Syria that includes the Assad regime, but is it not the case that with Iranian and Russian support, the Assad regime is likely to be in place for the foreseeable future? In these circumstances, what long-term policy options are the Government considering?

Baroness Anelay of St Johns: My Lords, to put the position absolutely accurately, we have said consistently that we do not see Assad as part of the solution, but we have always coupled that with the statement that it is for the people of Syria to decide how the future should look. Therefore, our long-term policy is to continue strongly to support the work of Staffan de Mistura in the talks in Geneva—which we understand will resume this Thursday—but also to wish well the talks in Astana. It has been recognised by those convening the Astana talks that the real process is led by the UN, to which we give our full support.

Digital Economy Bill

Report (2nd Day)

3.08 pm

Relevant documents: 11th, 13th, 16th and 18th Reports from the Delegated Powers Committee

Clause 15: Internet pornography: requirement to prevent access by persons under the age of 18

Amendment 25B

Moved by ***Lord Ashton of Hyde***

25B: Clause 15, page 18, line 7, leave out subsection (1) and insert—

"(1) A person contravenes this subsection if the person makes pornographic material available on the internet to persons in the United Kingdom on a commercial basis other than in a way that secures that, at any given time, the material is not normally accessible by persons under the age of 18."

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, we now move in this wide-ranging Bill from the esoteric delights of the universal service obligation, dynamic spectrum access services and the Electronic Communications Code to a crucial area: namely, seeking to protect children online.

As we have said before, the introduction of a new law requiring appropriate age verification measures for online pornography is a bold new step, with many challenges. It ensures that commercial providers of pornographic material are rightly held responsible for what they provide and profit from. Commercial providers of online pornographic content provide an incredibly large amount of easily accessible content to UK users, with little or no protections to ensure that those accessing it are of an appropriate age. It is imperative that we retain controls on such material and, in this terribly sensitive area, aim to strike a balance between freedom of expression and protection of the young.

Perhaps the most sensitive challenge is how we approach material that would not be classified by the BBFC in the offline world. We have heard concerns from some quarters that the current definition of "prohibited material" may be going too far in the type of material that the regulator is able to sanction above and beyond the age verification requirements. We heard in Committee that this,

"would give the regulator extended powers of censorship beyond that originally envisaged in the Bill",

that it would potentially set,

"new limits on consenting adults accessing pornography that is not harmful to themselves or others",

and that,

"this is not the place to resolve these wider debates on adult consensual pornography".—[*Official Report*, 2/2/17; cols. 1355-56.]

We agree. Our policy intent is child protection, not censorship. Our amendment redefines the scope, taking an approach based on the definition of an "extreme pornographic image" in the Criminal Justice and Immigration Act 2008. This captures grotesque sexual violence, including rape. We have thought long and hard about where we should draw the line. We have adopted two principles. First, as this measure is about protecting children, we do not want to create a new threshold for what adults can or cannot see. This is not the place for that debate. Secondly, we want to ensure that we do not allow the regulator to step on the toes of others involved in policing this territory.

The definition of an "extreme pornographic image" in the Criminal Justice and Immigration Act provides a good marker. I know that there are also concerns

about sexual violence against women and other acts that do not meet the "extreme pornography" definition. We absolutely do not intend to create a regime that unintentionally legitimises all types of sexually explicit content as long as age verification controls are in place. We are most definitely not saying that material not allowed under other legislation is allowed if age verification is in place.

That is why government Amendment 25YV makes it absolutely clear that content behind age verification controls can still be subject to criminal sanctions provided by existing legislation: for example, the Obscene Publications Act. But we concede that there is unfinished business here. Having protected children, we still need to examine other online safety issues. As we will come to later in the debate, my department is leading cross-government work on an internet safety strategy that aims to make the UK the safest place in the world to go online. We want to understand more about the scope of the problem and identify where there are gaps in our current approach to tackling online harms.

We have heard the calls to provide the age verification regulator with powers to block criminal images involving children, as defined by the Coroners and Justice Act 2009. However, at the forefront of cross-government thinking on this was the need not to cut across the excellent work of the Internet Watch Foundation on child sexual abuse content, complicating the landscape and making it harder to effectively and efficiently protect children. It has never been the case that this regime would seek to regulate that child sexual abuse material. Fundamentally, we are dealing with different harms, with different responses, and it is right that they are treated separately.

With child sexual abuse material, the Government seek to ensure that it is eradicated at source: that content is not just blocked but actively taken down from the internet. Providing for the age verification regulator to simply block this material in the course of its work risks this. The BBFC and the IWF are in agreement that they do not wish the BBFC to take on the role of policing child sexual abuse material, or content likely to fall within this classification. The Internet Watch Foundation does a vital and difficult job and we should not seek to complicate that by conflating with age verification.

This is a sensitive subject and we know that we will never satisfy everyone. But I hope that I have convinced noble Lords that the position we have settled on is neither arbitrary nor a sop to one interest group or another. I commend the government amendments in this group.

3.15 pm

Baroness Butler-Sloss (CB): My Lords, I was wondering which of us would go first, so I apologise to the House for being a little slow.

I strongly support the work that the Government aim to do on age verification. It is admirable work and, as a former family judge, it is exactly what I would have hoped that this Government would do. I have therefore had no general involvement in the Bill until this moment—but I am concerned that their admirable work is likely to have the unintended consequences that the Minister says he does not intend to have.

The government amendments deleting "prohibited material" and putting in its place "extreme pornographic material" are giving a message which is of great concern to me. The Prime Minister has gone public, hugely to her credit, in saying that she wishes to eradicate domestic violence. But the impact on the public of a lack of online protection in relation to prohibited materials, by changing the reference to extreme pornography, will inevitably leave a gap. Although the Government say that it will not, it seems obvious that it will leave a gap—which means that serious violent porn will not, if this legislation goes through, be covered in the way that extreme, violent pornographic material will be.

This is an opportunity for those disposed to violence, particularly in the home against spouses and partners, to see it online before they try it out in their own home. Perhaps I may give your Lordships one rather telling example of how this impacts not only on women. Many women out there, some of whom have already been polled, will be absolutely astonished and some, I believe, are outraged by the idea that this degree of violent porn online will not now be part of what is restricted. But I had a case on one occasion of two children, aged about 10 and 11, who kept the television on as loud as they could so that they could not hear their father beating their mother. Day after day they sheltered in the kitchen, away from what was happening in the front room.

The message is what worries me. Perhaps the message is even more important than the wording because the extreme, violent pornography may be identified as something which would not include a great deal of serious, violent porn—whatever the Government might say. This is the matter that has brought me to table an amendment and to speak to your Lordships today. There is some flawed Crown Prosecution Service guidance, but I do not propose to say anything about it as I hope that other noble Lords will do so.

We are facing a vast number of amendments from the Government on the second day of Report, without any prior consultation or any opportunity in Committee for noble Lords to ask rather more about the likely consequences, intended or unintended, of these amendments. So I have tabled Amendment 25YD—I thank noble Lords for telling me which one it is; there are such a lot of Ys—saying that there should be two aspects: first, that the use of the words "extreme pornographic material" in the place of "prohibited materials" should not last for more than three years; and, secondly, that in two years, by regulation, the Government should be looking at, reviewing and reporting on whether this has had any adverse effect. I have to say that I would be very surprised if it had not.

I am grateful to the Secretary of State for a very helpful letter in which he says that the Government are looking at a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a meeting. I asked, although it is likely that I already knew the answer, whether, after the White Paper, there would be legislation. However, we have Brexit. I was hearing only this morning how many Bills in addition to the great repeal Bill will need to be brought through

[Baroness Butler-Sloss]
this House as well as the other place in the 18 months to two years before we come to the end of Article 50 and leave the EU. The likelihood of getting legislation in the next two years to deal with the sort of violent porn that I am talking about is really remote. I am concerned about the damage that it may do to women and also, inevitably, to children, if the man and the woman have children. However young they are, the children will suffer as well as the women—and, sometimes, the men.

That is the general background to this somewhat elaborate amendment. I hope it may find favour with the House.

Baroness Benjamin (LD): My Lords, I am very pleased to hear the Minister say that the remit of the IWF is to be extended and that soon it will be able to remove these images wherever in the world we see child abuse images stored. At present the IWF can take down only UK-stored images. Every day that passes sees the increasing abuse of innocent children because of these images. When can we expect to see the IWF given all the necessary powers to take down any child abuse images that are ever seen on the internet, in line with the offline as well as the online policy that the BBFC has? On this International Day of Happiness, I thank the Government for ensuring that children will be safeguarded and will not be able to see abusive pornographic material anywhere, and that as soon as possible the IWF will be given all the powers it needs to make sure that we do not harm children anywhere in the world.

The Lord Bishop of Leeds: My Lords, it seems odd in a society such as ours that we are even thinking about how to give access to violent pornography or trying to mitigate it in some way. It seems clear to me that most of us sitting in this House probably have less idea of how online digital communications work than a five year-old. Children—my grandchildren's generation—are very adept and almost intuit how to do this stuff. The technology is advancing so quickly—more quickly than we can imagine—and you can bet your life that many of our children will find ways around it more quickly than we can set down laws. What is online ought to be held at least to the standard of what is appropriate for offline, because it is online that children, as well as young people and adults, will access this stuff, and it is too easy. If the higher standard applies to offline, surely it ought to be maintained for online communications. Otherwise, we are saying that this is acceptable for the common good and that it represents an acceptable anthropology—our understanding of what a human being is—in which we are happy to normalise violence, the commodification of people and sex, and even the exploitation, not just for sexual purposes but for commercial profit, of something that ought to be held in higher regard.

Baroness Howe of Idlicote (CB): My Lords, I spoke on the subject of prohibited material in Committee and I rise to do so again. In Committee, I raised concerns that if the Digital Economy Bill was amended so that prohibited material could be supplied if placed behind age-verification checks, children were still likely to see this material because the Government have made clear that they are expecting a "proportionate enforcement" targeting the biggest pornography sites—likely to be the top 50 to start with—so we are not creating a world in which children are safe from accessing prohibited material. They will be safer, yes, but not completely safe.

That is the sad effect of government amendments to Clause 16. If they are accepted, it will become acceptable for a website to supply any material so long as it is behind age verification, unless it falls within the very narrow definition of extreme pornography. By doing so, we are giving violent and abusive material a large boost of respectability, as we do not allow supply of the same material via DVDs or UK-based video on demand.

In this context, the fact that the legislation defining prohibited material remains in place does not make these amendments more acceptable. It simply presents a very awkward question for the Government. Why do they not want to enforce the standards set by these laws? The decision to go to the lengths of asking us to change the Bill so that most of the laws that make up prohibited material will not be enforced cannot but send the message that in some ways we regard this as acceptable. How does changing the Bill today to allow pornographic violence that allows injury to the breasts, anus and genitals so long as it is not serious, and serious injury to any other body part, do anything other than normalise violence against women? How is this consistent with the Government's other messaging on violence against women?

The other government argument—that the CPS will still retain the discretion to prosecute—borders on the absurd. As everyone knows, the vast majority of online porn accessed in the UK comes from websites based in other jurisdictions that cannot be easily reached by our courts. That is the whole point of creating an age verification regulator with the enforcement powers in Clauses 22 and 23, which do not depend on getting errant websites in Russia into court. I am especially concerned that this material will include some images of children. The origins of this part of the Bill were, after all, to protect children. I know that the Internet Watch Foundation has a very effective role in working with internet service providers on photographs and pseudo-photographs of children. However, I am troubled because there is no agreement around the world about the ethics of animated pornographic images of children. The IWF's role on animated images is restricted to images hosted in the UK.

3.30 pm

The truth is that the IWF, unlike the age verification regulator in the Bill, does not have statutory foundation or statutory powers of enforcement. Its power is based on and limited to international agreement. This works satisfactorily where there is such agreement, namely in relation to photographic images of children. It does not work, however, where there is no international agreement—in relation to computer-generated images.

In the context in which we now find ourselves, with a Bill that makes provision for a regulator with the power to prevent animated child sex abuse images being seen in the UK, courtesy of the enforcement

powers in Clauses 22 and 23, it would be manifestly wrong to strip the regulator of that power and to invest the responsibility for dealing with the challenge in a body unable to enforce our legal standards in relation to computer-generated child sex abuse material projected into the UK from websites based abroad. Without a clear enforcement mechanism, we would effectively be endorsing the availability of such content behind age verification and telling foreign websites that it is okay to supply such material into the UK. That is not the outcome I was expecting from the Bill.

I do not support the Government's extreme pornography proposals and will certainly vote against them if there is a Division. In the unfortunate event that they pass, I will support the very important backstop amendment moved by the noble and learned Baroness, Lady Butler-Sloss, to which I have added my name. It proposes a reasonable and measured approach to the changes the Government have made at a very late stage of the Bill. The amendment requires a review of how the amended clauses that I listed at the start of my speech are working and the impact of the use of the extreme pornography category after two years, with the option of restoring the current enforcement standards, which Amendment 25W would remove, after three years. This at least gives us time for further consideration, and I hope that the House will warmly support that opportunity.

Lord Gordon of Strathblane (Lab): My Lords, I make the same point I made in Committee, which is that offline and online should be aligned. I am relatively agnostic as to exactly where the line is drawn, but it should be consistent across offline and online. Otherwise, I invite the Minister to confirm that under the government amendments, material it is prohibited to see offline, in that it is refused any form of certification by the BBFC, will now be available online. If the answer is that it will not, I cannot see why the Government do not maintain the original position in the Bill. If, on the other hand, it will be available online, does the Minister recognise that—unfortunately and, I fully recognise, unintentionally—the Government may subvert the efficacy of the offline legislation? The internet is recognised not merely as a method of disseminating information. People frequently do not buy music in the form of CDs; they download it. They do not buy videos; they download them. If we do not do something about this, we will unintentionally subvert the offline legislation.

Lord McColl of Dulwich (Con): My Lords, I rise to support Amendment 25YD. I find myself very surprised by Amendments 25H, 25W and 25YC. I appreciate that in some technical sense these amendments may not jeopardise the principle that what is illegal offline is also illegal online, but as a matter of practice and enforcement, they most certainly do jeopardise the spirit of the principle.

The Bill is very clear that the age verification regulator must enforce the law with respect to illegal pornography to the same standard that exists offline. These amendments, however, deliberately change this and thereby, albeit without perhaps making significant amounts of illegal pornography legal, certainly ask us to support the proposition that our law should instruct the regulator to make space for all but the most violent, illegal pornography. What kind of message are we sending to society? If we vote for these amendments today we will be giving the wrong message. We cannot go to the length of using valuable parliamentary time to change the Bill as it stands through these amendments, which as a matter of practice make space for violent pornography, without sending a message that violence against women is in at least some sense acceptable.

The definition of extreme pornography and material is an inadequate replacement for the prohibited material category which the amendments seek to remove. It will cover only the explicit and realistic portrayal of violence which is life-threatening or likely to result in serious injury to just a few specific parts of the body—breast, anus and genitals. This leaves a range of violent acts and behaviour which we would be saying, courtesy of amendment to Clause 16, is acceptable to be portrayed in online pornography but which would not be granted an R18 certificate, or indeed any other certificate by the British Board of Film Classification for distribution in other ways.

The British Board of Film Classification guidelines state that material to which it refuses to give a certificate includes depictions of the infliction of pain or acts that may cause lasting physical harm; sexual threats, humiliation or abuse; and material, including dialogue, likely to encourage an interest in sexually abusive activity which may include adults role playing as non-adults. I believe that if such material is to be included in the new standard for the acceptable level of violence and abuse in pornography online, we are setting the standards in the wrong place. It puts a sheen of acceptability on materials portraying violent and abusive actions and, in doing so, communicates to the viewer that such attitudes and behaviour towards women are permissible.

In the light of what is already known about the overlap between the use of violent pornography and the development of attitudes which condone violence against women, and sexual aggression, this is deeply concerning. The government Amendment 25H to the definition of pornographic material, and what material can be blocked by the regulator, also places question marks over the standards applied to other formats, by which I mean DVDs and video-on-demand services. I recognise that the internet is a vast place, but simply because there might be different values reflected in different corners of the web, should we capitulate and reduce our standards? I would say not.

The Government have tried to protect the application of different standards set out in other legislation with Amendment 25YU to Clause 27. While the actual legislation may not be changing today for DVDs and video on demand, the pressure to adjust how that legislation will be enforced will be hard to resist. Furthermore, Amendment 25YV implicitly recognises that there are different standards applying in other formats that will no longer apply to the internet, breaking the premise that what is illegal offline is illegal online. This not only disproportionate but extremely risky.

I understand that there are concerns about the original definition of prohibited material, which is being removed by Amendment 25W because of out-of-date CPS guidance, but surely that is a temporary state

[Lord McColl of Dulwich]
that will in time be remedied. Making a permanent change to the definition of what pornography is acceptable to supply behind age verification goes beyond addressing the issues on which the CPS guidance needs updating. On touching on the CPS point, I must engage with the argument made by some that the Government are compelled to make these changes because the CPS guidance on the Obscene Publications Act is out of date. As the noble and learned Lord, Lord Mackay, has pointed out, that argument is absurd. If the CPS guidance is out of date, it should update it; it is ridiculous to argue that Parliament, which is sovereign, should have its freedom to do the right thing fettered by the fact that CPS guidance has been allowed to get out of date.

Anyone voting for Amendments 25H, 25W and 25YC will be voting to make space for violent pornography online which the Bill as currently defined does not do. If there is a Division, I shall be duty bound to vote against, because I could not possibly associate myself with an attempt to make violent pornography more available than this Bill currently suggests that it should be, respecting as it does the offline enforcement standards. A vote for these amendments must inevitably have the effect of conferring some level of approval and some measure of normalisation of violence against women. If there is a Division, I shall vote against.

In the unfortunate event of the amendments passing, I shall vote for the excellent Amendment 25YD proposed by the noble and learned Baroness, Lady Butler-Sloss, to which I have added my name. The amendment allows for the definitions of extreme pornography to revert to the current definition of prohibited material in three years' time, subject to a review in two years. It future-proofs the Bill and provides a means of dealing with this problem without needing to bring forward new legislation and take up valuable amounts of parliamentary time. The three years will provide ample time for the CPS to update the guidance that it should never have allowed to get out of date and provide time for proper public debate.

The internet is a wonderful invention in many ways, but it can be used for ill. Standards on harmful material and pornography have been honed and developed in relation to videos and DVDs in the offline world over many years. It would be ill advised permanently to establish a separate and lower set of standards for the internet. Amendment 25YD will allow the Government's amendments to address out-of-date guidance but restore consistency in the approach to pornography across all media after an appropriate time. I commend it to the House.

Lord Alton of Liverpool (CB): I support Amendment 25YD in the name of my noble and learned friend, to which she spoke so well earlier on, and the comments of other noble Lords in the debate so far. The problem with coming to this point in legislation, which has proceeded all the way through the other place and is now on Report in your Lordships' House, on a day when some 174 government amendments have been laid, is that it is very hard to do justice to genuine discussion or indeed scrutiny, which is what this House is supposed to do with these measures. Although I welcome the measured way in which the Minister, the noble Lord, Lord Ashton of Hyde, introduced the amendment today and his assurance that there will be a Green Paper, I was also very taken by my noble and learned friend's comment about the difficulties there would then subsequently be in having legislation. That is all the more reason not to legislate in haste, lest we end up repenting at leisure.

3.45 pm

Secondly, and in parenthesis before I turn to my substantive points, I was struck by what my noble and learned friend said about public opinion on this issue. Although some might think this a very narrow view, polling over the weekend showed significant opposition to the Government's proposal. Indeed, support for it ranged from 5% to 10% in the ComRes poll. Some 82%, rising to 86% in the case of women, thought that online standards should be the same as those offline or stronger—the point made by the noble Lord, Lord Gordon. Only 4% thought that online standards should be weaker but sadly, as we have heard, that is the ultimate, though probably unintended, consequence of the amendments before your Lordships' House.

I have long had an interest in the subject of children and media safety, after the tragic death in February 1993 of James Bulger, near the constituency in Liverpool which I represented when I was in another place. The 24th anniversary of his murder has just passed. I promoted a cross-party amendment to bring in increased protections for video material. As a result, the Government introduced the amendment, which is now Section 4a of the Video Recordings Act 1984, into this House on 14 June 1994. That section has become known as the "harm test" and I hope noble Lords will indulge me while I quote what was said in this House at the time by Earl Ferrers, who was speaking for the Government:

"There may be some works which the board believes would have such a devastating effect on individuals or on society if they were released that there should be the possibility of their being refused a video classification altogether, and the clause leaves the board free to do that. The criteria mean that the British Board of Film Classification must consider who is in fact likely to see a particular video, regardless of the classification, so that if it knows that a particular video is likely to appeal to children and is likely to be seen by them, despite its classification being for an older group, then the board must consider those children as potential viewers. That does not mean that the board must then ban the video altogether. The board will still have discretion on how, or whether, to classify it; but it must bear in mind the effect which it might have on children who may be potential viewers … our amendment goes wider and is not confined to psychological harm or harm only to children. Harm to adults and to society in general can be taken into account".—[*Official Report*, 14/6/1994; col. 1592.]

Earl Ferrers was right then and those words stand the test again today.

This framework has underpinned video regulation since and was adopted into the regulation of video on demand in 2014. It was totally logical that it should be included in this Bill when it was introduced in the other place. In parenthesis, and before saying anything further, I commend the Government for taking on the regulation of pornography on the internet through the Bill. I particularly support what the Minister has been saying about age verification and the effort he has been putting into that issue. Our principal, but not

only, concern is the protection of children; hence the emphasis on age verification. However, we should not delude ourselves into believing that this can be enough to meet the significant challenge. The evidence of the damage being done to children and young people through easy access to pornography is deeply disturbing and should give us all pause.

Last November, the Justice Minister, Dr Phillip Lee, the Member for Bracknell, said that the internet is,

"driving greater access to more worrying imagery online. In the extreme, the sexualisation of youth is manifesting itself in younger conviction ages for rape".

Hopefully, this legislation will make a significant dent in the amount of material seen by children and will lead to a reduction in the concerns that have been so extensively documented over the last couple of years. However, having stepped on this worthy but difficult road, some potholes have appeared, not least whether and how we should regulate what adults see. I am aware that some noble Lords are of the view that it is out there; we do not need to worry about it; it has all been going on for ages; adults should be able to see what they like and we should not interfere. However, we have not taken that view in the offline world, under the Video Recordings Act 1984.

One reason for that is that it became abundantly clear that children were accessing gratuitously violent material because adults simply left it lying around. It also became clear that what we see influences our behaviour, whether we are children or adults. The advertising industry certainly believes that what we see influences us. I looked at figures for advertising over the weekend. In the last 12 months, more than £5 billion was spent on TV advertising—a record amount. Taking UK advertising expenditure as a whole, in 2016 it increased by 7.5% to £20 billion, and internet ad spend increased by 17.3% to £8.6 billion. What we see affects what we eat and wear, how we spend our money and how we behave. What is true for the advertising industry is manifestly true for these other influences too. Indeed, Parliament has rightly rejected a disinterested, laissez-faire approach to the online world of video on demand, as is evident in the Communications Act 2003. We have had to say that some material simply is not appropriate, even behind age verification, with the harm test being a consideration in what the British Board of Film Classification will classify.

The Government are saying that nothing will change with their Amendments 25H, 25W and 25YC: what is illegal offline is, and will remain, illegal online. Yes, but only up to a point. For instance, we are saying, "Don't possess explicit animated images of children, but it is okay for a website to supply this to you if it is behind age verification as it does not meet the definition of extreme pornography". We are telling retailers that they cannot supply an unclassified video work without committing an offence, but that if they are a website the regulator will not bother them unless the work is unclassified because it contains extreme pornography. Extreme pornography is a very narrow definition of very violent pornography. It is a much narrower category than prohibited material, against which the law is enforced offline and against which the Digital Economy Bill currently suggests that the regulator should enforce the law. Violent pornography will be caught via the extreme pornography offence only if it is life threatening or likely to result in not just injury but serious injury to specifically named body parts—as we have heard from my noble friend Lady Howe—clarifying that serious injury to other body parts would not be caught, as she mentioned.

Rejecting the current prohibited material standard would also mean making space for sexually violent material that would not fall within one of the criminal offences but which the BBFC would not classify,

"in line with the objective of preventing non-trivial harm risks to potential viewers and, through their behaviour, to society".

I understand that some may say that even with these amendments the provision of an age verification regulator with the power to enforce the law online would be beneficial to the extent that it means extreme pornography would be caught. For me, however, and I suspect much of the country, the presenting issue is quite different.

We are at Report stage of a Bill that has completed all its stages in the Commons and almost all its stages here. These issues should have been more widely aired and these amendments should have been considered in the House of Commons and in depth in Committee in both Houses. There should be a public debate about the changes the Government are proposing and how they will impact on other media standards, which they inevitably will over the longer term. Unless there is evidence that there is no detrimental impact, the definition of extreme pornographic material will revert to that originally used for prohibited material and the ability to provide all this material via age verification with impunity will be removed. Amendment 25YD would give us all time for reflection and to review what the evidence says on the impact of violent pornography on women, and whether the Government have got the regulatory framework right.

Twenty-four years ago, I was talking about concerns arising from violent videos. Technology and accessibility to media have changed dramatically over that time but human nature has not. The same principles of harm to children, adults and the wider society need to be weighed and confronted. It was this House that introduced the harm test in 1994 and it is this House that should now ask the Government to reflect further, which is precisely what my noble and learned friend's amendment seeks to do.

Lord Mackay of Clashfern (Con): My Lords, my name has been mentioned in connection with something that I said on this issue. I had understood that the Government's reason for widening the scope of permissible pornography from prohibited material to exceptional pornography was to do with standing CPS guidance, which is supposed to be out of date. I said that it certainly does not require an Act of Parliament to bring prosecutorial directions up to date: if the judges have changed the rules, the prescription should be changed immediately. When I was told about this matter, I raised it with the Minister, from whom I understood that that was not the reason for this change, so my point about bringing the guidelines up to date does not really matter. There is a different reason for making this change, but I am not sure that I understand it and it will be for the Minister to explain it now. When he introduced these amendments, I did not understand him to say exactly what the reason was for

[Lord Mackay of Clashfern]
wanting to make the change, but it is clear that there is a substantial change allowing pornography which is not permitted as prohibited material to be allowed now. I am not sure what the basis for that is and why it is being done.

I am extremely sorry that I have an appointment in connection with another Bill with which I am involved, so I will have to leave. However, as my name was mentioned, I thought that I should say exactly what my position is. I do not understand the justification for this change and it is for your Lordships to say whether it is justified.

Baroness Kidron (CB): My Lords, I find myself very much in the same school as the right reverend Prelate in not understanding how we can justify a form of sexual violence by one group towards another. It is very upsetting. However, I want to raise a slightly different issue that I tried to raise in Committee. I suppose that it is covered by government Amendment 25B in that it refers to commercial providers. I keep feeling that we are missing the point here—missing the business model that is fuelling all this pornography. If the amendment were to refer to those who monetise pornography—that is, those who receive money from pornography—we could make a much cleaner sweep of this issue. I think that many noble Lords will have noticed this morning—

Lord Ashton of Hyde: My Lords, would it help the noble Baroness if I mentioned that later in the debate we will be talking about the definition of commercial providers?

Baroness Kidron: It certainly would. I beg the Minister's pardon.

Lord Farmer (Con): My Lords, I wish to speak in support of Amendment 25YD, tabled in the name of the noble and learned Baroness, Lady Butler-Sloss. It would have the effect of requiring a review of the use of the term "extreme pornography" after two years and provide the opportunity to replace it after three years with a broader standard of protection enforced offline. I shall also speak against the Government's amendments to Clauses 22 and 23. They would water down the Bill by deeming only the narrow category of "extreme pornographic material" unacceptable and not the wider category of prohibited material.

I understand that Part 3 of the Bill is primarily about protecting children and that the Opposition Front Benches do not want to provoke a discussion about adult access to porn. However, by asserting that adults should have online access to what is prohibited offline, it is they who have opened up this debate.

I also understand that the Government have legally founded reasons for their amendments. As we have heard, they are concerned, for example, about the mismatch between the Crown Prosecution Service guidance and what is actually prosecutable following developments in case law. Amendment 25YD would create a window of time in which to deal with this.

Standing back for a minute, it seems incomprehensible to a non-lawyer like myself that juries can determine that henceforth something is now acceptable that would, until fairly recently, have been considered obscene under law, and yet they bear no responsibility for meeting the societal costs that accrue when such lines of acceptability are moved.

4 pm

Many of the practices portrayed in porn scenes and films that would now be deemed acceptable under case law are medically harmful. For example, a very cursory glance at NetDoctor reveals that fisting—putting the whole hand into the rectum—which case law now deems acceptable in porn scenes,

"may be acceptable and enjoyable for some couples. But the diameter of the hand is so much greater than that of the penis that there's an increased risk of anal injury. For that reason, we do not recommend this practice".

There is no public recognition whatever of the medical harms, and therefore costs, associated with these sexual practices. We know that around 510,000 new STI diagnoses were made in the UK in 2011, with estimated treatment costs of £620 million. While these are obviously not all directly related to porn use, they are an indicator of the social and medical costs that hyperliberalism in sexual activity is exacting.

There is also scant regard for the well-documented effects on people's intimate relationships. I have already talked in this Chamber about increasing numbers of young girls being injured, even to the extent of incurring lifelong fistula conditions, by anal sex that has been inspired by their partners' consumption of porn. Researchers also point to how very dubious it is that men will properly obtain consent from their girlfriends and to the social pressures that girls endure: that they should like it or that the pain will decrease as they get used to it. To me this points straight back to the ubiquity of porn, which is normalising not just potentially harmful sexual practices but also coercion and aggression.

We will never deal with the appalling prevalence of violence against women in our society—our Prime Minister's laudable ambition—unless we face up to the intense violence in relationships being played out every night on millions of computer screens. Research indicates that extensive exposure to porn can make it impossible to obtain sexual satisfaction without also releasing the aggressive drive. In other words, as tolerance to porn grows, sexual excitement is no longer satisfying and aggression must also have an outlet.

The noble Baroness, Lady Jones, stated in Committee, with no apparent irony, that her party's opposition to existing Clauses 22 and 23, which passed in the other place, is based on the fact that:

"We are simply trying to protect the status quo so that adults who currently look at material can carry on looking at it—and this has nothing to do with child protection and children's access to pornography".—[*Official Report*, 2/2/17; cols. 1362-63.]

Again standing back, the status quo is not one that responsible legislators should defend. The prohibited material she wants adults to be able to access, which the BBFC has determined they would not be able to view offline, is sowing violence and relational misery across the nation.

Of course, not all consumers of porn are compulsively so or addicted to the material, but we are beginning to learn from research that the effects of compulsive or addictive responses to porn are harrowing and ultimately avoidable. Experts on porn addiction say that, just like

other forms, it is progressive and destructive. I am aware of one individual who started watching adult porn and found it was a gateway into child sex abuse images. He followed a few links and found himself hooked. He was caught after downloading a huge number of pictures and narrowly escaped a custodial sentence. However, he can now only see his own children under supervision and will never work in his profession again.

The internet has made porn more accessible, affordable and anonymous. It has radically changed the terms of society's engagement with porn. The libertarian argument is that we should cease from regulating anything until we are sure, beyond any doubt, that it is intrinsically harmful. I am surprised that a Conservative Government do not instinctively see the need to act before more harm has been perpetrated as a result of such an enormous change in behavioural norms.

The BBFC offers protection offline, which the Bill could have extended to the online world, but this has been swept away by these amendments. The Government have abrogated their responsibility in order to preserve people's freedom to walk in a minefield that they could have done something to help clear and make safer. Talking with one young man who has struggled to stop watching porn because he feels compulsively drawn to it but hates the way it affects him—a common paradox in porn consumption—he said it would make a difference if the top 50 sites were effectively blocked. It would cut down on the accessibility of the best-quality porn—they are the top sites for a reason, after all—and undermine porn's acceptability.

When the Government use their powers to restrict access to something for the public good it sends an important message, and when they choose not to use those powers it sends another message—that the practice is neutral or even positive. Neither are the case. By the time we had irrevocable evidence that smoking was harmful, about 85% of the population smoked. However, the Government acted in the teeth of vested interests and public practice. This Government should also act in this area. If they are intent on passing their amendments in order to get their age verification legislation through, then shame on the Opposition for exacting so high a price. The amendment of the noble and learned Baroness, Lady Butler-Sloss, will at least ensure we revisit this issue in a timely fashion.

The Earl of Erroll (CB): The noble Lord, Lord Farmer, is right about the huge dangers in viewing much of this pornography online but I do not think this Bill is the right place to deal with it—that is the challenge—because we are confusing two issues. This Bill is about protecting children—that is what was originally intended—and the idea is to have age verification to stop children watching any sexually explicit material online regardless of how bad or innocent it is. If it is sexually explicit, it has got to be hidden behind age verification.

The challenge is that we have now introduced into the Bill the concept of protecting adults. However, there is other legislation that already does that. If it is not working properly, we should cure that legislation. I agree that we should bring the CPS guidelines into line with what is going on and probably review the Obscene Publications Act. The Criminal Justice and Immigration Act also deals with issues around this problem. It is covered in lots of places.

However, inserting a blanket cover in the Bill is dangerous because suddenly the BBFC will act on its own initiative to close down websites, which will then be appealed against and cause chaos to the system while the law courts are possibly doing something else. Once it is appealed to the law courts you will have a problem because two sets of measures will be fighting each other. We need to keep it consistent. Yes, we should have protection for adults, but let us do it properly and in the right place.

I support the Government on these amendments for that reason because it brings the Bill back to where we can protect children against watching anything unsuitable. The government amendments align what is in the Bill with the Visa and MasterCard standards, which helps with the enforcement measures in the Bill. They will apply internationally and this will help the ASPs—the ancillary service providers—to comply with the Bill and help to enforce measures against websites that do not have age verification in place. They will align the Bill with the Criminal Justice and Immigration Act as well, which, again, will mean that there are no other loopholes by using one Act against the other. I have already spoken about the CPS guidance.

I understand that the topical *Fifty Shades of Grey*—I do not know anything about it because I have never read the book nor seen the film—involves bondage, pain and S&M. Should that book be allowed or should it have been banned? Should the film have been allowed for general release or not? It is those kinds of issues that cause confusion and we need to realise that.

The Bill does not legitimise what is behind the age verification. That is for other Bills to do. This Bill seeks to make sure that children cannot get at anything that is sexualised. Let us not cause confusion. Let us stick to one thing in one place and one thing in another place. I support the Government on this.

Lord Elton (Con): My Lords, I cannot support the noble Earl. I follow most of his argument, but when we are considering legislation in one area we have to take into account its effect in other areas. What we have here is a proposal to narrow a definition of maximum control and to place anything that is not within that narrow definition in an area of less control where a larger population is affected by it.

I do not apologise for coming to this very late because Her Majesty's Government are doing the same. In 1985 I was in the unfortunate position of taking through this House the Bill to abolish the GLC. After it had gone through the Commons and just before the Report stage here, the then Leader of the House, Willie Whitelaw, said, "My friends down the Corridor want me to abolish the Inner London Education Authority as well". Noble Lords can see what political dynamite that was. To bring forward proposals at the second stage in the second House without wide consultation with those concerned seems to me pretty late in the day, so we are right to look at this closely.

I view it in a simple way. Powerful arguments have been put by the noble and learned Baroness and others in favour of her amendment, which I warmly

[Lord Elton]
support. The central issue is a simple one. If you take the least harmful of a bunch of very harmful material out of control, you may make the control of the remainder more effective but you also release more harmful material to less strict control. That must be wrong. Other noble Lords have spoken much more academically and legalistically than I am able to do. I merely wish to say that I have listened with my heart and my head and I stand entirely behind the noble and learned Baroness's amendment.

Lord Browne of Belmont (DUP): My Lords, I support Amendment 25YD. In Committee I set out in detail all the reasons why I thought that the Government should not do what they have done in this series of amendments. They will remove "prohibited material" and replace it with "extreme pornographic material" and put the remainder of the prohibited material category behind age verification. I concluded my speech by saying:

"The Bill takes significant strides in the cause of child protection. It would be a shame if we in this House took steps to undermine this".—[*Official Report*, 2/2/17; col. 1359.]

I start my speech today with the same sentiment and by quoting the Minister whose comments at Second Reading agreed with the sentiment that I set out in Committee:

"It is a complicated area. Free speech is vital but we must protect children from harm online as well as offline. We must do more to ensure that children cannot easily access sexual content which will distress them or harm their development, as has been mentioned. We do not allow children to buy pornographic material offline, and this material would not be classified for hard-copy distribution. The BBFC has a well-understood harm test and would not classify material that, for example, depicts non-consensual violent abuse against women, and it may not classify material which is in breach of the Obscene Publications Act, as clarified in guidance by the CPS. Prohibited material has always been within the regulatory framework of this Bill. We consider that having a lesser regime for prohibited material than lawful material would be unsustainable and undermine the age-verification regime".—[*Official Report*, 13/12/16; cols. 1228-29.]

I want to repeat that final sentence:

"We consider that having a lesser regime for prohibited material than lawful material would be unsustainable and undermine the age-verification regime".

The general public agree with that principle. ComRes polling from last weekend and published today shows that 82% of the public think that the online standards for regulating internet pornography should either be the same as those for offline or be stronger. Yet contrary to public opinion, the Government have turned on their head and performed a major U-turn on the basis of mumblings about the Obscene Publications Act.

First, the Government are trying to convince us with an amendment to Clause 27, government Amendment 25YV, that this situation will be sustainable. Just last week the noble Baroness, Lady Shields, said in answer to a question from the noble Lord, Lord Elton:

"I should say to my noble friend that we are clear that what is illegal offline is also illegal online. Legislation is in place to deal with internet trolls, cyberstalking, harassment, revenge porn and the perpetrators of grossly offensive, obscene or menacing behaviour".—[*Official Report*, 15/3/17; col. 1861.]

But she did not add, "From next week, when we pass amendments on Report, not for pornography". We are bringing in different rules about what can be supplied online and offline. If you are a retailer of DVDs you cannot sell an unclassified work. If you are a UK-based video-on-demand service you cannot have a programme service that includes prohibitive material. But if you are a website you can supply all of this material to the UK as long as it is behind age verification, unless it is extreme pornographic material. I cannot see how this position can be sustainable. Therefore, in the longer term we are changing the rules about how we approve or supply this material. I argued in Committee that such sweeping changes to long-standing arrangements should be made only with a full and public consultation. We have not had that. It has been slipped in at the end of the Bill's parliamentary scrutiny.

4.15 pm

Secondly, there is no explanation of how this new plan does not undermine the age verification regime, which is at the heart of this whole part of the Bill. We started in the Bill with 18 and R18 being acceptable behind age verification checks. Now we are saying that it is okay for a website to supply all of this material if it is behind age verification. How do we explain that to our children? I suggested in Committee that the one scenario I could foresee was to place prohibited material behind age verification checks. I warned that we should not fall into the trap of thinking that age verification makes children safe across the board and that therefore adults can access what they like without concern. I quoted at length evidence that the Government and BBFC have been very clear that enforcement will be targeted at the bigger sites. I will not repeat those statements, but I remind noble Lords that the Explanatory Notes say that Clause 24 gives the age verification regulator discretion to,

"exercise its functions in a targeted way, to those providers of pornography who reach the most people or have large turnovers".

We have no reassurance that age verification will be implemented across the board. I am not saying that children will not be safer. I think they will—that is something I commend the Government for—but they will not be completely safe. Indeed, I hope that the noble Baroness, Lady Jones, will not mind me quoting her. She said in Committee:

"I do not think that anyone considers that what is being proposed in the Bill is going to be 100% deliverable or enforceable. We are on a journey and, if we can attack 50% or 75%, we are making progress in this area. It is inevitable that we will have to revisit the whole issue in the future, so we are taking steps towards what I hope will be a fully robust system ".—[*Official Report*, 2/2/17; col. 1350.]

The point is we know that it will not be fully robust, but the Government seem happy to bring forward proposals that they previously stated, presumably on good advice, would undermine age verification. I very much look forward to hearing what they have to say on this point.

In closing, I make it clear that I appreciate that, even with the proposed amendments, internet regulation will be moved forward by the Bill and the extension of blocking to extreme pornography. It is indeed better than the current scenario, but there is nothing in place to prevent the supply of such damaging material.

However, that it is better than nothing is not an adequate argument for adopting a definition that is inconsistent with other legislation regulating pornography and makes certain violent material acceptable.

I urge noble Lords to join me in calling for the retention of equivalent protections on the internet as are in place for the distribution of pornography offline by rejecting these amendments. I shall be pleased to vote for the excellent "review and rethink" amendment, Amendment 25YD, in the name of the noble and learned Baroness, Lady Butler-Sloss.

The Earl of Listowel (CB): My Lords, I offer my strongest support to my noble and learned friend Lady Butler-Sloss in her Amendment 25YD. She is of course a former president of the family courts and a chair of the adoption Select Committee which recommended additional support for adoptive families, a recommendation which has now been implemented. She has a long record in protecting vulnerable children.

I apologise for rising for the first time at this late stage in proceedings on the Bill. I felt bound to do so because I am vice-chair of the parliamentary group for young people in local authority care. On my noble and learned friend's concern that the relaxing of the regime might to some degree encourage an increase in the level of domestic violence, many young people coming into care come from backgrounds where there is domestic violence. I agree with her entirely that we need a review to make sure that such a change does not contribute towards violence towards women.

I thank the Minister for the additional protections in the Bill for children accessing pornography; they are very welcome indeed. I extend my thanks to his colleagues in the other place for introducing a statutory requirement for personal, social, health and economic education, which will ensure that all children receive high-quality sex and relationship education. I heard from Professor Sue Berelowitz last night, an academic who has produced a number of reports on child sexual exploitation. She highlighted to me the correlation between violent pornography and domestic violence. It is only a correlation, but because there is such a correlation, we should give it careful attention. I support my noble and learned friend's amendment and I hope that your Lordships will choose to do so.

Lord Morrow (DUP): My Lords, I support Amendment 25YD in the name of the noble and learned Baroness, Lady Butler-Sloss. I fully support powers to block the supply of damaging pornography both to support the requirement for age verification and to prevent the distribution of material that is harmful even for adult viewing. I support the Government's intention announced last month for a,

"major new drive on internet safety".

I support the Prime Minister's launch of a plan to,

"transform the way we tackle domestic violence and abuse".

But the principle of joined-up government seems to be lacking as we review the Government's amendments to Clauses 16 and 22 and the new clause defining extreme pornographic material.

The Government have recognised that the internet with its many amazing facets can also be extremely detrimental to the well-being of our young people if they are accessing pornography. That fact no longer seems to be in dispute. We recognise its impact on young people's self-perceptions and relationships. I hope your Lordships will bear with me as I quote from the 2013 report prepared for the Children's Commissioner for England. It concluded:

"Access and exposure to pornography affect children and young people's sexual beliefs … maladaptive attitudes about relationships; more sexually permissive attitudes; greater acceptance of casual sex; beliefs that women are sex objects; more frequent thoughts about sex … Pornography has been linked to sexually coercive behaviour among young people, and, for young women, viewing pornography is linked with higher rates of sexual harassment and forced sex".

This is why we want to protect children and I fully support the Government's intentions.

I find myself perplexed as to why we think this material has no impact on a person when they turn 18. I accept that being an adult brings certain freedoms, but they are not infinite. I accept that we have laws that make it an offence to possess certain types of material and that that position remains, as set out in government Amendment 25YV, but at the same time government Amendment 25H is saying, "It is okay for a person running a website to supply that very same material into the UK as long as it is behind age verification", with an exception for a very small number of very realistic images. I hope that the Government will reassure us that there are, indeed, a significant number of prosecutions for those offences, but I have my doubts. Even if there are cases that come to court in the coming years, are we going to be hearing, "This material was behind age verification systems, which the Government have said are what is needed. Therefore I thought material X and Y was within the law"? We are sending very mixed messages to the public about violent pornography.

I am particularly concerned about animated images of child sexual abuse, which would be against the law to possess in the UK and would be considered "prohibited material" under the present definition but will not be caught by the definition of "extreme pornography" the Minister intends to replace it with.

I greatly value the work of the Internet Watch Foundation in taking down online child abuse images, but it does not have the remit to cover animated or drawn images if the websites on which they are found are hosted outside the UK. This limitation is compounded when we understand that 99% of criminal content is hosted outside the UK. It disturbs me greatly that we are being asked to purposefully amend the Bill to remove from the regulator the power to prevent those images being made available in the UK via the internet when there is no other body able to fulfil that role. I cannot agree to changing a definition to one that will class such images as acceptable behind age verification. Therefore I will not be supporting the government amendments in this group.

I am not alone in my concerns about the kind of pornography these amendments would make permissible. Polling undertaken by ComRes over the weekend and published today—my colleague has made reference to it already—asked more than 2,000 adults what sorts of violent acts should be allowed in pornography online. In responding to different forms of content against which the age verification regulator would not have

[Lord Morrow]
the power to act if the government amendments pass today, public opposition to allowing access to that material varied from 74% to 81%. Not surprisingly, these figures were bigger among women, who clearly feel particularly worried about these changes. Whatever pressure the Government may have been under to make the changes proposed today, the great majority of the general public do not want the material described as "prohibited" to be accessible.

I have consulted John Larkin QC, the Northern Ireland Attorney-General, about how the Bill will impact Northern Ireland and he advises me that he can "see no good reason for a change from the prohibited material category to the extreme pornography category." Noble Lords will understand that I am inclined to agree with him. I am not convinced by the Government's arguments that such a wholesale change of approach is needed and do not support the government amendments. As someone who took Northern Ireland's equivalent of the Modern Slavery Bill through the Northern Ireland Assembly, I am particularly alive to the reality of violence against women. I find it very surprising that a Government led by a female Prime Minister who took the Modern Slavery Bill through Westminster should countenance the amendments before us today. I wonder whether she has been properly briefed on their consequence.

If there is a Division on the government amendments, I will vote against. In the unfortunate event that the amendments pass, I will vote for Amendment 25YD in the name of the noble and learned Baroness, Lady Butler-Sloss, and other members of your Lordships' House. It proposes that there should be a review of the effect of this change and a sunset clause that would revert the effect of the Bill back to that in Committee, because it is time we looked at the evidence for how this material is impacting adults as well as young people. We are a digitally connected people—for good and ill. I am not suggesting that every violent sex crime is fuelled by pornography but it is time we had an open discussion about the impact of this material on violence against women and children, so that there can be reasoned policy responses.

The Relate counselling service has indicated that counsellors are increasingly seeing problems with "relationships and sexual functioning" as a result of internet pornography. In *The Way We Are Now: The State of the UK's Relationships 2015*, Relate reported that 23% of 16 to 34 year-olds in a relationship reported an "overall negative impact" on their relationship from use of online pornography. The report said that pornography use is,

"an increasingly common topic in the counselling room".

Last year, a journal article reported, based on interviews with 55 women in rural Ohio, all of whom were trying to leave their male partner, that,

"pornography is a major component of the problem of rural woman abuse".

I hope Amendment 25YD will get overwhelming support from your Lordships that there needs to be a careful review of this change and the brakes put on, if necessary.

4.30 pm

The Lord Bishop of Chester: My Lords, I know we want to get to the Front-Bench speakers so I shall be very brief and, like the contestant on "Just a Minute", not repeat anything that has been said so far in the debate. I will say just two things.

First, virtually the only defence of the Government was from the noble Earl. He is half right and half wrong, in my view. The problem is that the Bill is not about the regulation of what adults should be watching, but changing the designation of pornographic material does just that. That is the internal problem in the Bill.

Secondly, there seems to be an agreement between the Government Front Bench and the Opposition Front Bench that the government amendments are going to go through. Then we have the amendment in the name of the noble and learned Baroness, Lady Butler-Sloss. When he replies, I would like the Minister to speak about the White Paper and the further review that is in prospect. What are its terms of reference? If the Bill goes through in the form in which the Government now want it to go through, it will leave a very unsatisfactory state of affairs in terms of how adult pornography is dealt with in our country, with the distinction between offline and online, and all the questions about the actual impact of what will be accessible. It would be helpful to me if the Minister would say a little more about what the review that the Government have in mind is intended to cover.

Lord Framlingham (Con): My Lords, I, too, shall be extremely brief because this matter has now been dealt with in great detail by a number of speakers. Few issues that come before your Lordships' House make me quite as angry and distressed as this. Given the role that Parliament plays in the welfare of our nation and our children, it saddens me hugely that we are even debating it as we are. I understand why we have to but it is an enormous comment on the state of our country. It took me a while to realise that we now accept pornography as an industry. It is an acceptable industry—not quite like motor cars or other things but it has become acceptable—and I think that says an awful lot about the state of our nation today.

I have spoken before in this House about how many thousands of primary school children watch hardcore porn on a regular basis. That should be cause for concern for us all. The noble Earl made the point about *Fifty Shades of Grey*—which I have to say immediately that I have neither read nor seen—but that makes the point for us, does it not? We are talking about a medium into which our young children slip away from us—we do not know where they have gone. It is a world we cannot join them in. I think it is a dreadful world—interesting, fascinating, fun, in some ways; but in other ways, absolutely dreadful. Those primary school children are not going to go out to Waterstones and buy *Fifty Shades of Grey* or pay for a ticket to go the cinema to watch the film of it. They are going to their bedrooms to slip into this other world and watch all these horrible things we are talking about.

How often have I heard us say in this House that the welfare of the child is paramount? We say it time after time, relating to one Bill after another. If we

really mean it when we say it, we should be much tougher on issues such as this. That should be reflected in how we vote today. I do not know what will happen to the government amendments but if we divide on them, I shall vote against them. I shall certainly support Amendment 25YD, in the name of the noble and learned Baroness, Lady Butler-Sloss. I hope very much that the House will show what it really thinks about these issues and support that amendment as well.

Lord Paddick (LD): My Lords, the debate this afternoon shows the importance of noble Lords participating in every stage of the Bill. My understanding of what has happened here is that the Bill was never intended by the Government to deal with protecting adults from pornography; it was to fulfil a manifesto commitment to protect children from accessing pornography. At a very late stage in the other place, a Conservative Back-Bencher brought protection against adult pornography into the Bill. The mess that we are currently in is completely down to the Government accepting that amendment.

The current law does not allow anybody to take down either prohibited material or extreme pornography from the internet with the exception of child pornography, which is dealt with separately through the Internet Watch Foundation and so forth. The Government's problem, having accepted that amendment in the other place to do with prohibited material, is that people are losing confidence in such a definition of pornography. While prohibited material is not allowed in films and DVDs classified by the BBFC, that material is not prosecuted as obscene by the Crown Prosecution Service. The law on what is and is not obscene—on what it is lawful to have and not lawful to see and possess—is in a mess. That is why we are in this situation.

The Government have tried to remedy the situation by picking on something that is not disputed: a definition of obscenity that is a concrete foundation on which to build for the future. They have therefore decided to replace this definition of prohibited material that is falling into disrepute—

Lord Gordon of Strathblane: Can the noble Lord produce a shred of evidence to say that this definition has fallen into disrepute? I see no evidence of it in the yearly polling done by the BBFC on its classifications.

Lord Paddick: I will try to say it again more clearly. It is the fact that the Crown Prosecution Service is not prosecuting people for possessing prohibited material. That brings the definition of prohibited material into disrepute, as far as the law is concerned. I am not quite sure what it is that the noble Lord does not understand about it being brought into disrepute in that respect.

Baroness Butler-Sloss: Why cannot the CPS just change its guidance?

Lord Paddick: Indeed. What the Minister said backed up what the noble Lord, Lord Browne of Belmont, said about the criticism of there being no public consultation. There has been no public consultation about introducing adult pornography into the Bill, in the form of prohibited material. There needs to be a public debate on this to decide whether the British Board of Film Classification's operation, where it does not issue certificates for prohibited material, is the right standard or whether the CPS standard is right. There has not been a public debate about that, and we need one.

Having said all that, I entirely agree with the noble and learned Baroness, Lady Butler-Sloss, about the impact that gratuitous violent pornography can have in terms of domestic violence and the impact that it then has on children in those families. That needs to be debated and addressed. However, that is not what the Bill was primarily intended to do. Contrary to what the noble Lord, Lord Farmer, suggests, this is not some deal that has been done between the opposition parties and the Government over keeping age verification. A Conservative Back-Bench amendment was introduced in the other place at a late stage, which is why there has not been sufficient time to debate the subject in this place either, and certainly not enough public consultation on the issue. In accepting that amendment, the Government introduced this complication.

Many noble Lords around the Chamber today have said, although I do not know if they realised this, that the definition of prohibited material does not go far enough either. You can get the sort of things that they want banned from the internet on a DVD, albeit an R18, bought from a shop. The noble Lord, Lord Farmer, gave examples of the sort of sexual activity that he disapproves of. I do not know whether he knows that some of the activity that he talks about is legal to buy in a shop on a DVD. We are getting into a mess here because there is no agreement generally about what should and should not be allowed to be seen.

Lord Farmer: I made the point about the medical ramifications of certain practices. That is the point I was making about that.

Lord Paddick: Forgive me if I misunderstood the noble Lord. I thought he was using that as an argument for why that sort of activity should not be allowed to be seen by anyone, but I could be wrong.

The Earl of Erroll: This may assist the noble Lord and the rest of the House—

Baroness Buscombe (Con): I remind noble Lords that this is Report.

The Earl of Erroll: Very quickly, for clarification, the problem is that some material is regulated by ATVOD, some by the BBFC and some by Ofcom. That is where the noble Lord's problems are coming from when he talks about "prohibited material".

Lord Paddick: I am grateful for the noble Earl's intervention, but for clarity I will stick to what I was saying. The noble Lord, Lord Alton of Liverpool, talked about the harm test that was introduced in 1994. I challenge anyone to suggest that some of the things that are not allowed in R18 videos cause harm to anyone. They might be unpleasant or, in some people's eyes, morally reprehensible, but certainly there are things that are not allowed because of the definition of prohibited material but cause harm to no one.

[LORD PADDICK]
That is an illustration, without going into specific gory details about what is and what is not allowed. That is why we are in the mess that we are in.

Clearly the question of what is and is not acceptable pornography needs to be reviewed, and my understanding is that that is what the Minister has said will happen as part of an online safety review. Were the House to divide, we on these Benches would prefer Amendment 25YW from the Labour Front Bench, under which a review would take place but without specifying what the outcome of that review should be—that is, a reversion to the discredited definition of prohibited material.

4.45 pm

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the Minister for introducing his amendments today. I am also grateful to the noble Lord, Lord Paddick, for bringing some clarity to what has been quite a complicated and emotional debate this afternoon. I urge noble Lords to look at Amendment 25YW in this group, which is in my name, because I believe that would take us some way through some of the dilemmas that we face this afternoon.

As has been said, these amendments arise from a dialogue we have been having over the last few weeks about the definition of "prohibited material" and "extreme pornography". That arose as a result of late additions to the enforcement measures in the Commons, which meant that the Bill did not receive the scrutiny it deserved at that stage. Hence we have been scrambling to understand and to consider the new requirement for internet service providers not only to block sites that do not have age verification filters in place for children but also to block access to other illegal pornographic material. I agree with other noble Lords that it is very unfortunate that this has come at such a late stage and that we are trying to deal with this important issue so late in the process. We are all at a loss and have lacked something because of it.

Since then, several variations of wording have been taken from Acts that already exist and put forward as the best way of defining the new obligation. We find ourselves having to take a significant decision on which of these various options would best benefit the law going forward. All of them would benefit from further debate.

In this context, and given the sensitivities involved, we welcome the Government's attempt to strike the right balance on this issue. Government Amendment 25YV is crucial in this regard. It is a short amendment that says:

"Nothing in this Part affects any prohibition or restriction in relation to pornographic material or extreme pornographic material, or powers in relation to such material, under another enactment or a rule of law".

In other words, if pornographic material is illegal offline, it would also be illegal online. The amendment underlines that point. This is the parity between offline and online that many people have sought, and it echoes the position that the Minister spelled out when we met him recently. We support this approach because we believe that any definition of illegal material transposed into the Bill at this late stage should be based on current statutory definitions.

We also recognise the added challenge that the current legal definitions are not being applied consistently, and that the Crown Prosecution Service guidelines need to be updated—which is another issue that we have been debating this afternoon. Only then will we achieve that true parity in removing offline and online material. But we are firmly of the view that this disparity should be addressed separately, and thoroughly, in conjunction with the Home Office. We are also firmly of the view that today we should focus on the intent of this Bill, which is to introduce age verification processes to stop children under 18 from accessing pornography. The debate this afternoon has muddied the water, because that is very clearly the intent of this part of the Bill, and the way that the government amendments are set out achieves that very important aim.

This is a huge step forward and a key policy prize. It is something that not just the Government but all the main political parties have been committed to. There is no doubt that if it is implemented successfully—although that is a huge ask—there will not be the opportunities for children to access the illegal material that is concerning noble Lords today. I accept of course the point made by the noble Lord, Lord Browne, that this cannot be 100% watertight—none of these things can be. We are on a journey. I think it was one of the right reverend Prelates who said that children are very tech-savvy and we have to keep up with them. Of course we do, so this will not be 100%. But it is a massive step on a journey that will stop an awful lot of casual viewing by children of internet pornography.

That is why we believe that we should retain our focus on children—to prevent all damage to their relationships, self-esteem and mental health, and all the issues which, we understand, result from underage viewing of pornography, which we have debated repeatedly during the course of the Bill.

Of course, that is not to say that there are not other huge social issues about adults viewing violent or degrading pornography—and we all have our views on the level of acceptability of that. I resent the fact that some people think that I am in favour of a free for all, because that is certainly not my position. Some of the issues have been raised by noble Lords today, and of course it is right that they are debated and resolved in the public realm. I agree with the noble Lord, Lord Alton, that there needs to be a public debate. It has been lacking until this debate today, which I believe is the beginning rather than the end of a debate which should take place.

We welcome that debate, but we do not feel that amendments to change the definition of illegal pornographic material which adults can access online is appropriate for a part of a Bill that is intended for another purpose. We believe that this should be part of a wider debate which factors in such matters as our traditional tolerance towards consenting adults and the potential consequence of more online material being driven out of reach on to the unregulated dark web if we do not get the regulation right. In this context, we appreciate the opportunity which the Minister

has proposed for a wider round-table debate on internet safety and will happily work with colleagues away from the Bill on how we can best deliver solutions to some of the wider concerns that have been expressed today.

In the meantime, we recognise that the definition of extreme pornography now proposed by the Government is not ideal. It may be only a backstop pending a fuller review of more appropriate wording. That is why our Amendment 25YW would require consultation on the definitions used in this part of the Bill and a report from the Secretary of State back to Parliament within 18 months. We think that that would be a real step forward.

Although we have sympathy with the amendment in the name of the noble and learned Baroness, Lady Butler-Sloss, we are concerned about the more prescriptive end of her review. We agree that there should be a review, but the very fact that she has already spelled out what the outcome should be causes us concern.

Our view remains that we should be looking for an updated definition based on something deliverable online and offline with equal strength. A number of definitions are out there—not just the definition of extreme pornography that we have been debating today. In other pieces of legislation there are other definitions. We need to do a job of work which is more than we can do today to consider all those definitions, consider what the Crown Prosecution Service can deliver in terms of taking action against people, and work on that basis.

I really hope that we can work together on this, because this has felt like a very divided debate. It is not; there is an enormous amount that we agree on. It is the tactics of how we go forward that we are struggling with.

In conclusion, we support the government amendments, as far as they go, but I hope that the Minister will be able to commit to a wider review with a deadline for reform—in conjunction with his Home Office colleagues, because we recognise that this goes wider than his department's remit. I hope that noble Lords will look at our amendment and support it. I look forward to the Minister's response.

Lord Ashton of Hyde: My Lords, this has been a wide-ranging debate and I find myself in a slightly uncomfortable position: I am taking issue with several of my noble friends but I very much agree with the noble Baroness, Lady Jones, and the noble Lord, Lord Paddick. If I may, I shall start with the amendments tabled by the noble and learned Baroness, Lady Butler-Sloss, and the noble Baroness, Lady Jones, and then move on to our amendments and reply to some of the points that noble Lords have made.

Obviously, Amendment 25YD, in the name of the noble and learned Baroness, Lady Butler-Sloss, is dependent on the preceding government amendments being passed. It provides that, three years after the Act passes, the definition of "extreme pornographic material" will cease to have effect and will be replaced by a definition of material which would not be classified—in effect, the current definition of "prohibited material".

The debate on this has been strong on both sides, and it is an interesting idea that we have considered. However, our aim with this Bill, as has been said by several noble Lords, is to protect children from accessing pornographic material. We are creating parity between the offline and the online worlds in protecting children from being able to access pornographic material. These are different and incomparable places, and this is the closest we can get on parity of content through the age verification regime. Subject to the Bill shortly gaining Royal Assent, to specify that this should happen in spring 2020 unless a review finds otherwise by spring 2019 is in our view unnecessarily restrictive. It presents a binary choice that predetermines the outcome of any review. We know this is a fast-moving environment, and we do not know what the landscape will look like in two years' time. Forcing the legislation into doing something which restricts the response to how children are protected online could have unintended consequences.

What we are doing now is: through the guidance to the regulator, we are providing for the regulator to report annually on the effectiveness of the regime. This will provide the opportunity to review the regime and take any necessary action. This is a big step forward without precedent, and to focus on this one issue, which is undoubtedly important, risks being able to ensure that the regime as a whole is as effective as possible in the future at preventing children from accessing pornography online.

The amendment in the name of the noble Baroness, Lady Jones, seeks to introduce that the Secretary of State must produce a report on the impact and effectiveness of the regulatory framework provided for in this part and must consult on the definitions used within this part. The report must be laid 12 to 18 months after the powers come into force. We must aim to lay the groundwork for success before the powers are introduced, and the regulatory framework we are providing will do that. However, this will be a bold new regime with many challenges and it is right that the effectiveness of the regime is reviewed. That is why, as I have just said, through the guidance to the regulator we are providing for the regulator to report annually to the Secretary of State on the impact and effectiveness of the regime. Placing a formal requirement on the Secretary of State to do this is, in our opinion, unnecessary.

The Bill is neither the end nor the extent of our interest in child internet safety. The implementation of age verification will be watched closely from day one. We have consistently recognised the need to be flexible in our approach and this will remain the case in addressing any issues that may arise. This work forms part of our wider response to online safety, and the work that has begun in the internet safety strategy demonstrates our clear commitment to ensuring that people in the UK have a positive experience online. I shall come to that a bit later. With that explanation I hope noble Lords will not press their amendments in due course.

I turn now to replies to some of the points noble Lords made about the government amendments. I echo very much the remarks of the noble Lord, Lord Paddick. For those who have not participated before in this Bill's process, it would be helpful to repeat some of the things he said about how we got here. In some ways it is a mischaracterisation—not malicious, I hasten to add, and maybe "misunderstanding" is a better

[Lord Ashton of Hyde]
word—that we are watering down the controls, as my noble friend Lord Farmer said, or that we slipped this in at the last minute.

As the noble Lord, Lord Paddick, said, the position we are in is because we have accepted amendments through the course of the Bill. It is a bit unfair of the noble and learned Baroness, Lady Butler-Sloss, to criticise the fact that this debate is happening so late in the day when the only reason we are having it is because we accepted the amendment in the House of Commons. The issues about where we go on what is effectively internet censorship were raised in Committee in this House. So we are discussing these things because noble Lords and Members of Parliament have changed the Bill as we went on. The one thing on which we all agree—and this has been confirmed all around the House—is that we want to address child online safety. One of the big advantages from this Bill is that, by getting effective age verification in place, we have made a huge step forward.

5 pm

The problem comes not on age verification but when we talk about ISP blocking, because when we start talking about ISP blocking for reasons other than age verification we are moving into online censorship. That is where, as I said in my opening remarks, the terribly difficult line is—the very sensitive nature of effectively discussing what is right and wrong. Blocking sites that show prohibited material may not cover some areas that some people think should be covered. I am not saying tonight what is right or wrong, but what is clear is that there is no consensus on this, and we should have a proper debate. We have said that using a definition that already exists in law, and has been debated, scrutinised and accepted by Parliament, is better than relying on the CPS guidelines.

The noble and learned Baroness asked a very reasonable question—"Why doesn't the CPS just change its guidelines?". Well, it may do in time, but one thing that is certain is that the Government cannot tell the CPS to change its guidelines. That would be quite wrong, and I think that noble Lords would be very upset if we did. So we have moved to an accepted definition of what should be blocked in the line of online censorship, because that is what it is, and that is the definition that we are proposing in our amendments.

The noble and learned Baroness asked some specific questions. We accept that in using the pre-agreed definition in the 2008 Act there are some areas that we might want to think about later. For example, there is violence to women. We are absolutely clear that we do not condone serious violent porn as described by the noble and learned Baroness; violent and obscene acts will continue to be liable to be investigated by the police and other law enforcement bodies. Our amendment has made that absolutely clear—what is criminal offline is criminal online. But age verification will provide stronger protections than currently exist online.

The noble Baroness, Lady Benjamin, talked about the IWF. I do not think that I said anywhere in my remarks that we were extending the remit of the IWF, because it covers non-photographic child sexual abuse images hosted in the UK, and we are not going to extend that—but we will continue to work with the IWF to strengthen the response to child sexual abuse material. We do not want to open up the scope of the line between the BBFC and the IWF.

The noble Lord, Lord Gordon, asked why online prohibition was not the same as offline. The fact is that content should be aligned, and our aim has always been to ensure that protections that exist for children offline are also provided online. There is the Obscene Publications Act, for example, under which the CPS can prosecute, but it has discretion whether to do so or not; it still exists, and the CPS will still be able to prosecute in exactly the same way as before. So this Bill should be viewed alongside other work that is done in relation to online material, in particular the work of the IWF.

We have listened carefully to the criticisms that, in defining prohibited material in Part 3 as anything that would not be classified, we were going too far. Some noble Lords may not agree with that, but freedom of choice should be curtailed only after a lot of thought. We have agreed, in our internet safety strategy, to provide the opportunity to think about these things and some noble Lords have already been asked. We are not kicking it into the long grass: we have already planned round tables. The right reverend Prelate the Bishop of Chester asked about the White Paper. It is a Green Paper; we have promised to publish it in June and we are having round tables before that. As far as legislative time is concerned, I too heard the "Today" programme this morning. Of course, Brexit is going to take a lot of time, but there is still room for the domestic agenda. I think we can be certain that protecting women against violence, and other things like that, are going to be high on it, but I am giving no promises. I may be new, but I have been around long enough to know that I am not going to commit the Government to that from this Dispatch Box. However, we are taking it seriously and producing a forum, led by my department and in conjunction with the Home Office, to look at the internet safety strategy.

I do not think we have moved from an existing regime which has been around for a long time. We are where we are because we have accepted amendments all the way through the progress of the Bill. We have work to do but, to get child protection online, we hope noble Lords will consider supporting the government amendments in the meantime. I beg to move.

Lord Mackay of Clashfern: The noble Lord, Lord Paddick, said that the definition of prohibited material had become somewhat "suspect"—I think that was his word. Why is that? Is it a legal definition and why has it become suspect?

Lord Ashton of Hyde: It should not really be me answering that.

Lord Mackay of Clashfern: You accepted his way of putting it.

Lord Ashton of Hyde: The reason is that the CPS decides whether to prosecute on offences as it sees them. It has guidance, which has been around for some time. The fact is—and some noble Lords may

not agree with this—that views have changed and the CPS does not always prosecute in line with its own guidance.

A noble Lord: Why?

Lord Ashton of Hyde: The reason it does not is because it has discretion in individual cases. Sometimes it thinks it is in the public interest to prosecute and sometimes it does not. When the noble Lord said that it is discredited, I think he means that the CPS does not always prosecute every situation in line with its own guidance. If I have misinterpreted what he said, I am sure he will be able to tell us.

Lord Paddick: The noble and learned Lord asked a good question. My understanding is that the definition of prohibited material which the British Board of Film Classification uses is supposed to incorporate all the different definitions in different laws about what is obscene and not acceptable. The fact is that, in regard to a number of elements of those laws, the Crown Prosecution Service no longer prosecutes people for possession of that material. The definition of prohibited material therefore includes material for which someone would never be prosecuted. To that extent, the definition of prohibited material has fallen into disrepute.

Amendment 25B agreed.

Amendment 25C

Moved by ***Lord Ashton of Hyde***

25C: Clause 15, page 18, line 11, leave out subsection (2)

Lord Ashton of Hyde: My Lords, these government amendments are primarily designed to address the concerns of the Delegated Powers and Regulatory Reform Committee. The committee's first challenge is defining who exactly is in scope of the new age verification regime. Amendment 25D provides for the Secretary of State to make regulations on the circumstances in which persons should or should not be treated as making pornographic material available on a commercial basis. We have provided these in draft to aid understanding of how this power will be used and welcome views before a final version is subject to affirmative parliamentary procedure. The intention of the regulations is primarily to capture those who make money or benefit from making pornography available online, including making it available free of charge. It is not the intention to capture those sites, for example, that mostly contain non-pornographic content. However, it is the intention to cover those who, for example, market themselves as making available pornographic material and who may benefit from it.

Questions have rightly been asked about pornography on social media and our approach has been to not rule out specific platforms. In the regulations we are suggesting the scope should not include sites where an overwhelming majority of users are clearly not accessing to view pornography or where an overwhelming majority of the content is not pornographic in nature. We do not want to let anyone off the hook and where pornographic material is available but not within scope, it may be that the site will be enabling and facilitating the availability of commercial pornography and subject to an ancillary service provider notification. It will depend on the facts of any given case. Many social media sites already act responsibly. We will also look at the issue further as part of the cross-government work on the internet safety strategy that my department is leading. I will say more about this later.

We accept the committee's argument for greater parliamentary scrutiny of who the regulator is. Amendment 25R would ensure that the first designation to be made for any given function is by the affirmative parliamentary process. As noble Lords will be aware, we have been working closely with the British Board of Film Classification as the intended regulator for much of the regulatory framework, including directing ISPs to block sites. We will come back to this in a later group, but let me say now that we have absolute confidence in the BBFC and will strongly resist anything that endangers the introduction of these important measures to protect children.

We have also addressed concerns that the regulator has too much flexibility in setting its own guidance. Amendment 25YQ provides for the Secretary of State to issue guidance to which the regulator must have regard, as is standard practice for statutory guidance. The regulator cannot choose to ignore this guidance. It provides direction to the regulator in a number of areas, including the important power of internet service provider level blocking. ISPs will be expected to take all reasonable steps to enact a notice from the regulator. We have circulated this guidance in draft. It is based on the many discussions and debates that have taken place over the previous months, but I stress that this is a draft, and we are now seeking views from parliamentarians and others before a final version is laid in Parliament.

In addition to the guidance to the regulator, we have also strengthened the requirements on the regulator in relation to the guidance it issues in Amendments 25YM and 25YA. The age verification regulator must publish guidance about the types of arrangements for making pornographic material available that the regulator will treat as being compliant and guidance about the circumstances in which it will treat services provided in the course of a business as enabling or facilitating the making available of pornographic material or prohibited material. Government believe that internet sites, including social media, can be classified by the regulator as an ancillary service provider, where they are enabling or facilitating the making available of pornographic or prohibited material. This would mean they could be notified of pornographers to whom they provide a service. This guidance will now be subject to an affirmative parliamentary procedure the first time that it is made, providing further opportunity for scrutiny.

Amendment 25M requires the Secretary of State to be satisfied that the intended appeals arrangements are "sufficiently independent" as part of the designation process and we provide further details on this issue in the draft guidance to the regulator, on which I will say more in a moment. Again, we will come back to this in a later group, but we are confident that further parliamentary scrutiny at the time of designation provides an appropriate time to ensure that the arrangements are right. I beg to move.

5.15 pm

Lord Paddick: My Lords, my noble friend Lord Clement-Jones and I have Amendment 25N in this group. It is a probing amendment to test whether a "sufficiently independent" appeal mechanism against a decision of the age verification regulator is good enough. Government Amendment 25M, regarding appeals against a decision of the age verification regulator, describes the arrangements as "sufficiently" independent of the age verification regulator. Our amendment would remove the word "sufficiently" so that the amendment read: "any person hearing an appeal under those arrangements will be independent of the age-verification regulator".

The British Board of Film Classification currently operates its own appeal mechanism against its decisions either to classify a film or DVD with a particular age classification or to refuse to grant a classification at all. That appeal mechanism is operated by the BBFC but by a panel that is independent of those who made the initial classification. To that extent, it is not wholly independent of the BBFC but it is arguably sufficiently independent to command the confidence of those seeking classification for their films and DVDs—that is, the industry can have confidence in the process.

Although this works well in practice with the proposed age regulation regulator, what if that regulator changes? This "sufficiently" independent arrangement appears to be designed around the proposed age verification regulator, the British Board of Film Classification, in a counterintuitive way—that is, not having an appeal mechanism that is totally or completely independent seems counterintuitive—because of the reputation that the BBFC has, which might not be the case were the age verification regulator to change. The wording "sufficiently independent" appears to be BBFC-specific in a way that might not be acceptable were any other regulator to be chosen. Perhaps the Minister can reassure the House on that point.

The Earl of Erroll: My Lords, I want to comment on Amendment 25D and to thank the Government for proposing new subsection (2B). One thing that worried those of us who had been thinking about how to make age verification work was the definition of "commercial basis", which was a potential loophole for some websites to get round the provision. This proposed new subsection seems to close that loophole in that, even if material is free, it can still be provided on a commercial basis. Therefore, I congratulate the Government and support this amendment.

Baroness Jones of Whitchurch: My Lords, I am grateful to the Minister for explaining the thinking behind these many amendments. I have read them and think that I understand them but I am sure that he will correct me if my interpretation is wrong. They underline the considerable amount of additional work that is still to be done if we are to get a comprehensive age verification scheme properly up and running.

The Minister will know that the Delegated Powers and Regulatory Reform Committee was of the view that many of the details should be spelled out on the face of the Bill. For example, it expected details such as the definition of "commercial basis" and the identity of the regulator or regulators to be specified at this stage. However, the provision of this information, like many other details, has been put off by the Government to a later date, to be included in the guidelines to which the noble Lord has referred and to be discussed in further debates that will be taken under their auspices.

The DPRRC also requested that guidelines on how the financial penalties should operate should be brought before this House as an affirmative resolution. I remind the House of a particularly stark criticism that it wrote at the time. It said:

> "We consider it objectionable as a matter of principle that a regulator, who is to be clothed with extensive powers to impose fines and take other enforcement action, should itself be able to specify how key concepts used in clause 15(1) are to be interpreted".

I would be grateful if the Minister could justify why what seems to be a rather straightforward piece of advice from that committee has once again been rejected. As I understand the noble Lord's amendment, it is the offer of a negative procedure that is now being put before us, which of course does not carry the same weight.

The amendments deal also with the provision for appeals, which again were debated at length in Committee. The Minister will know that the DPRRC recommended that a statutory right of appeal should be placed in the Bill. Again this advice seems to have been rejected by the Government and, instead, they are relying on a new formulation of words specifying that those hearing any appeal should be "sufficiently independent" of the age verification regulator. As we have heard, the detail of this "sufficiently independent" regime is spelled out in the draft guidance.

I have to say that we share the view of the noble Lord, Lord Paddick, that this really is not good enough. The guidelines specify that the independent appeals panel will effectively be appointed and funded by the regulator. However, we have tabled a separate amendment—Amendment 25P, which will come up in a later group—that specifies our belief that the appeals process should indeed be fully independent of the regulator. We believe that our amendment is more appropriate than that of the noble Lord, Lord Paddick. It would be helpful if the Minister could explain why the DPRRC's advice on this matter has been rejected.

I return now to the overall package of government amendments in the group. As I have said, they seem to flag up a great deal of further work that will need to carry on outside the Bill. As it is worded, the Secretary of State will issue guidance to the regulator and the regulator will, in turn, issue guidance for approval to the Secretary of State. That seems a rather cosy arrangement of swapping guidelines back and forth, but it is not quite clear to me at what point Parliament will have the final say in all these matters.

Some of the outcomes will come before the House in the form of affirmative regulations but others will not. We do not yet know who the regulators will be, how the age verification regime will work, how the privacy checks will work, what the definition of "commercial activities" will be, how ancillary services will be defined and, crucially, we do not know how the

internet service blocking system will work or what kind of fines will be imposed on those who fail to comply. Without wishing to overlay this, it all feels like a rather unsatisfactory piece of legislation. The amendments before us today and the guidelines that have recently been issued do little to reassure us that the Government really have got the detail of this in hand.

Regrettably, we feel that the Government are in danger of delegating far too many powers to the as yet unspecified regulator. This is an issue that we will return to in the next group of amendments. In the meantime, I look forward to hearing the Minister's response on the points I have raised.

Lord Ashton of Hyde: My Lords, Amendment 25N in the name of the noble Lord, Lord Paddick, seeks to remove the word "sufficiently" from the appeals guidance. I will explain why we do not think that that is necessary.

The draft guidance to the regulator specifies that an appointments board engaged by the regulator must appoint an independent appeals board—independent of the regulator, government and the industries that are most likely to submit an appeal. The draft guidance explains that the members of the independent appeals board, appointed by the appointments board, should be appointed on terms and conditions that ensure their independence. Members should represent a broad spectrum of opinion and experience and be respected in their field. They should also be able to demonstrate a commitment to the standards of conduct set out in the Committee on Standards in Public Life's *The 7 Principles of Public Life*. We agree that it is important that there is an independent, open, fair and transparent appeals process. Our amendment to the designation and guidance achieves this. It will deliver an appeals process that gives those affected recourse to an independent appeals panel which is not part of the regulatory body, and where the regulator has no say on who is a member and has no role in making the appeal decision.

Further parliamentary scrutiny at the time of designation will provide an opportunity to ensure that the arrangements are right. As part of the designation process, government Amendment 25Q requires the Secretary of State to lay before Parliament a statement of the reasons why she is satisfied that, for example, any person hearing an appeal will be sufficiently independent. Parliament will then have an opportunity to scrutinise this. In this case, "sufficiently independent" is an adequate description of a most robust appeals process. On that basis, I invite the noble Lord not to move his amendment.

I was somewhat taken aback by the noble Baroness's criticism of our response to the DPRRC. We thought we had addressed—

Lord Framlingham: I hope I am right. I think Amendment 25N is in the next group.

Lord Ashton of Hyde: I am sorry, that has rather thrown me. I was saying that I was surprised by the noble Baroness. We think that we have agreed to the spirit of nearly all of the DPRRC amendments. We have not done everything to the letter but we have agreed to the spirit of its amendments. However, we have written back to the DPRRC about the classification of a regulator—which we will come to later—but that is purely because we are following other legislation.

Baroness Jones of Whitchurch: I specifically asked about the ability to impose fines and so on. That appears to be under a negative resolution in the government amendments.

Lord Ashton of Hyde: We have not designated the financial regulator. We will have to do that. I will check if it is under a negative resolution and undertake to write to the noble Baroness and talk to her about it. I cannot remember what it is, to be quite honest.

The point about the financial regulator—we will come to this in a later amendment—is that we have a disagreement about the extent to which the BBFC should carry out functions. The one thing that we are agreed on is that it should not carry out financial enforcement. We will talk later about what exactly it should and should not do. We have not yet designated who the financial enforcement regulator is—we will do that later—but we want to get the regime up and running before we decide.

The government amendments have addressed many of the points raised today and by other noble Lords during the passage of the Bill. They provide for greater parliamentary scrutiny, include affirmative procedures where there were none and provide greater clarity and direction to the regulator. The direction to the regulator will be laid before Parliament and we have invited noble Lords to contribute to that draft guidance. In all, that will give greater confidence that the measures will be in the best place possible to be successful. I beg to move.

Amendment 25C agreed.

Amendments 25D to 25F

Moved by ***Lord Ashton of Hyde***

25D: Clause 15, page 18, line 16, at end insert—

"(2A) The Secretary of State may make regulations specifying, for the purposes of this Part, circumstances in which material is or is not to be regarded as made available on a commercial basis.

(2B) The regulations may, among other things, prescribe circumstances in which material made available free of charge is, or is not, to be regarded as made available on a commercial basis.

(2C) Regulations under subsection (2A) may provide for circumstances to be treated as existing where it is reasonable to assume that they exist."

25E: Clause 15, page 18, line 17, leave out subsection (3)

25F: Clause 15, page 18, line 36, at end insert—

"( ) Regulations under subsection (2A) may make different provision for different purposes.

( ) Regulations under subsection (2A) are to be made by statutory instrument.

( ) A statutory instrument containing regulations under subsection (2A) is subject to annulment in pursuance of a resolution of either House of Parliament.

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

Amendments 25D to 25F agreed.

Clause 16: Meaning of "pornographic material"

Amendments 25G and 25H

Moved by ***Lord Ashton of Hyde***

25G: Clause 16, page 18, line 38, before "means" insert "(except in the expression "extreme pornographic material")"

25H: Clause 16, page 19, line 17, at end insert—

"(g) a video work that the video works authority has determined not to be suitable for a classification certificate to be issued in respect of it, if—

(i) it includes material (other than extreme pornographic material) that it is reasonable to assume from its nature was produced solely or principally for the purposes of sexual arousal, and

(ii) it is reasonable to assume from the nature of that material that its inclusion was among the reasons why the video works authority made that determination;

(h) material (other than extreme pornographic material) that was included in a video work that the video works authority has determined not to be suitable for a classification certificate to be issued in respect of it, if it is reasonable to assume from the nature of the material—

(i) that it was produced solely or principally for the purposes of sexual arousal, and

(ii) that its inclusion was among the reasons why the video works authority made that determination;

(i) any other material (other than extreme pornographic material) if it is reasonable to assume from the nature of the material—

(i) that it was produced solely or principally for the purposes of sexual arousal, and

(ii) that the video works authority would determine that a video work including it was not suitable for a classification certificate to be issued in respect of it."

Amendments 25G and 25H agreed.

5.30 pm

Clause 17: The age-verification regulator: designation and funding

Amendment 25J

Moved by ***Baroness Jones of Whitchurch***

25J: Clause 17, page 19, line 47, leave out "may" and insert "must"

Baroness Jones of Whitchurch: My Lords, in moving Amendment 25J I shall speak also to Amendments 25K and 25P. They tackle three key aspects of the regulation regime as set out in Part 3. First, as we have said, we believe that a great deal more work needs to be done on the detail of the Bill, specifically on the functions of the regulators. It is important to get this right.

For example, potentially huge new powers will be available in Part 3, underpinned by large fines and considerable and as yet untested obligations laid on internet service providers, banks and advertisers. The core expectation is that these large institutions are going to help us to police pornography sites, but for this to work there has to be confidence in the competence of the regulators and that their judgments will be proportionate and legally watertight.

From our discussions so far with these groups, I do not think that we have quite reached that point. Like most people, they have sympathy with the aim of protecting children, but they remain somewhat confused about how this is going to work in practice and what their role will be. This is why we suggest in proposed new subsection (14) set out in Amendment 25P that there should be further widespread consultation about the designated functions and powers of the regulators before they are laid down in statute.

Secondly, there is the issue of who the regulator or regulators might be. As noble Lords will recall, the lack of detail about the roles that they are to perform was discussed at length by both the Delegated Powers and Regulatory Reform Committee and the Constitution Committee, which fed their comments through during the Committee stage. I will not rehearse all the arguments again because they have been spelled out, but as an example, the DPRCC concluded:

"We think it inappropriate to delegate to the Secretary of State, with only a modest level of Parliamentary scrutiny, the decision on whom to designate as the regulator".

The truth is that the Government have not been clear on this issue, and indeed they seem to have changed their position as the Bill has progressed without a legitimate explanation for doing so. The original letter of intent, which was sent by DCMS to the BBFC last year, made it clear that it would carry out the front end of the regulatory framework with a different, unnamed regulator of equal status carrying out the enforcement functions set out in Clauses 20 and 21. This position was maintained by the Government throughout the Commons debates on the Bill. Thereafter, in the Lords Committee stage debate, the Minister said:

"We propose that the BBFC should carry out the initial monitoring, assessing and notification work, and we are carefully considering alongside this the option for an enforcement regulator".—[*Official Report*, 2/2/17; col. 1297.]

Our amendment is consistent with that position.

However, the Government's view has changed again. In a more recent letter to the DPRRC, they say that it is intended that the BBFC should carry out all the functions apart from issuing financial penalties. Finally, at a recent meeting the Minister, Matt Hancock, began to speculate that the BBFC could in fact carry out all the functions in the Bill and that a second regulator was not really necessary. This is confirmed in the draft guidance that was produced last week. It is clear that a degree of mission creep is taking place here without an adequate explanation. That underlines our concerns that the Government have not really thought this through. It is not clear why there has been a change of heart. It might be purely pragmatic because, as we understand it, Ofcom has shown a reluctance to take on the enforcement role, but that is not a good enough reason to load all of the powers on to one body with little experience of the scale of enforcement that is spelled out in the Bill.

We continue to be clear that there are two separate regulatory functions, both with considerable responsibilities and heavy resource commitments. They are, first, identifying persons who contravene the requirement to provide age verification filters or who display extreme pornography—it may well be

that the BBFC is qualified to do that—and, secondly, taking the widespread range of enforcement actions, including imposing fines, cutting off payments and advertising revenue, and blocking sites as specified in Clauses 20 to 23. This is how the Government originally intended the system to work, and it is a mark of good governance that the two roles should be kept separate.

Our amendment would remove the option of having just one regulator and specifies that there should be two or more. The relationship between the two bodies is set out so that appropriate checks and balances are in place.

The amendment also specifies that the appeals mechanism for decisions by the regulator should be fully independent and not appointed, overseen and funded by the regulator. Again, this is an issue that we have debated previously. We do not believe that the measures set out in the draft guidance address our concerns about appeals, and I hope that even now the Minister will concede that the Government need to revisit the level of independence of the appeals mechanism and to reassure us on that matter.

Finally, our amendment specifies the need for the regulators to have the status of a body corporate, independent of the Government and with all appointments made openly and transparently. Compelling arguments on this matter were put forward in Committee by my noble friend Lord Stevenson, and we continue to believe that they should be addressed before any regulator is appointed. Unlike most regulators, the BBFC is a private company with private arrangements for board appointments. It lacks the transparency and accountability of most organisations operating in this public sphere. It is to be appointed to a role where it will take on considerable extra functions that will be funded by the Government and with complex moral responsibilities at their heart, as we have heard in the earlier debates. We need a reassurance that its governance is of the highest standard, in keeping with the Nolan principles and open to scrutiny.

We believe that our amendments cover the essential factors which underpin a solid and credible regulatory structure. The Government should take time to make the appointments of regulators and they should think again about the drift towards one regulator, which was never originally envisaged. It is important to ensure that all the parties that will play a role in this new regime have confidence in the competence and authority of the regulators, and we believe that this can be achieved only if we consult further and widely about the functions as set out in our amendments. On that basis, I beg to move.

Lord Paddick: My Lords, I shared some of the concerns that the noble Baroness has just articulated about the role of the BBFC as both the group that will reach these decisions and the one to enforce them. However, having met with representatives of the BBFC, I have to say that I do not agree with the noble Baroness about heavy resource commitments. The BBFC is content that it should be able to carry out these roles with a minimal increase in resources. Also, bearing in mind the confidence that the industry currently has in the BBFC around classification and the awarding of certificates for films and DVDs, we are confident that were the BBFC to become the regulator, it could carry out both roles.

At the end of the day, the BBFC is not at all confident about how effective the financial penalty elements of the Bill will be, bearing in mind that the overwhelming majority of pornographic websites are hosted in other countries. In its view, the enforcement of financial penalties will be almost impossible, but it is confident that it could quickly and easily ask internet service providers to block websites that fail to provide adequate age verification. In these circumstances, we do not believe that we can support the amendments.

The Earl of Erroll: My Lords, this is an important point. Without enforcement, nothing will work. If you do not enforce age verification, no one will bother with it. For exactly the same reasons as the noble Lord, Lord Paddick, gave, I think that the notice and take-down—the blocking—is the only thing that will work. Fines will not work; it is probably a waste of time even trying them. The only thing that might work is to ask the credit card companies not to take payments for those sites, because they like to observe the law. I am concerned that the BBFC will not have resources to do this properly, but even if it goes elsewhere the BBFC should still be able to notify ISPs to block sites. That bit must certainly be enforced.

Lord Ashton of Hyde: My Lords, I am grateful to everyone who has spoken in this brief debate. The introduction of a new law requiring appropriate age verification measures for online pornography will help protect young people and children from potential harms from online pornography. It will also rightly hold commercial providers of online pornography responsible for the material they provide and profit from.

The Government of course take the protection of children and young people very seriously. To provide effective protection it is important that we have a robust regulatory system in place. These amendments seek to limit the scope of the regulatory functions that may be fulfilled by the BBFC by seeking the requirement that the same regulator must not be responsible for both identifying a non-compliant site and taking enforcement action against it. I shall first explain why, in identifying the BBFC as the preferred regulator, we think we have made the right choice.

The Government's intention is that, subject to parliamentary approval, the BBFC will be the regulator responsible for identifying websites that do not have adequate age verification or are hosting extreme pornography, and then to give notice to the appropriate persons, be they payment service providers, ancillary service providers or ISPs. It is not intended that the BBFC will be designated as the regulator responsible for issuing financial penalties. That will be a role for a separate body, yet to be determined, but which will be approved by Parliament.

We are pleased to be working with the British Board of Film Classification as the intended age verification regulator, again subject to parliamentary approval. To respond to the remarks of the noble

[Lord Ashton of Hyde]
Baroness, Lady Jones, on structure, the BBFC is an independent, not-for-profit company that has a proven track record of interpreting and implementing legislation as the statutory authority for age rating videos under the Video Recordings Act. It has unparalleled expertise in classifying content and it is committed to delivering the aims of age verification. It is the expert on editorial judgments over pornographic and other content.

The BBFC has been classifying cinema films since it was set up in 1912 and videos and DVDs since the Video Recordings Act was passed in 1984. It continuously has to make judgments on classification, openly and transparently. These decisions relate to a multimillion-pound industry and are subject to challenge. The BBFC's work with mobile network operators on the self-regulatory regime for mobile content is a good example of where it successfully sets content standards, implements them and adjudicates transparently and accountably.

The BBFC will not operate without oversight. It must have regard to the statutory guidance from the Secretary of State to the regulator. This will provide a further opportunity to ensure that the regulator fulfils its duties in the way Parliament sees fit. As I said earlier, we are seeking views on this guidance before a final version is laid. Ultimately, the regulator's decision-making process will be subject to oversight by the courts as there is the possibility of challenge by way of judicial review. This prevents it acting arbitrarily.

In our view, these amendments are unnecessary for the following reasons. First, Clause 17 already enables the Government to designate a person, or any two persons or more jointly, as age verification regulators. The importance of getting this measure right means that the Government remain open-minded and retain flexibility as to how best to respond to changing circumstances. If the BBFC is proven to be unable to deliver certain regulatory functions the legislation has the flexibility to overcome these problems.

Secondly, splitting the regulatory functions in the Bill so that the same regulator cannot identify non-compliant sites and enforce against them unnecessarily creates a middleman in the process. The BBFC will have to give notice to a second regulator, which will then pass that notice on to an ISP or other appropriate body. This is just red tape for no benefit. It makes sense that the body that makes the original determination should also be responsible for notifying relevant parties affected by that determination and for ensuring that that notification action is effective in achieving compliance.

Thirdly, our ambition is to have the age verification regime in place by spring 2018. We are determined to stick to that timetable. The NSPCC has set out the scale of the problem we face and we need to get on with protecting children as quickly as we can. If we need to invent an additional regulator that can only delay the result.

5.45 pm

There will always be challenges when working with a pre-existing body on something new such as this. Equally, there are probably bigger challenges and potential delays in starting anew with the new regulator. We have every confidence in the BBFC's ability to take on this role and the procedure for designation provides a further opportunity for Parliament to scrutinise this.

I am grateful to the noble Earl, Lord Erroll, for talking about the BBFC's role. I remind noble Lords that it was always our intention that the BBFC would be responsible for notification of ancillary service providers, so notifying ISPs to block is an extension of this role and was introduced following an exchange of letters with the BBFC. The question of who will be the regulator for financial penalties is valid. We will continue to consider the appropriate timing for introducing financial penalties for non-compliant providers and decide who the regulator for this will be. This is the new system. This approach provides the appropriate level of flexibility and provides the right levers to ensure that providers of pornographic material will be incentivised to comply. The Government and the BBFC agree that much can be achieved through the initial stages of the regulatory framework—that is, before we get to financial penalties. This should interfere significantly with the pornography providers' business model and provide them with a real incentive to comply with the age verification requirements.

I therefore hope that, with that explanation and reassurance, the noble Baroness will feel able to withdraw her amendment.

Baroness Jones of Whitchurch: My Lords, I am grateful to the noble Lords who contributed to the debate. Of course I accept that the BBFC has considerable experience of dealing with classification. I will not rehearse the arguments that noble Lords put forward: it is of course the case. It is well known and well documented. The part of the Bill that we are concerned with concerns the enforcement role, which goes into uncharted waters.

The noble Earl, Lord Erroll, is quite right that the idea of notice and take-down is a very different way of operating and achieving your end goals. It is quite a novel way, and I am sure we all look forward to finding out whether it will work. The idea that to get pornographers to play ball, if you like, we will cut off their advertising or their money is a great initiative, but we do not know whether it will work. More importantly, I do not know whether the BBFC has any experience of trying to oversee a regime that operates on this basis.

As I said in an earlier debate, I have spoken to some of the internet service providers, and all of the organisations we are talking about here have every sympathy with what we are trying to achieve. However, they have a huge number of questions about how this will work in practice. It is very easy to say that we should block access to the sites, but it is much more difficult technically to implement and to oversee.

We could get carried away with the BBFC being in a position to take all of these functions over. I recall that when the BBFC gave evidence in the Commons before debate on the Bill started there it had much more modest ambitions about what it was able to do. It is interesting that it has been persuaded during the past few months that it should expand its horizons, but I have seen no evidence of it having been tested whether it has the staffing, the expertise or the funding

in place, or whether it has the confidence of those whom they will regulate to carry out this role. It is with the back end of all this that we are concerned.

The Minister has implied that the Government's thinking is the same, but if we look at what was said in the Commons, more latterly in debate here and now in writing, we see that the Government's position on this has changed as well. I do not know that there has been an adequate explanation. As I said originally, I suspect that they do not have another obvious person lined up, so the people at the BBFC are the only ones volunteering to do it. I am not sure that that is the best basis on which to try out something which I believe could be an exciting way of achieving our aims. I am not convinced that we have yet seen the evidence that the BBFC has the skills to do it.

The Minister may not be surprised that I do not accept what he had to say. There is an issue about subcontracting all this work to a private company that is not properly overseen and regulated in the way that we would want. I beg leave to withdraw Amendment 25J but will seek to test the opinion of the House on Amendment 25P.

Amendment 25J withdrawn.

Amendment 25K not moved.

Amendment 25L

Moved by ***Lord Ashton of Hyde***

25L: Clause 17, page 19, line 48, leave out "this Part" and insert "—

(a) all of the functions of the age-verification regulator under this Part, or

(b) any of those functions specified in the notice by which the designation is made.

( ) Different persons may be designated for the purposes of different functions."

Amendment 25L agreed.

Amendment 25M

Moved by ***Lord Ashton of Hyde***

25M: Clause 17, page 20, line 8, leave out from "that" to end of line 9 and insert "—

(a) arrangements will be maintained by the age-verification regulator for appeals to which subsection (4A) applies, and

(b) any person hearing an appeal under those arrangements will be sufficiently independent of the age-verification regulator.

(4A) This subsection applies to appeals—"

Amendment 25N (to Amendment 25M) not moved.

Amendment 25M agreed.

Amendment 25P

Moved by ***Baroness Jones of Whitchurch***

25P: Clause 17, page 20, line 27, at end insert—

"(8) In designating two or more persons under subsection (1), the Secretary of State must specify that the same persons may not carry out functions under the sections specified in subsection (9), and the functions specified in subsection (10).

(9) The functions specified in this subsection are the steps taken by the age verification regulator to identify that a person is—

(a) contravening section 15(1);

(b) making extreme pornographic material available on the internet to persons in the United Kingdom.

(10) The functions specified in this subsection are the enforcement powers under sections 20 to 23.

(11) The person or persons carrying out the age verification functions under subsection (9) must notify the person or persons carrying out the enforcement functions under subsection (10) of an identification under subsection (9), to enable that person or persons to take the necessary enforcement action.

(12) Appeals procedures must be carried out by a body that is fully independent of the regulator responsible for the functions set out in subsection (9).

(13) The regulator assuming the duties specified in subsection (9) is to be a body corporate which is independent from the Government and all appointments to the regulator are to be subject to fair and open competition.

(14) No designation shall be made under this section until the Secretary of State consults all such persons as he or she considers appropriate on the role of the age-verification regulator for the purposes of this Part."

Baroness Jones of Whitchurch: My Lords, for the reasons that I have just outlined, I wish to test the opinion of the House on this amendment.

5.52 pm

Division on Amendment 25P

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Amendment 25P disagreed.

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6.07 pm

Clause 18: Parliamentary procedure for designation of age-verification regulator

Amendments 25Q to 25S

Moved by ***Lord Ashton of Hyde***

25Q: Clause 18, page 20, line 29, leave out subsection (1) and insert—

"(1) Where the Secretary of State proposes to make a designation under section 17, the Secretary of State must lay before both Houses of Parliament—

(a) particulars of that proposed designation, and

(b) a statement of the reasons why the Secretary of State is satisfied about the matters mentioned in section 17(4)."

25R: Clause 18, page 20, line 35, at end insert—

"(3A) But subsection (3B) applies, instead of subsections (2) and (3), where the proposed designation would be—

(a) the first to be made under section 17 , or

(b) the first to be made under that section for the purposes of a particular function.

(3B) The Secretary of State may not make the designation unless it has been approved by a resolution of each House of Parliament."

25S: Clause 18, page 20, line 36, leave out "subsection (3) is" and insert "subsections (3) and (3A) are"

Amendments 25Q to 25S agreed.

Clause 21: Financial penalties

Amendment 25T

Moved by ***Lord Ashton of Hyde***

25T: Clause 21, page 23, line 24, at end insert—

"( ) The Secretary of State must lay before both Houses of Parliament the guidelines, and any revised guidelines, published under this section."

Amendment 25T agreed.

Clause 22: Age-verification regulator's power to give notice of contravention to payment service providers and ancillary service providers

Amendments 25U to 25YB

Moved by ***Lord Ashton of Hyde***

25U: Clause 22, page 23, line 44, leave out "prohibited" and insert "extreme pornographic"

25V: Clause 22, page 24, line 6, leave out paragraph (b) and insert—

"(b) state whether it is subsection (1)(a) that applies or subsection (1)(b) or both;"

25W: Clause 22, page 24, line 11, leave out subsection (4)

25X: Clause 22, page 24, line 28, leave out "prohibited" and insert "extreme pornographic"

25Y: Clause 22, page 24, line 33, leave out "prohibited" and insert "extreme pornographic"

25YA: Clause 22, page 24, line 39, leave out subsection (7)

25YB: Clause 22, page 24, line 43, leave out subsection (8)

Amendments 25U to 25YB agreed.

Amendment 25YC

Moved by ***Lord Ashton of Hyde***

25YC: After Clause 22, insert the following new Clause—

"Meaning of extreme pornographic material

(1) In this Part "extreme pornographic material" means (subject to subsection (3)) material—

(a) whose nature is such that it is reasonable to assume that it was produced solely or principally for the purposes of sexual arousal, and

(b) which is extreme.

(2) For the purposes of subsection (1)(b), material is extreme if—

(a) its content is as described in section 63(7) or (7A) of the Criminal Justice and Immigration Act 2008, and

(b) it is grossly offensive, disgusting or otherwise of an obscene character.

(3) Material to which paragraphs (a) and (b) of subsection (1) apply is not "extreme pornographic material" if it is or was included in a classified video work, unless it is material to which subsection (4) applies.

(4) This subsection applies to material—

(a) which has been extracted from a classified video work, and

(b) whose nature is such that it is reasonable to assume that it was extracted (with or without other material) solely or principally for the purposes of sexual arousal.

(5) In this section—

"classified video work" means a video work in respect of which the video works authority has issued a classification certificate;

"video work" means a video work within the meaning of the Video Recordings Act 1984;

"the video works authority" has the meaning given in section 16 ;

"classification certificate" has the same meaning as in the Video Recordings Act 1984 (see section 7 of that Act);

"material" means—

(a) a still image or series of still images, with or without sound; or

(b) a series of visual images shown as a moving picture, with or without sound."

Amendment 25YC agreed.

Amendment 25YD

Moved by ***Baroness Butler-Sloss***

25YD: After Clause 22, insert the following new Clause—

"Extreme pornographic material: review and repeal

(1) Subject to subsections (2) to (6) at the end of the period of three years beginning with the day on which this Act is passed—

(a) section 16(1)(g) to (i) ceases to have effect;

(b) section (meaning of extreme pornographic material) (1) and (2) ceases to have effect, and is substituted with the following, which comes into force on that day—

"(1) In this section "extreme pornographic material" means either of the following—

(a) the whole or part of a video work—

(i) if it is reasonable to assume from its nature that the video work was produced solely or principally for the purposes of sexual arousal, and

(ii) if the video works authority has determined the video work not to be suitable for a classification certificate to be issued in respect of it;

(b) material whose nature is such that it is reasonable to assume—

(i) that it was produced solely or principally for the purposes of sexual arousal, and

(ii) that the video works authority would determine that a video work including it was not suitable for a classification certificate to be issued in respect of it."

(2) Following the publication of a report under subsection (3) the Secretary of State may by regulations made by statutory instrument provide that the provisions of this Act do not cease to have effect in accordance with this section but are to continue in force indefinitely or for a specified period of time.

(3) The Secretary of State must, within a period of two years beginning with the day on which this Act is passed, review and prepare a report on the operation of the provisions mentioned in subsection (6).

(4) The review and report must consider the effect of the introduction of the definition of "extreme pornographic material" on the regulation of pornographic material under this Act and other enactments.

(5) The Secretary of State must lay a copy of the report before each House of Parliament.

(6) The sections are—

(a) section 16,

(b) section 22,

(c) section (meaning of extreme pornographic material),

(d) section 23,

(e) section 25,

(f) section 27."

(7) 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 Butler-Sloss: My Lords, I shall make a few points, although this was discussed in rather greater detail a little earlier. I start with the use of the word, "suspect" in relation to prohibited materials. It seems to me that it is suspect with the Crown Prosecution Service; it is an odd definition and does not mean that it is generally applicable. The words, "prohibited materials" were removed from the Bill as a result of the Perry amendment in the Commons: they were in the Bill anyway. It is important that that point is known. I have to say to the Minister that the move by the Government from children to adults in the amendments is due to the government amendments, which have been picked up by myself and other noble Lords. We would not have raised these issues without the government amendments. It is important to say that because I have no desire whatever to frustrate or inhibit the excellent work on age verification to be found in the Bill.

I think everybody agrees that this is now a mess. There is need for a proper debate on internet safety strategy, but it needs, if I may say so, a review with some teeth and pressure on the Government because of all the other government work there will be in the light of Brexit. The otherwise admirable amendment of the Labour Front Bench is, in my view, insufficiently strong because it has no teeth.

My amendment is not, despite what has been said, unduly prescriptive. If one looks with some care at the wording, which I am glad to say someone else drafted, subsection (1)(a) of the proposed new clause says that,

"section 16(1)(g) to (i) ceases to have effect",

but that is a fallback position. It is there to require the Government, under proposed new subsections (2) to (6), to have a review and to draft a report which will be laid before Parliament. It applies only if that is not achieved within two years, and since the Government are offering at least a Green Paper by June it should not be all that difficult to have a review and a report. Consequently, the work that is suggested in this amendment meets what is needed, which is two things: that the mess should be reviewed; and that the Government should be under a degree of pressure to make sure they get on with it and do not put it into the long grass, not because they want to do so but because of the pressure of other government business. I beg to move and, if no one else wishes to speak, I should like to test the opinion of the House.

6.12 pm

Division on Amendment 25YD

Contents 46; Not-Contents 176.

Amendment 25YD disagreed.

Division No. 2

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6.25 pm

Clause 23: Age-verification regulator's power to direct internet service providers to block access to material

Amendments 25YE to 25YL

Moved by ***Lord Ashton of Hyde***

25YE: Clause 23, page 25, line 6, leave out "prohibited" and insert "extreme pornographic"

25YF: Clause 23, page 25, line 12, leave out paragraph (b) and insert—

"(b) state whether it is subsection (1)(a) that applies or subsection (1)(b) or both;"

25YG: Clause 23, page 25, line 22, leave out "mentioned in section 17(4)(d)" and insert "to which section 17(4A)(d) applies"

25YH: Clause 23, page 26, line 17, leave out "prohibited" and insert "extreme pornographic"

25YJ: Clause 23, page 26, line 22, leave out "mentioned in section 17(4)(e)" and insert "to which section 17(4A)(e) applies"

25YK: Clause 23, page 26, line 29, leave out "prohibited" and insert "extreme pornographic"

25YL: Clause 23, page 26, leave out line 31

Amendments 25YE to 25YL agreed.

Amendment 25YM

Moved by ***Lord Ashton of Hyde***

25YM: After Clause 24, insert the following new Clause—

"Guidance to be published by age-verification regulator

(1) Subject to the following provisions of this section, the age-verification regulator must publish, and revise from time to time—

(a) guidance about the types of arrangements for making pornographic material available that the regulator will treat as complying with section 15(1); and

(b) guidance for the purposes of section 22(1) and (6) about the circumstances in which it will treat services provided in the course of a business as enabling or facilitating the making available of pornographic material or extreme pornographic material.

(2) Once the regulator has prepared a draft of guidance it proposes to publish under subsection (1)(a), it must submit the draft to the Secretary of State.

(3) When draft guidance is submitted to the Secretary of State under subsection (2), the Secretary of State must lay that draft guidance before both Houses of Parliament.

(4) Once the regulator has prepared a draft of guidance it proposes to publish under subsection (1)(b), it must submit the draft to the Secretary of State for approval.

(5) When draft guidance is submitted to the Secretary of State under subsection (4), the Secretary of State may approve it either without modification or with such modifications as the Secretary of State decides should be made to it.

(6) Once the Secretary of State has approved draft guidance under subsection (5), the Secretary of State must lay the following before both Houses of Parliament—

(a) the draft guidance, incorporating any modifications the Secretary of State has decided should be made to it under that subsection, and

(b) if the draft incorporates such modifications, a statement of the Secretary of State's reasons for deciding that those modifications should be made.

(7) If, within the period of 40 days beginning with the day on which draft guidance is laid before Parliament under subsection (3) or (6), either House resolves not to approve that draft guidance, the age-verification regulator must not publish guidance in the form of that draft.

(8) If no such resolution is made within that period, the age-verification regulator must publish the guidance in the form of the draft laid before Parliament.

(9) But subsection (11) applies, instead of subsections (7) and (8), in a case falling within subsection (10).

(10) The cases falling within this subsection are—

(a) the case where draft guidance is laid before Parliament under subsection (3) and no previous guidance has been published under subsection (1)(a) by the age-verification regulator; and

(b) he case where draft guidance is laid before Parliament under subsection (6) and no previous guidance has been published under subsection (1)(b) by the age-verification regulator.

(11) The regulator must not publish guidance in the form of the draft laid before Parliament unless the draft has been approved by a resolution of each House of Parliament.

(12) Subsections (7) and (11) do not prevent new draft guidance from being laid before Parliament.

(13) For the purposes of subsection (7)—

(a) where draft guidance is laid before each House of Parliament on different days, the later day is to be taken as the day on which it was laid before both Houses, and

(b) in reckoning any period of 40 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

(14) References in this section to guidance and draft guidance include references to revised guidance and draft revised guidance."

Amendment 25YM agreed.

Amendment 25YN

Moved by ***Lord Paddick***

25YN: After Clause 24, insert the following new Clause—

"Anonymity

(1) Age-verification providers must be approved by the age-verification regulator.

(2) In this section an "age-verification provider" means a person who appears to the age-verification regulator to provide, in the course of a business, a service used by a person to ensure that pornographic material is not normally accessible by persons under the age of 18.

(3) The age-verification regulator must publish a code of practice to be approved by the Secretary of State and laid before Parliament.

(4) The Code must include provisions to ensure that age-verification providers—

(a) perform a Data Protection Impact Assessment and make this publicly available,

(b) take full and appropriate measures to ensure the accuracy, security and confidentiality of the data of their users,

(c) minimise the processing of personal information to that which is necessary for the purposes of age verification,

(d) do not disclose the identity of individuals verifying their age to persons making pornography available on the internet,

(e) take full and appropriate measures to ensure that their services do not enable persons making pornography available on the internet to identify users of their sites or services across differing sites or services,

(f) do not create security risks for third parties or adversely impact security systems or cyber security,

(g) comply with a set standard of accuracy in verifying the age of users.

(5) The code must include provisions to ensure that publishers of pornographic material take full and appropriate measures to allow their users to choose the age-verification provider of their preference.

(6) Age-verification providers and publishers of pornographic material must comply with the code of practice.

(7) To the extent that a term of a contract purports to prevent or restrict the doing of any act required to comply with the code, that term is unenforceable."

Lord Paddick: My Lords, Amendment 25YN is in my name and that of my noble friend Lord Clement-Jones. This is a retabling of the amendment that we tabled in Committee to ensure that the details of those applying to have their age verified in order to access adult material on the internet remain anonymous.

I will not repeat at length the arguments I made in Committee. The Government are going to force individuals to go through an age verification process which they did not have to engage in before. To do that, they will have to prove their age by providing sensitive personal information to an organisation. Many of those organisations will create databases containing that sensitive personal information, which could become the target for hackers and criminals. As I said in Committee, there have been some high-profile cases of such unauthorised access to sensitive information in relation to porn sites and other similar sites in the past, with devastating consequences for those exposed. This amendment seeks to guarantee that age verification solutions ensure that the identities of those seeking to do the right thing and to have their age verified, rather than getting around the regulations by using for example a VPN, are protected. It would require the age verification regulator to approve age verification solutions and ensure that, as part of that, anonymity is protected.

Rather than accepting the amendment, the Government appear to be moving in the opposite direction. On page 6 of their draft guidance to the age verification regulator, the Government state in paragraph 5:

"There are various ways to age verify online and the industry is developing at pace. Providers are innovating and providing choice to consumers. The Regulator will not be required to approve individual age verification solutions".

Whatever your Lordships may think of anonymity, the first and most obvious question is: how will the age verification regulator know whether the solution will effectively verify age if it does not have to approve that solution? At paragraph 6, the draft guidance goes on to say:

"The privacy of adult users of pornographic sites should be maintained and the potential for fraud or misuse should be safeguarded".

The draft guidance talks about not duplicating the role of the Information Commissioner's Office and says that the focus of the age verification regulator should be on age verification.

In my discussions with the British Board of Film Classification, it has said that it has no particular interest or expertise in the area of data protection in relation to keeping confidential the details of those seeking age verification. We will end up with an age verification regulator that forces users of adult material on the internet to use an age verification solution but has no responsibility for approving such solutions.

In any event, the draft guidance is something to which the regulator has only to have regard to. We believe that if UK users of online adult material are to be forced to verify their age—it is only UK users, as those in other countries will not have to do this—the Government have a particular responsibility to ensure that their sensitive personal data, which they would not otherwise have to put at risk, does not get into the wrong hands. That is what this amendment seeks to achieve and I beg to move.

6.30 pm

The Earl of Erroll: My Lords, I will say a few words on this very quickly. I thoroughly approve of the premise of the amendment, which is to ensure that some websites do not try to cheat; in fact it would not be a bad idea to put it in the Bill.

I ought to declare an interest: I have been chairing a steering group working on British Standards Institute Publicly Available Specification 1296 on age checking. The whole idea is that this could be used in order to test the procedures and organisations doing age checking. One of the things that it mandates is privacy; it mandates that age checking must be general data protection regulation compliant. The real purpose behind this is that at the point when someone thinks of visiting a pornographic website there should be no requirement for that person to identify themselves to that website. It is perfectly possible at that point to bounce off the website with a token from that website to someone outside who may know about the person and can check their age, and then they can send back an encrypted token that can be stored saying, "This person, whose name I am not going to reveal to you, is over 18". That is all it does. That can then be data checked and unwound by someone with proper judicial authorisation, if something goes wrong. However, it could be that some websites will try to get around that. That is why the amendment is good: they would have to comply. I do not know whether that is somewhere else in the regulations, but having it in the Bill would be a good thing.

Some people say, "How can you stay anonymous?". The simple answer is that if you then wish to subscribe to the website and buy some of its product, and you freely give up your credit card, I am afraid that you will not be anonymous. However, that is your choice once you are in. The initial stage of just wanting to view the site should be anonymous, and we should reinforce that.

Baroness Jones of Whitchurch: My Lords, I echo many of the concerns raised by the noble Lord, Lord Paddick. We added our name to a similar amendment in Committee and there was a broad degree of support for the principles that were expressed. The amendment returns to the essential need to protect the identity of those who are over 18 and legitimately want to access pornographic sites without having their personal details compromised in the age verification process.

The noble Earl, Lord Erroll, has been very helpful in explaining how the privacy systems would work, using a two-stage process to prove someone's age and then giving them an encrypted token to use on adult sites. We agree with this model and would like to see it widely adopted. It assumes that age verification would be carried out by a separate age verification provider who has the specific technical skills to carry out these checks securely. However, we also agree that technology is moving on apace and that it would be a mistake to be too prescriptive. We believe that a code of practice, as set out in the amendment, would deliver the protections while allowing that to happen.

That brings us to the draft guidance on the regulator, which the Government published last week and which addresses the issue of privacy. We believe that of all the parts of the draft guidance, the section on privacy is indeed a step forward. It puts the onus on the regulator to work with the Information Commissioner's Office to ensure that systems are in place to check a user's privacy while having regard to the Data Protection Act. While we welcome that, we would also like it to address the need for users to have a choice of provider. Again, that is something that we debated at an earlier stage.

In addition, we have a continuing concern that the only provision for data protection breaches is for the ICO to be informed, rather than necessarily for it to act. I hope that the Minister will be able to reassure us that, if there are such breaches, they will indeed be followed up by action.

I hope that the Minister will be able to reassure us on these points. However, we feel that progress is being made on this subject. Depending on what the Minister is able to say in response, it may well be that we will ask the noble Lord, Lord Paddick, not to press the issue at this time.

Lord Ashton of Hyde: My Lords, I thank the noble Lord, Lord Paddick, and the noble Baroness, Lady Jones, and I thank the noble Earl, Lord Erroll, for his expertise in this area—age verification, I am talking about.

I have some sympathy with the noble Lord and the noble Baroness on this because we, too, have absolute desire for anonymity in these matters. So the Government have sympathy for the intention behind the amendments, but we feel that they go too far and that this amendment is therefore unnecessary. We have already made provisions to cover these concerns under government Amendment 25YQ, which provides that the Secretary of State may issue guidance to the regulator. I assure noble Lords that we approach this issue with the utmost seriousness. We have set out the draft guidance, which noble Lords have mentioned. It is of course draft guidance and, as we say at the beginning of it, we welcome comments—so perhaps some of the comments from today's debate can be incorporated.

A person making pornographic material available on a commercial basis to persons in the United Kingdom must have an effective process in place to verify that a

[Lord Ashton of Hyde]
user is over 18. This age verification already takes place online, from the gambling industry to mobile phone content to purchasing age-protected goods. There are various ways to age-verify online, as the noble Earl explained, and, as the industry is developing rapidly, it is expected that new age verification technologies will develop over time.

Providers are innovating and providing choice to customers. We agree that the process of age verifying for adults should rightly be focused on the need to establish that the user is aged 18 or above, rather than seeking to identify the user. As I have said, age verification controls are already in place without the approval of the age verification providers. For example, licensed gambling sites are required to have age verification controls that are not subject to pre-approval by the regulator but must take account of data protection laws.

We recognise that pornography provides a unique challenge in this space, which is why we are ensuring that the measures in place are stronger than currently exist. As such, the draft guidance to the regulator—I am pleased that in this area at least the noble Baroness, Lady Jones, gave her qualified approval—sets out the detail of how this should be done. Rather than setting out a closed list of age verification arrangements, the regulator's guidance should specify how it will assess in any given case that the requirements have been met.

The draft guidance, which was published last week, is clear that the process of age verifying for adults should be concerned only with the need to establish that the user is aged 18 or above, rather than seeking to identify the user. The privacy of adult users of pornographic sites must be maintained. We do not want the regulator to duplicate the role of the Information Commissioner's Office, the UK's independent body set up to uphold information rights. The draft guidance states:

> "The process of age verifying for adults should be concerned only with the need to establish that the user is aged 18 or above, rather than seeking to identify the user. The privacy of adult users of pornographic sites should be maintained and the potential for fraud or misuse of personal data should be safeguarded … The role of the Regulator should be to focus on the ability of arrangements to verify whether someone is over 18 and should be assured that age verification arrangements will protect a user's privacy".

That is pretty clear, I think.

As also set out in our draft guidance, the age verification regulator should work with the ICO. The regulator should be clear in its guidance on the requirements that age verification services and online pornography providers will have regard to under data protection legislation and, furthermore, that a privacy-by-design approach should be taken, as recommended by the ICO.

It is right that we do not seek here to duplicate the existing legislative and regulatory framework, but we must ensure that they are built into the age verification process in a meaningful way. We have always been clear that adults should be able to access legal pornographic content and individuals should rightly be protected from unintended consequences when doing so. As I said, we have produced a draft of the Secretary of State's guidance and are certainly happy to have further discussions ahead of the final version being laid.

Baroness Thornton (Lab): Could I invite the Minister to be slightly less gentle with those supporting this amendment by saying not that it goes too far but that it is a wrecking amendment? It would drive a coach and horses through this legislation.

Lord Ashton of Hyde: I had not thought of that. I am absolutely sure that that was not the intention. However, in the meantime, I would like the noble Lord to withdraw his amendment.

Lord Paddick: My Lords, I thank in particular the noble Earl, Lord Erroll, for his support on this amendment and acknowledge the work that he is doing in this field. The noble Baroness, Lady Jones of Whitchurch, said she echoed many of our concerns—and in Committee, Labour Peers added their names to the amendment. It proposes a code of practice, the content of which would be specified in the Bill, but it would provide flexibility, in that it sets out only the minimum requirements of such a code.

The Minister said that the Information Commissioner's Office is responsible for data protection, but the Information Commissioner's Office is designed to ensure that people who voluntarily put their personal information into the internet are protected—and this is not a voluntary process. This is making it compulsory for anybody who wants to access adult material to give their personal data, which they would not otherwise have to do. We therefore think that the protections should be greater than those provided by the Information Commissioner's Office.

As the Minister himself said, privacy is more important when it comes to accessing pornography than it is when accessing, for example, gambling sites. We are not reassured. The draft guidance that the Government have issued is only guidance that a regulator should have regard to; it does not have teeth at all. We therefore find both the draft guidance and the explanation given by the Minister inadequate for protecting the identities of those who seek age verification. I therefore wish to test the opinion of the House.

6.43 pm

Division on Amendment 25YN

Contents 74; Not-Contents 199.

Amendment 25YN disagreed.

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6.55 pm

Clause 25: Exercise of functions by the age-verification regulator

Amendment 25YP

Moved by ***Baroness Buscombe***

25YP: Clause 25, page 27, line 7, leave out "prohibited" and insert "extreme pornographic"

Amendment 25YP agreed.

Amendment 25YQ

Moved by ***Baroness Buscombe***

25YQ: After Clause 25, insert the following new Clause—

"Guidance by Secretary of State to regulator

(1) The Secretary of State may issue guidance to the age-ve regulator in relation to the exercise of the regulator's functions, and may from time to time revise that guidance.

(2) The guidance may cover (among other things) the following matters—

(a) considerations to be applied in determining—

(i) whether arrangements for making pornographic material available comply with section 15(1);

(ii) whether a person is an ancillary service provider, for the purposes of section 22;

(b) the approach to be taken by the regulator to the exercise of its powers to give notices under sections 20 , 22 and 23;

(c) the preparation and publication of guidance and reports by the regulator and the content of such guidance and reports;

(d) the maintenance by the regulator of arrangements meeting the requirements of section 17(4)(a) and (b).

(3) The regulator must have regard to the guidance.

(4) The Secretary of State must lay before both Houses of Parliament the guidance, and any revised guidance, issued under this section."

Amendment 25YQ agreed.

Amendment 25YR

Moved by ***Baroness Jones of Whitchurch***

25YR: After Clause 26, insert the following new Clause—

"Code of practice for commercial social media platform providers on online abuse

(1) Within six months of the passing of this Act, the Secretary of State must publish a code of practice about the responsibilities of social media platform providers to protect children and young people from online abuse and bullying.

(2) The Secretary of State may bring the code of practice into force by regulations made by statutory instrument.

(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.

(3) The code of practice must include—

(a) the overarching duty of care of internet service providers and social media platform providers to ensure the safety of a child or young person involved in any activity or interaction for which that service provider is responsible;

(b) the obligation to inform the police with immediate effect if notified that content on social media sites contravene existing legislation;

(c) the obligation to remove content with immediate effect if notified that posts on social media sites contravene existing legislation;

(d) the obligation to have specific terms of use that prohibit cyber-bullying and provide a mechanism for complaints of cyber bullying to be received and for the offending content to be removed; and

(e) their responsibility to work with education professionals, parents and charities to give young people the skills to use social media safely.

(4) Commercial social media platform providers must comply with the code of practice, once it is in force.

(5) The Secretary of State may from time to time revise and re-publish the code of practice.

(6) The Secretary of State may bring into force a revised and re-published code of practice by regulations made by statutory instrument.

(7) In this section—

"commercial social media platform provider" means a person who operates on a commercial basis an internet site on which people can interact;

"cyber-bullying" means material that has the effect of seriously threatening, intimidating, harassing or humiliating children and young people."

Baroness Jones of Whitchurch: My Lords, I beg to move Amendment 25YR and support Amendment 33A in this group.

Our amendment requires the Secretary of State to publish, within six months of the Bill being passed, a code of practice for all social media sites obliging them to put in place mechanisms to prevent children from being abused and bullied online. In the context of the rest of Part 3, we have specifically focused the amendment on the protection of children and young people, although we would expect such a code to have a wider benefit for adults suffering abuse. The amendment would require both Houses to approve the code and, once in place, it would be a statutory requirement on social media sites to comply. Although the full detail of the code is not spelled out, it would include requirements to inform the police if advised of illegal posts, and to take them down with immediate effect. In addition, it would require social media sites to have terms of use to prevent cyberbullying and abuse, including clearly spelled-out mechanisms for taking down the offending material.

We believe that these measures will ensure, finally, that the social media companies begin to take their responsibilities seriously. Action is overdue, which is why we have inserted a relatively tight but achievable timetable—and we make no apologies for that.

We have rehearsed in Committee many of the arguments why this intervention is crucial. I will not repeat them all, but we believe that the case for action to rein in the social media sites is now compelling. The charity Childnet has reported that one in four teenagers suffered hate incidents online last year, and that figure continues to rise. The NSPCC has reported that two-thirds of young people want social media sites to do more to protect them, with exposure to hate messages, pro-anorexia sites, self-harm sites and cyberbullying all on the increase.

Girlguiding revealed in a survey last year that 20% of girls were sent unwanted pornographic films or images without their consent. When I met a delegation of Girl Guides last week, they described how the bombardment of sexualised images was creating huge body-confidence issues and normalising sexist behaviour in schools.

I could go on, but the point is that all these statistics are going in the wrong direction. There is no culture of safeguarding children's safety and well-being online. As a result, children are being frightened, intimidated, bullied and coerced on social media sites.

Since our last debate in Committee, we have received further evidence of the failure of the social media sites to act when illegal material is brought to their attention. If anyone is in any doubt about the need for our amendment, they have only to recall the example of Facebook, which, on being informed by the BBC that

obscene images of children were being posted on its site, failed to remove the vast majority of those posts and then had the audacity to report the BBC to the police when it was sent further examples for it to follow up. Similarly, at the Home Affairs Select Committee, Google's vice-president admitted that it had allowed a video entitled "Jews admit to organising white genocide" to remain on its site despite admitting that it was anti-Semitic, deeply offensive and shocking. This latest evidence underlines why we feel that action is needed now.

When we debated this issue in Committee, the Minister gave what I felt to be a rather complacent response. He argued that a statutory code was unnecessary and that the onus should be on companies to develop their own in-house processes to deal with the issue. Of course, shortly after that, the Secretary of State decided that leaving it to the companies to sort out on their own was not really good enough after all, and that a new internet safety strategy would be launched, including round tables with the media companies and, as we have heard, a Green Paper in the summer. That is okay as far as it goes, but it does not go far enough. We believe that we have left it to the social media companies to change their behaviours on a voluntary basis for far too long. That is why our amendment has a timetable and a requirement for the eventual code to be placed on a statutory basis.

7 pm

Finally, for all those who are worried that these are global companies and therefore difficult to regulate, I ask noble Lords to look at the Australian system. They have already passed the Enhancing Online Safety for Children Act 2015. This Act requires all social media sites that have terms of use to prohibit cyberbullying and abuse. It also establishes a children's e-safety commissioner to deal with complaints and ensure that material is taken down. Of course, the social media sites being regulated are precisely the same ones which operate in the UK. At the same time, the Sunday papers over the last weekend reported that Germany is talking about introducing a similar statutory scheme. So let us not say that this cannot be done.

In conclusion, we believe that whatever discussions are now taking place with social media sites—and of course any discussions are welcome—they would be more fruitful if they concentrated on a draft code of practice that would ultimately be binding on them. Surely we owe our children and young people reassurance if we are finally to act on this issue.

Baroness Janke (LD): My Lords, I support Amendment 25YR and will speak to Amendment 33A, which is in my name. We certainly need to look much more closely at the duty of online providers and their responsibilities. Amendment 25YR refers to the overarching duty of care that agencies must have to children. Both amendments address the need to oblige these online providers to report incidents on content that are likely to contravene existing regulations and likely to come up to the criminal test as used in prosecutions.

The obligations also include that the content should be removed with immediate effect. As we have already heard, this has proved difficult in many cases and very many people say that they have tried to have offensive material removed unsuccessfully. Amendment 25YR refers to a code of practice, and mentions that it needs specific terms that prohibit cyberbullying and provide a mechanism for complaints, as well as for the removal of the offending material. The other thing I particularly welcome about this amendment is the obligation to work with educators, technical professionals and parents to ensure that young people have safe use of the internet.

Amendment 33A would extend this principle rather wider. I am sure we all support measures to prevent cyberbullying of children. It is also fair to say that it is not just children who suffer in this way. Many members of minority groups, disabled people and people with learning difficulties—in fact, people who are in some way different—come in for regular forms of abuse. People just like you and me, having disagreed with somebody, come in for torrents of vile, unpleasant and absolutely unacceptable bullying on the internet. I believe that this would not be allowed in newspapers. Somebody would not be allowed to abuse someone else in a pub. The landlord would be responsible and I believe that it is time we took the online providers to task and made them take some responsibility for what appears and what they allow.

The Minister, in replying to my amendment last time mentioned the fact that existing legislation already provides the means to do this. In fact, I think over 30 statutes refer to these measures and have not yet been consolidated—added to which, there are laws coming online that will make it even more difficult to have a consolidated approach, such as the revenge porn legislation and law on streaming of child abuse. It is becoming increasingly complex and we need a much firmer approach.

It was also mentioned that the Home Office had £4.5 million to address this issue; I understand that this was largely for the measures and resources that the police needed to prosecute criminal acts in this way. The last thing the Minister referred to was that the Law Commission was consulting on this issue. My understanding of that consultation is that it is about improving people's behaviour on the internet. It does not at all address the online providers. This Bill offers an opportunity to address an appalling practice that is becoming even more prevalent, and I hope that the Minister will agree to incorporate these amendments in the Bill.

Baroness Howe of Idlicote: My Lords, I am very happy to support the amendment—to which I have added my name—which would bring in a statutory code of practice for media platforms with the important aim of preventing online abuse.

As I said earlier, Part 3 is a child protection measure. Young people use social media. The 2016 Ofcom children and media report devoted an entire chapter to YouTube, social media and online gaming. Around 72% of 12 to 15 year-olds have a social media profile, with Facebook being their main social media profile, and three in 10 of these 12 to 15 year-olds visit their social media account more than 10 times a day. In the last few weeks we have heard about Facebook not taking down child sexual abuse images. Last week, the

[Baroness Howe of Idlicote]
Home Affairs Select Committee in the other place grilled representatives of Google, Facebook and Twitter on their response to online abuse and hate crime as part of their inquiry into hate crime and its violent consequences.

This amendment is in line with the Government's objectives to keep children safe. I am expecting the Government to come back and tell us that the UK Council for Child Internet Safety produced guidance for social media sites in 2015, entitled *Child Safety Online: A Practical Guide for Providers of Social Media and Interactive Services*, and that therefore this code of practice is just not needed. While I commend the good work of UKCCIS, the news of the last few weeks leaves me convinced that without a statutory code we are not doing enough to protect children and to support parents. Parents have to navigate completely new technological terrains. They have no reassurance that there are consistent standards across social media sites, nor what they are. Last year a third of parents said they were concerned about their child being the subject of cyberbullying. Part of the requirements of the code would ensure that social media sites worked with,

"education professionals, parents and charities to give young people the skills to use social media safely".

I fully support this initiative. Ofcom reports that 52% of parents of eight to 11 year-olds and 66% of parents of 12 to 15 year-olds talked to their children about cyberbullying. This is encouraging, but how much more encouraging if parents know that if they talk to their child about Facebook, the same rules apply on other social media sites and vice versa.

We expect to make our children safe in the physical spaces they occupy every day and have no hesitation in using the law to do so. We need to be doing the same online so I fully support Amendment 25YR to introduce a statutory code of practice for social media platforms.

Lord Alton of Liverpool: My Lords, I support the amendment proposed by the noble Baronesses, Lady Jones and Lady Janke, but also the remarks of my noble friend Lady Howe. I want to ask the Minister, when he comes to reply, about an issue that I raised in your Lordships' House previously, and that is the issue of suicide sites on the internet. It concerns me that young people can be encouraged to visit those sites and take their own lives. Only a year ago I attended a school prize giving in a north-west school, and the headmaster told me when I arrived how a child in that school had taken their own life only the day before. As noble Lords can imagine, that was a terrible tragedy not only for the family but for the whole school, and it rather changed the atmosphere on that occasion. That child had been visiting one of the suicide sites on the internet, and the headmaster discovered that several other children had been doing the same.

It can be revenge porn or the kind of trolling to which the noble Baroness referred, the harassment of young women in particular, or the whipping up of xenophobia, racism or anti-Semitism, but it is right that there should be a code of practice, and we should get on with it. I hope that the Minister will tell us more about the Green Paper, what the framework will be for it and when we are going to start to look at these issues seriously.

Lord Ashton of Hyde: My Lords, I am grateful to all contributors on this important subject. We take the harm caused by online abuse and harassment very seriously. The measures that we have introduced in this Bill show that the Government are taking this seriously. I hope that I can offer some comfort in this area since we last discussed these two amendments in Committee.

Amendment 25YR seeks to require Ministers to issue a mandatory code of practice to ensure that commercial social media platform providers show a duty of care to ensure the safety of a child or young person using their service; to report and remove illegal posts on social media; prohibit and remove cyberbullying; and to undertake to work with the education profession and charities to provide children with digital safety skills. Amendment 33A seeks to impose a duty on "social media services" to respond to reports posted on their site of material which passes the "criminal test", being that the content would, if published by other means or communicated in person, cause a criminal offence to be committed. I have two responses to these amendments—first, an explanation of the work that this Government have started to address these issues through our internet safety strategy; and, secondly, some fundamental concerns about their drafting.

The UK is leading the way in online safety, and will continue to do so, with the support of industry, parents, charities, academics, and other experts, and this is a firm priority for this Government. We have been absolutely clear that abusive and threatening behaviour is totally unacceptable in any form, online or offline. On 27 February, my department announced that it is leading cross-government work on an internet safety strategy which aims to make the UK the safest place in the world to go online for children and young people. This work will also address the abuse that women suffer online, as we look at trolling and other aggressive behaviour, including rape threats. We will ask experts, social media companies, tech firms, charities and young people themselves about online safety during a series of round tables later this month, and we will use these discussions to understand more about the scope of the problem and identify where there are gaps in our current approach to tackling online harms.

We will continue to consult closely with interested parties throughout the spring, including Members of this House with expertise in this area. Indeed, we have already invited several noble Lords to take part. A key part of this work will be to clearly set out the responsibilities of social media in respect of online safety as part of a Green Paper which will be published in June. Other priorities will include: how to help young people to avoid risks online; helping parents to face up to the dangers and discuss them with their children; and how technology can help provide solutions.

We have not ruled anything out at this stage, including a code of practice, but this is a complex field and to find the right solution we need to take the time to have a proper conversation with all the leading stakeholders. We would not want anything to prejudge the outcome

of these discussions. We believe that this will result in a properly considered, comprehensive approach to online safety which stakeholders are fully signed up to, and one that will deliver the long-lasting protections that these amendments are seeking to secure.

7.15 pm

I turn to the amendments. We have some fundamental concerns about how they are drafted. We have three main concerns about the amendment that would require a code of conduct for social media companies. First, while we fully agree that social media companies should be socially responsible to their users, to require them to have an "overarching duty of care" for "any activity or interaction" of young people on their platforms goes too far. It is unclear how this would be measured or what the parameters of such a duty would be.

Secondly, the amendment would require social media companies to inform the police about posts that contravene existing legislation. This would require social media companies to take a judgment role about whether content is legal or not, effectively handing them the power to police the internet. We would be extremely concerned about giving these companies this degree of authority.

Finally, the definition of social media companies is unclear and goes wider than the sorts of sites we think that the amendment seeks to cover. It would include any website or forum where users can interact, including through comments, live chats or reviews, from major retail websites to newspaper sites. That clearly goes far beyond the remit of child protection and would be unworkable, unwelcome and disproportionate.

In relation to the "criminal test" amendment, we have similar concerns about the definition of "social media service". More fundamentally, the law is very clear that what is illegal offline is illegal online, and we have processes in place to establish this. It should not be left to social media companies, or their users, to take a judgment on whether in their view content is criminal or not.

It is clearly right that we take the most effective action possible to remove vile material from the internet. We strongly believe that the internet safety strategy is the best mechanism to consider what more social media companies can do in this area. In the meantime, government is already working with social media and interactive services to have robust processes in place quickly to address inappropriate content and abusive behaviour on their sites.

We have all read the recent news stories about vile content hosted on social media companies. This Government believe that those companies have a responsibility to make sure their platforms are not used as a place to peddle hate or celebrate horrendous acts of violence. We are already talking to those companies and they are responding to those concerns. In particular, advertising revenue is an effective and salutary lesson for them.

We also expect online service providers to play a key role to protect their users and to ensure they have relevant safeguards and reporting processes in place, including access restrictions for children and young people who use their services. Social media companies already take down content that is violent or incites violence, if it breaches their terms and conditions. However, it is extremely difficult to identify where the threat has come from and whether the threat is serious.

We have referred already this evening to the Internet Watch Foundation, and its data confirm that good progress is being made. It works with companies to identify and remove illegal child sexual abuse material. In 2015, it processed 112,975 reports, and 68,543 were confirmed as child sexual abuse material. Yet only 1% of URLs were on social media sites.

I apologise if I gave the wrong impression in Committee—we are not complacent at all. We know that there is more to do and I give a firm commitment to the House that we will consider all available options through our internet safety strategy. For example, the noble Baroness, Lady Jones, mentioned the Australian system. We are carefully considering those international best practices, including Australia's approach, as part of the strategy.

The noble Baroness, Lady Janke, mentioned the problem of the plethora of relevant laws on, for example, cyberbullying. There are laws in place to protect people when bullying behaviour constitutes a criminal offence, for example under the Protection from Harassment Act 1997, the Malicious Communications Act 1988, the Communications Act 2003 and the Public Order Act 1986. I think that proves her point. We will take those things into account in the internet safety strategy.

The noble Lord, Lord Alton, mentioned suicide sites. That is, of course, something that needs to be looked at and we will include those in our strategy.

We are working on this now. As I said, it will be published in June. We will bring forward the implementation of proposals as quickly as possible thereafter. I hope that noble Lords, especially the noble Baronesses, Lady Jones and Lady Janke, are reassured that we are taking the necessary strides to keep children and young people safe online. I therefore ask the noble Baroness to withdraw the amendment.

Baroness Jones of Whitchurch: My Lords, I am grateful to the Minister. We support and agree with many of the initiatives that he has outlined. As has been said before, there are opportunities for us to participate in discussions on the Green Paper and the wider issues of internet safety. We welcome all those initiatives, but the list which the Minister gave very much puts the onus on parents, children and everyone else in society to behave well, be better educated and have the proper tools to navigate the internet safely. It did not put so much of an onus on the actual problem, which is that social media sites are encouraging and facilitating this bad behaviour.

Although we do not want to take anything away from the Government, there is still a major problem. The voluntary initiatives that we have so far required social media sites to take have not come up with the goods. The Minister said that things were getting better. I disagree; things are getting worse. We have heard examples from around the Chamber that children are feeling more intimidated and bullied; they are accessing suicide sites in a quite unacceptable way. Sites are not taking down this material when it is

[Baroness Jones of Whitchurch]
drawn to their attention. There continues to be a rather urgent challenge. Without wishing to overplay the Australian model, one can put systems in place to make this happen. It is not beyond their technical capacity to put the measures in place—they just need the proper encouragement. I do not want to take anything away from what the Government have said, but there is a level of urgency with this particular problem about social media sites.

The Minister also said that he had a problem with the wording of the amendment. I do not see what is wrong with an "overarching duty of care" for young people. It is all encompassing and I would hope that any responsible social media site would broadly welcome that initiative. He also said that it was not clear how the sites would make reference to the police. In the Australian system there is an e-safety commissioner through whom complaints are made. If the Government did not like our wording, I would have hoped that they would have come back with something better; we might have withdrawn our wording in favour of theirs if it achieved the same measure.

We still believe that social media sites will change their behaviour only when there is the very particular threat of a statutory obligation being placed on them at a set point in time. I am sorry to say that the Minister's response has not been sufficient on this occasion, and I would like to test the opinion of the House.

7.25 pm

Division on Amendment 25YR

Contents 203; Not-Contents 176. [The Tellers for the Contents reported 203 votes; the clerks recorded 202 names.]

Amendment 25YR agreed.

Division No. 4

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7.35 pm

Clause 27: Interpretation of this Part

Amendments 25YS to 25YV

Moved by ***Baroness Buscombe***

25YS: Clause 27, page 28, line 19, at end insert—

""extreme pornographic material" has the meaning given in section (Meaning of "extreme pornographic material");"

25YT: Clause 27, page 28, line 22, at end insert—

""pornographic material" has the meaning given in section 16 ;"

25YU: Clause 27, page 28, line 23, at end insert—

"(2) Section 22(3) of the Video Recordings Act 1984 (effect of alterations) applies for the purposes of this Part as it applies for the purposes of that Act."

25YV: Clause 27, page 28, line 23, at end insert—

"( ) Nothing in this Part affects any prohibition or restriction in relation to pornographic material or extreme pornographic material, or powers in relation to such material, under another enactment or a rule of law."

Amendments 25YS to 25YV agreed.

Amendment 25YW

Moved by ***Baroness Jones of Whitchurch***

25YW: After Clause 27, insert the following new Clause—

"Report on this Part

(1) Within 18 months, but not before 12 months, of the coming into force of this Part the Secretary of State must produce a report on the impact and effectiveness of the regulatory framework provided for in this Part.

(2) Before publishing this report, the Secretary of State must consult on the definitions used within this Part.

(3) The report must be laid before each House of Parliament."

Baroness Jones of Whitchurch: My Lords, I do not intend to reopen the debate but we were not reassured by what the Minister had to say at the time. Therefore, we wish to test the opinion of the House on this matter.

7.36 pm

Division on Amendment 25YW

Contents 179; Not-Contents 159.

Amendment 25YW agreed.

Division No. 5

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Ahmad of Wimbledon, L.
Anelay of St Johns, B.
Ashton of Hyde, L.
Astor of Hever, L.
Baker of Dorking, L.
Bates, L.
Berridge, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Brabazon of Tara, L.
Brady, B.
Bridgeman, V.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Buscombe, B.
Byford, B.
Caithness, E.
Callanan, L.
Cathcart, E.
Chisholm of Owlpen, B.
Colville of Culross, V.
Colwyn, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E. [Teller]
Couttie, B.
Craigavon, V.
Crathorne, L.
Crickhowell, L.
De Mauley, L.
Deben, L.
Dixon-Smith, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Elton, L.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fall, B.
Faulks, L.
Fellowes of West Stafford, L.
Fink, L.
Finkelstein, L.
Finlay of Llandaff, B.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Freeman, L.
Gadhia, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Glendonbrook, L.
Goldie, B.
Goodlad, L.
Goschen, V.
Greenway, L.
Griffiths of Fforestfach, L.
Hague of Richmond, L.
Hamilton of Epsom, L.
Hay of Ballyore, L.
Henley, L.
Higgins, L.
Hodgson of Abinger, B.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Horam, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lansley, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
McColl of Dulwich, L.
MacGregor of Pulham Market, L.
McIntosh of Pickering, B.
Mackay of Clashfern, L.
Mancroft, L.
Manzoor, B.
Mawson, L.
Mobarik, B.
Morris of Bolton, B.
Morrow, L.
Moynihan, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Northbrook, L.
Norton of Louth, L.
O'Cathain, B.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Patel, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Rana, L.
Redfern, B.
Ridley, V.
Risby, L.
Rock, B.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.

Selsdon, L.
Shackleton of Belgravia, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Skelmersdale, L.
Smith of Hindhead, L.
Somerset, D.
Spicer, L.
Stroud, B.
Sugg, B.
Taylor of Holbeach, L. [Teller]
Trefgarne, L.
Trimble, L.
True, L.
Tugendhat, L.
Ullswater, V.
Vere of Norbiton, B.
Verma, B.
Warsi, B.
Wasserman, L.
Watkins of Tavistock, B.
Wei, L.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Young of Cookham, L.
Younger of Leckie, V.

7.46 pm

Consideration on Report adjourned until not before 8.35 pm.

Non-Domestic Rating (Rates Retention) and (Levy and Safety Net) (Amendment) Regulations 2017

Motion to Approve

7.46 pm

Moved by ***Lord Young of Cookham***

That the draft Regulations laid before the House on 20 February be approved.

Lord Young of Cookham (Con): My Lords, the business rates retention scheme, which was introduced in 2013-14, allows local government in England as a whole to retain 50% of the business rates it collects locally. These regulations change the regulatory framework governing the day-to-day operation of the business rates retention scheme. The changes, which are highly technical, are necessary, first, to ensure that the scheme adapts to the impact of the 2017 business rates revaluation and, secondly, to reflect the fact that from 1 April 2017 a number of authorities will be piloting 100% business rates retention.

Starting with the changes that need to be made because of the revaluation, the business rates retention scheme currently provides that some of the 50% of business rates that authorities retain is redistributed between them to ensure that no area is disadvantaged by having a small business rates base. This redistribution is achieved through what are known as "tariffs" and "top-ups". Tariffs take money from authorities which are relatively rich in business rates when compared to their spending needs, and this is then redistributed through top-up payments to authorities which are relatively poor.

Tariffs and top-ups were set in 2013-14 based on the difference between the business rates that authorities were expected to collect in that year and their relative need, as established in that year's local government finance settlement. Thereafter, they were uprated annually by inflation. Any growth, or decline, in local business rates after 2013-14 has not been taken into account in future years' tariffs and top-ups—hence, authorities have an incentive to grow their business rates bases, as, by doing so, they keep 50% of the benefits of growth.

However, as a result of the business rates revaluation that will take effect on 1 April 2017, the amounts of business rates that authorities will actually collect in 2017-18 will be very different from what they collected in 2016-17. If, for 2017-18, we were simply to uprate the existing tariffs and top-ups by inflation, as we have done in the past, authorities could find their income from business rates substantially changed for reasons quite unconnected to their efforts to secure growth but due to revaluation.

Therefore, when we set up the scheme in 2013, we announced that we would adjust tariffs and top-ups to strip out the impact of revaluations. During the summer we consulted on the methodology for doing that, and new tariffs and top-ups for each authority were approved by Parliament as part of the most recent local government finance report.

Because business rates can decline as well as grow, the business rates retention scheme, under which local government keeps 50% of locally collected business rates, also provides for safety net payments to authorities that see their business rates income fall significantly. These are paid for by charging a levy on authorities whose business rates income grows. Tariffs and top-ups are used as part of the calculation of levy and safety net payments. The detailed calculations are set out in secondary legislation, which currently sets out the "old" tariffs and top-ups due to and from authorities. Therefore, these regulations amend the regulatory framework to ensure that the new tariffs and top-ups are used in these calculations.

The regulations also give effect to the 100% rates retention pilots, which the Government have set up to take effect from 1 April 2017. These were announced in the summer as a way of testing elements of the new 100% business rates retention scheme that will be rolled out more widely in 2019-20. Local authorities in Cornwall, Greater Manchester, the Liverpool City Region, the West Midlands and the west of England will be piloting the new arrangements in 2017-18 and, as a result, will keep all the local business rates they collect, subject to the normal arrangements in the system which redistribute some of their business rates income through tariffs and top-ups. In return, they will forgo some revenue grants from central government—most notably, revenue support grant—and their tariffs and top-ups will be further adjusted to ensure that the pilots are effectively cost-neutral.

The GLA will also keep a higher share of the business rates that will be collected by London boroughs in 2017-18. In return, it will give up its revenue support grant and take on responsibility for funding nearly £1 billion of grant to Transport for London. The regulations will make the necessary changes to the administration of the business rates retention system to ensure that the sums paid and received by the pilot authorities over the course of the year reflect the new pilot arrangements.

To sum up, the regulations make technical changes to the administration of the business rates retention system to reflect the impact of the revaluation and to

[Lord Young of Cookham]
allow the 100% rates retention pilots to operate from 1 April 2017. Without the changes, authorities would not receive the income from the business rates retention scheme that they are expecting and for which they have budgeted. I commend the regulations to the House and beg to move.

Lord Beecham (Lab): My Lords, I must first apologise to the Minister for missing the first minute of his speech; I hope it was not full of fresh information that I ought to be aware of. As far as I am concerned, and I think the same goes for my noble friend, there is no particular objection to these regulations. It is interesting, however, to hear about the proposed pilot schemes—I suspect that the good citizens of Surrey will be waiting with bated breath to see whether they will be included in the pilot scheme. Although the Minister cannot indicate the outcome of ongoing discussions with other authorities, perhaps he can tell us when a decision will be made.

Part of the problem faced by authorities, and by the Government themselves, is the delay in this revaluation—I think it should have occurred in 2015. Will the Minister tell us whether it will be possible to decide on and then stick to a regular period for revaluation? The longer the gap, the greater the impact appears to be, and that is certainly part of the current reaction.

There is also a real problem, not dealt with in these regulations, about the appeals process. The Local Government Association—I remind the House, such as it is, of my local government interests—points out that there have been more than a million appeals from business rate properties since 2010, and 200,000 of those appeals are still waiting to be decided. This has led councils to hold back £2.5 billion in reserves in case they have to meet their 50% share in respect of refunds; 50% is payable by councils and 50% is payable by the Government. The system is clearly creaking around what it is capable of resolving in relation to the appeals system. I wonder whether the Government will look at that system and at the funding that is required to be put in place when there are appeals.

Finally, one of the reactions to the announcement was to point out the strange apparent outcome that very large operations such as Amazon and Sports Direct, with their massive out-of-town sheds, get a very low business rate, whereas the shop on the corner and the pub in the middle of town pay a disproportionately high amount relative to those very large concerns. Are the Government looking at that anomaly and, if so, when will it be resolved? It certainly concerns anybody living in a city area, where business rates income will now be crucial to the services that the authorities can provide, and yet these large institutions, mainly outside urban areas, will both compete with those in our towns and cities and themselves have very little to pay by way of business rates. That anomaly should surely be addressed.

Lord Shipley (LD): My Lords, I too am a vice-president of the Local Government Association.

The context of these regulations is one in which there is an increasing lack of confidence in the sustainability of local government finance over coming years. There are several reasons for this, which have been well documented. It is partly about rising demand and it is partly about reducing income. However, there is no doubt that there is simply not enough money to do all the things that local government needs to do.

Despite declining income, however, business rates have not been reducing, and they are very high in international terms. They have become a major burden for many small businesses, even for some that will gain from the revaluation. The situation has become acute for many high street shops and pubs. Competition through internet purchasing from retailers not in shopping centres and that have lower business rate bills has become a major source of concern.

It is true, as the Government keep reminding us, that this revaluation is revenue neutral overall. Three-quarters of businesses will not pay more, but that means, of course, that one-quarter will pay quite a bit more. I acknowledge that there are transitional arrangements, and they will be important. However, the revaluation still means very high bills for some.

Thirty years ago we had a local domestic tax, a local business rate and a revenue support grant from central government, with a strong needs-based element in the government grant regime. I think that that needs assessment is now in danger of being inadequately reflected in government thinking. Much has changed since business rates were nationalised almost 30 years ago, but one thing has not: need remains in both absolute and relative terms and should be fully reflected in government policy.

I draw the Minister's attention to a comparison that I think is important, between corporation tax and business rates. Business rates raise around £28 billion and corporation tax raises around £43 billion. Corporation tax is being reduced to 17% by 2020, and in my view that reduction cannot be justified when business rates could be made lower. I think that the continued reduction of corporation tax helps bigger businesses—those that pay corporation tax—but smaller businesses that pay business rates but not corporation tax are getting a higher bill as a consequence of their exposure to business rates.

8 pm

The noble Lord, Lord Beecham, asked about the scale of appeals, and he said there was a backlog with the Valuation Office Agency of some 200,000 cases. I thought there were around 280,000 cases, so it will be interesting to have the up-to-date position from the Minister. However, the current rate of resolution of those appeals is only a quarter of the 280,000 that I think the figure is in a year. In other words, there is already a backlog of about four years. There will then be a huge rise in the number of appeals as a result of the revaluation. Has there been any discussion about the number of staff that the Valuation Office Agency has? It seems that it needs more.

Can the Minister also confirm what the Government have agreed for meeting the cost of appeals? The noble Lord, Lord Beecham, talked about the 50:50 split, but the Government have indicated that they are willing to pay more money as a contribution. I would be grateful if the Minister could confirm the detail of what that means.

I think it is wise to have the business rate retention pilots, and I am really pleased that they are taking place in as many places as is now planned. It is important to understand the impact of government policy, in terms of both need and equalisation, on some areas. I draw the Minister's attention to HS2, a long-term project. There is clear evidence that where major infrastructure goes in, much of it with government/public-funding support, it raises values. Where the Government decide to invest in infrastructure, values rise; and when values rise, the business rate income for those areas will also rise. One of the consequences is that, because development investment is likely to be higher in the places where the infrastructure investment has taken place, those parts of the UK that do not have major infrastructure investments may find they have lower business rates income, in comparative terms, as a consequence. It is not wise for government policy to lead to a situation in which some parts of the country have greater difficulty in raising money from business rates. For that reason, equalisation will matter in the years ahead. It is not something that will just disappear in the course of the next two to three years.

Baroness Pinnock (LD): My Lords, I draw the attention of the House to my entry in the register of interests as a councillor in the borough of Kirklees and as a vice-president of the Local Government Association.

I wish to draw the House's attention to the significant number of factors that are changing in the system of a 100% business rate retention and the consequences of those changes. We welcome the move to more locally raised funding for local services because it brings with it less reliance on the variation in perception of local government by different national government Ministers. Such a substantial change brings considerable uncertainty, and as local authorities are already grappling with substantial funding changes, this adds to the risks of councils being able to budget to meet local needs. The fact that the move to 100% retention coincides with the significant and overdue business rates revaluation has added to the complexity of what is being considered and how it will work out in practice. Consequently, there is an expectation that there will be a large number of business rate appeals, to which the noble Lord, Lord Beecham, and my noble friend Lord Shipley have already drawn attention. While it is to be welcomed that the Government have established a central fund for payment where appeals are successful rather than the existing system of a 50:50 share with local authorities, it must be fully funded, otherwise it will fall into disrepute.

A 100% business rates retention scheme brings with it both winners and losers. An analysis by the House of Commons Select Committee last year estimated that the winners are more likely to be in all the regions to the south of Birmingham, with the northern regions and the Midlands being net losers. Although government estimates are that local government as a whole will gain by between £10.5 billion and £12.5 billion a year, many local authorities will not gain and will rely on the system of tariffs, top-ups and the new levy system to allow equalisation.

This redistribution through tariffs and top-ups will be absolutely critical if local authorities that are currently not in a position to raise sufficient funding are to be able to meet local needs. This must be done on the basis of an individual council's needs and not on a regional, sub-regional or combined authority basis as there can be wide variations even between adjacent local authorities, again as the House of Commons committee report of 2016 demonstrated. The safety net is a critical factor and the detail of how this will operate is fundamental to enabling local authorities to deliver essential public services.

The other crucial factor in these considerations is the frequency of the so-called resets—the length of time between business rate revaluations. Obviously businesses, wanting certainty, would want a longer period, but local authorities, reliant on income from business rates and with fluctuation in need, will want a more frequent reset. It will be interesting to hear from the Minister about the lengths of time between resets that the Government are considering. It will also be interesting to hear what action the Government propose to take if, for instance, a large retailing business closes within a local authority and it therefore loses the income from that company's business rates. Would there be compensation for what could be a significant loss of income?

In addition to these variables, the Government are proposing that local authorities should have new responsibilities as a result of the increase in funding that will be gained by them from the 100% retention scheme. I am relieved that the attendance allowance scheme has now been excluded from the suggestions that the Government originally made, but I hope—perhaps the Minister will be able to give some reassurance—that they will not use the opportunity of local authorities gaining from additional funding to pass on more responsibilities than the funding available. That would be quite a cynical move and would just add to the cuts in local authority funding.

The Government have yet to spell out the arrangements for sharing business rates in two-tier authorities. Perhaps the Minister can throw some light on how that will happen. I would also like to hear from the Government about the central list of major public utilities whose business rates are centrally gathered. It would be nice to know which is on that list, what business rates in total they bring in, and how the money will be redistributed. I have not been able to find a list. I am sure there is one, but it is a little list that I have not been able to find.

A final uncertainty in this major reform of local government finance is the fair funding review, which I hope will live up to its name. The assessment of need referred to by my noble friend Lord Shipley is the fundamental building block for providing local councils and the people they serve with an assurance that councils will be able to meet their basic needs.

The Government are making substantial changes to local government finance at the same time as large cuts are being made to local government funding. This brings with it risks and uncertainty as well as an inability to plan for the long term. We seek assurances from the Government that these changes will not, first, result in even more significant cuts to funding for those councils that will struggle to increase business

[Baroness Pinnock]
rate income in the short and medium term. Secondly, can the Minister give an assurance that there will be a fair equalisation mechanism? Thirdly, will he take into account the significant changes in income or, as I have referred to, between the reset periods? Fourthly, will the fair funding review enable all local authorities to meet the needs of the people they represent?

Finally, I look forward to the Government providing information about the one-liner I spotted today in the Local Government Finance Bill:

"The Government will amend the related approach to the setting of council tax referendum principles".

I have thrown that in in the hope that the Minister will have some information on it.

Lord Kennedy of Southwark (Lab): My Lords, in debating these regulations I refer noble Lords to my entry on the register of interests. I declare that I am a local councillor in the London borough of Lewisham and a vice-president of the Local Government Association.

The first set of regulations, as we have heard, governs the payments to and from authorities and to the Government, while the second set governs the operation of the levy and the safety net for 2017-18, taking into account the revaluation and the 2017-18 business rates pilots. The amendments make provision for the following: allowing the pilot authorities, including in Greater Manchester, Liverpool City Region, West Midlands and West of England and Cornwall, not to pay a central share. There is to be a reduced central share in London to allow for the fact that the GLA will now receive Transport for London investment funding through business rates rather than a grant. The West of England Combined Authority is to receive 5% of business rates as well. There are changes to the baseline funding level for all authorities in line with the 2017 revaluation and the rise in RPI. Changes are made to the levy rates to reflect revaluation and the fact that the levy will not be payable for authorities in the pilot areas.

I have no issues with these regulations as they stand, but I have a few general observations and questions for the Minister. As we move to a system whereby local authorities keep their business rates, the Government need to ensure that the implementation is fair and provides councils with the resources they need to deliver services. Some areas will be able to generate large sums of money from their business rates while others, despite working on and growing their local economies, will struggle to generate sufficient business rate income to meet the demands placed on them. We have heard about the schemes in place to equalise that—the noble Baroness, Lady Pinnock, referred to them. Can the noble Lord comment on ensuring that the scheme to take account of imbalances has a very local focus rather than the focus being at the regional and combined authority level? I agree strongly with the comments of the noble Baroness in that respect. Can the Minister give local authorities some comfort by saying that the Government are aware of this issue and will be responding to it?

Can the Minister also comment on the trend of the Government to place more and more obligations on local authorities but not to provide the funds to meet them? It is a worrying trend that we have seen developing. I would certainly want to see extra business rates income being used to relieve existing funding pressures before we get to the additional responsibilities to be funded through business rates retention.

Can the Minister also say something in respect of business rates appeals, a point raised by other noble Lords in their contributions, and the risks associated with them for local government? My noble friend Lord Beecham and the noble Lord, Lord Shipley, both referred to this issue. I contend that local authorities holding £2.5 billion in case they need to refund money due to successful appeals is not the most efficient way to proceed.

8.15 pm

I also agree with the comments of my noble friend in respect of large organisations having little to pay in respect of business rates in comparison with high street shops and the important loss of income to local authorities. The noble Lord, Lord Shipley, made an important contribution about the question of need and the issue of corporation tax paid by large companies falling while the business rates faced by small businesses and the high street rise year on year, as they are doing again today. The noble Baroness made the point about the significant risk to local authorities caused by a number of factors in the larger than normal expected rate of appeals due to the revaluation.

I have also been thinking about the position of hospitals. We often hear about hospital budgets being under pressure, but they too have the potential to be affected by the increase in business rates. Again, I do not know whether schools pay business rates, and if so they could well be affected in terms of pressures on their budgets. It would be helpful if the noble Lord could respond to these points. However, I have no issue per se with the regulations before the House and I am happy to agree to them.

Lord Young of Cookham: I am grateful to all noble Lords who have taken part in what has been on the whole a consensual debate and I shall try to answer the questions that have been raised. If I cannot, I will write. I did not think that we would get through this debate without Surrey being mentioned. The position is that Surrey County Council informed the Government that it wanted to become a 100% business rates retention pilot area, but was told that that would not be possible for 2017-18. We said that, subject to due process and meeting the necessary criteria, it could participate in the 2018-19 pilot scheme. We explained that other councils had also had discussions with the department about becoming 100% pilots. We went on to announce that all councils will be free to apply to participate in a 2018-19 pilot programme and that the Department for Communities and Local Government would publish more information shortly.

I agree entirely with what the noble Lord, Lord Beecham, said about the need for regular revaluations, both to minimise the turbulence each time you do it and to make sure that we have an up-to-date tax base for local government. We have already said that we are looking at the revaluation cycle with a view to reducing the time between revaluations.

A number of noble Lords mentioned appeals. We are looking at changing the way in which appeals are dealt with under 100% rates retention so that individual authorities do not have to bear the risk of appeal losses. We are currently discussing the mechanics of doing this with the LGA and the sector with a view to removing some of the risks to their income from these appeals. Perhaps I can write on the backlog when I have the most up-to-date figures.

The noble Baroness, Lady Pinnock, asked what would happen if a local authority lost a substantial business rate payer in its area. When I introduced these regulations I mentioned that there was a safety net. There will continue to be one under 100% rates retention. We are discussing the detail of a new safety net with the LGA and the sector and will announce detailed proposals later in the year. The noble Baroness also made the valid point that not all local authorities will gain from 100% business rates retention. That is indeed the case. Redistribution and the timing between resets—in other words, how frequently we assess or reassess the needs of an authority—will be critical. Again, we are discussing the timing of this with the LGA, but we have indicated that we might reset the needs more frequently than under the 50% schemes. I hope that is of some reassurance to the noble Baroness.

We then heard about the anomalies in business rates between large rural businesses and small urban businesses. As noble Lords know, business rates reflect the rental value of the properties that businesses occupying them take. Businesses take decisions on location reflecting those differences. In recent years we have taken a number of steps to reduce the bills of small businesses, including some measures in the Budget and the permanent doubling of small business rate relief. Perhaps I could write about the question raised on the staff of the VOA who are needed to deal with appeals and the resources behind them.

The noble Lord, Lord Shipley, made the point that corporation tax has been going down whereas business rates have been going up. He drew attention to the imbalance. The only point I would make on that is that the rate of corporation tax is important to ensuring that this country remains competitive in an international world. The rate of corporation tax is a barometer of competitiveness in a way that business rates are not.

There was a valid point on Amazon. All businesses pay rates on the property they occupy, including Amazon. It is true that businesses that do not use high-value property or have a high internet profile will reduce their business rates bill, but of course business rates are not the only tax on those businesses. They will pay national insurance contributions on their employees and if they are making a profit they will pay corporation tax.

An issue was raised that is raised in every debate about local government about the Government putting more responsibility on local authorities without giving them the resources to discharge them. I remember making those points back in the 1960s when I was a local councillor. As part of the move towards 100% business rates retention we will give authorities some £12.5 billion of additional resources from which to fund the new responsibilities that they assume. To meet the perfectly valid point raised by a number of noble Lords, we are discussing the functions that will be devolved to local authorities with the LGA and with the local government sector. The new scheme will take account of imbalances through redistribution via tariffs and top-ups, and of the frequency with which, as I said a moment ago, we reassess the needs and reset the tariffs and the top-ups, in response to a point made by the noble Lord, Lord Kennedy.

We have stressed the importance we place on the fair funding review. We have been discussing the methodology of assessing needs with the LGA and with the sector. Again, we hope to publish further details in due course.

The noble Baroness, Lady Pinnock, raised the central list, which brings in about £2 billion per year. Perhaps I could write to her on the details of exactly where that money goes. The noble Lord, Lord Kennedy, raised a number of issues. As always happens when he winds up, I do not always have time to assess the in-flight information in time to respond to him, but he made valid points about hospitals, schools and a number of other issues. Perhaps I could write to him when I have assembled an up-to-date and authoritative response.

These regulations provide for changes to the day-to-day administration of the business rates retention system. The changes reflect decisions already made by Parliament in the *Local Government Finance Report* for 2017-18 about the percentage share of business rates that local authorities are to keep and the tariffs and top-ups that they are to pay or receive during the course of 2017-18. They deliver on the Government's commitment to ensure that authorities are not financially disadvantaged as a result of the business rates revaluation that comes into force on 1 April. They also provide for the 100% business rates retention pilots in Greater Manchester, Liverpool City Region, Cornwall, the West Midlands and in the West of England, and, to a more limited extent, in London. They ensure that the agreements reached with those authorities can be implemented and that the Government can learn lessons from those pilots before 100% business rates retention is rolled out more generally in 2019-20. I commend them to the House.

Motion agreed.

8.23 pm

Sitting suspended.

Digital Economy Bill

Report (2nd Day) (Continued)

8.35 pm

Clause 31: Disclosure of information to improve public service delivery

Amendment 25YX

Moved by ***Baroness Hamwee***

25YX: Clause 31, page 30, line 22, after "person" insert "to the extent the disclosure is necessary and proportionate"

Baroness Hamwee (LD): My Lords, on behalf of my noble friend Lord Clement-Jones and myself I beg to move Amendment 25YX and will speak to the other amendments in this group, which are all about

[Baroness Hamwee]

limiting disclosure—but, I want to stress, limiting it in what we regard as an appropriate way, accepting that there are benefits in information sharing but perhaps with more of an eye to privacy considerations than are in the Bill.

The first of the amendments would provide that disclosure of information should be only to the extent necessary and proportionate in connection with public service delivery. This is both because we regard "no more disclosure than is necessary and proportionate" as being important but also, in this context, because disclosure goes outside and beyond public authorities. We have tabled similar amendments to clauses dealing with debt, fraud and research.

In evidence to the Public Bill Committee, the Information Commissioner wrote:

"Proportionality and necessity are key to ensuring data sharing complies with data protection and human rights law",

and that,

"the Bill does not directly correlate with these concepts".

Our amendments would put these notions in the Bill. The ICO also commented on bulk data sharing. She wrote:

"As more data is shared ever more widely … big data analytics are used in complex and unexpected ways".

Our Amendment 28CB would require the civil registration official to be satisfied that disclosure is proportionate to the recipient's requirement.

Bulk data sharing is so significant that we think it should be reviewed after three years. Amendment 28CF refers particularly to the review covering public attitudes, the use of the powers, the availability of alternative mechanisms, and security considerations.

Amendment 26A takes us to a point that I raised in Committee. We would like to understand what is meant by individuals' and households' contribution to society in the context of improving their well-being. This is a condition for disclosure. What is additional in this phrase to the health and social and economic well-being provided for elsewhere in the clause? The expression is paternalistic and judgmental—and, probably more importantly for this purpose, it suggests a concern more for an advantage to society than to the individual or household. That goes against the thrust of the data sharing for public services, which is framed as being for the benefit of individuals and households.

We are also concerned that the exceptions to the protections include the prevention of anti-social behaviour. In Committee, the Minister said that people have a right to be protected against such behaviour. We would not argue against that, but "balance" is a term often used from that Dispatch Box and we think that the balance here is right out of kilter. Protection against anti-social behaviour is very different from protection against serious physical harm and so on. By definition—the definition being that there is a provision elsewhere—anti-social behaviour is not criminal behaviour.

The Government have explained this, as I said at the previous stage, but we do not believe that they have justified it. Nor have they justified exceptions for any crime, which is why our amendments would limit crime here to serious crime, which we have defined using the definition used in the Investigatory Powers Act. I have to say that not a lot of Clause 36 would fall within the DPA "vital interests" provision.

Next, in Committee we asked about the use of the definition of personal information rather than building on the DPA's personal data. The Minister told the Committee that to the extent that personal information is not governed by the DPA,

"we still expect that information will be handled in accordance with that framework because of the requirements of the codes of practice".—[*Official Report*, 6/2/17; col. 1259.]

Indeed, it would be the codes of practice, not the statute. Our Amendment 28AU is an opportunity for the Minister to answer the Information Commissioner's observation that there is a gap here. There are compensatory safeguards under the DPA—they apply under the DPA but seem not to apply under the Bill.

We remain concerned that an individual whose information is disclosed should be informed. My noble friend Lady Janke referred to the transparency that is necessary for public trust in the process. I completely agree with that. The Minister was concerned that, if a fraud were being investigated, you would not go out and tell the alleged fraudster what you were doing. I hope that the amendment answers that point, because it is a relatively narrow situation that should not preclude doing what is right more generally.

Amendment 28BM has been tabled to seek an explanation of Clause 40(4), in particular its wording,

"similar to that made by section 38".

Clause 38 gives powers to HMRC and, as I read it, HMRC will have powers to lift restrictions on disclosure. So, under Clause 40, does this mean that a specified person has a power to lift the restrictions? That does not seem right to me. I have undoubtedly misunderstood it—but, if I have done so, perhaps one or two other people would misunderstand it, too.

Amendment 39 is rather different: a sunrise clause—it could have been a sunset—to explore further how all this fits with the new rules that will come into effect in May 2018, when we will still be in the EU, under the EU general data protection regulation and the law enforcement directive. The GDPR will strengthen provisions on processing only the minimum data, on privacy notices with explicit requirements for data protection by design and default, and on data protection impact assessments.

We were assured in Committee that Part 5 is "compatible"—that was the word used—with the GDPR. Thinking about that afterwards, I wondered whether that meant that Part 5 was not inconsistent but possibly not as wide as the GDPR. We were told:

"When the regulation comes into direct force, we"—

that is, the Government—

"will look at the provisions of the Act and the codes of practice to ensure that they are consistent with it".—[*Official Report*, 6/2/17; col. 1490.]

Given that there will be a need to share certain data with other EU states after the date when we leave, how will all this be done? I hope that the Minister can share with the House the Government's proposals for checking that there is more than just consistency and that, more particularly, nothing is left out. I beg to move.

8.45 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I am obliged to the noble Baroness, Lady Hamwee. Amendment 25YX and the related Amendments 28CB, 28CG, 28DV and 28FD seek to impose an express requirement that the public service delivery power may be used to share information only to the extent that it is necessary and proportionate to do so. That covers the changes to debt fraud research and similar civil registration provisions in the Bill. With respect, the amendments are unnecessary as the powers will need to be exercised in line with the Data Protection Act and the codes of practice, which already require that only the minimum data necessary to fulfil the particular objective may be shared. It is therefore unnecessary to amend in accordance with this proposal.

The effect of Amendment 25YYD would be that the list of specified persons permitted to use the public service delivery power could be amended only to add or remove bodies. The removal of the word "modify" would affect the way that minor amendments could be made. I do not believe that the noble Baroness, Lady Hamwee, expressly referred to this amendment, but as it is listed in this group as her amendment I just mention the point because clearly it is necessary that there should be a degree of flexibility in how that provision operates.

Baroness Hamwee: I apologise; I thought that was in another group, though I received a note later. I would like to understand how extensive a modification might be.

Lord Keen of Elie: I am obliged to the noble Baroness. I am happy to explain within this group, where I understand the amendment remains. The removal of the word "modify" would affect the way in which minor amendments could be made. For example, where a body changes its name or the description of the category of a body needs to be adjusted, you would then want to modify rather than delete and start again.

Amendment 26A seeks to remove reference to,

"the contribution made by individuals or households to society",

from the public service delivery chapter. Again, I venture that the amendment is unnecessary because subsection (10) gives examples of "well-being" but does not provide an exhaustive list. Therefore we have three categories by way of example—but only by way of example. In response to the specific observation made by the noble Baroness, Lady Hamwee, I respectfully suggest that there is nothing paternalistic or judgmental about any of the examples given in the Bill. Indeed, where a party makes a contribution to society, that benefits the contributor as well as society, which is why it is appropriate that it should be given as an example in this context.

Amendment 28AU would provide a new definition of "personal information" for the purposes of the public service delivery power. This point was raised in Committee as well. The amendment expressly incorporates the definition of "personal data" under the Data Protection Act 1998 into the definition of personal information for the purposes of these powers, as well as making clear that the Bill's extended definition also includes deceased individuals and companies. We consider that the existing provisions set out the same position, albeit in slightly different words. I note that reference was made to the issue in Committee, and to the provision of codes of practice in that context.

The intention of Amendment 28AY seems to be to provide greater transparency by ensuring that individuals would know when information about them has been shared. Existing provisions in the Bill already require those using the powers to comply with Data Protection Act requirements as to the information that people are given about the usage of their personal data. This, supplemented by the requirements imposed by applicable codes of practice, ensures that the use of these powers will be as transparent as it can be.

Amendments 28AR and related amendments seek to narrow the exceptions to the general rule in Clause 36(1) that personal information received under the public service delivery powers may be used only for the purpose for which it was shared, to the effect that such information may not be shared for the purpose of preventing anti-social behaviour, and to restrict the exception permitting disclosure for the purpose of preventing or detecting crime to "serious" crime, as indicated by the noble Baroness. These amendments would also bring in an offence of disclosing personal information for the purposes of anti-social behaviour. The prevention of anti-social behaviour and the prevention or detection of crime are matters of significant public interest. If information sharing indicates potential criminal activity, public authorities should be able to take action. Similarly, if information received under the powers indicates that anti-social behaviour is occurring or is likely, we consider that this information should be disclosable to maintain public order. Anti-social behaviour may itself be seriously harmful to those who become its victims.

Amendment 28BM seeks to remove the power given by Clause 40(4), which allows regulations to make disclosures by newly specified persons subject to the same conditions that apply to disclosures of information provided by HMRC. That power would be used to require the consent of the original provider to any subsequent disclosures of particularly sensitive information, as is the case for information provided by HMRC under Clause 38. The amendment is undesirable, as it would remove flexibility to give enhanced protection to information from certain sources. I do not believe the noble Baroness read the provision in that form, but it is there so that enhanced protection may be given in a particular circumstance.

Amendment 28CF would impose a duty on the Secretary of State to review the civil registration power after three years, akin to the powers already provided in the debt and fraud powers. This duty was included in the debt and fraud powers to assess whether the powers deliver demonstrable benefit via an initial piloting process. The information gathered in the course of the pilot process will provide evidence for the review. It is our view that a similar duty to review the civil registration power would not be appropriate. First, civil registration information is already a matter of public record. Secondly, the powers are simply looking to update outmoded legislation to simplify and provide the flexibility to

[Lord Keen of Elie]
share civil registration data within the public sector to avoid the need to enact specific powers whenever a new need arises. The power has been developed to support a range of public authorities at national and local government level to transform the services that they can provide to citizens.

Finally, Amendment 39 is intended to ensure that Part 5 could not be brought into force until after the GDPR comes into effect, which would be in May 2018. This would prevent the use of the powers until that date, which would be unhelpful given that a number of bodies are keen to use the powers to achieve particular objectives, such as extending the warm home discount scheme. As we have said before, we consider that the present provisions are compatible with the GDPR—compliant, therefore, in that context—and we are committed to revisiting the codes of practice before May 2018 to ensure that they reflect the latest best practice of compliance with the GDPR.

In those circumstances, I invite the noble Baroness to withdraw her amendment.

Baroness Hamwee: My Lords, I thank the Minister, but all that will bear some reading. We felt it important to extend some of the comments that we made in Committee to get a more extended response. Noble Lords will be pleased to know that I shall not respond to all those points. On the Minister's first point about "necessary or proportionate", I do not know whether he means that I misread the ICO's comments, that the Government disagree with the ICO, or whether some of the changes to the Bill since its initial form have dealt with them. Perhaps I should just leave that hanging.

The fact that the "contribution to society" is an example does not answer our concerns. I remain anxious about it, as I do about "anti-social behaviour", which the Minister described as being a matter of significant public interest. I do not dispute that, but data sharing is a matter of significant public interest—I suggest, possibly greater. We are told that anti-social behaviour may be seriously harmful, but it is not criminal in this context, because we have other provisions to deal with crime.

I was indeed confused about the application of the HMRC powers to other bodies, and I remain confused about whether that extension is appropriate.

Finally, of course civil registration information is a matter of public record, but the updating takes us into a very different regime. The ability to share information in bulk is very different from that to look up individual pieces of information. Can the Minister tell the House today whether the consultation to which he referred extended beyond the sharing organisations to the sort of bodies concerned with privacy? He may not know, and I may be quite out of order in asking this on Report. I do not think he is going to leap to his feet—pause—no, he is not. I do not hold that against him. It is probably not in his brief. If there was not such consultation, that answers my point.

However, clearly, I should beg leave to withdraw the amendment.

Amendment 25YX withdrawn.

Amendment 25YY

Moved by ***Lord Keen of Elie***

25YY: Clause 31, page 30, line 23, leave out "a specified objective" and insert "an objective which is a specified objective in relation to each of those persons"

9 pm

Lord Keen of Elie: My Lords, the Delegated Powers and Regulatory Reform Committee made a number of recommendations on Part 5 of the Bill. The Government developed the information-sharing powers through consultation and partnership over a process that started over three years ago. These measures are about improving the way the Government operate for the public benefit. Of course, data sharing must be done with transparency, safeguards and oversight. It is in that spirit that we have accepted the bulk of the committee's recommendations. The way in which Part 5 is structured in seven chapters to deal with different data-sharing powers has meant that it has taken nearly 100 amendments to implement the recommendations, so I will spare the House from referring to every one in turn. I believe that my noble friend Lord Ashton has written previously setting out all that detail.

Our amendments place the lists of specified persons able to disclose and use information under the public service delivery, debt and fraud powers on the face of the Bill rather than in regulations. We then also narrow the powers to amend the lists. For public service delivery, specified persons will be permitted to share information only for the purposes of an objective which has been expressly specified as applicable to that person, rather than any specified objective. We have also narrowed the ability to set and amend data-sharing objectives for public service delivery, so that any specified objective must support the delivery of a specified public authority's functions.

For water and fuel poverty, we have restricted the powers to amend the list of support measures and to add to the list of permitted recipients of information under the clause, as the DPRRC recommended. Finally, we have adopted the committee's recommendations to remove Henry VIII powers to make consequential amendments to primary legislation, as well as to narrow the powers to review and amend the fraud and debt powers. We have ensured that any amendments can be only to improve the operation of the fraud and debt powers and there will be no way to use these powers to undo the safeguards that the Bill provides.

In addition to the DPRRC's recommendations, the Government have tabled amendments on the following matters. Amendments 28FE and 28FF remove repetition in Clause 60(5) relating to the criminal offences which protect personal information originating from HMRC, Revenue Scotland and the Welsh Revenue Authority. By removing this repetition, the amendments avoid any confusion which might otherwise be caused.

Amendments 28FG to 28FN correct an unintended consequence of measures that were agreed during Lords Committee stage to prevent disclosures by journalists in the public interest being caught by the anti-disclosure offences in Chapter 5. The unintended effect is that the criminal offence which protects personal

information disclosed under Clause 60(1), and which originates from one of the tax authorities, now applies only to disclosures made by the person who first receives the information but not those within the accreditation system who subsequently receive the information—for example, to undertake peer review or via intermediaries. These amendments therefore restore a key safeguard to the research power, which ensures that information is protected in all parts of the process.

Amendments 28FW, 28FX, 37 and 38 provide new data-sharing powers for Scottish Revenue and the Welsh Revenue Authority. Clause 70 provides the power for HMRC to share de-identified data, allowing HMRC to share aggregate and general information more widely, for purposes in the public interest. Following discussions with the Welsh Government and the Scottish Government, as requested by them, we are providing equivalent powers for devolved tax-raising bodies.

Amendment 28FY, tabled by my noble friend Lord Hunt, is supported by the Government. There is a recognised sound public policy argument for supporting the more effective operation of the Employers' Liability Tracing Office, referred to as ELTO. The discussions at Lords Committee sparked further conversations between HMRC and ELTO officials, resulting in an agreement to take this amendment forward. This Bill has offered a timely opportunity therefore to legislate. The current clause meets the objective of helping ELTO improve its records of employers' liability insurance policies, making it easier to identify insurers and so enable claimants to pursue compensation. Both parties recognise that there remains some work to do and it is currently unclear as to how effective HMRC data may be in helping to populate missing data. However, an enabling provision would allow more robust testing of the possibilities, with the opportunity to take these forward.

Amendments 40 and 41 enable commencement of measures by area so that the Government can ensure that measures are not commenced for Northern Ireland in the event that the Northern Ireland Assembly has not given legislative consent. Consent from the Northern Ireland Assembly is required on a number of measures, including the extension of public lending right to e-book loans, Part 5 of the Bill on digital government, the Northern Ireland provision in relation to Ofcom and, should the government amendment be agreed, the offence of breaching limits on ticket sales.

In consequence of the potential need to commence the Bill by area, these amendments also provide the power to make necessary transitional provision. The transitional powers will also be used to define small businesses in the statistics chapter of Part 5 until definitions in the Small Business, Enterprise and Employment Act 2015 come into force. I beg to move.

Lord Hunt of Wirral (Con): I declare my interest as a partner in the global law firm DAC Beachcroft, and other interests set out in the register, including chairing the British Insurance Brokers' Association and being president of the All-Party Parliamentary Group on Occupational Safety and Health. Taken at face value, Amendment 28FY would appear somewhat technical, but the Employers' Liability Tracing Office is working well, but it could work better, and this amendment would help to facilitate that.

I am so grateful to the Minister and his colleagues for the support that they have given to this amendment, which could make a substantial difference to the capacity of the office to help to secure compensation, expeditiously and effectively, for those afflicted by industrial illnesses. When someone faces a reduced quality of life and possibly an avoidably and unnecessarily early death because of an industrial illness innocently contracted, the least that we can do is to deliver compensation as quickly as possible in the hope that the individual with the illness can enjoy at least some benefit from it. I believe that in some small way the amendment will serve to make this a more civilised and compassionate country.

Baroness Hamwee: My Lords, we have two amendments in this group. The Minister was just a little previous in answering Amendment 25YYD on modification, so we do not need to go back to that. Amendment 33ZYD would remove several organisations from the list of specified persons for the purposes of fraud provisions, and the amendment is here to enable us to ask whether all these require the data-sharing gateway or, conversely, whether there are many other government-related organisations; I am not quite sure what the correct term might be for organisations such as the National Lottery or the British Council, but I shall use the term government-related organisations tonight. Are there not others that might use the power? What were the criteria used to select the ones that are in the schedule?

Lord Keen of Elie: I am obliged to my noble friend Lord Hunt and note what he said with regard to the amendment. On the amendment proposed by the noble Baroness, Lady Hamwee, Amendment 33ZYD, which seeks to remove a number of non-departmental public bodies listed in the schedule for the fraud power, I accept that the list in the schedule is long but the fact is that many public authorities are at serious risk of fraud. Each of the bodies was considered individually before being added to the schedule, and the NDPBs have been included because they each administer many millions of pounds in grant expenditure each year, which exposes them to a significant risk of fraud.

Baroness Hamwee: Were any organisations considered and discarded for that purpose?

Lord Keen of Elie: I am not in a position to say what number of bodies were considered and discarded, but I will undertake to write to the noble Baroness on that point. All the public bodies included in the schedule must, of course, comply with the data-sharing safeguards in the Bill. Clearly, public authorities may not enter into data sharing lightly. They will have to follow the codes of practice, comply with the Information Commissioner's requirements on data sharing and privacy and have in place all necessary protections to prevent unlawful disclosure.

The list of public bodies in the government amendments is shorter than the lists we have previously published in draft regulations although, as I indicated to the noble Baroness a moment ago, I do not know

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how many bodies were considered and removed before the process of listing them in the draft regulations took place. Care has been given to ensuring that we share only where there is a clear benefit, as required by the legislation. I hope that, with that explanation, the noble Baroness will withdraw her amendment.

Lord Collins of Highbury (Lab): My Lords, I will take this opportunity to briefly comment on this group of amendments. These Benches did submit a series of amendments in Committee. The Minister responded that the Government were giving due consideration to the Delegated Powers Committee report, so there was no opportunity to go through some of those issues in detail. We welcome the Government's amendments and the fact that they have responded to the Delegated Powers Committee. I have read the Information Commissioner's briefing for Report, and I welcome the fact that she strongly supports the Government's adoption of these amendments, which she believes will strengthen parliamentary scrutiny and government accountability.

The next group of amendments deals with the code of practice, on which we had lengthy debates in Committee, but I believe that the Government are now striking the right proportional balance between improving public and government services and the need to protect data.

Lord Keen of Elie: I am obliged to the noble Lord.

Amendment 25YY agreed.

Amendments 25YYA and 25YYB

Moved by ***Lord Ashton of Hyde***

25YYA: Clause 31, page 30, line 24, leave out "Chapter" and insert "section"

25YYB: Clause 31, page 30, line 25, leave out "regulations made by the appointed national authority" and insert "Schedule (Public service delivery: specified persons for the purposes of section 31)"

Amendments 25YYA and 25YYB agreed.

Amendment 25YYC

Moved by ***Lord Ashton of Hyde***

25YYC: Clause 31, page 30, line 26, leave out subsection (3) and insert—

"(3) The appropriate national authority may by regulations amend Schedule (Public service delivery: specified persons for the purposes of section 31) so as to add, remove or modify an entry relating to a person or description of person.

(3A) Regulations under subsection (3) may add an entry relating to a person or a description of person to Schedule (Public service delivery: specified persons for the purposes of section 31) only if—

(a) the person is a public authority or (as the case may be) each person of that description is a public authority, or

(b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority."

Amendment 25YYD (to Amendment 25YYC) not moved.

Amendment 25YYC agreed.

Amendments 25YYE and 25YYF

Moved by ***Lord Ashton of Hyde***

25YYE: Clause 31, page 30, line 33, leave out "(2)" and insert "(3)"

25YYF: Clause 31, page 30, line 38, leave out from "which" to ", whether" in line 39 and insert "remove a person from Schedule (Public service delivery: specified persons for the purposes of section 31)"

Amendments 25YYE and 25YYF agreed.

Amendment 25YYG

Moved by ***Baroness Hamwee***

25YYG: Clause 31, page 30, line 40, leave out "had regard to" and insert "complied with"

Baroness Hamwee: My Lords, the published groupings include Amendment 28CY, which should not have been tabled. I apologise to the House; it was a hangover from drafting before the Government tabled their amendments, which we have just dealt with, in response to the Delegated Powers and Regulatory Reform Committee. I will not be speaking to it and am sorry for the confusion. Similarly, Amendment 28CUA, published on the supplementary list, should not have been tabled—it was drafted a while ago but somebody panicked late on Friday afternoon and thought it had better be published.

9.15 pm

Amendment 25YYG and a number of other amendments in this group return us to the status of codes of practice. Some amendments are amendments to the Bill and some are amendments to government amendments. However, the short point is that we believe the codes are documents which should be complied with rather than documents to which regard is to be had, as "regard" seems to us insufficient. The operation of the Bill, when it is an Act, will be heavily reliant on the codes of practice.

In their reply to the DPRRC, the Government refer to handling information to the same standards as public authorities,

"including compliance with the codes of practice and the Data Protection Act".

If the obligation is the lesser provision—that is, having regard to—it will be enough for an organisation to think about the codes of practice and then decide not to follow them. That is a little too casual for us. We consider that organisations should follow the codes, although we of course appreciate that they do not have the force of law—they are good practice. However, having regard to them, as stated in the Bill, seems to us at two removes from following them more precisely in the way that we would like to see.

As regards Amendments 28BC and three others, the Bill requires the codes of practice to be,

"consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act".

We wondered whether there should not also be reference to Section 51 of the DPA, which relates to codes promoting good practice.

Digging around, as it were, on screen in preparation for today's debate, I found the Information Commissioner's

code of October 2016 on privacy, privacy notices, privacy information and privacy impact assessments. That code mentions when it is beneficial to go beyond legal requirements, and many matters to which reference has been made in the debate. The next little clutch of amendments, of which the first is Amendment 28BD, would require the codes to provide specifically for privacy impact assessments and privacy notices.

As regards Amendment 28BF and similar amendments, the Bill contains requirements to consult on the codes, including consultation with such other persons as the Minister thinks appropriate, which is a formula with which we will all be familiar. However, the named consultees might lead the reader to think that other persons would not extend beyond the arms of government, who are referred to specifically, apart from the ICO, which obviously is independent. There is a clear role for the third sector here and for the active, energetic and very knowledgeable organisations working in the privacy and human rights fields. We feel that to have some such reference as we are suggesting and not leave it to the normal sweeping-up provision would be appropriate and, we think, necessary. I beg to move.

Lord Collins of Highbury: My Lords, in Committee I had my name to an amendment regarding the status of the codes of practice. At that time, the noble and learned Lord referred to the appropriate level of legal obligation. He certainly persuaded me that the wording "having regard to" or "complying with" did not relate to whether a public authority could ignore a code, but whether there were reasons for doing so. I was persuaded about that level of flexibility.

Of course, we were really concerned about what the codes of practice would ultimately look like, what the engagement of the Information Commissioner would be and what the Information Commissioner's view was. On these Benches we were pleased to see not only the Government's amendments but the Information Commissioner saying that she was extremely pleased that the Government had accepted her recommendations on there being references in the Bill to codes of practice and the privacy impact assessments.

In the light of the Information Commissioner's overall comments and the fact that the Government have responded, we certainly welcome these amendments. However, I give notice that—the noble Baroness, Lady Hamwee, referred to this—what is in the codes and how public authorities operate them will be very important, and parliamentary scrutiny of and engagement in them will be critical in the future. I hope that we will see further drafts of the codes before they are ultimately laid before Parliament. It is really important not only that there is the highest level of consultation on them but that Members of Parliament are properly engaged in them.

Lord Keen of Elie: I thank noble Lords for their observations on these matters. There are of course government amendments in this group as well and perhaps I may begin with those.

This group of amendments concerns the codes of practice issued under Part 5 and those issued by the Information Commissioner's Office. It includes the government amendments that implement the recommendations of the Delegated Powers and Regulatory Reform Committee and, as the noble Lord, Lord Collins, observed, the recommendations of the Information Commissioner's Office. In addition, there are some opposition amendments on similar points.

We have already published draft codes of practice on data sharing. The Delegated Powers and Regulatory Reform Committee recommended that the first codes of practice and the UK Statistics Authority's statement of principles should be laid before Parliament in draft and should not be brought into force until they had been approved under the affirmative procedure. Revisions were to follow the draft negative procedure. We agree and have tabled amendments to achieve this, and it is intended that Parliament should have a suitable opportunity to consider these drafts and any amendments thereto in due course.

A further series of government amendments will require persons disclosing personal information under relevant chapters of Part 5 to have regard to the Information Commissioner's codes of practice on privacy impact assessments and privacy notices, transparency and control in so far as they apply to information which is being shared. As the noble Lord, Lord Collins, observed, the Information Commissioner called for explicit reference to these two codes to be made on the face of the Bill. We have worked with her office to develop these amendments, which supplement the existing requirement that the codes of practice prepared under the Bill must be consistent with the commissioner's own code on data sharing, and I understand that she is satisfied with the steps we have taken in that regard. I hope that this will provide further assurance to noble Lords that we are committed to ensuring that best practice concerning compliance with data protection and transparency will be applied to the exercise of powers under Part 5 of the Bill.

I now turn to the opposition amendments in the names of the noble Baroness, Lady Hamwee, and the noble Lord, Lord Clement-Jones. I hope I can persuade them that their amendments are no longer necessary, as the government amendments fully address the concerns of both the Information Commissioner's Office and the DPRRC.

As the noble Baroness has explained, the amendments in their names seek to ensure further consistency with the ICO's codes and to strengthen the role of those codes in the regime set up by Part 5, as well as providing for greater parliamentary oversight of the Government's codes, and I believe that we are now there. The Bill already requires that codes of practice issued under Part 5 of the Bill must be consistent with the ICO's data-sharing code of practice. The government amendments further require persons to have regard to the ICO's codes on privacy impact assessments and privacy notices, transparency and control when exercising relevant powers under Part 5. So we are now referencing all the codes which the ICO felt were critical for the operation of Part 5.

Of course, this is not the first time we have discussed amendments that seek to strengthen enforcement of the codes of practice by requiring authorities that use the powers of determined specified bodies to "comply with" rather than "have regard to" these

[Lord Keen of Elie]
codes. The Government's position remains that "have regard to" is the right weight to give to codes of this type. That is itself a legal obligation, as the noble Lord, Lord Collins, noted. Moreover, the public law will expect those who are subject to the codes to follow their stipulations unless there are cogent reasons why they should not. We note that the Information Commissioner's own codes are themselves advisory. A requirement to "comply with" the codes could lead to their being applied in a tick-box fashion, without due regard to whether the recommendations are actually applicable to and desirable in the context of the specific data share.

On the issue of adding additional persons to the consultation obligations for the codes, since Ministers have committed before Parliament to consult publicly on the Part 5 codes of practice, we suggest that such a requirement is unnecessary. The present provisions reflect what the noble Baroness noted to be the normal position.

Finally, on parliamentary oversight, the Government's amendments fully implement the DPRRC's recommendations, including, exceptionally, the use of the affirmative procedure for the first codes and the draft negative procedure thereafter. They go further than the noble Baroness's amendment, and I hope that that will be welcomed by all noble Lords. I therefore invite the noble Baroness not to press her amendments.

Baroness Hamwee: My Lords, I thank the Minister for that response. I had forgotten to say that I was glad to see the government amendments about the affirmative procedure—it was because of looking at those that we got those two stray amendments that were tabled in error.

The noble Lord, Lord Collins, is absolutely right about the codes of practice. I simply say, before begging leave to withdraw, that it will not be possible for amendments to be made once the codes are put formally to Parliament. That is why wide consultation and—I do not like the term—an iterative process is very important on what will be significant documents. I beg leave to withdraw my amendment.

Amendment 25YYG withdrawn.

Amendments 25YYH and 25YYJ

Moved by ***Lord Keen of Elie***

25YYH: Clause 31, page 31, line 1, after first "objective"" insert ", in relation to a specified person,"

25YYJ: Clause 31, page 31, line 1, after "specified" insert "in relation to that specified person"

Amendments 25YYH and 25YYJ agreed.

Amendment 26

Moved by ***Lord Whitty***

26: Clause 31, page 31, line 9, at end insert—

"( ) the facilitation of improvements in health conditions which could be exacerbated by living in a cold home."

Lord Whitty (Lab): My Lords, I raised this issue in Committee. It concerns one of the major justifications for data sharing that was proclaimed by the Government in their original justification for this Bill, which relates to dealing with fuel poverty. I first record my appreciation for the fact that both the noble and learned Lord, Lord Keen, and the noble Lord, Lord Ashton of Hyde, met me last week to discuss these amendments, which may well shorten proceedings this evening.

My main concern is that all public authorities should interact in order to deal with the problem of fuel poverty. Take, for example, the support that the fuel poor get from the warm home discount. There is a certain group, mainly the elderly that is automatically subject to the provisions of the warm home discount. However, there are other groups—in particular vulnerable families or families that are subject to certain illnesses—that have to be referred specifically in order to gain that benefit. They also, in those areas where there is still some local authority provision for intervention on fuel poverty, have to get through that hoop in order to qualify. As we know, there is no nationally financed fuel poverty eradication programme any more in England; there is, however, in Scotland and Wales, and there are a number of local authorities that do intervene in these matters.

9.30 pm

People in that particular group are most likely to be identified through health provisions. In other words, doctors, district nurses and other health professionals are most likely to identify the fact that they have a problem in relation to the state of their home and the lack of heat or ventilation which results in respiratory, pulmonary or other diseases. I have been engaged in the fuel poverty area for 10 or 15 years and it has always been the reference of that group into whatever scheme has been available at the time which has been lacking.

As I say, the easiest and most obvious way in which they are referenced into the scheme is through health professionals. That is why Amendment 26 deals with the ability of data sharing to come into effect through the identification of a potential benefit for improving the health of people whose condition is aggravated by living in damp or poor housing with poor heating and ventilation. It is not explicitly a benefit and not explicitly a service and therefore it needs to be added to the criteria in this respect.

The other reason for my concern about the inadequacy of the provisions in this area is that the amendments which your Lordships debated two groups ago while I was still dining downstairs dealt with the list of public authorities to which data sharing would apply. Government Amendment 33ZX and the next two amendments cover government departments and local authorities but do not cover health authorities. I understand from the other debates that have been engaged in on this Bill that the issue of health information is particularly sensitive. However, here I am simply talking about a GP or a district nurse identifying that one of the problems of a family is that they cannot afford to heat or ventilate their house on their income and that the health conditions from which they suffer are being aggravated thereby.

This is not disclosing their whole health record. It is not even necessarily sharing it with the energy companies or anybody else in the private sector; it is simply alerting DWP or, indirectly, the energy supplier, through information that this particular group ought to qualify for the warm home discount and for any locally available interventions to improve their homes.

I understand from having spoken to Ministers that this is a difficult issue for them. The inclusion of health professionals and health bodies within the list of people who share data is delicate and controversial. All I am asking from the Minister tonight is to indicate that it would be possible under secondary legislation, at the point where these issues are more positively resolved, to add GPs, district health authorities and other health authorities to the list of people who could share data in this particular respect. The addition of my paragraph (c) would allow them to refer or identify people who are potentially affected through their health condition but not disclose their total health record.

That is what this is about. I accept that it is complicated and delicate, but I would like a positive indication from the Minister that in this way, if all the other difficulties about health information were overcome, they could add health authorities to the list and thereby deliver what I am asking for in this respect.

My other two amendments were largely dealt with in Committee. I retabled them because I would like to be a bit more explicit. Having discussed the issue with Ministers, I think that they have the authority to add gas and electricity networks to the list. They are the bodies with which fuel-poor households are increasingly likely to engage, as distinct from the supply companies, so at some point they should be added to the list. If that is a relatively easy process, I will not pursue Amendments 27 and 28. However, I would like on the record a clearer indication from Ministers that the ability to add health authorities and health professionals, including GPs, to the list could come further down the line, because it would address an issue that was clearly identified by the Government as one of the most important reasons for engaging in information and data sharing in the first place. I beg to move.

Baroness Finlay of Llandaff (CB): My Lords, I have tabled amendments in this group. I start by thanking the noble and learned Lord, Lord Keen of Elie, and his Bill team for having met with me and for dealing patiently with my queries. I know from that meeting that the Government are not minded to accept my amendments, but I would like the arguments to be put on the record.

I have listened carefully to the noble Lord, Lord Whitty. While I do not dispute at all that his amendments are well intentioned, I can see enormous difficulties arising in determining the threshold of the condition—how severe it has to be, which co-morbidities might be aggravating one another, which members of the family would be involved and so on. I am not sure from the way he argued for his amendment whether an email notification system against a set of clear criteria that had been pre-negotiated with the consent of the patient or family would meet the needs and be simple and straightforward. Would it be a communication system free from the risk of mining the patient's clinical records? The reason I ask is that at the moment health bodies are not specified in the Bill, but if they were included, that would certainly need legislation because in effect it would override the common-law duty of confidentiality.

I know that at the previous stage the noble and learned Lord, Lord Keen, said that the Government were minded to consider bringing health and social care bodies within the scope of these powers in the future and that that would be done using a statutory instrument passed by the affirmative procedure. I appreciate that the Minister said that there would be wide consultation before that happened.

The difficulty is that in Clause 36(7) it appears that the duty of confidence, which could apply to the duty of medical confidentiality, could be removed if health is brought within the scope of the Bill. It could provide a legal gateway for sharing medical records for purposes that are not currently specified among a wide range of government departments and public service providers. The concern is that to date a special legal status has been afforded to health data in the common-law duty of medical confidentiality due to its sensitivity and the importance to the public of a confidential health service. This common-law duty of confidentiality protects health data over and above the safeguards provided by the Data Protection Act, so simply referring to the Bill's requirement to comply with that Act when making disclosures does not maintain the current level of protection.

If the Bill proceeds unamended and the Government include health bodies in the list of specified bodies, which they could do by statutory instrument, I think that would be viewed as a serious assault on medical confidentiality because it would open up the power to share confidential information. Indeed, problems with the failure of the current safeguards in the system were aired this weekend over TPP, the IT system that many general practitioners use. In a way, that demonstrated that the current safeguards in place around the IT systems are, frankly, inadequate.

NHS Digital could be drawn into the Bill's information-sharing powers. It holds vast quantities of confidential data, which would mean that the Bill could give the Government direct access to them without consent, because the process would override the current common-law duty. This needs to be considered in the context of the National Data Guardian, who has spoken about the need to build trust in the health system's ability to handle data, and a real concern among many patient groups of the general mistrust that their very confidential data could be shared.

I believe that my amendments will not be accepted, but if they are not I hope the Government will be able to reassure me that if health data were to be brought into the Bill's information-sharing powers they will not just be added to the current framework created by the Bill and then the duty of medical confidentiality deemed to be protected, but that there will be full public engagement and full parliamentary scrutiny prior to proceeding, and that the protections in place would include independent oversight and real-time monitoring of the data sharing. In Wales, the IT system overseeing NHS Wales has instituted real-time

[Baroness Finlay of Llandaff]
monitoring because there was concern that staff could have used their access rights to unprofessionally access healthcare records of people with whom they did not have a direct care relationship. I am afraid that human nature is that people are rather inquisitive about what may be happening to people they know, but those may be very sensitive and very private data. Therefore, they need the highest safeguards around them.

The problem is that once there is a data leak it really cannot be pulled back and closed. I hope the Government will provide the reassurance that, as well as the other aspects, there will be real-time monitoring and independent oversight of the whole process, with additional sanctions that will be of a high enough level to, I hope, act as a major deterrent for any breaches of any data-sharing agreement.

Baroness Hamwee: My Lords, we have Amendment 28AV in this group, which is also about the common-law duty of confidentiality. Obviously that includes doctor-patient confidentiality. We are with the noble Baroness in her concerns. Apart from wanting to see that duty preserved, the reason for the amendment is to seek confirmation that it is to be overwritten rather than preserved. I found subsection (7) quite difficult. When we were contacted by a member of the public who was clearly qualified to read the legislation with a query about it, it seemed appropriate to raise this because it is quite difficult to follow. Clearly, one should be quite certain about what we are doing.

9.45 pm

Lord Collins of Highbury: My Lords, I hesitate before intervening in this group of amendments because, the last time I intervened, my noble friend said that I must be slightly confused, as I was talking about electoral rolls, bread rolls and toilet rolls. We are, of course, conflating a number of issues in this group, but I think that there is a really good point. My noble friend has raised an important area where the public good can be served not by sharing confidential information but by ensuring the availability of information that will serve a specific purpose in relation to fuel poverty. We on these Benches are very sympathetic on that point. In Committee we tabled amendments on the common-law duty of confidentiality, and the noble and learned Lord responded to those amendments. The only point I would make now is that it is vital that medical records remain confidential. They contain information that can affect not only people's health but their access to jobs and to insurance. Access to a whole range of things is at risk if it is felt that this information will not remain confidential. Of course, the consequence of that is another public health issue, because if people do not have confidence that their records will remain confidential, they will not go to their doctor, they will not tell their doctor and they will not seek the treatment that they perhaps should. So there is a very strong case here.

One other point—it is not related to this group of amendments so I ask for forgiveness—is that there is a balance between maintaining confidentiality and security. Many of the problems in the health service, and why people lack confidence in it, are not about policies and procedures but about the health service's ability to maintain a secure IT system. I hope the noble and learned Lord will be able to address those issues. The assurances that my noble friend has sought about future ability are really important. The ability to communicate—not the details of people's confidential records but one government department to another and one public agency to another, to serve a very clear public need—is vital.

Lord Keen of Elie: I am obliged to noble Lords, and in particular I thank the noble Lord, Lord Whitty, for his continued interest in this area and for taking the time to meet and discuss this matter at some length with me and the Bill team. Clearly, as the noble Lord, Lord Collins, observed, this is an important part of the fuel poverty agenda. That is why it takes on such considerable importance even when faced with issues such as medical confidentiality.

On the point about common-law confidentiality, and medical confidentiality in particular, it is not an absolute; there are already statutory gateways through which information can and must flow on occasions, and therefore one must not take it that medical confidentiality is somehow completely ring-fenced and separate from the world that we actually live in. There are circumstances where there should be, has to be and is disclosure. It may be possible—I put it no higher in terms of this Bill—to address a further gateway. However, one should not confuse any mechanism within the Bill with the consequences of human or IT failure, however regrettable they may be. I agree with the noble Lord, Lord Collins, that one has to have regard not only to the structure within which information is shared but to the need to ensure that the sharing process is itself secure. But they are separate issues.

The noble Lord, Lord Whitty, acknowledges that some parts of his amendment may not be necessary. Amendments 27 and 28 would provide that information can be shared with licensed electricity and gas distributors for the provision of fuel poverty assistance. They can already be added to the data-sharing arrangements in Clause 32 by regulations. The Government will consider whether to exercise this power in the context of considering the future role of electricity and gas distributors in delivering fuel poverty schemes. I reassure the noble Lord that the provision made by Amendment 26 is already covered by Clause 31, which provides powers to share information for,

"the improvement of the well-being of individuals or households".

Of course, this includes,

"their physical and mental health and emotional well-being".

While we do not consider the noble Lord's amendment necessary in this instance, the objectives that he highlights are an example of how in appropriate circumstances information held by healthcare providers could, in future, be valuable to support the more effective delivery of public services to those in need. It underlines why the Government are unable to accept Amendments 28AV, 28AW and 28AX, tabled by the noble Baronesses, Lady Finlay and Lady Hamwee.

The Government do recognise the particular sensitivities with identifiable health information, as highlighted in the National Data Guardian for Health

and Social Care's recent review of data security, consent and opt-outs. Health bodies in England are therefore not included in the list of bodies now in the Bill that will be permitted to use these powers. However, as the noble Lord, Lord Whitty, noted, health issues are a key factor in the complex social problems faced by people, whom we are aiming to support with these powers. Excluding the use of identifiable health information altogether would remove the possibility of including such information in the future without amending legislation. It would be premature to take this step in advance of the implementation of the National Data Guardian's review and the public consultation that that will engage.

An amendment to maintain the common-law duty of medical confidentiality is not considered necessary. Those powers enable information to be shared only where it is already held by specified persons, acquired in a different context from the patient-doctor relationship. Any information that would have been subject to medical confidentiality would have found its way into a specified person's hands only through an existing gateway. As I indicated earlier, there are already statutory gateways through which such information can move. Of course, we are dealing with permissive powers.

At this late hour, I will attempt the impossible: to satisfy the interests of all parties in the context of these provisions. Beginning with the inquiry from the noble Lord, Lord Whitty, health bodies are not presently included in the schedules. As drafted, it would be possible for health bodies to be added to the schedules at a future date but—and I emphasise this—no decision will be taken until, first, the Government publish their response to the Caldicott review and any recommendations have been embedded and assessed; secondly, there has been a public consultation on the issue and the views of the National Data Guardian and appropriate representative health bodies such as the GMC and BMA have been sought; and, thirdly, there has been a debate in both Houses pursuant to the affirmative procedure required to add bodies to the schedule. I hope that that reassures the noble Lord, Lord Whitty, that it can be done, although it has yet to be done, and that there are steps that we will take to reassure the noble Baronesses, Lady Finlay and Lady Hamwee, before any such step is implemented.

If health bodies or information were to be expressly excluded in the Bill, it would require primary legislation to enable those bodies to share information under the powers. If and when we decide that it would be helpful to have those powers—in implementing the fuel poverty initiative, for example—it would be most unfortunate if we were delayed by literally years before we could actually achieve the objective, when in fact there is provision here to do it by way of the affirmative procedure so that both Houses have ample opportunity for debate.

If we take those steps, there will be safeguards. When considering whether to add any health bodies to the schedules in the public service delivery, debt and fraud chapters, clear safeguards will apply. First, before a new body may be added to the schedule, it must show that it fulfils the relevant criteria relating to that specific power designed to ensure that only bodies with relevant functions for holding or requiring information relevant to that particular power may be added. The Minister must consider the procedures in place for secure handling of information before any new body can be added to the schedule—a point raised by the noble Lord, Lord Collins. A decision will be taken on whether it is in the public interest and proportionate to share identifying health information in order to achieve a specified objective. There would be no question of simply sharing this information more widely. The powers must be exercised in accordance with the Data Protection Act, which requires that only the minimum information necessary to achieve the objective may be shared. Under the Bill—and under the Data Protection Act—personal information may be used only for the purpose for which it was shared and data must be stored securely to ensure compliance with that Act. Again, this point was raised a moment ago.

Identifying health information will constitute sensitive personal data and so to ensure fair and lawful processing, it must fulfil one of the more onerous Schedule 3 conditions as well as the Schedule 2 condition under the Bill. In addition, new criminal sanctions have been included for wrongful disclosure with a maximum penalty of up two years' imprisonment, a heavy fine or both. Further steps can of course also be taken to remove a body from the schedule if it does not comply with the requirements of the Act.

I do not suppose that I have satisfied anyone with that explanation at the end of the day. But, if nothing else, I hope that it has assisted in informing your Lordships as to why we consider that these amendments are not appropriate and that it would be appropriate to retain the ability to introduce health bodies by way of appropriate regulation. We feel that there will be appropriate safeguards and extensive consultation before any such step is taken, so I invite the noble Lord to withdraw his amendment.

Baroness Finlay of Llandaff: May I ask for clarification over one issue? Would a statutory instrument, when brought forward, envisage adding health bodies to the Bill in a blanket way, or would it be envisaged that there would be statutory instruments for specific purposes, such as health bodies for the purposes of identifying fuel poverty, and that when something else emerged it would require a separate statutory instrument so as to keep that gateway as narrow as possible?

Lord Keen of Elie: With respect, we clearly intend to maintain any gateway in as narrow a manner as is reasonable. The point that the noble Baroness raises is really a question for another day. We are not there yet; health bodies are not included in the schedule. If and when it is contemplated that they will be, there will be extensive consultations on the very issues that she raises.

Lord Whitty: My Lords, I thank the Minister for his ability to deliver a compromise position between what appeared to be diametrically opposed attacks in this group of amendments. He has done very well and almost satisfied me—I thank him for that and for his previous discussions.

[Lord Whitty]

Clearly, my amendments envisage a fairly narrow gateway, and in her latest remarks the noble Baroness, Lady Finlay, was responding to that. I am very grateful to the Minister for his assurance that the procedure could add health authorities and health bodies to the list in specific circumstances. When we come to the statutory instrument phase, I am arguing for only a relatively narrow inclusion, which may well be carried by the form of the statutory instrument which we eventually have to consider. I also recognise that the Minister has to await the outcome of these other considerations.

On the other hand, I would impress on the Minister that fuel poverty is a really big issue and that the lack of communication between the health and social security sides, and the other interventions, has proved a major inhibition in tackling fuel poverty. The information to be shared is in two directions. It would also allow a medical GP, for example, to access DWP information as to whether people in a household qualified for help. It is not simply a matter of disclosing medical information; it is one of ensuring that the medics actually understand the broader context of the household with which they are concerned.

I thank the Minister for his help in this direction. We will no doubt return to this at some subsequent stage but in the meantime, I beg leave to withdraw.

Amendment 26 withdrawn.

Amendment 26A not moved.

Amendment 26B

Moved by ***Lord Ashton of Hyde***

26B: Clause 31, page 31, line 16, at end insert—

"( ) The third condition is that the objective has as its purpose the supporting of—

(a) the delivery of a specified person's functions, or

(b) the administration, monitoring or enforcement of a specified person's functions."

Amendment 26B agreed.

Clause 32: Disclosure of information to gas and electricity suppliers

Amendment 27 and 28 not moved.

Amendments 28AA to 28AH

Moved by ***Lord Ashton of Hyde***

28AA: Clause 32, page 31, line 40, at end insert—

"( ) In this section and section 33 "specified person" means a person specified, or of a description specified, in Schedule (Public service delivery: specified persons for the purposes of sections 32 and 33)."

28AB: Clause 32, page 31, line 41, at end insert—

"(za) amend Schedule (Public service delivery: specified persons for the purposes of sections 32 and 33) so as to add, remove or modify an entry relating to a person or description of person;"

28AC: Clause 32, page 31, line 44, at end insert "so as to add, modify or remove a reference to a fuel poverty measure"

28AD: Clause 32, page 31, line 44, at end insert—

"( ) Regulations under subsection (4)(za) may add an entry relating to a person or a description of person to Schedule (Public service delivery: specified persons for the purposes of sections 32 and 33) only if—

(a) the person is a public authority or (as the case may be) each person of that description is a public authority, or

(b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority."

28AE: Clause 32, page 31, line 44, at end insert—

"( ) Regulations under subsection (4)(a) may add a person or a description of person to subsection (1) only if the person or (as the case may be) each person of that description—

(a) provides assistance of a kind mentioned in subsection (2) to people living in fuel poverty,

(b) monitors or enforces the provision of such assistance to such people,

(c) administers a fuel poverty measure, or

(d) provides services to a person within paragraph (a), (b) or (c)."

28AF: Clause 32, page 32, line 1, leave out "(4)(a)" and insert "(4)(za) or (a)"

28AG: Clause 32, page 32, line 6, after "from" insert "Schedule (Public service delivery: specified persons for the purposes of sections 32 and 33) or"

28AH: Clause 32, page 32, line 17, at end insert—

""fuel poverty measure" means—

(a) a scheme, arrangement or set of arrangements, or

(b) a function or set of functions,

which has as its purpose (or one of its purposes) the provision of assistance of a kind mentioned in subsection (2) to people living in fuel poverty;"

Amendments 28AA to 28AH agreed.

Clause 34: Disclosure of information to water and sewerage undertakers

Amendments 28AJ to 28AP

Moved by ***Lord Ashton of Hyde***

28AJ: Clause 34, page 33, line 8, at end insert—

"( ) In this section and section 35 "specified person" means a person specified, or of a description specified, in Schedule (Public service delivery: specified persons for the purposes of sections 34 and 35)."

28AK: Clause 34, page 33, line 8, at end insert—

"(3A) The appropriate national authority may by regulations—

(a) amend Schedule (Public service delivery: specified persons for the purposes of sections 34 and 35) so as to add, remove or modify an entry relating to a person or description of person;

(b) amend subsection (1) so as to add or remove a person or description of person to whom information may be disclosed;

(c) amend subsection (3) so as to add, modify or remove a reference to a water poverty measure."

28AL: Clause 34, page 33, line 8, at end insert—

"( ) Regulations under subsection (3A)(a) may add an entry relating to a person or a description of person to Schedule (Public service delivery: specified persons for the purposes of sections 34 and 35) only if—

(a) the person is a public authority or (as the case may be) each person of that description is a public authority, or

(b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority."

28AM: Clause 34, page 33, line 8, at end insert—

"( ) Regulations under subsection (3A)(b) may add a person or a description of person to subsection (1) only if the person or (as the case may be) each person of that description—

(a) provides assistance of a kind mentioned in subsection (2) to people living in water poverty,

(b) monitors or enforces the provision of such assistance to such people,

(c) administers a water poverty measure, or

(d) provides services to a person within paragraph (a), (b) or (c)."

28AN: Clause 34, page 33, line 8, at end insert—

"( ) In determining whether to make regulations under subsection (3A)(a) or (b) in relation to a person or description of person the appropriate national authority must have regard, in particular, to—

(a) the systems and procedures for the secure handling of information by that person or persons of that description, and

(b) in the case of regulations which remove a person from Schedule (Public service delivery: specified persons for the purposes of sections 34 and 35) or subsection (1), whether that person, or any person providing services to that person, has had regard to the code of practice under section 39 as required by that section."

28AP: Clause 34, page 33, line 12, at end insert—

"( ) In this section "water poverty measure" means—

(a) a scheme, arrangement or set of arrangements, or

(b) a function or set of functions,

which has as its purpose (or one of its purposes) the provision of assistance of a kind mentioned in subsection (2) to people living in water poverty."

Amendments 28AJ to 28AP agreed.

Clause 36: Further provisions about disclosures under any of sections 31 to 35

Amendment 28AQ to 28AY not moved.

Clause 37: Confidentiality of personal information

Amendment 28BA and 28BB not moved.

Clause 39: Code of practice

Amendment 28BC to 28BF not moved.

Amendments 28BG and 28BH

Moved by ***Lord Ashton of Hyde***

28BG: Clause 39, page 36, line 38, at end insert—

"(6A) The relevant Minister may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

(6B) Before reissuing the code the relevant Minister must lay a draft of the code as proposed to be reissued before Parliament.

(6C) The relevant Minister may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.

(6D) In subsection (6C)"the 40 day period" means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(6E) For the purposes of subsection (6D) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days."

28BH: Clause 39, page 36, line 42, leave out paragraph (a)

Amendments 28BG and 28BH agreed.

Amendment 28BJ

Moved by ***Lord Ashton of Hyde***

28BJ: Clause 39, page 37, line 2, at end insert—

"(8) In disclosing information under any of sections 31 to 35 , a person must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(9) The duty in subsection (8) does not affect any other requirement for the person to have regard to a code of practice in disclosing the information."

Amendment 28BK (to Amendment 28BJ) not moved.

Amendment 28BJ agreed.

Clause 40: Regulations under this Chapter

Amendment 28BL

Moved by ***Lord Ashton of Hyde***

28BL: Clause 40, page 37, line 14, leave out subsection (3)

Amendment 28BL agreed.

Amendment 28BM not moved.

Amendments 28BN to 28BR

Moved by ***Lord Ashton of Hyde***

28BN: Clause 40, page 37, line 19, leave out from "of" to first "this" in line 20 and insert "—

( ) regulations under section 31 (3) which amend Schedule (Public service delivery: specified persons for the purposes of section 31) so as to add an entry relating to a person or description of person,

( ) regulations under section 32 (4)(za) which amend Schedule (Public service delivery: specified persons for the purposes of sections 32 and 33) so as to add an entry relating to a person or description of person, or

( ) regulations under section 34 (3A)(a) which amend Schedule (Public service delivery: specified persons for the purposes of sections 34 and 35) so as to add an entry relating to a person or description of person,"

28BP: Clause 40, page 37, line 20, leave out "provision amending this Chapter so as" and insert "power"

28BQ: Clause 40, page 37, line 39, leave out "or 32(4)(b)" and insert ", 32(4)(b) or 34(3A)(c)"

28BR: Clause 40, page 38, line 7, leave out "31(2) or 32(4)(a)" and insert " 31(3), 32(4)(za) or (a) or 34(3A)(a) or (b)"

Amendments 28BN to 28BR agreed.

Clause 41: Interpretation of this Chapter

Amendments 28BS to 28CA

Moved by ***Lord Ashton of Hyde***

28BS: Clause 41, page 38, leave out line 32

28BT: Clause 41, page 38, line 34, leave out "31(2) which specify" and insert " 31(3) or 32(4)(za) which add, modify or remove an entry relating to"

28BU: Clause 41, page 39, line 1, leave out "31(2) which specify" and insert " 31(3), 32(4)(za) or 34(3A)(a) which add, modify or remove an entry relating to"

28BV: Clause 41, page 39, line 3, after "32(4)(a)" insert "or 34(3A)(b)"

28BW: Clause 41, page 39, line 5, leave out "or 32(4)(b)" and insert ", 32(4)(b) or 34(3A)(c)"

28BX: Clause 41, page 39, line 7, leave out "relates to a matter" and insert "could be specified by provision falling"

28BY: Clause 41, page 39, line 16, leave out "31(2) which specify" and insert " 31(3) which add, modify or remove an entry relating to"

28CA: Clause 41, page 39, line 35, at end insert—

"( ) The power of the Secretary of State in section 69(2) of the Wales Act 2017 to amend an enactment contained in primary legislation in consequence of any provision of that Act includes power to amend this Chapter, and section 97 so far as relating to this Chapter, in consequence of section 48 (water and sewerage) of that Act."

Amendments 28BS to 28CA agreed.

Clause 42: Disclosure of information by civil registration officials

Amendment 28CB not moved.

Amendment 28CC

Moved by ***Lord Ashton of Hyde***

28CC: Clause 42, page 41, leave out lines 37 to 39 and insert—

"(6) The Registrar General may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

(7) Before reissuing the code the Registrar General must lay a draft of the code as proposed to be reissued before Parliament.

(8) The Registrar General may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.

(9) In subsection (8)"the 40 day period" means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(10) For the purposes of subsection (9) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days."

Amendment 28CC agreed.

Amendment 28CD

Moved by ***Lord Ashton of Hyde***

28CD: Clause 42, page 41, line 39, at end insert—

"(7) In disclosing information under section 19AA, a civil registration official must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(8) The duty in subsection (7) does not affect any other requirement for the civil registration official to have regard to a code of practice in disclosing the information.""

Amendment 28CE (to Amendment 28CD) not moved.

Amendment 28CD agreed.

Amendment 28CF not moved.

Clause 44: Disclosure of information to reduce debt owed to the public sector

Amendment 28CG not moved.

Amendments 28CH to 28CU

Moved by ***Lord Ashton of Hyde***

28CH: Clause 44, page 42, line 30, leave out "specified person" and insert "public authority"

28CJ: Clause 44, page 42, line 32, after "section" insert "and Schedule (Specified persons for purposes of the debt provisions)"

28CK: Clause 44, page 42, line 32, leave out "specified person" and insert "public authority"

28CL: Clause 44, page 42, line 34, leave out "specified person" and insert "public authority"

28CM: Clause 44, page 42, line 38, leave out "The reference in subsection (1) to" and insert "For the purposes of this section and Schedule (Specified persons for purposes of the debt provisions)"

28CN: Clause 44, page 42, line 39, leave out "specified person" and insert "public authority"

28CP: Clause 44, page 43, line 4, leave out "regulations made by the appropriate national authority" and insert "Schedule (Specified persons for purposes of the debt provisions)"

28CQ: Clause 44, page 43, line 5, leave out subsection (5) and insert—

"(5) The appropriate national authority may by regulations amend Schedule (Specified persons for purposes of the debt provisions) so as to add, remove or modify an entry relating to a person or description of person.

(5A) Regulations under subsection (5) may add an entry relating to a person or a description of person to Schedule (Specified persons for purposes of the debt provisions) only if the following conditions are satisfied.

(5B) The first condition is that—

(a) the person is a public authority or (as the case may be) each person of that description is a public authority, or

(b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority.

(5C) The second condition is that the person or (as the case may be) a person of that description ("P" in either case)—

(a) requires information from a public authority or a person providing services to a public authority to improve P's ability to identify, manage or recover debt owed to a public authority or to the Crown,

(b) has information which, if shared with a public authority or a person providing services to a public authority, has the potential to improve that authority's or that person's ability to identify, manage or recover such debt, or

(c) has functions relating to the management or recovery of such debt the exercise of which may be improved by the disclosure of information by or to P."

28CR: Clause 44, page 43, line 12, leave out "(4)" and insert "(5)"

28CS: Clause 44, page 43, line 17, leave out from "which" to "whether" in line 18 and insert "remove a person from Schedule (Specified persons for purposes of the debt provisions),"

28CT: Clause 44, page 43, line 21, leave out "(4)" and insert "(5)"

28CU: Clause 44, page 43, line 26, leave out "(4)" and insert "(5)"

Amendments 28CH to 28CU agreed.

Clause 48: Code of practice

Amendments 28CUA to 28DB not moved.

Amendments 28DC to 28DJ

Moved by ***Lord Ashton of Hyde***

28DC: Clause 48, page 46, line 38, at end insert—

"(6A) The relevant Minister may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

(6B) Before reissuing the code the relevant Minister must lay a draft of the code as proposed to be reissued before Parliament.

(6C) The relevant Minister may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.

(6D) In subsection (6C)"the 40 day period" means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(6E) For the purposes of subsection (6D) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days."

28DD: Clause 48, page 46, line 42, leave out paragraph (a)

28DE: Clause 48, page 47, line 2, at end insert—

"(8) In disclosing information under section 44 , a person must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(9) The duty in subsection (8) does not affect any other requirement for the person to have regard to a code of practice in disclosing the information."

28DF: Clause 49, page 47, line 25, at end insert—

"( ) The power in subsection (5) to amend this Chapter—

(a) may be exercised for the purposes only of improving the effectiveness of the operation of the power in section 44 (1), and

(b) may not be used to remove any of the safeguards relating to the use or disclosure of information in section 45, 46 or 47 ."

28DG: Clause 49, page 47, line 30, leave out "44(4)" and insert " 44(5)"

28DH: Clause 49, page 47, line 42, leave out "44(4)" and insert " 44(5)"

28DJ: Clause 49, page 48, line 10, leave out "44(4)" and insert " 44(5)"

Amendments 28DC to 28DJ agreed.

Clause 50: Regulations under this Chapter

Amendments 28DK to 28DR

Moved by ***Lord Ashton of Hyde***

28DK: Clause 50, page 48, line 34, leave out subsection (3)

28DL: Clause 50, page 48, line 39, leave out "44(4) which specify" and insert " 44(5) which amend Schedule (Specified persons for purposes of the debt provisions) so as to add an entry relating to"

28DM: Clause 50, page 48, line 40, leave out "provision amending this Chapter so as" and insert "power"

28DN: Clause 50, page 49, line 1, leave out "44(4)" and insert " 44(5)"

28DP: Clause 50, page 49, line 3, leave out "44(4)" and insert " 44(5)"

28DQ: Clause 50, page 49, line 6, leave out "44(4)" and insert " 44(5)"

28DR: Clause 50, page 49, line 9, leave out "44(4)" and insert " 44(5)"

Amendments 28DK to 28DR agreed.

Clause 51: Interpretation of this Chapter

Amendments 28DS to 28DU

Moved by ***Lord Ashton of Hyde***

28DS: Clause 51, page 50, line 14, leave out "44(4) which specify" and insert " 44(5) which add, modify or remove an entry relating to"

28DT: Clause 51, page 50, line 17, leave out "44(4) which specify" and insert " 44(5) which add, modify or remove an entry relating to"

28DU: Clause 51, page 50, line 20, leave out "44(4) which specify" and insert " 44(5) which add, modify or remove an entry relating to"

Amendments 28DS to 28DU agreed.

Clause 52: Disclosure of information to combat fraud against the public sector

Amendment 28DV not moved.

Amendments 28DW to 28EE

Moved by ***Lord Ashton of Hyde***

28DW: Clause 52, page 50, line 28, after "section" insert "and in Schedule (Specified persons for purposes of the fraud provisions)"

28DX: Clause 52, page 50, line 37, leave out "The reference in subsection (1) to" insert "For the purposes of this section and Schedule (Specified persons for purposes of the fraud provisions)"

28DY: Clause 52, page 51, line 2, leave out from "in" to end of line and insert "Schedule (Specified persons for purposes of the fraud provisions)"

28EA: Clause 52, page 51, line 3, leave out subsection (6) and insert—

"(6) The appropriate national authority may by regulations amend Schedule (Specified persons for purposes of the fraud provisions) so as to add, remove or modify an entry relating to a person or description of person.

(6A) Regulations under subsection (6) may add an entry relating to a person or a description of person to Schedule (Specified persons for purposes of the fraud provisions) only if the following conditions are satisfied.

(6B) The first condition is that—

(a) the person is a public authority or (as the case may be) each person of that description is a public authority, or

(b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority.

(6C) The second condition is that the person or (as the case may be) a person of that description ("P" in either case)—

(a) requires information from a public authority or a person providing services to a public authority to improve P's ability to identify or reduce the risk of fraud against P or a public authority to which P provides services,

(b) has information which, if shared with a public authority or a person providing services to a public authority, has the potential to improve that authority's or that person's ability to identify or reduce the risk of fraud against that authority, or

(c) has functions of taking action in connection with fraud against a public authority, the exercise of which may be improved by the disclosure of information by or to P."

28EB: Clause 52, page 51, line 10, leave out "(5)" and insert "(6)"

28EC: Clause 52, page 51, line 15, leave out from "which" to ", whether" in line 16 and insert "remove a person from Schedule (Specified persons for purposes of the fraud provisions)"

28ED: Clause 52, page 51, line 19, leave out "(5)" and insert "(6)"

28EE: Clause 52, page 51, line 24, leave out "(5)" and insert "(6)"

Amendments 28DW to 28EE agreed.

Clause 56: Code of practice

Amendments 28EF to 28EJ not moved.

Amendments 28EK to 28EM

Moved by ***Lord Ashton of Hyde***

28EK: Clause 56, page 55, line 7, at end insert—

"(6A) The relevant Minister may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

(6B) Before reissuing the code the relevant Minister must lay a draft of the code as proposed to be reissued before Parliament.

(6C) The relevant Minister may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.

(6D) In subsection (6C)"the 40 day period" means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(6E) For the purposes of subsection (6D) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days."

28EL: Clause 56, page 55, line 11, leave out paragraph (a)

28EM: Clause 56, page 55, line 14, at end insert—

"(8) In disclosing information under section 52, a person must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(9) The duty in subsection (8) does not affect any other requirement for the person to have regard to a code of practice in disclosing the information."

Amendments 28EK to 28EM agreed.

Clause 57: Duty to review operation of Chapter

Amendments 28EN to 28ER

Moved by ***Lord Ashton of Hyde***

28EN: Clause 57, page 55, line 37, at end insert—

"( ) The power in subsection (5) to amend this Chapter—

(a) may be exercised for the purposes only of improving the effectiveness of the operation of the power in section 52 (1), and

(b) may not be used to remove any of the safeguards relating to the use or disclosure of information in section 53 , 54 or 55 ."

28EP: Clause 57, page 55, line 42, leave out "52(5)" and insert " 52(6)"

28EQ: Clause 57, page 56, line 10, leave out "52(5)" and insert " 52(6)"

28ER: Clause 57, page 56, line 22, leave out "52(5)" and insert " 52(6)"

Amendments 28EN to 28ER agreed.

Clause 58: Regulations under this Chapter

Amendments 28ES to 28EY

Moved by ***Lord Ashton of Hyde***

28ES: Clause 58, page 56, line 46, leave out subsection (3)

28ET: Clause 58, page 57, line 5, leave out "52(5) which specify" and insert " 52(6) which amend Schedule (Specified persons for purposes of the fraud provisions) so as add an entry relating to"

28EU: Clause 58, page 57, line 6, leave out "provision amending this Chapter so as" and insert "power"

28EV: Clause 58, page 57, line 13, leave out "52(5)" and insert " 52(6)"

28EW: Clause 58, page 57, line 15, leave out "52(5)" and insert " 52(6)"

28EX: Clause 58, page 57, line 18, leave out "52(5)" and insert " 52(6)"

28EY: Clause 58, page 57, line 21, leave out "52(5)" and insert " 52(6)"

Amendments 28ES to 28EY agreed.

Clause 59: Interpretation of this Chapter

Amendments 28FA to 28FC

Moved by ***Lord Ashton of Hyde***

28FA: Clause 59, page 58, line 19, leave out "52(5) which specify" and insert "52(6) which add, modify or remove an entry relating to"

28FB: Clause 59, page 58, line 22, leave out "52(5) which specify" and insert "52(6) which add, modify or remove an entry relating to"

28FC: Clause 59, page 58, line 25, leave out "52(5) which specify" and insert "52(6) which add, modify or remove an entry relating to"

Amendments 28FA to 28FC agreed.

Clause 60: Disclosure of information for research purposes

Amendment 28FD not moved.

Amendments 28FE and 28FF

Moved by ***Lord Ashton of Hyde***

28FE: Clause 60, page 59, line 6, at beginning insert "subject to sections 63(5), 64(5) and 65(5)(information disclosed by tax authorities),"

28FF: Clause 60, page 59, line 7, leave out subsection (6)

Amendments 28FE and 28FF agreed.

Clause 62: Bar on further disclosure of personal information

Amendment 28FG

Moved by ***Lord Ashton of Hyde***

28FG: Clause 62, page 61, line 1, leave out paragraph (b) and insert—

"( ) for the purposes of enabling anything that is to be published as a result of the research to be reviewed before publication, where the disclosure is made to a person who is accredited under section 67 as a person to whom such information may be disclosed for that purpose"

Amendment 28FG agreed.

Clause 63: Information disclosed by the Revenue and Customs

Amendments 28FH and 28FJ

Moved by ***Lord Ashton of Hyde***

28FH: Clause 63, page 62, line 42, at end insert ", or

( ) by a person to whom the information is disclosed by virtue of subsection (3)."

28FJ: Clause 63, page 62, line 46, leave out paragraph (b) and insert—

"( ) for the purposes of enabling anything that is to be published as a result of the research to be reviewed before publication, where the disclosure is made to a person who is accredited under section 67 as a person to whom such information may be disclosed for that purpose"

Amendments 28FH and 28FJ agreed.

Clause 64: Information disclosed by the Welsh Revenue Authority

Amendments 28FK and 28FL

Moved by ***Lord Ashton of Hyde***

28FK: Clause 64, page 63, line 39, at end insert ", or

( ) by a person to whom the information is disclosed by virtue of subsection (3)."

28FL: Clause 64, page 63, line 43, leave out paragraph (b) and insert—

"( ) for the purposes of enabling anything that is to be published as a result of the research to be reviewed before publication, where the disclosure is made to a person who is accredited under section 67 as a person to whom such information may be disclosed for that purpose"

Amendments 28FK and 28FL agreed.

Clause 65: Information disclosed by Revenue Scotland

Amendments 28FM and 28FN

Moved by ***Lord Ashton of Hyde***

28FM: Clause 65, page 64, line 43, at end insert ", or

( ) by a person to whom the information is disclosed by virtue of subsection (3)."

28FN: Clause 65, page 65, line 3, leave out paragraph (b) and insert—

"( ) for the purposes of enabling anything that is to be published as a result of the research to be reviewed before publication, where the disclosure is made to a person who is accredited under section 67 as a person to whom such information may be disclosed for that purpose"

Amendments 28FM and 28FN agreed.

Clause 66: Code of practice

Amendments 28FP to 28FS not moved.

Amendments 28FT to 28FV

Moved by ***Lord Ashton of Hyde***

28FT: Clause 66, page 66, line 17, at end insert—

"(8A) The Statistics Board may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

(8B) Before reissuing the code the Statistics Board must lay a draft of the code as proposed to be reissued before Parliament.

(8C) The Statistics Board may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.

(8D) In subsection (8C)"the 40 day period" means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(8E) For the purposes of subsection (8D) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days."

28FU: Clause 66, page 66, line 20, leave out paragraph (a)

28FV: Clause 66, page 66, line 23, at end insert—

"(10) In disclosing information under section 60, a person must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(11) The duty in subsection (10) does not affect any other requirement for the person to have regard to a code of practice in disclosing the information."

Amendments 28FT to 28FV agreed.

Amendments 28FW to 28FY

Moved by ***Lord Ashton of Hyde***

28FW: After Clause 70, insert the following new Clause—

"Disclosure of non-identifying information by the Welsh Revenue Authority

(1) A relevant official of the Welsh Revenue Authority may disclose relevant information to any person if—

(a) the information is non-identifying information, and

(b) the official thinks that the disclosure would be in the public interest.

(2) Information is non-identifying information for the purposes of this section if—

(a) it is not, and has never been, identifying information, or

(b) it has been created by combining identifying information, but is not itself identifying information.

(3) Information is identifying information for the purposes of this section if it relates to a person whose identity—

(a) is specified in the information,

(b) can be deduced from the information, or

(c) can be deduced from the information taken together with any other information.

(4) In this section—

(a) "relevant official of the Welsh Revenue Authority" means a person within any of paragraphs (a) to (d) of section 17(2) of the Tax Collection and Management (Wales) Act 2016, and

(b) "relevant information" means information which—

(i) is held by the Welsh Revenue Authority in connection with its functions, or

(ii) is held by a person to whom any of the functions of the Welsh Revenue Authority have been delegated in connection with those functions."

28FX: After Clause 70, insert the following new Clause—

"Disclosure of non-identifying information by Revenue Scotland

(1) A relevant official of Revenue Scotland may disclose to any person information held by a relevant person in connection with a relevant function if—

(a) the information is non-identifying information, and

(b) the official thinks that the disclosure would be in the public interest.

(2) Information is non-identifying information for the purposes of this section if—

(a) it is not, and has never been, identifying information, or

(b) it has been created by combining identifying information, but is not itself identifying information.

(3) Information is identifying information for the purposes of this section if it relates to a person whose identity—

(a) is specified in the information,

(b) can be deduced from the information, or

(c) can be deduced from the information taken together with any other information.

(4) In this section—

(a) "relevant official of Revenue Scotland" means a relevant official as defined by section 15(2) of the Revenue Scotland and Tax Powers Act 2014,

(b) "relevant person" has the meaning given by section 13(2) of that Act, and

(c) "relevant function" means a function mentioned in section 13(3)(a), (b)(i) or (c)(i) of that Act."

28FY: After Clause 70, insert the following new Clause—

"Disclosure of employer reference information by HMRC

(1) A Revenue and Customs official may disclose employer reference information held by the Revenue and Customs to the Employers' Liability Tracing Office for use by it for the permitted purpose.

(2) The Employers' Liability Tracing Office is the company registered in England and Wales with the company registration number 06964651.

(3) The permitted purpose is the purpose of providing assistance in connection with—

(a) claims against an employer, or an employer's insurer, arising from personal injury or death that occurred, or is alleged to have occurred, in the course of a person's employment by that employer, or

(b) applications for a payment under the Diffuse Mesothelioma Payment Scheme established under the Mesothelioma Act 2014.

(4) "Employer reference information" means any of the following information relating to an employer—

(a) the employer's name and address;

(b) any combination of numbers, letters or characters that is uniquely associated with the employer and used by Revenue and Customs to identify or refer to the employer, whether generally or for particular purposes.

(5) References in this section to an employer include references to a person who has at any time been an employer.

(6) In this section—

"employer" and "employment" have the same meaning as in the employment income Parts of the Income Tax (Earnings and Pensions) Act 2003;

"Revenue and Customs official" has the meaning given by section 18(4)(a) of the Commissioners for Revenue and Customs Act 2005;

"the Revenue and Customs" has the meaning given by section 17(3) of that Act."

Amendments 28FW to 28FY agreed.

Clause 71: Disclosure of information by HMRC to the Statistics Board

Amendment 28GA

Moved by ***Lord Ashton of Hyde***

28GA: Clause 71, page 69, line 29, at end insert—

"( ) After subsection (4) insert—

"(4A) In disclosing information under subsection (1), the Commissioners or an officer of Revenue and Customs must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(4B) The duty in subsection (4A) to have regard to a code of practice does not affect any other requirement for the Commissioners or an officer of Revenue and Customs to have regard to a code of practice under the Data Protection Act 1998 in disclosing the information.

(4C) In determining how to comply with the duty in subsection (4A) the Commissioners or the officer of Revenue and Customs must have regard to any views of the Board which are communicated to the Commissioners or the officer."

Amendment 28GB (to Amendment 28GA) not moved.

Amendment 28GA agreed.

Clause 72: Disclosure of information by public authorities to the Statistics Board

Amendment 28GC

Moved by ***Lord Ashton of Hyde***

28GC: Clause 72, page 70, line 18, at end insert—

"(7A) In disclosing information under subsection (1), a public authority must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(7B) The duty in subsection (7A) to have regard to a code of practice does not affect any other requirement for the public authority to have regard to a code of practice under the Data Protection Act 1998 in disclosing the information.

(7C) In determining how to comply with the duty in subsection (4A) the public authority must have regard to any views of the Board which are communicated to the authority."

Amendment 28GD (to Amendment 28GC) not moved.

Amendment 28GC agreed.

Clause 73: Access to information by Statistics Board

Amendments 28GE and 28GF

Moved by ***Lord Ashton of Hyde***

28GE: Clause 73, page 76, line 12, at end insert—

"(9A) The Board may not publish the original statement under this section unless a draft of the statement has been laid before, and approved by a resolution of, each House of Parliament.

(9B) Before publishing a revised statement under this section the Board must lay a draft of the statement as proposed to be published before Parliament.

(9C) The Board may not publish the revised statement if, within the 40-day period, either House of Parliament resolves not to approve it.

(9D) In subsection (9C)"the 40 day period" means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(9E) For the purposes of subsection (9D) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days."

28GF: Clause 73, page 76, leave out line 15

Amendments 28GE and 28GF agreed.

Amendment 28GG

Moved by ***Lord Ashton of Hyde***

28GG: Clause 73, page 76, line 18, at end insert—

"(11) In exercising any of its functions under section 45B, 45C or 45D to require the disclosure of information, the Board must have regard to any code of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998 which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information, so far as the code applies to the information in question.

(12) The duty in subsection (11) to have regard to a code of practice does not affect any other requirement for the Board to have regard to a code of practice under the Data Protection Act 1998 in exercising the function."

Amendment 28GH (to Amendment 28GG) not moved.

Amendment 28GG agreed.

Amendments 28GJ and 28GK

Moved by ***Lord Ashton of Hyde***

28GJ: Clause 73, page 77, line 26, at end insert—

"(5A) The Board may not publish the original code of practice under this section unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

(5B) Before publishing a revised code of practice under this section the Board must lay a draft of the code as proposed to be published before Parliament.

(5C) The Board may not publish the revised code of practice if, within the 40-day period, either House of Parliament resolves not to approve it.

(5D) In subsection (5C)"the 40 day period" means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(5E) For the purposes of subsection (5D) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days."

28GK: Clause 73, page 77, leave out line 29

Amendments 28GJ and 28GK agreed.

Clause 74: Disclosure by the Statistics Board to devolved administrations

Amendment 28GL

Moved by ***Lord Ashton of Hyde***

28GL: Clause 74, page 78, line 39, at end insert—

"(8A) In disclosing information under subsection (1), the Board must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(8B) The duty in subsection (8A) to have regard to a code of practice does not affect any other requirement for the Board to have regard to a code of practice under the Data Protection Act 1998 in disclosing the information."

Amendment 28GM (to Amendment 28GL) not moved.

Amendment 28GL agreed.

Amendment 29 had been withdrawn from the Marshalled List.

Clause 80: Appeals from decisions of OFCOM and others: standard of review

Amendment 29A

Moved by ***Lord Foster of Bath***

29A: Clause 80, page 84, line 3, at end insert "and taking due account of the merits of the case".

Lord Foster of Bath (LD): Wow, my Lords, what a tour de force.

Some time ago, we were debating the last string of amendments, during which the Minister sought to achieve the impossible and, according to the noble Lord, Lord Whitty, almost succeeded. In moving Amendment 29A, which is in my name and that of my noble friend Lord Clement-Jones, I am going to ask the Minister not to achieve the impossible, but merely to give a very clear statement to the House at the end of the debate, with which I hope we will then be satisfied, so that we can move on.

In Clause 80 at the moment, the Government seek to change the regime for appeals from Ofcom decisions from an appeal on the merits to one which follows a judicial review standard. As the Minister is well aware, the move is opposed by the vast majority of the telecoms industry, including the most significant investors in telecoms infrastructure. It is also opposed by many smaller players, by new entrants and by the industry bodies, the CBI and techUK.

Ofcom is an immensely powerful regulator which can make life-or-death decisions for these companies and their investors. The industry players feel that it is only fair that they should have the protection of due process. They believe that changing the appeals regime in the way proposed introduces significant regulatory uncertainty into the UK investment environment.

There is no evidence that has convinced us that Clause 80 is necessary, let alone desirable. Many claims have been made to support the need for a change that have transpired to be simply wrong. For example, it was initially claimed that it would bring Ofcom appeals into line with other sectors, but that point has now been dropped. The Minister made that very clear at col. 1737 in our deliberations in Committee on 8 February. It was also claimed that the new approach would be quicker, but evidence clearly shows that judicial reviews can take at least as long as current telecoms appeals. Many other claims were made which were effectively debunked in Committee by my noble friend Lord Clement-Jones.

Despite all that, in Committee, the Minister refused to accept an amendment which would have done no more than duplicate the wording of the EU directive, which implements the right to appeal under consideration. Rather strangely, the Minister said:

"I acknowledge that the amendment essentially replicates the wording of Article 4 of the EU framework directive, albeit it is not identical to it. While this would in one view remove the gold-plating of the existing standard in a technical sense, the Government consider that it would not lead to any substantive change in approach".—[*Official Report*, 8/2/17; col 1739.]

In that statement, he seems to indicate a lack of faith in the judicial bodies responsible for hearing appeals, almost implying that they are not capable of applying the law properly. I say that because the only alternative interpretation of what he said is that the Government now intend to underimplement the framework directive and put in place a standard which does not meet the European requirements.

On the one hand, we are assured by the Government that the words in Clause 80 will allow appeal bodies to take due account of the merits, but the noble and learned Lord, Lord Keen, by saying that a substantive change of approach was required, implied something different. After all, the language of Clause 80 plainly refers only to judicial review. As traditionally understood, this would absolutely not encompass consideration of "merits".

I argue that there is a real risk of ambiguity that could cause confusion when the first cases are taken under the provision. I hope that the noble and learned Lord will not only respond to the general point but give a clear statement about what exactly is intended by Clause 80 and whether the appeal bodies will be allowed to do what the framework directive says, which is to ensure that,

"the merits of the case are duly taken into account".

Just before I finish, I ask the Minister to give one more clarification on an issue about which there is confusion. He will recall that during debate in Committee, my noble friend Lord Lester raised with him the point that judicial review in cases that do not relate to European directives do not have merits taken into account, whereas in relation to European directives they do. The debate was about proportionality. The Minister was very clear when he said,

"here we are dealing with judicial review in the context of the EU framework directive, which requires that the merits of the case are duly taken into account in any appeal".—[*Official Report*, 8/2/17; col 1738.]

That is the sort of clear statement that I hope that he will repeat today. I hope that he can go further and explain what will happen post Brexit—although I assume that the entire EU directive will be transposed into UK law. Then, perhaps we will maintain the proportionality to which he referred and the merits will continue to be taken into account. I hope that he can clarify that for me, as well as give that clear statement—not an impossible task—and we can then quickly move on.

10.15 pm

Lord Aberdare (CB): My Lords, I should like to speak briefly in support of Amendment 29A. Removing merit-based appeals, as Clause 80 would do, seems both unfair to appellants in cases where Ofcom may make decisions that are materially wrong even if they reflect due process, as will inevitably occur on occasion, and undesirable, potentially harming consumers and deterring investment. This seems precisely the opposite of what is needed in such an important, strategic, high-value, fast-changing, innovative and growth-oriented sector.

I will not try to restate the arguments made in Committee, or those made by the noble Lord, Lord Foster. I just make two points in response to the helpful letter from the noble Lord, Lord Ashton, on 14 March. The letter describes the merits appeal as,

"akin to a retaking of the whole decision",

but an appeal will normally be made only on specific grounds where an appellant believes there is a clear error. So the amendment would not require whole decisions to be re-examined, only those aspects specified in the notice of appeal.

Secondly, I accept that the judicial review process is,

"perfectly able to meet the current EU law requirement that the merits of the case are duly taken into account"

if the judges so decide in a given case. Rather than leaving it to judicial discretion, however, why not spell out in the Bill that they should be taken into account even after they are no longer banned by the EU framework directive, thereby future-proofing it for the post-Brexit world?

Ofcom decisions are of crucial importance for both consumers and telecom providers, and indeed for investors. As we have heard, the change to a judicial review standard is strongly opposed by the great majority of industry participants, from the major incumbents such as BT and Virgin to much smaller, newer market entrants, such as CityFibre, along with the CBI and techUK, the latter representing 900 tech sector companies, the majority of them SMEs.

I claim no specific expertise on judicial review, and I am no great fan of BT, but it is important that the relatively modest requirement set out in Amendment 29A should be incorporated into the Bill.

Lord Stevenson of Balmacara (Lab): Briefly, the ground has been well covered by the noble Lords, Lord Foster and Lord Aberdare, and I have little to add. Three things strike me. I recalled in Committee that this was one of the areas where we had received the most external notifications and correspondence. It is still something that we need to take carefully. As has just been said, it is surprising that almost the entirety of the industry affected by the judgments of Ofcom have joined up to make the case.

Following on from both speeches, what is required is a statement from the noble and learned Lord. I am sure he is straining at the leash to give us all another compromise solution that will do the trick. He is shaking his head; maybe there are other things he has to cover as well. However, the situation seems to hinge on whether Article 4 of the EU directive applies sufficiently well after this Bill goes through, as before. Yet, as has been mentioned, there will be an opportunity, presumably in the great repeal Bill, to cover exactly this point. So what is the hurry?

Lord Keen of Elie: My Lords, I am obliged to noble Lords. As the noble Lord, Lord Stevenson, observed, there have been quite a lot of external communications on this. Indeed, I notice that the quotation that the noble Lord, Lord Foster, gave on my observations in Committee was identical to that quoted in a letter from Towerhouse LLP to the Department for Culture, Media and Sport on 17 March. Everybody seems to be singing from the same hymn book.

At present, Section 195 of the Communications Act 2003 requires that appeals against Ofcom's regulatory

[Lord Keen of Elie]
decisions are decided by the Competition Appeal Tribunal on the merits. I shall come back to "on the merits" in more detail in a moment.

Appellants argue that appeals "on the merits" should allow for a bottom-up review of the decision, inviting the tribunal to substitute its own view for that of the regulator—in effect, two tiers doing the same thing. Appeals are therefore seen as an opportunity to rerun arguments that were considered and rejected by Ofcom in reaching its decision, or to put forward swathes of new evidence to persuade the tribunal to reach a different decision. Such appeals can lead to extremely lengthy and costly litigation, with extensive cross-examination of experts and witnesses. This depletes the regulator's resources and means that other regulatory action by Ofcom is inevitably delayed, allowing for the potential for providers to frustrate the regulator with speculative or even spurious appeals, causing considerable uncertainty in the market and delay to other regulatory decisions.

The Government consider that appeals in the communications sector need to be rebalanced to ensure that Ofcom is held properly to account for its decisions, but also enabled to regulate in an effective and timely manner in the interests of citizens and consumers, as it is required to do. Clause 80 does just that; it requires that instead of merits appeals, the tribunal must decide appeals against Ofcom's decisions by applying the same principles as would be applied by a court on a judicial review. Judicial review is generally a well-understood standard of review against which very significant decisions made by most public bodies are tested. Importantly, this will ensure that appeals are focused on identifying errors in Ofcom's decisions, rather than simply seeking to persuade the tribunal to reach a different conclusion.

Those affected by Ofcom's decisions will remain able to challenge them effectively. In Committee, the noble Lord, Lord Clement-Jones, said that judicial review was,

"solely concerned with whether the decision is unlawful in a technical sense—that is, was the correct process followed?".—[*Official Report*, 8/2/17; col. 1734.]

I hope I can reassure him that this is simply not the case. First, appellants are able to argue that Ofcom's decisions are based on material errors of fact or law. Material errors will therefore be identified and corrected in a judicial review process. Secondly, judicial review is a flexible standard of review, which allows the court to decide on the appropriate intensity of review according to the individual circumstances of the case. For example, there may be more intensive review processes in the context of matters pertaining to human rights. In particular, Ofcom has various statutory duties to ensure that its decisions are proportionate—in other words, that they go no further than is appropriate and necessary to attain a legitimate aim. In reviewing whether a decision is proportionate, the courts can carry out a closer and more rigorous review of the decision.

Of course, appeals in the communications sector are required to ensure that,

"the merits of the case are duly taken into account",

as a matter of EU law under Article 4 of the EU framework directive. That will remain the case under a judicial review standard. I understand that there is uncertainty about the extent to which requirements in EU law may become a part of UK law after the United Kingdom leaves the EU, but that will be a matter for Parliament to determine when the great repeal Bill is introduced, as the noble Lord, Lord Stevenson, observed, and will be looked at in the context of the overall future regulatory framework for electronic communications, including the appeals regime, once the UK has left the EU.

A number of Ofcom's regulatory decisions are already appealable only by way of judicial review, and the Court of Appeal confirmed as long ago as 2008 that judicial review is capable of taking account of the merits of the case, as required by EU law and, in particular, by Article 4 of the EU directive. Lord Justice Jacob in the Court of Appeal in the T-Mobile case in 2008 said that it,

"is inconceivable that Art. 4 in requiring an appeal which can duly take into account the merits, requires Member States to have in effect a fully equipped duplicate regulatory body waiting in the wings just for appeals. What is called for is an appeal body and no more, a body which can look into whether the regulator had got something material wrong".

He also held that,

"there can be no doubt that just as JR was adapted because the Human Rights Act so required, so it can and must be adapted to comply with EU law and in particular Article 4 of the Directive".

Indeed, in a more recent case involving judicial review and Article 4 in 2016, Mr Justice Cranston observed that, as the Competition Appeal Tribunal had said:

"Ofcom enjoys a margin of appreciation on issues which entail the exercise of its judgment",

and that,

"the Tribunal should apply appropriate restraint".

It is not a second-tier regulator, and the fact that it might have preferred to give different weight to various factors in the exercise of a regulatory judgment would not in itself provide a sufficient basis to set aside Ofcom's determination. It should not interfere with Ofcom's exercise of a judgment unless satisfied that it was wrong.

These are the relevant judicial review standards that will be applied in these circumstances. We do not want a complete retrial—if I can call it that—or a situation in which, at two levels, we begin at the beginning and end at the end with an entirely different opinion and approach to the evidence, and, perhaps, entirely new arguments being advanced evidentially in support of the merits of a case. That is a never-ending process and is not common to any other area of regulation by a public authority.

The judgments I have referred to have been considered in a number of subsequent cases and it is clear that a judicial review standard is consistent with the requirements of Article 4 of the framework directive. In these circumstances, it is not considered that there is any real need for this amendment. It is appropriate that we proceed with Clause 80 and I therefore invite the noble Lord to withdraw the amendment.

Lord Foster of Bath: My Lords, it is late but I would love to rebut some of the Minister's remarks about rerunning arguments, swathes of evidence, frustrating delays, uncertainty and so on. If he looks at the Ministry of Justice's own figures over the last 10 years, judicial review took on average between 9.3 and 13 months. I can compare that with many merits-based cases that have taken considerably less time under the current Ofcom regime. He talked about no other regulators operating in that way: I point out that the water, electricity, health, aviation and post sectors all currently face scrutiny under regimes that do require consideration of merits.

However, I do not want to go into all those details. I thank the Minister because he has, in effect, said what I wanted him to say. It was half put on the record on 8 February when he talked about the requirement for the merits of a case to be,

"duly taken into account in any appeal".—[*Official Report*, 8/2/17; col. 1737.]

That has been repeated today. Disappointingly, the Minister said no more about what will happen post Brexit, other than that it is a matter we will consider in due course. Nevertheless, I thank the Minister for at least going some way to providing what I asked for and beg leave to withdraw.

Amendment 29A withdrawn.

Amendment 30 had been withdrawn from the Marshalled List.

Amendment 31

Moved by ***Lord Inglewood***

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

"The independence and funding of the BBC

(1) The Communications Act 2003 is amended as follows.

(2) After section 198ZA (inserted by section 81 of this Act) insert—

"198ZB The independence and funding of the BBC

(1) The BBC is to be independent in all matters concerning the content of its output, the times and manner in which its output is supplied, and the governance and management of its affairs.

(2) The Prime Minister, the Secretary of State, the BBC, OFCOM, and all other persons and bodies with responsibility for matters relating to the governance and establishment of the BBC must ensure that the BBC is able to operate independently from Ministers and other public authorities in the United Kingdom.

(3) The licence fee is to be for the exclusive benefit of and use by the BBC to fund the performance of the BBC's functions and public purposes.

(4) Subject to sections 365 and 365A, the Secretary of State may not transfer to the BBC responsibility, including liability and costs, for any public expenditure.""

Lord Inglewood (Con): My Lords, in the absence of two of the United Kingdom's leading courtroom advocates, it is left to me to make the case for Amendment 31. The rationale for the amendment—and for a number of others to which I and other noble Lords put our name—is very simple. It is based on the fact that we have here, as your Lordships all know, a state-funded broadcaster: the BBC. It seems to us to follow that, in a democracy subject to the rule of law, its independence from government must be honoured and seen to be respected. At the same time, for very obvious reasons, they have got to have a relationship with each other, and it seems to us that the nature of that relationship is not properly defined.

With many others, not least the Lord Speaker in his previous incarnation, I have felt that establishing the BBC by royal charter, using the royal prerogative, is, in the reality of the world we live in, no guarantee of its independence. Indeed, it is rather the opposite, since we all know that, over the years, there has been a whole series of deals completed in smoke-filled rooms—not least in the case of money, where Governments of all persuasions have seemed to take Dick Turpin as their role model.

10.30 pm

In the context of this matter, it seems relevant and germane that there has been over recent years and months—we have had a lot of it in this Chamber—debate about press regulation, and the Press Recognition Panel and its relationship to statute and the use of the royal prerogative. At heart, the essence of what we are talking about is the same, and the principles that apply seem to me the same—which is why we hope that the Government will accept the logic, and hence the desirability, of what is proposed in these amendments.

The purpose of this amendment is to point out the flaws, weaknesses and shortcomings of the existing arrangements and to draw attention to the need for a clear, simple public set of properly legally founded rules of engagement for this relationship. In so doing, it sets the ground rules for the parties and gives the rest of us, both in Parliament and more widely in the country, a benchmark against which we can judge the propriety and sense, or otherwise, of what goes on. I very much hope that the Government will be able to indicate that they feel sympathetic—indeed, supportive—of this approach, which seems to me a very fundamental one in a society of the kind in which we are living. I beg to move.

Lord Wood of Anfield (Lab): I thank the noble Lord, Lord Inglewood. I think the principle of maintaining the independence of the BBC unites virtually everyone in this House. However, the question is: do we agree on what constitutes a challenge to that independence, and do we agree to provide extra protection to the BBC when the independence is under threat?

This amendment sets out concerns about three kinds of independence being compromised: editorial independence, operational independence and financial independence. As the debate in Committee showed, there are widespread concerns about independence of these three varieties being challenged in different ways. Therefore, I think the statements of intent and principles in the amendment of the noble Lord, Lord Inglewood, enjoy widespread support. I think most people would agree that they should govern the approach of the legislature and the Executive to the BBC. However, I wish to bring a couple of issues to the surface. Although

[Lord Wood of Anfield]
the amendment raises these crucial principles, it also suggests the difficulty of using the power of the state to protect bodies outside the state against interference from the state.

I have two concerns in particular. First, there is a larger principle here of putting the independence of a major institution of British public life on a statutory footing. I am personally sympathetic towards that but it is a principle which deserves debate on its own terms, both as a principle and as applied to specific cases such as the NHS, which has been debated before, or the BBC. Secondly, what exactly constitutes independence—not simply politically but legally—needs clarification and precision. Imposing a duty on Ministers and other bodies to ensure that the BBC can operate independently opens the question of how that can be defined, both so that we can recognise it in the observance and the breach, and enforce it. Again, this is something that needs further debate and discussion.

The amendment touches on a cornerstone issue for the BBC and broadcasting policy and the ethos and integrity of public life more generally. However, it raises a broader issue which deserves a more lengthy proper scrutiny in future.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I am grateful to noble Lords for their remarks. In returning to this issue, I am sorry that the noble Lord, Lord Lester, is not here to speak to his amendment as we have debated this issue at length with him as part of the recent discussions on the BBC's royal charter. We have debated it at Second Reading, in Committee and in other debates and Questions. The amendments that the noble Lord, Lord Lester, has tabled, and my noble friend Lord Inglewood has proposed, seek to constrain future royal charters for the BBC through statute. I should have said that I hope the noble Lord, Lord Lester, makes a speedy recovery and returns not to bring this subject up again but other subjects.

I note that, following the discussion we had in Committee, the noble Lord, Lord Lester, made a number of changes to his amendments proposed tonight in the areas of governance and funding. I appreciate the thought that he put into this and the dialogue that we have had on this so far. However, we still maintain that very serious risks are associated with the amendments and therefore we cannot support them.

As noble Lords will by now appreciate, the disagreement between the Government and those who tabled this amendment comes down, as the noble Lord, Lord Wood, said, to a matter of principle. Is the BBC best governed and protected through a charter or through a charter underpinned by legislation? I accept that there are instances where it is desirable and appropriate for a charter to be underpinned in statute but it is the Government's view that this does not apply to the BBC.

Noble Lords may be interested to know that this is a discussion as old as the BBC itself—indeed, it is almost exactly 10 years older than the noble Lord, Lord Lester. When the then Postmaster-General announced in July 1926 that the BBC would be established through its first royal charter, he remarked that the new corporation would derive its authority from royal charter rather than from statute to make it clear to the public that it was not,

"a creature of Parliament and connected with political activity".

In practical terms, noble Lords will appreciate that there is little difference between the effect of the BBC's charter and its accompanying framework agreement and an Act of Parliament. Both are binding on the BBC and on Ministers. Article 3 of the current charter provides:

"The BBC must be independent in all matters concerning the fulfilment of its Mission and the promotion of the Public Purposes, particularly as regards editorial and creative decisions, the times and manner in which its output and services are supplied, and in the management of its affairs".

That carries the same weight in a charter as it does in primary legislation, but in my view the latter option carries unacceptable risks to the independence of the BBC. From a practical point of view, amending an Act of Parliament in the event that a change is required—with all the party-political debate and pressure that that would entail and the uncertain legislative timetable—is not the right vehicle to make sure that the BBC can be governed effectively. Who can tell what political pressures will exist entirely unconnected to the detail of the BBC charter when the charter comes up for renewal?

Charter review remains the right vehicle. It affords an ample opportunity for debate and consultation but also allows for full consideration of all the connected and complex key issues, for effective decision-making and, crucially, for a negotiated agreement with the BBC.

Incidentally, I cannot resist mentioning that my noble friend Lord Inglewood referred to the Government as Dick Turpin in this case. I may be entirely unfamiliar with the story of Dick Turpin but I did not realise that he gave £3.7 billion annually to his victims.

Therefore, I submit that a statutory underpinning will leave the BBC under constant threat of change and monitoring what the Parliament of the day sees as the national interest. I fear that fellow parliamentarians, some of whom may not have my noble friend's pure motives, will find it an irresistible temptation to tweak here and there, and, even with the best of intentions, we cannot expect the BBC to operate effectively and plan for its future in such circumstances.

I believe that this should be a matter for the Government of the day to decide ahead of the next charter review. The charter model has stood the test of time since 1926—through economic depressions, world war and huge technological change—to achieve what has been praised throughout the passage of this Bill as the BBC we have today. Given your Lordships' ongoing interest and informed views, I am confident that the Government of the day will be minded to consider this carefully. With that explanation, I hope my noble friend will be able to withdraw his amendment.

Lord Inglewood: My Lords, I am very grateful to my noble friend for his very full response to the remarks that have been made on this amendment. He went to the heart of it at the outset when he said that he was opposed to the suggestion in the amendment because it would constrain the royal charter in the future. But that is precisely the reason why we moved the amendment.

The mechanism of the royal charter enables the Government, in practice, to have a huge and relatively unscrutinised and uncontrolled ability to adapt and adjust the framework for the relationship they have with the BBC to their own preferred ends.

As I listened to my noble friend, it occurred to me that it was about 25 years ago that I stood at the Dispatch Box at which he was standing a moment ago, discussing the same issues. It crossed my mind—ignoble though it may be to say it—that almost the same speech could have been given to me to deliver all those years ago.

It is perhaps a mistake to simply assume that because something gives the impression of having worked reasonably well for 70 years—it may or may not have—it will continue to work equally well in the years to come. I look around the Chamber this evening and see that some of us are perhaps not quite yet 70 years old but heading that way—and that some may even have passed it. I am afraid that it is the nature of the human condition that when you get to 70 years old, you may not be as fit, spry and sharp as you were in years gone by. So it is not good enough to say that because it has worked well in the past—and it has worked only moderately well—it therefore follows, as night follows day, that you can extrapolate that it will work well indefinitely.

However, I was encouraged by the concluding remarks of my noble friend. He said that he was confident that Governments in the future would seriously consider the point that was being made. I think that is important. On any measure, we have just started a BBC charter and there is a bit of time until the next one comes into effect. While I think that it would have been desirable to have placed in the Bill the statutory provisions that are contained in the amendment, not to do so may not be fatal to the underlying project. Certainly this is something we ought to think carefully about in the hours and days to come—not least the noble Lords, Lord Lester and Lord Pannick, who have not had the advantage of listening to the remarks of my noble friend. Against that background, I beg leave to withdraw the amendment.

Amendment 31 withdrawn.

Amendment 32 had been withdrawn from the Marshalled List.

Consideration on Report adjourned.

House adjourned at 10.42 pm.