Vol. 799
No. 337

Tuesday
23 July 2019

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2019-07-23

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

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

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Tuesday 23 July 2019

2.30 pm

Prayers—read by the Lord Bishop of St Albans.

Road Safety
Question

2.36 pm

Asked by ***Lord Jordan***

To ask Her Majesty's Government whether they plan to include road safety targets for England as part of their road safety statement.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, there is no robust academic evidence to indicate that the setting of targets would contribute to progress in road casualty reduction. As announced in the road safety statement published last Friday, the department will be conducting research into the efficacy of targets. However, local authorities, the police and other bodies are free to set their own targets, should they wish.

Lord Jordan (Lab): My Lords, I declare an interest as a deputy president of RoSPA. I thank the Minister for her reply and welcome the Department for Transport's road safety statement released last week. However, it is extremely disappointing that in an otherwise positive and constructive policy the Government failed to commit to safety targets for England. There were over 170,000 road traffic casualties in the UK in 2017, 1,793 of them fatal. Our road safety improvement trend stagnates, while the best in Europe—countries such as Norway, Ireland and even our own Scotland—all use targets and are seeing continuing improvement. Do not the Government agree that the case for the implementation of targets for England has already been comprehensively made?

Baroness Vere of Norbiton: The Government do not agree that the case has comprehensively been made. However, as I have already stated, we will be conducting research into this area and will consider the results. I thank the noble Lord for his welcome of the road safety statement. It is fine work and will see us through the next two years, with numerous action plans for our four key user groups.

Earl Attlee (Con): My Lords, is the Minister aware that the Government's decision to take another look at the proposal for graduated driving licences, which was dropped some time ago, is welcome, as is the proposal for eyesight tests for more senior drivers? Both are welcome and are likely to lead to an improvement in road safety.

Baroness Vere of Norbiton: My noble friend has mentioned two of our key user groups for the road safety statement, the first being young road users. We will look at and research both a graduated learner scheme, which is the period up to when people pass their test, and then graduated driver licensing, which will consider driving at night and whether young users can carry passengers. We are also looking at eye tests, which would be free for older road users.

Lord Foster of Bath (LD): My Lords, part of the remit of the Air Accidents Investigation Branch is to improve air safety by making use of lessons learned from air accident investigations. There are similar remits for bodies that deal with marine and rail accidents. Given the need to reduce road accidents, it seems odd that we have no national road accidents investigation branch. Given that many other countries do, can the Minister explain why we do not?

Baroness Vere of Norbiton: I thank the noble Lord for that question. Indeed, it was my pleasure to visit the AAIB last Friday and it truly is a world leader in air accident investigation. Turning to road accident investigation, there are many things that the Government are doing. For example, we have committed £480,000 to road collision investigation work, which is being undertaken by the RAC Foundation. This will look at the causation of accidents, which has changed significantly in recent years, and it will provide insights on investigations but also interventions.

Lord Berkeley (Lab): My Lords, we have an Office of Rail and Road and it is responsible for rail safety. Seven passengers died on the railways last year, compared with 1,770 people who died on the roads, as my noble friend has said. Is it not time that the Government extended the remit of the ORR to cover road safety?

Baroness Vere of Norbiton: The Government are not minded to do that at the current time. We believe that the current system is working well. There have been improvements in road safety. The UK is the second best in the EU in terms of road safety. We have done well. Fatalities have fallen by 39% in 10 years, but I recognise that there is more to be done and that is why we have done this road safety statement.

Baroness Finlay of Llandaff (CB): What commitment are the Government giving to lowering the drink-driving limit, particularly when drugs are also involved, given that alcohol is thought to be involved in one in eight road deaths?

Baroness Vere of Norbiton: The noble Baroness will be aware that Scotland recently reduced the limits for drink-driving and a review by the University of Glasgow showed that there was no evidence that reducing that limit had contributed to a reduction in road deaths. However, the Government are aware that some people, for example, are repeat drink-driving offenders and we have now put in place the facility where such people have to medically prove that they are not alcohol-dependent before they get their licence back.

Baroness Browning (Con): I am sure my noble friend is aware that a diagnosis of Alzheimer's disease has to be notified by law to the DVLA. When the DVLA receives that information, it then makes medical inquiries. Is my noble friend aware that that would give only a

[Baroness Browning]
medical opinion? It would not necessarily give any indication as to how safe that person is on the road and it is very difficult for relatives and friends to have input into that consideration.

Baroness Vere of Norbiton: I am very interested in what my noble friend has to say and if she has any more information on certain cases I would be happy to look at it. I know that the DVLA looks at its policies, processes and procedures with regard to licence renewal, and it is up to the applicant to make sure that they notify the DVLA if they have a medical condition or if their eyesight has deteriorated.

Lord Brookman (Lab): My Lords, I just wonder, looking at my noble friend's Question, are we talking about the United Kingdom? Are we talking only about England? Are we talking about Wales? Are we talking about Scotland? Are we looking for common unity on this issue?

Baroness Vere of Norbiton: Matters relating to road safety are substantially devolved. However, I have some statistics here that the noble Lord might be interested in. The number of fatalities in the UK per unit of measurement is 28. Of the four home nations it is highest in Northern Ireland, where that goes up to 37, then Scotland at 35, Wales at 33 and England at 27. I hope that there is work going on between the countries. England is currently leading the way, but I would certainly welcome some developments in other nations.

The Earl of Erroll (CB): My Lords, would it not be more sensible to incorporate night driving into the learning period for driving and possibly include it in the test so that learners learn how to drive at night rather than just limit drivers after they have passed their test and are not with a trained instructor?

Baroness Vere of Norbiton: We are looking at all the things we might potentially include in the graduated learner scheme. At the moment, we are leaning towards minimum learning periods and elements such as that, with night driving later on. However, we are also very conscious that that might have detrimental social and economic impacts on those who have already passed their test.

Commonwealth: Decriminalising Homosexuality

Question

2.45 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government what progress has been made in decriminalising homosexuality in Commonwealth countries since the Prime Minister became the Commonwealth Chair-in-Office.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, at last year's Commonwealth Heads of Government Meeting, the Prime Minister announced a £5.6 million programme to assist member states seeking to reform legislation that discriminates on the grounds of sex, gender identity or sexual orientation. Several countries have expressed interest in this offer and the UK is supporting them while respecting their request for sensitivity. Three countries—Trinidad and Tobago, India and Botswana—have made progress on decriminalisation.

Lord Lexden (Con): My Lords, that is indeed good news. In the years ahead, will it not be important to remember the Prime Minister's statement in 2018 that the British Government have a special responsibility to help Commonwealth countries get rid of anti-gay laws? While there has been recent progress, as my noble friend said, in India last year and Botswana this year, should we also not remember the many countries where there is terrible oppression? An example is Uganda, where violently homophobic debates occupying nearly 50 days of parliamentary time have taken place since 2014, which is designed to buttress and strengthen cruel anti-gay laws.

Lord Ahmad of Wimbledon: My Lords, I agree with my noble friend's comments, and I am sure he will agree with me that my right honourable friend the Prime Minister has prioritised this issue not just at the Commonwealth summit but subsequently. I am sure the House will join me in thanking her for the important progress we have seen on this important human rights issue. My noble friend is right to draw attention to parts of the Commonwealth where suppression and persecution of the LGBT community is very much in evidence. We continue to work bilaterally to raise these issues of concern. I have had various discussions with the noble Lord, Lord Collins, on this issue, and his idea of having champion countries in different parts of the world is something I am pursuing with colleagues at the Foreign and Commonwealth Office. I look forward to working with Members of your Lordships' House in further strengthening our work in this area.

Lord Morgan (Lab): My Lords, is not one of the reasons for this very harsh treatment of this community in Commonwealth countries the attitude of the churches, which in a country such as Uganda are very reactionary? The representatives of the churches in this House are civilised and enlightened people. Could one perhaps request them to use their influence in this direction?

Lord Ahmad of Wimbledon: I am also the Prime Minister's envoy on freedom of religion or belief. Religion or faith is for all of humanity and, whatever faith it may be, it teaches not just tolerance but understanding and respect for the rights of others. I talked of working with your Lordships' House, which includes the Spiritual Benches. I know that the Church of England is playing a very important role in promoting understanding and respect for all people across the Commonwealth, including the LGBT community.

Lord Scriven (LD): My Lords, the Commonwealth charter was signed by all members in 2013. It states that all parties are committed to non-discrimination, although it does not specifically mention sexual orientation. No CHOGM communication has mentioned LGBT rights since then, and it is doubtful whether

they are going to be on the Rwanda CHOGM agenda. What will the Government do to raise this issue and make sure it is covered?

Lord Ahmad of Wimbledon: The noble Lord is right: it was not in the last communiqué or the one before that, and it is unlikely to be in the Kigali one because, as he will know, the Commonwealth takes decisions and issues communiqués with unanimity and consensus across all 53 member states. However, as my right honourable friend the Prime Minister illustrated during the plenary session of the London Commonwealth Heads of Government Meeting, there are opportunities specifically to raise these issues, and we will certainly explore opportunities to do the same in Kigali.

Viscount Waverley (CB): My Lords, are the Government aware that the Government of the Maldives are keen to apply for fast-tracked readmittance to the Commonwealth? Given that their engagement on issues is helpful and that there are many other positive reasons, are the Government minded to support their application, ideally to be in place before the CHOGM 2020?

Lord Ahmad of Wimbledon: We of course welcome the application from the Maldives, and I have met the Maldives Foreign Minister. Their application is being processed and we all hope that it will be finalised in time for Kigali 2020.

Lord Black of Brentwood (Con): My Lords, does my noble friend agree that there is a devastating link between criminalisation and the spread of HIV? A survey of Caribbean countries revealed starkly that rates of HIV infection among MSM are four times higher in those that criminalise homosexuality than in those that do not. It is a damning statistic. Does my noble friend agree that decriminalisation is therefore not just a moral but a public health and safety imperative?

Lord Ahmad of Wimbledon: I totally agree with my noble friend.

Lord Collins of Highbury (Lab): My Lords, the noble Lord kindly mentioned the need for other voices from other countries, but there is also a very strong economic case for diversity and inclusion. Certainly, many global companies have adopted very positive policies on inclusion and diversity. Can he tell us what the FCO is doing to raise this issue with other departments, particularly those responsible for trade, to ensure that trade envoys and others make a positive case for diversity and inclusion so that we encourage investment and a change in the law?

Lord Ahmad of Wimbledon: I assure the noble Lord that I regularly raise every element of human rights in my interactions with Ministers in other departments, particularly those with a trade focus. As we leave the European Union, we are looking at the importance of retaining a strong voice on human rights in future trade agreements, and I will continue to make that case across government.

Baroness Corston (Lab): My Lords, does the Minister agree that one difficulty here is the inheritance of Empire? When I chaired the Joint Committee on Human Rights, we went to Delhi to talk to the commission on equality and human rights there and we mentioned the legislation on gay rights. The answer was emphatic: "We got this legislation from you, and we're grateful".

Lord Ahmad of Wimbledon: The noble Baroness is right to raise that. I think that the legislation has been tested recently, and we should welcome the review of the courts. Regarding the legacy of the old British Empire, particularly where India is concerned, speaking as the son of Indian parents who now represents the British Government, I think that we have laid that one to rest.

Immigration: Children

Question

2.52 pm

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

To ask Her Majesty's Government what assessment they have made of the impact on children of the no recourse to public funds immigration condition.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government work with local authorities to support families with children who are subject to the no recourse to public funds condition. The condition applies to migrants with no leave to remain or those here on a temporary basis. They include skilled workers and their families where the minimum income threshold for a visa is normally £30,000. Those granted leave on the basis of family life may apply to have the condition lifted to avoid destitution.

Baroness Lister of Burtersett (Lab): My Lords, I think that the answer there was that no assessment has been made. "It's just like living a life without being alive", is how one girl described the impact of this immigration rule, which denies access to most benefits, free school meals and social housing. In view of the growing evidence of the hunger, homelessness and emotional pain that it is causing children, and the ineffectiveness of central and local authority safeguards, why are the Government not monitoring the rule's impact and doing more to protect children according to their obligation under the UN Convention on the Rights of the Child to give primary consideration to the best interests of children?

Baroness Williams of Trafford: The noble Baroness will know that the no recourse to public funds condition has been set by successive Governments—it is not new. There are obviously exceptions for refugees relating to humanitarian protection and there are certainly discretionary leave cases. We also recognise the need for exceptions where the right to family or private life is involved under the Immigration Rules. We therefore allow applicants to seek leave on family life grounds or to request that the no recourse to public funds provision is lifted or not imposed at all. Local authorities have seen real-terms increases and will do so up to the

[Baroness Williams of Trafford]
spending review. They should be well placed in addition to the extra £410 million allocated to them in 2019-20 to invest in adult and children's social care services.

The Lord Bishop of St Albans: My Lords, research by the Children's Society shows that this particular group of children is more likely to experience absolute poverty, homelessness and greater levels of domestic violence. Despite the significant evidence about the damage that poverty, destitution and abuse can have on children's outcomes, the Home Office has not yet made public how many children are subject to these NRPF conditions on their families' leave to remain. Will the Minister commit to making these figures publicly available?

Baroness Williams of Trafford: I am not in a position to make the figures publicly available. However, where children are involved, families may qualify for support from local authorities under Section 17 of the Children Act. It is very difficult to substantiate some of the claims made in the report without knowing the cases. I do not decry what the right reverend Prelate says: we have an absolute duty to children in our care and our communities.

Baroness Hamwee (LD): My Lords, following the right reverend Prelate's question, does the Minister agree that it is important to know how many children are affected? We cannot take policy decisions without underlying information. Does she recognise that there are probably tens of thousands of British-born children —or children eligible to apply for British citizenship—who do not have access to public funds? Is this the right way to treat fellow Britons? How does it affect integration and cohesion?

Baroness Williams of Trafford: While I cannot give out the figures, I can say that 54 local authorities can access a database developed by local government with funding from the Home Office. It is called NRPF Connect and allows for online checks and information sharing, enabling the Home Office to identify local authority-supported cases and prioritise them for conclusion. There is communication between the Home Office and local authorities.

Baroness Manzoor (Con): My Lords, some of these children will be rough sleepers. Will the Minister address the accusation that the Rough Sleepers' Support Service is being used as a secret service?

Baroness Williams of Trafford: I thank my noble friend for referring to that accusation. I have heard it before: it was raised in your Lordships' House the other day. It is not a secret service. Officials are working with partners to ensure that effective referral processes are established and that rough sleepers will always be made aware of how information collected on them will be shared and used.

Lord Rosser (Lab): My Lords, have the Government not been asked twice about the number of children experiencing the consequences of having no recourse to public funds? I am not quite clear from the Government's response whether they have that figure but are declining to reveal it or do not know the figure. If the Government do not have the figure, is it because they know they would be embarrassed by the figure's magnitude if they had to give it out, or are they just not particularly interested?

Baroness Williams of Trafford: It is not a question of not being particularly interested. As I said to the noble Baroness, Lady Hamwee, there is information sharing between the Home Office and local authorities. I imagine that it is management information, as opposed to publishable figures, but I can confirm that to the noble Lord.

Lord Russell of Liverpool (CB): My Lords, in her response to the noble Baroness, Lady Lister, the Minister said that several Governments have applied the same rules. She might be interested to know that a very distinguished noble friend and fellow Cross-Bencher sitting not a million miles away from me muttered in my direction, "One of the definitions of insanity is doing the same wrong thing again and again".

I come back to the point of children being denied free school meals. In all conscience, how can any Home Office official or Minister say that that is the right thing to do? In what way does it promote integration? And what on earth have those children done wrong?

Baroness Williams of Trafford: The point I made did not uphold the noble Lord's point that doing the same thing over and over again and expecting a different result is the definition of insanity but that successive Governments have accepted that, if you do not have right of residency, NRPF should apply. On free school meals, a pupil or their parent must be in receipt of any of the qualifying benefits, including asylum support, and must make a claim to the school for free school meals. It is not that a child would not have access, but that they must satisfy the criteria. Decisions over whether immigrants or refugees have recourse to public funds and/or receive asylum support are made by the Home Office.

Housing: Permitted Development Rights

Question

3.01 pm

Asked by ***Baroness Thornhill***

To ask Her Majesty's Government what plans they have to review permitted development rights following a planning inspector's decision to overturn Watford Borough Council's rejection of plans to convert a light industrial unit into flats of 16.5 square metres and with no natural light or fire escapes.

Baroness Thornhill (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as a vice-president of the Local Government Association.

Lord Young of Cookham (Con): My Lords, all homes created through permitted development rights for change of use are required to comply with building regulations, including in respect of fire safety. We announced in a

Written Ministerial Statement on 13 March our intention to review permitted development rights for the conversion of buildings to residential use in respect of the quality standard of homes delivered. This will inform any future decisions on permitted development rights for change to residential use.

Baroness Thornhill: I thank the Minister for that Answer, but building regulations are not quite the same thing as standards. Does he agree with Watford Borough Council in this instance that, with a total floor space of 16.5 square metres and containing no windows, these do not constitute homes in 21st-century Britain? As for the welcome review, the spring is quite a long way off. Can the Minister indicate how quickly changes will come into place and whether he can inject a little urgency into the process? Does he also acknowledge that these controversial permitted development rights have damaged relationships with an already anti-development public, who were quite incredulous that such standards were permitted without planning permission?

Lord Young of Cookham: On the case concerning Watford which the noble Baroness mentioned, the borough council may appeal against the planning inspector's decision within the next few days, so she will understand if I put that to one side. I make two general points: first, I hope all noble Lords will agree that, if you have redundant office or industrial buildings in an area where there is a severe shortage of residential accommodation, it makes sense to convert the one to the other. That is why the coalition Government in 2013 issued the permitted development order, which said that if you have planning permission for an office, you have planning permission for residential. That policy has produced 46,000 new homes, the vast majority of which are of good quality. Secondly—here, I agree with the point the noble Baroness made in a debate last week and which the noble Lord, Lord Best, raised yesterday—there have been some very unsatisfactory applications of that policy and some homes of very poor quality have come on to the market. That is why we have announced the review. We want to learn from Watford. The review is scheduled to complete by the end of the year. I take what she says about urgency: we want the policy to produce properties of a decent quality.

Lord Bird (CB): My Lords, can the Government not take this wonderful opportunity to praise the borough of Watford for not slipping us back to the 1940s and 1950s, when many of our poorest people lived in appalling conditions?

Lord Young of Cookham: I hope the noble Lord will understand if I do not praise the London borough of Watford, as it may be about to take the Government to court—that might get me into difficulty. However, I agree with the thrust of what he said. It is worth reminding the House that the Prime Minister said last month that,

"I believe the next government should be bold enough to ensure the Nationally Described Space Standard applies to all new homes".

I agree with that.

Lord Cunningham of Felling (Lab): My Lords, would it not be illegal to keep animals in these circumstances, let alone human beings? What advice has been given to planning inspectors about such proposed developments? It seems astonishing to anyone who has worked in local government, as the noble Baroness and others in this House have, that these permissions are being given by planning inspectors.

Lord Young of Cookham: Again, that is subject to the case, which may come before the courts, as to whether what was applied for in Watford constituted a dwelling house. That is the issue that may well be tested. I refer the noble Lord to the Homes (Fitness for Human Habitation) Act 2018 that comes into effect in March next year, which gives tenants additional rights if they believe their property is not fit for human habitation.

Lord Watts (Lab): Although the Government are right to conduct a review, surely it is not impossible to introduce changes to the present system so that all buildings must have windows and natural light?

Lord Young of Cookham: At the moment, building regulations do not require that, and that is one of the issues the review will look at. At the moment, there are no requirements for a property to have windows, natural light or minimum space standards. That is why we are reviewing the position, and the noble Lord is quite right to make that point.

Baroness Brinton (LD): My Lords, may I very gently correct the Minister? He said, "the London borough of Watford", but the Borough of Watford is not in London; it proudly sits in Hertfordshire. The planning inspector says very clearly that he is constrained by the GPDO 2015 rules. He says he recognises that,

"living without a window would not be a positive living environment".

When planning inspectors are so constrained, surely it is time urgently to review these planning regulations? They are clearly not fit for purpose. Can the Minister come back to the House as soon as possible with a revised review date?

Lord Young of Cookham: This Minister may not be in a place to come back to the House, but I take the noble Baroness's point. There is clearly strong feeling in your Lordships' House that the current position is wholly unsatisfactory. We are reviewing it and I take the point about urgency that all noble Lords have impressed on me; we will come back the moment we have some progress to report. I take on board what noble Lords have said: that people should not be required to live in properties of the kind described by the noble Lord, Lord Cunningham.

Non-Domestic Rating (Lists) Bill

First Reading

3.07 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

National Insurance Contributions (Termination Awards and Sporting Testimonials) Bill

Third Reading

3.07 pm

Lord Young of Cookham (Con): My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purpose of the National Insurance Contributions (Termination Awards and Sporting Testimonials) Bill, has consented to place her interest, so far as it is affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Bill passed.

Wild Animals in Circuses (No. 2) Bill

Third Reading

3.08 pm

Motion

Moved by ***Lord Gardiner of Kimble***

That the Bill do now pass.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, in moving that the Bill do now pass I wish to express my gratitude to all noble Lords for their interest in the Bill and for their thoughtful—and sometimes challenging—contributions. I am grateful for the positive engagement and support from the noble Baronesses, Lady Jones of Whitchurch, Lady Bakewell of Hardington Mandeville, Lady Parminter and Lady Jones of Moulsecoomb on the Opposition Benches.

This Bill was a manifesto commitment of my party. While support from across the House has been notable, I have been struck by the level of scrutiny which your Lordships have devoted to the Bill—and rightly so. I also place on record my appreciation of Defra officials and all those who have assisted this Bill to, I hope, its successful conclusion.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister and his civil servants for the considerable support and help they have given us during the conduct of this Bill. Indeed, the Minister showed considerable patience and skill in addressing our concerns and steering the Bill through to what we all felt was a speedy conclusion. Banning wild animals in circuses has been a policy of our party for some time, and I am very pleased that we were able to play a part in guiding the Bill towards the statute book before the Recess. So I very much echo the thanks of the Minister and will just add that, whatever happens in the coming days, I hope that he will be in his place in the autumn. From our side, we certainly feel that he deserves it.

3.10 pm

Bill passed.

Hong Kong

Statement

3.11 pm

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, with the leave of the House, I will now repeat in the form of a Statement the Answer to an Urgent Question in the other place. The Statement is as follows:

"There have been a number of developments in Hong Kong over the weekend. On Friday evening, the police seized a quantity of explosives from a warehouse in the New Territories, along with knives, petrol bombs, corrosive acids and T-shirts supporting Hong Kong independence. On Saturday, there was a large rally in the area known as Central in support of the Hong Kong police. Yesterday, hundreds of thousands of people took part in a largely peaceful march on Hong Kong island. However, some protesters diverted from the approved route and there were clashes with the police, including outside the Chinese Central Government liaison office. Last night, there were disturbing scenes in the New Territories town of Yuen Long: a group armed with chains and poles attacked pro-democracy protesters and other passengers at the metro station; 45 protesters were reportedly injured, one critically. We were all shocked to see such unacceptable scenes of violence.

There has been a great deal of speculation about the identity of the group who attacked people at Yuen Long metro station, but it is important that we do not jump to conclusions on their identity until a thorough investigation has taken place. I welcome Carrie Lam's statement today saying that she has asked the commissioner of police to investigate this incident fully and pursue any law breakers. We will be keeping a close eye on this, as I know will honourable and right honourable Members.

I condemn all violent acts, but I stand by people's right to protest peacefully and lawfully. We must not let the violent actions of a few overshadow the fact that hundreds of thousands of people took part in the march yesterday and did so in a peaceful and lawful manner. In doing so, they were exercising their right to peacefully protest and stand up for their freedoms. We fully support this right, which is guaranteed under the joint declaration. Successive six-monthly reports in this House have highlighted that Hong Kong's political freedoms have been coming under increasing pressure, and the House is right to reflect this in its appetite for urgent questions, parliamentary questions and statements.

Let me assure the House that the Government remain fully committed to upholding Hong Kong's high degree of autonomy, rights and freedoms under the one country, two systems principle. They are guaranteed by the legally binding joint declaration. We will continue to be unwavering in our support for the treaty and expect our co-signatory to behave in a like manner. Rights and freedoms and the rule of law are vital for Hong Kong's future success and for its people. We will continue to stand up and speak out".

My Lords, that concludes the Statement.

3.14 pm

Lord Collins of Highbury (Lab): My Lords, I thank the Minister for repeating the response to the Urgent Question, and he is right to say that we should not jump to conclusions. Yesterday, the Minister in the other place, Dr Murrison, said that it is probably not sufficient simply to have an internal police inquiry, which is what the IPCC would be in the Hong Kong context. He went on to say that,

"it really does need to involve Hong Kong's excellent and well-respected judiciary".—[*Official Report*, Commons, 22/7/19; col. 1098.]

What are the Government doing to ensure that there is such an independent investigation and inquiry, and that the judiciary is properly involved?

Lord Ahmad of Wimbledon: The noble Lord raises an important point. My right honourable friend the Minister of State, Dr Murrison, has been quite clear in the other place that we want an independent and robust inquiry. If I can amplify his statement from yesterday, we need to know the extent to which the inquiry will be full, comprehensive and independent. A purely internal police inquiry is unlikely to achieve that objective.

Baroness Northover (LD): I too thank the noble Lord for repeating the Answer to the Question and for what he just said in answer to the noble Lord, Lord Collins. We reiterate support for that. Clearly, if the police did not respond to emergency phone calls—a number of people were beaten up in that circumstance—it does not seem satisfactory for the police complaints authority to investigate it. Is the foreign affairs spokesperson in China who said that Britain's role relating to Hong Kong ended in 1997 still in place? If he is, and therefore is not thought by China to have spoken out of turn, will the United Kingdom go to the United Nations to reinforce the treaty to which the noble Lord referred?

Lord Ahmad of Wimbledon: I thank the noble Baroness and the noble Lord, Lord Collins, for their support. The statement that was made is of course not our position. We remain very much committed to the Sino-British agreement, signed by ourselves and China, which protects Hong Kong's autonomy to 2047. The statements made do not reflect our understanding or what we believe to be the correct interpretation of what has been signed. We have made this very clear in bilateral discussions with China. I note what the noble Baroness suggested and I will certainly take it back.

Lord Robathan (Con): My Lords, not only are the Chinese pushing back on the freedoms of Hong Kong, which we guaranteed, but it appears they are treating the Uighurs in Xinjiang province incredibly badly, with perhaps over 1 million people in re-education camps. I hope my noble friend can reassure me that we are working with our allies to put as much pressure as we can on this very large country, which I regret to say is behaving in a very unpleasant way.

Lord Ahmad of Wimbledon: I assure my noble friend that we have made our position very clear bilaterally on the persecution of the Uighur Muslims in Xinjiang province. We have continued to make that position clear through international fora, including at the Human Rights Forum. When I last spoke there I specifically referenced the suppression and persecution of not just the Uighur Muslims but other minorities, including Christians. Last week we had the international ministerial on freedom of religion or belief, which the noble Lord, Lord Alton, also attended. He has been a strong advocate for speaking up against the persecution of Uighurs and minorities in that country. I assure my noble friend that there was a focus during that meeting on the very issue he raises.

Lord Alton of Liverpool (CB): My Lords, I welcome what the Minister said to the noble Baroness, Lady Northover, about the importance of insisting that an internationally guaranteed treaty is upheld at the United Nations. It would be helpful for the House to know what our intentions are in that regard and specifically whether this can be raised at the Security Council or with our allies. Would the Minister agree that, instead of remaining silent to the brute force of Triad gangs beating up protesters with iron bars, Beijing's increasingly authoritarian regime should understand that the answer to its fears about separatism is to be found in the free air of Hong Kong, not in the Uighur re-education camps of Xinjiang, and that a prosperous, harmonious and stable future for China will never be served by the use of violence?

Lord Ahmad of Wimbledon: I totally agree with the noble Lord. That principle applies not just in China, but anywhere around the world. On the specific issue of the identity of those people committing the attacks, we welcomed Carrie Lam's statement that she has asked the commissioner of police to fully investigate and to pursue lawbreakers, but I assure the noble Lord that we will stay focused on raising the issue of the suppression of minorities within China. As I said in response to the noble Baroness, I will certainly take back what has been said on the international agreement. Although we are in a small transition, it is certainly something I would seek to pursue as Minister for the UN.

Lord Soley (Lab): Have the Chinese Government, in any discussions, ever indicated whether they would support or oppose an independent element in any investigation of the recent attacks that the Minister referred to?

Lord Ahmad of Wimbledon: We have been dealing directly with the Chinese Government, and I have already commented on the statements made by Carrie Lam. While we welcome the inquiry, we continue to stress that it has to be independent. We do not believe that a review carried out only by the police fulfils that criteria, and we will continue to make that case.

Lord Wilson of Tillyorn (CB): My Lords, there is no doubt that what has been happening recently in Hong Kong is a matter for enormous concern, particularly for those of us in your Lordships' House who have been involved with Hong Kong and have great affection for it and its people. There have been mistakes and things have gone wrong on all sides. The Bill to deal with extradition—the fugitive offenders ordinance—was put through with too great speed. The Hong Kong

[Lord Wilson of Tillyorn]
Government accept that it was not handled well. The peaceful demonstrations have had an increasingly violent element, which is very much to be deplored. What happened in Yuen Long in the New Territories over the weekend, with what seemed to be Triads beating up some of the protesters, was appalling. But would the Minister agree that there are some bright elements in the situation in Hong Kong? One is the resilience of Hong Kong, which reasserts itself. One hopes that it will do so this time. The second is the rule of law, which should be applied without fear or favour; it has been done up to now and must continue.

Lord Ahmad of Wimbledon: I agree with the noble Lord on his final point; we have seen Hong Kong's two-systems policy work well. We have been calling for these protests, on all sides, to uphold the rule of law, and we welcomed the recent announcement of the special inquiry by Hong Kong's Independent Police Complaints Council. It was also heartening to see Carrie Lam call the Bill that the noble Lord referred to "dead". It is important that the Chinese authorities work in the best interests of the people of Hong Kong.

Lord Campbell of Pittenweem (LD): My Lords, I do not disagree with any of the exchanges so far, but I am rather concerned about the extent to which our options in this matter are limited. It was said that the United Kingdom's interests finished at the time of the handover. If that becomes the official policy of the Chinese Government, there is not much that we can do in respect of that, is there?

Lord Ahmad of Wimbledon: I hear what the noble Lord says, but we sought an agreement, which we believe was signed in good faith by both parties. Ensuring that the good faith is upheld on the principles of the agreement is something that we have taken up bilaterally, and will continue to do so. On the wider issue of human rights within China, let us be very clear: China is an important strategic partner to the United Kingdom. We enjoy strong ties with China on trade and through links with our diaspora. Those strengths should lend themselves to candid conversations on concerns we have, particularly on issues of human rights. I assure the noble Lord that we will continue to raise those bilaterally and in international fora as we see fit.

Personal Independence Payments
Statement

3.23 pm

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, with the leave of the House, I will now repeat the Answer to an Urgent Question asked in another place concerning personal independence payment:

"The Supreme Court has ruled on the case known as MM, or SSWP v MM. This case was about the definition of 'social support', when engaging with other people face to face in the PIP assessment, and how far in advance that support can be provided.

We took this case to the Supreme Court because we wanted clarity on this issue, and the judgment now gives us that clarity. We welcome the court's judgment. We are pleased that it accepted that there is a difference between 'prompting' and 'social support', and that there must be a need for social support to be provided by someone who is trained or experienced in providing such support.

PIP is already a better benefit for people with mental health conditions compared to the disability living allowance. The proportion who get the higher rate of PIP is five times higher than under DLA—with 33% on PIP and just 6% on DLA.

It is clear that there is an increasing understanding in society about mental health and how important it is to make sure that individuals with poor mental health get the right help. It is not an exact science, but it is one of the few areas with cross-party support.

Getting this clarity will ensure that even more people who need help to engage face to face may now be eligible to benefit under PIP. Supporting disabled people and those with mental health conditions continues to be a priority for this Government. That is why we will now carefully consider the full judgment and, working with disabled people and engaging with Mind and other stakeholders, we will implement it fully and fairly so that claimants get the support that they are entitled to now".

3.26 pm

Lord McKenzie of Luton (Lab): My Lords, I thank the Minister for repeating an Answer to a UQ concerning a landmark judgment of the Supreme Court. The judgment, as we have heard, is to be welcomed and will mean that people with mental health problems who find social situations debilitating can now be assessed as having sufficient points to be eligible for the personal independence regime.

However, Mind—which should be thanked for its intervention in the case—suggests that, since the introduction of PIP, as many as 425,000 people with psychiatric disorders have been turned down for the benefit. Will the Minister say, therefore, what additional resources have been made available to enable past assessments to be reviewed and if necessary rectified, and what additional training is being provided to staff to enable them to better assess the needs of individuals with these conditions?

Baroness Buscombe: My Lords, I thank the noble Lord for his response and his understanding that we welcome this judgment. As he will know, we regularly consult stakeholders to help shape the training of DWP staff, and I am proud that we now have, in respect of training, a mental health champion in each of our personal independence payment assessment centres.

We welcome this judgment, as it helps us to gain a much deeper understanding of mental health issues and conditions across society. This will, however, be a complex process, which we are committed to doing, and we will report back to the House with further information. The vast majority of the appeals require additional medical information. That is why we are piloting the scheme: so that claimants can provide this evidence at the mandatory reconsideration stage, rather than at tribunal. We are, in other words, doing all we can to continue to improve the system to support those who need help.

Baroness Thomas of Winchester (LD): My Lords, is it not clear, in the light of this and other judgments, that the PIP descriptors in the field of mental health need substantial amendment? It sounds as if that is what the Government have in mind, and I am very pleased that the department is upholding the judgment as much as the rest of us. We really need a cool, hard look at all the descriptors, and for the Government to consult on them fully and come back with detailed amendments. We also need better-trained assessors and a genuine stage of mandatory reconsideration, instead of the rubber stamp that we all too often get now. There is a huge number of successful appeals and consequently an unacceptably long wait for a tribunal hearing.

Baroness Buscombe: I shall do my best to respond to the noble Baroness, who of course knows so much about this area. On waiting times, we are committed to processing PIP claims as quickly as possible while ensuring that we have all the evidence we need to make the right decisions. A key issue has been not having sufficient medical information in the first instance. We are working with the NHS to see what we can do to rectify that. In the last quarter, February to April 2019, 55,097 claims on average were processed each month. The average new claim or reassessment claim waits just six weeks for assessment. However, PIP is needs based and not condition based, and reviews are a key part of the benefit to ensure that the right support continues to be delivered.

In a nutshell, we believe that PIP is working so much better. There were originally some quite difficult issues around it. We are constantly working to improve the situation. That is why now have a mental health champion in each PIP assessment centre. We are making sure that there are experts behind each assessor. We have videos to help people understand what the process is so that they can feel comfortable about that engagement at the assessment centre. We also encourage people to come with a trusted third-party individual to support them through that often quite emotional process.

Yes, it is a complex process. We are committed to doing all we can. We will report back to the House with further information in relation to the Supreme Court's decision, but we continue to spend more on supporting those with mental health issues—quite rightly.

Lord Low of Dalston (CB): My Lords, notwithstanding what the Minister says about the judgment, it is clear that there are still major problems with assessment of disabled people for benefits. Figures recently obtained from the DWP under the Freedom of Information Act indicated that more than a third of PIP assessments carried out by Capita were found to be defective—up 4% in the two years since 2016. This makes it clear that things are going in the wrong direction, and not the right direction as the Government habitually claim when such concerns are raised. What can the Minister say to assure the House that the Government are getting on top of these problems?

Baroness Buscombe: My Lords, we are working hard to get on top of these problems, and no one is working harder than my honourable friend in another place the Minister for Disabled People, Justin Tomlinson MP. We recognise that for the most severely disabled claimants the award review process can seem unnecessarily intrusive. That is why those with most severe lifetime disabilities are more likely to have their evidence reviewed by a DWP case manager without the need for another face-to-face assessment, which we know has caused issues. Additionally, in August 2018 we introduced updated guidance for case managers which will ensure that those who receive the highest level of support under PIP, where their needs are unlikely to change or may even get worse, will now receive an ongoing award with a light-touch review at the end of the 10-year period. As I said earlier, we are working hard with the NHS to see what more we can do to get the right medical evidence to make sure that we make the right decision in the first instance.

Universal Credit: Managed Migration

Statement

3.33 pm

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, with the leave of the House, I shall now repeat a Statement made in another place by my right honourable friend the Secretary of State for Work and Pensions. The Statement is as follows:

"Mr Speaker, at the core of this department is the desire to deliver a considered and considerate welfare system that incentivises work. Universal credit has been rolled out nationally and now has over 2 million claimants. We continue to listen to claimants, stakeholders and Members of this House to improve the system. In short, we examine what works and act accordingly. That is why one of my first acts as Secretary of State was to announce legislation for a small pilot to move existing welfare claimants on to universal credit. This managed migration involves moving claimants who are still on legacy benefits and have not had a change in circumstances across to universal credit. This pilot will give colleagues and claimants confidence in the department's approach to the transition before we return to the House to report on progress and seek permission to extend managed migration.

Today I am laying regulations to commence the pilot for no more than 10,000 claimants, which will start this month as promised. We will begin with one site— Harrogate, as previously announced—to ensure that people's transition is carefully supported. We have the possibility to extend the pilot to further sites as it progresses. This will allow us to learn from putting processes into practice, and to adapt our approach accordingly. The department will continue to work closely with expert stakeholders to ensure that the pilot supports the most vulnerable and hard-to-reach claimants. Claimants who are moved to universal credit will be eligible for transitional financial protection to safeguard their legacy entitlement. They will also have access to additional financial support before they receive their first UC payment, including the two-week run-on of housing benefit and the discretionary hardship payment, in addition to advances.

I want to reiterate that the department does not intend to stop the benefits of anyone participating in this pilot. Instead, we will be testing how we can

[Baroness Buscombe]
encourage and support those moving over to universal credit, without halting their benefits. The listen-and-adapt, evidence-based approach is the right way to deliver universal credit.

We have also revised our approach to claimants who are entitled to the severe disability premium. The regulations that I am laying today will enable us to begin to provide support for claimants who were entitled to the premium and have already moved to universal credit. From 24 July 2019, these claimants will be considered for backdated payments covering the time since they moved to universal credit. These claimants will also gain access to ongoing transitional payments that reflect the severe disability premium to which they were previously entitled. We have reviewed the rates of those payments to enable the most vulnerable to receive increased support. Claimants will now receive payments of up to £405 per month alongside their universal credit award, increased from the previous proposed maximum of £360. We estimate that by 2024-25, approximately 45,000 of the most vulnerable claimants will benefit from this package of support, worth an estimated £600 million over the next six years. My department will begin the process from Wednesday 24 July 2019, ensuring that claimants are paid at the earliest opportunity.

Following the High Court judgment on the severe disability premium, these regulations will also bring to an end, in 2021, the barrier that currently prevents its recipients moving to universal credit through a change of circumstances. Until 2021, anyone currently receiving SDP whose circumstances change will continue to be held on legacy benefits, as they are now. After 2021, the barrier will be removed. SDP claimants will move on to universal credit through natural migration, gaining access to the new payments available to those who have already moved over.

The department will continue to follow this approach in the weeks and months to come, identifying areas for improvement and seeking new ways to better support claimants. In the months ahead, we are completing an evaluation of the effectiveness of universal credit sanctions in supporting people into work in order to report back to the Select Committee in the autumn; evaluating the results of our pilots that explored offering claimants more frequent benefit payments on demand; launching a new service for private sector landlords to receive housing benefit rent payments directly from the department; and continuing a proof of concept in south London to test a "written warning" sanctions model whereby a sanction is not applied on the first failure to attend an appointment.

I am determined—and I know the department is determined—to ensure that universal credit is always a force for good".

3.39 pm

Baroness Sherlock (Lab): My Lords, I thank the Minister for repeating that Statement. We have had a lot of Statements from DWP in the last year, and there is beginning to be a rule of thumb that the gentler and blander they sound at the time, the more they contrast with the story behind them. I will try to unpack what I think has happened to get us to this point, and I invite the Minister to correct me when she responds if I make any mistakes.

I think this is now the fourth version of these regulations, and the plot has thickened with every turn. We have been awaiting a debate on them for months and suddenly, in the very last days of this Session, they have been snatched away and replaced with a negative version. These regs cover two things: the process of moving people en masse on to universal credit—known as managed migration—and the losses faced by people getting the severe disability premium in legacy benefits, who lose out a lot when they go on to universal credit because there is no equivalent in UC.

The Government originally published some draft regs in June last year. These prompted outrage because the process of managed migration turned out not to be managed at all, but meant that millions of people would simply get a letter saying, "Your benefits will stop on date X. It is up to you to apply for universal credit. If you do not apply for that date then you will not get any money, and if you do not apply within a month, even if you get money later, you will lose the right to make sure that you get transitional protection, which stops you being worse off". That went down very badly. The Government had intended always to pilot these, but the regulations covered managed migration as a whole.

The same month, Esther McVey, then Secretary of State, had announced that nobody else who was getting the severe disability premium would be forced on to universal credit until the managed migration stopped, so they could not lose out on that transitional protection, and that the Government would compensate people who had already gone across for the money they had lost. That statement, as it happened, coincided with a successful legal challenge against the Government by two people who had moved house, had to go on to universal credit and lost out as a result. The Government were then required to pay them damages and ongoing payments of nearly £180 a month. I wonder whether the Government are still appealing the various decisions on this.

The Social Security Advisory Committee then consulted on the regulations, and eventually some slightly revised regulations were tabled on 3 November together with a very critical report by that committee. That version of the regs still covered the whole managed migration process, involving up to 3 million people, even though everybody had urged the Government to take powers only for the pilot and then to come back to Parliament. There was also strong criticism of this approach from voluntary organisations working with claimants, because they were worried that many vulnerable people getting benefits would struggle simply to take responsibility for making the transition to the new system alone. The SSAC report also flagged up that the payments being made to people who had been moved across under UC and had lost this disability benefit were actually only £80 a month, whereas their losses were £180 a month.

Then, Amber Rudd became Secretary of State. She admitted to the Work and Pensions Select Committee that the Government had thus far failed to obtain cross-party support for these regulations. In January,

they withdrew the SI laid in November and brought in two new SIs: a negative one, which prevented anyone else getting this disability payment from transferring to UC before managed migration, which came into force in January; and an affirmative SI which was to provide for a year-long pilot for managed migration and set the level of transitional payments for those who had been moved on to UC loss of disability payment. With me so far? Excellent.

We have been waiting since then to debate this affirmative SI. The Secretary of State said in March that the pilot would begin in July, and said again on 1 July that the pilot would definitely begin this month, yet there was no debate on the regulations which would provide for the pilot to take place. That is possibly because the regulations contained provisions for payments to people on this disability benefit which have been found to be unlawful. However, Ministers had promised that the pilot would not start without Parliament having had a debate first. In fact, on 8 January, the Minister for Employment, Alok Sharma, told the House of Commons:

"We will also ensure that the start date for the July 2019 test phase involving 10,000 people is voted on".—[*Official Report*, Commons, 8/1/19; col. 175.]

Well, it has not been.

There were serious questions about the pilot. Ministers needed to be clear about the aims and the success criteria and whether or not the nature of the pilot would satisfy people. Those were the questions that Parliament wanted to debate before the regulations were approved. Then, the final twist: yesterday those regulations were withdrawn and a new negative regulation was tabled instead, published in the last week of term to take effect in the same week. The Government are not even abiding by the convention that 21 days should elapse between tabling regulations and their taking effect. Moreover, although it is a wonderful thing that the eyes of the country are on the Palace of Westminster this week, they may not be looking at us primarily for the purpose of considering universal credit and the managed migration pilot regulations.

I am really worried about universal credit and how it is rolling out. The Government should stop rolling it out while they fix it. But that is for another day. These regulations affect two specific but important issues and Parliament has a right to consider them properly. There may be an urgency but it is entirely of the Government's making; handling it in this way is disrespectful to Parliament.

I ask the Minister three questions. First, can she explain why, having promised that Parliament would debate the regulations before starting the pilot, Ministers have reneged on that commitment? It cannot surely be simply because Amber Rudd admitted that she did not know that she could get them passed in the other place. We surely cannot have come to the point where Parliament will no longer be asked questions unless Ministers are satisfied that the answers will be the ones they want.

Secondly, can she guarantee that everybody who was getting STP and has been moved across to universal credit will be no worse off than they would have been, and that the Government's new plans satisfy the requirements of all the legal judgments against them?

Finally, will she promise that Ministers will return to Parliament with a full report of the results of the pilot and give us the chance to debate them before laying any further regulations for a full rollout of managed migration?

I do not blame this Minister, but it is the responsibility of her department. I urge her to answer those questions as fully as she can in order to start trying to rebuild some trust.

Baroness Janke (LD): My Lords, I too am grateful to the Minister for repeating the Answer to the Urgent Question and would like to ask some questions about the pilot.

I am not completely familiar with processes of this kind and am grateful to the noble Baroness for raising a lot of issues that had occurred to me. I would be grateful if we could have more detail of the scope, approach and methodology of the pilot, when the findings are likely to be made public, when there will be an opportunity for external agencies to examine and question the report and, indeed, when there will be a debate here before the Minister comes back to Parliament for permission to carry out managed migration.

I hope that the pilot will look at some of the needs as expressed by the various groups and that they will be taken account of and reviewed: for example, bringing assessments back in-house for people with disabilities, following the whole record of the assessment process; providing split payments to protect vulnerable women; reviewing the work search process requirements, particularly for women with young children or caring responsibilities; and the piloting of different approaches to digital accessibility, particularly for disadvantaged groups and people with disabilities.

I welcome the proposed action on the judgment of the High Court and would like more detail as to how it will communicate to all people who are eligible, with a report back from the Minister on how that is being carried out. I very much hope that the pilot will provide us not only with insight and the chance to review some of the problems that I have been aware of since I have been covering the issue, but the opportunity for debate and external scrutiny before the managed migration process is carried out in full.

Baroness Buscombe: I thank both the noble Baronesses, Lady Sherlock and Lady Janke, for their questions. I have to agree with the noble Baroness, Lady Sherlock, that it has been a journey. It has not been easy, but I am pleased to say that we are, we believe, now in a very good place. It has taken longer than we would have liked, but through that process, we have made some serious improvements not only to the whole system of universal credit, as people naturally migrate—we have now had the rollout into all job centres as of the end of last year—but to thinking through what we should do on managed migration. Indeed, I remind noble Lords—I am looking at the noble Baroness, Lady Donaghy, who is part of the House of Lords Secondary Legislation Scrutiny Committee—that that committee suggested that the department should legislate for a pilot phase. I remember that the suggestion was first made at a meeting of all Peers. I cannot remember the date—I apologise—but it was some time ago. We listened to

[Baroness Buscombe]
that recommendation and suggestion and, as many noble Lords will know, are now and have been for some months working closely with key stakeholders. We invited more than 80 to talk to us about how they might like to be involved to help us. Noble Lords will agree that this is a huge enterprise, a huge reform that we are working through, and we need their support and understanding. We need to learn from and work with them and test our processes. Much of this—I turn to the noble Baroness, Lady Janke—is about ensuring that we get it right by introducing a pilot, which we will keep to no more than 10,000 people, before we move on to the fuller phase.

I will answer some of the key questions. Why has it taken so long to lay new regulations? Our previous draft regulations were subject to a judicial review. That judgment quashed parts of Schedule 2 but made it clear that it was up to the Secretary of State to decide how to respond. We have been considering options and are now in a position to re-lay the regulations.

Why did we change from an affirmative—where we thought we were in the right place to debate with noble Lords—to a negative procedure? The previous draft regulations included an appeal rights provision, which clarified that there were no appeal rights for procedural matters where claimants are issued migration notices, request an extension of the time to claim or request a cancellation of migration notice. These revised regulations now introduce only a pilot, rather than managed migration as a whole, and a provision has been removed, making them now subject to the negative procedure. However, I make it clear that the provision was a clarification of policy, so its removal does not represent a policy change. In relation to appeals, claimants will of course be able to appeal their universal credit benefit decision if they feel that it is incorrect.

It is important to say that because only pilot regulations are being introduced, the department must return to Parliament for approval to continue managed migration activity after the pilot has been evaluated. We will bring forward such legislation only when the process works in the best possible way for everyone. While I appreciate that this means there is no automatic debate and vote on these regulations, Parliament will still have the opportunity to consider them.

We have broken the 21-day rule, as alluded to by the noble Baroness. It is there to allow people to prepare for the changes that legislation will introduce, but claimants have been expecting these changes in this legislation for over a year and they are positive changes. Therefore, after careful deliberation—and particularly considering the delay engendered by the judicial review and responding to the judgment—we have decided that our primary concern should be to pay former severe disability premium claimants the transitional payment as quickly as possible. Bringing into force the managed migration provisions will allow DWP to issue a migration notice—then claimants will have three months to claim.

We were asked why we are not laying the SDP transitional payments separately. SDP transitional payments are a fundamental part of the wider transitional protection framework. As the transitional payments are inextricably linked with the wider rules for transitional protection, it is essential that provisions for former SDP claimants form part of the regulations that introduce transitional protection as part of managed migration.

I say to the noble Baroness, Lady Sherlock, that the Government are still appealing the TP and AR judicial review.

For those noble Lords who are not familiar with it, I will now give more detail about the managed migration pilot. We have chosen to commence the pilot at one jobcentre—Harrogate—where we will seek to learn from many cases with complex needs. It has a case load with a mixture of urban and rural claimants, which will further aid our learning, and is supported by a local service centre under the same management. It is important that we test an approach that is based on using existing relationships that the DWP or trusted partners, our stakeholders, have with claimants. Through these relationships we will establish whether someone is ready to move and how to get them ready.

We will initially select claimants for the pilot from those who currently attend the jobcentre for meetings with their work coaches. The work coaches will then build on these existing relationships to prepare claimants to move and support them through the process. We will start with small numbers and grow the pilot safely, only increasing it when we feel it is right to do so. We have thought through the process. We have been working closely and continually with stakeholders to make sure that we work with the evidence and that we make necessary changes as we develop the process.

It is also important to make it clear that there will be a considerable number of gainers in this process. Some £2.4 billion-worth of unclaimed benefits is not going to the people who need them because they do not know about them. By supporting claimants who may have been on universal credit for many years, without any change of circumstance, and who have not been in touch to re-engage with us, universal credit will make sure that this money will reach those who need it most. There are some amazing stories of where this has happened to date. When migration is complete, because of UC, 700,000 more people will be paid their full entitlement, worth an average of £285 a month.

More disabled people will receive higher payments under UC. The rate in UC for these claimants is higher at £336 per month—up from £169 per month on the equivalent ESA support group. This means that around 1 million disabled households will gain on average around £100 more a month on universal credit.

It is a continuing journey but we are in a good place to do the right thing by going forward in a measured way, working with claimants—particularly vulnerable claimants— and making sure that we look after those who need our support.

Baroness Janke: Did the Minister say there would be a report on the pilot? I specifically asked whether there would be a report which could be scrutinised and, if necessary, debated.

Baroness Buscombe: I am glad that the noble Baroness has prompted me. We will publish an assessment of the impacts prior to scaling of managed migration. As we said in our response to SSAC, we are conducting

detailed equality assessments of migration plans as part of our public sector equality duty. We will report on the impacts of the testing, which will be evaluated, and we will respond through a report on the learning and adaptations.

3.58 pm

Lord Kirkhope of Harrogate (Con): My Lords, perhaps I may comment, as the Baron of Harrogate and a resident of Harrogate, that I will be watching the pilot with great interest. I hope that the positive outcomes my noble friend is anticipating will be delivered for the people of Harrogate.

Baroness Buscombe: I thank my noble friend for his question. As he will know, Harrogate has a strong mix of benefit claimants that will reflect case loads across the country as we start to scale. We looked at this issue carefully and took some time to choose somewhere that would have a strong mix of people who can work with ease with us and others who have differing complex needs. We wanted to be sure that we could reflect case loads across the country as we start to scale. There are many cases with complex needs which we will be seeking to learn from. Harrogate also has a case load with a mixture of urban and rural claimants, which makes a difference in terms of people's approach. This will further aid our learning and is supported by a local service centre under the same management as the jobcentre. So I hope my noble friend will stay in touch with developments in Harrogate. We are very keen to start work tomorrow if all goes well.

Baroness Lister of Burtersett (Lab): My Lords, I think that my noble friend asked for Parliament to be able to debate the report on the pilot before the regulations are laid, because it is very disappointing that, although the Secretary of State said that the Government continued to listen to Members of this House to optimise the system, they do not seem terribly interested in what we might have had to say about the pilot. I think that we could have come up with some constructive thoughts on that pilot, so that is disappointing.

I welcome the fact no one will lose their legacy benefits if they do not move on to universal credit during the pilot and what the Secretary of State called the "who knows you" approach, but how far will it be possible to learn lessons about the potential dangers of the widely criticised hard stop that my noble friend referred to once managed migration is fully rolled out? Because then, of course, that will no longer apply; people will lose their legacy benefits. And how easy will it be to scale up this approach nationally when the local support networks that the Government are very much relying on here are so variable and, in some places, pretty thin and probably getting thinner with local authority cuts? Also, the staff to claimant ratio is likely to be rather worse than it is for the pilot. So, just how much can we learn from this pilot in terms of what the fully scaled managed migration will look like?

Baroness Buscombe: I will respond to the noble Baroness by saying that I absolutely appreciate and very much respect the work that she does in relation to supporting just the sort of people we want to support through this process. I am quite surprised in some ways that the noble Baroness is not more involved with the stakeholders who we are constantly now engaging with—but I am sure that she is aware of those who are working with us in number to guide us and test us to make sure that we do not pursue a route that looks as if it is not going to work. We have to do this in a way that takes account of all the differing complex needs that people have, which is not going to be easy. People sometimes fluctuate over time in terms of those needs, so we have to be very, very flexible, and we think that that is the best way of working on this. Again, I go back to the advice from the Lords committee that suggested that we have a pilot just to make sure that we do our utmost to ensure that nobody falls through the cracks.

The noble Baroness referenced the hard stop. Once issued with a migration notice, claimants will have at least three months to claim universal credit and we are piloting this approach precisely to learn how we can contact and support people to move to universal credit without ending their legacy entitlement. We are not intending to move people to UC by stopping their benefits in the pilot. We will be testing how to encourage and support people moving on to universal credit without needing to stop benefits. It is not a question of hard stop and just giving people notice and then saying, "Sorry, cheerio, you haven't responded". We will do what it takes. There would have to be highly exceptional circumstances, I suggest, for there to be a situation where we had failed through every avenue to be in touch with someone and so would end their benefit. I have to say that it has not been and is not our intention to allow anyone to have their benefits stopped. The phrase "hard stop" evolved from the Opposition Benches, I think, and it is something that we have worked hard to deflect, because we do not want people to fall through the cracks or to stop receiving benefits because we have failed in some way to ensure, by visiting their homes, making contact with them, working with them and encouraging third-party trusted support to work with them and us, that we do the right thing and look after these people who need our ongoing support.

The Lord Bishop of Durham: My Lords, I thank the Minister for all she said and look back several months to how she involved us and engaged with a group of us in a range of helpful ways. The regulations that have been laid show evidence of the Government having listened. I am deeply grateful for the ongoing engagement with stakeholder groups. However, along with my noble friends who have already spoken, I wish to highlight that this House and the other place, not the stakeholder groups, have to scrutinise the regulations, so to land them on us at this point in a negative form seems quite hard to take, if I am being honest.

I thank the Minister for the explanation about Harrogate—I had written down, "Why Harrogate?"—but Harrogate is not going to produce 10,000, so presumably work has been done on other places that would also offer that kind of thing. Can the Minister give us any indication of where after Harrogate, because there will be similar issues?

[The Lord Bishop of Durham]

I have three further questions. The Statement began by emphasising yet again that UC is about helping people into work, yet we know that the largest percentage of people are already in work. So, in the pilot, what examination will be undertaken to see whether UC really is helping people into work? Secondly, will the pilot include people who are being negatively impacted by the two-child limit, and will an analysis of the impact on those affected by the two-child limit be undertaken as part of the pilot? It could offer some comparison with the report *All Kids Count*, which sought to offer some analysis which shows how severely damaging the two-child limit is proving to be.

Finally, on migration notices, paragraph 44 of the regulations is very clear about people being informed that,

"all awards of any existing benefits to which they are entitled are to terminate and that they will need to make a claim for universal credit; and … specifying a day ('the deadline day')".

Will the Minister acknowledge that this phrasing will still be extremely hard for people to hear and receive when a letter arrives stating that all their benefits are going to be terminated and that they will have to make a fresh claim? I acknowledge that the earlier criticisms about timescales have been heeded and there is a three-month wait, but what thought has been given to how that kind of letter will be worded to make it very clear that, as the Minister has said to us, it is not the intention that benefits will be terminated in the sense that no benefits will be received? That is not how it sounds in the regulations.

Baroness Buscombe: I thank the right reverend Prelate for his positive response to these regulations. I appreciate the frustration of noble Lords who feel that they seem to have come late in the day. As I said, the key reason for that relates to the judgment, which we needed to respond to. We needed to get it right. The judgment said that there was an unintended consequence and we were not being quite fair in how we were treating people in terms of the severe disability premium. We are really keen to get that right. From tomorrow, we can start working on how we can support those people, backdating their pay and so on to ensure that they are properly supported financially.

I want to be very positive about universal credit and about how the pilot will help more people into work. It is really important to stress that managed migration will open up the world of work for thousands and deliver financial support for those whose circumstances have not changed. The good news stories that our department reads about, listens to and sees on our videos and on social media on a daily basis are very different from some of the scaremongering that has gone on over the many months and years during which universal credit has been developed. It is fantastic when one meets people who feel for the first time an extraordinary sense of dignity and pride, and a sense of "can do"—a phrase used by the person who will become our Prime Minister tomorrow. That is really important, because these are people whose families, sometimes over generations, have not worked. They have lived in families who do not understand what the word "work" means and they have had no sense of self-worth. Now, they have that and it is fabulous. Therefore, I hope that the right reverend Prelate will support—

Lord McKenzie of Luton (Lab): My Lords—

Baroness Buscombe: I am in full flight here.

Lord McKenzie of Luton: Does the Minister accept that this Government were not the first to understand the importance of getting people into work? If she goes back just a few years in history to previous Governments, she will see that it was a Labour Government who started the process of engagement with people, rather than leaving them to rot on disability benefits. The game plan of the noble Baroness's Government was to push people on to disability benefits so they would not count as part of the unemployment statistics. It was only when a Labour Government came in that programmes such as New Deal and many others were started.

Baroness Buscombe: One reason I became a Conservative was that there was an incredible advertisement in 1979 that said, "Labour Isn't Working". It showed lines and lines of people outside what we then called the employment exchange. That was a long time ago, but in 2010—the noble Lord knows this—20% of working-age households were still entirely workless. We have got that down to 13.9%. It is still not good enough but we are doing all we can. I accept that in the past the party opposite encouraged people into work but we feel that this reform has made a huge difference. A thousand people have entered work every day since 2010, and that is an incredible legacy. The reality is that we have record employment and extraordinarily low unemployment. Indeed, I am rather proud that unemployment among women is lower than it is among men. We are working hard to encourage as many people as possible to contribute to the country they live in and to feel proud that they can work for and support their families.

In terms of the two-child policy, I say to the right reverend Prelate that I have made it clear several times at the Dispatch Box, and I will make it very clear again, that we believe strongly that people who would like to have more than two children must make the same tough decisions as everyone else and ask themselves whether they can support those children in the same way as people who do not turn daily to the state for support. My children's generation are all asking themselves, "Can we afford to have more children who we look after, contribute to and support ourselves rather than expecting others to pay for them?". I have to be really blunt about this.

The Lord Bishop of Durham: The report titled *All Kids Count* makes clear a number of cases where people made exactly the call the Minister described. Their life circumstances then changed and they found themselves unable to support their children. That is part of the argument about why this needs to be re-examined.

Baroness Buscombe: The right reverend Prelate will know that each and every parent will receive child benefit for each and every child, no matter how many children they might have now and into the future. In

addition, we are talking about children born after April 2017. Following a decision that was made under the current Secretary of State, my right honourable friend in another place—and made very public so that people were aware before then—we have cancelled the possibility of people with a change of circumstances and children born before April 2017 losing their tax credits. The parents will continue to receive tax credits for those children up to the age of 20.

We must think about affordability. A family with six children will receive in tax credits—over and above all other benefits—about £17,000 a year. That is net. We are talking about a considerable sum of money which, if you gross it up, will be many people's entire income. I must be blunt. That policy will remain firm—to the best of my knowledge, because I am merely the conduit of the policy in your Lordships' House, in a sense.

The reality is that we are trying to support as many people as possible, encourage them into the world of work, be excited for them—

Baroness Goldie (Con): My Lords, I am sorry. This is to allow Back-Benchers to ask questions. There are one or two more who wish to in the remainder of the 20 minutes.

Lord Rooker (Lab): The Minister has taken more than half of the time allotted. I have only a simple question. I declare an interest: I was a member of Sub-Committee B of the Secondary Legislation Scrutiny Committee, which dealt with this matter late last year and early this year.

The hard stop came from the stakeholders, not the Opposition. I did not quite hear the answer to the question. When the pilot has taken place, there will be an assessment of and report on it—lessons to learn, what we expected or whatever. Will Parliament have the chance to debate that report before the transfer over to the full Monty for the 3 million? We have not had a specific answer to that question. That is the key, because nobody will take any notice of what we say otherwise.

Baroness Buscombe: The noble Lord is quite right. There is no question—it is quite right, absolutely right—that we should report once we have done the pilot, before regulations are laid to roll out the entire managed migration. I apologise to your Lordships if I failed to make that absolutely clear. I think the suggestion put forward by that committee that we have a pilot was right. It has taken us time to get it ready. We absolutely will report the results of the pilot in full.

Small-scale Radio Multiplex and Community Digital Radio Order 2019

Motion to Approve

4.19 pm

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

That the draft Order laid before the House on 20 June be approved.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the order that we are debating today will facilitate a new approach to open up broadcasting on terrestrial digital radio to more than 300 existing community stations and smaller commercial services. It will also offer an opportunity for new entrants who wish to launch new services.

There has been a marked change in listening habits over the past decade, with a significant shift towards consuming radio via various digital platforms. The latest RAJAR audience listening figures, published in May 2019, show that digital radio now accounts for 56.4% of all radio listening; 10 years ago, it was just 20.1%. This shift has significant implications for around 300 existing community stations and small commercial radio stations that are currently broadcasting to local audiences only on FM or AM. For most of these small stations, a move to digital by broadcasting on their existing local digital radio multiplex is not an option, because many local multiplexes have insufficient capacity available for carrying additional stations and the cost of carriage for an individual station is too high. Smaller stations recognise that they will increasingly be at a disadvantage in retaining their audience as digital becomes the default mode.

To address this issue, the Government supported the development of an innovative approach known as small-scale DAB. Small-scale DAB is digital radio. It uses advances in technology to provide a flexible and cheap approach to digital transmission which performs well in localised geographical areas. DCMS funded a programme of work by Ofcom to examine the feasibility of small-scale DAB technology. This included 10 successful technical trials in towns and cities across the country. However, the trials licences were issued under temporary licensing arrangements and we concluded that these arrangements would not be appropriate for the longer term.

The existing legislation is more than 20 years old and places a number of burdens on radio multiplex operators that are not necessary or appropriate for small-scale radio multiplex services. Importantly, the existing legislation does not allow Ofcom to reserve capacity for community radio stations or enforce restrictions on ownership; both are essential if smaller stations are to have a viable opportunity to broadcast on DAB. To enable the necessary legislative changes to be made, DCMS supported a Private Member's Bill sponsored in your Lordships' House by my noble friend Lady Bloomfield of Hinton Waldrist, which received cross-party support; I extend my thanks to her.

The Broadcasting (Radio Multiplex Services) Act 2017 amended the Communications Act 2003 to provide a power to modify, through secondary legislation, the rules for radio multiplex licensing set out in Part 2 of the Broadcasting Act 1996. In 2018, the Government consulted stakeholders about detailed proposals on new arrangements for licensing new small-scale radio multiplexes, and we received 87 mainly detailed responses, including from commercial and community radio operators. Overall, there was strong support for the proposals, but there were representations, including from the Community Media Association—the CMA—on

[Lord Ashton of Hyde]
whether we had got the balance right between protecting the legitimate interests of the community radio sector and allowing the commercial sector to be involved. We have reflected all these points in drawing up the order. The order secures important protections for community radio and small commercial stations which want to use these networks while ensuring that only minimum, necessary burdens are placed on new operators.

The issue that attracted the most attention during the consultation was who could hold a small-scale radio multiplex licence and the proposed limits to the number of licences that could be held. The CMA proposed strict rules that limited licences to not-for-profit entities and to holding a single licence. However, we were not attracted to this approach as it would have excluded many of the existing operators of the successful small-scale trials.

We think it is important to have a mixed economy, and for commercial entities to be involved and apply their skills and investment to develop small-scale DAB. This will help ensure that there is interest in taking up licences—something that will actually benefit community stations that would otherwise find it difficult to run a small-scale multiplex service. None the less, we recognise that some restrictions on ownership are necessary to avoid a potential concentration of ownership, and we consulted on this basis. Since the consultation, we have listened and made a small number of changes to the original proposals to strengthen the protections for community radio.

The order ensures that capacity reserved for community stations on a small-scale multiplex is a firm reservation; in other words, it must be maintained for use by community digital radio stations—C-DSP licence holders—and not by temporary commercial services. This removes an incentive for operators to seek to overcharge community radio stations. The order requires Ofcom to ensure that small-scale radio multiplex licence holders publish information about the carriage fees charged. This will allow fees to be compared and benchmarked, which will also help to limit charges. Finally, the order requires Ofcom to consider the extent of involvement of community radio in a particular application when awarding a small-scale radio multiplex licence. In other words, an application supported by local community services, for example as consortium partners, will have a greater chance of success.

In addition to these measures, the order sets out the other elements of the new licensing framework for small-scale radio multiplex services. Taken together, these measures will help to ensure that community radio's interests will be protected. The key elements are as follows. First, they require Ofcom to reserve capacity on small-scale multiplexes for community digital radio stations. There must be a minimum of three slots available, with a variable upper limit set by Ofcom based on an assessment of local need. Ofcom will be able to review the reservation at the point of renewal.

Secondly, they create a new C-DSP category of licence for community stations broadcasting on digital. C-DSP licensees will need to commit to the same social value requirements that apply to existing community stations. Thirdly, they restrict the total number of small-scale radio multiplex licences that can be held by one company at a given time. They also place much stricter restrictions on the number of small-scale radio multiplex licences that existing national operators can be involved with and require them to do so in consortia with other partners.

The order also contains a small but important provision relating to community radio licensing. Community radio has been a major success story, with more than 280 services on air. But the licence terms for the first stations launched in 2005 are due to expire in 2020. We want community stations to continue to focus on what they are doing well—serving their local communities—rather than being concerned about the renewal of licences during a period when stations will need to think about digital radio carriage on new, small-scale multiplexes. Therefore, the order will also allow for a further extension of analogue community radio licences for a fourth five-year term, up to a maximum of 20 years. This avoids the need for Ofcom to readvertise the first wave of community radio licences, which it would need to do later this year. This proposal has strong support from the CMA.

We believe that small-scale DAB has the potential to revolutionise radio in the UK. This order will facilitate a clear pathway to digital for over 300 existing community and small commercial radio stations, as well as providing an opening for new entrants. The extensive technical trials have demonstrated that small-scale DAB provides a low-cost, viable option for smaller stations to broadcast on a terrestrial digital platform. I beg to move.

Lord Kirkhope of Harrogate (Con): My Lords, I will make just a short intervention. I declare my interest as someone who has been involved in commercial radio since about 1972, first with the White Paper at the time and then, with the emergence of commercial radio, as an applicant for one of the first commercial radio licences, which I did not get. Subsequently, I have been very much involved in the hospital radio movement—and am to this day.

I very much welcome the general tenor of the order, and the nature of it has been very much to do with realising the importance of the community in radio broadcasting. I think all of us agree that radio, as opposed to TV and online services, is still absolutely indispensable to vast numbers of people all over the country—in particular in localities where they can have local information that they could not otherwise get quickly and immediately to their benefit.

My concern over many years has been that the original ideas behind what was then the Independent Broadcasting Authority, which granted the original licences to commercial stations, required in the criteria a considerable level of local input. Over the years, as I think my noble friend will acknowledge, the way in which our commercial broadcasting and radio have developed in this country has been more towards monopolistic situations, combining radio stations, wherever they may be located, in a way that has taken from them the importance of that local interest. Therefore, it has to some extent been up to the new community broadcasters, of which there are many now, mostly broadcasting in analogue on AM or FM frequencies, to provide local input.

4.30 pm

So my question to my noble friend is this: in the event of creating and granting new licences, and taking into account the need for balance between non-profit-making and commercial interests, can we be absolutely sure that there will be a strict requirement in these particular licences that that local input will be maintained, even if the ultimate owner or proprietor is someone who is pursuing commercial interests not only with a particular licence or area, but in a wider setting around the country?

I would add that community radio is important, and in particular the acknowledgement of digital broadcasting. I am sure that my own hospital radio venture, which is currently operating on FM, will be looking with great interest at the chance of going on to the digital frequency. That would be important to many people who are providing that sort of service, not only within hospitals but for the general well-being of the community around those areas. I would like that reassurance from my noble friend. This is very exciting, very overdue and very important. I would like to know that we will ensure that we strictly impose local criteria on those who receive licences in future.

Lord Storey (LD): My Lords, we welcome this SI, but the noble Lord, Lord Kirkhope, gets to the nub of the matter, and perhaps some of our concerns. The Minister will recall that I asked an Oral Question about local independent radio. As we have heard, some of the national companies—Global, for example—have been buying up local commercial radio stations and syndicating the programmes made in London, with an opportunity to break out for local news and weather. This means that the opportunities for people to be engaged at a local level in the radio industry are lost because the programmes are made in London, for example. Community radio gives us that opportunity to allow the local voice to be heard and for local people to be involved in making those programmes, not just speaking into the microphone but in the production of programmes, which is equally important.

We want reassurance on the issue of the 30% in six different companies. There could be a benefit—I shall speak against myself for a moment—where those commercial operators would provide resources for the community radio stations to give them the opportunity to develop. We could also see an opportunity if a big news story broke in a very localised community and the local community radio was there; it could be picked up and used on the larger independent commercial radio station in the area, or nationally for that matter. I can see advantages. I suppose we have to watch this very carefully.

The Minister might have answered this, but could he clarify again whether the order states that a local commercial radio station broadcasting on small-scale DAB will receive an automatic renewal of its analogue licence? Otherwise, we welcome this legislation.

Lord Stevenson of Balmacara (Lab): My Lords, we too welcome the broad approach of the legislation. In so doing, I echo the points already made. Some very difficult questions have been raised by some of the issues the Minister referred to in his opening speech and picked up by the noble Lords, Lord Kirkhope and Lord Storey, but the central one, which I think we all got a fair amount of correspondence about, is how we provide for and support the community activity we are looking for from the digital radio service or services, and ensure the commercial pressures from those larger-scale operators do not squeeze out that initiative. I do not think we will be able to bottom this out in the debate today, but the SI goes some way to do so. Indeed, about four pages' worth of restrictions and limits are being placed on ownership and various types of constructions that can be made for companies operating in this area, which will try to achieve that balance. We will have to see how that works in practice, but the issue has been well raised.

I will make two points about the broader context. I remember asking the noble Baroness, Lady Bloomfield, when the Private Member's Bill she supported went through the House what its implication might be for the broader context of digital radio in this country. We have been waiting for some time for some news about the digital switchover date. I am sure the Minister will have a note about that. Could we see whether this brings us a bit closer? Of the two criteria, I think that more than 50% of new cars being bought that had digital radios fitted as standard was reached three or four years ago, but we were also waiting for more than 50% of the listening public to be listening on digital services. I think the Minister said in his opening remarks that that is now well over 50%. The barriers to that appear to be disappearing, and if, as we are hearing, local radio is moving in swarms—even in Harrogate—to digital, why are we not hearing about the switchover date from the Government? Is this not the sort of "get up and go" we have been promised by the soon to become new Prime Minister, taking advantage of the new technology and driving it through for the greater benefit of Britain? I look forward to the Minister's response.

Of the comments received, there are three small issues I want to leave with the Minister as questions. The question of coverage is to some extent included in the SI, but the broader question of whether all communities will benefit is not. Is there any intention behind the SI? If not, will the Government think about looking at this within a year or two's time to make sure that all communities, certainly the ones beyond urban areas, are not left behind? True local radio provision has to be local for everybody. This is a step in the process of trying to get greater community radio coverage. I wondered whether there was anything in the thinking that would encourage the point made by Local Radio Group that some areas are still not covered.

The comments from the Community Media Association about making sure that we have a sufficient number of not-for-profit companies organised have already been mentioned. That raises the question of the Community Radio Fund, which is referred to in the Explanatory Memorandum. It has not been uplifted from its current level of £400,000, despite the fact that there are more community radio stations operating and possibly more to come. Does the Minister have any thoughts on how that fund might be moved forward and whether there are any prospects of that happening? It will certainly be an important floor for those wanting to operate these systems to have at least some public money available to get them started.

[Lord Stevenson of Balmacara]

The third question concerns the impact this order will have on the local commercial radio services that are currently broadcasting, and the question of analogue licence renewal. He said that the extension was going to be made for a 20-year period, to ensure that those currently in it do not feel that they have to go through the process of resubmitting their bids for new licences. The point has been made, and I think we accept, that a balance has to be struck between those who are proposing these services and ensuring that they continue to exist, and not placing undue burdens. However, 20 years seems a long time. Given that this has already been extended once, what will the impact be on trying to drive competition in this area? Surely, if a number of people were interested in bidding for these licences, the opportunity to do so would be when they are advertised. If I am repeating correctly what the Minister said, we are again going to lose out again for another five years on that. Perhaps he will comment on that.

Lord Ashton of Hyde: My Lords, I am very grateful for all noble Lords' comments. I detected a general approval of the order. It provides a benefit to the country, allowing stations specific to local areas and local communities to be set up, which may, to an extent, counter the effects mentioned by the noble Lord, Lord Storey.

Starting with my noble friend Lord Kirkhope, I completely agree that even in this age of Netflix and video-on-demand services, radio is still indispensable. I can provide reassurance to him and the noble Lord, Lord Storey, that the whole point of these requirements is to avoid a concentration of ownership, and that there will be a local interest. In every single small-scale radio multiplex, there will be a firm reservation for community radio. Even though we think that it is beneficial to have a mixed policy of commercial and community, there must always be a reservation for community, which will be a minimum of three. Ofcom has the power to vary that to an unlimited higher amount, depending on its assessment of demand. There are also specific concentration rules stating that no organisation can hold more than 20% of the multiplex licences. This will prevent a concentration.

The noble Lord, Lord Storey, also mentioned national operators. They will be able to hold only a 30% stake in any company, and they are limited to being involved in a maximum of six licences. There are 700 expressions of interest already; I think that is a meaningful limit. There is a strict overlapping rule, which will avoid a local monopoly, and there is also an adjacent area rule. This prevents small-scale radio multiplex licensees holding adjacent licences where the overlap is significant, and avoids operators trying to replicate local regional coverage by holding a collection of small-scale multiplexes.

Lastly in answer to my noble friend, when Ofcom considers a new small-scale multiplex licence, it will look favourably on an application which contains community radio within it. There will be a presumption in favour of community radio if it is combined with commercial radio to set up a multiplex. We set up the rules deliberately to prevent some of the problems that the noble Lord, Lord Storey, mentioned. In many cases, the community and local radio element will benefit from commercial radio as well, because it will be able to contribute to the investment required. Admittedly, the investment required is much less: one of the benefits of the new technology, and the reason there are so many expressions of interest, is that it makes the price of one transmitter, I think, £9,000, and £17,000 for two. It is much more affordable than it was. We have tried to promote competition and diversity of ownership and to address some of the concerns about concentration of ownership; that is why we have taken those steps.

4.45 pm

The noble Lords, Lord Storey and Lord Stevenson, asked whether local commercial radio stations that have analogue services would benefit from automatic FM licence renewal in the same way as if they broadcasted on a relevant local DAB multiplex. I think Radiocentre has asked for this issue to be clarified. There is a problem here: I do not think that will happen, because it cannot be dealt with by the statutory powers under which the licensing framework for small-scale multiplexes is being made. The renewal of analogue licences for stations that take carriage on DAB is dealt with in Section 104A of the Broadcasting Act 1990, while the powers in Section 258A of the Communications Act 2003, under which this instrument is made, allow for modifications of the Broadcasting Act 1996 and the Communications Act 2003, but not the Broadcasting Act 1990. There are other technical reasons that I will not trouble your Lordships with now. The Government's response to the radio deregulation consultation said that this was an area we needed to reform, and we will consider how best to change the legislation accordingly.

The noble Lord, Lord Stevenson, also asked about switchover. He is right to say that now that digital radio listening is currently at 56.4%, and the DAB network goes to 91% of homes, the criteria set by the Government in 2010 have been substantially met. The ex-Minister for Digital and the Creative Industries, in a speech at the industry's radio festival conference in May, announced that there would be a review of radio and audio to consider the impact of changes in listening. We are, therefore, talking to radio industry stakeholders about the next steps for digital radio and intend to make a Statement about our plans in the next few weeks.

As the noble Lord, Lord Stevenson, mentioned, in the 2015 spending review we increased funding to the Community Radio Fund. We think that community radio will expand, and we will look at how best to support it as part of our spending review. As I mentioned, there were 700 expressions of interest; with help from the commercial sector I am sure that the spending review will take that into consideration. We will definitely look at that area.

I think I have covered most of the points raised. I am very grateful for the support of noble Lords.

Motion agreed.

British Nationality Act 1981 (Remedial) Order 2019

Motion to Approve

4.49 pm

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

That the draft Order laid before the House on 2 May be approved.

Relevant document: 20th Report from the Joint Committee on Human Rights

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, in this day and age, I think that we can all agree that the law should not discriminate against people simply because their parents were not married when they were born or discriminate against people just because it was their mother who was British and not their father.

The draft British Nationality Act 1981 (Remedial) Order seeks to remove discriminatory provisions in the British Nationality Act 1981 for those applying for British citizenship under specific routes introduced to address historic discrimination against those whose parents were not married. The draft order was first laid in Parliament in March 2018.

This means that, once the law is changed, those seeking to register as British citizens who were born to an unmarried British father before July 2006 or to a British mother before 1983 no longer need to demonstrate that they are of good character where it would be discriminatory to require them to do so.

In two separate cases, the courts declared the good character requirement unlawful and made a declaration of incompatibility with the European Convention on Human Rights. The legislation will correct incompatibilities identified by the domestic courts by removing the good character requirement for those applying for British citizenship in certain routes on the basis of historic discrimination. I am grateful to the JCHR for its scrutiny of the order and its careful consideration of a hugely complex and sensitive issue.

The remedial order process to correct incompatibilities in primary legislation with the European Convention on Human Rights is rarely used. It is therefore right that each order is scrutinised carefully to ensure compliance with the procedure laid down in the Human Rights Act 1998 and to ensure that incompatibilities found by the courts are addressed.

The Government welcome the committee's recommendation that this order be approved today. However, it remains our position that the wider nationality issues raised by the committee go beyond the judiciary's incompatibility rulings and are therefore outwith the scope of the order. I commend the order to the House and beg to move.

Baroness Lister of Burtersett (Lab): My Lords, I wish to use this opportunity to raise three burning injustices addressed by the Joint Committee on Human Rights in its report on the order. The first two concern children who have to register their citizenship entitlement because of their parents' status. The third concerns the denial of citizenship to the offspring of fathers from British Overseas Territories who were not married to their mothers.

First, I and others in both Houses have many times raised the question of the level of fees charged to children who were born or who have spent most of their lives here, who are entitled to British citizenship but who have to register their entitlement because of their parents' status. The fee is £1,012, of which only £372 represents the administrative cost of processing registration. Ministers bristle when the rest is referred to as profit, but profit it is even though it is ploughed back into the system to subsidise totally separate Home Office immigration functions.

The JCHR spells out what this means, stating that,

"children from more disadvantaged backgrounds, and children in local authority care who are less likely to be able to afford the fees are more likely to be disadvantaged by the fee level impeding their ability to register as British nationals".

The committee echoes the concerns raised by the Select Committee on Citizenship and Civic Engagement, of which I was a member. It concludes:

"Home Office fees for children who have a right to be British should be proportionate to the service being offered and should be priced at a rate that is accessible for children accessing their rights. This is not the case at the moment since fees for children are three times more than the cost of the service—four-figure fees merely to register an existing right to be British are unacceptable. Disproportionately high fees should not exclude children from more vulnerable socio-economic backgrounds from accessing their rights".

I shall not rehearse all the arguments again other than to remind the Minister that citizenship matters, not just for practical reasons such as access to higher education but for reasons of belonging, identity and security.

I find it depressing that despite the Home Secretary's admission more than a year ago that the fee represents a "huge amount" and that he should look at it, despite concerns raised repeatedly in both Houses and despite the chief inspector's critical report, nothing has happened other than that the fee was not raised this year. It is not good enough that we continue to be fobbed off with vague assurances that the matter is "under consideration". Will the Minister explain exactly what is meant by that? Is it active consideration? If it is, who is considering it and how, and when will the results be made public? If not, when will it be actively considered?

As if the exorbitant fees were not bad enough, these children are also subject to what is called the good character requirement. The JCHR report traces the history of this and how it was inappropriately extended to this group of children, who are entitled to British citizenship, wrongly referred to by a Minister at the time as "coming to the UK". This is an example of how, time and again, the Home Office conflates and muddles up nationality law, which establishes who is entitled to British citizenship, and immigration law, which is quite separate. The JCHR, and those giving evidence to it, questioned the appropriateness of applying the test to children who were born in, or have grown up in, the UK. It again cites the Select Committee on Citizenship and Civic Engagement, which questioned the age—10—from which the test is applied. The JCHR concludes:

"It is inappropriate to apply the good character requirement to young children with a right to be British, where the United Kingdom is the only country they know and where they have grown up their whole lives here'.

The JCHR is also critical of how Ministers refer to "heinous" crimes in relation to the test, ignoring how it is applied also to cautions, minor offences and some forms of non-criminal behaviour. Indeed, it notes that half the children denied their right to British citizenship on good character grounds have not even received a criminal conviction, let alone been prosecuted for a

[Baroness Lister of Burtersett]

"heinous crime". It notes that the Home Office has updated the guidance in response to an earlier report by the chief inspector, to make clear the duty of,

"safeguarding and promoting the welfare of children",

and to make,

"the 'best interests' of the child a primary consideration".

However, in essence, the revised guidance does not address the concerns raised and the JCHR observes that it seems that,

"to date, the best interests of the child and child safeguarding obligations are not being adequately taken into consideration in Home Office decision-making".

It reports that the Home Office has still been unable to explain or justify why the test is applied to children who know no other country and, in particular, to children as young as 10 so that the policy,

"is preventing children whose only real connection is with the UK from becoming British",

contrary to what was originally intended. It calls on the Government to review the application of the test again in view of their,

"obligation to consider the best interests of the child when considering the impact on children with such a close connection to the UK".

It also says that the Home Office has failed to explain why a child should be deprived of this important right merely on the basis of a police caution. Will the Minister now give an explanation of, and justification for, applying the test to these children, undertake to review its application, as called for by the JCHR, and, while carrying out the review and without further delay, undertake to limit its application to serious crimes so that minor offences are excluded?

I pay tribute to those who have campaigned relentlessly on these issues, in particular the Project for the Registration of Children as British Citizens, and give due notice to the Home Office that their champions in this and the other House do not intend to give up the fight. With a new Prime Minister, why not put an end to these two injustices and claim some credit for doing so? I also pay tribute to those who have campaigned on the final citizenship injustice I will raise, particularly one of its victims, Trent Miller, who has been writing to me about it ever since I acted as a humble foot soldier to the late and much missed Lord Avebury who went as far as the constraints of the Immigration Bill allowed on this issue during its passage in 2014.

The JCHR refers to the recommendation made in its previous report in 2018. It deemed it "unacceptable" that acquisition of British nationality should depend on whether a person's father or mother was a British Overseas Territories citizen and on whether or not their parents were married. It recommended urgent legislative action to remove this discrimination affecting those born before July 2006. The Government's response was that they would undertake consultation with the overseas territories at a point when a suitable legislative vehicle was identified. The JCHR expresses dismay at this further delay. It also notes that the Explanatory Memorandum to the order explains that the legislatures of the overseas territories,

"have not been consulted since they have no competence in matters relating to nationality and citizenship".

One might have thought that the Government would have known that before committing to such consultation. As it is, we seem to be back where we started. The JCHR was unsurprisingly not impressed, and made it clear that:

"The Home Office and the Foreign and Commonwealth Office should not wait to consult on this at some unspecified point in the future, but should take action to consult and actively seek to remedy this human rights violation as swiftly as possible, rather than proffer excuses for delay".

In fact, according to a Written Answer I received on 10 May, it seems there has been "engagement" with the British Overseas Territories to,

"seek their views on possible future changes on the matter",

and, once again, there are those weasel words:

"This matter is under consideration".

5 pm

Will the Minister therefore tell us what the outcome of that engagement has been and why the Government continue to drag their feet on remedying this blatant and anachronistic piece of discrimination? Will she give a commitment to do what she can to ensure that legislative action is now taken sooner rather than later? In introducing this order, she said how this kind of discrimination is unacceptable. To quote Trent Miller:

"This would remedy the deep hurt and sense of rejection felt by children, now adults, affected who simply want to be respected and treated fairly".

As it is, he feels he is being treated as "less than" and being "shut out". How can this possibly be justified? It is high time to bring an end to this injustice.

Lord Russell of Liverpool (CB): My Lords, the noble Baroness, Lady Lister, in her usual style, has once again taken the wind out of my sails, so I will sail in her slipstream. My commiserations to the Minister, as she has the second instalment of the "Lister and Russell show" today.

The Minister commented that the JCHR had gone slightly outside its brief in its comments on this draft order. I would like to suggest to her why that might have seemed the right thing to do. The subjects, conclusions and recommendations it raises on pages 23 to 25 of the report, if you bother to read them, are fairly sobering and somewhat shocking. They are not new; they are issues that have been raised repeatedly in a variety of fora. They will not go away, because again and again we see and hear evidence of what I assume and hope are the unintended consequences of the Home Office's multifaceted approach to trying to constrain, manage and discourage non-UK nationals and their dependants, including large numbers of children—some of whom have the absolute right to be British citizens—from becoming British citizens. The reason the JCHR has commented on that is that it feels, as many of us do, that that is shocking and simply unacceptable.

While I suspect that the immune system of the Home Office is in a demoralisingly parlous state, I also observe that the cumulative layers of scar tissue it has acquired over the last few years seem to have rendered it incapable of remembering above all that its activities which impact on children are prescribed under British and international law, which say very clearly what the rights of those children are. They make it very clear

that those rights have to be first and foremost in every thought and action of the Home Office on our behalf as citizens of this country.

It is unacceptable that the immigration status of parents, whether it is up for argument or not, should have such a material and, in many cases, negative effect on their children, who have done nothing to deserve such treatment. Under international law and the European convention on the rights of the child, and the UN version, they have an absolute right to be protected. I cannot understand why the Home Office seems incapable of recognising this and putting it at the forefront of all it does.

I have three questions for the Minister, and if she is unable to answer them this afternoon, I should be delighted if she had the time and courtesy to write to me. The first is on the subject of citizenship. Do the Government recognise that British citizenship and indefinite leave to remain are simply not the same in terms of the entitlements and security they bring, and that having British citizenship for those entitled to it is a fundamental part of a child's right to an identity?

Secondly, to return to the perennial issue of citizenship fees and the lack of fee waivers, the Government have, I am glad to say, committed to ensure that the issues highlighted in the Independent Chief Inspector of Borders and Immigration's report on the charging for services will be addressed. They said that the recommendations will be,

"factored into spending considerations on fees",

and undertook to conduct further consultation. Will the Government commit to completing that review even if, as I suspect is entirely possible, the comprehensive spending review is confirmed as being delayed? These children cannot and should not wait.

Thirdly, on local authority duties, do the Government not recognise that local authorities have a duty as corporate parents to support children in care and to secure the most permanent status for which they are eligible? If so, do they accept that to charge children in care for citizenship applications is a cost shift from the Home Office to local authorities that creates extra financial pressures on already cash-strapped local authorities? It is robbing Peter to pay Paul and it is simply unfair.

Lord Dholakia (LD): My Lords, I support what has been said so far. The Minister rightly pointed out that this is a remedial order to Parliament to correct incompatibilities in the British Nationality Act 1981 with the European Convention on Human Rights as identified by the courts in recent cases.

The question remains as to how we got into this mess in the first place. So deeply entrenched has been the Home Office in keeping people out of the United Kingdom that previous policies lacked basic concern about the rights and values of people wishing to settle here. Common sense would have told the Government that they were entitled to the incompatibilities being removed at the earliest possible occasion. There are no ifs and buts in this matter: it has taken 28 years to recognise this anomaly and the sooner it is put right, the better.

None of us is surprised that, as the British and British overseas citizenship rights campaign tells me, once again the Home Office is stalling and wants to push for a better legislative opportunity, for which the Home Secretary must look. Meanwhile, children of BOT descent born to unmarried BOT fathers remain shunned and left out in the cold, preventing them being officially embraced by their unmarried BOT fathers' homelands. It is plainly wrong and should never have been allowed to happen in the first place.

Recent information has revealed areas of serious concern regarding immigration and nationality issues. We were concerned about the scandal of Windrush settlers who were denied proper documentation when they arrived here. This week, we read about the treatment of immigration detainees by private contractors who inflicted misery in our detention centres. They made millions of pounds' profit from the services they provided. For this to happen at a time when we took great pride in promoting antis-lavery legislation in the United Kingdom shames all of us who are keen to promote dignity and respect for detainees.

This weekend, the *Sunday Times* reported on cash for British passports for those who can afford to pay millions of pounds into government coffers. You may ask what this has to do with the order before us. The aim for each of the above group is to obtain British nationality so that they can lead a decent life in the United Kingdom. Why is it taking us so long to rectify an anomaly identified by our courts?

We accept that a number of the recommendations are outside the scope of the remedial order before us. There is no need to wait for another opportunity to revisit nationality laws. We should be actively promoting new legislation to rectify anomalies identified by the JCHR. This order gives us the opportunity to bring forward sooner rather than later legislation that would remedy the deep hurt and sense of rejection felt by the affected children, who are now adults. They simply want to be respected and treated fairly. It is unacceptable that discrimination in acquiring British nationality persists. We should also use this opportunity to consolidate all immigration and nationality issues and proof these against anti-discrimination legislation. We welcome a wider consultation and ask the Minister to set up a timetable for this exercise.

A number of issues that have been identified in the debate so far need to be considered. One such is the "good character" requirement in the context of seeking British nationality. This applies to those aged 10 or over, as that is the age of criminal responsibility. Is the Minister aware that my Private Member's Bill on this matter has gone through all stages in your Lordships' House and will be dealt with by Wera Hobhouse MP in the other place? I ask the Minister to await the outcome before specifying that the Government do not consider it appropriate to adjust the "good character" policy so that certain acts become inadmissible when assessing a minor's suitability for British citizenship. No one would wish to ignore some heinous crimes, but great care must be taken to look at the proportionality of the crime and its impact, so that applicants are less likely to meet the threshold for refusal of citizenship.

[Lord Dholakia]

My final point relates to the fees issue, which was also identified by previous speakers. My noble friend Lady Hamwee—she would have loved to speak today as she was a member of the JCHR, but she is at a Select Committee meeting and is unable to be here—told me that the size of the fees can mean that a family is able to pay for one child but not stretch to the other. When is the Minister going to look into this? Does she accept that citizenship is not something to be granted on a discretionary basis but an entitlement when all the conditions are met? I look forward to the Minister's comments.

Lord Rosser (Lab): I thank the Minister for explaining the content and purpose of this draft order, which we support as it corrects a discriminatory and unlawful requirement. The Joint Committee on Human Rights has also recommended that the draft order be approved. I will say, before I go any further, that I have nothing new to say that has not been said already. Nevertheless, I still have a determination to say it.

British nationality law granted automatic citizenship by descent only to children born in wedlock to British fathers. Changes have allowed children born to a British mother or father to become a British citizen by descent, irrespective of whether their parents were married, but there remained a requirement to prove "good character" in cases where the applicant is 10 or older. Following the expression of concerns about this continuing requirement—and, probably more decisively, court judgments of incompatibility with the European Convention on Human Rights—this draft order finally removes the "good character" test for young people seeking their right to British citizenship. Can the Government confirm that they consider this draft order to be compatible with human rights?

While approving this draft order, the Joint Committee on Human Rights made a number of other recommendations in its second report on the order, published on 9 July, which in my view fully justifies our referring to the content of the JCHR report when discussing this order and expecting a government response, either now or later, to what is in that report. It would be helpful if the Government could indicate what their response is to the conclusions and recommendations set out in the second JCHR report on this draft order, published on 9 July.

As has already been said, the JCHR's conclusions and recommendations include the following:

"The Government should review the application of the good character test to children with a right to British citizenship who have grown up in the UK",

particularly in the light of the,

"obligation to consider the best interests of the child".

The JCHR has also expressed the view that the Home Office is leaving itself open to successful legal challenge by requiring from children against whom it has previously discriminated additional requirements, such as good character, that would not have applied had they been able to apply as young children when they were under the age of 10. The committee recommended that the Home Office reconsider its position in respect of children it had previously discriminated against, so that they can obtain British nationality without discrimination or superfluous requirements.

5.15 pm

Again, as my noble friend Lady Lister of Burtersett and other noble Lords highlighted, the committee also said that the provisions of the British Nationality Act 1981 relating to British Overseas Territories citizenship contained the same discrimination that is the object of the draft order we are now discussing, and that the Government should not wait to consult on this at some unspecified date in the future but should take action to consult and actively seek to remedy this human rights issue—it has been described as a violation—as swiftly as possible.

The JCHR recommended that the Government should not charge an application fee to those who had previously been discriminated against. Can the Government confirm that this is now their intention and indicate when the fees regulations will be amended accordingly? As has already been pointed out, application fees for children are three times more than the cost of the service. The JCHR has commented that disproportionately high fees should not exclude children from more vulnerable socioeconomic backgrounds from accessing their rights to British citizenship. Will the Government now set the fee for citizenship at cost price? Will they ensure that full-fee waivers are available to any child who cannot afford it?

Referring to local authorities, the JCHR said that they should ensure that children in their care with an entitlement to British citizenship should be registered as British to ensure that they maintain their status and rights on leaving care. It is not obvious, though, that we have a clear idea of the immigration status of all children in the care of the state. What are the Government doing in conjunction with local authorities to identify those children with insecure immigration status and to ensure that they receive proper legal advice?

As I said earlier, we support the draft order, but I hope that the Government will provide a response to the associated issues raised by the JCHR in its report and which have been referred to by other speakers in this debate.

Baroness Williams of Trafford: I thank all noble Lords for their contributions to this debate, which has lasted longer than it did in the other place. That does not surprise me, because your Lordships are so much more forensic.

Most noble Lords made similar points, the first of which was around the good character test for children. The good character requirement for British citizenship is set out in the British Nationality Act 1981 and applies to those seeking to register as British who are aged 10 and over at the time of application. This is because 10 is the age of criminal responsibility in England and Wales. Children as young as 10 can and do commit very serious acts of criminality, such as murder and rape, and it cannot be right that such offences are disregarded when assessing a child's suitability for citizenship. The Government do not believe that the good character requirement for children is at odds with the statutory obligation in Section 55 of the Borders, Citizenship and Immigration Act 2009.

However, I wish to make clear—I think it was either the noble Lord, Lord Dholakia, or the noble Lord, Lord Rosser, who raised this issue—that having a criminal

conviction does not necessarily mean that an application for citizenship is automatically refused, particularly in the case of minor offences attracting an out-of-court disposal: for example, a youth caution. Each case is considered on its individual merits, and guidance for caseworkers makes it clear where discretion can be exercised.

The noble Lord, Lord Rosser, raised the issue of repeated fees—

Baroness Lister of Burtersett: Before we move off the good character test, while it is helpful to have that explanation, could the Minister explain how, according to the JCHR, half of the children denied their entitlement to British nationality on the grounds of good character have not even received a criminal conviction, let alone been prosecuted for the kind of dreadful crimes that she mentioned?

Baroness Williams of Trafford: I will write to the noble Baroness on that because if people have not even had a conviction or indeed been found guilty of any small crime, that would appear to contradict what I was saying.

All noble Lords asked about the fees for children. The noble Lord, Lord Russell, made the distinction between ILR and citizenship. That is absolutely right. Upon application for citizenship there is a fee, but citizenship is not an absolute right and acquisition is not automatic; it remains subject to an application being made and the fulfilment of statutory requirements such as taking an oath and making pledges at a citizenship ceremony in the case of adults, and the payment of fees. There are provisions for those who are destitute, including children living in local authority care, to be exempt from application fees in specific circumstances. This is clearly set out in guidance for caseworkers and the Government consider it sufficient to allow vulnerable children to access the services they need. Nevertheless, I am aware that this issue has been raised several times recently, both in this House and in the other place, as well as being the feature of the recent inspection by the Independent Chief Inspector of Borders and Immigration. Given the attention that this subject has attracted, the Government have agreed to keep the current position under review. Before the noble Baroness, Lady Lister, screams in frustration, I will keep the House updated on that. Clearly, we are about to go through a period of slight flux with a new Administration, a comprehensive spending review and a new Prime Minister, so I hope the noble Baroness will forgive me for being a bit more vague on this occasion. I do not think she does, but it is as much as I can say at this time.

The noble Baroness, Lady Lister, and the noble Lord, Lord Rosser, talked about the British Overseas Territories. The JCHR is concerned that the discriminatory provisions this remedial order seeks to remedy will still apply to British Overseas Territories citizens. Regrettably, that is true. When changes to nationality legislation were made, they were introduced at a very late stage in the parliamentary process and there was no time to consult fully with the territories about introducing similar provisions for the status of British Overseas Territories citizens. It would not have been right to introduce legislation that would affect the territories and potentially the status of those living there without that consultation. We recognise the difficulties that still are faced by those citizens who might want to pass on their citizenship to their children and we are actively considering how best to address those concerns, taking into account the opportunities for doing so.

The noble Lord, Lord Rosser, asked about the compatibility of the order with the ECHR. The draft order is compatible with human rights; we confirmed this in the Explanatory Memorandum that was relaid yesterday.

Baroness Lister of Burtersett: I am sorry to interrupt again. I am slightly behind so I am a bit out of sync. I am very confused now because the Minister said it would not be right to make these changes without consulting the British Overseas Territories, but the Explanatory Memorandum says that British Overseas Territories have not been consulted since they have no competence in matters relating to nationality and citizenship. There is also the Written Answer to me saying that there has been engagement with them. If not now, could the Minister explain in a letter what exactly is the state of play in relation to the British Overseas Territories and whether it is possible to move this on, because it has been going on for a long time?

Baroness Williams of Trafford: The noble Baroness makes a very valid point. I suspect the answer is that engagement is not the same as formal consultation, and we do not tend to do things to the overseas territories without consulting them formally. I will confirm that to her if I can. She is right that we need to remedy this sooner rather than later because there is a gap which needs to be sorted.

The noble Lord, Lord Rosser, asked about a government response to the JCHR report. The Immigration Minister will today respond to the JCHR's most recent recommendations and a copy will be laid in the Library.

Motion agreed.

Crown Prosecution Service: Rape and Sexual Offences

Question for Short Debate

5.25 pm

Asked by ***Baroness Chakrabarti***

To ask Her Majesty's Government what assessment they have made of delays in processing rape cases by the Crown Prosecution Service; and what steps they are taking to review the Crown Prosecution Service's *Rape and Sexual Offences* guidance.

Baroness Chakrabarti (Lab): My Lords, I am so grateful to your Lordships' House for considering my Question on a burning hot day when so much attention is understandably elsewhere—I am grateful for the chill in your Lordships' Chamber—but if the business of leadership and government is not to protect the most vulnerable among us, I honestly do not know why we are here.

[Baroness Chakrabarti]

Left or right, north or south, on the planet, let alone in our country, there is no democracy without the rule of law, and one of the indicators of that fundamental bedrock breaking down is when in any society, the most serious crimes, such as rape, may be perpetrated with increasing impunity. More than 98% of reported rapes will never even result in a criminal charge. Recent government figures show all prosecutions at their lowest levels since 1970, and prosecutions for sex offences have fallen by one-third between 2017 and 2018. Our underfunded criminal justice system is in a crisis of resources and morale, and never is this more alarmingly evidenced than by its handling of sexual violence. It has emerged that one-third of police files are being sent back for more information. A blame game seems to have developed between prosecutors and their colleagues in uniform. There is nothing like finger-pointing to demonstrate overworked people close to their wits' end. Recent information disclosed by the Attorney-General's Office shows a shocking increase of more than 140% in the time taken to charge suspects in rape cases. In an Answer to a Written Parliamentary Question from Her Majesty's Opposition, the Government revealed that the average number of days from complaint until charge has risen from 32 in 2010-11 to 78 in 2017-18.

There are other serious problems with the way rape cases are handled. In my opinion the so-called "digital strip searching" of survivors' mobile phones is probably unlawful. Consent for such an intrusion into private life in exchange for access to justice, in the absence of primary legislation, cannot surely be in accordance with the law or comply with the right to respect for private life under Article 8 of the human rights convention or the right to a fair trial under Article 6.

The prospective Prime Minister has in the past spoken in favour of the human rights convention. In 2016, he is reported to have said, "Keep the European Convention, it's a fine thing ... We wrote it". If we wrote it, Mr Johnson, let us keep it and abide by it in thought, word and deed. I am sure that—despite all the temptations—your Lordships' House looks forward to the reaffirmation of that position today.

I pay tribute to the distinguished outgoing Victims' Commissioner, the noble Baroness, Lady Newlove, and I welcome the new one. I also commend the broad coalition of campaign groups for bringing the issue of the controversial digital processing notices, introduced for police in England and Wales earlier this year, to the fore today. Women—the overwhelming majority of rape victims—are already discriminated against in the system. A trawl through their intimate data only reinforces the idea and the feeling that they are the ones in the dock. That is the practical effect of the purported "consent form".

When Ms Sirin Kale at VICE magazine contacted me a little while ago to tell me that rape victims with cases going through the courts are told not to tell therapists about their assaults, I could barely believe that this was true. The suggestion that victims should avoid vital therapy for fear of prejudicing trials is as cruel as it is clumsy. The poorly drafted CPS guidance appears to be at least 17 years old. Have there really been no developments in professional thinking about trauma, treatment and memory since then, or could it be that a system without funding for treatment is desperate enough to rely on the flimsiest excuse for not providing it?

To suggest that a rape victim be denied counselling or therapy for perhaps months and months while awaiting trial is as ridiculous as denying the victim of any other form of violence vital medical treatment for their physical wounds. In some cases, it might be even worse. I quote a survivor who cannot be named for legal reasons: "You are allowed limited pre-trial counselling but you aren't allowed to discuss anything that is in your police notes, which is obviously what happened to you. The defence can request your notes, then some parts of what you said can be used against you or the therapist can be seen to be guiding you over what happened or what to say if it does go to court. I think therapy would have massively helped me—so many people credit counselling and therapy as being life-changing and it's really frustrating for me that I felt like I desperately needed it and I haven't been able to have that". I commend VICE magazine for its investigation into the treatment of rape complainants in our country. Non-partisan ethical journalism still lives.

The End Violence Against Women Coalition has begun legal action against the authorities, claiming that the CPS has covertly changed its practice in relation to decision-making on rape cases and that this has contributed to a dramatic fall in the number being charged. The coalition has warned that cases with "extra vulnerabilities" such as child sexual exploitation and those where a woman might make allegations against a former partner are most likely to be dropped, due to the difficulties therein.

Because of the obliteration of civil legal aid since the coalition Government's disastrous LASPO reforms, victims' groups are having to crowdfund on the internet to seek legal redress—this in a legal system that was once the envy of the world. It is still a great legal system in that international oligarchs will come here for Rolls-Royce arbitration and justice against each other, but it is more like a soup kitchen for the most vulnerable.

I welcome that the Government under the outgoing Prime Minister agreed to review the treatment of rape complainants, but victims will need assurance that this will be meaningful. Surely a Government of any stripe should consult and value the expertise of judges, lawyers, mental health professionals, women's organisations and survivor groups who have been fighting these burning injustices for some time. This system failure is a shameful breach of survivors' human rights. Victims should never be required to make the false choice between justice and survival.

Therefore, I hope that we can all urge the incoming Prime Minister to make the rule of law and the rights of the most vulnerable among us an absolute priority if we are to hold the bare bones of our democratic society together in the difficult months ahead.

5.36 pm

Baroness Newlove (Con): My Lords, I thank the noble Baroness, Lady Chakrabarti, for introducing this important debate today, and I thank her for her kind words.

I served for seven years as the Victims' Commissioner for England and Wales—something that I am very proud of. The role of Victims' Commissioner is independent from government but, throughout that time, I held regular meetings with Ministers and policymakers, as well as senior officials from a range of criminal justice agencies. At those meetings I was able to raise issues of concern, as well as secure a better deal for victims. Indeed, I placed great importance on them as an opportunity to influence policies and practice, based on the experiences of victims up and down the country whom I had the privilege of meeting. After all, that was the main purpose of my role.

My commitment to greater transparency was so important that I would share notes of some of my meetings by placing them on the website, even tweeting about them at the same time, to enable victims and practitioners to see the issues I had raised and the responses I had received from the agencies concerned. When used appropriately, social media is a great way of getting to a wider audience—after all, there is only one of me.

I met the Director of Public Prosecutions—DPP—regularly. I place on record my gratitude to the outgoing DPP, Alison Saunders, who worked hard with me to support and commit to improving the experience of victims within our criminal justice process. I also had the pleasure of meeting her successor, Max Hill, before I stood down in May. At these meetings, I constantly raised the issue of the fall in the number of rape charges and whether that indicated a change in policy or practice.

In my final meeting with the DPP, he reassured me that the CPS was not changing the way it made decisions on whether to make a charge for a rape or sexual assault. Such decisions were based on the available evidence and whether there was a public interest. The CPS appetite for pursuing such cases remained the same. The overall drop in sexual violence cases being referred to the CPS meant that fewer cases were being considered.

That leads me to disclosure, another sensitive and worrying issue. I like the term that the noble Baroness, Lady Chakrabarti, used—digital strip-searching—because it feels like that. The DPP kept me updated on work within the CPS to monitor how disclosure was being handled. I was given assurances that CPS staff were examining cases very carefully, making sure that issues concerning disclosure had been handled appropriately. This means that there will be several thousand cases under active consideration at any one time. The DPP is aware that this caution was interpreted by the public as a reluctance to make a charging decision, but he said that the CPS's overriding objective was to work to "get it right".

I welcome such care. Who would not? Unfortunately, it has a knock-on effect of additional delays to our victims. Any additional delay would have a detrimental impact on the victim. Yet again, they are being lost in a prolonged process. This was compounded by the police's reluctance to put some suspects on bail. This again undermined victims' confidence that they would be adequately protected, in turn making them reluctant to come forward.

As prosecutors have very little contact with victims, they did not always appreciate victims' concerns. The police would often blame the CPS for delays: CPS barristers needed to have better communication with victims. I want to see more humanity offered within our criminal justice system.

We have looked at Section 41 cases. I know that my successor, Dame Vera Baird, made a report on these in her capacity as police and crime commissioner for Northumbria. That came up against contradictory responses from the CPS. However, the DPP accepted that Section 41 requests were made in an open court but that the judges were able to direct the application to be determined in a closed court. Again, this is an area that needs to be carefully explained to the victim. In fact, the findings of the House of Commons Justice Committee's inquiry into the disclosure of evidence in criminal cases missed a huge opportunity to tackle the great disadvantage that rape and sexual abuse victims face in this area compared with all other victims of crime.

The victims are quickly required to give blanket consent in writing that the police and CPS can access all personal data from their education, safeguarding, council and social services records; their medical, psychiatric and dental records; and any notes that may have been made about counselling they have received. This is to see if there is any material that would undermine the prosecution case or assist the defence. If anything is found in such a category, it will be disclosed to the defence. The fact that the complainant has signed the consent form means that he or she has no right to object. Yet, if the same person makes a complaint of a physical assault without any sexual component, they will not be asked for any personal documentation, even if they are the only witness and the defendant denies it.

It is well documented that myths and stereotypes surrounding rape enter into the courtroom in sex cases. Victims are lying, or they ask for it, being provocative with their clothing and so on. Judges are now expected to explain the fallacy of such commonly held beliefs to juries. However, such myths are still played out in this disclosure process. Some personal records may need to be obtained and shared with the defence to test the truth. However, the test is clear: it should be only those which are relevant to the facts and obtained through reasonable lines of inquiry.

Although a defendant has an absolute right to a fair trial under Article 6, a complainant's right is surely as important. As we speak today, this balance is not even considered. If complainants do not sign up for the full disclosure, the CPS often says simply, "Raped or not, we are not taking this case any further". The Justice Committee heard evidence of this but make no recommendations.

Time and again we hear about fair justice and the rehabilitation of offenders. If you are bereaved following a murder, you are treated as a victim. If you say no to sex, you are in your own special box. Surely the records show that our dealing with victims of rape is woeful and that we must improve it. For due process to go ahead for victims of rape and sexual assault, there

[Baroness Newlove]
must be a system where victims feel safe to make their complaint and provide evidence; otherwise, nobody within our criminal justice system will have confidence.

5.45 pm

Lord Carlile of Berriew (CB): My Lords, it is a pleasure to follow the noble Baroness, Lady Newlove. I pay tribute to her stellar contribution to the criminal justice system. I also thank the noble Baroness, Lady Chakrabarti, for bringing this very important Question to the House.

My reason for taking part in this debate is that, over many decades now, I have prosecuted, defended and sat as a part-time judge in rape and serious sex cases, so I have that experience to offer. I should probably inform the House, although I do not regard it as a declarable interest, that Alison Levitt QC, my wife, was the principal legal adviser to the Director of Public Prosecutions for five years and was responsible for the rape policy, its production and its instruction in the service from 2009 to 2014. I say to the noble Baroness that my belief—I have obviously read the policy extremely carefully on numerous occasions—is that the problem is not with the policy but with its application. I shall turn to that in due course.

My knowledge of the Crown Prosecution Service leaves me with the view that we should support those men and women who are lawyers and Crown prosecutors in the service and have to deal with these cases. They can only do what can be done with the material that they are given. I urge that there could be better liaison between the Crown Prosecution Service and the police: sometimes they sit in silos when they should be talking to one another. As it happens, when my noble friend Lord Hogan-Howe was Commissioner of the Metropolitan Police, I was for three years chairman of the London Policing Ethics Panel and the about-to-be Prime Minister was the Mayor of London.

I went out on ordinary night patrol with officers in north London and saw how they behaved towards people who had sexual complaints to make. I can say that, in almost every case, they behaved immaculately and showed that the training of police officers is fit for purpose. The problem that has arisen with the electronic communications issue is that the judgment of well-trained police officers has given way to process, so they are obliged to present forms which are not fit for every purpose to individuals faced with the most terrible crisis of their lives. My encouragement would be that the CPS and the police should talk about a simple old adage: circumstances alter cases. When an alleged victim, or complainant as I prefer to call them, alleges that she or he has been raped or subject to a serious sexual offence, the appropriateness of every request has to be instinctive in the minds of both the police officers concerned and the prosecutors considering the case.

It is worth noting—the noble Baroness, Lady Chakrabarti, has given most of the statistics and I will not repeat them—that fewer than 4% of women who report sexual attacks now expect their cases to reach trial, according to recent research. That is a completely shocking and true statistic. As I see it, there has been a subtle and undisclosed policy change within the Crown Prosecution Service; this was recognised and commented upon by the colleague of the noble Baroness, Lady Newlove, the independent Victims Commissioner for London, Claire Waxman, and others. Indeed, in September of last year, the *Guardian*—which is not always right but was, I believe, on this occasion—revealed that rape prosecutors in some specialist training seminars had been urged to take a more risk-averse approach to rape cases after criticism of low conviction rates. That has nothing to do with the policy; it is to do with the application.

It is worth reminding ourselves that there has been a fundamental change—years ago; certainly from the time when I was first practising—in the approach to serious sex cases. Corroboration used to be required: independent confirmatory evidence, which is to say, independent of the complainant. For years now, corroboration has not been required. The starting point has to be that, if there is a complainant, male or female, who raises a credible case of rape, on the face of it, that is enough to justify a prosecution, all other things being equal. There are very few "stranger rape" cases and they are usually quite easy to prove. Most are usually convicted although not all; there are some terrible stories of cases where there have not been convictions. The real mischief arises in date rape and familial rape cases, where there will be no independent observers.

I would like to raise a few basic points of which the House and, above all, prosecutors, need to be reminded, and I will echo something absolutely correct that was said by the noble Baroness, Lady Newlove. When the prosecution applies to alleged rape cases, the same code test should apply that applies to all other cases—the test of rape should be exactly the same as that for prosecution of assault, robbery, fraud or any other criminal offence—and there should be a complete exclusion from the police and prosecutors' minds of those myths and stereotypes of which the noble Baroness spoke.

There was a time—I confess to being old enough to have been around to make these kinds of suggestions in the 1970s and 1980s—when barristers actually asked complainants how they were dressed. The implication was that if a female complainant was wearing a short skirt or, heaven forfend, fishnet tights or anything of that kind—or if she was a sex worker, mentally ill or in some way physically or mentally disabled—she was a less worthy person to be a complainant in a prosecution. People were acquitted in those days because those myths and stereotypes had credence. In the modern era, well into the 21st century as we are now, let me remind those who are interested that sex workers are raped, women are raped by their husbands and girls who wear fashionable, short clothes and fishnet tights mean it when they say no to somebody who takes an interest in them. Those myths and stereotypes are entirely inappropriate.

There are some types of case where it is true that convictions may be hard to obtain because there is a residue of those myths and stereotypes. However, if the prosecutor applies the CPS code test with what is called the merits-based approach, which is used in all such cases, and if they and the police believe that the claimant may well be truthful and reliable, there has to

be a prosecution, prima facie. Date rape cases are an obvious example. If the Crown prosecutor were to apply a purely predictive approach based on past experience of similar cases—which I am told is sometimes called the bookmakers' approach—she or he might well feel unable to conclude that a jury was more likely than not to convict the defendant. Coming to that sort of decision in effect resuscitates the old corroboration requirement, which Parliament abolished years ago. With the merits-based approach, the question of whether the evidential test was satisfied should not depend on statistical guesswork.

In the context of sexual offences, this means that even though past experience may tell a prosecutor that juries may be unwilling to convict in cases in which, for example, there has been a delay in reporting the offence, or the complainant was drinking at the time the rape was committed, those kinds of prejudices against complainants should be ignored for the purposes of deciding whether there is a realistic prospect of conviction. In other words, the prosecutor should proceed on the basis of a notional jury which is wholly unaffected by the myths, stereotypes and prejudices of the type which, sadly, still carry some traction in some quarters. They should ask what the merits of a prosecution are, taking into account what they know about the defence case, of course, and whether, if the defendant is convicted, it would be justified, safe and merited. It is not a different test, but if you apply the merits-based approach, it just means that the prosecutor is reminded of how to approach the evidential stage of the full code test.

The statistics presented in this debate tell a terrible story. They mean that decent young men and women who have been sexually assaulted lose their confidence in the rule of law, something the noble Baroness, Lady Chakrabarti, quite rightly emphasised. We should not allow any such situation to continue, while of course always maintaining the independence of the Crown Prosecution Service.

5.56 pm

Baroness Bryan of Partick (Lab): My Lords, my noble friend Lady Chakrabarti's Question is about the Crown Prosecution Service for England and Wales, but I am going to take advantage of the debate that she has kindly secured to highlight some of the issues that we face in Scotland.

The basic problems are similar. The police and the prosecuting bodies make public statements to encourage victims to come forward, stating that they will support women and men who have been subjected to rape or sexual assault. There has been an increase in reports to the police, but a decrease in the percentage of cases being prosecuted.

In England and Wales, the CPS has been accused of dropping rape cases that appear weak. This failure has been described by the director of the Centre for Women's Justice as a "human rights failure". Article 3 of the Human Rights Act requires "effective" police investigation and prosecution of rape cases.

In Scotland, the records show an increase in the number of reported rapes and attempted rapes, which were up 28% in 2016-17 and 20% in 2017-18. The percentage of cases that went on to be prosecuted went up slightly in 2016-17 but was still only 13.7% of complaints. In 2017-18, this fell to 10.1%. The percentage of reported cases that result in convictions is less than 5%. Nearly 20% of prosecuted cases end with a finding of "not proven"—I will come back to this later.

There are two major differences between Scots law and the law in England and Wales. The first is the need for corroboration. As the noble Lord, Lord Carlile, said, this used to apply in England and Wales but continues in Scotland. The second is that a jury has a third verdict as well as guilty or not guilty: not proven. Both differences appear to have an impact on cases of rape and sexual assault.

The requirement for corroboration of evidence in criminal cases is described as,

"an ancient and highly distinctive feature of Scots criminal law".

It requires that each "essential" or "crucial" fact be corroborated by direct or circumstantial evidence. This requirement remains in place despite an extensive inquiry in 2011 by Lord Carloway which recommended its abolition. Research conducted for the report found that 58% of serious cases not pursued due to lack of corroboration would have had a "reasonable prospect of conviction" in England and Wales. The report concluded that,

"the requirement for corroboration could … make it too difficult to prosecute certain offences, for example those typically committed in private (such as rape)".

There is one possible way of bringing a prosecution when there is no direct corroboration—the Moorov doctrine, stemming from a case in 1930. This was based on similar fact evidence, which could allow evidence from other offences to be used as corroboration. But that can add to the pressure put on complainants, as their cases are dependent on other victims who may change their mind or may have a weaker case, which could result in a decision not to prosecute or an unsuccessful prosecution.

The second handicap that can impact on successful prosecutions for rape and sexual assault is the option for a jury to find a case not proven, which has the same status in law as not guilty. Juries may use this when they consider that the accused may be guilty but insufficient evidence has been presented by the prosecution. The not proven verdict is used disproportionately in rape cases. Rape Crisis Scotland pointed out that nearly 30% of acquittals in rape and attempted rape cases were not proven, compared with 17% for all crimes and offences.

I shall give two examples of how this has impacted on women. Emma reported a man who had raped and abused her when she was a child. The police explained to her that the key factor in determining whether to take forward a prosecution would be corroboration. Even though there was documentary evidence in social work and medical records, it was not sufficient, as there was no corroboration of each element of the charge. Although another family member had been abused, she did not want to become involved, so the Moorov doctrine could not apply. Emma believes that if the abuse had taken place in England, her abuser would have been prosecuted.

[Baroness Bryan of Partick]

Miss M was raped and her attacker was prosecuted, but the jury gave a not proven verdict. Last year she took her case to the civil courts and succeeded in establishing that she had been raped by the man she had accused. The sheriff accepted that the evidence was cogent, compelling and persuasive. She was, however, made to go through a second court case, at tremendous personal stress and financial cost.

The corroboration requirements should have been abolished following the Carloway report in 2011. The recommendation to scrap it was supported by the Scottish Government, the Crown Office, Police Scotland and campaigners for victims of domestic violence and rape. But it was opposed by all the High Court judges in Scotland, other than Lord Carloway. One of the judges, Lord Cullen, stated:

"It's very important that",

corroboration,

"is there and always has been for centuries as a safeguard against wrongful conviction".

Making particular reference to rape cases, the judges warned that,

"the abolition of corroboration may result in miscarriages of justice".

But we can be sure that miscarriages of justice are happening regularly in a system where cases are not brought due to lack of corroboration.

In 2014, the Lord Advocate, Frank Mulholland, stated:

"In the past two years, 170 cases of rape have had no proceedings taken in them because of insufficient evidence, which in many instances is a lack of corroboration".

Another judge-led review into how sexual offences are dealt with in the Scottish criminal justice system is under way. This has been welcomed by Rape Crisis Scotland and other support and campaigning organisations, but we have to hope that, when it reports next year, it is followed by swift action to ensure fairness for the accused but also justice for women and men who have been subjected to rape or sexual assault.

Will the Minister in his role as Advocate-General for Scotland lend whatever weight he can to encourage the abolition of the need for corroboration and an end once and for all of the use of the not proven verdict?

6.05 pm

Lord Hogan-Howe (CB): My Lords, I thank the noble Baroness, Lady Chakrabarti, for the opportunity to debate this important issue. There are various challenges facing the investigation and prosecution of rape, but the fundamental issue is that there are far more allegations of rape coming forward, with the statistics offered by the noble Baroness, Lady Chakrabarti, and it is taking too long for relatively few prosecutions to succeed following those allegations.

The Government are committed to a review of the current delays. I support that review as it will look into the concerns about the prosecution process, and I believe that it is due to complete in the spring of next year. It seems to me that there are three principal problems, intrinsically linked, that the review can consider. The first, which has already been mentioned, has to do with digital evidence. The second has to do with resources—both are affecting the Crown Prosecution Service and the Police Service. The third, which is directly affecting the Crown Prosecution Service, is how will a jury respond to the evidence with which it might be presented.

In terms of digital evidence, concern has been expressed —we have heard it again today—about the requirement for victims of rape and other sexual attacks to sign a consent form allowing access to their digital media. I share that concern, which I have mentioned here before. My concern is first from a position of principle. Traditionally, sadly, the courts were expected to pry into the sexual history of victims—the noble Lord, Lord Carlile, mentioned this—to determine whether the present charge is more likely to be proven or not. Quite properly that approach has been vastly curtailed and will very rarely appear in a criminal trial. The critical question, of course, is whether consent is present during the charged offence, not whether previous relationships or behaviour could indicate that the allegation is unlikely to be true on this occasion.

However, many of the defence requests for digital media now deal with communication after the alleged attack, which is taken to indicate that consent was present at the time of the attack. Surely the evidence they should rely on should concern what happens at the time of the attack rather than events before or after it. However, if it is decided that this could be relevant, perhaps the CPS, the police or the defence should have to argue in court for a production order. This would put on record the reasons for the request and I hope reassure the victim at some level that this is not a trawling exercise, but one based on a well-thought-through defence that has some relevant facts to challenge.

Whether we stay with the present system or establish a new one, as the noble Baroness, Lady Newlove, touched on, there is a definite need for better communication with victims, who appear concerned that their privacy will be invaded. We can all imagine why. Whether it is well founded or not really does not matter, because any limitation on the potential for a well-considered investigation or on any victim coming forward—any obstacle at all to a victim's confidence—surely should be addressed. Communication is one good way of making sure it can be addressed, but it is clear that at the moment the police or the CPS together are not reassuring victims about the purpose of that consent form or what it will be used for.

The second issue is the sheer volume of digital evidence available. I am told that there is now a common backlog in forces of four months to examine devices for all offences, because there are of course cyberattacks, online harassment and many other offences where digital evidence is directly relevant. It has become particularly relevant in sexual offences. The reasons for the backlog are, first, the number of devices available to all individuals. We can all probably appreciate that over the past 10 years we each have had probably more than one device. It is not one person with one device. Secondly, there is the number of locations on those devices where evidence might be discovered. It might be the call-logging system. Many parts of a digital device are relevant. Finally, there is the number of social networking sites and the evidence they contain.

At the moment, the evidence retrieval process has very limited automation. It still requires people to establish patterns, recover evidence and seek intelligence from the available material. This can mean examining emails, texts, WhatsApp, Instagram, Facebook—I will not make the list any longer, but we know that people communicate in many ways now. Where we expect to find the evidence is not always where it will be discovered. The police, the CPS and the courts system have been unable to keep pace with this tide of information. It might be relevant and useful to the prosecution or, of course, the defence.

Secondly, loss of resources over the past few years has similarly affected the police and the CPS. The CPS can respond only to the materials offered by the police, as the noble Lord, Lord Carlile, mentioned. Both have lost 15% of their 2007-08 resources. My point is not just another attack on the Government for lack of resources, but simply to highlight that at the same time as the exponential rise in digital evidence sources and the number of reports of sexual offences, there has been a significant loss of resources to the police and the CPS.

The new Prime Minister, Boris Johnson, has promised another 20,000 police officers, which is to be commended. However, this will need to be driven forward. The gap in the number of officers will, in my estimation, take at least 18 to 24 months to be delivered. There is no similar promise for the Crown Prosecution Service, which I believe needs a similar injection of resources to replace the 15% it lost. Without that, even if we get more investigations, I am afraid we will get fewer outcomes for the reasons we have already discussed. Essentially, automation is the way forward. It would be a fantastic opportunity for everybody involved in the criminal justice process, but it is not here now. The resources being put into the system will not be there immediately, so we have to look immediately at the training of the police, prosecutors and the courts to ensure the system gets more efficient, quicker and more effective in the long run.

Until the previous speaker I was going to say that I thought that the Scottish system might have lessons to offer us, because the procurator fiscal gives direction in investigations, rather than the police submitting a file to ask for advice. Sometimes that can be a very good model to follow, but I am afraid, based on the evidence I heard, I cannot possibly support it any more.

If it is true that the CPS is trying to anticipate, as people are worried about, the response of a jury to the evidence it might hear, then there are two major challenges to this approach, since it is difficult for any lawyer or anyone to try to estimate how the evidence will be heard by a jury. First, the UK still does not allow research into how juries make their decisions. It is a secret, so the CPS and all of us will struggle to understand what is or is not persuasive evidence. What is it that drives our prejudices? What will make a difference in a jury room? America allows this. In fact, what happens in a jury room in America can be discussed openly in certain states. I am not arguing for openness in decision-making by juries, but clinical and academic research can make a real difference and help us to understand, particularly in sexual offence cases, what might be helpful in presenting future evidence.

As was again touched on by the noble Lord, Lord Carlile, at the time of an attack many victims are vulnerable. Some research suggests that 70% of them are vulnerable by age, mental ill-health, alcohol consumption or the effects of drugs. In fact, in many cases the very reason why they were targeted is that vulnerability. That of course affects their recollections, which can be fragmented and appear inconsistent. It is just another complexity in estimating the value of the victim's evidence before it is presented to a court. I support the noble Lord's point about judging it on its merits, but I can see equally that good lawyers are trying to make sensitive decisions about how they put victims under pressure in a court case, where, in an adversarial process, no matter how sensitive the defence or the prosecutor, the victim will feel a great deal of pressure to justify their claims. The victim's perspective is very difficult for any lawyer or police officer to try to estimate to make sure that these offences are investigated properly.

In response to the point made by the noble Baroness, Lady Newlove, about the length of time that investigations and charging decisions are taking, the changes in the bail law have had an impact. The noble Baroness, Lady Chakrabarti, said that the length of time had doubled. There is now a fixed limit on the length of bail that can be given by the police, which, broadly, is a good thing. Unfortunately, it has led to people not being given bail. The investigation carries on probably for at least as long as it would have done with bail. It is accommodating the digital evidence problem but has, I am afraid, led to a confusion for victims: people who are not on bail do not have conditions placed on them, and relatively few people are being put on bail. The impact of that should be considered in the review.

The digital evidence problem, the compounding effect of resources and the attempts by lawyers to anticipate a jury's reaction to evidence are three things which might complicate these particular cases in the ways that we have heard.

6.16 pm

Lord Marks of Henley-on-Thames (LD): My Lords, I too congratulate the noble Baroness, Lady Chakrabarti, on securing this debate, which responds to widespread and justified public concern about the failure to prosecute and convict rapists, and the delays involved.

The first focus of this question is on delays in processing rape cases. I do not believe that the serious and increasing delays are the result of CPS policy. I believe that they reflect the underfunding of the CPS and the criminal justice system generally—a point ably made by the noble Lord, Lord Hogan-Howe. Anyone who has read *The Secret Barrister* will appreciate the degree to which the system in general and the CPS in particular have been damaged to breaking point by repeated and unacceptable cuts in resources. Staff throughout the system are overworked and forced to cut corners. Morale is at an all-time low. Good, public-spirited staff are leaving in all areas and at all levels. It is therefore no wonder that inefficiencies and delays are endemic, wasting what limited resources there are. Anyone who has spoken to criminal barristers, solicitors, court staff, judges or CPS staff recognises that the

[Lord Marks of Henley-on-Thames]
depiction of the system in *The Secret Barrister* is no exaggeration. It is at least well-balanced; if anything, it is an understatement.

We know that a very high number of rapes go unreported, understandably. Yet underreporting of rape encourages perpetrators to believe that they can force victims into sex without fear of the consequences. The fall in the number of reported cases leading to prosecution makes matters worse. The brave and very public accounts of rape given by so many in the #MeToo movement have brought home to us all the prevalence of these abhorrent attitudes and the offences that go with them.

There are many reasons why victims do not report rape. Embarrassment, the prospect of the ordeal of giving evidence and being cross-examined and the fear of not being believed all play their part. Many victims fear disruption to their lives, particularly when they are in a relationship with the offender. The widely publicised failure of reports of rape to lead to convictions is another deterrent. Delay, and the prospect of victims having to put their life on hold and being forced to hang around, with the threat of a trial hanging over them for months or even years, is a major reason for victims' reluctance to report rapes which they desperately wish to put behind them. Yet there is not a word about delay in the entire CPS policy document, the *Code of Practice for Victims of Crime*, or even in the Prosecutors' Pledge. These omissions are highly significant.

Last Friday, we debated the Private Member's Bill on victim support proposed by my noble friend Lady Brinton. Her Bill calls for a legal right for victims not to be subjected to unnecessary delays. It should become law, and the Government should provide the resources to implement the pledge. Victims have been greatly encouraged by the support they received from the noble Baroness, Lady Newlove, when she was in office.

The second focus of this debate is the CPS guidance. The *Policy for Prosecuting Cases of Rape* was published in 2004, and updated just once, in 2012. Yet public attitudes to rape have been changing rapidly. Traditional but wholly unacceptable—and, bluntly, sexist—views of rape, as highlighted by the noble Baronesses, Lady Newlove and Lady Bryan, have rightly been challenged, exposed and jettisoned. I accept from the noble Lord, Lord Carlile, that, very largely, on decisions to prosecute as well as on delay, the policy is not the problem. The problem lies with its implementation, and failures there are largely attributable to the problems within the CPS that I identified in relation to delay. However, there is considerable room for updating the policy as well. Perhaps I may pick up a few discrete points where specific changes might encourage victims to report rape.

The policy still countenances continuing with a rape prosecution against the wishes of the victim, who might still be compelled to give evidence. The threat that a victim's choice can be overborne in this way is unacceptable and may inhibit reporting. In practice, I suspect that prosecutions are rarely pursued against the victim's wishes. Can the Minister tell us how often this happens?

The disclosure obligation threatens victims with embarrassment, distress and humiliation. Of course, the prosecution must comply with its duty to disclose relevant evidence to the defence. However, prosecutors and police must be sensitive about the collection and disclosure of evidence on victims' mobile phones and devices. I reach no conclusion as to whether current national police consent forms are unlawful, as was asserted by the noble Baroness, Lady Chakrabarti, but they certainly do not meet this need for sensitivity. The noble Baronesses, Lady Chakrabarti and Lady Newlove, both used the graphic phrase "digital strip-searching". It is an accurate description of victims being effectively required to hand over their mobile phones for the police to trawl through all their data, otherwise no prosecution will ensue. Police must understand that a mobile phone is part of its owner's identity, and that their invasion is very personal. Of course, mobile phone downloads may help test a defence of consent and have sometimes led to just acquittals. The rape trial of Liam Allen, a psychology student at Greenwich, collapsed last year, after a two-year delay, when the complainant's mobile phone records corroborated his defence of consent. The prosecution, however, must be selective and seek, and disclose, only material likely to be relevant. Even then, surely phones can be quickly handed back to victims.

The noble Lord, Lord Hogan-Howe, made an important suggestion on this issue: namely, that trawling through records could be limited by a requirement for the defence to obtain production orders. He also made important points about the need for resources, in view of the proliferation of digital evidence.

I turn to special measures—measures that protect victims from the unpleasantness of giving evidence, particularly that of having to face their assailants—such as giving evidence from behind a screen or from a remote location by video link. Yet the guidance and the code contain no right to special measures, only the possibility of permission for them on application by the Crown. The Bill introduced by the noble Baroness, Lady Brinton, would give children or adults who are vulnerable—as rape victims generally are—a statutory right to give evidence from a remote location or from behind a protective screen. Such a right would remove from rape victims one of the horrors of a trial. The possibility that special measures might be awarded does not fit that bill.

Finally, in sexual offence cases victims are entitled to anonymity in the media. Yet the policy document states as a fundamental principle that an accused is entitled to know the name of their accuser and that only in exceptional circumstances may a court allow witnesses not to give their name in open court. Is that right today, in cases where the victim is not known to the defendant and when, in the age of the internet, tracing people by their name is so easy? Why should the right of the victim to privacy not prevail? This is yet another area for rethinking.

Further changes are needed, but time is short. My essential point is that we need to update our procedures to remove those features that inhibit the reporting of rape, and encourage a drive to make rape prosecutions

less difficult and more humane for victims—without reducing their fairness for the accused—with the ultimate aim of reducing the incidence of this horrible crime.

6.25 pm

Baroness Gale (Lab): My Lords, I thank my noble friend Lady Chakrabarti for bringing forward this important debate, and all the Peers who have spoken, showing the wealth of experience we have around the House in this field, providing detailed explanations of the problems involved in cases of rape, and suggesting what needs to be done to improve the situation.

The Crown Prosecution Service report of 26 September 2018 said that compared to the previous year, rape case referrals to the CPS from the police had fallen by 9.1%, and there had also been a big drop—23%—in the number of rape cases brought by the CPS. A number of noble Lords have commented on how low the conviction rate is in rape cases.

In April, the National Police Chiefs' Council, the Crown Prosecution Service and the National College of Policing launched the new digital device extraction and digital processing notice to all police forces. This required rape victims to hand in their phones for full data download. A number of noble Lords have spoken about the difficulties and concerns this is bringing about. Rather than seek consent for specific digital evidence, the new policy asks complainants to confirm that they understand that their devices may be subjected to unlimited data searches. Victims are told that if they do not consent their case may not continue, and that if evidence of any other crime is found on the phone it will be investigated. The noble Baroness, Lady Newlove, spelled out quite clearly the effects of that.

Campaigners have warned police that excessive demands for victims' data are unlawful and are obstructing justice by leading to cases being dropped. This new policy was released despite many objections by campaigning groups, including Rape Crisis, the Centre for Women's Justice and the End Violence Against Women coalition.

The new Victims' Commissioner, Dame Vera Baird, noted recently that the National Police Chiefs' Council and the CPS had published this digital download consent form in April despite the strong disagreement of experienced rape support organisations, police and crime commissioners, and my predecessor. The instructions attached to it make it clear that if there is no consent to—as a minimum—the extraction of all data, except deleted material, the case may not proceed. Dame Vera said that this was wholly disproportionate. Why are the organisations that are complaining about this not listened to? When someone with the status of Dame Vera Baird makes remarks like this, with all her experience, surely the Government—and all those concerned—should listen.

The *Guardian* was mentioned earlier in the debate, and it has published quite a lot about these recent cases. One article showed that extremely intrusive requests for permission to access all electronic devices and personal records, including health, social services and school records, are routinely made by some police forces to those who report rape even before they begin the investigation. Does the Minister agree that this cannot be right? Women's organisations are concerned that knowledge of such a level of intrusion and scrutiny induces profound anxiety for many rape victims who are thinking about reporting, and they could be put off because of it.

While preparing for this debate, I listened to a podcast about Rebecca—which is not her real name. She was raped at knifepoint and held prisoner for two days by her boyfriend, a man who was known by the police to be violent. Despite the evidence of violence against Rebecca, the CPS dropped the case, saying that WhatsApp messages that she had sent to placate her attacker could be misinterpreted by the jury. In another case, Gina—also not her real name—was raped repeatedly by her husband, but the case was dropped again because the CPS felt that the jury might not understand the dynamics of coercive and controlling relationships. That certainly does not encourage victims of rape to come forward.

The new national consent forms authorising detectives to search texts, images and call data are proving controversial. Indeed, a campaign to challenge the controversial "digital processing notices" was launched today in Parliament by 10 campaigning organisations. They allege that such notices are highly likely to infringe victims' data protection and privacy rights and cause delays to investigations, as police and prosecutors have warned that, in some cases, if victims do not allow the contents of their phone to be downloaded, they may not be able to pursue an investigation.

The director of Big Brother Watch said:

"These digital strip searches"—

that term has been used several times in this debate, because I think that is what it feels like—

"are a gross invasion of victims' privacy and an obstruction of justice. Our phones contain emails, social media accounts, app data, photos, browsing history and so much more. These phone downloads can even exceed the information gathered from a police property raid".

Dame Vera Baird said:

"Unless they sign the entire contents of their mobile phone over to police search, rape complainants risk no further action on their case. These are likely to be traumatised people who have gone to the police for help."

What are the Minister's views are on such an invasion of privacy?

Harriet Wistrich, the director of the Centre for Women's Justice, has said that her organisation is,

"preparing a legal action on the basis these consent forms are unlawful as they discriminate against women—who are the … majority of rape victims—as well as a violation of the right to privacy, and of data protection principles".

Although this has been a really good debate that has highlighted some very worrying problems, the justice system should be there to support victims. This new measure of using digital devices to obtain evidence brings great worries to victims. All support and encouragement should be for victims who have had the courage to come forward and report the crime. They should have every right to object to the use of their personal data where it is not relevant to the case and not be told that, if they do not do so, it may not be possible to proceed with their case.

[Baroness Gale]

Much has been done in recent years to encourage victims of rape to come forward to receive justice and to ensure that the perpetrator is brought to justice. I hope the Minister will be able to reassure us that he will look at this matter, bearing in mind all the comments that have been made. Something must be wrong if so many have raised all the difficulties. I ask the Minister to look at this matter again and I look forward to hearing what he has to say.

6.34 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I thank the noble Baroness, Lady Chakrabarti, for securing this debate. I join other noble Lords in expressing my thanks to the noble Baroness, Lady Newlove, and congratulate her on all the work she has done during the past seven years as the Victims' Commissioner.

Clearly, rape and sexual violence are devastating crimes which have a significant and profound impact on complainants. It is clearly of the utmost importance that such crimes are dealt with robustly. The CPS has undertaken extensive work over the past decade to ensure that specialist prosecutors are fully equipped to deal with the particular complexities of rape cases. It is recognised that these are extremely serious cases that have to be approached as robustly as possible.

It is true that sexual offences continue to take longer to progress through the criminal justice system than other criminal cases. Clearly, that can be highly distressing for complainants and, indeed, for those accused in such horrific cases. Cases involving sexual offences, especially rape, are some of the most challenging and complex that the CPS has to deal with. They involve very little corroborative evidence in comparison with other cases, and often result in prosecutors having to consider one person's word against another's in trying to balance the strength of a case. Unfortunately, as a number of inquiries are needed to ensure that a case is thoroughly investigated, it means that they can take longer than other criminal cases.

A number of factors can contribute to the time it takes for a charging decision to be made. For example, the CPS increasingly gives early advice to police about reasonable lines of inquiry needed to build a case. This means that prosecutors may be engaged earlier in the process than they would have been previously, often before the police investigation is complete. That means that it may take longer from the point of initial referral for a charging decision to be made, as police investigations will often be ongoing after cases have already been sent to the CPS.

However, early investigative advice is part of the important collaborative work between investigators and prosecutors to ensure that a case is robust before it progresses to court and that issues do not arise late in the process. The noble Lord, Lord Hogan-Howe, alluded to the position of the procurator fiscal in Scotland and the system there. It may be that that has something to commend it. Wider reference was made to the system of criminal prosecution in Scotland: the issues of corroboration and the not proven verdict. These being devolved issues for the Scottish Government, I would not wish to venture an opinion on them from the Dispatch Box. As has been observed, they have been the subject of a recent report and will be subject to consideration in future.

There has been huge growth in the volume of digital evidence, particularly in rape cases. That is a complicating factor in the gathering and analysis of evidence in all cases, including those of rape. As part of ongoing work under the national disclosure improvement plan, the CPS continues to work closely with the police to improve the processing of digital material. On 10 June, my honourable friend the Solicitor-General and my right honourable friend the Minister for Policing co-chaired a tech summit on this issue to explore how technological innovations could be used to support and increase efficiency when handling these large quantities of data.

The noble Baroness, Lady Chakrabarti, raised the matter of CPS guidance on pre-trial therapy. I assure noble Lords that the CPS is clear that complainants and witnesses should not be discouraged or prevented from having access to therapy and counselling before or during the trial process. The guidance is reviewed regularly, and the CPS is working with the police, National Health Service and other voluntary sector providers to develop revised operational practice guidance on pre-trial therapy. The renewed guidance will enable all complainants to receive the therapy they require in a timely fashion, both to assist their recovery and to assist them in giving evidence to the best of their ability, having regard to the trauma they may have suffered in the course of the crimes in question. Consultation on the new draft guidance began last summer and has gone through more than 20 iterations. A final consultation with stakeholders on the guidance is now under way, and it is intended that the renewed guidance will be published later this summer. All CPS guidance is regularly reviewed and refreshed, to ensure that it supports prosecutors robustly in making charging decisions and that the tests set out in the Code for Crown Prosecutors are correctly applied.

Specific reference was made to the merits-based approach. The noble Lord, Lord Carlile of Berriew, gave a detailed analysis of the merits-based aspect of the approach in this matter. His observations and analysis closely followed those set out by my right honourable friend the Attorney-General in a letter of 3 July 2019 to Wera Hobhouse and other Members of the other place who had raised the whole question of prosecution in rape cases and queried the merits-based approach. Specific reference to that approach was removed from guidance for prosecutors, following an inspection by Her Majesty's Crown Prosecution Service Inspectorate in 2016. This made clear that including separate reference to the merits-based approach only in the legal guidance on rape had caused confusion for some prosecutors and led to incorrect application of the code test. The code itself has never included specific reference to the merits-based approach because it is an integral part of the evidential test that is followed. The changes that have been made to guidance for prosecutors do not reflect an underlying change to policy, and the code that prosecutors follow when making a charging decision has not changed.

I assure noble Lords that the specialist prosecutors who work on these cases still have access to extensive guidance to assist them in making charging decisions, including on the need to avoid the myths and stereotyping which occur in this kind of case. That is particularly important because, at the end of the day, Crown prosecutors have to take a view on the evidence before them, putting to one side any idea that a jury could be swayed by the myths and stereotypes that in the past have so often been taken into account when looking at charging or proceeding to trial in cases of this kind. I emphasise that there has been no change in policy, and changes made to the guidance do not alter the code that is relied upon by Crown prosecutors.

Concerns have been aired in this House, and by the media and third parties, about the digital consent forms that were introduced in February. Some commentators have stated that these forms subject complainants to a "digital strip search"; that term has been repeated in this House. This language is extremely unhelpful. It is important that concerns should be heard, but inflammatory and provocative terms such as this will not help to improve public confidence in the reporting of these horrendous crimes. I urge noble Lords, the media and third parties to consider carefully before they resort to such inflammatory language. This is a complex area, and a sensitive balance has to be struck to support complainants and their right to privacy, while allowing the police to pursue all reasonable lines of inquiry to ensure that the defendant can receive a fair trial. The noble Lord, Lord Marks, referred to the case of Liam Allan, where the prosecution ultimately collapsed because of the disclosure of some digital material by the prosecution to the defence. The noble Baroness, Lady Gale, touched upon a conundrum. She said that data should be available only when it is relevant, but it should never be relevant where it is not relevant to the case. The question is how we determine whether the digital material is or is not relevant to the case, unless we examine it. That is the conundrum often faced by those dealing with matters in this complex area.

I reiterate a point made by the now Director of Public Prosecutions, Max Hill, who made it clear following his appointment in November 2018 that mobile telephones should not be examined as a matter of course and that only reasonable lines of inquiry should be followed. That approach has been endorsed by the Court of Appeal in a case where the CPS successfully appealed a Crown Court decision to stop a case due to a complainant's telephone not having been downloaded. The CPS and the DPP are supporting the view that such material should be accessed only where it can be established that it would be relevant to the complaint in question.

I assure the House that requesting access to a complainant's phone only in cases where it is relevant remains the position. The forms that have been introduced simply apply a consistent approach across all 43 police forces, to be employed where it is reasonable to make a line of inquiry that involves an appropriate examination of a complainant's phone. However, it is of course important that we establish consistency and that there be a clear understanding as to the scope of the requests for digital data.

Lord Marks of Henley-on-Thames: I am sorry to interrupt the noble and learned Lord, but the problem that most of us have been concerned with on these consent forms is, first, the blanket nature of their use—the noble and learned Lord said something to respond to that—and, secondly, the implied threat that, if the consent form is not signed, no prosecution can proceed. That aspect of it is particularly worrying, and it is a matter that has been aired in the media quite heavily.

Lord Keen of Elie: As far as I am concerned, neither the DPP nor the CPS would endorse the implied threat that, if there was a reason for not signing a consent form for the disclosure of digital material, they would simply refuse to contemplate a charge on a case such as this, or indeed in any other case. I believe that the problem stems from the use of language, and that such terms as "digital strip search" merely seek to underline how it is possible for parties to misunderstand the scope of the inquiry that is being carried out here. What has to be emphasised is the need to secure justice for the complainant and for the accused.

Baroness Chakrabarti: On that point raised by the noble Lord, Lord Marks, could the Minister tell the House what the legal foundation for this form is? Does it have foundation in any statute? I think we can all agree that it at least to some extent creates an interference with privacy rights; if it does so, where is the foundation that makes it in accordance with law? If it is consent, and therefore not based on any statutory foundation, is that consent real if complainants fear that their case will not be taken forward?

Lord Keen of Elie: In so far as I follow what the noble Baroness is saying, it requires first of all a balance between rights that arise under the European Convention on Human Rights—the right under Article 6 to a fair trial and the right under Article 8 to privacy—and the need to ensure that any intrusion into these matters is in the public interest and can be properly justified. As to the specific foundation for the consent form, in carrying through a prosecution it is necessary for reasonable and appropriate inquiries to be carried out in the public interest. A consent form is therefore produced for the complainant to consider signing. The situation is this: the complainant may refuse to sign that consent form, but in those circumstances that might well intrude upon the ability of the police properly to investigate a particular complaint.

Baroness Newlove: I appreciate all this dialogue, and I know this is a timed debate, but in all of this we are losing the victim as a person with sound mind who has been told to sign this form. That is why I mentioned in my speech that this is about humanity; I am afraid that they are told that if they do not sign this consent form there will be no prosecution. I would really like the Minister to look at this and understand the victim's journey, because we are losing sight of what they are going through in the first place to come forward and report this crime.

Lord Keen of Elie: I am not at all aware of a policy in place such that, if a complainant is presented with a consent form, they will be told, "If you do not sign it, there will be no attempt to pursue and investigate a

[Lord Keen of Elie]
complaint or crime". That is the difficulty with taking matters from the way they are sometimes reported in the media.

In view of the time limit on this debate, I will add only this. As the House is probably aware, the Attorney-General's review of the effectiveness and efficiency of disclosure in the criminal justice system was published last November. Further to the review's recommendations, work is ongoing to update the Attorney-General's guidelines on disclosure. The intent is to ensure that the guidance to investigators and prosecutors carrying out disclosure obligations is both clear and up to date. Changes to the Criminal Procedure and Investigations Act code of practice are also being considered so that we can bring all of this together later this year.

In these circumstances, I seek to reassure the House that cross-government work is ongoing to review all aspects of the criminal justice system's response to rape cases, including CPS processes and decision-making, and the matter of disclosure.

Freedom of Information Act 2000

Question for Short Debate

6.52 pm

Asked by ***Lord McNally***

To ask Her Majesty's Government what plans they have to extend the Freedom of Information Act 2000 to contractors and other organisations exercising public functions.

Lord McNally (LD): My Lords, the last days of a dying Administration might seem to be a strange time to be looking for a clear statement from government about plans to reform and update the FoI Act 2000. I have enormous respect for the Minister and have long advocated that the House publish a collection of his bon mots from the Dispatch Box, which leave the House amused but none the wiser—the greatest of all Dispatch Box skills. In the past few years, we have witnessed not so much open government as open warfare from this dysfunctional Administration. I am not expecting any new announcements this evening. I consider this debate to be simply a "billet doux" to the incoming Administration, letting them know that if there is no legislation announced for the next Session, I will seek to introduce a Private Member's Bill to update and improve the FoI Act 2000.

The initial aim of the Act was to increase openness and transparency, increase accountability, improve decision-making, increase public understanding of the process of decision-making in government, increase participation in that decision-making and increase public trust in government. It would be a brave man or woman who, as we approach the 20th anniversary of the Act coming into force, would claim that all those objectives have been achieved. However, as I believe my noble friends Lord Shipley and Lord Scriven will illustrate, the need for a robust and effective FoI Act is more necessary and the need for its expansion and update more urgent than ever.

The reasons are twofold. First, we live in an entirely different world of information since the Act became law in 2000. We now live in the age of the internet, the data revolution, the fourth industrial revolution and the forward march of artificial intelligence. These revolutions through which we are living have provided more access to information and opinion than at any time in human history, but they have also thrown up profound concerns about personal privacy and the capacity of government and other organisations to amass information about the individual far beyond anything dreamt up in George Orwell's *Nineteen Eighty-Four* dystopia.

Secondly, over the past 20 years under successive Governments, there has been a steady move of responsibility for a wide range of services and activities out of the public sector to private sector and NGO delivery. This has blunted the effect of the FoI, and important services sectors have moved beyond its reach.

At this moment of double jeopardy, we are fortunate in having an Information Commissioner who has shown admirable leadership and strength in response to those challenges. In January this year, Elizabeth Denham exercised her right to communicate directly to Parliament to send what I consider a landmark paper entitled *Outsourcing Oversight? The Case for Reforming Access to Information Law*. The message she sent was clear and unequivocal:

> "In the modern age, public services are delivered in many ways by many organisations. Yet not all of these organisations are subject to access to information laws. Maintaining accountable and transparent services is a challenge because the current regime does not always extend beyond public authorities and, when it does, it is complicated. The laws are no longer fit for purpose".

That was her message to Parliament:

> "The laws are no longer fit for purpose".

That submission of more than 150 pages, submitted to Parliament in January, produced a response from Chloe Smith MP, then Parliamentary Secretary to the Cabinet Office, of two and a half pages, which even the kindest would say would say was underwhelming in its enthusiasm for reform. Let me give a few quotes to let the House have a flavour of that response:

> "A number of those recommendations would require legislation and so will require careful and detailed consideration by the Government".

Students of Whitehall vocabulary will know that "careful and detailed consideration by government" is the antithesis of Churchill's "action this day" dictum.

I quote again from Chloe Smith's response:

> "we are concerned about a disproportionate burden, because we do not want to discourage smaller organisations from serving the public"—

an admirable concern which excuses lack of action in the guise of protecting charities and SMEs. However, in a letter to me, Chris Walker, public affairs manager of the National Council for Voluntary Organisations, writes:

> "NCVO would like to see greater transparency within government contracting, and as such, in principle, we would welcome the extension of FOI".

It is true that he mentions a number of measures to protect charities from being overburdened, which can then be taken into account in drafting legislation. I found the NCVO letter helpful and constructive. It convinces me that the time is right for the fresh legislation called for by the Information Commissioner.

In her insipid letter to the information Commissioner of 24 April, Chloe Smith said that the Government will,

"focus on the implementation of the policies already in place".

That is despite the commissioner's clear message to Parliament that the laws are no longer fit for purpose.

The ICO makes a number of recommendations about reform of the law. It includes making greater use of existing powers under the Freedom of Information Act to designate a greater number of other organisations exercising functions of a public nature and amending the law to give a clear legislative steer, with the clear aim of enabling greater access and transparency.

As the ICO's paper points out, full transparency matters, because the Government spend £284 billion a year—almost a third of their total expenditure—on external suppliers. It also matters because recent events, such as at Grenfell Tower in 2017, have raised serious concern about the public's access to information about the delivery of social housing—a matter which I know will be developed by my noble friend Lord Shipley. The collapse of Carillion in 2018 highlighted the limits of information available, or not available, about outsourced public services and gave a stark warning to those who claim that FoI concerns can be better met by conditions written into contracts than clear rules written into legislation.

The ICO approach is supported by the News Media Association, which represents the national, regional and local media industries. In a brief sent for this debate, the association says:

"We welcome the debate and hope that the Government will bring forward measures for extension of the Freedom of Information Act 2000 to contractors performing public functions".

The great gift of 19th-century liberalism to the present day is a Civil Service politically neutral and chosen and promoted on merit—the Northcote-Trevelyan reforms. It is ironic that, 20 years after it was claimed that FoI would undermine the tradition of being willing to speak truth to power, the real threat to these principles is not FoI but politicians who demand only unquestioning obedience to their ideological fixations. In these circumstances, freedom of information becomes a shield for, not a threat to, the integrity of our public services and those who work to serve us and is a bulwark for us all against the abuse of power.

7.01 pm

Lord Scriven (LD): My Lords, I welcome this timely debate from my noble friend Lord McNally. It is timely for those of us who live in Yorkshire after the recent revelations that have come out from Welcome to Yorkshire, the tourist board, about spending, expenses and a toxic culture that has been going on for many years. Because this is now a private company that predominantly carries out a public function, it is not subject to freedom of information and the taxpayers of Yorkshire have not been able to get to the unfolding issues as fast as possible.

Until 2009 this organisation was a public body, the Yorkshire Tourist Board. In 2009 the new chief executive, Gary Verity, decided to make it a private limited company, and therefore completely and totally out of scope of freedom of information and all other public sector rules, driven by private company legislation and subject to its shareholders. In the last 10 years, this body has had over £10 million of public money. It basically gets half its funding from the public sector and the rest from small to medium-sized businesses. This is big business. Over the last four years, it has got £596,000 from East Riding council, £438,000 from North Yorkshire County Council, over £800,000 from Leeds City Council, £250,000 from my own city of Sheffield and £193,000 from Barnsley. In reality, it does not get this money from the council but from the council tax payers, who have a right to know who is spending their money and how.

Due to the lack of freedom of information, no one really knows what has been going on under the auspices of Welcome to Yorkshire. Many have said it has been a successful organisation in bringing the Tour de France and the Tour de Yorkshire there. However, the ends have to justify the means—and the means are quite breathtaking. There have been major excesses and scandals that nobody has been able to get to for years and years, starting back in 2012, because every time we asked for information we were told it was a private company and nothing to do with us.

These excesses include luxury spending on helicopters; hotels at £600 a night at the Connaught; lavish meals during which the chief executive, Gary Verity, and the former chair, Ron McMillan, played games involving who could get the most expensive wine on expenses; chauffeur-driven cars to take people a few miles; shooting expeditions—seen as networking—at £2,500 a day; and expeditions around the country. Only yesterday it came to my attention via a former employee that there is a possibility that a flat in Leeds, which was either purchased or had its mortgage or rent payments paid, was given to Gary Verity for him to stay there, and that that flat is now rented out and the former chief executive claimed hotel expenses while in Leeds.

This is why freedom of information is important. Only yesterday I asked the interim chair, Keith Stewart, to clarify this and got an email refusing to do so, saying that it had given me the courtesy of answering one question about expenses yesterday and was going to answer no more. Serious allegations are made about the misuse of public money, and nobody can get to them. That board has closed ranks and is not giving taxpayers the views they need.

I want to praise a number of people. A few staff have put their heads above the parapet: Annie Drew, a former PA to Gary Verity; Helen Long, also a former PA; and Dee Marshall, a former executive director. I also praise some hard-working journalists: David Collins of the *Sunday Times*, who exposed some of this stuff; Sheron Boyle of Sheron Boyle Media and ITV; David Rhodes of the BBC; and Chris Burn of the *Yorkshire Post*. This has been going on for years. If we had had freedom of information, we would have been able to get this information many years ago, some of the excesses probably would not have happened, some of the people who carried out these excesses would have been sacked or got rid of earlier, and there would have been proper procedures, policies, spending and procurement in this organisation.

We are told this first came to light in 2012, three years after this organisation became a private limited company, when a previous chair, Clare Morrow, was

[LORD SCRIVEN]
alerted to a bullying issue by a former PA to Gary Verity. Despite serious allegations being made, this was brushed under the carpet, a £10,000 payout was made and an NDA signed. There was a culture of bullying and toxicity. In the last 11 years, we now find out, Gary Verity has had 20 personal assistants. We do not know how much has been paid out on the NDAs because we are not allowed to get that information. When we ask for it under freedom of information, we are told it is not subject to FoI because, even though the organisation has spent over £10 million of public money, it is not a public body.

Lord Lee of Trafford (LD): My noble friend has listed a number of county councils, local authorities and cities which have given substantial amounts of money to this body. Did they not ask any questions at any stage or follow where their money went?

Lord Scriven: My Lords, that is a good question. Some did and some have now suspended payments to those organisations. This organisation was run in a private and closed way and even though some people asked, they did not get answers. There are questions to be asked of council leaders and chief executives about how they followed their taxpayers' money.

As I say, there are serious allegations about helicopters being procured from friends of the former chief executive to get him from a double booking at a football match to a private family dinner back in Yorkshire. Again, we are not able to get to the bottom of that. Two reports have recently been brought out, one by BDO, which states that this organisation has claimed nearly £1 million in taxpayer-funded expenses. It is not able to work out whether the majority are appropriate or proportionate to personal use versus business use, because there are no policies, no paperwork and no proper procedures. If this organisation had been subject to freedom of information, that would have been highlighted many years ago and these measures would have been put in place. In answer to my noble friend, councils and others would therefore have been able to hold Welcome to Yorkshire to account much more easily.

This organisation has clearly been excessive and misspent public funds. There were no policies or procedures and people were being paid to sign NDAs. There was a culture of toxicity in the organisation and yet no one was able to get at it, despite the fact that £10 million of public money was spent.

I know the Minister cannot put right the wrongs and I know that most noble Lords will be shocked at the excesses I have described. But we in this House and this Parliament have the power, through legislation, to impose the rules on openness and transparency that public bodies have to follow on to private organisations that carry out predominantly public functions, and on to private outsourced bodies that carry out duties on behalf of public bodies.

This might be an excessive case but there is no doubt that it is indeed a case—and that is why freedom of information is needed. If we had had freedom of information, the taxpayers of Yorkshire would probably have been better served by this organisation, which would have been able to get to the root of some of these problems. Those who worked within that organisation would have been aware that their actions, spending and way of working were subject to public scrutiny, as would the scandal in Yorkshire that has now unfolded.

7.11 pm

Lord Shipley (LD): My Lords, I first remind the House of my interests in the register in connection with the Local Government Association. I thank my noble friend Lord McNally for tabling this Question for Short Debate and, like my noble friend Lord Scriven, I give him my full support.

The Freedom of Information Act 2000 has proved itself by adding a direct means for scrutiny of public authorities by the general public and not just by elected politicians. The Burns report of 2016 found that transparency and openness had been enhanced since 2000 and recommended that it should be further enhanced and not restricted.

Last month marked the second anniversary of the Grenfell fire. Grenfell United, in its parliamentary briefing for that anniversary, made seven recommendations, one of which was about freedom of information. It called for,

"an extension of the Freedom of Information Act to cover TMOs"—

tenant management organisations—

"and housing associations, to give tenants the right to see critical information about their homes".

It seems a basic right for a tenant to have that information and it puzzles me that tenants can be excluded from information that is directly relevant to them.

The context is the failure of successive Governments since 2000 to strengthen the Act. It has limitations and it has fallen behind many other countries. As we have heard, the Information Commissioner has estimated that a third of government spending is used to procure public services. The problem is that more and more services have been provided by contractors who are not accountable under FoI, as the public might expect them to be. The test is whether the contract between the contractor and the public authority gives the authority the power to get the information it wants under the contract: that is, does the contractor hold the information for the purposes of the public authority or for its own purposes? On too many occasions, unfortunately, information that the public might feel they have a right to know is being denied to them. For example, it appears that fire safety defects can be excluded. This cannot be right. Contractors should not be less accountable than the public bodies that used to provide the same services directly.

It is not just PFI or other contractors; it is tenant management organisations as well. In relation to Grenfell, the Kensington and Chelsea Tenant Management Organisation had refused FoI requests on the grounds that it was not a public authority. I find that amazing, but it is true. But worse, the Information Commissioner upheld a refusal in 2012. However, after that appeal process, the Kensington and Chelsea Tenant Management Organisation did respond to some tenant requests for information—but in July 2017 it then refused an FoI request for a report on the emergency lighting system

in Grenfell Tower that had been written in 2005. Surely it cannot be right to refuse tenants information of this kind.

The Government need to amend the law. Information of important benefit to the general public should not be withheld from them when it would be available if the public authority had not contracted out the work. The Burns report of 2016 concluded that this was the right approach. The Committee on Standards in Public Life has recently concluded likewise and the Information Commissioner, as we have heard from my noble friend Lord McNally, has called for similar changes. So, the question must be: what is the hold-up? The consequence of delay is doubt and avoidance. In the case of housing associations, it is wrong that their tenants are not able to access the same information council tenants can get.

Two years ago, the housing journal *Inside Housing* asked more than 60 housing associations for copies of their fire risk assessments. Very few responded. Councils would have had to. I understand that this difference is in the process of being addressed in Scotland. Might we do the same in England? It does not follow that housing associations will have to be redesignated as public organisations if they fall within the FoI remit. This is, as my noble friend Lord McNally said a moment ago, a different world from 2000, but it is the case now that FoI laws are no longer fit for purpose and I hope the Government will act.

7.17 pm

Lord Tunnicliffe (Lab): My Lords, I thank the noble Lord, Lord McNally, for securing this important debate. I fear that my words will very much echo his and I feel sorry for the Minister that he has so far had so little support. As we have heard, freedom of information requests are an essential safeguard in our system of government. They give the public the tools to hold the Government to account over the decisions they take and the way taxpayers' money is spent. The Freedom of Information Act 2000 covers central government departments and the executive agencies and public bodies they sponsor. They typically receive around 8,000 to 9,000 freedom of information requests every quarter. That has risen from about 7,000 per quarter in 2010. The percentage of freedom of information requests that departments refuse to comply with in full has increased from around 40% in 2010 to 55% by the end of 2018.

As well as this, the Act covers Parliament, the Armed Forces, devolved Administrations, local authorities, the NHS, schools, universities and police forces. However, since the legislation was introduced, there has been an explosion of private-sector involvement in public functions. This has been driven by this Government's ideological pursuit of privatisation and outsourcing. But companies which enter into such contracts are not subject to FOI requests and subsequently not subject to similar levels of accountability as others working in the public sector. The Information Commissioner's Office, which is tasked with the special monitoring of FOIs, said,

"The lines between public and private sector service delivery have blurred as local authorities enter joint ventures with private companies and some start to trade on for-profit and not-for-profit bases. However, this growing area of quasi-commercial activity is removed from public scrutiny offered by the FOIA".

I am particularly concerned that large companies can achieve a quasi-monopoly position and end up bidding for contracts at a lower market value when they are up for renewal. The Public Accounts Committee found that between January 2016 and July 2018 government departments had to renegotiate over £120 million worth of contracts with the private sector to ensure public service delivery would continue because they were initially contracted out too cheaply. I believe this is slowly destroying the public sector and stops smaller companies being able to enter the market. With competitors squashed, costs are forced down and inferior labour conditions are introduced. Profits subsequently rise and, instead of being reinvested in public services, they fill the pockets of those running such companies and their owners. As the Freedom of Information Act 2000 does not cover such outsourcing and private/public sector contracts, I am unable to discover to what extent this is happening.

I am losing track of the number of failures of outsourcing which have come to light in the past few years. These have thrust the question of whether private companies should provide public services into the spotlight. We all know how the catastrophic collapse of Carillion highlighted the problems with the outsourcing business model. Its collapse in January 2018 directly impacted on 30 councils and 220 schools. But the list of failures does not stop there. In May the Government were forced to announce a U-turn to reverse their 2014 part-privatisation of probation, and in April they said that they would take HMP Birmingham permanently back into public ownership from G4S after appalling violence and an inspection report last August.

A similar experience can be found at the local level. Bedfordshire County Council's contract with HBS for financial services, human resources and other services was ended early after major dissatisfaction with services. Barnet council had to pay thousands of pounds for emergency IT services after its regular provider went into administration.

I also highlight the failings of Capita and its botched recruitment contract with the Army. Recruitment is in free fall, with numbers standing at 75,880—well below the Government's target of 82,000. Can the Minister explain why the Government continue to sign new contracts with companies—for example, the recent £525 million MoD contract which will privatise large parts of its fire and rescue service to Capita—despite these companies having failed to simply do their job? To put it simply: outsourcing as it stands is a broken business model.

Following these failures, the public have rightly lost confidence in the privatisation of our public services and the carve-up of the public realm for private profit. They are keen for outsourcers to be subject to the same law as the rest of government. However, current loopholes in the Freedom of Information Act, as well as in the Human Rights Act, are hindering any efforts to do so, and the Information Commissioner, Elizabeth Denham, has called for FoI laws to be extended to all public service suppliers. This would force companies running public services to answer to the public. Does the Minister agree that introducing more accountability

[Lord Tunnicliffe]
can help restore some trust? Can the Minister confirm that the Government will follow the ICO's advice and extend FoI requests to all public service suppliers?

Last Saturday, Labour announced that we would transform the legislative framework around outsourcing contracts by making them subject to the Human Rights Act and the FoI Act. We would legislate to ensure that local authorities review all service contracts when they expire and to create a presumption that service contracts will be brought back in-house and delivered by the public sector unless certain conditions and exemptions are met. We would also introduce a new set of minimum standards in contracts where outsourcing has to continue, including a fair wage clause, trade union recognition, supporting local labour and supply chains, annual gender pay audits and time-limited contracts. Will the Government be making a similar commitment? These changes will help bring accountability and public responsibility, as well as fairer working conditions, to a failed model which has been protected by this Government for too long.

It is clear that outsourcing and contracting out public functions to the private sector cannot continue without reform. The constant failures coming from major outsourcing firms cannot be allowed to continue. It is time to give the same tools to the public to hold private companies to similar standards as government departments when carrying out important public functions. Extending FoI requests is a key part of that but, overall, we also need to move away from an ideological desire to privatise first and ask questions later. However, I believe that will come only from a change of government.

7.25 pm

Lord Young of Cookham (Con): My Lords, I begin by thanking the noble Lord, Lord McNally, for securing this debate and for the speech he made introducing it. This is a policy area in which he has great expertise, and it comes as no surprise that, in his own words, he is campaigning for further reform and updating of the original FoI Act. I am grateful to other noble Lords who have spoken, each bringing their own interests to the debate: in the case of the noble Lord, Lord Shipley, local government and housing; in the case of the noble Lord, Lord Scriven, tourism in Yorkshire; and in the case of the noble Lord, Lord Tunnicliffe, his experience of managing contracts when he was in charge of London Underground. I take note of and encouragement from what the noble Lord, Lord McNally, said at the beginning—that he has very low expectations for my response and that his speech was a bit too PBL Committee for a slot in the next Queen's Speech. He made it clear that he was not expecting any exciting announcements at the Dispatch Box and he will not be disappointed.

The FoI Act is a pillar upon which open government operates, and the Government are committed to supporting its effective operation. As the noble Lord said, it underwent post-legislative scrutiny by the Justice Select Committee in 2012, and in 2016 an independent FoI commission, which the noble Lord referred to, led by the noble Lord, Lord, Lord Burns, carried out an extensive and thorough review of the Act to consider whether it still ensured an appropriate balance between transparency on the one hand and the legitimate need for a private space for advice and discussion on the other, and also whether the costs of FoI were proportionate to its many benefits.

Overall, the commission found the Freedom of Information Act to be working well. It said:

"We do not expect that these will have a dramatic impact on the use of the Act, or on the range of information which is made available under it".

It looked at the issue of private contractors providing public services—one of the themes of our debate this evening. By then, the principle of outsourcing was well embedded in government policy. It concluded that,

"extending the Act directly to private companies … would be burdensome and unnecessary".

The Government welcomed the recent report—a landmark report, in the words of the noble Lord, Lord McNally—by the Information Commission and of course it is right that the Information Commissioner and the Government keep the workings of the Act under review because, as the noble Lord said, the environment in which we operate is changing. The Act covers more than 100,000 public authorities and has been in operation for more than 14 years, so of course we should keep it under review.

As the noble Lord, Lord McNally, said, the Information Commissioner laid a report before Parliament in January this year which examined how the Act engages with public sector contracts and information held in relation to those contracts by private companies. The Government carefully considered the report and responded to the commissioner on 24 May and placed a copy in the Libraries of both Houses. I note what the noble Lord, Lord McNally, said about his disappointment with our response. The noble Lord quoted from the letter from Chloe Smith. Perhaps I may have one quote of my own. The Minister made it clear that,

"as more public services are contracted out to the public sector, it is important that they are delivered in a transparent way, to ensure accountability to the user and to taxpayers".

After the Information Commissioner published her report, we published *The Outsourcing Playbook* in February 2019. It introduced a package of measures that will improve decision-making, quality of service and value for money when government outsources to the private sector. One commitment was to increase accountability and transparency by publishing key performance indicators for all government key contracts. Although this government initiative was started before the IC presented her report to Parliament, it reflects the commitment that she asked for of further transparency from government with regard to contractors. I hope that noble Lords will regard that, in part, as a response to the accusation that the Act is not fit for purpose.

In addition, the Cabinet Office has created a transparency and data team, which has been given the mandate to proactively publish government data. It is continually looking at how the range of information published by government can be expanded and made as useful as possible to citizens, business, the voluntary sector and government itself. The open contracting data standard was put into place in 2016 and ensures that citizens can see a clear public record of how government money is spent. We are looking for opportunities to build on this initiative.

I think that FoI is working well but it seems that it is essentially reactive. The Government are interested in complementing FoI by encouraging public authorities, where appropriate, to put more information in the public domain and therefore to be proactive.

Outsourcing was one of the themes of our debate. It remains an important component in a mixed economy of government service provision, which includes the voluntary sector. Outsourcing has been used by Governments and local authorities of all colours for decades, and systematic reviews across a number of studies between the 1970s and the 1990s show clear cost benefits of outsourcing, delivering cost savings of 20% for basic services. The Government are committed to building a healthy and diverse marketplace of companies bidding for contracts to deliver quality public services at good value for the taxpayer. As the noble Lord, Lord McNally, said, estimates are that outsourced services represent about 8% of GDP and perhaps two-fifths of public expenditure.

We remain committed to spending £1 in every £3 of that sum with small and medium-sized enterprises. Listening to the speech of the noble Lord, Lord Tunnicliffe, I am concerned that increasing the reporting burden on these small organisations, as well as some of the other measures that he mentioned at the end of his speech, risks reducing for those SMEs the attractiveness of government as a buyer and therefore might weaken the resilience of our market and reduce the value for money that government is able to deliver.

Supplier failure—again, mentioned by the noble Lord, Lord Tunnicliffe—is rare, but extending FoI to the organisations would not, I believe, help prevent it. Financial information is often commercially confidential and is therefore exempt from disclosure under the Act.

Much of the debate was about information which should be provided when a public authority enters into a contract. There is a revised FoI code of practice, which recommends that when a public authority enters into a contract, there should be agreement on what information will be held by the contractor on behalf of the public authority and that this should be indicated in an annexe or schedule to the contract. Contractors must comply with requests from a public authority for access to such information and must do so in a timely manner. For example, if a contractor holds information relating to a contract on behalf of a public authority, this information must be considered in the same way as information held by a public authority, and it is subject to the FoIA. Examples could include information that a public authority has placed in the custody of a contractor or a contract that stipulates that certain information about service delivery is held on behalf of the public authority for FoI purposes.

The noble Lord, Lord Tunnicliffe, raised a number of questions and perhaps I may write to him. He asked specifically why we were continuing to place a number of contracts with organisations in the private sector.

Housing associations—an issue raised by the noble Lord, Lord Shipley—are already required to make public a significant amount of information. They have to publish their accounts annually, including a strategic report covering issues such as the remuneration of key personnel. Of course, many housing associations have tenants on the board.

The Regulator of Social Housing, which regulates the sector, also publishes information supplied by housing associations at individual provider level, including details of their stock holdings, rent levels and evictions. The review of social housing regulation will be looking at how transparency and accountability for tenants can be further improved, including better access to landlord information. As I understand it, although this would not be a conclusive factor, housing associations are generally opposed to being included under the FoI Act.

The noble Lord mentioned Grenfell. I recognise the significant concerns in this area, particularly over information that should be available to tenants about the buildings they are living in. The review of social housing regulation, announced in the Government's social housing Green Paper last summer, will look at how transparency and accountability for tenants can be improved. I will ensure that this review takes on board the points made by the noble Lord, Lord Shipley, about the legitimate requirements of tenants. I was struck by the parallels he drew between the rights of local authority tenants as contrasted with the rights of housing association tenants.

I turn to an issue raised by the noble Lord, Lord Scriven. I thought that his noble friend Lord Lee of Trafford raised a pertinent question about what those who are funding the body were doing. It was not clear to me how the public body—which I understand it was, namely the Yorkshire tourist board—became a private body, and who was party to that decision. Of course, I understand his concern about allegations of fraud. My understanding is that, following the allegations he referred to, Welcome to Yorkshire appointed two independent professional services businesses—the accountants BDO and the external lawyers Clarion, which the noble Lord referred to in his speech—to undertake separate investigations following the departure of the CEO, Sir Gary Verity. They investigated and recently reported on the culture, governance, procedures and management of the organisation. I am sure that the noble Lord welcomed that publication, along with Welcome to Yorkshire's commitment to implement the recommendations in the report. I understand that more than £40,000 of expense claims have been repaid by Sir Gary. However, despite a number of exchanges, it is not the case at the moment that FoI would cover organisations of the specific nature of the current body.

There are a number of other issues that I will need to write to noble Lords about. I will conclude by saying that the Government are committed to the principles of transparency and openness across the public sector. We are proud of our global reputation as a leader on transparency. The Justice Select Committee said that freedom of information was a significant enhancement to our democracy when it carried out post-legislative scrutiny of the FoI Act. I

[Lord Young of Cookham]
would go further. Freedom of information is an intrinsic part of our democracy, extending to cover more than 100,000 public bodies and enabling the public to find out what has been done in their name. Those words are probably the last from Prime Minister May's Administration from this Dispatch Box in your Lordships' House.

Sentencing (Pre-consolidation Amendments) Bill [HL]

Reported from Committee

The Bill was reported from the Special Public Bill Committee with amendments. The Bill, as amended, was ordered to be printed.

House adjourned at 7.37 pm.

Volume 799
No. 337

Tuesday
23 July 2019

CONTENTS

Tuesday 23 July 2019