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PARLIAMENTARY DEBATES
(HANSARD)

# HOUSE OF LORDS
## OFFICIAL REPORT

*ORDER OF BUSINESS*

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In Hybrid sittings, [V] after a Member's name indicates that they contributed by video call.

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

| Abbreviation | Party/Group |
|---|---|
| CB | Cross Bench |
| Con | Conservative |
| DUP | Democratic Unionist Party |
| GP | Green Party |
| Ind Lab | Independent Labour |
| Ind 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

*Thursday 3 December 2020*

*The House met in a hybrid proceeding.*

*Noon*

*Prayers—read by the Lord Bishop of Carlisle.*

## Arrangement of Business

*Announcement*

*12.08 pm*

**The Deputy Speaker (Lord Brougham and Vaux) (Con):** My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, others are participating remotely, but all Members will be treated equally. I ask all Members to respect social distancing. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Oral Questions will now commence. Please can those asking supplementary questions keep them no longer than 30 seconds and confined to two points. I ask that Ministers' answers are also brief.

## National Trust Acts

*Question*

*12.09 pm*

*Asked by* ***Lord Lexden***

To ask Her Majesty's Government what plans they have to review the National Trust Acts.

**The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con):** My Lords, the National Trust is independent of the Government. Its activities are overseen by its board, the Charity Commission is the regulator and the scope of its work is set out in legislation. While it would be possible for the Government to review the National Trust Acts, we do not believe that it would be a proportionate approach at this time. In the first instance, the trust should be accountable for its activities to the Charity Commission as the trust's regulator.

**Lord Lexden (Con):** My Lords, the trust's director of volunteering recently declared:

"At the National Trust we have a duty to play a part in creating a fairer, more equitable society".

Is that compatible with the statutes under which the trust operates? Was it not an act of folly for the trust to rush out a tendentious report on slavery and colonialism —insulting the memory of Sir Winston Churchill in the process—in order to demonstrate its good will to a movement that is interested not in securing a deeper, more accurate understanding of colonialism and the past, but only in advancing an extremist political agenda in the present? Unless it changes course, is there not a danger that this important institution, admired by so many for so long, will forfeit the nation's trust?

**Baroness Barran (Con):** I agree with my noble friend that the National Trust plays a unique part in our society, with over 5.5 million members. Our position on all charities, including the National Trust, is that they must pursue their primary charitable purpose, which, in the case of the National Trust, is to protect and preserve our heritage for the nation.

**Lord Robathan (Con):** It is to that last point that I draw my noble friend's attention. This is a much-loved institution, of which many of my close family and my parents have been members—I confess that I have not, but I have visited endless historic houses and walked innumerable miles over the coastland and moorland that the trust looks after so well. Indeed, I contributed to Project Neptune half a century ago. I applaud Hilary McGrady, who opened up Divis Mountain, where I watched birds many years ago, looking down on the drab housing estates of west Belfast, but something has gone badly wrong. Why are curators of real expertise being sacked? Yet we now have a curator of repurposing historic houses; it is an infantilisation of going round these houses. Will the Minister let us have a look at the Acts, which have allowed the director-general to be paid nearly £200,000 a year while pursuing an agenda that seems out of tune with the fundamental purpose?

**Baroness Barran (Con):** As I said in my opening remarks, the National Trust is an independent charity, and rightly so. It is therefore the responsibility of its trustees and council to oversee some of the points that my noble friend raised.

**The Deputy Speaker (Lord Brougham and Vaux) (Con):** I remind noble Lords to keep their questions brief.

**Lord Berkeley of Knighton (CB) [V]:** My Lords, does the Minister agree that, in order to approach equality—it is not just Black Lives Matter that is of importance—we should keep some of the small venues open; after all, we are not just a nation of mansions. I take the Minister's initial point, but I know that the finances have meant that some of these smaller places are threatened. On Black Lives Matter, I feel completely that it is a question of presenting the facts and letting visitors decide for themselves. There should be no opinion or political aspect to that whatever.

**Baroness Barran (Con):** On the noble Lord's last point, the Government agree. Our position has been to retain and explain houses, statues and other artefacts that represent our history. If I understood the earlier part of his question correctly, in relation to smaller properties, my understanding is that the National Trust currently has no plans to permanently close any properties or to reduce its commitment to the houses within its care.

**Baroness Young of Old Scone (Lab) [V]:** Will the Minister acknowledge that the report commissioned by the National Trust that has been referred to simply sought to audit its collections in a non-judgmental way, so that it can better provide contextual information to those viewing the collections? Will she confirm that

[Baroness Young of Old Scone]
she is aware that the National Trust has lost in excess of £200 million in income this year as a result of Covid? The National Trust is the backbone of the tourism industry, which will be important in national post-Covid recovery. What will the Government do to support heritage charities, large and small, to do that important job as part of the national recovery?

**Baroness Barran (Con):** That may well have been the intention: I do not doubt for a second that the National Trust was intending to audit its houses, but our view is that the way in which it was done was unfortunate. While the trust may not have intended to cause offence, the feedback from members and parliamentarians suggests that it did.

**Baroness Bakewell of Hardington Mandeville (LD) [V]:** My Lords, the National Trust has fulfilled its charitable objectives over many decades. The country has benefited both from the preservation of cultural heritage and from the nature and beauty of its open spaces. Two of the greatest challenges of our age are tackling climate change and dementia. Will the Minister confirm that the National Trust agreement with the Alzheimer's Society to make its places dementia-friendly and its zero-emissions target of 2030 are great steps forward?

**Baroness Barran (Con):** I was not aware of the specific initiative with the Alzheimer's Society to which the noble Baroness refers, but I am happy to share her positive remarks in relation to both things.

**Baroness Hayter of Kentish Town (Lab):** I am an enthusiastic member of the National Trust and I was delighted that it spent £7 million at Chartwell on the legacy of Churchill. Surely the Minister will agree that a mature debate on our nation's history that recognises the complex backgrounds of our lands, our country houses and our statues can only be good for understanding the real history of the whole of our country.

**Baroness Barran (Con):** Those views were set out clearly by my right honourable friend the Secretary of State when he wrote to all arm's-length bodies earlier this year and talked about history being "ridden with moral complexity" and the need to understand that. The question in this case is about the primary charitable purpose that the National Trust is pursuing.

**Lord Moylan (Con):** My Lords, the National Trust has become something of a national monopoly, at least in the country house market, largely due to the very large endowment of properties to it by the state over the years in lieu of tax. Will my noble friend agree to undertake an assessment of the benefits that might accrue from splitting it into two or more organisations, with a view to encouraging competition and increasing the variety of visitor experience, which I think I can fairly say has become rather samey?

**Baroness Barran (Con):** I am sorry to disappoint my noble friend, but we have no plans currently to do such a review. The National Trust conducts its own governance review every 10 years and any external review of its activities should be left to the Charity Commission.

**Lord Bird (CB):** I shall take a different angle on the National Trust. I have been approached by people who live in National Trust properties and I know that there are all sorts of plans to modernise the relationships between staff and the tied cottages. In places, these relationships are medieval—very much like the buildings—Victorian or Edwardian. I would like to see a change to the Acts so that we can make sure that the trust is carrying out its social duty for social justice and we do not allow a situation where the tenants are living in the past while the big landlord, the National Trust, is riding high on the hog.

**Baroness Barran (Con):** The noble Lord makes an interesting point. I hope that the trustees of the National Trust will read *Hansard* and pick up on his remarks.

**The Deputy Speaker (Lord Brougham and Vaux) (Con):** My Lords, I regret that the time allowed for this Question has now elapsed.

## National Planning Policy Statements: Climate Change

*Question*

*12.20 pm*

*Asked by* ***Lord Whitty***

To ask Her Majesty's Government what plans they have to review National Planning Policy Statements to assess whether they are aligned with the United Kingdom's commitments under the Paris Climate Agreement and section 1 of the Climate Change Act 2008.

**The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con):** National policy statements set out the planning policy framework for nationally significant infrastructure, including energy and transport. It is for relevant Secretaries of State to review their national policy statements whenever they consider it appropriate to do so.

**Lord Whitty (Lab) [V]:** My Lords, that rather ignores the major problem facing us. The whole of the national planning statement needs to be revised in light of the commitment to net zero, and that applies to all sectors. Take construction, for example: the energy efficiency of much new-build housing is way below the Government's own ambitions and what is needed. Does the Minister agree that planning needs to set out basic energy efficiency standards for new builds? Developers too often prefer demolition and rebuild to retrofit options, but should that preference not be reversed in planning guidance? When are the construction industry and developers going to be forced to recognise that one of our major commitments is to get on the path to net zero?

**Lord Greenhalgh (Con):** My Lords, the Government recognise the importance of climate change and responding to a commitment in the manifesto towards that net-zero objective. We have a plan in place to do so, and we recognise the important part that the planning regime plays. It is something that needs reform, and that is why we have set out a new approach to planning in the planning White Paper.

**Lord Browne of Ladyton (Lab) [V]:** My Lords, the Minister will be aware of the Royal Town Planning Institute and of its January 2020 report, *Five Reasons for Climate Justice in Spatial Planning*. Therein it makes clear that:

"As the climate crisis deepens disadvantaged communities will bear the brunt."

Among the strong recommendations, it identifies a need for consultation with these often neglected communities in developing planning guidelines and policy statements. To what extent have the Government incorporated that clear advice into their ongoing planning assessments?

**Lord Greenhalgh (Con):** My Lords, I am sure that the climate change strategy team has read every single report on the matter and recognises the importance of having clear planks to be able to achieve the target. Obviously, at the moment those are the national carbon budgets, the net-zero target strategy and, of course, the 10-point plan.

**Baroness Jones of Moulsecoomb (GP):** My Lords, this is such a wonderful, wide open Question that it is very difficult to know where to go for an answer, but let me try a very small point. The Government seem to be doing a slight U-turn on onshore wind farms, which have quite harsh rules at the moment within planning documents. Is there going to be a new document for onshore wind?

**Lord Greenhalgh (Con):** My Lords, I am not going to take the prompt from the noble Baroness. We need to write to her on the matter, because I do not want to make policy on the hoof.

**Lord McColl of Dulwich (Con) [V]:** My Lords, in view of our dire financial situation and the huge cost of reducing our carbon emissions, should we not give priority to reducing air pollution and the pollution of the sea?

**Lord Greenhalgh (Con):** My Lords, Mark Carney, who is the finance adviser for the UK presidency of COP 26, made the point that we make our choices today very rationally, and around two-thirds of the journey will be made because it is the right thing to do—because the right choice is actually a green choice. He called on more creativity from business to be able to get that extra leap to hit the target. That is very salient; we are a long way down the right path. We need to focus on air pollution and sea pollution and ensure that it is not only right morally but the right thing to do in business terms as well.

**Lord Oates (LD):** My Lords, the National Planning Policy Framework states that:

"New development should be planned for in ways that … help to reduce greenhouse gas emissions",

so why are the Government refusing to introduce the future homes standard until 2025? How is this crazy policy approach—to build homes that will later have to be retrofitted—compatible with our obligations under either the Climate Change Act or the Paris Agreement?

**Lord Greenhalgh (Con):** I do not recognise that the commitment to a net-zero standard in the future homes standard is anything other than very bold and brave. This Government are pushing that. We recognise that the industry needs to move in line with that as well; that is why we are promoting modern methods of construction and other ways to ensure that we hit that net-zero target, and strengthening the planning guidance so that we hit that end point.

**The Earl of Caithness (Con):** My Lords, not updating the policy statements has led to some perverse planning decisions, in particular the one by Cumbria to allow coal mining. When will my noble friend's department decide whether that planning application should be called in? Does he realise that there will be great anger all around the House if it is allowed?

**Lord Greenhalgh (Con):** My Lords, I point out that the National Planning Policy Framework was updated to deliver commitments in the 25-year environment plan and on other matters, but there is obviously more to be done. The framework on planning for this issue is quite clear and makes sure that everything that comes forward is environmentally acceptable.

**Viscount Waverley (CB) [V]:** Are the Government satisfied that state-sponsored infrastructure projects, such as the Lower Thames crossing, meet the safeguarding of environmental standards? Given that retaining and strengthening the role and voice of local councillors in the planning and decision-making process should be a priority, and following in a logical sequence from the point of the noble Lord, Lord Whitty, I ask whether councils are using compulsory purchase powers to develop brownfield sites for new homes before taking land from the metropolitan green belt.

**Lord Greenhalgh (Con):** My Lords, the point around brownfield is very well taken. It is much better to build on brownfield than on greenfield land, although I have to say, from my own experience of 16 years as a local councillor, that CPO powers are not frequently used by local authorities. This is something that we need to think about; that power could be used to good effect.

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, I refer the House to my relevant interests as set out in the register. Many local authorities have declared a climate emergency, but at the same time have opposed renewable energy developments or other developments in their areas that would be consistent with their policy intent. There is a real tension and a real inconsistency here, and it is the responsibility of the Government to deal with that. Does the noble Lord agree on that point and, if he does, what plans does he have to deal with it?

**Lord Greenhalgh (Con):** My Lords, there is a tremendous commitment to the objective that my noble friend—well, not my noble friend; sorry, I am not good on the protocol yet, but I consider the noble Lord a friend, even though I cannot say so. The Prime Minister set out his ambitious *Ten Point Plan for a Green Industrial Revolution*. It covers clean energy, transport, nature and innovative technologies. There is a real ambition in this Government to ensure that we meet our climate change commitments, and we will continue to work on delivering that plan. It is no good having a plan unless you implement it.

**Baroness Thornhill (LD):** I too am a vice-president of the Local Government Association. The White Paper proudly proclaims to be sweeping away red tape and simplifying requirements for environmental assessment and mitigation. How will the Minister guarantee that this deregulation will not lead to a rollback of environmental standards? What will be the role of the local authority—if at all—with regard to monitoring and enforcing new standards when they eventually arrive? They do not appear to be involved in the drawing up of them, according to what I can read in the White Paper.

**Lord Greenhalgh (Con):** My Lords, that is a misrepresentation of the thrust of the planning reforms. We need to engage with communities. The idea of the planning reforms is to ensure that engagement happens up front and that it works within a framework to make sure that we get sustainable development and that we also hit the objectives that we have set as a Government.

**Lord Curry of Kirkharle (CB) [V]:** My Lords, does the Minister accept that there is a potential conflict between the Government's intention to build 300,000 new housing properties each year and the risk that, under pressure to deliver this ambition, local authorities and local planners are ignoring advice from the Environment Agency in approving housing schemes that are at serious risk of flooding if, as it is assumed, global temperatures rise by more than two degrees centigrade due to climate change?

**Lord Greenhalgh (Con):** My Lords, in 89% of cases, the advice from the Environment Agency is followed. There is a commitment to maintain and enhance the objectives on avoiding environmental damage in the White Paper—certainly to maintain if not to enhance. There is also a commitment to review whether the current protections via the National Planning Policy Framework are enough, and, importantly, to boost transparency, data collection and reporting where the Environment Agency or the lead local flood authority advice is given; so they are shining the spotlight of transparency. There is a pledge to review what is done in those cases where the Environment Agency flood advice is not taken, as well as to review the current approach to flood resilience design. I hope that that is a full enough answer for the noble Lord.

**The Deputy Speaker (Lord Brougham and Vaux) (Con):** My Lords, we did better this time, but, again, the time for this Question has now elapsed.

## Child Trust Funds: Children with Learning Disabilities

*Question*

*12.31 pm*

*Asked by* ***Lord Young of Cookham***

To ask Her Majesty's Government what plans they have to facilitate access to Child Trust Funds by children with learning disabilities.

**Baroness Scott of Bybrook (Con):** My Lords, children with learning disabilities might not have the mental capacity to manage their finances and might need someone to do this on their behalf. Parents need legal authority to access funds on their adult children's behalf and might need to apply to the Court of Protection. This is an important protection set out in the Mental Capacity Act 2005, and the Government are taking steps to improve the support available to parents in this position.

**Lord Young of Cookham (Con):** My Lords, last March the *Telegraph* drew attention to the problems facing 150,000 children with child trust funds who cannot access their cash when they are 18 because of their disability and whose parents have to go to the Court of Protection—a cumbersome and time-consuming process involving 47 forms and 100 questions. Will the working group that was announced yesterday by the Minister look at the alternative system of appointees used by the Department for Work and Pensions to pay exactly the same group of children, which is far quicker, simpler and cheaper?

**Baroness Scott of Bybrook (Con):** The noble Lord makes a very interesting point. I know that the Ministry of Justice is looking at and working on this. I have just heard that the DWP is, in fact, joining the working group, but the DWP appointees procedure does not extend to property and assets of the individual. It deals solely with government benefits. Extending the appointees scheme to include child trust funds would not be appropriate as it is at the moment, as it would not provide the protections currently delivered by the Mental Capacity Act.

**The Lord Bishop of Carlisle:** My Lords, does the Minister agree that some children with learning disabilities who want to access trust funds might have life-limiting conditions? There might not be much time available for legal processes to be gone through. Can she assure the House that, if such situations have not already been considered, they will be given the attention that they deserve?

**Baroness Scott of Bybrook (Con):** They are absolutely being given the attention they deserve, but there are already procedures in place such that, if a young person has a life-limiting condition, that issue can be dealt with almost immediately by the courts.

**Baroness Browning (Con) [V]:** My Lords, my noble friend Lord Young of Cookham has identified what is actually a larger problem. I took all stages of the

Mental Capacity Act through another place and also did the post-legislative scrutiny in our House. I say to my noble friend—and I declare an interest—that for parents of both children with learning disabilities and many on the autism spectrum, resort purely to the Court of Protection or to expensive legal trusts is really no help to parents of limited means who try to provide for their children throughout their lifetime. I hope that my noble friend will consider what more is needed to look at the situation we now have, particularly with more people living independently.

**Baroness Scott of Bybrook (Con):** I thank my noble friend; she is absolutely right. That is why the Government made the announcement yesterday that we want to reduce the obstacles to supporting young people who lack mental capacity. There are other things that can be done instead of the Court of Protection: if the young person has the mental capacity to have an involvement, then there is, of course, the much cheaper and easier way of lasting powers of attorney.

**Lord Singh of Wimbledon (CB) [V]:** My Lords, on this International Day of People with Disabilities, it is particularly important that registered contacts and carers are helped to access child trust funds to meet the increasing needs of children with disabilities turning 18. Does the Minister agree that, while speedier permission from the Court of Protection is desirable, it is also in the interests of the child to ensure that enduring powers of attorney are still sufficient and fit for purpose to prevent possible misuse of funds?

**Baroness Scott of Bybrook (Con):** I agree with the noble Lord. This is a balance. It is important to make sure that those young people who do not have the mental capacity to access their funds get them easily, quickly and without cost, and that is what the Government are looking at. However, there are other ways, as the noble Lord says, such as lasting powers of attorney, where the young person can have an involvement in what happens to their finances.

**Lord Blunkett (Lab):** I had the privilege 20 years ago of initiating the research on, and then working with the Chancellor of the Exchequer to set up, the child trust fund. We never envisaged at that time that this situation would arise. I want to reinforce the suggestions made by the noble Lord, Lord Young—as usual, very sensible—about trying to fast-track this and to ensure that the two big providers that are trying to find a way through are supported and enabled, rather than having obstacles put in their way.

**Baroness Scott of Bybrook (Con):** I absolutely agree, and, as I have said, we are trying, through a working party, to find a way to reduce the obstacles that the families are facing. There is also a fee remission, which ensures that families who need to go to the Court of Protection to access these funds will not suffer financially as a result. If they have already paid any money, they can get that reimbursed. Now there is the working group looking further at how we can improve the process.

**Lord Addington (LD):** My Lords, is this not something about which the House should once again congratulate the noble Lord, Lord Young, on pointing out an absurdity? Will the Government give us an undertaking that, if they cannot find an ad hoc solution quickly, they will find that little bit of parliamentary time that is needed to ensure that we have a workable solution to this?

**Baroness Scott of Bybrook (Con):** I am not going to make a promise of extra time, but I can say that the working group has now been put together involving the MoJ, the Treasury, the DWP, the charities and the Court of Protection to make sure that all the accessibility issues are sorted out, that it is a much more streamlined process and that it will not cost the parents any money.

**Baroness Altmann (Con):** My Lords, I am delighted that the Government have established a working party and congratulate them on the decision about the fee remission. However, with the numbers involved here, there could be 25,000 court cases a year on this issue over the next eight years or so, with Covid delays and capacity issues at court. Given that these parents are trusted by the Department for Work and Pensions to manage their child's benefits, would it not make sense to ask the department to take seriously the suggestion of my noble friend Lord Young of Cookham to use an established procedure?

**Baroness Scott of Bybrook (Con):** We absolutely will and are looking at my noble friend Lord Young's ideas and, as I say, the DWP has just joined the working party, which is starting straight away and will report back to the Minister in early January. We are not stopping on that but looking at the best way of dealing with these issues.

**Lord Touhig (Lab) [V]:** My Lords, being disabled in Britain should not mean being a second-class citizen, but that is how it must seem for children with learning disabilities whose families face an expensive battle to gain access to the child trust fund. Imagine the outcry if big city investors, or perhaps pensioners, were denied access to their own money. The Government would then be rushing to their aid. The Prime Minister has pledged to level up. Will the Minister tell him that these children can have access to their money now? The message is simple: get this done.

**Baroness Scott of Bybrook (Con):** I am afraid, as I have said before, that we are doing everything we possibly can. It is not costly any longer because the fee remission will ensure that families can go to the Court of Protection and not suffer financially. We will get it done but we have to take into account the Mental Capacity Act 2005 and the fact that these young people are at times vulnerable and need protection through that Act.

**Baroness Gardner of Parkes (Con) [V]:** My Lords, more than 700,000 teenagers will be given the keys to their child trust funds over the next 12 months. It was never made clear to parents that disabled children will

[Baroness Gardner of Parkes]
be unable to access the funds at 18, due to their lack of mental capacity. With an application to the Court of Protection on behalf of a disabled child, they might be able to do that but there is no surety that they could. Parents care greatly about their children and this is a tragic situation. I was reassured by many of the answers that the Minister has given and hope that everything will work out, and access will be readily available.

**Baroness Scott of Bybrook (Con):** I can assure the noble Baroness that there is no way in which those children will not get access eventually but it is about how they get it.

**The Deputy Speaker (Lord Brougham and Vaux) (Con):** My Lords, the time allowed for this Question has elapsed. We now come to the fourth Oral Question.

## Covid-19: GCSE and A-level Exams

*Question*

*12.43 pm*

*Asked by* ***Lord Randall of Uxbridge***

To ask Her Majesty's Government, further to the impact of the COVID-19 pandemic on classroom-based learning, what plans they have for (1) GCSE, and (2) A-level, exams (a) in 2021, and (b) beyond that date.

**The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con):** My Lords, the noble Lord's Question is certainly topical, as the Secretary of State for Education made an Oral Statement on 2021 exams in the other place earlier this morning. In recognition of the challenges faced by students this year, the Government have introduced a package of new measures that will help to ensure that every student is able to receive a fair grade that reflects what they know and can do.

**Lord Randall of Uxbridge (Con):** I welcome today's Statement. I trust that my Question did not make the Government rush it out precipitately. They seem to be doing everything they can to be fair and generous to those whose education has been disrupted by Covid. Can my noble friend confirm that consideration has been given to those schools and individuals disproportionately affected by the pandemic, not just now but in the coming months?

**Baroness Berridge (Con):** My Lords, the Government indeed recognise that there has been differential learning loss and—working alongside Ofqual, which has responsibility in this matter—we considered a regional approach, but that was quickly ruled out as unfair. However, we have established an expert advisory group whose job is to monitor and make recommendations about anything further that we can do to address differential learning loss.

**Baroness Blackstone (Ind Lab):** My Lords, I welcome the Government's decision to hold GCSE and A-level exams this year, and their admission that to cancel them last year was a mistake. It certainly was, as some of us said at the time. The measures that the Government now propose are, for the most part, welcome too, although more than a little late. However, the measures make no reference to FE or HE, even though public exams are a gateway to those sectors. Why have the Government no proposals for schools to inform colleges and universities of how much schooling applicants have missed and whether they had adequate access to online learning? This is vital information if university and college admissions are to be fair.

**Baroness Berridge (Con):** I can assure the noble Baroness that we have worked closely, obviously, with FE and HE because the examination system of course bolts on to admissions, particularly in relation to the grade profiling that we have outlined. That will be similar but not identical to last year's, because HE in particular was used to the system that there was last year. However, entry will be on the basis of grades and that is why we have maintained the exams at 16—the majority of English students move institution at that age.

**Lord Storey (LD) [V]:** I very much welcome the announcement by the Government. As we know, there is educational disadvantage throughout the country, depending on which school and region one is in. It particularly affects those in poorer areas. The Minister said that considering regional variations would be unfair. Why would that be the case?

**Baroness Berridge (Con):** My Lords, the effect on children, even within a region, can be variable and any regional approach could easily mean that there would be unfairness—for instance, if a child has been out of school for a length of time and lived one mile into Cheshire, while there was a regional approach for Trafford. Our approach tries to address the fact that every child has had their education disrupted. We have said that at the end of January the topic areas will be announced, as well as the aids that a child can take into an exam. That will enormously relieve the pressure and be as fair as possible to individual children. It is not possible, though, to have a fair system that is regionally based.

**Lord Baker of Dorking (Con) [V]:** My Lords, I declare an interest as the founder of the university technical colleges. Is the Minister aware that on 26 November, some 798,000 students were due to attend school? The attendance rate is at about 80% and is likely to continue like that until Christmas and be worse afterwards. This means that the teaching days lost will be different for individual students. Some may lose five days of teaching while others may lose 40. In that case, will the class teacher, who will be the only one who knows how many days have been lost per student, be allowed to adjust the grades of each student to reflect the amount of education that each one has missed?

**Baroness Berridge (Con):** My Lords, no, we are not relying on teachers in that way. We are convinced that, for those students who are part of the way through their courses, the fairest way to assess them is through

an examination system in which, of course, they are anonymised. That has been a concern over the years for various cohorts of students, such as BAME pupils in terms of subjective assessments. We stand by the fact that the fairest way to do this is to hold public examinations. The adaptations that we have announced will, as far as is possible, give children an examination that tests their knowledge. They will be aware of the topic areas and any aids that they can take into the examination hall at the end of January.

**Lord Field of Birkenhead (CB):** I declare an interest as the chair of a multi-academy trust. I welcome the statement from the Minister, but I would add that making exams easier to pass does not necessarily help the poor the most. As there are groups of us who are anxious that this opportunity for levelling up is not lost, perhaps we could meet with the Minister when she has time.

**Baroness Berridge (Con):** My Lords, I always welcome the opportunity for meetings and I hope that in the new year our meetings can be face to face rather than on Zoom. We are convinced that this set of adaptations and the fact that the exams have been delayed by three weeks will help those students who have been out of school the most. We cannot create a perfect situation, but we are confident that these adaptations will help those children the most.

**Lord Watson of Invergowrie (Lab) [V]:** My Lords, the Government have finally listened to calls from Labour, school leaders, trade unions and parents by setting out a plan for next year's exams, but this really should have been in place months ago to give pupils, parents and schools the clarity they need. Significant numbers of pupils have been and will continue to be absent from school due to Covid-19, causing disruption to their education. Of course, the pattern across the country is uneven. This raises the spectre of these young people being examined on what they have not been taught rather than what they have been. What makes the Minister confident that the expert group announced today can ensure that such a damaging outcome is avoided?

**Baroness Berridge (Con):** My Lords, since schools have returned, they have known about and had to adapt to the guidance for public health restrictions on the curriculum, such as not running geography field trips. But at the end of January, they will know the topic areas on which most examinations will be set. That means that—although many schools are doing a sterling job of catching up for these young people—if that part of the curriculum has not been covered yet, they will know at the end of January to cover it. As the exams are three weeks later than normal, that should give adequate time. We expect the majority of the curriculum to have been taught to the majority of students but, to make sure, they will know these topic areas. That should address the noble Lord's point.

**Baroness Garden of Frognal (LD):** My Lords, having listened to the Secretary of State this morning on the welcome but tortuous arrangements for the next GCSEs, may I ask what consideration the Government have given to doing away with GCSEs? With the raising of the school leaving age, they are no longer a school leaving exam and the time spent on working for exams could be much better spent on life skills, career options and preparation for adult life, as well as instilling a love of learning, which is so often displaced by the tyranny of exams.

**Baroness Berridge (Con):** My Lords, exams give students an opportunity to show what they know and to be assessed on it objectively. I pay tribute to schools and exam centres that, even during the recent lockdown, ran examinations for approximately 20,000 students. We are confident that exams can be run next year. As I have outlined, exams at 16 are important in England, because the majority of our students transition at that age.

**Baroness Fox of Buckley (Non-Afl):** The noble Baroness, Lady Berridge, brings us good news for once. That exams will go ahead is especially important when so many have opportunistically used the pandemic to lobby against exams per se—no U-turns, please. When the Secretary of State says that the most important thing is how young people progress to the next stage, does it not reduce exams merely to credentials on pieces of paper? What are the Government doing about the knowledge gap to compensate for what is not being taught, beyond exams? While I commend creative special measures, generous grading and so on, some teachers say that exam aids and crib sheets are an official endorsement of cheating. Can the Minister comment?

**Baroness Berridge (Con):** My Lords, we are confident that schools—as will be shown when they are inspected by Ofsted, which will not happen until at least the summer term—are delivering a broad and balanced curriculum. The changes and reforms that have been introduced to GCSEs should be knowledge rich, so that students leave with a love of learning and not just exams to help them transition to the next stage.

**The Deputy Speaker (Lord Brougham and Vaux) (Con):** My Lords, again, the time allowed for the Question has elapsed.

*12.53 pm*

*Sitting suspended.*

## Business and Planning Act 2020 (London Spatial Development Strategy) (Coronavirus) (Amendment) Regulations 2020

*Motion to Approve*

*1 pm*

*Moved by* ***Baroness Scott of Bybrook***

That the draft Regulations laid before the House on 2 November be approved.

*Relevant document: 34th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 25 November*

*Motion agreed.*

## Food and Feed Hygiene and Safety (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020

*Motion to Approve*

*1.01 pm*

*Moved by* ***Baroness Penn***

That the draft Regulations laid before the House on 14 October be approved. *Considered in Grand Committee on 1 December*

*Motion agreed.*

## Protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020

*Motion to Approve*

*1.01 pm*

*Moved by* ***Viscount Younger of Leckie***

That the draft Regulations laid before the House on 2 November be approved.

*Relevant document: 34th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 1 December*

*Motion agreed.*

## Arcadia and Debenhams: Business Support and Job Retention

*Commons Urgent Question*

*The following Answer to an Urgent Question was given in the House of Commons on Wednesday 2 December.*

"On Monday, Arcadia Group Ltd, which employs approximately 13,000 people, appointed administrators, who are assessing all options available to the group. They will honour orders made over the black Friday weekend. No redundancies have yet been announced and existing sales channels will continue to operate while administrators evaluate options. The Secretary of State has written to the Insolvency Service asking that it expedites consideration of the administrators' report. Yesterday, Debenhams, which employs approximately 12,000 people, announced the decision of administrators to wind down the company. No redundancies have been announced and existing sales channels will continue to operate while administrators evaluate options. We know that this will be a worrying time for employees and their families, and we stand ready to support them. I pay a particular tribute to the hard-working staff, who have kept these well-recognised businesses going in difficult times for so long.

Although the Government have no role in the strategic direction or management of private retail companies, we are in regular contact with both companies and the administrators in order to understand fully the situation they are facing. The coronavirus crisis has made life difficult for retailers such as Arcadia and Debenhams, particularly those that were already facing challenging trading conditions before the pandemic. We acted quickly at the start of the pandemic to deliver one of the most generous and comprehensive economic packages in the world. It included: the coronavirus job retention scheme, which up to 30 September had provided £7.7 billion-worth of support to companies in the retail and wholesale sector; removing all eligible properties in the retail, hospitality and leisure sectors from business rates for 12 months—that is worth more than £10 billion; cash grants of up to £25,000 for retail, hospitality and leisure businesses with a rateable value of between £15,000 and £51,000; more than £50 billion in business loans, which supported 9.6 million jobs and provided flexibility; and legislation to protect commercial tenants from eviction.

Through the plan for jobs, we have also announced a series of measures to protect, support and create jobs, including our £2 billion kick-start scheme and a doubling of the number of front-line work coaches, which will be important in this situation in particular. The Government have committed to supporting the retail sector, and we are working closely with industry through these unprecedented times, particularly to ensure the safe reopening of non-essential retail today. On Monday, my right honourable friend the Communities Secretary encouraged local authorities to allow shops to open for extended hours, to accommodate more shoppers safely in the lead-up to Christmas.

I will continue to work with the sector to meet future challenges. Indeed, I will co-chair the next meeting of the Retail Sector Council tomorrow to discuss our strategic approach to the sector. I have regular retail calls, including one last week, with representatives from Arcadia among the retailers on that call. We are confident that the sector has the skills, knowledge and drive to bounce back."

*1.02 pm*

**Lord Stevenson of Balmacara (Lab) [V]:** My Lords, I am sure the whole House joins with me in expressing deep sympathy with those who are at risk of losing their jobs just before Christmas, at a difficult time in the high street and, more generally, because of the pandemic. During the passage of the Corporate Insolvency and Governance Bill earlier this year, we put forward amendments to make pension fund holders priority creditors when businesses go bust. Would this not be a very good opportunity for the Government to review their decision not to proceed on this issue? SMEs, such as those that supply Debenhams and Arcadia, do badly when big firms get into trouble. Their debts are rarely given priority in a liquidation and are lost if there is a pre-pack. The Government are consulting on the powers of the Small Business Commissioner. Will they ensure that much-needed new powers for the commissioner in this area are given proper consideration?

**Baroness Bloomfield of Hinton Waldrist (Con):** My Lords, I remember the noble Lord's amendments to the Corporate Insolvency and Governance Bill very well, but it was always a question of getting the balance right. Elevating the rights of pensioners would have negatively impacted suppliers and the unpaid wages of existing employees. The trade credit reinsurance

scheme is designed to support small businesses coping with the economic impact of Covid-19, and I assure the noble Lord that we will take his views on new powers for the Small Business Commissioner into account.

**Lord Fox (LD):** In an answer yesterday, the Minister Paul Scully noted that

"The independent Pensions Regulator has a range of powers to protect pension schemes".—[*Official Report*, Commons, 2/12/20; col. 314-15.]

Under the watch of that regulator, using those powers, Philip Green ran up a deficit of £350 million in the Arcadia pension fund, while paying his family three times that. Does the Minister agree that this is proof that the regulator has too little power over business owners like Mr Green, and what do the Government plan to do about it?

**Baroness Bloomfield of Hinton Waldrist (Con):** The noble Lord is right to point out that the Pensions Regulator has a range of powers, but the Government do not involve ourselves in the running of businesses. Where there is evidence of bad practice, it is taken up through the relevant authorities. At this stage, it is difficult to estimate the shortfall between the assets and liabilities of the fund. The Pensions Regulator is working closely with the company and scheme to ensure that prior commitments are fulfilled.

**Lord Lucas (Con) [V]:** My Lords, will my noble friend ask her ministry to make clear to the Treasury the damage done to UK business if HMRC does not tax international businesses effectively? About 10 million packages from China arrive in the UK each week. The Treasury proposes not to charge VAT on packages with a declared value of less than £135. That is around £100 billion of business per annum that UK firms are shut out from, because they pay VAT and the Chinese do not, and £20 billion per annum lost to the Treasury. Will my noble friend agree to meet me to discuss ways in which this damage can be avoided—which appear effective and not difficult to implement?

**Baroness Bloomfield of Hinton Waldrist (Con):** I agree to meet my noble friend to talk about these issues, but he is not quite right about VAT. The Government will collect VAT on parcels below the £135 threshold, but we will also implement a more robust system to do so from the end of the transition period. That will include removing a relief from VAT for the import of goods under £15, which has long been abused by overseas sellers, and improving VAT collection by placing the responsibility to collect VAT on an online marketplace where it facilitates a sale of up to £135.

**Baroness Prosser (Lab):** The Minister will be aware that the vast majority of jobs that will be lost due to the collapse of Arcadia and Debenhams this week are held by women. That is mostly because jobs in retail can often be offered with part-time hours and a deal of flexibility. What plans does the Minister have to initiate programmes to get those women back into jobs—for example, working with employers to identify a greater selection of part-time employment and perhaps dedicated training programmes to enable women to reskill or upskill?

**Baroness Bloomfield of Hinton Waldrist (Con):** The noble Baroness is quite right to focus on the proportion of women who are employed in retail specifically. We are doing all we can for all affected employees and have doubled the number of front-line work coaches across the network of jobcentres, who will help with preparation of CVs and interview practice. Our plan for jobs also includes a series of measures to protect, support and create jobs. We are also helping those who have lost jobs in the pandemic back into employment through our £238 million JETS programme. I will write to the noble Baroness on the specifics of women employees and the projects we have to support them, having done some research.

**Lord Empey (UUP):** My noble friend will be aware of the large rates bills faced by high-street and town-centre retailers. She will also be aware that out-of-town shopping centres are not subject to the same amount of rates. Secondly, parking in town centres is discouraged or extremely expensive, whereas in out-of-town centres it is free and encouraged. Under these circumstances, how can our high streets possibly hope to compete against larger organisations, particularly online, which are operating at warehouse-level rates against town-centre rates? Surely this policy needs to be completely scrapped and to start over.

**Baroness Bloomfield of Hinton Waldrist (Con):** My Lords, it is right that all businesses make a contribution to maintaining the roads, buses and emptying bins—all things on which their customers rely—but the noble Lord asks a good question about the difficulties of following a green agenda and discouraging car use for out-of-town shopping centres. We need the whole system to be fair, which is why we will deliver a fundamental review of the whole business rates system. This will build on the changes we are making, which are worth over £23 billion to businesses over the next five years, and will take nearly half of all businesses in England out of paying any business rates at all. We have committed to small businesses by increasing the retail discount to 50% and, due to Covid-19, we have gone further and increased it to 100%.

**Lord Sikka (Lab) [V]:** My Lords, if Arcadia and Debenhams had worker-elected directors, they would have enriched the corporate governance at both companies. At Arcadia, they would have sought early resolution of the pension scheme deficit, and at Debenhams, they would have expressed concern about the overload of debt market equity owners. Their insights would have resulted in better outcomes for all concerned. Will the Government now follow many other European countries and legislate to create worker-elected directors for all large companies?

**Baroness Bloomfield of Hinton Waldrist (Con):** I cannot comment on the Government's intentions or otherwise to create worker-directed representation on company boards, but the audit trail of Arcadia is quite clear. The auditor's report was clear that there was a material uncertainty about the group's ability to continue as a going concern. It also failed to publish its 2019 accounts this August. Late filing of accounts attracts an automatic penalty fine and is an alert. As to whether

[Baroness Bloomfield of Hinton Waldrist]
there need to be specific investigations of directors, the administrators have a duty to report within three months of the insolvency on the conduct of the company's current and former directors.

**Baroness Neville-Rolfe (Con):** The Government have done a great deal to support this highly competitive sector, and little more can profitably be done to help these firms. Schumpeter's creative destruction nearly always builds a better world eventually, as resources and skilled staff shift into new areas of opportunity; I remember that from the sad collapse of Woolworths when I was in retail. What does the Minister think can be done with the stores and sites that are freed up by this sad collapse this week?

**Baroness Bloomfield of Hinton Waldrist (Con):** I thank my noble friend for her supportive and constructive comments. The Government recently reformed the use classes to create a new commercial business and service use class. This will give businesses greater flexibility to change to a broad range of uses such as leisure and as shops and offices, as well as nurseries and health centres, without the need for planning permission. This means that businesses will be able to adapt to changing circumstances and respond to the needs of their local communities more easily and quickly. More widely, we are looking to transform the planning system as set out in the White Paper, *Planning for the Future*, which will make it simpler, quicker and more accessible, and more certain.

**The Deputy Speaker (Baroness Garden of Frognal) (LD):** My Lords, the time allowed for this Question has elapsed. I apologise to the noble Lords, Lord Mackenzie, Lord Liddle and Lord Foulkes, that we did not have time for their questions.

## Coronavirus Vaccine
*Statement*

*The following Statement was made in the House of Commons on Wednesday 2 December.*

"With permission, I would like to make a Statement about the coronavirus vaccine. Today marks a new chapter in our fight against this virus. Ever since the pandemic hit our shores almost a year ago, we have known that a vaccine would be critical to set us free. So all through this arduous year—it has been an arduous year—while we have been working night and day to fight the virus and keep it under control, we have been striving, too, to develop the vaccines that can give us hope and let us eventually release the curbs on our freedoms that have bound us for so long.

Thanks to the incredible work of the Vaccine Taskforce, the Business Secretary and Kate Bingham, we have already amassed a huge portfolio of different vaccine candidates. We have backed seven vaccines and ordered 357 million doses on behalf of the whole UK, one of the biggest portfolios per capita in the world. We have said from the start that a vaccine must be safe and effective before we would even consider deploying it. Any vaccine must go through a rigorous process of clinical trials, involving thousands of people and extensive independent scrutiny from the Medicines and Healthcare products Regulatory Agency, one of the world's most respected medical regulators.

Today, I am delighted to inform the House that the MHRA has issued the clinical authorisation of the Pfizer/BioNTech vaccine. This is a monumental step forward. It is no longer 'if' there is going to be a vaccine, but 'when'. In our battle against the virus, help is on its way. Today is a triumph for all those who believe in science, a triumph for ingenuity and a triumph for humanity, and I thank everyone who has played their part in this achievement. I thank the team at Pfizer, the team of scientists at BioNTech, the volunteers who stepped up and took part in clinical trials, and the MHRA itself, which made sure that this is a vaccine we can all have faith in. Thanks to their efforts, I can confirm that the UK is the first country in the world to have a clinically approved coronavirus vaccine for supply, and now our task is to make use of the fruits of that scientific endeavour to save lives.

We have spent months preparing for this day, so that as soon as we got the green light, we would be ready to go. We were the first country in the world to pre-order supplies of this successful vaccine, and we have 40 million doses pre-ordered for delivery over the coming months—enough for 20 million people, because two jabs are required for each person. Following authorisation, the next stage is to test each batch of the vaccine for safety. I can confirm that batch testing has been completed this morning for the first deployment of 800,000 doses of vaccine. Those doses are for the whole United Kingdom. This morning, I chaired a meeting of Health Ministers from the devolved Administrations to ensure the rollout is co-ordinated nationwide.

This will be one of the biggest civilian logistical efforts that we have faced as a nation. It will be difficult. There will be challenges and complications, but I know that the NHS is equal to the task. Rolling out the vaccine, free at the point of delivery and according to clinical need, not ability to pay, is in the finest tradition of our National Health Service, and I am delighted to confirm that the NHS will be able to start vaccinating from early next week.

The whole purpose of the vaccine is to protect people from Covid, so that we can get lives back to normal. We will prioritise the groups who are at greatest risk. This morning, the Joint Committee on Vaccination and Immunisation has published its advice, setting out the order of priority according to clinical need, and that includes care home residents and their carers, the over-80s and front-line health and social care workers. We will deliver according to clinical prioritisation and operational necessity. The need to hold the vaccine at -70C makes it particularly challenging to deploy.

While we begin vaccination next week, the bulk of the vaccinations will be in the new year. I urge anyone called forward for vaccination by the NHS to respond quickly to protect themselves, their loved ones and their community.

Over the next few months, we will see vaccines delivered in three different ways. First, we will begin vaccinations in hospital hubs. Secondly, we will deploy through local community services, including GPs and

in due course pharmacies, too. Thirdly, we will stand up vaccination centres in conference centres and sports venues, for example, to vaccinate large numbers of people as more vaccines come on stream. This is an important step, but we are not there yet, so I stress that we must all keep playing our part, keep following the new rules that the House approved overwhelmingly yesterday and remember the basics, such as 'Hands, face, space', and, 'Get a test', which we know from experience are so important in keeping the virus under control.

Before I finish, may I also update the House on another bit of good news? From today, I am absolutely thrilled to say that we can safely allow visits in care homes for those who test negative for Covid-19.

Coronavirus has denied so many people the simple pleasure of seeing a loved one, which is so precious to so many, especially in our care homes. This is possible only because of the success we have had in building one of the biggest testing capacities in Europe, with local and national teams working together, side by side—something we have often discussed right across this House. We have worked hard on testing. We have worked hard on the vaccine. Our strategy is suppressing the virus until a vaccine can make us safe. That strategy is working, and I am delighted that we will be able to see families and friends come together ahead of Christmas, thanks to this improvement.

This is a day to remember, frankly in a year to forget. We can see the way out of this, but we are not there yet, so let us keep our resolve and keep doing our bit to keep people safe until science can make us free."

*1.13 pm*

**Baroness Wheeler (Lab):** My Lords, I thank the Minister for the Statement. Yesterday's great news about the Pfizer/BioNTech vaccine and the MHRA's clinical authorisation was the breakthrough that we all hoped for. We on these Benches join in with the heartfelt thanks to the dedicated scientists and those who have taken part in the trials, testing and validation process. Coming with the absolute assurance from the MHRA that no corners have been cut by it in the speeding-up of the vaccine, and that safety of the public has rightly remained paramount, the news is especially welcome.

Hospital trust staff will receive the vaccine first. This is a massive logistical challenge given the size of the workforce, the temperatures that this vaccine must be stored at and the two doses needed. We understand that 50 hospitals are already set up and waiting to receive the vaccine. How many NHS staff are expected to be vaccinated by January? When will mass-vaccination centres start opening in our communities?

On care homes, today we have the reality of the difficulty of ensuring that the vaccine can be delivered safely and quickly to them, in the light of its low temperature requirements and because of the fragmented social care system, involving thousands of predominantly small providers employing permanent and often frequently changing temporary staff. The Joint Committee on Vaccination and Immunisation's Covid-19 priority lists advises that care home residents and the staff who treat them should be first in line to be inoculated. We now understand that only care home staff will be among the first to be vaccinated, travelling to an NHS centre. While this and readiness in parts of the NHS to administer the vaccine are welcome, can the Minister update the House on how the Government will ensure that in the rollout of this essential vaccine, that hopefully will help to protect thousands of care home residents, they do not find themselves at the back of the queue once again? Care home managers are demanding clarity over this issue and have warned of confusion and raised expectations among vulnerable people.

Overall, we have historic strengths with vaccination, but in recent years we have lost our measles-free status, and we know that vaccination rates can often be lower in poorer and more vulnerable communities. While Covid-19 has affected everyone, the burden of the pandemic has disproportionately impacted the poorest, who are more likely to die than the richest. Can the Minister ensure that there is a health equality strategy, so that black and ethnic-minority groups, and the poorest and most vulnerable, do not miss out on this vaccine?

I also make a special plea for unpaid carers. Carers UK is deeply disappointed that carers are not on the priority list for the vaccine in England. Can the Minister explain the thinking behind this by the JCVI or the Government? They were prioritised for the flu vaccine, as it was recognised that if they get flu, the loved ones they care for are at risk and cannot be properly cared for. As a carer myself, I am in touch with many local carers, who play a vital role in keeping older, disabled and seriously ill people safe during the pandemic.

On the supply of vaccines, the UK has promised 40 million doses by spring, which is estimated as enough to give the required two jabs to health and care workers and everyone over 65. Nevertheless, in the first few weeks of winter, our ability to vaccinate could easily outstrip supply. Current figures are that there will be 800,000 doses in the country within days, with several million more to follow in weeks. I understand that the jabs are being manufactured in Belgium. What assessment have the Government made of the impact of Brexit on importation? Can the Minister reassure the House that supplies will not be disrupted, deal or no deal? We all understand that the restrictions will remain in place for some time but in the meantime, if someone is vaccinated, will they still have to isolate if contacted by test and trace, or are they now released from that obligation?

The Government's document, *Community Testing: A Guide for Local Delivery*, suggests that local areas can use mass testing as a freedom pass. What does this mean in practice? How will local areas enforce rules if some people are able to follow different rules based on their testing status? In the Commons yesterday, the Prime Minister suggested that people may want to take advantage of mass testing ahead of visiting their families this Christmas, but what does this mean for people in areas that do not have access to lateral flow testing? Needless to say, despite the approval of a vaccine the restrictions will need to remain in place for some time, and test and trace will be key. Can the Minister confirm that mass testing will therefore be rolled out in all areas in time for Christmas? What are the consequences of the Christmas exemption period if not?

[Baroness Wheeler]

We must not forget that the Minister's Statement also announced the welcome news that family visits can now take place in care homes, subject to visitors testing negative for Covid-19. However, the increase in staff and resident testing, alongside the introduction of visitor testing, must be backed up by additional resources to make this possible. What extra funding is being made available to care homes to meet the costs of additional testing, cleaning, PPE and visitor administration that they will incur?

Today's focus is on the vaccine and how it will be distributed. However, for the record, in response to the Secretary of State, Matt Hancock, claiming that the process of vaccine approval has been one of the early benefits of leaving the EU, the MHRA has today made it clear that the process for developing and authorising the vaccine has been undertaken under the terms of European law, which remain in force until the completion of the Brexit transition period at the end of the year. In other words, Matt Hancock's assertion is simply not true.

**Baroness Jolly (LD) [V]:** No one can deny that the news about the Pfizer-BioNTech vaccine is just what we need as the days get shorter and Christmas still seems some way off. The technical achievement is enormous, and I am happy to congratulate all those involved in the creation of the vaccine, in the lightning regulation process and in its manufacture. The logistical challenge is next, and I feel sure that, again, the armed services will figure highly here.

Some time ago, I asked the Minister who might carry out the vaccinations. There are not enough NHS staff free to do it. Is there a plan to train others? The training is very short and needs no clinical background whatever. I seem to remember that student friends, when training to be doctors, would practise their technique by injecting oranges. I understand that it will be at least Easter before all the population has received the first round of the Pfizer vaccine and midsummer before we have all had the two jabs.

Can the Minister clarify what sort of immunity someone would have if they failed to get the second jab? What is the timescale of the availability of the other vaccines that we know are in the pipeline? When do we expect all the population of the UK who are willing to be vaccinated to have received their vaccine, and does he have an indication of how many will refuse it?

Vaccine is not a magic bullet—yet. Those of us who will not get it for some time will have to be careful and adhere to the rules outlined by the Government. We might be surprised that not everyone is aware of the symptoms of the virus—the cough and the loss of taste and smell, along with flu-like symptoms. They have not been part of the messaging but, on prevention, we all know "hands, face, space". Was there a reason that the messaging did not include symptoms? I appreciate that if you are an avid follower of the PM's No. 10 virus briefings, all that information is at your fingertips, but for many these are not required viewing. How much is the department using Instagram, Facebook and Twitter to get these messages out? If it is not using them, why not? For months to come, people will be testing positive, and anyone who does will still be required to quarantine.

I would like to spend the rest of my time addressing some issues relating to self-isolation that have come from research by King's College London, based on surveys carried out by the Department of Health and Social Care. Many of us who have been in this situation isolate, as that is doing our bit to prevent the spread of the virus. King's found that intentions to isolate were high but, when it came to sticking to it, the numbers were low. It found that there were both practical and psychological barriers to an effective isolation system. Practically, there is the issue of finance. The evidence suggests that those of a lower socioeconomic status with dependent children or older relatives struggle financially or lose their pay if they self-isolate, and they choose to ignore the advice.

The £500 grant has not been available since the onset of the lockdowns, and £250 does not cover all the costs for a family for a week if you lose your wage. If a child has to go into quarantine, there is no eligibility for support, yet in all probability a parent will have to take time off work to care for the child. Not all employers continue paying a salary to those isolating or caring for someone who is isolating.

The data that I referred to came from a series of surveys carried out by the department. Is that data in the public domain? It would be really interesting to see the breakdown by geography and demography.

**The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con):** My Lords, I am enormously grateful for that large number of thoughtful and nuanced questions, and I will try to cover as much ground as I possibly can.

I start by supporting the noble Baronesses' tribute to the MHRA. It has played a complete blinder. It has quietly worked since January for this very moment. It has thrown an enormous amount of expertise, diligence and professionalism at the extremely challenging task of managing this vaccine authorisation, and it is to its massive credit that it has landed with an enormous amount of confidence and has been greeted so well.

The noble Baroness, Lady Wheeler, asked about EU law and exactly where we stand in terms of Brexit. She is exactly right that this authorisation was done under the terms of European law, and the carve-out that we took was indeed completely within the realms of European law. I pay tribute to the international collaboration that lay behind this vaccine—among the inventors, with their Turkish-German background, with the contributions of the German company that founded the vaccine and of the Americans, who have marketed and distributed it. In fact, the collaboration behind it has been global.

However, there is something British about it as well. In Britain, we have a long-standing commitment to research into infectious diseases, and that has created an enormously strong framework and foundation for the work that we have done. At universities such as Oxford, where the Jenner Institute is based, and Imperial, we have established a terrific international reputation for our work on infectious diseases.

The regulator, the MHRA, has gone about its work with an enormous amount of confidence and expertise. That has meant that it has been able to handle, in parallel, the clinical trials for efficacy and the reviews for safety. It analysed huge amounts of data in parallel in real time, so that it could turn around the authorisation promptly and confidently when presented with the final data.

The commercial effectiveness of the Vaccine Taskforce has been phenomenal. It has secured contracts for a large number of vaccines, which has meant that manufacturing has been able to take place in advance, and delivery of the vaccine, which is happening as we speak, is able to take place promptly. On the enormous amount of collaboration on the deployment of the vaccine, about which the noble Baroness asked, I pay tribute to colleagues in the NHS, NHSD, the military, and those in social care and logistics. There has been enormous collaboration across the piece.

The noble Baroness asked exactly what figures there are for delivery and when it is scheduled to take place. I am afraid that I cannot give the precise schedule, but I reassure her that, as soon as we know the precise timetable, we will publish it to give the confidence and reassurance to the public that, quite reasonably, they would like.

The noble Baroness is entirely right that social care is our number one priority. The prioritisation list from the JCVI is crystal clear. It also presents a big challenge because, as she knows, the Pfizer vaccine requires cold storage. It comes in units of more than 100 vials. We do not want to waste this extremely valuable vaccine, so we are having to work closely with social care colleagues and the NHS to ensure that workers and those in social care can receive it. That will be difficult, and I do not doubt that there will be problems, particularly, as the noble Baroness pointed out, with getting the vaccine to small units of social care. However, I reassure her that colleagues are working on that night and day and are very focused on delivering a solution.

The noble Baroness asked whether those who take the vaccine will need to isolate. Yes, they will, and that will have to continue for a while. The truth is that we do not know whether taking the vaccine will reduce transmissibility. Our suspicion is that it will, but until we have the clinical evidence that that is the case, we have to be pragmatic and ensure the safety of the public. However, we are working extremely hard on trying to resolve that issue, and I reassure the noble Baroness, care home managers and those who live and work in social care that they are at the top of the priority list.

The noble Baroness also asked me about delivery of the vaccine from Belgium. I reassure her that there are numerous fallback plans for all kinds of scenarios and that the transport arrangements for this valuable cargo have been thought through incredibly carefully.

The intention is not to roll out mass testing or community testing in every single local authority before Christmas. We are working with those local authorities that have stepped forward and that either are the most keen or have the highest infection rates, to ensure that the partnerships that we have in place develop really good best practice and that those directors of public health who are the most energetic have the resources they need to develop new models. That work is happening at pace and we get updates on it every day. It promises to be an extremely effective model for cutting the chain of transmission.

I pay particular tribute to universities, which have worked extremely closely with both the Department for Education and the department of health to ensure that there is community testing on campus, so that the migration home before Christmas is done safely and effectively.

The noble Baroness, Lady Jolly, is entirely right that apparently it is not very difficult to learn how to give an injection. I have been offered a training course, but I am not sure that anyone would actually want an injection from me. However, I reassure her that we have mobilised an enormous army of people to administer the vaccine. That includes those existing in the NHS and social care as well as pharmacists, who have stepped up massively and to whom we are very grateful, and it will include the return to service of many retired healthcare professionals, to whom we are enormously grateful.

As the noble Baroness pointed out, there is a pipeline of vaccines coming through, not least the British one developed at Oxford University in collaboration with AstraZeneca. I cannot give her a schedule on precisely when all of those will be delivered, but it is extremely promising that there are between half a dozen and a dozen vaccines on their way. It serves as an indication of how science has ridden to the rescue to help us out of this awful pandemic.

Regarding those who are either sceptical or refusing a vaccine, we are reassured that concerns about the vaccine are at present relatively low. We are engaging with anyone who has a concern about the vaccine with respect and in a spirit of dialogue to try to present the evidence in a transparent and reassuring way. That approach seems to have paid dividends, and I am encouraged that the British public will be stepping forward for the vaccine in very large numbers.

I reassure the noble Baroness that we have a massive social media campaign to engage the public. I pay tribute to the media teams in the department and the Cabinet Office, who have worked incredibly hard throughout the entire pandemic and have handled literally dozens of campaigns, often at pace, with enormous creativity and diligence—and have got sign-off from Ministers, which is no mean feat at times—under difficult circumstances. They deserve all our thanks and praise.

Lastly, on the noble Baroness's quite important questions about isolation, she is absolutely right: isolation is key. There is no point in testing and tracing if you do not isolate. However, the surveys that she refers to are fragmented. I am not sure if some of the simple surveys actually tell the whole truth. In honesty, people's response to isolation is probably more subtle than simple binary questions would suggest. We are beginning to understand that many who are isolating, although they may not have completely obeyed every strict command in the isolation protocols, have massively changed their behaviours, and we are looking at ways of supporting those people through civic and financial support and through our messaging to ensure that the isolation protocols are as effective as possible.

**The Deputy Speaker (Baroness Garden of Frognal) (LD):** My Lords, we come to the 30 minutes allocated for Back-Bench questions. I ask that questions and answers be brief, so that I can call the maximum number of speakers.

*1.34 pm*

**Lord Patel (CB) [V]:** My Lords, as we embark on a mass vaccination programme, it is important that we follow up all those who are vaccinated, or at least a cohort of them, with whatever vaccines are used, in a scientific way. It is important that structured scientific data collection is implemented. Do the Government plan to do that, and who will be doing it? I hope that it will be UK academic institutions, because there is much more science to learn post vaccination about the effectiveness of different vaccines and the science of the new way of developing these vaccines.

**Lord Bethell (Con):** As ever, the noble Lord is extremely wise in his observation. He is entirely right to hold us to account. There is no point in enjoying this fine moment too much when you have the noble Lord, Lord Patel, on your case reminding you about the next big challenge around the corner. He is right that pharmacovigilance is essential. We need to make sure that this and other vaccines work and that we learn from the behaviours of all of them. That is precisely why we put the deployment of this vaccine through the NHS. There was a temptation to set up an alternative agency and focus on the actual injection of the vaccine over all other matters. Instead we have run it through the NHS UC Digital process, which means that all the information around the vaccine is put very firmly into the GP record. That means that we can do population-wide analysis of the results of the vaccine. We have a very large research community in the UK both in the companies such as Pfizer, which, as he knows, are responsible for pharmacovigilance, and in the university sector. We will have all those records available for them to do the follow-up work that he rightly emphasises.

**Lord Dobbs (Con) [V]:** My noble friend will know that I have reservations about some aspects of government policy, but the news about the vaccine is wholly good news. It is a triumph for all concerned and I join in with his praise for them, although my noble friend himself should not be shy about taking his own share of the credit. He mentioned that other vaccines are coming down the road—in the pipeline, I think he said—including the Oxford vaccine. These vaccines have different characteristics and require different handling. How do the Government plan to distribute and discriminate between the different vaccines? Will one get priority over another? While I understand that he cannot be precise, can he offer any further guidance about how soon we can hope that everyone who wants one will have a vaccination available?

**Lord Bethell (Con):** I thank my noble friend for his kind words. I reassure him that everyone in Britain who wants a vaccine will get one. In fact, we are going to do everything that we can to encourage everyone in Britain to have a vaccine. We believe that prevention is better than cure, and that vaccines such as the ones coming down the pipeline offer the best possible fightback against this horrible disease. With regard to the different properties of the vaccine, his observation is entirely right: it is likely that the different vaccines have different properties, not least that some are much easier to transport than others, but some might work better, for example, with children or with those susceptible to other conditions. We do not have full data on the other vaccines so it is impossible to make those comparisons at this stage, but I assure him that when we have the data we will make sensible decisions along those lines.

**Lord Clark of Windermere (Lab) [V]:** I thank the Minister for being so frank and admitting that the initial rollout will not be uniform throughout the country this year. I want to ask him about those individuals prioritised for the vaccine on the grounds of age or having weaker immune systems—specifically, who will identify those individuals? Initially the role of GP surgeries was highlighted for that task. Is that still the case? What will happen in those GP surgeries—there are quite a number of them—that have no GPs? Will the nurse practitioners be able to perform the role of identifying those individuals? I would like a specific answer to that because it is important in the longer term for a great many people.

**The Deputy Speaker (Baroness Garden of Frognal) (LD):** I remind noble Lords of the request for brevity.

**Lord Bethell (Con):** I remind the noble Lord that the criteria sent out by the JCVI are extremely simple and mainly driven by age, so the selection procedure is very straightforward. He is right that the distribution of the vaccine is limited by both the size of the vials and the need for cold storage. That is why there will be an emphasis on hospitals over GP surgeries. That represents a challenge in places such as rural areas that may be distant from hospitals, but I reassure him that the deployment team is doing all that it can to ensure that no one is left behind.

**Baroness Brinton (LD) [V]:** Does the Minister agree with the JCVI's decision not to prioritise unpaid carers—most of whom are caring for clinically, or extremely clinically, vulnerable people—when unpaid carers are not just prioritised but encouraged and chased by the NHS to have the flu vaccine in order to help protect the person they are caring for?

**Lord Bethell (Con):** My Lords, difficult decisions have to be made by everyone in this. The JCVI has looked very carefully indeed at the challenge of how to prioritise this vaccine, taking representations from a large number of groups. Ultimately, its priority is to protect life and the NHS, and its clear decision has been to have a prioritisation based on age because this is the greatest driver of mortality.

**Baroness McIntosh of Pickering (Con) [V]:** My Lords, I add my congratulations to my noble friend, the MHRA and everyone associated with producing this vaccine in such record time; it is a great tribute to our health service. I will focus on the fact that the flu jabs

for the over-50s are still being distributed, and there is a reluctance among some—perhaps as many as two-thirds of the over-50s—to take up the flu vaccine, as they would like to wait for the Covid vaccine, which, of course, defeats the purpose of offering them the flu vaccine. Is this something that my noble friend is aware of, and is it something that he could address? I echo the remarks of the noble Lord, Lord Clark, and ask that specific regard be had to the challenges of administering the vaccine in rural areas. Will my noble friend use, as far as possible, the dispensing doctors in this regard? I pay tribute to them and the work I do with them.

**Lord Bethell (Con):** My Lords, as few will be surprised to know, the rollout of the flu vaccine has been hugely successful this year; the take-up has been massive. I am not aware, from the stats that I have seen, of any slowdown in the take-up of the flu vaccine, but the point my noble friend Lady McIntosh makes is understandable—I am happy to check it out. I also encourage anyone who is thinking about deferring the flu vaccine until they get the Covid vaccine to think again because it is a massive priority to get vaccinated for both.

The noble Baroness and I have talked before about dispensing doctors, whose role is very important. There is a challenge with the distribution of the Pfizer vaccine because of cold storage and the large number of shots in each vial. I am not sure whether that means that rural dispensing doctors can play the important role that they might do at this stage of the distribution, but I reassure the noble Baroness that they will play a role in the national distribution as it pans out over the next few months.

**Viscount Waverley (CB) [V]:** My Lords, I note that many unknowns exist in differing vaccine effectiveness cycles. Are the Government planning to combine the careful management of linking certified testing to identity data, particularly given that the technologies and solutions are available? As regards the urgent rollout of vaccines globally, I propose that a commandeering exercise of wide-bodied aircraft, laid-up due to Covid, be considered to lessen the global logistical nightmare.

**Lord Bethell (Con):** My Lords, in relation to the logistical nightmare, one of the nice things about vaccines is that they do not take up much space: they are relatively compact, so I am not sure that wide-bodied aircraft will be needed, but I thank the noble Viscount for the wise suggestion. In relation to certification, he raises an interesting prospect that we have not fully bottomed out yet. As I said in response to earlier questions, we do not know whether vaccination will reduce transmissibility. Our hope and expectation are that it will, but until that is proven, any thoughts of certification will be premature.

**Lord Liddle (Lab) [V]:** I congratulate the Minister on his generous attribution of credit for this remarkable achievement, which was in very sharp contrast to the two Cabinet Ministers who sought to make cheap and inaccurate nationalist points about it yesterday—that is to his credit. Speaking as a Cumbria county councillor, I say again that his honesty about the constraints on the rollout is commendable. Does he agree that, in rural areas, it is still very important that we concentrate on remedying the defects in our tracking and tracing system that our Cumbria public health director has identified? There is still a lack of proper liaison between the national and local systems, and this deficiency has to be addressed in this period, as people may become more relaxed as a result of the wider availability of a vaccine.

**Lord Bethell (Con):** I welcome the noble Lord's challenge and completely endorse his point that tracing will remain important. Not everyone will take the vaccine initially; it will not be available to everyone for months, as the Deputy Chief Medical Officer made plain in his briefing earlier today. Tracing remains a really important feature of our fight against this disease. However, I respectfully suggest that his information is a little out of date: the amount of collaboration on tracing between the national and local efforts, particularly with DPHs such as the one in Cumbria, has come on in leaps and bounds, even in the last few weeks. From my briefings and meetings with DPHs, I know that they have been provided with an enormous amount of data, support and access to tracing resources in order both to bring their local intelligence and insight to bear and to support the national tracing effort. I applaud all those DPHs who have stepped forward in this way, and I am very hopeful that the local-national combination on tracing will pay massive dividends.

**Lord Scriven (LD) [V]:** My Lords, in the first priority group, there are over 3.2 million people aged 80 or over. As the UK will get doses for 400,000 people initially, what access framework is in place to ensure an ethical approach to the vaccine rollout for these first 400,000 people that is not based on having the sharpest elbows or the chance of having a hospital appointment?

**Lord Bethell (Con):** My Lords, the noble Lord raises an important challenge there; fairness and equity are important in this important time. However, I will try to assess the situation: we have 800,000 doses of a vaccine that is incredibly difficult to transport, requires cold storage and is in vials containing more than 100 doses each. Therefore, practical considerations are pre-eminent at the moment, rather than sharp elbows.

**Baroness Uddin (Non-Afl) [V]:** My Lords, I thank the Minister for the gracious way he has introduced this discussion, and I welcome his assurance of dialogue. I hope he will agree, as he has assured us, that the vaccine will not be the only effective means of preventing infections and further deaths and that the Government will continue their heartening improvement of the test and trace programmes and ensure that those in tiers 2 and 3 have the required financial measures. Can he assure me and the House that his department will urgently scale up communication with particularly vulnerable and poorer communities, where concerns around vaccination are significant? Can he assure me that any proposed government use of the police and army will be done with consent and after consultation with local authority leadership?

**Lord Bethell (Con):** The noble Baroness will probably have noticed earlier today the recent publication of test and trace figures, which showed a dramatic improvement in both the tracing numbers and the testing turnaround numbers. We still have far to go, and improvements are needed, but this is an extremely encouraging set of figures, which demonstrate that our focus on getting this important service right is undiminished.

In relation to getting the vaccine to poorer communities, the noble Baroness is entirely right: there are communities where the Government are not trusted as much as they are elsewhere and where there is suspicion of the vaccine. We are working extremely hard at the department, in the NHS and with Cabinet Office colleagues to reach out to community leaders and think of thoughtful and creative ways of ensuring that the vaccine penetration among these communities is strong and that we have built the confidence and belief necessary for people to step up and take the vaccine as they should.

**Lord Rooker (Lab) [V]:** My Lords, I echo my noble friend Lord Liddle in applauding the Minister on his approach and attitude. Is it not worth celebrating the involvement and success of Turkey, Germany and Belgium in getting this vaccine to the UK? We did not order all the vaccines so early. During the next few weeks, the Health Secretary has to be the most trusted voice of Government as he rightly seeks to persuade people to take the vaccine. How can he perform this role when he has uttered a string of untruths? The latest is that the medicines regulator could only work fast because of Brexit. This is untrue and everybody knows it. I hope this problem of trust can be restored because the advice given by the Secretary of State will be crucial to the take-up of the vaccine.

**Lord Bethell (Con):** I am slightly surprised by the tone of the noble Lord's question. If there were ever a moment when my right honourable friend the Secretary of State for Health deserved a bit of praise and a thank you, today would be that day. That ad hominem attack was beside the point. On his serious point about trust in the vaccine, it would not be helpful for politicians to lead the charge. Our approach is to put science and the NHS at the forefront of our communications. They are truly engaged with both the expertise and the communities that need to take the vaccine.

**Baroness Walmsley (LD) [V]:** My Lords, the rollout will require many people, in addition to those giving the injection. Are there any plans to use the thousands of NHS volunteers who signed up during the first lockdown to act as marshals, drivers, identity checkers, or whatever else is required? In planning the appropriate use of the military, have the Government recognised the concerns of certain community leaders that their presence at testing sites would not reassure members of their communities who are hesitant about taking the vaccine because they do not trust authority?

**Lord Bethell (Con):** The noble Baroness is right about the NHS volunteers. We would very much like to work with those who stepped forward. Their move was extremely welcome and kindly meant. However, the deployment of the vaccine is a precise affair. We are relying on people having to put in long hours—often not at their own discretion or convenience. Volunteers may well play a role, but the backbone and functional aspect of the deployment will rely on professional staff.

I appreciate her conundrum about the military. It is a delicate dilemma. I do not want to live in the kind of country where we turn our back on the military because some people might feel uncomfortable at the sight of uniforms on the streets. We need to build trust with communities. I want to use this moment of the vaccine to build a bridge of trust between those whom the noble Baroness reasonably described and the military. We must not make the mistake of disrespecting the military by turning them away from this important task.

**Lord Hunt of Kings Heath (Lab) [V]:** My Lords, as the Minister who established the MHRA, I strongly endorse the Minister's congratulations. I pay particular tribute to the outstanding leadership of Dr June Raine. I note what the Minister said about unpaid carers and the justification for not giving them priority but would the Government be prepared at least to discuss this with Carers UK? On care homes and visitor testing, which are mentioned in the Statement, is the Minister aware of calculations by Care England that the infection control fund will not cover the cost of implementing the new testing regime, let alone all the other areas for which the fund is intended? Will the Government consider increasing the fund?

**Lord Bethell (Con):** My Lords, the support we are giving to social care throughout this period is incredibly important. I should be happy to meet with Care UK to discuss this. I cannot duck the issue. The JCVI has made its prioritisation clear. It is based on thoughtful science, infection rates and the calculation of how best to save life. While I feel compassion for carers, including some in this Chamber, we have to live with this tough decision. I cannot pretend I am going to try to change it. The inspection control fund is generous; we have put a large amount of money into it. If it proves not to be enough, we will be happy to revisit it. Protecting social care through these final few months is a big priority. I should be happy to discuss how we can do this better with the noble Lord at his convenience.

**The Deputy Speaker (Baroness Garden of Frognal) (LD):** My Lords, all supplementary questions have been asked and answered. I congratulate noble Lords.

*1.56 pm*

*Sitting suspended.*

## Arrangement of Business

*Announcement*

*2.01 pm*

**The Deputy Speaker (Lord Lexden) (Con):** My Lords, the Hybrid Sitting of the House will now resume. Some Members are here in the Chamber while others are participating remotely, but all Members will be treated equally. I ask all Members to respect social distancing. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

We now come to day 3 of Committee on the Covert Human Intelligence Sources (Criminal Conduct) Bill. I will call Members to speak in the order listed in the annexe to today's list. Members are not permitted to intervene spontaneously; the Chair calls each speaker. Interventions during speeches or "before the noble Lord sits down" are not permitted.

During the debate on each group of amendments, I invite Members, including Members in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request and will call the Minister to reply each time. The groupings are binding, and it will not be possible to de-group an amendment for separate debate. A Member intending to press an amendment already debated to a Division should have given notice in the debate. Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make this clear when speaking on the group.

## Covert Human Intelligence Sources (Criminal Conduct) Bill

*Committee (3rd Day)*

*2.03 pm*

*Relevant documents: 10th Report from the Joint Committee on Human Rights, 19th Report from the Constitution Committee*

### *Clause 1: Authorisation of criminal conduct*

*Amendments 20 and 21 not moved.*

**The Deputy Chairman of Committees (Lord Lexden) (Con):** We proceed to the group beginning with Amendment 22. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this, or anything else in this group, to a Division should make that clear in debate. I should inform the Committee that if Amendment 22 is agreed to, I cannot call Amendments 23 to 30.

*Amendment 22*

*Moved by* ***Baroness Chakrabarti***

**22:** Clause 1, page 2, leave out lines 27 to 30 and insert—

"(b) for the purposes of preventing or detecting serious crime.

(5A) In subsection (5), "serious crime" means a crime triable only on indictment."

Member's explanatory statement

The amendment is intended to constrain the use of criminal conduct authorisations by precluding their use for the purpose of preventing or deterring minor criminal activities, non-serious disorder, or non-criminal damage to economic interests.

**Baroness Chakrabarti (Lab) [V]:** My Lords, it is a pleasure to introduce my noble friend Lord Hendy's Amendment 22. He is detained in the Court of Appeal—not by the Court of Appeal, you understand. I wish also to introduce other amendments in this group.

Amendment 22 has an object similar to those of Amendments 23 to 31. The intention of all of them in various respects is to limit the conduct for which CCAs can be granted as set out in Clause 1(5) and to exclude their use for the kinds of non-criminal objects of undercover policing that have been revealed in the Undercover Policing Inquiry, which began to hear evidence three weeks ago.

Amendment 22 would remove from the permissible objects of a CCA the prevention or detection of disorder other than disorder which also amounts to a serious crime, such as riot. It would require that the object of preventing or detecting crime is restricted to serious crime.

My noble friend Lord Hendy was particularly attracted to the definition of "serious crime" proposed in Amendment 31, refining it to an offence conviction for which would lead to the expectation that someone over the age of 21 without previous convictions would receive a sentence of imprisonment of more than three years. That amendment also requires that the serious crime involves the use of violence, results in substantial financial gain or is conducted by a large number of people acting in a common purpose. The latter requirement in conjunction with the expectation of a prison sentence of greater than three years is a welcome limitation on the use of the crime of conspiracy, which has been used against trade unions in particular for more than 200 years.

These restrictions on the objects for which criminal conduct authorisations—CCAs—can be given are vital in light of the evidence already emerging in the Undercover Policing Inquiry, in which my noble friend is participating as counsel to a number of trade unions. Several of your Lordships have already highlighted the pointless activities of undercover police officers "penetrating"—that is the term used in the special demonstration squad references—hundreds of entirely peaceful campaigns against perceived injustice, political parties and trade unions, all apparently behaving entirely lawfully in exercise of their rights to freedom of expression, assembly and association. Notoriously, some of those officers formed intimate relationships based on lies with more than 30 innocent women as cover.

Amendment 22 is designed also to remove from the Bill use of a CCA purportedly

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

This ominous phrase is undefined here but clearly capable of being interpreted as encompassing lawful industrial action, which might inevitably have some adverse economic consequences. Without that amendment, agents could be authorised to commit crimes to prevent, minimise or disrupt legitimate trade union activity. I am sure that your Lordships would agree that that must be totally unacceptable.

Trade unions and industrial action ceased to be criminal in this country 150 years ago, with some cross-party consensus. Industrial action, since it was made lawful in contemplation or furtherance of a trade dispute in 1906, has been very closely regulated, most recently by the Trade Union Act 2016. Trade unions and their activities are also protected by

[Baroness Chakrabarti]
international law, not least by Article 11 of the European Convention on Human Rights. The risk to trade unions posed by CCAs granted

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

should be removed.

At Second Reading, it was said that there was no risk to trade union activities in this Bill. The evidence given to the Undercover Policing Inquiry does not inspire confidence on the part of trade unions and trade unionists that they face no risk here from the issue of criminal conduct authorisations. We now know from the inquiry that the Metropolitan Police Special Branch maintained files on trade unions and had an industrial intelligence unit keeping watch on them for apparently no lawful purpose.

The report by Chief Constable Mick Creedon on police collusion in blacklisting in relation to Operation Herne and Operation Reuben describes the industrial intelligence unit:

"Formed in 1970 to monitor growing Industrial unrest, officers from the Industrial Unit used various methods to report on the whole range of working life, from teaching to the docks. This included collating reports from other units (from uniform officers to the SDS), attending conferences and protests personally, and also developing well-placed confidential contacts from within the different sectors."

The inquiry has heard that undercover officers of the special demonstration squad penetrated both unions and rank-and-file campaigns by trade union members. The undercover officer Peter Francis has apologised to the unions he spied on. One undercover officer testified that the first chief superintendent of the special demonstration squad was of the view that the trade union movement was infested with communists who took their orders from the Soviet Union, and he subsequently joined the blacklisting organisation, the Economic League. No doubt, this view was dated and dismissed when expressed, but the fact is that spying on trade unionists did not cease when he left. We know from the Creedon report that the modern equivalent of the Special Branch industrial intelligence unit is the National Domestic Extremism and Disorder Intelligence Unit's Industrial Liaison Unit. It is clear that this kind of process continues.

If the Government do not intend legitimate trade union activity to be within the scope of activity allegedly threatening the economic well-being of the United Kingdom, they ought to amend the Bill in the way suggested and accept Amendment 28 in the names of my noble friends Lord Rosser, Lord Kennedy of Southwark and Lady Clark of Kilwinning and the noble Baroness, Lady Jones of Moulsecoomb, which is to be debated in a later group. I beg to move.

**Baroness Hamwee (LD) [V]:** My Lords, it is clear that there is a lot of unease—I choose a mild term—around the House about the threshold for granting criminal conduct authorisations, although there seems to be general acceptance of the ground of national security. My noble friend Lord Paddick will speak about the threshold for disorder, and I will say a word about crime. Economic well-being and other matters that have just been referred to are in separate groups, so I will not anticipate those debates.

To prevent or detect crime without qualification seems to us to be, bluntly, wrong. I appreciate the requirement for proportionality, but the more certainty about what level of crime justifies going to the next stage of assessing whether a grant can be made, the better, and on the face of the legislation. I am sure the Minister will say that it is not intended that a trivial crime should prompt such an authorisation, but the legislation must make clear the threshold for granting so serious an authorisation.

Amendment 22, in the name of the noble Lords, Lord Hendy and Lord Hain, has chosen

"crime triable only on indictment",

which is certainly one way of going about this. It strikes me that there might be too wide a mesh in that net. We have proposed a definition of serious crime taken from the Regulation of Investigatory Powers Act, as authorising intrusive surveillance. Amendment 31 sets out the definition. I note that the noble Lord, Lord Hendy, has said to the noble Baroness that he is attracted to this, and I welcome that support.

*2.15 pm*

The relevant section in RIPA is Section 81, which is reproduced, although I apologise to the House, because in Amendment 31, which sets out the tests, I should have had an "or" in between paragraphs (a) and (b) in proposed new subsection (5B). However, they are alternatives. I do not suggest that both have to be satisfied, although I suspect that in practice it is likely they would be. RIPA recognises that intrusive surveillance is a particularly serious form of surveillance, and I do not think it could be denied that criminal conduct is serious. We think this is an appropriate definition which, in the past, has clearly satisfied not only Parliament but the Home Office—I believe an amendment on that was accepted by it—and the Constitution Committee has been concerned about this as well. I hope we will find a way to define the level of crime, whether it is this amendment or not—although we think it is a good way to go about it. I will leave it to my noble friend Lord Paddick to talk about disorder.

**Baroness Jones of Moulsecoomb (GP):** My Lords, the amendments in this group pose the important question of when and why the Government should allow people to commit a crime and grant them full legal immunity for it. The Government need to justify granting such a broad legal immunity. They are calling it wrong. I understand why they are doing this: there is a court case at the moment that will influence the outcome of this particular manoeuvre, and there is the inquiry, which I hope will have some tough recommendations when it comes to an end. Personally, I would rather that the granting of immunity was restricted to serious crimes only, as set out in the amendment of the noble Lords, Lord Hendy and Lord Paddick, because that would strike a more reasonable balance between the risks inherent in this criminal authorisation and the types of crime it is being used to fight. When you look at past mistakes, you have to ask, what was the crime the Lawrence family was suspected of committing or being about to commit? What was the point of that? Can that happen again?

Yes, of course it can, and it can happen to innocent people. We need to be aware of that when we pass the Bill, as we no doubt will.

Then there is the issue of preventing disorder, which my Amendment 24 seeks to address. This is something I care about a lot, because I go on a lot of demonstrations, protests and campaigns. I am out there, on the streets, and you could argue that I am creating disorder. When I was arrested a few years ago—the only time I ever have been—you could argue that I was creating disorder. What I was actually doing was trying to get between the police and the protestors. I was saying things like, "Could we all calm down?" That is what I said when the senior police officer lost his temper and said, "Nick 'em all." I feel that preventing disorder is an honourable thing to do, so we should think carefully about what disorder is. It is the Government's duty to make sure that that is clear. "Preventing disorder" is far too broad a category for authorising criminal conduct.

If the disorder is so bad as to be criminal, it will already be captured in the prevention or detection of crime, but if it is not criminal, we are moving into the territory of peaceful protest and other legitimate gatherings. What is the justification for the state authorising people to commit criminal offences and giving full legal immunity in these cases?

Based on 2019 figures, at the moment in the UK there are more than 500 people who can authorise this sort of immunity for criminal conduct: 312 chief superintendents and 212 chief officers of other ranks. With 500 or so people who can authorise a crime and give immunity, you have to ask yourself: how many mistakes will those people make? And they will; they are going to make mistakes. I see some considerable scope for error in that. I really do not think that the words "preventing disorder" should be in the Bill. If the disorder is a crime then people can be arrested for it; if it is not, why on earth would we let someone else commit a crime to stop something that is not a crime? Perhaps the Minister can explain that to me.

**Baroness Massey of Darwen (Lab) [V]:** My Lords, in speaking to Amendment 25, I shall put the views expressed by the Joint Committee on Human Rights in Chapter 5 of its report on the Bill. I am a member of that committee.

The amendment seeks to limit the use of criminal conduct authorisations to protecting national security and preventing crime. The JCHR report accepts that authorising criminal conduct may, in certain circumstances,

"be necessary and proportionate in the interests of national security or for the purpose of preventing or detecting serious crime."

These were the purposes considered by the Investigatory Powers Tribunal when it approved MI5's policy in the third direction challenge, and are the purposes highlighted by the Home Office in the Explanatory Notes. However, the Bill also permits CCAs to be made for the purpose of preventing disorder and for the economic well-being of the United Kingdom, as was mentioned before. The report says:

"It is difficult to understand why it is necessary to include 'preventing disorder' as a potential justification for authorising criminal conduct. Serious disorder would amount to a crime … and therefore be covered by the purpose of 'preventing crime'. Any non-criminal disorder would not be serious enough to justify the use of criminality to prevent it."

The NGOs Reprieve, the Pat Finucane Centre, Privacy International, the Committee on the Administration of Justice, Rights and Security International and Big Brother Watch raised concerns that the Bill could allow for CCAs to be granted in relation to

"the activities of Trade Unions, anti-racism campaigns and environmental campaigns that have been the site of illegitimate CHIS activity in the past."

The report concludes:

"The purposes for which criminal conduct can be authorised should be limited to national security and the detection or prevention of crime"

and that

"the power to authorise criminal conduct as contained in the Bill is far too extensive".

**The Deputy Chairman of Committees (Lord Lexden) (Con):** My Lords, the noble Lord, Lord Hain, whose name appears next on the list, has withdrawn, and the noble Lord, Lord Dubs, unfortunately did not join the debate remotely at the start. I therefore call the noble Baroness, Lady Bryan of Partick.

**Baroness Bryan of Partick (Lab) [V]:** My Lords, it is a real pleasure to take part in this debate. I am sorry that my noble friend Lord Dubs will not be joining us, but I am speaking before my noble friend Lord Judd—they have both spent many decades of their lives fighting for civil liberties. They will remember, I am sure, Maria Fyfe, who entered Parliament in 1987 and did so much over the years to champion women's representation, but who sadly died this morning. I am sure that they and others will join me in sending condolences to her family and comrades in Scotland.

I shall speak specifically to Amendment 22 in the names of my noble friends Lord Hendy and Lord Hain, and moved very ably by my noble friend Lady Chakrabarti, but I also support the other amendments in this group which argue that, should this Bill become law, CCAs could be used only to prevent or deter serious crime. The terms "preventing disorder" and being

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

are so imprecise that almost any campaigning group or trade union could be included. These criteria are potentially political and could be used simply to defend the status quo against anyone who challenges it.

It seems quite odd that this legislation could not wait until the findings of the Undercover Police Inquiry. As the inquiry progresses, it is hearing that police have been used to spy on any number of groups that were deemed to be "anti-establishment", even when they were humanitarian organisations such as Operation Omega, which tried to provide humanitarian aid to then East Pakistan. One police officer sent into the group has said:

"They weren't hurting anyone, they weren't disturbing anyone. Okay, you could argue that we don't like to see these things posted on our lampposts, you know, stuff like that."

He was then asked:

"Did you hear them promote or encourage public disorder?"

He replied:

"That's a difficult one to answer, because a lot of organisations recommend demonstrations and activity that would bring their cause to the attention of the press and thereby to the rest of the population."

[Baroness Bryan of Partick]
A demonstration is of course a legitimate form of campaigning, but it is unfortunately seen as illegitimate in some quarters.

The undercover work extended into the trade union movement. Trade unions are a legitimate and essential part of our democracy, as guaranteed by the ILO since 1949. Member countries, including the UK, are required to guarantee the existence, autonomy and activities of trade unions, and to refrain from any interference that would restrict this right or impede their lawful exercise. Despite this, the Metropolitan Police Special Branch established the industrial intelligence unit in 1970 to monitor what it saw as growing industrial unrest. There is, we understand, a present day equivalent in the Industrial Liaison Unit of the National Domestic Extremism and Disorder Intelligence Unit.

I have no idea what justification could possibly have been used to send spies into humanitarian organisations, political parties or trade unions, but I suspect that preventing disorder and it being in the interest of the economic well-being of the United Kingdom will have been used. There can be no justification for this and it should be removed from the Bill.

On Monday we heard the Statement in the other place that there would be no inquiry at this time into the murder of Pat Finucane—even though there is no doubt that there was state collusion in his assassination. After 30 years, the Government will still not shine a light on this atrocious event. His death should serve as a reminder that Governments and their agents can lose the capacity for moral judgment when they convince themselves that only they serve the greater good.

We were told on Tuesday that these examples happened a long time ago and that things have changed. But while the Bill continues to cover more than serious crimes and includes subjective actions such as disorder and economic well-being, it is a danger to anyone involved in politics and trade unionism. We should never grant the legal right for covert actions against citizens whose only crime is to disagree with the Government of the day. This amendment would go some way to achieving that.

**Lord Judd (Lab) [V]:** My Lords, the dividing line between a police state and a democratic society with a liberal, humanitarian base is sometimes hard to define. It is not absolute and the dividing line wanders around a certain amount, but one principle should be clear above all, and that is that in the kind of society in which we want to live, the tradition is that the police do their job by public consent. The objective is to maximise good will between the public and the police, to forestall the danger of alienation from the police and the building up of a hostile relationship between police and large sections of the public. That is why, on matters of this kind, it is so important to ensure that it does not become just a convenient device that can be used pretty much at random for interests that cannot be well substantiated in the context of liberal democracy.

*2.30 pm*

For that reason, I believe that this group of amendments has raised some very important points indeed, which we must all take seriously. I do not want to live in a society in which the police have this as a useful technique, with certain, modest restraints. I want to live in a society where this is not normal and where, if it is needed, exceptionally, those grounds can be properly justified in terms of national priorities, in the interests of our people as a whole. Good will between the public and the police is crucial to our stability as a society, and the holding of public confidence in the police is crucial too. We must be careful that we do not place that in jeopardy.

**The Deputy Chairman of Committees (Lord Lexden) (Con):** The noble Baroness, Lady Blower, who appears next on the list, has withdrawn, so I call the noble Lord, Lord King of Bridgwater.

**Lord King of Bridgwater (Con) [V]:** My Lords, unlike, I think, every other speaker to these amendments so far, I do not support them. I see in them, once again, attempts to impose yet more conditions that may affect the effectiveness of the operation of undercover support and sources doing what I thought was generally agreed to be vital work in the interests of enforcement and the life of people in our country. I say at the start that a number of these things, and the worry about how these powers may be exercised, do not pay respect to the fact of the code of practice, which many have said should be required reading for everybody taking part in these debates. The importance of that code of practice is that it is going to have to be approved by both Houses of Parliament. That will be a very important protection, because it is under that code of practice that authorising officers issuing CCAs, and the Investigatory Powers Commissioner, will obviously be required to act.

I make no apology for repeating what I said on an earlier amendment in quoting James Brokenshire, the Minister for Security, when he gave the astonishing figures for a single year in London alone. The use of undercover sources resulted in 3,500 arrests, the recovery of more than 100 firearms and 400 other weapons, the seizure of more than 400 kilograms of class A drugs and the recovery of more than £2.5 million in cash. It also enabled, which I did not mention, the National Crime Agency to safeguard several hundred victims of crime, including from child sexual exploitation and abuse. Those figures alone, just from London in one year, surely leave nobody in any doubt of the importance of this vital source of support for preserving an orderly and law-abiding society. I make this point because, under the code of practice, which includes this question, others are seeking to add the word "serious" to "crime". How does an authorising officer react when an informant comes and says, "There is a group of people who are starting to get together, I am not quite sure what they are up to, but I think there is a real risk that it could turn, later on, into something much nastier"?

When one looks at those figures I quoted from James Brokenshire, how many lives have been saved; how many people's lives have not been disrupted; how much misery and poverty that might otherwise have entailed has been prevented? For these reasons, I am not persuaded of the need to add "serious" to crime; I think it might inhibit the operation of a properly authorised issuer of a CCA, who obviously has to use

his judgment, and has to persuade the IPC as well that his judgment is correct and is in line with the code of practice.

I should also say a word about preventing disorder. We are living in extremely difficult and dangerous times at the moment. We know that the power of social media now makes it possible, in an instant, practically, to organise major demonstrations which may, in fact, be based on that new and horrid ingredient "fake news". These may disrupt many people's lives and may cost people's lives. Although there are many very worthy causes—whether it is Black Lives Matter or Extinction Rebellion—pursuing very understandable and admirable objectives, none the less we also know that around the fringes of those organisations, or in the confusion that some of their demonstrations cause, other sources of crime can easily emerge and it often makes opportunities for gangs to commit many more crimes as well. So I would not delete "preventing disorder", provided it is properly covered within the code of practice.

The other thing I would just add is about economic well-being. I totally support trade unions—I always have done and, as Secretary of State for Employment, I was obviously closely involved—and legitimate trade union activity. However, we all know that, within our lifetime, we have had one or two instances where that has not been the case. One instance was the miners' strike, when Mr Arthur Scargill said that one of his objectives was to bring down the Government, and he was not averse, in the process, to accepting money from the Soviet Union in pursuit of that objective. It is to the credit of Neil Kinnock, now the noble Lord, Lord Kinnock, if I may say so, that he would not support him at that time, because Mr Scargill had not put the issue to a vote of the whole trade union movement.

I think we have seen here, and I understood at the beginning of this, that virtually all noble Lords recognise the vital importance of undercover source information and for there to be a proper system, a statutory system, under which they would operate. That is what I wish to see. I wish to see a thoroughly effective code of practice, thoroughly trained issuing officers and rapid and close contact with the Investigatory Powers Commissioner as they carry out their work.

**Lord Paddick (LD):** My Lords, I accept that it is difficult to separate these issues, but I will leave discussion of economic well-being and the activities of trade unions and trade unionists until the relevant groups.

As drafted, the Bill defines very broadly when a criminal conduct authorisation is necessary, and this group of amendments focuses on the new Section 29B(5)(b) inserted into the Regulation of Investigatory Powers Act 2000 by Clause 1(5) of this Bill. It states:

> "A criminal conduct authorisation is necessary … if it is necessary … for the purpose of preventing or detecting crime or of preventing disorder".

Crime and disorder have very wide definitions, as noble Lords have set out in this debate.

As we have already debated, tasking a CHIS to participate in crime is a very serious step for any authority to take, with all the implications for the rule of law and the potential for abuse that we have already debated, and because of the potential danger it places the CHIS in, about which we will discuss more in a later group. In many situations it could have far more negative consequences for innocent people than the interception of communications, and we should not forget that we are amending legislation that was originally intended to cover, when drafted, only the interception of communications.

The legislation covering such interception limits the use of its powers to cases of serious crime. Even in my limited seven years in this House, I have lost count of the definitions of serious crime in different pieces of legislation. It could be argued that, if we wanted to limit the power to grant a CCA to cases of serious criminality, we could choose whatever definition of serious crime we liked.

The noble Lords, Lord Hendy and Lord Hain, have decided in their Amendment 22 to define serious crime as indictable offences only, but I am glad to hear from the noble Baroness, Lady Chakrabarti, that the noble Lord, Lord Hendy, is attracted to our definition rather than the one in his own amendment.

As my noble friend Lady Hamwee has clearly articulated, we have gone with the definition already used in RIPA—for the sake of consistency, at least within the Act itself. The principle, however, is the same: that this power to grant a criminal conduct authorisation should be limited to serious crime.

The Government may say that, in addition to being necessary, the granting of a CCA must also be proportionate, and it would not be proportionate to deploy CHIS if the criminal activity was minor. The same argument applies, however, to the interception of communications in RIPA, where "necessity" is already limited to serious crime, as defined in our Amendment 31.

The noble Lord, Lord King of Bridgwater, talked about the code of practice. There is, however, a definition of serious crime in RIPA despite the existence of the code of practice for the interception of communications. The noble Lord also talked about the impressive array of offences that had been detected as a result of the deployment of CHIS, including those relating to firearms, drug-dealing and child sexual exploitation. All those examples would fall within our definition of serious crime.

What is sauce for the goose is sauce for the gander, even though geese and ganders are different in some important respects. RIPA limits the interception of communications to serious crime, so this Bill should limit the issuing of criminal conduct authorisations to serious crime using the same definition.

The second issue is more difficult and more controversial, starting with the fact that the prevention of disorder is not one of the necessary grounds for the interception of communications. The Government are already on the back foot here, in that large-scale disruptive disorder can have very serious consequences for society yet there is no power to intercept the communications of organisers of disorder in order to prevent it. None the less, there is an argument for both the interception of such communications and the deployment of CHIS into groups that are planning to cause widespread disruption that could seriously affect

[LORD PADDICK]
public order, cause damage to property and the economy, prevent people going about their day-to-day business, and create fear among innocent bystanders.

*2.45 pm*

That is the nature and scale of the disorder that we should be concerned about—not legitimate peaceful protests. By the same argument that limits the interception of communications to serious crime in RIPA, this Bill should limit the granting of CCAs to serious disorder, of which there is, to my knowledge, no legal definition. Our Amendments 26 and 30 limit the granting of CCAs to serious disorder and define that in terms of the offence of riot in the Public Order Act 1986, namely:

> "Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety".

Using such a definition would rule out both peaceful demonstrations and Friday night pub brawls, but it would include situations where it was anticipated that a violent faction was intent on hijacking a peaceful demonstration. Going back to what the noble Lord, Lord King, said, it would only be necessary for the police to have a reasonable belief that a peaceful demonstration might be hijacked by violent demonstrators for them to be given the necessary authority to deploy CHIS in potentially law-breaking circumstances.

However, I take the point made by the noble Baroness, Lady Massey of Darwen, that such disorder—riot—is in itself a serious crime as defined in our Amendment 31. It is important, however, to set out clearly that the type of disorder should be limited to serious disorder on the face of the Bill. We believe that such amendments would also address the concerns of the noble Baroness, Lady Jones of Moulsecoomb.

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, Amendment 22, moved by my noble friend Lady Chakrabarti with the support of my noble friends Lord Hain and Lord Hendy, seeks to limit the use of criminal conduct authorisations to serious crime—and by that they mean indictable offences that must be tried in Crown Court before a judge and jury.

The amendment seeks to remove subsection (5)(c) in respect of economic well-being in the United Kingdom. It would be helpful if, in her response, the noble Baroness, Lady Williams of Trafford, were to set out examples of what this provision is seeking to do and what it is not seeking to do. There are concerns about this, as I am sure the noble Baroness has heard, from around the House, during discussion of this group.

Can the Minister also explain why the list of necessary grounds given in this Bill—as listed in subsection (5)(5)—is slightly different from those listed in the Counter-Terrorism and Border Security Act? In that Act, the reasons listed are that the activity threatens national security, threatens the economic well-being of the United Kingdom in a way relevant to the interests of national security, or is an act of serious crime. Why not use the same words? Not to do so is surely a recipe for confusion when you are dealing with such serious matters. We want to see clarity from the Government; clarity about what they intend to bring into law is very important. Why is a form of words that was acceptable to the Government two years ago, when they put the Counter-Terrorism and Border Security Act on the statute book, changed in this Bill? Surely there is a risk of some overlap between these two pieces of legislation. Will the noble Baroness clarify this when she responds to the debate?

Amendments 23 and 26, in the name of the noble Lord, Lord Paddick, add the word "serious" in order to limit a criminal conduct authorisation to issues of serious crime. I have listened carefully to the arguments from the noble Lord and have some sympathy with them, so I will be interested to hear from the Minister the case for why these amendments are not necessary. The noble Lord referred to the number of times we have talked about serious crime over the years, and the various definitions of "serious". That is a fair point and it needs to be answered.

The noble Baroness, Lady Jones of Moulsecoomb, raised the question as to why preventing and detecting crime would not be enough, on their own, as reasons for the powers in the Bill to be deployed. We also need reassurance about what will not happen when powers are given by Parliament, so it is important for the Minister to set out what will not be impacted.

Noble Lords may not like it, but the right to withhold one's labour and to strike is a hard-won right that we should all defend. We need guarantees that the powers in the Bill would never be used to undermine lawful, legal trade union activity in respect of strike action or campaigning activity. My noble friend Lady Chakrabarti raised the important point regarding trade unions, as did my noble friend Lady Bryan of Partick and many others. We have to get the balance right; lawful activity must not be undermined by the state with the use of undercover activities.

We have heard about the policing inquiry. Some terrible things have happened that I am sure we all regret, which have undermined legitimate activity. It must never happen again. Those are the questions the noble Baroness needs to reassure the House on: how will this Bill ensure that never ever happens again?

I am a proud trade unionist. I was a member of USDAW for 12 years when I first left school and I have been a member of the GMB for the last 30 years. I never rose very high in the GMB ranks; I got as far as the chair of the Labour Party senior staff sub-branch for a couple of years. I spent probably more time arguing with the rest of the staff in the Labour Party about where we wanted to get to. But I certainly think that the unions are very important. For example, USDAW—a union I am very close to—is a great trade union with great campaigns that I always support. It is important that we support the work that unions such as USDAW do.

At this point, I pay tribute to my old friend John Spellar. John was first elected to public office 50 years ago today, in a St Mary Cray by-election on 3 December 1970. John has served as a councillor, trade unionist, trade union official, MP and Minister. John would have nothing to do with any extremism of any sense whatever; anyone who knows him would know that.

He has also run a news service for many in the Labour Party called "Spellar News". We get it two or three times a day: early bird, evening round-up and news flashes. John is actually retiring the news service today, which I am very sad about. He has done great work as a trade unionist and is a great example to many of us in the Labour Party.

I was also sorry to learn that the noble Baroness, Lady Jones of Moulsecoomb, has been arrested on demonstrations. I have been on a few demonstrations in my time as well. I have avoided being arrested, but I must admit that I have also been demonstrated against. When I was a councillor, many times things that we did on the council provoked some annoyance. I remember once that I put up the fees of the traders in East Street Market and drew their wrath for a number of weeks. There were lots of unpleasant signs about me.

What is important here is that, if you are a trade unionist or a campaigner, nothing in the Bill must ever undermine legitimate work. It is really important for the Government, and for the noble Baroness, to reassure the House and Parliament that nothing legitimate will ever be undermined when this goes on the statute book, and that actually it will be supported. I think she can see from the comments of people around the House today that we are not convinced that is the case. She needs to reassure us now in responding to the debate.

**The Minister of State, Home Office (Baroness Williams of Trafford) (Con):** My Lords, I thank all noble Lords who have taken part in this debate and pay tribute to anyone who has been in politics—and indeed the trade union movement—for 50 years. I have heard of John Spellar in dispatches, but unfortunately not the person that the noble Baroness, Lady Bryan of Partick, referenced.

Turning to public authorities, they have different functions, the ultimate outcome of which is to keep the public safe from harm in a variety of ways. It is very important that they can lawfully deploy CHIS to fulfil those responsibilities. These amendments seek to restrict the statutory purposes available to public authorities under the Bill.

The structure of new Section 29B closely resembles that of Section 29, which authorises the use and conduct of CHIS, as there is a high degree of interrelationship between the two provisions. That is why a Section 29 authorisation is required to be in place before a Section 29B authorisation can be granted. The statutory purposes that will be available for a criminal conduct authorisation are linked to those available for a use and conduct authorisation. It is not operationally workable to have different grounds for authorisation between the provisions. For example, we would want to avoid a situation where a CHIS's use and conduct has been deemed necessary for the prevention of crime, but the linked criminal conduct authorisation for the same CHIS and the same activity may be only on the basis of preventing a serious crime, as my noble friend Lord King of Bridgwater pointed out.

My noble friend also pointed out the words of my right honourable friend James Brokenshire about the sheer amount of activity that has been done under covert means—it led to 3,500 arrests and the recovery of more than 400 firearms, 100 other types of weapons, 400 kilograms of class A drugs and £2.5 million-worth of cash. But first and foremost, and most importantly, is the fact that it safeguarded hundreds of victims from child sexual abuse and other heinous crimes.

To restrict the prevention of "crime" to "serious crime", as Amendments 22, 23 and 31 propose, would mean that public authorities would be less able to investigate crime that, while not amounting at the time to serious crime, actually has a damaging impact on the lives of its victims—so the outcome is serious, to answer the question of the noble Lord, Lord Kennedy. An example of this would be food crime: the extension of meat durability dates, leading to out-of-date food being consumed, is damaging and can be very dangerous to public health.

Of course, the necessity and proportionality requirements mean that an authorisation must be proportionate to the activity it seeks to prevent. This provides an important safeguard against authorisations of serious criminality being granted to prevent less serious, but equally important, crime. However, it is surely right that public authorities have access to the most effective tools to ensure justice for victims of these crimes and to prevent their occurrence.

The noble Baroness, Lady Chakrabarti, referred to some of the examples that we have heard in this Chamber of sexual relationships between undercover police and women, and some of the actually quite devastating consequences of that. I think I have said before in this Chamber that that was not lawful, is not lawful and would never be lawful.

In response to the amendments seeking to remove economic well-being, this is one of the established statutory purposes for which covert investigatory powers may be deployed by public authorities. It recognises that threats to the economic well-being of the UK could be immensely damaging and fundamental in their effect. It might, for example, include the possibility of a hostile cyberattack against our critical national infrastructure, our financial institutions or, indeed, the Government. It is important that law enforcement bodies and intelligence agencies can deploy the full CHIS functionality against such threats where it is necessary and proportionate.

Similarly, preventing disorder is an important and legitimate law enforcement function. Where illegal activity takes place, public authorities listed in the Bill have a responsibility to take action as is necessary and proportionate. An example of this could be managing hostile football crowds, which does not involve lawful protest but causes harm to the public.

To be clear to noble Lords concerned that either economic well-being or preventing disorder could be used to target legitimate protest or the work of the trade unions, an authorisation can be granted only if it is proportionate to the harm or criminality that it seeks to prevent. Therefore, this would not include—to use the words of the noble Baroness, Lady Chakrabarti—"legitimate and lawful activity". The noble Baronesses, Lady Jones and Lady Bryan of Partick, also gave examples of activity by political groups or trade unions. The noble Lord, Lord Kennedy, asked me about the difference between the wording in this Bill and the CT Act. It goes wider, basically, and it is consistent with RIPA.

With those words, I ask noble Lords not to press their amendments.

*3 pm*

**The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab):** I have received a request to speak from the noble Lord, Lord Paddick.

**Lord Paddick (LD):** My Lords, I am grateful for what the Minister has said and appreciate that she has to stick to her script, but it gives the impression on occasion that there is no point in making contributions to debate because what I have said appears, from what she has said, to have been completely ignored. I will repeat exactly what I said. I said that of course the Government may say that in addition to being necessary the granting of a CCA must be proportionate—the issue that she mentioned—and it would not be proportionate to deploy a CHIS if the criminal activity was minor. That is almost word for word what she said. However, I went on to say that the same argument applies to the interception of communications in RIPA, where necessity is limited to serious crime, as defined in our Amendment 31. That second point seems to have been completely ignored by the Minister. I accept that that is probably because she has, understandably, just stuck to her script. It comes back to the point that I made, which is: what is the point of making speeches in debates if what noble Lords say is ignored by the Minister?

The Minister said that these amendments would limit how CHIS could lawfully be deployed and seek to restrict their deployment, and authorities would be less able to investigate crime. This Bill is about criminal conduct by CHIS, not their deployment. It is about giving authority to agents and informants to commit crime, and grant complete legal immunity to CHIS in those circumstances. There is a world of difference between deploying a CHIS and authorising them to commit crime, and then granting them immunity from prosecution. Yet the whole basis of her argument, from what I understood her to say, is that there is no difference between the two. In which case, what is the purpose of the Bill?

I say again: why is the interception of communications limited to serious crime if there is no need to limit the deployment of CHIS, who are going to be authorised to commit crime? Why should they not be limited to serious crime? That is a question that the Minister has failed to answer.

**Baroness Williams of Trafford (Con):** The noble Lord, with whom I am actually good friends, makes a valid point: what is the point in making speeches if points are ignored? I often find that I make the same points over and again, and they are completely ignored because such is the will of people to make their opposite points. However, on this occasion, he is absolutely right. I did not address his point about RIPA and it being confined to serious crime. In the interception of communications, we are dealing with machines. In the deployment of humans, we are dealing with something else. I apologise to him for not answering his point.

**Baroness Chakrabarti (Lab) [V]:** My Lords, I am grateful to all noble Lords for the care with which they have approached this group, which once more highlights the gravity of the development of this legislation to enable statutory criminal conduct authorisations with total immunity for the first time in our law. I will not rehearse the various arguments, most of which I agree with, but I will respond to the noble Lord, Lord King of Bridgwater, a distinguished statesman for whom I have a great deal of respect, and to the Minister. It is their opposition to these amendments and the thinking behind them that I must address, because the issue is so serious.

At various times in the debates on the Bill, some noble Lords have expressed irritation that one should hark back to past abuses including those in the Undercover Policing Inquiry, or the treatment of my noble friends Lord Hain and Lady Lawrence, as if they belong in a bygone era and would never happen again. Other examples include the treatment of the Greenpeace women and so on. One can cast those abuses aside by saying they would never happen again but, of course, we know that as legislators we have the precious duty—the sacred trust of those who have appointed us to this role—to learn from the past and legislate for the future, informed by the dangers that past activities have exposed. It is right that we take some care and employ forensic precision in refining provisions in legislation as serious as this.

With the greatest respect to the noble Lord, Lord King of Bridgwater, and the Minister, there has been an element of blurring classes of activity that should not be blurred in legislation of this kind. In particular, there has been blurring, as the noble Lord, Lord Paddick, highlighted, on authorising undercover operatives, which is perhaps the most serious kind of intrusive surveillance—because humans are human, not machines, to quote the Minister. Yes, they need more protection but we also need more protection from them because they will change our behaviour and not just record it.

Undercover operatives are important but dangerous, even under the present law. There is a new category of authorisation in this legislation, which is about criminal conduct by those agents and criminal conduct with total immunity after the fact. That is completely novel. It is important to understand how we got here, not just regarding the vital need for these operatives or the abuses of the past but the jurisprudential and legislative train that got us to this station.

Article 8 of the convention on human rights guarantees the right to respect for private and family life, stating that:

> "Everyone has the right to respect for his private and family life, his home and his correspondence."

But of course there are exceptions. Article 8(2) is crucial in this debate. It states:

> "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

That is a necessarily broad exception. Why? It is because that exception exists in international and human rights law to cover any privacy interference at all. Any camera on a high street or requirement to fill out a tax form is an interference with privacy. It includes any

interference on a prisoner's privacy or the privacy of a schoolchild—any interference at all. Therefore, that category of exception is broad. However, it is too broad for intrusive surveillance, which is why, as the noble Lord, Lord Paddick, said, we start to introduce further restrictions for intrusive surveillance. It is not just about the duty to fill out a tax form any more; we are now talking about much greater intrusions—serious crime rather than just any crime.

Economic well-being is vital, for example, for the tax form; but it is too broad a category for authorising agents of the state to commit crimes against me, my friends or my associates. That is the Article 8 wording, which is too easily copied and pasted. Then we have the slightly tighter definitions in the Regulation of Investigatory Powers Act, on to which today's scheme is going to be grafted. That, serious though it is, is intrusive surveillance, but this is intrusive surveillance plus criminal activity plus total civil and criminal immunity. That is why the justifications in this Bill need to be tighter still than those in RIPA, not broader, and certainly a great deal tighter than the exceptions to Article 8 of the convention. I hope that I have made that clear, and I hope it rings true with most of your Lordships' House.

To return to the noble Lord, Lord King of Bridgwater, I say that nobody is under any doubt that covert human intelligence sources are absolutely vital tools of public protection. Under the current law, we have no doubt that they have protected many of us and saved many lives. However, that was on the basis of a law where these people acted on the basis of guidance, but without this absolute immunity; but now we are told that they need absolute immunity—not a public interest defence and not what they have had until now. Therefore, it is perfectly reasonable to at least probe the possibility of, if not to insist on, much tighter regulation and safeguards than are currently provided in the Bill. Having had that discussion, however, for today at least I beg leave to withdraw the amendment.

*Amendment 22 withdrawn.*

*Amendments 23 to 26 not moved.*

**The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab):** We now come to the group consisting of Amendment 27. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this amendment to a Division should make that clear in the debate.

*Amendment 27*

*Moved by* ***Baroness Hamwee***

**27:** Clause 1, page 2, line 30, at end insert "so far as those interests are also relevant to the interests of national security"

Member's explanatory statement

This would only allow a criminal conduct authorisation to be granted on economic grounds if it is also relevant to the interests of national security.

**Baroness Hamwee (LD) [V]:** My Lords, we have covered a good deal of the ground of Amendment 27 in the previous debate. I will try not to repeat too much of that. The basis for a criminal conduct authorisation under new Section 29B(5)(c) is the economic well-being of the United Kingdom. Amendment 27 seeks to qualify that with the words,

"so far as those interests are also relevant to the interests of national security".

I said that I was not going to repeat too much of the previous debate, but I have made a note that I want to echo the wise words of the noble Lord, Lord Judd. Of course, today is not the first time that Parliament has been presented with grounds for doing something that it considers unappetising or justifiable only in quite extreme circumstances or where it is concerned that the grounds are too wide. I am not referring only to today, but the range of public authorities that fall into this Bill is wider than we have seen before by quite some margin.

Under the Investigatory Powers Act 2016, which allows for bulk acquisition warrants to be issued for the acquisition of data, if the Secretary of State considers it necessary in the interests of national security, the warrant is authorised. It is also authorised for the purpose of preventing or detecting serious crime or in the interests of the economic well-being of the UK, and then the words in Amendment 27 follow. Those qualifying words were not in the Bill as it was introduced. They were introduced and added after amendments and debate. I cannot now recall why we did not end up simply relying on the original national security grounds to cover economic well-being as well. These were words that the Government accepted; they were also words to be found in the Counter-Terrorism and Border Security Act 2019, to which the noble Lord, Lord Kennedy referred, in the definition of a hostile act that entitles questioning and detention at the border.

*3.15 pm*

As the noble Baroness, Lady Chakrabarti, has said, the subject of this debate and this Bill is at the extreme end of what is being authorised. Perhaps we should simply have aimed for the deletion of new paragraph (c), but my noble friend Lord Paddick and I wanted to be constructive about this. Of course, however, we have to address the wide variety of issues that come within the umbrella of the country's economic well-being. In considering the qualifications that anyone granting an authorisation must consider, and which would be considered in the supervision of the use of these powers, I refer not just to the general qualifications, but to the fact that under new Section 29B(6), which tells the grantor what must be taken into account, this is only in considering requirements under new subsection (4)(a) and (b). I am sorry: I am misreading my notes, partly because it is getting very dark here, so I shall leave that.

I have noted what the Minister for Security said in the Committee in the Commons, when he defended the economic well-being provisions as

"an established statutory purpose for investigatory powers".—[*Official Report*, Commons, 15/10/20; col. 613.]

If the words are familiar to the Minister, it is because she has just said exactly the same thing, so my response is the same. The examples were used of cyberattack, critical infrastructure and financial institutions: yes, but qualified in the way that I have explained.

[Baroness Hamwee]

The noble Baroness talked about the full CHIS function: function, yes, but not the use of powers. As my noble friend Lord Paddick has said, there is a world of difference between deploying a CHIS and granting the right to use criminal conduct with immunity. There is an established statutory purpose, but I refer again to the existing qualification in the Investigatory Powers Act, and that is the threat to national security. I beg to move.

**Baroness Jones of Moulsecoomb (GP):** My Lords, my name is down to speak on this group of amendments by mistake, but I will take the opportunity to support the noble Baroness, Lady Hamwee, and to point out to the Minister that part of the reason we keep arguing back when she gives us information is that her text rewrites history.

Many of us were there 20 years ago when, to give just one example, we challenged the police about police officers sleeping with—almost exclusively—women to infiltrate campaign groups. I was on the Metropolitan Police Authority for 12 years and challenged successive Met commissioners to say to us that that was not lawful and not something that police officers were encouraged to do. They could not do it because all the police who have leaked and whistleblown about doing that sort of thing have said that they were encouraged to do it. It was implicitly and explicitly seen as one of the perks of the job.

So, if we do not listen, it is not because we do not have a lot of respect for the Minister; it is that we know that what she says is rewriting history. It is not true that police officers were told that it was not lawful to sleep with women on campaigns. I cannot emphasise that enough. I challenged the noble Lords, Lord Stevens, Lord Blair and Lord Hogan-Howe, and Commissioner Stephenson on this very issue and none of them could reply. I hate to attack civil servants but the Minister is getting a rewriting of history from them. That is why we argue back: because we know that it is just not true.

**Baroness Chakrabarti (Lab) [V]:** My Lords, that was a happy accident for the Committee—not that I would ever describe interventions from the noble Baroness, Lady Jones, as accidental. It is also a privilege once more to follow the noble Baroness, Lady Hamwee, who is a tireless and humble servant of your Lordships' House.

This is another wholly sensible amendment. If it is not accepted, it would be really useful to hear from the Minister under which scenarios a perceived threat to the economic well-being of the nation that did not also constitute either a threat to national security or a serious crime would justify not surveillance but criminal conduct. We need to keep returning to the fact that the Bill is not about a mere investigatory power or the authorisation of covert human intelligence, which were catered for long ago; it is about authorising criminal conduct by agents of the state with total immunity.

A point that I did not address previously was proportionality. We have been told a number of times not to worry about the lack of greater restriction and precision because proportionality will always be a requirement, so that will be safeguard enough. But, of course, proportionality will be left to the discretion of the individual authorising person in any number of agencies listed in the legislation. That is a great deal of discretion. The famous American legal philosopher Ronald Dworkin described discretion as

"like the hole in a doughnut".

He said that it

"does not exist except as an area left open by a surrounding belt of restriction. It is therefore a relative concept. It always makes sense to ask, 'Discretion under which standards?'; or 'Discretion as to which authority?'"

In other words, to leave everything to proportionality in the judgment of the person authorising the crime is no real safeguard at all. So it falls to us to be much more precise about the grounds on which, in a democratic society, we allow something as serious as criminal conduct and criminal immunity for agents of the state.

**Lord Beith (LD) [V]:** My Lords, Amendment 27 seeks to qualify the use of the concept of economic well-being as a ground for authorising criminal activity by human intelligence sources. I served on the Intelligence and Security Committee for over 10 years, many of them under the chairmanship of the noble Lord, Lord King, who spoke earlier this afternoon. I did not always agree with him but he was an admirable chairman. The breadth of the term "economic well-being" worried me then. It was an issue that I raised and explored, and that was in relation only to intrusive surveillance and the interception of communications, not the full authorisation of serious criminal offences.

There were some obviously strong candidates for recognition as threats to economic well-being—action by a hostile state or a terrorist or extremist group to destroy or disrupt key elements of our critical national infrastructure, energy supply, transport or banking and financial transaction systems. Now, they would clearly include a major hostile state or extremist action to disrupt public authority or business systems by cyberattack. But would we include Brexit and the negotiations for a deal? That clearly has massive implications for our economic well-being. What about pandemics? What if we get another one and we believe that it is being spread deliberately or recklessly by other countries or organised groups? What about a big overseas defence contract, perhaps involving up to 10,000 jobs, which we fear we might lose, with serious damage to our economic well-being? Any action we take might of course be harmful to other UK businesses participating in a rival consortium bidding for the same contract.

In the preceding debate, we also heard about the way in which economic well-being was used to justify actions against trade unionists, although I shall not repeat the examples or arguments used then. Where do we draw the line and who draws it? Is it an authorising officer? Is it an after-the-event decision taken by those with oversight responsibility, particularly the commissioner?

As I said, I asked these questions when the issue was intrusive surveillance, where the main risk to being found out was international political embarrassment. There are circumstances in which intrusive surveillance might be acceptable but authorising a serious criminal offence is not. Here, we are using a very broad and undefined concept for the authorisation of criminal offences, potentially including very serious offences.

Obviously, it can be crucial to have a source of intelligence deep within a hostile state agency, terrorist group or criminal gang which poses a threat to critical national infrastructure. Such a source might have to appear to those around them to be a willing participant in preparing for, or even assisting in, a major crime which it is hoped can be thwarted by law enforcement. But there is potentially a significant difference between authorising a source in a terrorist gang to go along with serious offences in order to help prevent, as we all accept, a dreadful and deadly act and authorising someone with access to cybercrime to carry out a violent offence which might not be necessary in order to put an end to that crime.

The point that I want to make is that the concept of economic well-being is broad, and there is so little understanding of how it will be interpreted by the very wide range of agencies empowered by the Bill that it puts massive responsibility on the authorisation and review processes and on the code of practice. I hope that the Intelligence and Security Committee of Parliament will, at some point in the near future, undertake a general analysis of how the legislation is working and pay particular attention to the use in this area of the concept of economic well-being.

I am very glad that my noble friend has tabled this amendment, which attempts to limit the scope of economic well-being for this purpose to matters that are relevant to national security, but I think that I know the answer that the Minister will give to the suggestion—that, conceivably, it might exclude some serious threats to the health or livelihood of large numbers of our citizens. However, if we do not find a way of defining more clearly what we mean by economic well-being and limit its application in authorising criminal offences, we will take a serious risk: of leaving the authorising and scrutiny bodies dealing with these decisions with no framework and having to make it up as they go along.

*3.30 pm*

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, Amendment 27 is tabled in the names of the noble Lord, Lord Paddick, and the noble Baroness, Lady Hamwee. I am not going to speak for long because we discussed some of these issues in the previous group. We have mentioned numbers in the various pieces of legislation and I have made the point about consistency. I know that when I mentioned the counter-terrorism Act, the noble Baroness was spot on and I will look at what she said in the earlier debate. However, we need to be sure that we have consistency in the various bits of legislation that we are talking about today. That is very important.

A number of colleagues have talked about the need to get the balance right here. The concerns that have been raised by Members of the House show that it is one thing when you are dealing with terrorists from another state or people who for various reasons are looking to undermine the economic well-being of the country, but on the other side of that are quite lawful campaigners. We might not like them and we might think that what they are doing is wrong or irritating, but they are acting in a perfectly lawful way. That is the area in which we need reassurance and it is what this debate comes down to. People have the right to protest, to be annoying and irritating, as long as they do it lawfully. We have to be sure that we get this right and that is what we are worried about.

Equally, I turn to the whole question of trade unionists, who have been mentioned many times. Trade unionists have the right to campaign and to know that they can do so without having agents put in to undermine their activities. You could argue that others might undermine their activities, but they do not need people in their own ranks who are sent in to do that.

As many noble Lords have mentioned, in the past undercover officers have been sleeping with campaigners. That is totally out of order. I am sure that it will be said that that will never happen again, but people need to be reassured that it is, as I say, totally out of order. While the Government are saying that this will never happen again, the noble Baroness, Lady Jones, has challenged a number of police commissioners—three of them are now Members of this House—and has never had an answer; that is also a concern. These things are totally wrong.

The Minister has a job here to find a way of reassuring the Committee that these things will not happen again, but how can we be sure about that? That is the issue that we have to deal with, because of course we thought that they could not have happened before, but clearly they did and we have only found out about them years afterwards. We want legislation that is right and proper so that people are protected, but, equally, legitimate campaigners have to be protected as well so that they are not abused and wrong things done to them. This, I think, is the crux of the issues we are debating today and I look forward to the response of the noble Baroness.

**Baroness Williams of Trafford (Con):** I thank all noble Lords who have taken part in this debate. I will start with the comments of the noble Baronesses, Lady Jones and Lady Chakrabarti, and the point about listening to what each other is saying. I have never tried to skirt around the issue of the disgusting behaviour of some 30 years ago. I do not know whether police officers were not told that it was illegal and the inquiry is clearly establishing the ins and outs of that. But it was not acceptable and it was never lawful, and it cannot be authorised under this Bill. I hope that I have made that very clear. I do not dismiss what those women went through—including, indeed, what the noble Baroness, Lady Lawrence, went through—and I hope that the inquiry will vindicate an awful lot of the people who suffered, complained and were simply ignored in the past. The inquiry will get to the bottom of something that was never lawful in the first place. I digress, but I must add that operational partners are very clear that that sort of behaviour could not be authorised under this Bill.

I shall move on to the substance of Amendment 27. I will not repeat the points I made in response to the last set of amendments, but I will emphasise that economic well-being is one of the established statutory purposes for which covert human investigatory powers may be deployed by public authorities. We recognise that threats to the economic well-being of the UK could be immensely damaging and fundamental in

[Baroness Williams of Trafford]
their effect. That might include, for example, the possibility of a hostile cyberattack against our critical infrastructure, as I said earlier, attacks on financial institutions or on the Government themselves. I gave examples in my previous speech of the victims of CSA, cash and drugs activity, so they may not be solely related to issues of national security.

We have agencies such as HMRC, the NCA and the Serious Fraud Office whose mandate includes mitigating broader threats to the UK's economic well-being. These threats are real, emerging and go beyond the remit of national security. We cannot tie our hands in response to such threats by limiting the statutory purposes available to tackle these issues. Of course, there are also examples of where economic well-being is not restricted to national security, as set out in other parts of the Investigatory Powers Act and the Security Service Act.

I hope that I have given a full explanation of why Amendment 27 should be withdrawn.

**The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab):** My Lords, I have received no requests to speak after the Minister, so I call the noble Baroness, Lady Hamwee.

**Baroness Hamwee (LD) [V]:** My Lords, I am grateful to those noble Lords who have contributed to this debate. My noble friend Lord Beith posed a number of new scenarios and he is right to prompt us to be thoughtful about these issues.

I have to say that I find it difficult to envisage what economic interests there might be which would justify a criminal conduct authorisation that do not fall within national security interests or the prevention or detection of what we think should be limited to serious crime. I do not want to repeat the arguments that I and others made in the previous debate or indeed in this one, but I will say in response to the Minister that she has introduced an element that perhaps we have not dealt with before: the need to anticipate what might happen. I may have got her words wrong, but that is the meaning I took from them. I would point to the word "preventing" crime as set out in subsection (5)(b).

I am sorry that we have not been able to progress this any further, but clearly at this moment I should beg leave to withdraw the amendment.

*Amendment 27 withdrawn.*

**The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab):** We now come to the group beginning with Amendment 28. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in the group to a Division should make that clear in the debate.

*Amendment 28*

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

**28:** Clause 1, page 2, line 30, at end insert—

"(5A) The circumstances in which a criminal conduct authorisation is necessary on grounds specified in subsection (5)(c) may not include the activities of trade unions."

Member's explanatory statement

This would provide that circumstances in which a criminal conduct authorisation is deemed necessary for the economic well-being of the UK may not include the activities of trade unions.

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, Amendment 28 in my name and that of my noble friends Lord Rosser and Lady Clark of Kilwinning, and the noble Baroness, Lady Jones of Moulsecoomb, seeks to amend the Bill by adding to it an exclusion that, where a criminal conduct authorisation is sought and deemed necessary, the grounds on which it is sought cannot include the activities of trade unions. We have mentioned trade unions in a number of our earlier debates. This is a very important issue and one that I hope that the noble Baroness, Lady Williams of Trafford, will make a very positive response to at the end of the debate. I should add at the start of my remarks that I fully support Amendment 29, in the name of my noble friend Lady Clark, which is an amendment to my amendment to add the words "or legitimate political activity".

Noble Lords will know that trade unions have been legal in the United Kingdom since about 1824. As a result of the Royal Commission on Trade Unions of 1867, it was agreed that unions were advantageous both to employers and employees. That led to the passing of the Trade Union Act 1871. Trade unions have been a force for good in the United Kingdom and around the world. They have led campaigns to improve the conditions, and the health and safety, of workers and communities alike. They are experts in the world of work. Through constructive engagement with employers in the public and private sectors, they have sought to deliver improvements of which we are all beneficiaries today. They should not be subjected to any activity resulting from the powers given under the Bill, which is why this amendment is so important.

Trade unions have brought about improvements such as sick pay, maternity pay, the eight-hour day for most workers, paternity leave, paid holidays, the minimum wage, protection against discrimination, equal pay and safe and healthy workplaces, but there is always more to do. Trade unions today are campaigning on zero-hours contracts and their associated poor working conditions, and on low wages. They also play a huge role in the campaigns on climate change, domestic abuse and the gig economy—where basic rights are often in short supply. They have highlighted the shambles of the universal credit roll-out, for example, and the great shame that, in the fifth-richest country in the world, there are people relying on food banks and sleeping in the streets close to this noble House.

All that work is legitimate and legal, and it should never be at risk from the powers contained in the Bill. I am seeking an unequivocal assurance from the Minister that trade unions will never be targeted. If she will not accept this amendment, how can she provide that assurance to the House? I fully support the amendment in the name of my noble friend Lady Clark, as I said

earlier, which would further ensure that legitimate political activity cannot be targeted under the powers contained in the Bill.

Amendment 35, in my name and those of my noble friends Lord Rosser and Lord Hain, and the noble Baroness, Lady Jones of Moulsecoomb, would prevent the powers in this Bill being used to compile lists of trade union members or to discriminate against them when they seek employment. We have heard disturbing stories of how, in the past, police officers were involved—and that is terrible—and organisations were doing just that. It is vital to have an unequivocal assurance that never again will we see officials of the state involved in targeting individuals, using the powers contained in the Bill. These are serious matters. Even the Metropolitan Police's official spokesman said that the force's internal report into blacklisting had established that the conduct of certain officers amounted to the improper sharing of information, as the law stands. Even their own spokesperson accepted that these things were wrong.

That was all part of a scandal which was exposed 10 years ago. It involved an organisation called the Consulting Association and information being quite improperly supplied to companies. That effectively ended the individual's chances of getting a job, which was appalling and disgraceful. We are all aware of the settlements offered by companies such as Balfour Beatty, Carillion, Costain, Kier, Laing O'Rourke, Robert McAlpine, Skanska and VINCI. I am sure that the Undercover Policing Inquiry will look at this further, but I am also concerned that these activities should worry us all.

If these powers are put on to the statute book, what are the protections and guarantees against these activities happening again? I know the Minister will say it will never happen again but, sadly, sometimes these things do. Can she say in her answer what will be done if it happens again? We all know about the questionable activities of Mark Jenner, also known as Mark Cassidy. He allegedly passed on information about 300 workers; his name comes up many times in connection with other activities. We need to know that this cannot happen again and, if it does, what the Government would then do. I look forward to this debate and I beg to move.

*Amendment 29 (to Amendment 28)*

*Moved by* ***Baroness Clark of Kilwinning***

**29:** Clause 1, after "trade unions" insert "or legitimate political activity"

**Baroness Clark of Kilwinning (Lab):** My Lords, I shall speak in favour of Amendment 28, to which I have added my name. It seeks to outlaw the infiltration of trade unions. In addition, I shall speak to my Amendment 29, which would go further in seeking to outlaw the infiltration of legitimate political organisations and activities. I have tabled it as a probing amendment. Many of these issues take up a lot of what was discussed in the previous debate.

State surveillance of political organisations is of course far from new. It has been going on for many centuries. Earlier this week, we heard powerful testimony from my noble friend Lord Hain about his own experiences. I know that there has been surveillance on my noble friend Lady Lawrence of Clarendon and her family. I suspect that other Members of this House may also have been subjected to surveillance, whether they are aware of it or not.

*3.45 pm*

As the House has already discussed, the Mitting inquiry has recently started taking evidence on the seemingly industrial use of undercover surveillance methods against a wide range of left-wing and progressive campaigns. These include the Vietnam Solidarity Campaign, the Anti-Apartheid Movement, women's rights organisations, anti-colonial movements, anti-racist campaigns—and families, such as those of my noble friend Lady Lawrence, who were campaigning on justice issues involving a family member. There are many others including the miners' strike, the Shrewsbury 24 and blacklisting campaigns. In 2015, a whistleblower revealed that there had been surveillance on 10 MPs, including my noble friend Lord Hain, Jack Straw and several other well-known politicians.

The inquiry established in 2015, which we have heard about, is due to report its investigations in 2023. It is currently taking evidence into allegations of infiltration of more than 1,000 political groups, starting in 1968. It is unclear whether surveillance led to intelligence on any serious crime. We hope that the inquiry will uncover facts to inform debate. As my noble friend Lord Kennedy said, Mark Cassidy is perhaps the best-known infiltrator. He infiltrated environmental groups and had sexual involvement with campaigners. For seven years, he adopted a fake identity, deceiving women into sexual relationships. Although it has become clear that some undercover officers have been using this tactic to infiltrate groups over a period of nearly 50 years, again it is unclear what intelligence the state has obtained as a result.

I am very aware that the Minister has said that such conduct by agents was wrong, and I am grateful to her for that. In a previous debate earlier this week, her ministerial colleague described such behaviour as "a mistake". The Metropolitan Police has already paid compensation to four women as a result of these inappropriate relationships. Given that these and other practices, including the infiltration of groups, have been going on for so many decades—whether or not they involved behaviours such as having sexual relationships with campaigners—the protections need to be in the Bill. Surveillance needs to take place within a clear legal framework; it also needs to be clear what level of infiltration of campaigning and political organisations is acceptable.

My amendment refers to "legitimate political activity", which would require to be defined. It could include human rights organisations, environmental campaigns and a wide range of other non-violent organisations. This legislation is an opportunity to consider what is and is not acceptable surveillance by the state. What rights do we have to take part in political activity in a free society? What rights do we have to privacy in circumstances where no criminal activity is taking place or is likely to do so?

As my noble friend has said, many of these campaigns may be inconvenient to those in government. They may be intent on changing government policy or the way in which we organise ourselves as a society. The

[Baroness Clark of Kilwinning]
amendment from my noble friend Lord Hendy would allow surveillance only where there was a crime triable on indictment. Neither of these present amendments would be required if his amendment, or some of the other wider amendments to ensure judicial oversight, were to be passed.

Many in this House are here only because of their involvement in politics, which is a fundamental right in a free society. The legislation before us is an inadequate framework that includes few safeguards. The backdrop is a history of recent police abuse and failure to respect human rights. Legislation is required to create a framework and this Bill is an opportunity to do that. However, as currently framed, it is inadequate and provides few safeguards. Therefore, I would be grateful if the Government could outline the circumstances in which they believe it is acceptable to undertake surveillance of those involved in political activities.

**Lord Paddick (LD):** My Lords, I start by making it absolutely clear that I do not blame the Minister or those who have written her brief. All I am saying to the House is that Members of this House involved in this debate have hands-on experience of these issues. I include the noble Lord, Lord Davies of Gower, and the noble Baroness, Lady Manningham-Buller, in that. I ask the Government to listen very carefully to those with that experience; that is all. I can confirm that the Minister and I are friends.

The amendments in this group seek to prevent the use of criminal conduct authorisations in connection with the activities of trade unions or legitimate political activity, or to compile lists to exclude people from employment because of their involvement with trade unions or their activities. Others seek to ensure that they are not used disproportionately against minorities and to find out how the Government intend to respond to the Undercover Policing Inquiry.

There are difficulties with Amendments 28 and 29. What happens if a trade union, or its members, is involved in criminal or seditious activity, such as, as was suggested earlier, the activities of Arthur Scargill and the National Union of Mineworkers? Who defines what political activity is legitimate? If members of a trade union have been involved in criminal activity, are there not circumstances where they could legitimately be discriminated against by employers?

We have sought to take a more general approach. In an earlier group, I mentioned our Amendment 56A in this group. It might have been better in the group where we discussed prior judicial authorisation, but the amendment did not come to me until midway through that debate. That is why it is in this group. However, it addresses exactly the issues that the noble Baroness just spoke about. Therefore, it is legitimate for it to be in this group.

I believe there is consensus around the House that agents of the state, in particular the police, should not be able to authorise covert human intelligence sources—an informant or agent—to participate in crime, granting everyone involved legal immunity in the process, without more rigorous and independent oversight. Otherwise, the sort of activity that the amendments in this group seek to prevent could take place.

As we have already debated, the problem with the prior judicial authorisation of a criminal conduct authorisation, which has to define very precisely what exactly the CHIS is or is not allowed to do, is that the agent or informant is often being sent into an uncertain, rapidly changing scenario in an uncontrolled environment, often involving chaotic individuals. Straitjacketing the agent into an exact set of actions, stepping outside of which would remove his legal immunity, is not practical, not least if the CCA has to be referred back to a judge, the Investigatory Powers Commissioner or even a Secretary of State before the criminal conduct authorisation can be changed. These are often fast-moving situations, involving complex human interactions that cannot be paused while a decision is made.

It is essential that covert human intelligence sources are not tasked to commit crime in a way that is not legitimate, whether by mistake or corruptly. The draft revised code of practice is not reassuring on this point. For clarity, I will set out what could happen in practice: a handler, who is in in contact with the informant and wants him to participate in crime, makes an application to an authorising officer—in urgent cases, a police inspector or equivalent and, otherwise, a superintendent. Paragraph 5.8 of the draft code of practice says:

"authorising officers should, where possible, be independent of the investigation. However, it is recognised that this is not always possible".

There could be a situation where a drugs squad sergeant investigating a drugs gang gets urgent authority from his own drugs squad inspector to authorise an undercover drugs squad officer to engage in a drug deal in which the sergeant, the undercover officer and, arguably, the authorising officer are all immune from legal action. It is not difficult to see the potential for abuse in such situations. Noble Lords will be able to imagine a similar scenario, where the target of the operation is a legitimate peaceful protest or the proper activities of a trade union.

Amendment 56A in my name and that of my noble friend Lady Hamwee seeks to resolve this conundrum. It seeks to ensure that, if it is intended that an agent or informant is to participate in crime, the

"nature and extent of the deployment have been approved by the Investigatory Powers Commissioner"

in advance, not the precise details of the criminal conduct authorisation. It is pre-approval, if you will: a CCA cannot be granted unless and until the Investigatory Powers Commissioner has agreed to the mission, in general terms, on which the CHIS is about to embark.

The amendment does not require the prior approval of the exact and precise terms of the criminal conduct authorisation. Instead,

"the purpose and extent of the deployment, and … the type of criminal activity"

likely to be involved must be explained, in general terms, to the Investigatory Powers Commissioner, who must approve the use of the agent or informant in the intended way. The Investigatory Powers Commissioner could, for example, approve the deployment of an agent into a terrorist organisation, but would, in all likelihood, refuse the use of a CHIS to spy on the legitimate activities of a trade union.

We suggest that this would provide the reassurance that many noble Lords seek by ensuring that a covert human intelligence source should not participate in crime without prior judicial approval, but without the Investigatory Powers Commissioner becoming involved in trying to understand the personality of the CHIS and those he will interact with, or becoming involved in the exact detail of the criminal conduct authorisation prior to the event. It would give the handler the flexibility he needs, but ensure that the CHIS is deployed only for a legitimate purpose. Such prior approval of deployment would apply only where it is intended that the agent or informant will be authorised to commit crime.

Clearly, there needs to be provision for urgent cases, which the amendment attempts to give, but what constitutes an urgent case also needs to be defined—although there is guidance in the draft code of practice about this. The question of legal immunity needs to be dealt with separately, but I urge the Government to seriously consider this compromise, and I hope that the Minister will undertake to discuss this amendment with me before Report.

As with all activity by the state and its actors, the impact on minorities should be monitored, and we support Amendment 78. However, we feel that it is too early to expect the Government to set out how they will respond to the Undercover Policing Inquiry, as this will depend on its findings.

**Baroness Jones of Moulsecoomb (GP):** My Lords, the noble Lord, Lord Paddick, gave a very graceful explanation of his previous intervention. Perhaps I should do the same and at the same time apologise to civil servants. If we accept what the Minister has said—that such actions as sleeping with campaigners to infiltrate those campaigns was illegal then and is illegal now—that still means that four Met commissioners sat in front of the body holding them to account and refused to commit to that. What does that say about our senior officers? We always have to bear this in mind, and I have been involved in this struggle for the past 20 years.

*4 pm*

It was possibly 15 or 16 years ago that some members of my family were at a festival and they said, "We think there's some police spies among us." I laughed at them and said, "I look at the Met police budget on a monthly basis—I know there's no money for that sort of nonsense." But you know what? There was. Somehow, while they were closing police stations and getting rid of sergeants, they still found time for the police spies, and that is outrageous. For us, there is a depth and colour to this legislation that I feel is lacking for others who have not experienced the other side of this police behaviour.

The amendments offer special categories—for example, political, trade union and of course blacklisting, which was a horrendous thing to have happened. I am not so sure that it is not still happening. I have tabled Amendment 82, which asks the Government to hold off on this Bill until the "spy cops" police inquiry is over. I realise that that is a bit too hard-line and will not happen, but my point is that it is a bit daft to bring this in when we do not have the experience of that inquiry to draw on. In many ways this is quite heavy-handed. I hear, "Well, all the bad stuff happened in the past and it couldn't possibly happen again." I am afraid that my experience suggests otherwise. It would be useful to know by what formula the Government are going to respond to the undercover policing inquiry, because many of us have been following that for decades.

I turn to the other amendments. The trade union blacklisting was an appalling practice. Men—mostly men—lost their livelihoods, their houses and sometimes their families when they were banned from working because the police were passing information around. Is that not happening any more? I would really like to know. I think it probably is. It has to be illegal and the people involved should be prosecuted; there is no doubt about that.

Then there is the excellent Amendment 29 from the noble Baroness, Lady Clark of Kilwinning, who made a very good speech. I wish I had that sort of calm manner in your Lordships' Chamber. There are times when I think to myself, "What on earth am I doing here?", and I am sure there are lots of other people who think the same [*Laughter*]. The fact is that I am here because I care. I do not have to do this; I could go back to Dorset and look after my leeks—actually, they are my partners' leeks; raspberries are what I do—and think about the garden. This Bill gets to the heart of what I care about in politics, which is justice, fairness and delivering on a society where people can express themselves without being closed down by other forces.

I shall go back to my speech, if I can find my place. The noble Baroness's Amendment 29 refers to "legitimate political activity", and there is lots of that. This is legitimate political activity, however heated it gets. For example, there is the question of economic well-being. I do not want a police officer to decide if my Green Party view of economic well-being is against the interests of society. I think the Conservative Party's view of economic well-being is extremely damaging not just for us but for our whole planet. It is going to affect us very deeply as a country for decades to come, but I still do not want police going around committing crimes because of that.

I feel that there are issues here that we will have to come back to on Report. I had intended to sign Amendment 29, and I will do so if it can be brought back on Report.

**Lord Judd (Lab) [V]:** My Lords, I declare an interest as a member of a trade union ever since my undergraduate days in my first job, during a long vacation, as a garden labourer for the LCC. I joined a trade union as a young man and have remained convinced about the unions' role in society ever since. They are fundamental to the kind of free society in which we want to live, a society with checks and balances and in which the rights of individuals, whoever they are, can be protected. In the struggles of the trade union movement over many years, we can see how those rights have been hard-won by brave and courageous people who stood up for justice and fairness as they understood it.

I said on the last amendment that the dividing line between a free society and a police state is not always absolutely clear. In our society, while the majority of

[LORD JUDD]
employers are responsible people, with a sense of responsibility towards their workforce and to all who are involved in their industry, we know that too many employers and people in the private sector are ruthless. They are prepared to do anything to further their profit and financial gain. I add in parenthesis that I always see a correlation between lasting industrial and commercial success—and responsible leadership of industry—with the recognition that the role of trade unions has been central to ensuring that success in the future. I always think people who deny these rights and freedoms, and the importance of organised labour, are in one way or another destined to have a sticky end.

In the kind of society in which we are living, it is therefore crucial to take our responsibility towards the protection of trade unionism and the protection of the rights of workers within our society as fundamentally important. We must not drift into a situation in which, by an inappropriate use of police powers, less savoury elements in our commercial system can exploit the situation for their own good. I always saw the blacklist of people who had been involved in what was regarded as unacceptable activity as pernicious. How many employers are on a blacklist from participation in the economy because of totally unjustifiable things that they have done? That is where we come down to the fundamental fairness and justice in our society. For those reasons, I am very glad that my noble friends have moved this amendment, and I express my strong support for what they have said.

**Lord Thomas of Gresford (LD) [V]:** My Lords, I support Amendment 56A in particular. In the earlier debate on the issue of prior judicial authorisation, I made the point that notification of an authorisation of criminal conduct to the IPC, as suggested by the noble Lord, Lord Anderson, and other noble Lords, lacked teeth. In response, the Minister argued that the oversight role of the Investigatory Powers Commissioner has teeth. She said that it includes ensuring that public authorities comply with the law and follow good practice. She added that public authorities must report relevant errors to the IPC office; for example, where activity has taken place without lawful authorisation or there has been a failure to adhere to the required safeguards, saying that the role of the IPC was to make recommendations to public authorities in areas that have fallen short of the required standard. This all may happen after a criminal event has taken place. The so-called safeguards would then bite on nothing.

Alternatively, the Minister relied on a framework in which the safe deployment of the CHIS is made by experienced, highly trained professionals, guided by the code of practice. Like the noble Lord, Lord King of Bridgwater, I have looked at this, but cannot find any guidance as to the areas in which it is appropriate for all these public authorities to deploy CHISs. It says simply that the deployment must be

"necessary and proportionate to the intelligence dividend that it seeks to achieve"

and

"in compliance with relevant Articles of the European Convention on Human Rights".

The authoriser himself or herself is charged with considering whether the activity to be investigated is an appropriate use of the legislation, which rather begs the question of what, when and where is appropriate. It is entirely the subjective opinion of that individual authoriser. He may object to the secret cultivation of leeks in Dorset, for all that the noble Baroness, Lady Jones, might know.

Examples of the deployment of covert agents, as outlined by the noble Lords, Lord Hain and Lord Mann, and the noble Baroness, Lady Jones, herself, and in the case of the Lawrence family, are dismissed as errors of the past, and that in the bright future under the provisions of this Bill, they would not happen. I agree entirely with the noble Baroness, Lady Chakrabarti, that we learn from the past, and that in this Bill there is a blurring. This bright future includes a novel element: the authorisation of crime with complete and total immunity against prosecution, or against civil suit. The Bill envisages that covert human intelligence sources will be employed in the future by a wide variety of public authorities in a wide variety of unknown situations and areas. Let us consider the areas referred to in these debates: protests against apartheid in South Africa, protests involving the cooling towers of electricity stations, and protests up trees. As for the Lawrence family, I cannot imagine what public interest was being pursued.

I recall prosecuting a case in which the defendants were charged with sending letter bombs. It emerged in the evidence at the trial that a covert security service officer was happily waving a banner in a protest march through Caernarfon in support of the aims of the bombers, shortly before the trial took place. Waving a flag may not be an offence outside Northern Ireland, but the case involved a serious crime that resulted in a 12-year sentence of imprisonment. As prosecutor, I received a knock on my door at home from the local policeman from Rhosllanerchrugog, warning me about my personal security during the trial, and telling me not to open any large letters. Two days later, I was contacted for the same purpose by the security services, who presumably did not feel the same urgency or concern for my safety as my local bobby.

*4.15 pm*

The banner-waving secret service agent was not committing a criminal offence by joining a protest, but in this Bill, we are concerned with authorising criminal offences. It is not a matter of the past; this must still be going on. Are there CHISs currently deployed in penetrating Extinction Rebellion? Is the committing of criminal offences as part of the investigation of these protest movements necessary and proportionate? Is the question of public interest to be left unchecked and unhindered in the hands of an investigating authority, however well trained its individual authorising officers may be? Such an individual authoriser may have lost the capacity for moral judgment, as the noble Baroness, Lady Bryan of Partick, said earlier today.

Amendment 56A does not seek prior authorisation of the specific terms of a CCA. As my noble friend Lord Paddick made clear, there is no straitjacket, having regard to the uncertain and chaotic circumstances of the deployment. However, it does involve the need

to satisfy the Investigatory Powers Commissioner that criminal activity is necessary and proportionate in the area in which the covert source is being tasked, outlining its nature and its extent. The proposal is that the IPC should be informed of the deployment of the source with authority to commit criminal offences in a particular area, and his oversight of the issues of necessity and proportionality is invoked. That is the sensible and workable safeguard. There is also provision in the amendment for another process if a speedy decision is needed.

The Minister promised the other day to consult the noble Lord, Lord Anderson, and those supporting his amendment. Clearly, the matter is still in play. I suggest that the Minister consult the proposers of Amendment 56A to see whether this is not a far better way forward.

**Baroness Chakrabarti (Lab) [V]:** My Lords, I agree with everything that has been said in this group so far. Of course, it comes at the problem from a slightly different angle. We heard in the last group that the purposes for which a CCA may be issued are incredibly broad, with definitions taken from the realms of international law not practicable enough to work at a fairly junior authorising level for something as severe as criminal conduct. This group comes at the same problem from the angle of protecting groups—legitimate political and trade union groups, and so on—which have been, on the evidence, targeted for abusing and intrusive surveillance in the past, and now there is the greater risk that comes with criminal conduct and immunity.

I join others in thanking the Minister for her comments about the victims of undercover police officers who formed intimate relationships, sometimes over many years and sometimes producing children. Her apologies and reassurances will give some comfort to the women in question, but in that spirit of constructive debate and listening, it must be pointed out that there were abuses beyond even those, including the abuses experienced by my noble friends Lord Hain and Lady Lawrence, and others, who were not subject to that sexual intrusion, but were none the less subject to intrusion on the basis of their political views and activities alone. As it stands, there is nothing on the face of the Bill that would protect such legitimate democratic actors from similar or greater abuse in the future, given that what we are talking about now is criminal conduct with total immunity, as we have heard.

I look forward once more to the Minister's reply to the very constructive suggestions that come in a number of different forms in this group.

**Lord Morris of Aberavon (Lab) [V]:** My Lords, I wish to speak briefly to Amendment 28, which I support. I was surprised at the breadth of the debate on Amendment 22 and others, as some of the comments on trade unions might have been more appropriate in this debate. Nevertheless, the noble Lord, Lord Paddick, made some worrying points in that debate in comparing RIPA and seeking justification for the words in this Bill. I suspect that he will want to return to them, given the inadequacy of the reply of the Minister, who gallantly recognised the points he made.

The state is sometimes minded to intervene in fields where it should not. The words in the clause,

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

may need clarification and, indeed, very close scrutiny. In my view—I think I am quoting Shakespeare—they need to be "cabined, cribbed, confined". The noble Lord, Lord Thomas of Gresford, also made some pertinent points in rightly parading some historical matters. Can the Minister refer to the precedents for words of this kind? I suspect they may have been used before. If so, it should be looked at very carefully as to whether they should be repeated, because as they stand, they are a licence to do anything. The line is a very thin one, from my past experience, between legitimate activity and activity in which the state is sometimes minded to intervene. In the Bill, there is no qualification of these words, but one is mightily needed.

I have no present interests to declare, but I was for many years a member of APEX, subsequently taken over by GMB, and I was in turn a Member of Parliament sponsored by those unions. As a retired member, I no longer have that interest to declare but, as a practising barrister, I had the privilege of giving legal advice to the south Wales miners during the miners' strike. My junior counsel was Mr Vernon Pugh, later a very eminent Queen's Counsel. The circumstances of that particular legal advice escape me—indeed it would not be appropriate to comment any further—but it was during that period that I believe the Thatcher Government crossed the line and intervened in lawful industrial activity. The freedom of the trade unions to assemble, protest, negotiate and represent was a battle that had been won over many years. My noble friends Lord Kennedy—in a very forceful speech—and Lord Judd made reference to these points. Nobody in their right senses would want to return to that and not follow the best practice of ensuring that trade unions are able to do their work.

The amendment seeks, with belt and braces, to protect trade unions from authorisation for a criminal activity. The words are a matter of great concern. It would be a sad day if we in any way return to the state interfering with trade unions and their activities and particularly condoning and authorising criminal offences involving the proper and lawful activities of trade unions. Amendment 28 is a clear warning: keep off the pitch. No normal Government would dream of crossing the line.

Regrettably, we have lived through a period when tempers were frayed, unfortunate incidents occurred and the Government did intervene. What we do not know is how infiltration occurred during that period. It is a fundamental point that we should know more. We are not talking of surveillance; that is the vital difference. Surveillance may be proper in some circumstances, but authorising criminal activity involving trade unions is not. To avoid repetition of what has happened in the past, and with those few words, I support the amendment.

**Baroness Hamwee (LD) [V]:** My Lords, if the noble and learned Lord was referring at the beginning of his contribution to the term "economic well-being", I hope that the references made during the earlier debate will be helpful. I certainly agree with him

[Baroness Hamwee]
about the breadth of what is in the Bill and the distinction between surveillance and authorising criminal conduct.

The amendments in this group raise the issue of whether we are concerned about the activity or the actor. My noble friend Lord Paddick questioned Amendment 29 and the term "legitimate political activity". I had in fact made a note that that quite attracted me, but he and I have not had the opportunity to thrash this out between us. We may get it on the Floor of the House if the noble Baroness brings the matter back at a future point.

On Amendment 78, on the equality impact assessment, frankly, the Government would be ill advised to resist this. I am mindful of the need to avoid the identification of agents. The noble Baroness, Lady Manningham-Buller, was very clear about that the other day but, as the amendment is worded, I do not think that there should be such risks—although of course I am not experienced in this area.

In Amendment 56A, my noble friend has stood back to look at the purpose. Again, it is the broader point of addressing the principle rather than producing a list or a detailed prescription. I hope that the Minister will accept that we are keen to address the problems that the Bill throws up without undermining it. I am sorry that, today at any rate, I will not get the chance to speak after she has responded to my noble friend, but I believe that he has come up with a formula that is well worth pursuing.

**Baroness Williams of Trafford (Con):** I thank all noble Lords who have spoken on this group of amendments. I start with the point made by the noble Lord, Lord Paddick, about people in this House with experience. This is important, because your Lordships' experience in such a wide variety of areas makes legislation in Parliament better.

*4.30 pm*

I also agree with the noble Lord, Lord Kennedy, in commending the work of the trade unions, which, as he said, among other things, started by ensuring that workers had suitable pay and working conditions, unlike some of the terrible things they suffered in the past. I do not diminish the devastation that blacklisting caused, which many noble Lords mentioned. The noble Lord, Lord Kennedy, and the noble Baroness, Lady Clark of Kilwinning, asked how we can make sure that this does not happen again. It is a sad fact of life that we cannot categorically say that anything will not happen again, but noble Lords will agree that supervision by IPCO, the code of conduct and oversight by the IPC are very good safeguards that clearly were not there in the past; nor were the Human Rights Act and some public authorities' internal processes.

To answer the noble Lord, Lord Paddick, IPCO has unfettered access to documents and information, and can pick up any issues. As I said on Tuesday and say again to the noble Lord, Lord Thomas of Gresford, I want to discuss ways to provide for closer real-time oversight with IPCO, as was suggested by the noble Lords, Lord Anderson and Lord Rosser. I am also happy to talk to the noble Lord, Lord Paddick—definitely before Report.

These amendments speak broadly to one issue, which is the need for reassurance that the Bill is not a conduit for public authorities to target legitimate and lawful activity. Amendments 28 and 29 seek to prevent a criminal conduct authorisation being granted for activities of trade unions, or legitimate political activity, on the grounds of

"the interests of the economic well-being of the United Kingdom",

while Amendment 35 addresses blacklisting.

I understand the concerns that noble Lords have raised about criminal conduct authorisation being used to target trade union organisations and their members or legitimate political activity. It is not the intention of the Bill to target legitimate and lawful activity, and I hope that the safeguards that I outlined have provided some comfort on this, but I will offer some further reassurance on this point. That an authorisation relates to the activities of a trade union is not in itself sufficient to establish that the authorisation is necessary on the grounds on which authorisations may be granted, including the economic well-being of the UK. I point noble Lords to paragraph 3.6 of the updated CHIS code of practice, which clearly sets this out. Also, Article 11 of the European Convention on Human Rights provides the right to freedom of assembly and association, and Section 6 of the Human Rights Act makes it unlawful for public authorities to act in a way which is incompatible with a convention right.

On the point made by the noble Lord, Lord Thomas of Gresford, on subjectivity, which was also alluded to by the noble Baroness, Lady Hamwee, we cannot anticipate every context, and therefore cannot prescribe each. Authorisations must be necessary and proportionate. In assessing proportionality, consideration must be given to whether the criminal conduct is part of efforts to prevent more serious criminality. The activity must be necessary for one of the statutory purposes outlined, proportionate to the activity it seeks to prevent and compliant with the Human Rights Act. I hope that that provides reassurance to noble Lords on their concerns around targeting legitimate and lawful activity by trade unions and their members, and the illegal practice of blacklisting.

We cannot rule out a situation in which a member of a trade union or someone involved in political protests is separately engaged in illicit activities that provide legitimate grounds for investigation, as was pointed out by the noble Lord, Lord Paddick. For this reason, we cannot carve out specific groups or individuals from the statutory grounds available for authorisations. The noble Lord made a point about a circle of colleagues, all with similar skin in the game in terms of deployment and authorisation, such as a drugs sergeant handling a CHIS who is going on to do undercover drugs work. Policing colleagues have confirmed that the case that he outlined would not happen, because the police have dedicated source units that handle all agents.

On Amendment 78, the intention of this Bill is to support public authorities to keep the public safe from the harms that criminals, terrorists and other adversaries seek to inflict. A criminal conduct authorisation may be granted only after very careful consideration as to whether it is both necessary and proportionate. The authorisation can be in relation only to a legitimate

intelligence target; an individual or group would be under investigation only because of their activities and not the particular protected characteristics that they hold. If there were any evidence that this was not the case, I would expect the IPC to raise its concerns with the public authority. I hope that noble Lords recognise that we are limited on what can be disclosed publicly about the types of investigations that CHISs would be tasked to participate in, to protect their identity and safety and not to jeopardise ongoing investigations. We will not be able to accept this amendment, but I both recognise and agree with the sentiment behind it.

I turn finally to Amendment 82. The Government recognise the significant concerns about the way in which undercover policing has operated in the past. For that reason, the Home Secretary established the inquiry in 2015: to get to the truth of those events and ensure that we learn lessons for the future. Amendment 82 from the noble Baroness, Lady Jones of Moulsecoomb, seeks to delay the enactment of this Bill until after the conclusion of the inquiry. I understand that this is some years off. It is clear from the timetable that the inquiry's proceedings will last a long time, and the Government want to put the framework for the deployment of CHISs in criminal conduct beyond legal doubt. I hope that the noble Baroness understands that her amendment is neither practicable nor reasonable, at this point.

The Bill is without prejudice to the inquiry. The Government will carefully consider its conclusions and recommendations when they are published. In the meantime, the Home Office is an active participant in the inquiry and is following proceedings closely. The inquiry's investigations are ongoing and we must be mindful not to say or do anything that might prejudice those proceedings.

Finally, I take this opportunity to reiterate that operational partners have publicly stated that it is never acceptable for an undercover operative to form an intimate sexual relationship with anyone who they are tasked to investigate or may encounter during their deployment. This conduct will never be authorised; nor must it ever be used as a tactic of a deployment. This is made clear in the code of ethics of the police service, as well as the updated law enforcement agencies' authorised professional practice guidance for undercover operatives. With those words, I hope that the noble Lord is happy to withdraw his amendment.

**The Deputy Chairman of Committees (Lord Bates) (Con):** My Lords, I have received one request to speak after the Minister, from the noble Lord, Lord Paddick.

**Lord Paddick (LD):** My Lords, I am grateful to the Minister. I have just one question. She said that the scenario I suggested could not happen because police forces had dedicated source units. Can she point to where in the Bill or in the codes of practice it says that that has to be the case? If not, the Bill or the code of practice is defective.

**Baroness Williams of Trafford (Con):** The noble Lord will appreciate that not every Bill contains every minute detail of issues such as this, but I hope that, with my having made the statement on the Floor of the House, the noble Lord is satisfied that there cannot be conflict. However, I would be very happy to speak to him about this before Report.

**Baroness Clark of Kilwinning (Lab):** I am happy to withdraw Amendment 29.

*Amendment 29 (to Amendment 28) withdrawn.*

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, I thank all noble Lords for their contributions to this debate, in which we have discussed some important issues. Needed here are guarantees that trade unions—as corporate bodies or their individual members—political parties, campaigning organisations and individual political campaigners undertaking legitimate and lawful activity, which you may not like, will not have agents of the state working to undermine their work. That is the key thing here. We will have to pursue this matter again on Report. This has clearly happened in the past and the Minister has admitted that it could happen in the future. If we cannot guarantee that it will not happen again, what are we going to do about it? That is what we need to know; that is the point that we need to sort out.

The noble Lord, Lord Thomas of Gresford, highlighted the wide range of authorities that have powers and the subjective nature of individual criminal activity authorisations. That is also an issue. I am starting to wonder whether some previous authorisations were malicious or, in some cases, just stupid. Either way, you worry about, "Well, why would people do that?" It may be malicious or just stupid. How could one issue an authorisation for some little organisation that poses a threat to nobody? It is a waste of public money if nothing else; it is just ridiculous. These are the things that we need to know about.

The noble Baroness, Lady Jones of Moulsecoomb, is a highly respected Member of the House. I like her very much, as I know do many other Members around the House. We do not agree on everything, but we agree on lots of stuff. She brings important points to the House which we all need to consider and respond to. For that, she is highly valued.

In response to my question and that of my noble friend Lady Clark, we need to hear from the Minister that further reassurance about what we are going to do if this happens again.

I want to make one final point—it is a little bit off-piste. We have talked about economic harm, but I would suggest that Brexit is the most ridiculous act of economic harm that has ever been bestowed on this country. That is an issue for another day, but there is nothing madder than that. I beg leave to withdraw the amendment.

*Amendment 28 withdrawn.*

*Amendments 30 to 33 not moved.*

**The Deputy Chairman of Committees (Lord Bates) (Con):** We now come to the group of amendments beginning with Amendment 34. I remind noble Lords that anyone wishing to speak after the Minister should

[LORD BATES]
email the clerk during the debate. Anybody wishing to press this or anything else in the group to a Division should make that clear during the debate.

*Amendment 34*

*Moved by* ***Baroness Hamwee***

**34:** Clause 1, page 2, line 36, leave out "(for example, the requirements of the Human Rights Act 1998)"

Member's explanatory statement

This amendment would provide that conduct in reach of the Human Rights Act could not be authorised.

**Baroness Hamwee (LD) [V]:** My Lords, we have both Amendments 34 and 36 in this group, the latter being the substantive amendment. I apologise that the explanatory statements as published refer to conduct "in reach" of the Human Rights Act; that should have been "in breach"—or, of course, not in breach. I can spell; it is just that my typing is not very good, though I suppose that "in reach" is what we were aiming at.

*4.45 pm*

The other amendments in the group list what is outlawed—which of course we would support—but we prefer to go back one step to the overarching reason for the outlawing and not to risk an omission. Our amendments focus on the Human Rights Act.

As the Joint Committee on Human Rights has reported, there needs to be "clear legal authority" when there is a risk of interference with human rights. It further states:

"More specifically, the European Convention on Human Rights (ECHR) … requires any power that interferes with a qualified right to be 'prescribed by law'."

Amendment 36 states not only that conduct incompatible with convention rights may not be authorised but that the conduct of a source—a CHIS—should be deemed to be the conduct of a public authority. As I read it, the ECHR memorandum published with the Bill by the Government is concerned with those authorising the use of a CHIS and the granting of a CCA. It tells us that training on human rights and on how public authorities approach agent participation is important. It states:

"Special training is given to those who work with CHIS on how to select, train and assess CHIS to ensure that CHIS are fully aware of the strict limitations of their authorised criminal conduct and the consequences of engaging in criminality that is not authorised. Ultimately, a CHIS stands to be prosecuted for his or her participation in crime where this goes beyond what is authorised."

When I read that, I thought, "This is really very tough on a CHIS, who has a tough experience anyway, both as to what he is required to do and, more so, if he is wrong." The JCHR, whose report I quote from again, says:

"The process of authorising criminal conduct will engage state responsibility. The State will be responsible … for human rights violations carried out by its agents ... The State will also be responsible if it fails to take reasonable steps to protect an individual from an anticipated breach of Article 2 (the right to life) or Article 3 (prohibition on torture) by a third party. Furthermore, 'the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention.' Criminal conduct may also impose obligations on the State to investigate … violations and to provide an effective remedy to those whose rights have been abused."

I have been confused by some comments from the Government about the applicability of the convention and how it fits with the authorisation and with how the conduct is carried out. Hence, an important limb of this amendment would require that the actions of the individual authorised were deemed to be those of a public authority.

There are a number of other amendments in this group, including Amendment 42, which extends to the issue of whether under-18s can be used for this purpose and granted such an authorisation. We have amendments later, so I shall leave comments on that until a group which more broadly deals with under-18s. I beg to move.

**Lord Cormack (Con):** My Lords, I do not dissent from what the noble Baroness, Lady Hamwee, said, but I shall concentrate my remarks on the amendment in my name, to which the noble Lords, Lord Hain and Lord Judd, and the noble Baroness, Lady Jones of Moulsecoomb, have kindly added theirs. Just so that colleagues are precisely aware, my amendment says:

"A criminal conduct authorisation may not authorise … murder, torture or rape, in any circumstances, or … a person under the age of 18 to engage in criminal conduct".

I tabled this amendment because, during the debate at Second Reading, a number of people expressed very considerable concern about minors, those under the age of 18, being authorised to commit crimes. A number of colleagues including, perhaps most notably, the noble Baroness, Lady Kennedy of The Shaws, talked about Canada and other countries where there is a specific list of crimes that are definitely not in any circumstances able to be authorised. I regard this as a probing amendment, and I intend to return to the subject on Report, if the Government do not give me what I think is a satisfactory response. It is a probing amendment because I think it may be that the approach of the noble Baroness, Lady Hamwee, is the one that the Government prefer. I do not know, but I think these points should and must be addressed.

I make it absolutely plain at the outset that I listened very carefully indeed to what my noble friend Lord King of Bridgwater said in the earlier debate this afternoon. He talked about the important work that these agents perform in the national interest. I do not dissent from that, nor from the very warm words of approval in a notable speech by the noble Baroness, Lady Manningham-Buller, on Second Reading, where she stressed the bravery of agents. However, we are swimming in murky waters here and, as I have said before, it is important that we recognise the implications of this very far-reaching legislation.

I think it is splendid that we have the noble Lord, Lord Paddick—he is briefly away from his seat—bringing his experience of the Met, but I wish that one or two of the former commissioners who sit in your Lordships' House would give us the benefit of their advice as we move on to Report. We are very privileged in this House to have true experts with enormous collective experience, and it would be good to hear from them on this very important subject.

What I am seeking to do through this amendment is to achieve a balance between the absolute requirements of a civilised society and making that society safe. There are things that one should not do in any circumstances and still claim the rights of a civilised society. Torture, of course, stands out as perhaps the foremost among those, but I think a civilised society also has to be careful about what it allows its young people to do. One of the tragedies of the last 50 years —the time that I have been in Parliament—is that childhood innocence has been, to a large degree, destroyed. The principal culprit in recent years has been social media. That is something, way beyond the scope of the Bill, that the Government have to give further priority to.

If, in dealing with county lines and so on, we are going to authorise young people under the age of 18—indeed, I understand that some of them are under the age of 16—to engage in criminal conduct, that is really not a hallmark of a civilised society. I appreciate the difficulties, and I would like to hear more about them. That is why I said, a moment ago—and I am glad he is back in his place—how much we welcome the presence and participation of the noble Lord, Lord Paddick, and how helpful it would be if some of the former commissioners of the Met who are in your Lordships' House took part on Report because, clearly, he and they know far more about this than I do. I try to look at this from a civilised perspective, and it troubles me deeply that young people should be authorised to commit crimes, and sometimes very serious crimes indeed.

I hope the Minister, who has been meticulous in seeking to answer the very legitimate points made by colleagues in this debate, will be able to devote some time and attention to this. I would welcome the opportunity of discussing these things with her before Report. We need the Bill; I accept that. Some of those we will be authorising are, indeed, as the noble Baroness, Lady Manningham-Buller, said, among the bravest of the brave, but there are others who have a criminal background themselves and, while I would not necessarily question the validity of their work, I might question the validity of some of their motives.

I think we have to get this, as we are legislating. Up to now, we have not, although we all know it has happened. As this very important, far-reaching Bill is before your Lordships' House, and as it was not given the scrutiny in another place that we are giving it, I want us to be able to send it back to the other place significantly improved. I hope that, as in so many cases, the Government, recognising the validity of points made in your Lordships' House, will themselves introduce amendments that we will be able to welcome and endorse, to create a Bill that is truly workable and that achieves that balance I talked of a few moments ago. I hope it goes back to the other place and does not come back to us after that, because I hope the other place will accept the improvements made to it. I commend this, as a probing amendment, to your Lordships' House.

**Baroness Jones of Moulsecoomb (GP):** It is a pleasure to follow the noble Lord, Lord Cormack, whose amendment I have signed. It is a very important amendment about putting limits on what can be authorised, excluding rape, torture and murder. Quite honestly, it is astonishing that this even has to be debated; we really ought to be free of that sort of threat to ordinary people, quite often.

The Government say that amendments such as these are not necessary, because of the complex legal web of proportionality and the Human Rights Act. That argument might carry more weight if the Government were not constantly fighting a culture war against human rights lawyers. However, one does not need to be a human rights lawyer to understand that rape, murder and torture are never justified, so these restrictions have to be in the Bill.

Then there is the Government's circular argument that we must not ban specific crimes from being authorised, because undercover agents would be tested by the criminals to prove themselves by doing prohibited acts. The circularity of that argument is that if the Human Rights Act already prohibits something, they can already be tested. I would like that cleared up if possible.

*5 pm*

Finally, we have to think about the victims of these crimes—the survivors. Women have been raped by undercover police officers, and the Bill would prevent future victims getting any compensation or legal redress for those crimes.

I have also signed the amendment in the name of the noble Lord, Lord Rosser. I support all the amendments, but especially those by the noble Baronesses, Lady D'Souza and Lady Massey of Darwen, which are superb. I hope we will come back to this on Report. There is the extra element of the amendment from the noble Lord, Lord Cormack, on not authorising children to be undercover agents. We will revisit that later this evening; I will say more about it then.

**Lord Judd (Lab) [V]:** My Lords, I shall speak warmly in support of the amendment by the noble Lord, Lord Cormack. It is succinct and brief, and it clearly spells out the issues at stake. He explained why they matter so much. I am also glad to support other amendments that develop that theme with reference to activity in the same sphere.

I am also glad that the importance of the European Convention on Human Rights and our commitment to it is underlined again in this group of amendments. The convention is there to safeguard the future of a stable society. It was written in the context of what we had experienced in that bitter Second World War. People saw that these things mattered for a stable society. It is when the going gets tough and the demands get challenging that our adherence to those principles and to the convention becomes more important than ever.

The noble Lord, Lord Cormack, referred warmly and rightly to the bravery and courage of the many people in the security services. I endorse that totally; I have great admiration for what is being done by much of the security services, for what they have achieved and for the way they have safeguarded people—men, women and children—from unacceptable action. In taking that argument seriously, one of our jobs is to uphold those in the security services, and other services

[LORD JUDD]
such as the police, who believe fundamentally in being part of a free, liberal society, which they are there only to uphold. It is easy, by not upholding the best and highest principles of those people, to begin to undermine the services. It is corrosive, and we must not let it happen. That is why the amendments are so important. We have in our midst the noble Lord, Lord Paddick, who demonstrates what decent, imaginative and responsible people in that sphere of public service are trying all the time to uphold and demonstrate. I listen always with profound respect to what he has to say.

There is only one other point I want to emphasise. In this unpleasant time in which we live, with so many challenges to our way of life and to what we want to be able take for granted, and with our anxieties about the well-being of our families and so on, we are involved—as I have said before in our debates—in a battle of hearts and minds. I am totally convinced, with all the evidence of recent decades, that terrorism and extremism gain hold and thrive when there is a climate of doubt among a significant number of people and a worry that the state is abusing its power. That is why it is so important that we demonstrate all the time that when we have to take action of the kind the Bill deals with, it is demonstrably justified by what is essential for the well-being of our society. That is why we have talked so much about judicial supervision and so on, which matters in this context. We must not allow ourselves to give ammunition to those who try to manipulate society by building up that climate of doubt and anxiety among ordinary, decent people. These amendments deal with how we approach and win the battle for hearts and minds. We are about a different kind of society.

On that final note, matters such as murder, torture and rape have no place whatever in the kind of society that we claim to be and that we want to protect. That should be a fundamental guiding principle, and that is why I am glad that the noble Lord, Lord Cormack, spelled this out so well. Also, the use of children is unthinkable when so many of them come from vulnerable backgrounds and are vulnerable themselves, and when you consider what we are doing to them as individuals and to their potential to be decent and positive citizens. No, the use of children is not acceptable. I also believe that when we slip into that sort of activity we give ammunition to the people we are determined to defeat. We must not do that. Underlying that principle is not just that it is a tactical necessity—I believe it is a necessity—but that we demonstrate all the time what the values of our society are, and how we are different from these people who want to undermine it and have very little respect for all the things we hold dear.

This is an immensely important group of amendments, and I am glad they are there for our consideration. I plead with the Minister, for whom I have great respect as an individual, to take them as seriously as she should.

**Lord Hodgson of Astley Abbotts (Con):** My Lords, I have Amendment 45 in this group, which is slipstreaming along behind Amendment 44 tabled in the names of the noble Lords, Lord Rosser, Lord Kennedy of Southwark and Lord Judd, and the noble Baroness, Lady Jones of Moulsecoomb. That is a body of Members of your Lordships' House that I hold in the highest regard, but not one that I often slipstream along behind, to be honest—but I am glad to do so today. I assure them that my purpose is not to impede their amendment, but just to make clear beyond peradventure that the provisions that they seek apply equally when CHIS operations take place overseas.

The amendment follows from some of the remarks I made at Second Reading, and because, during the debate in Committee a couple of days ago on Amendment 7 —moved by the noble Baroness, Lady Ritchie of Downpatrick—in which I did not take part, the Minister made clear in reply at col. 193 of the *Official Report* that the Government believed that the ability to operate CHIS and CCAs overseas was essential to the proper operation of the Bill.

This is the first time I have spoken in Committee, and again I want to touch briefly on something else that I said at Second Reading. In picking up here the strictures of my noble friend Lord King of Bridgwater, also picked up on by my noble friend Lord Cormack, of course I understand the duty and importance of the Government keeping us safe, that we send men and women often into danger, and that that may require the undertaking of some actions which might be described at least as being "disagreeable". But equally I argue—as other noble Lords have done—that in a democratic society there must be a limit to how disagreeable these things can be. That is the balance that other noble Lords referred to, and to which this amendment and others we shall discuss later tonight are directed.

I also need to make it clear that I do not have any legal or operational experience of covert operations. My views are drawn from a number of years serving as an officer of two all-party parliamentary groups—one on drones and the other on extraordinary rendition. I want to make sure that the practices used in those two areas cannot, will not and must not be allowed to morph over into the operation of CCAs overseas.

Let me deal with drones first. Drones obviously provide a long arm for military and other surveillance purposes. It is a somewhat surreal experience to go to an RAF station outside Lincoln, sit in a portakabin set in the corner of a huge hangar created to house Lancaster bombers in the Second World War and watch a pilot flying a drone thousands of miles away in the Middle East. But while it is surreal, it is also deadly serious, because this is the means for carrying out what has sometimes been called extrajudicial killing.

It is not widely known just how extensive these operations have been. In terms of the RAF's Operation Shader, which covers Iraq and Syria, the MoD tells us that there have been over 8,000 sorties, 4,400 bombs or missiles released, 3,964 enemy fighters killed and 298 wounded—and how many civilians? Just one. That could indicate extraordinarily accurate targeting by the RAF, but the US Defense Department has to reveal to Congress the number of civilian casualties caused by US forces, and in the recent figures sent to Congress they made it clear that they specifically excluded deaths caused by non-US forces, of which there were at least 14. If you press the Government on this area, the answer is that no answers can be forthcoming

because of national security. My noble friend will quite rightly say that this is a Bill about covert operations, not drone strikes. I understand that, but I want to be reassured that, down the road, the blanket refusal based on national security will not be available as a response to an inquiry looking into problems with an individual CCA undertaken overseas.

*5.15 pm*

Secondly, I turn briefly to the issues surrounding extraordinary rendition and the role of the Armed Forces, which are one of the relevant authorities listed in new Part A1 in the Bill. None of the three largest parties in your Lordships' House has clean hands on this murky issue. Following very considerable pressure, the coalition Government approved Sir Peter Gibson, the Lord Justice of Appeal, to hear an inquiry into the circumstances surrounding extraordinary rendition. But the Government drew the terms of the inquiry very carefully to ensure that any consideration of actions of the UK's Armed Forces was excluded from Sir Peter's inquiry. It was, and is, widely felt that the drafting had been necessitated because UK forces had handed individuals over for interrogation by others, notably US forces.

Again, my noble friend will no doubt say that this is a Bill about covert operations, not rendition—and again that is true. But the key question I would like to hear an answer on is whether the new regime on CCAs overseas can take place at one remove. To what extent can an individual operating under a UK-granted CCA, but operating overseas, bring into play or make use of another individual who may not be subject to the same legal and other constraints?

The Committee so far has explored CCAs working within the geographical confines of the United Kingdom. Once one moves to different countries, with different time zones and different patterns of law and custom, the potential problems and challenges to their proper supervision becomes greater, and that is why I have tabled Amendment 45.

**Baroness D'Souza (CB):** My Lords, Amendment 55 in my name is in this group. The amendment seeks to place on the face of the Bill a clear prohibition on three grave criminal acts, namely murder, torture and sexual violations. It is narrower in its application than other amendments in this group, to avoid any confusion about the scope of these prohibitions. Therefore, references to "too broad" and "too open to interpretation", such as threats to economic well-being and damage to property, are omitted. An added clause, referring to the discretion of the state not to prosecute the commission of even these major crimes, provides a further lack of restriction in exceptional cases.

Of course, there is no doubt of the need for the Bill to protect informants in their often dangerous but vital work. But the Bill as it stands puts the executive authorities and their agents above the law, a concern widely expressed at Second Reading. No state should authorise serious crime without limits. The Government's justifications for allowing these grave crimes have still not been fully dealt with—for example, why the Human Rights Act, according to previous statements on the part of the Government, would not apply to informants' criminal actions, or why listing prohibitions would somehow expose informants to additional danger. These are among the remaining ambiguities in the Bill.

We might learn from the original RIPA legislation, which necessitated later additional amendments to prevent its scope inexorably increasing over the years. The law must be accessible and clear. There is an opportunity here and now to make this Bill fit for purpose by incorporating the three main prohibitions limiting the sanctioning of grave crimes which are themselves contrary to the terms of the ECHR, to which the UK is party. To omit these limits, the Bill damages the integrity of criminal law and suggests that the state may tolerate, or even encourage, the most serious offences in the UK law.

**Lord Anderson of Ipswich (CB) [V]:** My Lords, these amendments have at their heart the question of whether there should be a list of offences which can never be authorised. The Government say not, claiming that countries which have such lists do not experience the same type of criminality that we do, especially in Northern Ireland; that to have such a list would mean that CHIS were tested against it; and that the Human Rights Act provides sufficient protection in any event. Despite the briefings which the Minister and the Security Minister have kindly arranged for me, I am afraid that I am yet to be fully convinced.

First, I wonder whether the nature of serious crime in this country is really so different from that in Canada, Australia or the US, each of which has some sort of list. Northern Ireland is mentioned, but given historical experience, it might be thought that the public reassurance given by a list would be of particular value in Northern Ireland. The principled objection to a list is rather diminished by the fact that the new Section 29B(10)(a) will empower the Secretary of State to create just such a list in secondary legislation. This, however, is no merely technical or topical concern, such as might justify the Government in reacting on the hoof to some future scandal. The content of the list is surely something that Parliament should consider coolly in advance, and not just to debate but to amend.

As for the Human Rights Act, it is unfortunate that there seems to be no easy way for the police or anyone else to translate what the Government characterise as its protections into clear and comprehensible operational advice. I have a good deal of sympathy with each of the various points made by the Joint Committee on Human Rights in chapter 4 of its report, some of which have already been echoed in this debate. Though I do not repeat them here, I very much hope that, before Report, we will see a detailed and convincing response to all of them. Included in that, I suggest, should be a fuller explanation of paragraphs 14 to 16 of the ECHR memorandum, which has, perhaps understandably, generated a degree of concern.

What of the argument based on the testing of CHIS? The more I think about this, the less I understand it. Suppose that we amend the Bill to say, "CHIS cannot be authorised to rape." Suppose then that the gang asks an individual to rape and that the individual refuses. What does that tell the gang? One possibility is that the individual simply has scruples that he is unwilling to set aside. Another is that he may be a

[Lord Anderson of Ipswich]
CHIS whose authorisation does not stretch as far as rape or who has been advised by his handler not to rape. Whether or not the crime of rape features on a prohibited list has no bearing on the issue, unless one assumes, absurdly, that every CHIS will be authorised to commit all types of crime not on the prohibited list and will make full use of that authorisation whenever the opportunity presents itself. The reality surely is that CHIS will continue to be authorised in only limited respects, no doubt falling far short of sexual crime, and that a refusal to rape, murder and torture cannot, therefore, be a meaningful indicator of CHIS status.

It is hard to understand why a short list, bearing no relation to the types of crime that will routinely be authorised, should increase the risk to a CHIS or make it more likely that he will be successfully outed as a CHIS by the criminal group in which he is embedded. If public reassurance requires it to be known that undercover police may not form intimate relationships, as it evidently does, then why should it not be known that CHIS cannot be authorised to commit—at least—the trio of torture, murder or rape mentioned in the amendment of the noble Lord, Lord Cormack? I look forward to any guidance that the Minister can give on this point. This is important stuff, and if the Government are right, we really need to understand why.

I venture to suggest that the extensive powers in the Investigatory Powers Act 2016 were endorsed by Parliament because they were accompanied by equally strong safeguards, and also because the agencies and others were prepared to go to unprecedented lengths to explain why they were needed. They explained their case fully and frankly, at a detailed operational level, to trusted interlocutors such as the team that produced the bulk powers review in 2016 under my leadership. They also explained it as fully as they properly could to Parliament and the public as a whole. I hope that that lesson has been fully learned, because, as the noble and learned Lord, Lord Thomas of Cwmgiedd, has already indicated, it may be needed on this Bill too.

**Baroness Massey of Darwen (Lab) [V]:** My Lords, I shall speak to Amendment 56 on behalf of the Joint Committee on Human Rights, of which I am a member. This report was derived from consultations with many knowledgeable and concerned participants. My noble friend Lord Dubs, also a member of that committee, has already contributed significantly to these debates. Unfortunately, he is otherwise engaged this afternoon in unavoidable commitments, but I hope that he will be here to present Amendments 39 and 63.

Amendment 56 establishes a prohibition on the authorisation of serious criminal offences in similar terms to those appearing in the Canadian Security Intelligence Service Act 1985. The Joint Committee on Human Rights expressed concern that even the most serious offences, such as rape, murder, sexual abuse of children and torture, which necessarily violated basic human rights, were not excluded on the face of this Bill. Noble Lords today and previously have expressed grave concerns about this issue. The Home Office considered this necessary because it feared it created a checklist for suspected CHIS to be tested against. The Government's position is that the Human Rights Act provides a guarantee against certain criminal conduct. However, it is noted in paragraph 40 of our report that, if a criminal gang or terrorist group were familiar enough with the relevant legislation to test a CHIS against it, they would presumably be equally able to test them against the guarantees of protections set out in the Human Rights Act. The committee did not consider it appropriate to legislate by providing open-ended powers while relying on the Human Rights Act as a safety net.

The report noted that the Human Rights Act has not prevented previous human rights violations by undercover investigators, or CHIS. For example, the Human Rights Act was in force for much of the period when undercover police officers from the National Public Order Intelligence Unit were engaging in intimate relations with women involved in the group that they had infiltrated. The committee also noted that other countries with similar legislation, including Canada, the US and Australia, had expressly ruled out CCAs ever enabling the most serious offences. I realise that this has been referred to before today. The report therefore concluded:

"There appears to be no good reason why the Bill cannot state clearly that certain offences or categories of offences are incapable of authorisation."

**The Deputy Chairman of Committees (Lord Lexden) (Con):** The next speaker on the list, the Lord Bishop of Carlisle, has, sadly, withdrawn, so I call the noble Lord, Lord Dubs.

**Lord Dubs (Lab) [V]:** My Lords, I was originally not going to be present for this debate, and I left the main thrust of the argument to my noble friend Lady Massey. I simply say that I endorse what the Joint Committee on Human Rights has said, and this has set the pattern for many of the debates this evening. I am fully in support of the arguments put forth by my noble friend Lady Massey.

**Baroness Chakrabarti (Lab) [V]:** My Lords, like my noble friend Lord Dubs, I can be short in the light of some outstanding contributions that we have heard from Members of your Lordships' House. The more I listened to those arguments, the more I was convinced that there needs to be some kind of limit on the nature of criminal conduct that can be authorised with—and I repeat—total advance immunity from criminal liability or civil suit. If in Canada, why not here? It was the noble Lord, Lord Anderson of Ipswich, who dealt with the so-called Sopranos argument on testing with particular dexterity.

*5.30 pm*

If, as the Minister has now said more than once in Committee, performing fraudulent but otherwise so-called consensual sexual relationships with a subject of surveillance will no longer be permitted and cannot under any circumstances be authorised under this legislation, how can it be permissible for crimes such as murder, torture and rape be authorised? If the Minister is going to reassure us in her remarks that those crimes cannot be authorised, why not place such a reassurance in the Bill? Why rely on administrative

arrangements on Pepper v Hart reassurances in your Lordships' House, rather than, in the interests of the rule of law, place such restrictions and reassurances in primary legislation?

The noble Lord, Lord Hodgson of Astley Abbots, was right to remind us that the Bill has extraterritorial effect and of the abuses of the recent past, not just in relation to undercover policing in the UK but to the horrors of the so-called war on terror. It is not just the noble Lord, Lord Paddick, who brings so much to these debates. I hope noble Lords will all agree that the noble Lord, Lord Cormack, spoke with particular wisdom and balance. I shall stop there and look forward to, no doubt, further wisdom from the noble and learned Lord, Lord Thomas of Cwmgiedd.

**Lord Thomas of Cwmgiedd (CB) [V]:** My Lords, I shall speak briefly as my noble friend Lord Anderson of Ipswich has almost precisely expressed the views that I share.

I support the more specific amendments, particularly the first paragraph of the amendment in the name of the noble Lord, Lord Cormack, and spoken to by the noble Baroness, Lady D'Souza. I do not address the under-18 issue because that is a separate and difficult point. What we are concerned with is the question of serious crimes such as murder, sexual offending and serious violence. This point only arises or becomes of any importance if there is no pre-authorisation provision. I considered each of the arguments that have been outlined as to why this is unnecessary, first, as regards human rights. I must say, in respect of the amendment in the name of the noble Baroness, Lady Hamwee, that to frame something in terms of the Human Rights Act in this area is fraught with difficulty and uncertainty. Framing it in terms that ordinary people can understand and follow is difficult.

My noble friend Lord Anderson dealt with the testing argument and I need say nothing more about that. Perhaps the Minister can assure us regarding what the noble Baroness, Lady Chakrabarti, has just said and put an assurance into the Bill.

I want to deal with one further matter: the position of the IPC. Of course it can be said that if a serious crime of the kind we are contemplating were ever to be committed, it would immediately come to light by a post-occurrence investigation by the IPC. However, I cannot imagine anything more damaging to the security services, the police or any other body than for them to be put in such a position. It can never be necessary or proportionate to murder or torture, and it can never be necessary to commit rape. It would bring enormous confidence to everyone in the security services, for which I have the greatest admiration, as do many noble Lords who have spoken, if it were known that there are certain things that those bodies can never be authorised to do. I cannot understand why the Government are so reluctant to concede on that.

There may of course be matters that I or Members of the House do not know about, which is why it becomes important to consider the matter that I raised on Tuesday—namely, asking for a report from a trusted body or individual or to a Select Committee where the evidence justifying such a course that the Government appear to want to take could be explained.

**Lord Rosser (Lab) [V]:** There are a number of amendments in this group relating to human rights. They variously provide that a criminal conduct authorisation: may not authorise activity that would be incompatible with convention rights; may not authorise murder, torture or rape, or a person under the age of 18 to engage in criminal conduct; cannot authorise causing death or grievous bodily harm, sexual violation or torture; and cannot authorise causing death or grievous bodily harm, perverting the course of justice, sexual offences, torture or depriving a person of their liberty.

There is also an amendment in my name and that of my noble friends Lord Kennedy of Southwark and Lord Judd, and the noble Baroness, Lady Jones of Moulsecoomb, that would also put explicit limits in the Bill on the types of criminal behaviour that can be authorised. These limits cover causing death or bodily harm, sexual violation, perverting the course of justice, torture, detaining an individual or damaging property where it would put a person in danger. There is an amendment to my amendment from the noble Lord, Lord Hodgson of Astley Abbotts, the purpose of which, as he has explained, is to explore whether the proposed regulatory regime provides adequate safeguards for operations carried out overseas.

The amendments all follow a similar theme, namely, wanting to include in the Bill clearer and tighter wording in respect of the criminal conduct that can be authorised by a CCA, so that there can be no doubt over what is a permissible criminal conduct authorisation and, more significantly, what is not. The Government's position appears to be that criminal offences that are contrary to the Human Rights Act are already precluded, given that all public authorities are bound by the Human Rights Act, and thus authorising authorities are not permitted by the Bill to authorise conduct that would constitute or entail a breach of those rights.

Interestingly, the Bill states in new Section 29B(7) in Clause 1(5), on criminal conduct authorisations:

> "Subsection (6) is without prejudice to the need to take into account other matters so far as they are relevant (for example, the requirements of the Human Rights Act 1998)."

But what are the words "to take into account" meant to mean in this context as regards adhering to the requirements of the Human Rights Act? One can, after all, take something into account and then decide that it should be ignored or minimised in whole or in part. What do the words,

"so far as they are relevant",

mean in relation to the requirements of the Human Rights Act? In what circumstances are those requirements not relevant in relation to criminal conduct authorisations?

Turning to an issue that the noble Lord, Lord Anderson of Ipswich, addressed, the Government have maintained that specifying in the Bill offences that cannot be authorised places at risk undercover officers and agents on the grounds that to do so would place into the hands of criminals, terrorists and hostile states a means of creating a checklist for suspected CHIS to be tested against. However, as has been said, the Canadian Security Intelligence Act authorises criminal conduct similar to that proposed in the Bill, and my amendment reflects the wording in the Canadian legislation on the type of serious criminal conduct that cannot be authorised.

[Lord Rosser]

The Joint Committee on Human Rights has pointed out that the Bill gives the Secretary of State power to make orders prohibiting the authorisation of any specified criminal conduct and that, in line with the Government's argument, whatever might be prohibited by such an order could presumably also be used by criminals as a checklist against which to test a covert human intelligence source. The JCHR comments in its report:

"If limits can be placed on authorised criminal conduct in publicly available secondary legislation without putting informants and undercover officers at undue risk, it is unclear why express limits cannot also be set out in primary legislation."

The JCHR report also states:

"If a criminal gang or terrorist group was familiar enough with the relevant legislation to test a CHIS against it, they would presumably be equally able to test them against the guarantees and protections set out in the"

Human Rights Act.

Perhaps, in their response, the Government could say whether they are still committed to the Human Rights Act, since following their 2019 election manifesto commitment to ensuring that there is a proper balance between the rights of individuals, national security and effective government—which suggests that the Government do not think that is the present position—they have announced that there is to be a review into the operation of the Human Rights Act.

If the Government intend to argue that the Human Rights Act will provide protection in the years ahead against unacceptable use of the powers in this Bill, there needs at least to be a clear statement from the Government that they are committed to the Act and will not be altering its provisions.

It could be claimed with some justification, however, that the Human Rights Act has not prevented previous human rights violations connected to undercover investigations or covert human intelligence sources. I await the Government's response to this group of amendments and to the contributions that seek more specific wording in the Bill, to put clear limits on the type of criminal behaviour that can be authorised.

**Baroness Williams of Trafford (Con):** My Lords, I thank noble Lords for their very thoughtful contributions to a discussion of the upper limit of what can be authorised by a criminal conduct authorisation.

I will first address comments—because they have been the most numerous—that propose to replicate on the face of the Bill the limits that the Canadians have set in the legislation governing their security service, and Amendment 42, from my noble friend Lord Cormack, which prohibits murder, torture or rape. I totally recognise why noble Lords want to ensure that this Bill does not provide authority for an undercover agent to commit any and all crime. It does not. I reiterate once more: there are already clear limits on the criminal activity that can be authorised and they can be found within the Human Rights Act—which, by the way, was not in place when some of the activities that noble Lords have described were carried out.

Nothing in this Bill undermines the need to comply with that Act, as is made clear by new Section 29B(7). Further limits are placed on the regime by the need for the authorising officer in all public authorities to confirm that there is a demonstrable need to authorise a CHIS by making a clear case for its necessity and proportionality. I understand questions about why we cannot place explicit limits in the Bill, as they do in other countries, notably including—as noble Lords have said—Canada, and I will explain our reasoning.

We think that placing express limits on the face of the Bill is not necessary. The Human Rights Act already provides these limits and the amendments that replicate the limits in Canadian legislation do not prohibit any criminal conduct which is not already prohibited by the ECHR and HRA, as encompassed by the Bill. The noble Lord, Lord Anderson, made a point about undercover police who have sexual relationships: if gangs knew that that was unlawful, would they then test against it? I would say that although that behaviour would be unlawful in that context, it is very distinct from rape. I have been trying to talk to my noble friend who is a QC and perhaps I will set my answer out in more detail in writing.

*5.45 pm*

Next, however, I will address the point made by the noble Lord, Lord Rosser, who is worried that the Government are not committed to human rights legislation. As we set out in the 2019 manifesto, the Government will

"look at the broader aspects of our constitution",

including the

"balance between the rights of individuals … and effective government."

As part of this manifesto commitment, we pledged to update the Human Rights Act, which is now 20 years old. This does not change the fact that the UK is committed to human rights and will continue to champion them at home and abroad. Furthermore, let me be clear: the UK is committed to the European Convention on Human Rights.

Some noble Lords will still call for us to be more explicit on the limits of conduct which can be authorised. To do so would be to risk CHIS testing, by spelling out for our adversaries exactly what crimes a CHIS will never be authorised to undertake under any circumstances—knowledge that is then used as a checklist to test for suspected undercover operatives. This is a particular risk in the UK, where operational partners see testing attempted by groups in Northern Ireland in particular.

We all have a responsibility to ensure the safety and security of our undercover operatives, who are tasked by the state to gather information and intelligence in order to safeguard the public from terrorism and crime. We must also accept the regrettable truth that in providing an explicit list of limits for CHIS we run the risk of handing criminal and terrorist groups a means of initiating new recruits into their ranks. We must not be so naive as to think that certain organised crime groups, in seeking to ensure that their ranks are not infiltrated by undercover operatives posing as prospective new members, will not insist that new recruits undertake heinous crimes that they know a undercover operative could never undertake.

We should also question what happens when a criminal or terrorist group asks someone suspected of being an undercover operative, who in fact is not one, to undertake a proscribed crime in order to test them.

In a bid to protect themselves, could a person falsely accused of being a CHIS be more likely to undertake a crime that they might otherwise not commit?

I will also address what might appear a contradiction: saying on the one hand that these are sophisticated groups that could test for CHIS were there to be explicit limits on the face of the Bill, and on the other that activity contrary to the Human Rights Act is prohibited. The people and groups who are the subject of CHIS operations are many and varied. Some are very sophisticated and capable organisations that will invest real effort in understanding and frustrating our covert capabilities. Those groups, which include hostile states, will go to lengths to try to convert the Human Rights Act obligations into specific offences which they can then test against. They may feel that they have reached clear conclusions on some offences but will not know for certain in every case that their analysis is sound. This margin of uncertainty can be enough to keep our CHIS working safely and effectively.

At the other end of the spectrum of our opponents are individuals and small groups that are no less committed to their crimes, but are unsophisticated. Their effectiveness may often lie in their willingness to act quickly and violently. Such a group will not have a sound understanding of the Human Rights Act, or any other deep legal analysis. If, however, we simply presented them with a list of offences, we are certain that many of them would use that as a means to try to identify the undercover operative. They would often get that wrong, meaning that negative consequences would fall on people wrongly suspected of being a CHIS, as well as on the CHIS themselves.

I know that those are all uncomfortable scenarios but they are ones that we must consider very seriously. We must put public safety first.

I now turn to Amendments 34 and 36. Even without specific reference to the Human Rights Act in the Bill, the obligations under the Act would still apply to the authorisation of criminal conduct. On the introduction of the Bill to this House, I signed a statement confirming compliance with the ECHR, while Section 6 of the Human Rights Act sets out that it is unlawful for a public authority to act in a way which is incompatible with a convention right. The use of the wording "for example" when naming the Human Rights Act in the Bill is intended to demonstrate that this is just one of a number of considerations that the authorising officer must take into account before granting a criminal conduct authorisation.

Amendment 36 also seeks to confirm that conduct in breach of the Human Rights Act cannot be authorised. There is no need for this amendment because authorising officers must already comply with the Human Rights Act, and the Bill does not do anything to undermine the protections in the Act. All criminal conduct authorisations must meet strict necessity and proportionality parameters before being signed off by an authorising officer. If the required parameters were met and an authorisation was properly granted, the public authority would of course stand by this authorisation, as it would with any other tasking of a CHIS.

My noble friend asked whether activity can be authorised for a CHIS and one removed. The actions of each individual CHIS must be explicitly authorised and lawful. He also asked me about ETJ effects. Any deployment will comply with the Human Rights Act, even if it is extraterritorially applied. Of course, we are also bound by international human rights law.

Finally, the noble Baroness, Lady Massey of Darwen, asked about the JCHR report. We will respond to it in due course and will address the points made in the report. Noble Lords will of course have an opportunity to consider the response.

With that, I ask the noble Baroness to withdraw her amendment.

**Baroness Hamwee (LD) [V]:** My Lords, I will pick up a number of points, if I may. First, the noble Lord, Lord Hodgson, raised important issues, although the whole of this debate is important. I think he will know that I agree with him because I have previously referred to rendition in this context.

Like the noble Lord, Lord Anderson, I cannot believe that crimes in the UK are worse or more intractable than those in other countries that are mentioned—although what do I know? He referred to new subsection (10)(b). I am interested that he reads the word "requirements" as being a prohibition. I find it a difficult word and am quite curious as to why it is not spelled out rather more clearly.

Like the noble Lord, Lord Rosser, I find new subsection (7) curiously expressed, or, if I might put it this way, certainly less than whole-hearted. The Minister says that nothing in it undermines the Human Rights Act, but why is it given as an example of matters

"so far as they are relevant"?

I agree with the noble and learned Lord, Lord Thomas of Cwmgiedd, that it is important to make our legislation accessible and understood by people who do not know the detail of a technicality, but a breach of human rights may be such a nuanced matter that, on this occasion, I have some hesitation about that. The Government refer to training, which I mentioned at the beginning. Although I also put it in a slightly quizzical way, we have been given that assurance.

Perhaps following on from that point, does listing outlawed conduct risk permitting what is not listed? I certainly do not share the view that it would be a checklist, because you could equally well test against the Human Rights Act, or indeed test an individual, without being technical about it, as to how far a suspected CHIS is prepared to go. I think that that really covers most of that issue but others may think that there is more sophistication to the point.

If, as I suspect we might, we gather round the JCHR amendment proposing new subsection (8A), I hope that we might add to it that it does not limit the other provisions of the section. I am looking ahead, of course, to the next stage.

These are not easy issues. On previous Bills, I found myself saying that it is hard to deal with arguments that amount to, "You don't know what we know about how all this operates", but I am pretty certain that we will return to this issue at the next stage. As of now, I beg leave to withdraw the amendment.

*Amendment 34 withdrawn.*

*Amendments 35 to 38 not moved.*

**The Deputy Chairman of Committees (Lord Lexden) (Con):** We now come to the group beginning with Amendment 39. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in this group to a Division should make that clear in the debate. I should inform the Committee that, if Amendment 39 is agreed to, I cannot call Amendment 40.

*Amendment 39*

*Moved by* ***Lord Dubs***

**39:** Clause 1, page 2, leave out lines 45 to 47 and insert—

"(b) consists in conduct—

(i) by the person who is so specified or described as the covert human intelligence source to whom the authorisation relates, or

(ii) by another person holding an office, rank or position within the public authority making the criminal conduct authorisation, which assists or encourages criminal conduct by the covert human intelligence source to whom the authorisation relates; and"

Member's explanatory statement

This amendment clarifies who can be authorised to commit criminal offences.

**Lord Dubs (Lab) [V]:** My Lords, so far we have been debating the nature of the criminal offences that may or may not be authorised. Amendment 39 would clarify who can be authorised to commit criminal offences. As I made clear on earlier amendments, I am a member of the Joint Committee on Human Rights, and my contribution to the debate on this amendment stems from the report by that committee. That report has been referred to by many noble Lords and indeed has almost served as the text for some of the debates. That is a credit to the work of the committee, which I think is very positive and influential.

The committee found the Bill's definition of what amounts to criminal conduct for the purpose of a CCA "unhelpfully obscure". It noted, in particular, that it includes conduct in relation to a CHIS. The expression "in relation to" is one of those phrases that can mean almost anything and is capable of all sorts of interpretation, narrow and wide. My noble friend Lord Rosser used a similar phrase which was a bit vague in an earlier debate. I repeat that the expression "in relation to" can mean almost anything.

Why are the Government doing this? I will use an American expression that we all know and which I learned many years ago: mission creep. One sets out to do something but inevitably, in trying to get the powers to do that, one expands what one wants to be able to do, sometimes beyond what is reasonable or could have been envisaged at the outset. This amendment relates to what I would call mission creep on the part of those who drafted the Bill.

*6 pm*

It seems plausible that the purpose of authorising conduct in relation to a CHIS is to ensure that those authorising and handling a CHIS are not exposed to prosecution on the basis of secondary liability. However, that is not a justification that has been put forward by the Home Office. I should be clear that my understanding of secondary liability is criminal liability for encouraging or soliciting another person to commit a crime. The Home Office has not said, though perhaps the Minister will tell us, what the purpose of this provision is. If the justification that I have put forward is the one that will be put forward by the Home Office, I hope the Minister will say so.

The report by the human rights committee concluded —and I should conclude with this as well—

"The Bill requires amendment to clarify who can be authorised to commit criminal offences. In the absence of a clear explanation of the need for a CCA to authorise more than the conduct of the CHIS, only the conduct of the CHIS and any resulting secondary liability, should be capable of authorisation."

The amendment seeks to limit the definition of criminal conduct in that way. I think it is a matter of tightening it up and getting rid of material in the Bill that should not be there. I beg to move.

**Lord Sikka (Lab) [V]:** My Lords, it is a great pleasure to speak in this debate. My concern is about authorising corporations to commit criminal acts and the consequences for the individuals who have been somehow enrolled to commit criminal acts and subsequently discarded. Through this amendment, I seek to address those issues.

The Bill permits the relevant authorities to enrol and authorise state and non-state actors to commit criminal acts. None of the relevant authorities listed in the Bill is hermetically sealed; they are not self-contained. They use corporations—private organisations—to further their aims. They interact with others, and there is evidence to suggest that over the years corporations have been authorised to commit what some would say were criminal acts, while others might perhaps say those acts were dangerous. Corporations have become an arm of the state, and all Governments in recent years have had an appetite for outsourcing things. I can see nothing in the Bill that would prevent a Government from outsourcing the commission of criminal acts.

There is a fair bit of research into some of these companies. I want to draw attention to an article, dated 20 December 2018, that is easily accessible on the openDemocracy website. I shall quote part of it:

"G4S, one of the UK's biggest private military companies, provides pivotal 'operational support' to Britain's military in Afghanistan and such incidents bring back into focus the extent that private military and security companies are present – and sometimes directly involved – in combat … Britain has led this privatisation of modern warfare. It leads the world in providing armed contractors to 'hot spots', be it combating terrorism in the Middle East or fighting pirates off the Horn of Africa. Some of their biggest clients are governments; since 2004, the British state has spent approximately £50 million annually on mercenary companies."

I would add that lots of details are very rarely provided by government officials to Parliament or the public. Over the years, I have tried to look at some of these companies, but it is almost impossible to track them. They are formed and then very quickly dissolved. It is very difficult to track their operations. The article that I have referred to goes on to say:

"Despite the size of this mercenary industry, the entire sector is marked by secrecy. Men trained in the arts of subterfuge and counter-intelligence dominate this sphere, and the result is an industry that operates from the shadows."

How will the CHIS Bill make this industry accountable? There is clear evidence that these companies have been used for the commission of criminal acts.

One example of this is that in 2007, employees of Aegis Defence Services, based in London, posted footage on the web showing its guards firing their weapons at what was reported at the time as "civilians". The company said the shootings were legal within the rules of protocol. That company has also been criticised for allegedly employing former child soldiers from Sierra Leone as mercenaries in Iraq. This is a company that is headquartered in London.

As far as I am aware, there is no central database of private military and security companies operating from the UK, and I do not think that there is even any legal requirement for them to register with a governing body. Yet these companies, both in the past and possibly even now, are authorised to commit criminal acts. There is nothing in the Bill to prevent a relevant authority from authorising such companies to conduct these acts.

My concern is that we must not authorise private profit-maximising corporations to commit criminal acts. You could argue that, the more terror they unleash and the more criminal acts they commit, somehow the higher their profits will be; their executives and shareholders will be that much richer. This is simply unacceptable. Their victims receive virtually no compensation or justice, and Governments have simply pretended that they know nothing about the criminal acts being committed in their name. The murk surrounding them was touched upon in the 1996 report of Lord Justice Scott's inquiry into the arms to Iraq affair, but there was very little clarity.

Corporations provide not only mercenaries and related services; they also operate much of the local infrastructure, including the operation of prisons. Their employees may be persuaded to go undercover into a prison to learn about drug dealing and much more. Presumably, they would need to be authorised to do so by the Home Office to commit such acts. These undercover agents can, intentionally or unintentionally, injure others. In those circumstances, who exactly is to be held accountable? Is it the corporation which has been authorised to commit the criminal act, or is it the relevant authority? As far as I am aware, the Investigatory Powers Commissioner does not have access to the documents and the personnel of these corporations.

There is also the unedifying scenario of a relevant authority authorising a corporation to commit criminal acts, which in turn holds training sessions for its employees, training them to commit murder, torture and other heinous acts. What would happen to those individuals who refuse to obey the instructions of their employers? Would they be able to say that they cannot go along with that? Would they be able to access an employment tribunal to secure redress? I cannot see anything about that in the Bill.

At the moment, people can refuse to commit criminal acts but if the Bill becomes law certain criminal acts would be normalised, though they would need to be authorised. That presents an enormous danger, and we have not sufficiently discussed the implications of corporations being licensed or authorised to commit these acts. Over the years, government departments have not come clean at all about how they have interacted with such corporations.

Today, and in previous debates, many noble Lords have drawn attention to the fact that children and vulnerable people may be enrolled to commit criminal acts. They can be used by the relevant authority and then discarded, perhaps being paid a small sum. However, many of these individuals will have flashbacks for years. They will have nightmares and suffer mental health problems; where exactly will they be able to turn for help? On the other hand, if these individuals are employees of the relevant authority, the employer will owe them a duty of care. They will then have recourse against the employer—namely, the relevant authority—so that they can be supported and compensated. Again, that is an issue.

Corporations should not be authorised under any circumstances to commit criminal acts. In the UK, we do not even have a regulator to enforce company law, never mind anything else the corporations might do—there is no central enforcer of company law in this country. Another benefit of restricting the commission of criminal acts to persons employed by the relevant authority is that that would protect very young children: children under a certain age cannot be employed at all. This will provide extra protection for those individuals. If the vulnerable people are used, the relevant authority has to be accountable for their action.

It is with this kind of issues in mind that I have proposed Amendment 53, which suggests that only individuals directly employed by a relevant authority can be authorised to commit criminal acts. We do not have the power to fully look into what corporations do, and, as I said earlier, there is not even a central regulator.

**Baroness Chakrabarti (Lab) [V]:** I can be brief. My noble friends pose two very important questions that become even more unnerving when run together. I look forward to what the Minister says about, first, the exact detail of this conduct in relation to CCAs—it is vague language; can it be sharpened?—and, secondly, the ability under the legislation as drafted for corporations, rather than individuals, to be licensed to commit criminal conduct or to run CHIS and criminal conduct themselves. If she thinks that the Bill is too broad compared to government policy, will she consider ruling out on the face of the legislation that kind of sub-delegation or outsourcing to corporations?

**Lord Anderson of Ipswich (CB) [V]:** [*Inaudible*]—the noble Baroness, Lady Chakrabarti. I am less concerned than I think she is by the prospect of immunity being accorded to CHIS—at least, human CHIS. I incline more to the view expressed by the noble Baroness, Lady Manningham-Buller, on our first day in Committee that CHIS

"should not risk prosecution for work they are asked to do on behalf of the state, in most cases at considerable personal risk."—[*Official Report*, 24/11/20; col. 211.]

Of greater potential concern is the prospect of a general criminal and civil immunity for the authorising officer or body. We look forward to hearing whether, as debated

[Lord Anderson of Ipswich]
on the first day in Committee, the Criminal Injuries Compensation Authority will be able to compensate the victim of a crime covered by an authorisation, which would at least be a start on the civil side. We will, I am sure, return to these difficult issues.

Hardest of all is to see what justification there could be for according immunity, in any circumstances, to persons who are neither a CHIS nor employed by the authorising authority.

I welcome the clarification that these amendments would provide and will be interested to hear whether the Minister has anything to say against them. I anticipate that she may not because, as the Advocate-General for Scotland said on the first day in Committee:

"The Bill is intended to cover the CHIS themselves and those involved in the office authorisation process within the relevant authority".—[*Official Report*, 24/11/20; col. 151.]

If, as I hope and believe, nothing more is intended, let us ensure that the Bill makes this clear.

*6.15 pm*

**Lord Paddick (LD):** My Lords, I share the concerns of the noble Lord, Lord Anderson of Ipswich, about seeking clarity as to who is covered not just because a criminal conduct authorisation authorises somebody to commit a crime, but because they have, as a consequence, both civil and criminal legal immunity. As we and other noble Lords have argued, immunity from prosecution should be decided after the event by the independent prosecuting authority—disagreeing with the noble Lord, Lord Anderson, and the noble Baroness, Lady Manningham-Buller. However, these amendments raise important questions, not least about legal immunity.

The first person covered, without doubt, is the agent or informant—the covert human intelligence source. If the CHIS is asked or ordered to participate in crime then if anyone is to be given legal immunity, it should be him. The question then becomes: is a handler who asks or orders a CHIS to commit crime, whether or not the request or order is legitimate, also covered by legal immunity? This arises from the fact that he can request or order a CHIS to commit crime only if he, in turn, has been given authority to issue such a request or order by the authorising officer. If the authorising officer has told the handler that he is permitted to request or order a CHIS to commit crime, should the handler also have legal immunity, in that it is then the authorising officer's decision, not that of the handler? Then, if the authorising officer has agreed that the handler can request or order a CHIS to commit crime, should the authorising officer too not be covered by legal immunity?

What the noble Lord, Lord Sikka, was aiming at with his amendment came as something of a surprise. I do not understand how, under the terms of the Bill, a corporation can be authorised to carry out crime. Surely, it has to be an individual—the covert human intelligence source himself or herself—who is authorised, not a corporation. While I accept that some work of the police service, for example, or the security services may be outsourced, surely that corporation would have to be listed as an authorising authority in the Bill if that were the case.

There would be unintended consequences of the amendment of the noble Lord, Lord Sikka, if the only person who can be authorised to commit a crime is an undercover police officer or a James Bond-type character in the security services, and not a criminal who is helping the police or, indeed, somebody in a foreign country who is simply an employee of an organisation that interests the security services and who passes information back, not an employee of the security services. That would surely leave a big hole in what the Bill attempts to achieve. We cannot support Amendment 53. However, I am very interested to hear the Minister's response to my question, and that of other noble Lords: who is covered by the CCA? Is it the CHIS who commits the crime, the handler who tells him to commit the crime, the officer who authorises the handler to tell the CHIS to commit the crime, or all three?

**Lord Rosser (Lab) [V]:** My Lords, Amendment 39 in the names of my noble friends Lady Massey of Darwen and Lord Dubs removes from the definition in the Bill of authorised criminal conduct the words

"by or in relation to"

the specified covert human intelligence source. It replaces those words with a more detailed definition; namely, that it is conduct by

"the covert human intelligence source"

or by a person who holds a rank, office, or position in the public authority that is granting the authorisation and is assisting in the behaviour of the covert human intelligence source. As my noble friend Lord Dubs said, this amendment was recommended by the Joint Committee on Human Rights.

Under the terms of the Bill, authorised conduct is not limited to the conduct of the covert human intelligence source. The code of practice says that a criminal conduct authorisation may also authorise conduct by someone else in relation to a covert human intelligence source, with that someone else being those within a public authority involved in or affected by the authorisation.

If the Government do not accept Amendment 39, they need to set out in their response the reasons why they consider it necessary to provide for the authorisation of criminal conduct by someone other than the covert human intelligence source; the parameters of that criminal conduct by someone other than the CHIS that can be so authorised; and the safeguards in the Bill to ensure that the person authorised to commit criminal conduct—who is someone other than the covert human intelligence source—is not also involved in any way in the authorisation process to which that criminal conduct relates.

I shall listen with interest to the Government's response to Amendment 39 and to the pertinent questions raised by my noble friend Lord Sikka in speaking to his amendment.

**Baroness Williams of Trafford (Con):** My Lords, I thank noble Lords who have spoken in this debate.

Amendment 39 seeks clarification on who can be authorised under the Bill. The intention behind the Bill is to provide protection both to the CHIS themselves and to those involved in the authorisation process within the relevant public authority. There are a range

of limitations on what can be authorised under the Bill, including the conduct being necessary and proportionate. This means that it would not be possible to grant an authorisation for criminal conduct unless that conduct was by a CHIS for a specific, identified purpose, or involved members of the public authority making, or giving effect to, the CHIS authorisation.

Amendment 53, from the noble Lord, Lord Sikka, seeks to restrict those who can be granted a criminal conduct authorisation to employees of the public authority. The Government cannot support this amendment as it would significantly hamper our public authorities' efforts to tackle crimes and terrorism. While CHIS are often employees of the public authority, they also can be members of the public. The real value of CHIS who are members of the public is in their connections to the criminal and terrorist groups that we are targeting. This is often the only means by which valuable intelligence can be gathered on the harmful activities which we are seeking to stop. Employees of a public authority will not have the same level of access. I reassure the noble Lord that the authorising officers within the public authority set out clearly the strict parameters of a criminal conduct authorisation. Were a CHIS to engage in criminality beyond their authorisation, that conduct could be considered for prosecution in the usual way.

The noble Lord, Lord Paddick, asked whether the CHIS and their handler could be prosecuted. Obviously, every situation will be different, but if the CHIS acted beyond their authorisation, they would have to answer for that. Equally, if the CHIS handler acted inappropriately or in a way that might endanger the CHIS, they could also be liable for that conduct.

The noble Lord, Lord Sikka, talked about security guards being undercover operatives. The noble Lord will know that we have published the list of bodies that can run undercover operatives. In addition to this, the criminal injuries compensation scheme is not undermined by this Bill, and I understand that anyone can approach the IPT if they feel they are due civil compensation. I think that is right, but I will write to noble Lords if that is wrong.

**The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab):** I have received a request to speak after the Minister, and hand signals suggest it may be the noble Lord, Lord Paddick.

**Lord Paddick (LD):** I thank the Minister for her explanation. I am not sure I explained myself well enough to her in terms of who is covered by legal immunity. It is not if the CHIS goes beyond the CCA, but if the CHIS remains within the CCA. So, if the CHIS operates exactly in the way the handler has told them to, and the handler tells them only what the authorising officer has authorised them to, but it is not necessary or proportionate, it is corrupt or a mistake, who is covered by the CCA? Who is covered by the immunity, even though the CHIS has not gone beyond what they were asked to do?

**Baroness Williams of Trafford (Con):** I say again that each situation will be different, but I understand the noble Lord's point that if the CHIS is acting as instructed, but the handler has gone beyond where they should have gone, it would be the handler's authorising officer who would be liable for that activity. There would be an investigation, but at that point, we are talking about a theoretical case. If it was the handler who had acted beyond their purview, the handler would be liable for that handling activity, or the authorising officer. It is late, I am tired, and I have suddenly forgotten my thread.

**Lord Dubs (Lab) [V]:** My Lords, I am grateful to all noble Lords who contributed to the debate. I have to lead with what the Minister said. I feel that her interpretation of the part of the Bill we are talking about was nearer to the spirit of the amendment than the wording of the clause itself. That is why I want to have a look at it. As for what my noble friend Lord Sikka said, I was not aware that a person in the Bill could be a corporate body. I fear he has an important point, but maybe it is not quite in the scope of the Bill. I beg leave to withdraw the amendment.

*Amendment 39 withdrawn.*

*Amendment 40 not moved.*

**The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab):** My Lords, we come now to the group consisting of Amendment 41. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this amendment to a Division should make that clear in debate.

*Amendment 41*

*Moved by* ***Baroness Chakrabarti***

**41:** Clause 1, page 3, line 2, at end insert "; and

(d) is not carried out for the primary purpose of—

(i) encouraging or assisting, pursuant to sections 44 to 49 of the Serious Crime Act 2007, the commission of an offence by, or

(ii) otherwise seeking to discredit,

the person, people or group subject to the authorised surveillance operation."

Member's explanatory statement

This amendment would prohibit the authorisation of criminal conduct where the covert human intelligence source acts as an agent provocateur.

*6.30 pm*

**Baroness Chakrabarti (Lab) [V]:** My Lords, this amendment is very simple but, none the less, incredibly important to reassure some noble Lords and organisations, which you heard from earlier, about peaceful, legitimate protest and political activity, such as trade unions, environmental movements and so on. This is an important amendment to reassure them against abuses by Governments present and future. No disrespect is intended to a Government of any particular stripe. It has been drafted with some care, because I understand that it is difficult to limit the precise positive purposes of a covert human intelligence source, not least because the Government have chosen in this legislation to cover

[Baroness Chakrabarti]
a wide range of public authorities and their investigatory, regulatory and enforcement work. I have tried to rule out the use of a criminal conduct authorisation for the purposes of agents provocateurs.

I complained on other groups that one of the problems with the legislation, as drafted, is that it grafts criminal conduct—which is much more serious than normal intrusion—on to a legislative scheme designed for intrusion, but not for the greater harms of criminality. It also has a limited Long Title and a limited scope. It is difficult to use amendments to the Bill to improve the RIPA scheme on to which so much weight is now being placed. However, I believe it is possible to do a great deal of good, even within the limited Long Title, in preventing agents provocateurs.

For the avoidance of doubt, and for members of the public watching at home or reading tomorrow, an agent provocateur is a state agent who is placed undercover, quite often in a protest movement, trade union or other innocent, legal, peaceful organisation, for the deliberate purpose either to incite crime on the part of others who would not normally go that far in their protest or for the agent to commit crime, while undercover, to delegitimise the wider peaceful movement in the public's eyes or to justify a more repressive policing or banning response by the state. This method has been used throughout history and throughout the world, even in the United Kingdom. It was used during the hunger marches and in various trade union activity. We will see what comes from the Undercover Policing Inquiry.

I have no doubt that the Minister does not intend the Bill to allow criminal conduct authorisations—which now come with immunity, as they never did before—to be used to license agents provocateurs. Therefore, it seems to me that she would want to support this amendment, or something like it, which puts it beyond doubt that no CCA is able to authorise agents provocateurs.

The amendment is carefully drafted not to rule out the agent who finds himself or herself joining in with criminal activity to keep their cover or encouraging, assisting or inciting, while in discussions with others, to keep their cover. It prohibits the authorisation for the primary purpose—this is the crucial part of the amendment—of inciting crime, to use the modern definition under the Serious Crime Act 2007, or otherwise seeking to discredit the person or organisation being spied on. That is, they are not inciting it, but they are doing it undercover to discredit that organisation. To me, it seems simple and carefully crafted, if I may say so, but desperately important to reassure those involved in peaceful protest in particular. I beg to move Amendment 41.

**The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab):** My Lords, the noble Baroness, Lady Warsi, is not participating in this debate, so I call the next speaker, who is the noble Lord, Lord Paddick.

**Lord Paddick (LD):** My Lords, I too signed the amendment, which the noble Baroness, Lady Chakrabarti, has very adequately introduced. When I think back to my experience in the Metropolitan Police Service and the instructions that we had, acting as an agent provocateur was clearly and explicitly prohibited as that relates to covert human intelligence sources committing crime. However, unless I have missed it, I cannot find in the Bill or in the draft code of practice any explicit reference to "agent provocateur".

To repeat what the noble Baroness said in different terms, an agent provocateur is someone who commits a crime or encourages others to commit a crime that would not have been committed had it not been for the actions of the CHIS, or it relates to a situation in which the CHIS commits a crime and then blames the organisation for that crime, which members of the organisation had no intention of committing. In other words, the crime would never have taken place had it not been for the presence of the CHIS.

I look forward to hearing from the Minister where I have missed that explicit instruction, either in the Bill or in the codes of practice. I stress to her that, although I understand that this scenario could not happen under existing guidelines in the police service, we in this House want reassurance either in the Bill or in the codes of practice that it is prohibited.

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, my contribution on this amendment will be fairly short. I hear the point that my noble friend Lady Chakrabarti makes and I note the point made by the noble Lord, Lord Paddick, that this issue is not mentioned in the Bill. Therefore, I am not quite clear whether the amendment is necessary. It would help us if, when the Minister responds, she could say something about the detail of the authorisations in a CCA.

Behind all the amendments today are concerns and worries about what may or may not have happened in the past. People want reassurance going forward, but they are not seeing it. I see that theme across all our discussions today. At some point, the Government will probably have to go a bit further to provide that reassurance, although I do not know how they will do that.

All these issues have been raised because of concerns that people have had in the past. As my noble friend said, we do not know whether we can stop this in the future, but I hope that the Minister can go a bit further. I cannot see any particular issue but, if I am right, the reason behind an authorisation would have to be recorded and shared with the Investigatory Powers Commissioner. That is the issue on which we need reassurance, as we move forward and give people new powers.

**Baroness Williams of Trafford (Con):** I thank noble Lords. I hope to reassure the noble Baroness, Lady Chakrabarti, and the noble Lord, Lord Paddick, about why we do not need this amendment.

I have already stressed the requirement for all CHIS authorisations to be given in line with the Human Rights Act. Article 6 of the ECHR protects the right to a fair trial. The article restates a fundamental principle of English law and, I understand, Scottish law: that a court has a duty to ensure a fair trial. The use of an agent provocateur could be seen as affecting the fairness of a trial, and rightly so. A court already

has the requisite power in law—under Section 78 of the Police and Criminal Evidence Act 1984—to consider and exclude such evidence. The relevant entrapment principles are set out in the leading House of Lords case of Loosely from 2001, which also opines on the convergence of English law in this area with our Article 6 commitments. I hope that that provides reassurance.

**Baroness Chakrabarti (Lab) [V]:** I apologise: I perhaps have not made myself clear enough. It is late and we have all been at this for a while, but I do not think that I explained myself well enough either to my noble friend Lord Kennedy of Southwark or to the Minister.

Agents provocateurs are not limited to the trial process. In fact, the scenario that I have painted could apply where nobody is brought to trial, so Article 6 and evidential rules against entrapment are no protection. I shall try again.

The scenario is like this. Some hours ago, the noble Lord, Lord King, spoke about the possibilities—suspicions or fears perhaps—that in the future environmental or race equality movements might become involved in more militant or violent action against people or property. That is a concern that he already has, and maybe some other people do too. Given that the Bill allows economic concerns to be a justification not just for CHIS but criminal conduct, what would happen if a CHIS were authorised to enter such a protest movement and misbehave in order to discredit it when that movement had not yet, or at all, engaged in that more violent, militant or illegal activity?

In my scenario, it is possible that only the CHIS himself is committing a crime, but because he is doing so within that movement, the organisation is now discredited in the public mind or the Government might choose to prohibit the organisation in some way. It is quite possible that in that scenario nobody will have been brought to court and there will be no Article 6 fair trial issue and no entrapment/evidence issue.

**Baroness Williams of Trafford (Con):** Will the noble Baroness give way?

**Baroness Chakrabarti (Lab) [V]:** Of course.

**The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab):** My Lords, I am afraid that that is not within the rules at present. I apologise to the Minister but we have to let the noble Baroness, Lady Chakrabarti, finish.

**Baroness Chakrabarti (Lab) [V]:** I apologise. It is hard to see the Minister's face or responses from this angle on Zoom. Briefly, in my scenario there is no trial, fair or otherwise, and therefore there is no issue of evidence against entrapment. There is just a CHIS who has been authorised for the purposes of discrediting a movement that may be feared to become violent in the future but is nowhere near doing so at the moment. My amendment seeks to ban a criminal conduct authorisation being issued for that primary purpose.

**The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab):** Would the Minister care to respond to the noble Baroness, Lady Chakrabarti?

**Baroness Williams of Trafford (Con):** I apologise for intervening at an inappropriate moment. I was trying to clarify whether the noble Baroness was suggesting that a CHIS would be authorised to entrap. I do not think that authorisation would be valid.

*6.45 pm*

**Baroness Chakrabarti (Lab) [V]:** Forgive me, but in the scenario that I have just painted there is no entrapment because nobody is prosecuted. There is just criminal behaviour by a CHIS for the purpose of discrediting in the public imagination an otherwise peaceful protest movement, for example; it could be an environmental movement. At the moment I see nothing in the Bill that bans a criminal conduct authorisation being made with the primary purpose of discrediting an otherwise peaceful movement that perhaps poses a challenge to some people's idea of the economic well-being of the nation.

**Baroness Williams of Trafford (Con):** I think that we are coming to the end of this debate, but entrapment in and of itself would have been committed.

**Baroness Chakrabarti (Lab) [V]:** My Lords, we can disagree on that, but perhaps before Report the Minister and her colleagues might reflect on what I am trying to achieve. For the moment, I beg leave to withdraw my amendment.

*Amendment 41 withdrawn.*

*Amendment 42 not moved.*

**The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab):** We now come to the group beginning with Amendment 43. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in the group to a Division should make that clear during the debate.

*Amendment 43*

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

**43:** Clause 1, page 3, line 2, at end insert—

"( ) A criminal conduct authorisation may not be granted to a covert human intelligence source under the age of 18."

Member's explanatory statement

This amendment would prohibit the granting of criminal conduct authorisations to children.

**Lord Young of Cookham (Con):** My Lords, along with the noble Baroness, Lady Chakrabarti, the right reverend Prelate the Bishop of Durham and the noble Baroness, Lady Bull, I have tabled Amendment 43, to exclude the granting of criminal conduct authorisations to children. I am grateful for the helpful meeting with my noble friend the Minister, James Brokenshire and Home Office officials, who talked me through the need for this provision. I am also grateful to Jennifer Twite of Just for Kids Law and Tyrone Steele from Justice for putting the contrary view.

[Lord Young of Cookham]

As it stands, the Bill is silent on the role of children in this aspect of law enforcement. It would have been helpful if the child rights impact assessment developed by the Department for Education in 2018 had been undertaken for this Bill. It would have illuminated our debate. The amendment would not prohibit the use of children as covert human intelligence sources entirely. That would have been my preference, but unfortunately it is outside the scope of the Bill. Therefore, the amendment is narrower, focusing on the prohibition of their involvement in criminal activities, for which the case is even stronger.

The Government are asking the Committee to approve the tasking of some of the most vulnerable children in this country, some as young as 15, with infiltrating some of its most dangerous organisations and groups—drug cartels, sex-trafficking rings and, potentially, terrorist cells. Let me address head on the arguments for allowing children to be used as CHIS. These were set out at Second Reading by my noble friend Lord Davies of Gower, whose views I respect as a former member of counterterrorism command at the Met and a former member of the National Crime Squad, by the Minister in her reply to that debate, and by the Minister for Security in another place. My noble friend Lord Davies said:

"The use of children has been much exercised today. It is unpleasant… particularly with issues that have been mentioned, such as county lines, paedophilia and child trafficking. If it has a long-term benefit to other children, I consider that that makes it necessary."—[*Official Report*, 11/11/20; col. 1083.]

The Minister basically said the same:

"This may be necessary to stop criminal gangs from continuing to exploit those individuals and prevent others from being drawn into them."—[*Official Report*, 11/11/20; col. 1112.]

The Minister for Security, James Brokenshire, stated in a letter to the chair of the Joint Committee on Human Rights on 4 November that

"a young person may have unique access to information or intelligence that could play a vital part in shutting down the criminality, prosecuting offenders and preventing further harm."

In a nutshell, the argument was that the end justified the means—that the imperative of fighting crime overrode normal standards and justified law-breaking. But I do not buy that.

Let us assume, for example, that it could be shown that waterboarding or sleep deprivation of suspected terrorists to extract information would save lives. On that theme, on the "Today" programme recently, Robert Woolsey, a former director of the CIA, said:

"Would I waterboard again Khalid Sheikh Mohammed … if I could have a good chance of saving thousands of Americans or, for that matter, other allied individuals? Yes."

Would we condone it in legislation? Of course not. Torture was abolished in 1628 and is prohibited under international law. The utilitarian argument is trumped by the moral imperative; torture is a red line. There are no exceptional circumstances where torture is justified, no matter that it might lead to the saving of innocent lives. It is not a price that civilised society is prepared to pay.

Using children as CHIS is not of course torture, but the analogy is apt, as it shows the vulnerability of the argument that the end justifies the means. I say to my noble friend that, for some of us, using children—often vulnerable, yet to come to terms with adulthood, unable to assess properly the risk of what they are being asked to do or even perhaps comprehend the limits of their mission and often being asked to continue in a harmful relationship, to commit crimes and to penetrate criminal gangs—is also a red line. Those under 18 are legally children, and the law accepts that they cannot make good decisions about their lives, hence the ban on marriage, buying alcohol et cetera—activities otherwise legal. How could it be that a child as young as 15 can give their full and informed consent to being placed in a sexually exploitative environment, particularly given the pressures on them to do so from people in authority, people whom they should trust, who might have been expected to save them?

This red line is embedded in our legal system. We are signatories to the United Nations Convention on the Rights of the Child, Article 3 of which provides:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

The Children Act 2004 makes this obligation all the more concrete. Section 11 states that public bodies, including the police and other law enforcement entities, must have

"regard to the need to safeguard and promote the welfare of children".

I do not see how we square the circle. Either we safeguard and promote the welfare of children or we do not. How can it ever be in the best interests of a child to be a spy? Far from encouraging children to get further entangled in criminal activities, those who have their best interests at heart should do precisely the opposite: disengage them from that environment and so help them to rebuild their lives free from harm. We should be pulling children away from criminality at every turn instead of pushing them into the arms of serious criminals. How is a child protected from danger if a gang discovers that he or she is a CHIS? What would be the public reaction if, heaven forbid, a child CHIS was murdered by the gang he or she was infiltrating? How can a local authority in loco parentis for a child discharge its duties if a social worker is not aware of what is going on?

I make one final point. Under the Children Act 1989, every local authority has the duty to safeguard children in need. Where a local authority suspects that a child is likely to suffer significant harm, it can seek an order from a court to take the child away from those parents and place them into care. This would certainly cover parents encouraging their children to take actions such as drug trafficking or gang participation. How can the local authority perform those duties when another arm of the state, the police perhaps, is doing precisely the opposite? If a parent were putting children into such risky, harmful situations, we would rightly expect the children to be taken into care.

What is happening is that the state is seeking immunity for conduct for which it regularly takes parents to court. It is creating a statutory mechanism to expressly permit the harming of children. Local authorities already find this unacceptable when undertaken by parents; we must concur when the state does it. Noble Lords will have seen the statement by the Children's Commissioner issued on Monday:

"The Children's Commissioner remains to be convinced that there is ever an appropriate situation in which a child should be used as a CHIS. She is extremely concerned that this practice is not in the best interests of the child and there are insufficient safeguards in place to protect these vulnerable children. To that end, the Commissioner supports the introduction and adoption of the following amendments: amendment 43."

My objection is one of principle, but there are other issues to be raised, if the principle is set aside, about safeguards. Those will be addressed by others who propose other amendments in the group. I hope that, at the end of this debate, the Government will be persuaded to think again. They say child CHIS are used very infrequently. I believe it would be best if they were not used at all. In the meantime, I beg to move.

**Baroness Chakrabarti (Lab) [V]:** My Lords, it is an absolute privilege to follow the noble Lord, Lord Young of Cookham, to associate myself with every word he spoke just now and to have signed his amendment. Amendment 43 and, to some extent, the others in the group, go to the heart of who we are as a society and, indeed, to the heart of what dangerous, important law enforcement is all about if not, ultimately, to protect children most of all.

It is unconscionable that children should be used as agents per se. Unfortunately, as I have complained before, we cannot do anything about children being used as agents in the Bill, but we can amend it to prevent those children being put in even greater harm's way by authorising them to commit criminal conduct, which is normally the opposite of the message we send to our children. Indeed, we condemn those who, elsewhere in the world, groom their children for crime or to act as soldiers even in grave situations of war, and such children have often sought refuge in the United Kingdom.

One of my fears in relation to children being used in this way is that many of them are particularly vulnerable children to begin with. Some of them may actually be wards of the state; they may actually be looked-after children who do not have a normal, viable, stable family to protect them. If these children are looked after by the state and then used by the state in this way, that is a double abuse, it seems to me, by all of us as a community.

There must be other ways to ameliorate this problem. There are young people, as I once was, who look far younger than their age well into their early 20s. There must be other, more proportionate ways to do some of the work that needs to be done, exceptionally. It is a very serious human rights violation for any state to put children as young as 15, as the noble Lord, Lord Young has said, into this kind of situation, with long-term consequences for their emotional health and, indeed, for their lives.

**Baroness Hamwee (LD) [V]:** The noble Lord, Lord Young, is very persuasive, and he is right. My noble friends Lord Paddick and Lady Doocey and I have Amendment 52 in this group, and I have also put my name to Amendment 60, because if the outcome of the debates is to restrict but not prohibit the authorisation of under-18s and vulnerable people to commit criminal conduct, then Amendment 60 is the amendment that deals with both groups—I do not really like the term "groups"; they are individuals, but noble Lords will understand what I mean.

*7 pm*

Our amendment provides that there should be no authorisation of someone under the age of 18, victims of slavery and other egregious exploitation—we have used the words in the Modern Slavery Act, essentially—someone unable to give informed consent, or someone likely to be adversely affected by the experience. Those categories may overlap.

I emphasise what I have said before: I cannot envisage how acting as a CHIS, let alone being expected to carry out what is, in other circumstances, technically a crime, can be in a child's best interests—a point well made by the noble Lord. The more I have learned, including about safeguarding, the more this feels like grooming. Your Lordships have had plenty to say about that in another context. Among other things, it is criminal.

Here we are dealing with criminal conduct authorisations when the object of the conduct is not only, for instance, an organised crime member, but also, in a sense, the subject himself or herself. If noble Lords accept, as I do, that a 16 or 17 year-old is a child and still developing, we have to wonder about the effect on the child's development. What will the effect be on their neurological development—as I understand it, not being an expert—and emotional development in this situation? It concerns more than well-being, but certainly it is about well-being.

Our amendment includes victims of slavery and other extreme, egregious treatment. They are quite likely to suffer further long-term damage on top of what they have already experienced. Someone who has very recently been treated as a slave, or otherwise exploited, is very likely to be further traumatised, and I doubt they would be able to give informed consent.

I am concerned that neither my amendment nor Amendment 60 adequately cover this situation. There must be a positive obligation on the relevant investigating public authority to consider whether the CHIS who, in the context of the Bill, is prospectively given an authorisation may himself be a victim. That should be in RIPA itself, as the noble Lord said, but we cannot do anything about that here.

We know that there have been instances of victims being prosecuted for working, for instance, in cannabis factories—and I mean prosecution of victims—because they are seen as offenders, not victims. The logic of this should be an absolute bar on their use. If it is not absolute, there should be very careful consideration of who is entitled to breach that bar and give authorisation, and what the processes should be.

My noble friend Lady Doocey will speak to proposed new subsection (8B) in our amendment, but in brief, if an authority is in a position to grant an authorisation it should make the assessment of the CHIS with regard to the issues to which I have alluded. If concerned, it must, with the person's consent—consent is important—refer them to the national referral mechanism.

**The Lord Bishop of Carlisle:** My Lords, I speak in support of Amendment 43, in the names of my right reverend friend the Bishop of Durham, the noble Lord, Lord Young, and the noble Baronesses, Lady Chakrabarti and Lady Bull, and Amendment 60, in the names of

[The Lord Bishop of Carlisle]
the noble Baronesses, Lady Young and Lady Hamwee, and the noble Lord, Lord Kennedy of Southwark. As we have heard, both concern the treatment of children.

We should not for a moment underestimate some of the evils in our society that the Government and the forces of law and order are tasked with confronting. Some of those evils involve the abuse of children and vulnerable people, including, as we know, the scourge of county lines drug gangs, sexual predators and traffickers. It does not take much imagination to see how, as a result of this, there is a periodic temptation to use children as covert assets. We must clearly guard against that temptation; as we have already been reminded, our first duty must be to the care and well-being of children. This applies all the more to children who find themselves in vulnerable and harmful situations, such as those used and abused by criminal gangs.

We are talking here about the exposure of children to dangerous, exploitative and traumatic environments, with significant potential long-term consequences for the children in question. Our responsibility must be to look first to their welfare. As we have been reminded by the noble Lord, Lord Young, it is argued that covert tactics involving children can be of great value in protecting other victims, but how do we determine an acceptable level of harm to a child, even if there might be a wider benefit? Even if that argument were acceptable, as, again, the noble Lord, Lord Young, observed, how can a child legitimately understand and give informed consent to keeping himself or herself in a harmful situation? It seems to be a very dangerous precedent to suggest that a child can provide informed consent to an activity that may cause long-term harm and trauma.

Therefore, I support both these amendments, which recognise the principle that our first duty is to protect and support children and vulnerable people. As we have been reminded, Amendment 43 would prohibit the use of children as covert agents in criminal activities, while Amendment 60 significantly raises the threshold for the granting of criminal conduct authorisations to guarantee that they could be used in only very extreme circumstances and with much more thorough safeguards than are presently provided.

As others have emphasised, we are all hugely grateful to those who work to protect children and confront criminals who would abuse them. I do not for one moment underestimate the difficulties that they face, but I fear that the Bill, as it stands, does not do enough to provide sufficient safeguards for protecting children from being seen as assets rather than victims who need support. That is why I am glad to support these amendments.

**Baroness Bull (CB):** My Lords, I rise principally to support Amendment 43, to which I have added my name, but I fully support all the amendments in this group, which have in common their intent to protect children and the most vulnerable in our society. Before I address Amendment 43, I will speak briefly to Amendment 52, in the names of the noble Baronesses, Lady Hamwee and Lady Doocey, and the noble Lord, Lord Paddick. I mention Amendment 52 in particular because it addresses two issues that I and others raised at Second Reading: first that the code of practice's definition of a vulnerable adult currently fails to include victims of slavery or trafficking; and secondly that, while the code stipulates that there must be an assessment of the juvenile's ability to give informed consent, there is no consideration given to the ability of a vulnerable adult to give consent.

The insertion of proposed new subsection (8A)(b) would specify that authorisation must not be granted to anyone who is a

"victim of slavery or servitude or forced or compulsory labour or of human trafficking or exploitation".

This addresses the concerns raised by Anti-Slavery International, namely that someone who has been either trafficked or exploited is unlikely to be able to give informed consent to acting as a CHIS, given their traumatic experiences of manipulation and control and the long-term psychological implications of this on their ability to make independent decisions.

Within the same amendment, proposed new subsection (8A)(c) would prevent authorisation being granted to anyone

"who has been assessed by an appropriately qualified independent person as likely to be unable to give informed consent to acting as a source".

I believe this would go some way to addressing my concerns about the absence of any reference in the code of practice to mental capacity and the ability of someone with impaired mental capacity to consent to acting as a CHIS. It has to be borne in mind that mental capacity is specific to a given decision, rather than universal. The Mental Capacity Act code of practice is clear that someone can have capacity to make decisions in certain areas, such as deciding what activities they would like to do during the day, but lack it for others, such as deciding whether to engage in risky and dangerous activities such as acting undercover. Given this, it seems to me essential that mental capacity is specifically taken into account.

I turn now to Amendment 43. I am grateful to and in awe of the noble Lord, Lord Young of Cookham, for introducing the amendment so effectively, and to the noble Baroness, Lady Chakrabarti, and the right reverend Prelate the Bishop of Carlisle for their contributions. I fully support their remarks and will add only a few of my own.

My primary objection to the use of children as covert sources is that it stands in direct opposition to our fundamental responsibility to children both morally and legally, as we have heard, to do everything in our power to extricate them from situations and relationships that promote criminality and risky behaviours. We know that vulnerable young people are targeted by criminal gangs who groom, manipulate, intimidate, coerce and force children into the packaging and supply of drugs and the transportation of money, drugs and drug paraphernalia. We know that these children are often obliged to commit criminal acts in order to establish their credibility and prove their trustworthiness within the gang.

These are children who almost inevitably come from disadvantaged backgrounds—growing up in deprived areas, living with experiences of trauma, substance misuse, mental health issues, learning difficulties and possibly even in the care of local authorities. These are children whose life chances and opportunities are already greatly reduced in comparison to their better-off peers, thus

further deepening the inequalities between those who have and those who have not. It is hard to believe that, rather than acting to end this exploitation, the law itself would recruit them as covert sources, exploiting the existing exploitation and, in effect, becoming the next perpetrator in a cycle of continued abuse.

Alongside this moral argument, there is a more practical consideration. Research suggests that teenagers are not even particularly effective as covert sources, because information-processing abilities are not as developed in teenagers as they are in adults. Adults think with the prefrontal cortex, the rational part of the brain, which means they can respond to situations with judgment and with consideration of the long-term consequences. Teenagers process information with the amygdala: the emotional part of the brain. In teenagers, the connections between the rational and emotional parts of the brain are not yet fully developed, which is why they cannot always explain what they are thinking. Often they are not thinking—they are just feeling. Adolescents are more likely to act on impulse and engage in dangerous behaviours, and they are less likely to pause to consider the consequences of their actions.

We also know that most young people involved in gangs and drug supply are themselves regular users of drugs, which they may need to use in order to blend in. I am grateful to Dr Grace Robinson for sharing her work in this area. Drugs and alcohol use can change or delay development of the connections between the logical and emotional parts of teenage brains. All this throws into question the accuracy, consistency and completeness of any information provided by teenagers acting as covert sources and, as a result, its utility in intelligence-gathering operations.

Alongside the fundamental concern of whether it is morally and legally right to put young people directly in harm's way, we need to set this secondary concern, of whether the information they are likely to provide would be of sufficient value to justify the risks. My belief is that, however valuable the information, it can never off-set the immediate and long-term harm to young people recruited to act as covert sources—young people whose life opportunities and outcomes are already likely to be compromised. For this reason, I stand with the noble Lord, Lord Young of Cookham. The end does not justify the means.

*7.15 pm*

**Baroness McIntosh of Pickering (Con) [V]:** My Lords, I speak to Amendment 48 tabled in my name and support all those who have spoken in favour of limiting the use of children as CHIS. The reason for putting forward Amendment 48 is to try to probe the thinking of the Government on the relationship between the provisions of the Bill and the UN Convention on the Rights of the Child. How does my noble friend the Minister believe that they can square the use of children as CHIS with the provisions of that convention?

I endorse and support entirely the comments of my noble friend Lord Young of Cookham and I thank him for so eloquently moving his Amendment 43. I congratulate the other noble Lords who supported his amendment. The noble Baroness, Lady Massey, has tabled Amendment 51, which would build on the thinking that I have put forward in my probing amendment about how the UN convention could apply in this regard.

My noble friend Lord Young referred to one of the four general principles that are set out in the UN Convention on the Rights of the Child—Article 3, establishing what is in the best interests of the child. I support that view entirely; it is difficult to see how using children as covert intelligence sources can be squared as being within the best interests of the child, as opposed to the wider and broader interests of the community. I also have regard to the three other general principles of the UN convention: Article 2, on non-discrimination; Article 6, on the right to life, survival and development; and Article 12, on the right to be heard. In summing up this debate, can my noble friend the Minister indicate how a child's voice, particularly one who may be as young as 15, in the instances that we are considering, in this part of the Bill, is heard before they are asked to operate as covert human intelligence sources?

I support entirely the comments made by others that children are particularly vulnerable in this regard. They may not understand what is being asked of them. Are they in a position to ask what the implications are for their future, and how their actions might be interpreted? Are they actually in a position where they could refuse to act, if it has been explained to them, when they are being asked to act in a particular way? It is difficult to understand the circumstances in which this might be explained to a child aged 15, 16 or 17—how their conduct might benefit our society, but also how it might be of harm to themselves.

I support this group of amendments. I have tabled Amendment 48 as a probing amendment, because I believe that the provisions of the UN Convention on the Rights of the Child apply here. If that can be achieved by one of the other amendments in this group, I will be extremely happy. I urge my noble friend to put my mind at rest by indicating how what the Government are seeking to do through this Bill by using children as CHIS can be squared with the provisions to which I have referred in the UN convention.

**Baroness Massey of Darwen (Lab) [V]:** My Lords, I agree with so many of the remarks made today by noble Lords following the powerful and moving opening speech by the noble Lord, Lord Young. I declare my interests as being involved with several voluntary sector organisations and all-party groups for children, and as a rapporteur on children's rights issues in the Council of Europe.

Amendment 51, in my name and that of my noble friend Lord Dubs, is based on the findings reflected in Chapter 5 of the Joint Committee on Human Rights report on the Bill. The amendment would prohibit the authorisation of criminal conduct by children without specific prior judicial approval. The Bill provides only for the authorisation of criminal conduct by a CHIS and does not make a distinction between adults and children, nor is any distinction drawn between adults and children for the purposes of CCAs within the revised CHIS code of practice. The JCHR report found that:

"It is hard to see how the involvement of children in criminal activity, and certainly serious criminal activity, could comply with

[Baroness Massey of Darwen]

the State's obligations under the HRA and under the UN Convention on the Rights of the Child … in anything other than the most exceptional circumstances. Article 3 UNCRC",

which has already been quoted by the noble Lord, Lord Young,

"provides that: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'"

The best interests of the child must be at the core of all our concerns.

The JCHR report concludes:

"Deliberately involving children in the commission of criminal offences could only comply with Article 3 UNCRC or Article 8 ECHR in the most exceptional cases."

The amendment provides protection against the authorisation of criminal conduct by children in unexceptional cases. It would require prior judicial approval before the granting of a CCA in respect of the conduct of a child in the limited circumstances in which judicial approval would be forthcoming—that is, only where the undercover operation is for the purpose of saving lives or preventing serious physical or mental harm.

I want to add some remarks based on my own experiences and interests that extend the issues expressed in the JCHR report. Children are often characterised as "young" under 16, but the UNCRC and the World Health Organization stipulate that anyone under 18 is a child. That puts an extra dimension on things. We also know that children are not a homogeneous group. Some will be vulnerable. As has been said, they may be subject to having been used for all manner of purposes. They are at significant risk already. This is a very important issue.

The UNCRC is clear about the rights of the child in its 42 articles. For example, Article 36 says that children shall be protected from any activities that could harm their development. Article 12 says that the child's right to a voice when adults are making decisions is paramount. Child refugees have the same rights as children born in that country. Children have the right to get and share information, as long as that information is not damaging to them or others. That applies to all children. I ask the Minister to convince me that sufficient care is given to the stipulation that the best interests of the child are paramount and to provide some examples of how that care works in practice—for example, about who is consulted as to the appropriateness of a child being involved.

I want to repeat the reference that the noble Lord, Lord Young, made to the Children's Commissioner; he made a very powerful statement. As she recently said, she remains to be convinced that there is ever an appropriate situation in which a child should be used as a CHIS. She has called for a full investigation to take place into the use of children in such circumstances and believes that the current legislative framework should be amended to protect children's rights. I agree totally. Child impact assessments are always useful. Many of us in this House, and in Parliament generally, have been calling for that for some time. Wales has integrated the UNCRC into its legislation and Scotland is discussing a Bill to do so. When will England do the same?

Before Report, will the Minister meet those of us concerned about child rights, including protection, in relation to the Bill? Can she produce reassuring evidence that children are not being exploited? If that evidence is not forthcoming, the amendment will certainly need strengthening.

**Lord Dubs (Lab) [V]:** My Lords, when I originally looked at this Bill and thought about it in relation to children, I felt that there might be some justification for using children as CHIS in the most exceptional circumstances. I am now doing something that is not very fashionable. I am changing my mind in the light of what I have heard in the debate so far, especially from my noble friend Lady Massey and the noble Lord, Lord Young. I now believe that there should be no circumstances in which children should be part of this process. It is wrong and cannot be justified. The highest standards of human rights would be fully met if we said that children should be totally exempt. There should never be any circumstances in which the end would justify the means. I have been persuaded by the argument. Maybe one does not often admit this publicly, but I am prepared to do so here and now.

**Baroness Doocey (LD) [V]:** My Lords, I wish to speak in favour of Amendment 52. I too support the comments made about children by previous speakers.

This amendment seeks to place in law safeguards for young people, for those who have been trafficked and for other vulnerable individuals. There is a real risk to vulnerable adults, as well as to children, because victims of modern slavery and trafficking are not always recognised as such. This amendment puts safeguards in place for them, as well as for minors.

I share the same fundamental concern as the noble Lord, Lord Dubs. Children should not be placed in harm's way by the state or in the pursuit of any other alleged greater good. It is the job of the state to protect children, not to deploy them as spies.

I want to address directly the argument made on this point by the Minister at Second Reading. She said that, in practice, juveniles are not asked to participate in criminality in which they are not already involved. Surely the fact that children are already involved in crime does not make them any less worthy of protection. We like to say that with rights come responsibilities, but that maxim misunderstands rights. Rights are absolute and children should expect the absolute right to basic protection from this country. That protection should not be contingent on some invented responsibility to help the police by acting as a spy. Children seldom choose to become involved in gangs. Many are vulnerable. Many have been abused. Some are victims of trafficking. Others have been appallingly neglected both by their families and then by the state. It is not right to view them as having chosen a lifestyle of criminality and thereby complicit in their own fate.

Just as the Modern Slavery Act acknowledges that children cannot consent to their own slavery, we should recognise in the Bill that children do not put themselves into these dangerous situations. They should not be asked to take advantage of danger in the interests of police investigations. These young people are at very high risk of long-term physical and emotional harm

from the experiences they have already had. Being designated a CHIS puts them at hugely increased risk. I find it indefensible that 16 and 17 year-olds can be brought into this highly dangerous territory of spying for the state with no appropriate adult to help and support them. The age of majority in this country is 18: 16 and 17 year-olds are children and these particular 16 and 17 year-olds are very vulnerable children. It is completely unacceptable for them to be co-opted by the police for spying without the same representation that they would enjoy if they were arrested for some minor offence, such as theft.

The police do a very difficult job. We are all in their debt for protecting us as individuals and as a society. The need to get a result can sometimes blur boundaries in the pursuit of solving a crime or bringing a prosecution. The genre of police drama would scarcely be so rich without the reality that rules can sometimes be bent and occasionally broken.

*7.30 pm*

What I am hearing from charities that work tirelessly on the ground is that police sometimes—perhaps with the best of reasons or intentions—leave young people, very often girls, inside gangs, despite suspecting that those girls are probably victims of trafficking. The truth is that, to the officers, the girls are more valuable as spies than they are as victims, but, in my view, no result in a case is worth crossing that line or turning a blind eye to a very vulnerable child's needs. Just as we do not believe in sending children into battle in the Armed Forces, we should not believe in sending them to battle crime among gangs in the depths of crack dens and in the back rooms of pubs. I hope that the Minister will reconsider these issues when she responds.

**The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab):** I call the next speaker, the noble Lord, Lord Judd.

We will go to the noble Baroness, Lady Jones, and if we can reconnect with the noble Lord, Lord Judd, we will bring him in after the noble Lord, Lord Russell. I call the Baroness, Lady Jones.

**Baroness Jones of Moulsecoomb (GP):** My Lords, this is an issue that I have raised several times in your Lordships' House: the issue of child spies. We even had a debate on it about 15 or 18 months ago in Grand Committee. Everybody I have ever mentioned it to—either out in the wider world or here in your Lordships' House—is absolutely horrified at the idea that the police or the security services use children as spies. Other noble Lords have mentioned how damaged these children probably are. The fact is that the police find them when they are committing crimes, so they catch them doing something criminal. Anecdotally, I have heard that the children are given the option of being arrested and taken away, or they can go back into the gang. I have absolutely no way of knowing whether this is true, but it sounds like blackmail to me. So in addition to the police not rescuing these children, the children are sent back into danger.

I said in my Second Reading speech that I would stop this process immediately. Luckily, the noble Lord, Lord Young, was faster in putting the amendment down, because his support is obviously going to carry a lot more weight than mine. It struck me at the time, however, that anyone can be horrified by this. You do not have to be a right-on, woke Greenie. It is horrifying to all of us.

I have put down an amendment about vulnerable people, which I consider children to be as well, and it covers anyone who is a victim of modern slavery. Quite honestly, we have heard from the Government that this whole Bill is all about protecting the country and the people of Britain; but it is not protecting some people. Some people are not getting the protection that the Government are offering to others. If we are not protecting vulnerable people or children, what do we think we are protecting: a way of life that we can be proud of? I really do not think so.

Personally, it is unforgivable seeing these children used as pawns and spies to somehow find out what we think might be useful information about criminal gangs. It is worse than state-sanctioned child abuse: it is state-sponsored child abuse, and the Government should be thoroughly ashamed of trying to put this into legislation. I would like to see the Government more inclined to taking these children out of criminality and actually saving them from the sort of life that they have been leading, rather than pushing them back into greater danger and possibly greater criminality.

I have met police whistleblowers: I think they are astonishing, because they go against their group and their friends; it is incredibly difficult. Two of the whistleblowers I have met suffer from PTSD. The PTSD is not from confessing what they did but from the work they did when they were undercover, because being undercover is highly stressful. The "undercover" I mean is not necessarily to do with drug gangs or terrorist organisations; quite often, when it comes to political groups or campaigns or NGOs, officers are sent in for years. We have heard about relationships lasting seven years, children being fathered and that sort of thing. When you are undercover that long, you do suffer trauma. It is extremely difficult to come out of that and feel normal again, because you have hidden so much of yourself and so much of your life from other people.

One of the whistleblowers I am talking about is absolutely divorced from reality; he finds it extremely difficult to feel any emotion. He told me when his father died, he could not cry, and he still has not been able to cry, some years later, because of the trauma he suffered as an undercover police officer. The other one, who I know quite well, told me he has the opposite problem: he is extremely emotional and cries very easily at all sorts of things because of the trauma he suffered as an undercover police officer. Can anyone please tell me that children are less vulnerable to that sort of trauma than adults? Of course not; children are more susceptible to that sort of trauma. I do not care how many children it is; one is too many. Those children will suffer, possibly for the rest of their lives. We as a nation really should not be causing that.

**The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab):** I call the next speaker, the noble Baroness, Lady Young of Hornsey.

**Baroness Young of Hornsey (CB) [V]:** My Lords, I am going to try not to repeat comments made by colleagues already. However, I feel it is important to put on the record some of my huge misgivings about what this Bill does in relation to children and vulnerable individuals. I wholeheartedly support the arguments put forward in other amendments in this group, especially when we are talking about children—whether we call them "children" or "juveniles" is semantics—and vulnerable adults as CHIS. I hope we can collaborate on a single amendment on Report, should that be necessary, because many of us feel we must pursue this until we cannot do so any longer.

I have been slightly conflicted about where to put my energy in this Bill: like other noble Lords who have already spoken, I fundamentally disagree with the practice of using young people and vulnerable individuals as covert intelligence sources at all, let alone encouraging them to commit criminal acts. It raises so many questions, and one that has been bugging me for a little while, since I read about this issue, is: who in this Chamber would be prepared to sacrifice—that is how I see it—their own, or a friend's, 15, 16 or 17 year-old to become a CHIS and commit a crime in that role? When I hear people describe using children or vulnerable people as CHIS as unpleasant or uncomfortable, I think that that does not do justice to the seriousness of this issue.

All of us here accept that there are legitimate reasons for undercover work to disrupt criminality of all kinds and use a variety of strategies to secure credibility for agents working in the field. The question is, then: what are the limitations and checks and balances that are necessary to maintain confidence in the institutions undertaking such activities in our democracy and on our behalf? The draft code of conduct issued by the Government goes some way towards alleviating fears regarding the use of children and vulnerable adults, but it does not go far enough in my view or the view of most of those who have spoken in this group this evening. Amendment 60 seeks to address some of the gaps in the guidance with regard to the deployment of children, juveniles and vulnerable individuals and to ensure that these safeguards are enshrined in legislation.

Amendment 60 is straightforward. Proposed new subsection (1) defines its parameters by stating that children, vulnerable individuals and victims of modern slavery and human trafficking are the subject of this amendment. These individuals are defined in proposed new subsections (5) and (6). In essence, this amendment is concerned with the welfare of those with limited capacity to make informed choices—which noble Lords mentioned earlier—without adequate support and resources to protect themselves. I draw your Lordships' attention to issues raised by colleagues working with learning disabled adults who have seen at first hand how vulnerable adults can be groomed and lured into being a cuckoo. Some noble Lords may not be familiar with that term but, in essence, it means an innocent person who is groomed or coerced into harbouring drugs, criminals or whatever.

This is a particular issue for people with learning disabilities because it is relatively easy to persuade them by fair means or foul to become a cuckoo—to use their spaces to hide criminal goods. The same can be said of looked-after or care-experienced children who are known to have left care and been given accommodation. These are also spaces where criminal gangs steadily work on that young person and inveigle themselves into to use for their criminal activities. The problem is that their vulnerability facilitates exploitation in both those groups. The idea, therefore, that we might endorse state or public bodies to enable vulnerable adults in hazardous situations or care-experienced care leavers to commit unspecified crimes with immunity should be totally unacceptable.

Those who have been subjected to trafficking or other forms of modern slavery are similarly vulnerable to coercion of various kinds, with threats made not only to them but to their families. On that issue, I should like some clarification on the Government's draft code of practice. On page 18, reference is made to "collateral intrusion"—one of those terms—which concerns the potential harm that may be done to individuals who may be related to the culpable person being spied on. My understanding of that section is that the harm posed to the relatives or the family and private life of the CHIS is not under consideration there. I may have completely misread or misunderstood that and hope that the Minister can clarify it for me. If it is seen as an issue, and the authorities have to take account of the CHIS's family welfare, perhaps I have missed it, and I apologise. However, if not, and the private life of the families of the juvenile or vulnerable adult is not a factor to be considered when assessing the appropriateness of deploying the CHIS and enabling their criminal activity, I should like to know why. This is particularly important for the welfare of the families of vulnerable individuals and young people because they may not have a complete understanding of the dangerous situation in which they are placing others, as well as themselves. It comes back to the issue of what is an informed choice.

The point of proposed new subsection (3) in my amendment is that an appropriate adult, if a parent or guardian is not available to take on that role, must be present and be independent of any of the authorities recruiting a CHIS. Whatever the age of the CHIS, whether 15, 16, or 17, it should be mandatory, not discretionary, that an appropriate adult is present. The reason is that, given that there must be exceptional circumstances when it is determined that a CHIS is the only way in which to deal with a specific situation—we explain what such circumstances are in our amendment—the young person or vulnerable individual must be able to make an informed choice on engaging with the authorities in this way, and protected as far as possible from making a decision that may cause them significant harm. If the situation is acceptable, it is all the more obvious that an independent appropriate adult must be present for anyone under the age of 18 and other vulnerable individuals. Do we really think that these young people or vulnerable adults will be able to keep what they have done to themselves, when in some circumstances they may have committed a crime at the instruction of an agent of the state? That would place not only them but their families and relations in jeopardy.

As my noble friend Lady Bull pointed out, anyone who knows young people of that age—15, 16 or 17—will know that levels of maturity vary and that an understanding that actions taken today may impact negatively on their futures, to say the least, can be hard to grasp at that age. Why not make it mandatory for an appropriate adult to be present for all those described in proposed new subsection (1)? The very fact that they are in the predicament of involvement with a criminal gang indicates that some bad choices have already been made. Many of these young people will have been in care, as has been pointed out, excluded from school or charged with a crime; they will be using drugs. Many people are working really hard to turn the lives of these juveniles around, to set them on the right path and to point out role models who can help them make a positive contribution to society.

*7.45 pm*

I have heard it said that we are talking about only a small number of people under 18 who have been recruited as CHIS. As the noble Baroness, Lady Jones, said, if there is only one, it is one too many—but more than one has been recruited in this way over the years. I have heard a figure of around 15, but I am not sure over what timespan or whether that is accurate.

To recap: an appropriate adult must be available to all juveniles and vulnerable individuals and, to avoid a conflict of interest, must be able to demonstrate independence from any public body seeking to deploy the child. Coercion can be quite subtle. One of the former undercover police officers told us in a briefing how he had heard from a source—not necessarily a juvenile—that the police had told this potential or existing CHIS: "Either you inform on these criminals or we will tell them that you've done so anyway." The kind of talk that says, "If you don't do this, then we'll arrest you", does not really give people in those situations a real choice as to what future decisions they make.

At Second Reading, I pointed out to the Minister that a number of reviews had all reported the overrepresentation of young black and minority-ethnic men in the criminal justice system. I asked for the Home Office's view on any equality impact studies made on this subject. Given that overrepresentation in the criminal justice system, it seems quite likely that there is at least a possibility that black and other ethnic-minority people might be overrepresented when it comes to using CHIS. I would like to hear a view on that from the Minister, as that question was not addressed adequately at Second Reading.

In summary, a key point of the amendment is clarification of the exceptional circumstances in which it would be "appropriate" for a child or vulnerable adult to be given a CCA. Secondly, appropriate adults should be mandatory for young people and vulnerable individuals and must be self-evidently independent. The state surely cannot be seen to be complicit in and to legitimate further exploitation of already vulnerable children and adults unless there really are no other options on the table and all possible safeguards have been implemented.

**The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab):** After the noble Lord, Lord Russell of Liverpool, I will call the noble Lord, Lord Judd.

**Lord Russell of Liverpool (CB):** My Lords, this is a fascinating if somewhat one-sided debate. I will suggest in a minute why I think that is the case and why that gives the Government a problem. I thank the Minister who, with her usual courtesy, went out of her way to have a meeting with me with her Bill team last week. I am extremely grateful for that.

It is crystal clear from the Bill's passage in the Commons, from Second Reading and from today that both Houses have significant concerns about the use of children as CHIS. I will make my comments across all the amendments in this group, but I will try to put them in the context of why I think Her Majesty's Government have a problem.

The fact that so many of us are so uneasy about this subject is, to me, clear evidence that we are unconvinced. We have yet to hear a compelling, clear and detailed articulation of why this is necessary in the first place. As the noble Lord, Lord Young of Cookham, said in his excellent opening speech, why, for example, did Her Majesty's Government not conduct a child rights impact assessment on the Bill? I address that directly to the Minister, and I would like her to give me and the noble Lord, Lord Young, an answer to that, if not today, in future in writing. The template exists—why was it not used?

We feel that the onus is firmly on the Government to persuade us, and they have not yet done so. We need facts; we need solid data, redacted as appropriate, about previous and current deployments to demonstrate their necessity and value in the absence of viable alternatives. We need the evidence of their worth. We need a detailed and clear explanation of what is meant by "exceptional circumstances", and we need examples to illustrate this. We do not have this.

Earlier this afternoon, the noble Lord, Lord Anderson of Ipswich, made what I thought was a very compelling case, which I ask the Minister to reflect on carefully. He recalled that in the passage of the Investigatory Powers Act 2016, a process went through whereby the different authorities concerned spoke in private to a group of people—including the noble Lord, Lord Anderson—probably made up largely of judicial commissioners who are privy to the Official Secrets Act and can be entirely relied upon. They in turn were able to disseminate what they had heard and to give their judgment on the value, or otherwise, of it. I think that, in this case, that might be a very useful precedent to consider following. Subsequently, the noble Lord, Lord Anderson, said that after that process there was a second stage, where those findings from that first group were relayed to both Houses of Parliament. That apparently was extremely effective, so we do not necessarily need to reinvent the wheel; I think we do have a precedent.

If the Government fail to convince us that there is a real need for and demonstrable value in using child CHISs, then it is highly probable that on Report there will be a strong case and significant backing for amendments, such as Amendments 43 and 52, which will simply prohibit their use, full stop. However, if the Government are able to convince us that this is a necessary evil, we are in a different but still problematic place. To their credit, both the Minister and her colleague,

[Lord Russell of Liverpool]
James Brokenshire, have made it clear that they acknowledge and even share some of our concerns. In that spirit, I appeal to them, and to the Bill team, to work with us to discuss and embed much more substantial and overt safeguards into the Bill on Report. Amendments 48, 51 and 60 are perhaps a good starting point.

As I said at Second Reading, we are dealing, thankfully, with a very small number of child CHIS deployments. If we can be persuaded that they are necessary, can we not create a watertight process which will mollify critics, put in place forensic scrutiny and oversight and which will, above all, focus on the best interests not of the police, or whichever authority it is, but of the child?

I think all of us who have spoken today are entirely at the Minister's disposal and wish to work with her, should she so wish, to try to put our shared concerns to rest. But, as I said earlier, if the Government are unable to persuade us with strong evidence that there is a compelling justification for using child CHISs, many of us will feel compelled to insist upon prohibition. This is the Government's challenge.

**Lord Judd (Lab) [V]:** My Lords, I thank unreservedly the noble Lord, Lord Young of Cookham, for the way in which he introduced this amendment. It was a challenge to us all. In protecting the values of our society, of which we like to speak so often, and in protecting the young and the vulnerable, there have to be some absolutes. I am glad that some of the other amendments have drawn attention to other vulnerable people who have been through nightmare experiences, and to whom the damage from being used in this way can be quite incredible.

We have to take seriously—again—the point that I have made several times this afternoon. I am afraid that we could be giving those who seek to undermine our society a victory, because they have provoked us into a situation in which we have acted against what we know to be essential. Nobody can calculate the damage to young people of being used in this way. Very few can really understand or analyse the damage done to other vulnerable people by being used in this way.

So, if we are going to stand firm for the society in which we believe, we must not allow ourselves to give in on these things; we must have absolutes. I therefore counsel those who have moved important amendments raising very serious points about "exceptional circumstances" to consider that probably, in this situation, there are no exceptions. We have to make our stand absolute and, in that way, we can win the battle for humanity that we are determined to win. I thank the noble Lord, Lord Young, for having challenged us so clearly.

**Lord Paddick (LD):** My Lords, the Committee will not welcome me trying to summarise what has been said, and I could not do justice to the excellent contributions that we have heard, not least from the noble Lord, Lord Young of Cookham, who completely summed up the position with a very compelling argument, using the analogy with torture that the ends do not justify the means—in the case of this Bill, using children as CHISs and authorising them to commit crimes.

A number of noble Lords said—and the Minister may be about to tell us—that it is a very small number of children who are actually involved in this sort of activity. But the whole reason for using child CHISs that the Government use to try to justify it is that the growth in child sexual exploitation, the growth in county lines drug dealing and the growth in human trafficking mean that they need to use more children as CHISs. These are not going to be small numbers for very long—that is the point I am trying to make.

The noble Baroness, Lady Young of Hornsey, in her excellent speech, asked us to consider placing one of our own 15 year-old or 16 year-old sons or daughters into such a situation. But I ask the Minister to imagine being put herself—let alone a child—into a criminal gang and being asked to try to carry off an act where she was pretending to be part of a gang and at the same time passing information to the police, or being asked to commit a criminal offence.

Many of these children, as other noble Lords have said, are vulnerable, either because they have substance misuse problems, because they are looked-after children or simply because their decision-making is immature because of the physiology of the brain, as the noble Baroness, Lady Bull, said. This is a horrifying situation in which to place anybody, let alone a child. As my noble friends Lady Doocey and Lady Hamwee said, this should not apply just to children who are vulnerable; there are many vulnerable adults who, arguably, are more vulnerable than some streetwise teenagers. We are, again, very grateful for the support of the noble Baroness, Lady Bull, in that respect.

*8 pm*

We have debated this before in relation to statutory instruments regarding the use of children as CHIS. The Regulation of Investigatory Powers (Juveniles) Order 2000 sets out some of the attempts by the Government to mitigate the risks that these children face, including, at Article 5(a)(ii), that,

"the nature and magnitude of any risk of psychological distress to the source arising in the course of, or as a result of, carrying out the conduct described in the authorisation have been identified and evaluated."

Identified and evaluated by whom? It means by the police—and, with the best will in the world, the police are going to be primarily focused on tackling criminality and dismantling the criminal gang, rather than on the best interests of the child. As my noble friend Lady Doocey said, the focus is not going to be on the welfare of the child. In a recent article in *Independent Voices* by a former undercover police officer, he described how they would go out to exploit vulnerable people, to get them to do this sort of thing. In short, children should not be seen as a disposable asset to be used in this way.

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, this is one of those debates where you can stand up and quite honestly say you agree with every single word that has been said from across the House. I am sure the noble Baroness understands that this presents a particular problem for the Government, because I am sure that, in addition to the noble Lord, Lord Young of Cookham, who made an excellent speech, many other members of the Government's own party will agree with all the points that have been raised here today.

This group of amendments brings the House back to an issue that was first raised by my noble friend Lord Haskel on a statutory instrument, to which the noble Baroness responded. I remember sitting in a much more packed House, and there was lots of concern around the House—"What is this?" People were quite shocked to learn that children were being used in such a way, and that shock and concern has continued, which is why we have come here today.

Everyone around the House is very worried. That is certainly why I signed Amendment 60, which was so ably spoken to by the noble Baroness, Lady Young of Hornsey. Other noble Lords have spoken, and all these amendments are excellent, but I hope that we can hone this down to one. I particularly like Amendment 60, but I think we can see the concern expressed by the House, and we need to deal with this. Our Amendment 60 does not rule out child CHIS completely, but it certainly restricts them. I accept that in very limited circumstances, you might have to use a child, but it must be a very limited, rare occasion.

I am confident that the House will pass an amendment on this issue. Ideally and hopefully, it would be a government amendment, but I am confident that the House will pass an amendment by a large majority on this issue, which is about children. As you have heard, people under 18 can be quite streetwise—certainly, children think they are quite streetwise, although I do not know if they are; they are not quite as streetwise as they think they are. It is about that ability to give informed consent.

We are asking these children to take part in, be involved in and inform and report back on some very dangerous situations. This can be terrorism, drug dealing, sexual abuse or paedophilia: all sorts of really appalling, terrible things. We have to ask ourselves the question posed by the noble Lord, Lord Young of Cookham: how is that individual child protected? What would be said if a child CHIS is authorised and that child dies? That would be appalling—what would we say then? I think we have to take note of and be concerned about that, as well as the comments of the Children's Commissioner in respect of using child CHIS.

Of course, sometimes—we have had this before—the child CHIS can be asked to pass information back to their handler, who can be a member of their own family. There are often situations when they are involved in a crime family: it could be their own father or mother. It is not always the case that the child is in care and hanging around the streets before getting involved; sometimes, it can be members of their own family, who can be very dangerous people. We are putting people in very difficult situations, and we must be even more careful about the individual child in those situations. These children have rights, and we need to ensure that, as the state, we protect them even more. As I said, if you are under 18, you are legally still a child and deserve protection from the state.

The right reverend Prelate made the point again about children, and I fully support his comments, as I do the points about mental capacity made by the noble Baroness, Lady Bull, which are very important. I also support the point of the noble Lord, Lord Paddick, that, sometimes, you can have quite a streetwise child and, equally, an older adult who is not that streetwise, so there is an issue there as well. These are things that we need to consider.

I hope that the noble Baroness will be able to tell the House that she fully understands the situation—and I know she is concerned about this. I hope that she will work with the House and, as the noble Lord, Lord Russell, says, can see the concern and genuine desire to agree something. I hope that she will welcome noble Lords from around the House and that we will come back with an amendment that, hopefully, we can all sign up to on Report, allowing very limited circumstances where a child may need to be used—very limited. Equally, I want to see much more protection for people. I hope that, when the noble Baroness responds, she will be able to give the House that information.

**Baroness Williams of Trafford (Con):** My Lords, I start with the words of the noble Lord, Lord Kennedy, and absolutely confirm that I fully understand what all noble Lords have been talking about this evening. Of course, I will continue to work with the House, as I have done to date, in discussing what is, for me, the most difficult part of the Bill. The noble Lord, Lord Paddick, asked me: would I like to be a CHIS? No: I would be utterly terrified. Could I see my children being deployed in such activity? It would be incredibly difficult for me.

We need to put ourselves in the shoes of those children, who, as every noble Lord has said, are fairly vulnerable people in the sense that they might have been involved in, or their home life might be the site of, criminal activity. This is a very difficult area indeed. I thank the noble Lords, Lord Russell, Lord Paddick and Lord Kennedy, and my noble friend Lord Young of Cookham—and any noble Lords who are behind me—who have taken the time to come and speak to me about this aspect of the Bill.

The noble Lord, Lord Russell, put to me the suggestion from the noble Lord, Lord Anderson, about sessions in private. We are thinking about the best way to ensure that people have some of the information they need, although noble Lords will understand that some of that is sensitive to the point that it cannot be given out. I hope that noble Lords will appreciate that I have taken the time to have a one-to-one session with any noble Lord who requested it, on any aspect of the Bill. That said, these issues are very difficult, and I totally understand the concerns that have been raised. Nobody likes to think of children or young people being involved in these horrible areas.

Noble Lords may recall that the issue of juvenile CHIS, including whether they should be authorised at all, was discussed extensively in Parliament in 2018. The noble Lord, Lord Russell, and the noble Baroness, Lady Young, asked me why there was no child impact assessment of the Bill. As a result of concerns being raised about the use of juvenile CHIS, the IPC himself launched a review of all public authorities that have the power to authorise CHIS, to ensure that there was a comprehensive record of how often these powers were used in relation to juveniles. The conclusions of the review were reported in March 2019 to the Joint Committee on Human Rights. I have discussed them before, including the numbers, on the Floor of this House.

[Baroness Williams of Trafford]

On the basis of these detailed reviews, the IPC was satisfied that those who grant such authorisations do so only after very careful consideration of the inherent risks, and that concerns around the safeguarding of children and the public authority's duty of care to the child are key considerations in the authorisation process. He also noted that public authorities are reticent to authorise juveniles as CHIS unless the criminality and the risk of harm to individuals and communities that the authorisation is seeking to prevent is of a high order and cannot be resolved in less intrusive ways. The noble Baroness, Lady Young of Hornsey, put that challenge to me.

The IPC also highlighted that juvenile CHIS are not tasked to participate in criminality that they are not already involved in and that becoming a CHIS can, potentially, offer a way to extricate themselves from such harm. The decisions to authorise were only made where this is the best option for breaking the cycle of crime and the danger for the individual, much as that might sound contradictory.

As well as the IPC investigation, the High Court considered the issue of juvenile CHIS last year. Mr Justice Supperstone set out his view that it was clear that the principal focus of the framework for juvenile CHIS is to ensure that appropriate weight is given to a child's best interests and that the practical effect of the enhanced risk assessment is that juveniles are,

"only utilised in extreme circumstances and when other potential sources of information have been exhausted."

I hope that that goes some way to reassuring noble Lords that the decision to authorise a young person to act as a CHIS, or participate in criminality, is never taken lightly.

I will now set out the additional safeguards that apply to the authorisation of juveniles as CHIS, and which will equally apply when criminal conduct is being authorised. These include authorisation at a more senior level, a shorter duration for authorisations—four months, rather than 12 for adult CHIS—with monthly reviews, and a requirement for an enhanced risk assessment. There must also be an appropriate adult present at meetings between the public authority and the CHIS for those under 16 years of age. To answer another question, appropriate adults are always independent of the police or other investigating authorities. This must be considered on a case-by-case basis for 16 to 17 year-olds.

These safeguards are contained within the Regulation of Investigatory Powers (Juveniles) Order and the updated CHIS code of practice, where the safeguards for juveniles have been further strengthened. The revisions to the code will be subject to a full consultation before they are finalised and will have legal force.

*8.15 pm*

While public authorities will very rarely use young people as CHIS, we must recognise that some juveniles are involved in serious crimes, both as perpetrators and as victims. Consequently, young people may have unique access to information that is important in preventing and prosecuting gang violence and terrorism. This helps remove from the cycle of crime not only the young person authorised as a CHIS but other young and vulnerable individuals caught in criminality.

We should also acknowledge that by universally prohibiting the authorisation of young people to undertake criminality we are increasing the risks to them and placing them in an even more vulnerable position. If criminal gangs and terrorist groups know that a young person will never be authorised by the state to undertake criminality, such groups will be more likely to force young people to engage in criminality, confident in the knowledge that they could never be a CHIS. In seeking to protect young people, we do not want inadvertently to place them at greater risk of being exploited by criminal gangs. We therefore cannot support amendments which place a blanket prohibition on authorising juveniles to participate in criminal conduct.

With regard to vulnerable groups, equally, a vulnerable person will never be coerced into becoming a CHIS or undertaking criminal activity. However, there may be occasions when they take an informed and independent decision to assist a public authority that is seeking to help them, and others in a similar position, by bringing the gangs that exploit them to justice. The updated CHIS code of practice makes it clear that such individuals should be authorised to act as CHIS only in the most exceptional circumstances, and there are further safeguards, including higher authorisation levels. Full risk assessments are also carried out and maintained throughout the tasking.

Amendment 51 in the name of the noble Baroness, Lady Massey of Darwen, would make prior judicial approval a requirement for all criminal conduct authorisations that related to CHIS under the age of 18. The amendment encounters the same practical issues as those that we have already discussed more broadly on prior judicial approval: namely, that it takes the decision to authorise the criminal conduct of a juvenile CHIS away from the authorising officer, which may result in greater risks to the young person. Authorising officers are highly trained and must consider the requirements set out in the code of practice, including those additional safeguards for juvenile CHIS, as part of their decision-making role. The authorising officer will know the juvenile CHIS and their circumstances in precise detail and will have a duty of care to ensure that the well-being and safety of the CHIS is a primary consideration of the authorisation decision. Thus, we think that the authorising officer is the best person to take those decisions. Of course, the IPC maintains an important role in providing independent oversight for authorisations of juvenile CHIS, as he does more broadly for all CCAs.

Amendment 48 from my noble friend Lady McIntosh would ensure that where criminal conduct authorisations were granted in relation to juvenile CHIS, the provisions of the United Nations Convention on the Rights of the Child applied. Clearly, the provisions of the convention use language intended to apply to a range of legal systems worldwide. The detailed CHIS code of practice, together with the protections contained in legislation, contain safeguards to ensure that the juvenile's interests are protected. The code states explicitly that the need to safeguard and promote the best interests of the juvenile is a primary consideration in all operations involving juvenile CHIS, reflecting the requirement in Article 3 of the United Nations Convention on the Rights of the Child.

Amendment 60 in the name of the noble Baroness, Lady Young of Hornsey, places restrictions on the authorisation of juveniles and vulnerable persons, but without going as far as to restrict the use of these groups in their entirety. This was the group that the noble Lord, Lord Kennedy, referred to. I have already explained in detail the safeguards that are in place for vulnerable and juvenile CHIS. We think that these safeguards strike the right balance but recognise that, on rare occasions, it may be necessary to authorise participation in criminal conduct, to prevent further criminality or to protect the identity of a young person who may be deployed as a CHIS.

Turning to the specifics of the amendment, it seeks to define vulnerable groups. The updated code of practice, which has legal force, already provides a definition of "vulnerable individuals", so we have not placed it in the Bill. The amendment also requires an appropriate adult to be present at all meetings between a handler and a CHIS up to the age of 18; obviously, this is already the case for those up to the age of 16. For 16 and 17 year-olds, it must be considered on a case-by-case basis; if an appropriate adult is not present, the IPC can consider the reasoning set out as part of his oversight function.

I have said before that the law recognises that parental responsibility diminishes as the child gets older, but I assure noble Lords that the vulnerability of all young people aged under 18 is taken very seriously. These assessments are made on a case-by-case basis and focus specifically on the young person's safety and welfare. Public authorities may draw on the expertise of those with specific training and experience in fields such as mental health and social care.

Turning to the requirement to define "exceptional circumstances", we want to avoid highlighting the circumstances under which young and vulnerable people are authorised to undertake criminality when acting as a CHIS, as this would hand to our adversaries a greater understanding of how public authorities operate. In addition, the specific restrictions in this amendment are very restrictive. County lines are an example of where it may be necessary to use this tactic but where it might not be covered by these restrictions. However, the code of practice, which I reiterate has legal force, is clear that juveniles and those who are vulnerable are to be used only in exceptional circumstances. Indeed, between 2015 and 2018, there were only 17 instances where law enforcement bodies deployed juvenile CHIS. Their participation in criminal conduct is rarer still.

I understand noble Lords' concerns and look forward to further discussions with them to consider before Report whether there are ways to provide, in the words of the noble Lord, Lord Kennedy, additional reassurance and safeguards, as well as provide assurance about some of the safeguards that are in place.

**The Deputy Chairman of Committees (Baroness Henig) (Lab):** I have received requests to speak after the Minister from the noble Lord, Lord Russell of Liverpool, and the noble Lord, Lord Kennedy of Southwark. We will start with the noble Lord, Lord Russell of Liverpool.

**Lord Russell of Liverpool (CB):** I thank the Minister for her very full reply. I asked whether the approach of my noble friend Lord Anderson of Ipswich in 2016 to the scrutiny of the Investigatory Powers Act, as it went through both Houses, might not be a model to follow. In our meeting last week, the Minister discussed with myself and those of us who are sceptical about the use of child CHIS for evidence the requirement for this. To convince us, she was kind enough to indicate that the 17 cases that we know of through IPCO produced a result that was deemed, in the balance of all things, positive and justified the use of those cases. In the absence of that sort of evidence, those of us whose primary concern is the best interests of the child are understandably very cautious and a little sceptical. We are willing to be convinced but we need the evidence to be convinced, please.

**Baroness Williams of Trafford (Con):** I will reiterate what I said, which is that I am trying to work out a mechanism for sessions that might be helpful but not leaked, and perhaps where we can give some working examples—again, perhaps in private. We will try to do that if not before Report then during it, but before we come to this amendment.

**Lord Kennedy of Southwark (Lab Co-op):** Actually, I have nothing to ask. The noble Baroness answered my point right at the end, after I had asked the clerk if I could speak, so I will leave it there.

**Lord Young of Cookham (Con):** My Lords, I am very grateful to everyone who has taken part in this debate—not least the Minister, who has been on her feet answering debates for over six and a half hours and has done so with patience and courtesy. It is probably in breach of her human rights to be on duty for such a long time.

I am also grateful to all those who have taken part in this debate, the vast majority of whom have been in favour of Amendment 43—namely, there are no circumstances in which children should be used as CHIS. That is reflected in most of the amendments, with one or two, as it were, blurring the red line a little by specifying certain circumstances in which that might be possible.

Perhaps I may briefly pick up some of the points that were made during the debate. The noble Baroness, Lady Chakrabarti, made a good point about those over 18 who look younger than they are and whether, if it is inevitable that people who look young will be used, it should be them rather than people who actually are under 18. The noble Baroness, Lady Hamwee, made a good point about the rather narrow distinction between, on the one hand, grooming, which we are all against, and, on the other, persuading vulnerable children to act as covert human intelligence, which we are less enthusiastic about.

The right reverend Prelate the Bishop of Carlisle asked us to think about the consequences for the child, and he wanted better safeguards. The noble Baroness, Lady Bull, quite rightly, wanted the ban extended to victims of slavery and trafficking and those who are unable to give informed consent. She delved into the psychology of teenagers to query whether this worked and whether somebody of that age could make rational decisions. My noble friend Lady McIntosh wondered how the use of children could be compatible with the UNHCR. Then the noble Baroness, Lady Massey, joined others in pressing for a meeting with the Minister between now and Report, which she has readily agreed to.

[Lord Young of Cookham]

We then came to what I thought was the most valuable contribution—from the noble Lord, Lord Dubs. He was the floating voter in this debate. He said that he had been swung by the argument and was now in favour of Amendment 43. As a former Chief Whip, I was always rather worried when colleagues went into the Chamber to listen to the debate just in case they could be swayed the wrong way, but on this occasion I am delighted that we have had an impact on the floating voter.

The noble Baroness, Lady Doocey, said that vulnerable children need support, particularly if they are already victims. She made the valid point that we do not send children into battle, so should we send them into circumstances that might be equally dangerous? The noble Baronesses, Lady Jones and Lady Young of Hornsey, touched on the risk of blackmail: "Either work with us as covert human intelligence or you will be arrested". The noble Baroness, Lady Young, mentioned evidence from police officers that this was the case.

I say to the noble Baroness, Lady Jones, that it is not just Greenies who are in favour of this. I was a member of Friends of the Earth for a very long time—until, as Secretary of State for Transport, I built the Newbury bypass, when, I am sad to say, it expelled me. She also made the valid point that if the police are traumatised when they act in these circumstances, what will be the position of children under 18?

The noble Baroness, Lady Young, made a point that was picked up by others: would we allow our children—or, in the case of many Peers, our grandchildren—to be used as human spies? Of course, under the terms of the draft code, parents would not necessarily know that this was happening; they do not have to be told.

The noble Lord, Lord Russell, summarised the concern in both Houses and said we need the evidence. I hope we get the evidence and I hope it is all of it: not just the evidence that may substantiate the case that the Minister wishes to persuade us of, but evidence of where things have not perhaps gone quite as they should. The noble Lord asked whether the process used for the Investigatory Powers Act might be used in this case. I am not familiar with it but that sounds like a very helpful suggestion.

*8.30 pm*

The noble Lord, Lord Paddick, made the point that demand is likely to increase because of the nature of criminal activities with the growth of county lines. The noble Lord, Lord Kennedy, sounded to me as though he was veering towards Amendment 60 rather than Amendment 43, and I will have to use the time between now and Report to see whether we can nudge him a little further to one side.

I very much welcome what the Minister has said. She wants to work with us to see if we can get clarity to try to find a way through. As of now I remain, with the Children's Commissioner, unconvinced that there are any circumstances in which this is right, and the Minister has a challenge to make me shift my position between now and Report. In the meantime, I beg leave to withdraw the amendment.

*Amendment 43 withdrawn.*

*Amendments 44 to 48 not moved.*

**Lord Parkinson of Whitley Bay (Con):** My Lords, we must finish at 8.45 pm but the next group has only five speakers, so if noble Lords are willing to keep their comments brisk and brief then we may just be able to finish it before we have to adjourn.

**The Deputy Chairman of Committees (Baroness Henig) (Lab):** We come now to Amendment 49. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this amendment to a Division should make that clear during the debate.

*Amendment 49*

*Moved by* ***Lord Paddick***

**49:** Clause 1, page 3, line 2, at end insert—

"( ) A criminal conduct authorisation must be reviewed monthly by the person by whom it is granted.

( ) A criminal conduct authorisation ceases to have effect on the date it provides, which must be no later than four calendar months after the date it is granted."

Member's explanatory statement

Under this amendment a criminal conduct authorisation would be reviewed monthly and expire after four months.

**Lord Paddick (Lab):** My Lords, this amendment is in my name and that of my noble friend Lady Hamwee. As we have debated at length, authorising a CHIS to commit crime and granting immunity to that CHIS and maybe others involved is a far more serious thing to do than simply deploying a CHIS. We felt that to expect such an authorisation to last for 12 months—and, in the code of practice, with no mandatory review within that 12-month period but purely at the discretion of the authorising officer—was too much; it is far too long for a criminal conduct authorisation to be in place and not be reviewed.

We cast around for what a reasonable period might be and went back to what I referred to before: the Regulation of Investigatory Powers (Juveniles) Order 2000, amended by the Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018. The initial order changed the period for authorising a juvenile CHIS from one year to one month. The 2018 order amended that to four months with a monthly review, recognising how much more serious it is to deploy a juvenile CHIS than an adult CHIS. Therefore, bearing in mind how serious a CCA is compared with the deployment of a CHIS in other circumstances, we felt that a four-month cut-off for a CCA with monthly reviews was the appropriate limitation to be placed on a CCA in line with the authorisation for juvenile CHISs. I beg to move.

**Baroness Chakrabarti (Lab) [V]:** I will speak briefly in full-blooded support of the noble Lord, Lord Paddick, and an amendment that seems to me like a no-brainer. The worst abuses of undercover policing, as are emerging in the inquiry, have related to people who have been embedded for a long time without adequate review, and obviously the risk of abuse is greater the longer a person builds their legend and is embedded without proper review.

Given that all time limits are arbitrary, it is right that we look for something relatively short, given the gravity of the line that is being crossed with this legislation for

criminal conduct. The noble Lord has come to a very decent compromise with the monthly review and the four-month maximum on licensing people to commit crime.

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, I will be brief. I see the point that the noble Lord, Lord Paddick, is making on the need for review, but I am not convinced that it needs to be in the Bill. I am not persuaded that it is the right thing to do, although I see the point of a review. When the noble Baroness responds, maybe she can tell us about the detail of future authorisations. Would it be built into the authorisation itself? That would seem the better place for it, but I will wait to hear what the noble Baroness says. As it is, I am not convinced by the amendment or that the issue should be in the Bill.

**Baroness Williams of Trafford (Con):** My Lords, I hope to provide the clarity that the noble Lord, Lord Kennedy, seeks and persuade the noble Lord, Lord Paddick, that this is not necessary in the Bill. The current authorisation period of 12 months is consistent with the authorisation for the use and conduct of CHIS, which will need to be in place before criminal conduct can be authorised. Keeping the Bill consistent with the powers laid out in Section 29 will ensure that this power remains operationally workable for the public authorities listed in the Bill.

In the updated CHIS code of practice that accompanies the Bill, it is clear that a criminal conduct authorisation should be relied upon for as short a duration as possible. There is also a requirement on authorising officers to undertake regular reviews to assess whether the authorisation remains necessary and proportionate, and is justified. An authorisation must be cancelled when that is no longer the case.

Authorisations will be specifically and narrowly drafted and, in many cases, the specificity of the authorisation will mean that the criminal conduct authorised is in effect narrowly time-limited. However, there will be occasions when this conduct necessarily extends longer than a four-month period; CHIS who are members of proscribed organisations is a good example of this.

**Lord Paddick (LD):** I thank the Minister for what she just said and I thank the noble Baroness, Lady Chakrabarti, for her support. I do not quite understand the position of the noble Lord, Lord Kennedy of Southwark. If 12 months is specified as the length of a CCA in the Bill then why, if we want to change it to four months, should it not be in the Bill? The Minister is saying it is consistent with the period for authorising CHIS, but not the period for authorising juvenile CHIS. It is a much more serious issue than simply authorising CHIS, as we have discussed. Authorising someone to commit a crime and giving them immunity from prosecution is far more serious than simply deploying CHIS.

To say that it makes it easier if the length of time is the same for one as it is for the other is to ignore the seriousness of this deployment—authorising CHIS to commit crime. If you were to follow the noble Baroness's argument to its logical conclusion, you would not need the Bill to authorise CHIS to commit crime, as it would be just the same as deploying CHIS. No doubt we will return to this on Report but, at this stage, I beg leave to withdraw my amendment.

*Amendment 49 withdrawn.*

*House resumed.*

*House adjourned at 8.40 pm.*

# Grand Committee

*Thursday 3 December 2020*

*The Grand Committee met in a hybrid proceeding.*

## Arrangement of Business

*Announcement*

*2.31 pm*

**The Deputy Chairman of Committees (Baroness Barker) (LD):** My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering except when seated at their desk, to speak sitting down and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

The microphone system for physical participants has changed. Your microphones will no longer be turned on at all times, in order to reduce the noise for remote participants. When it is your turn to speak, please press the button on the microphone stand. Once you have done that, wait for the green flashing light to turn red before you begin speaking. The process for unmuting and muting for remote participants remains the same.

I remind all speakers that there is a limit of two minutes for contributions in the debate this afternoon. The time limit is three hours.

## Spending Review 2020

*Motion to Take Note*

*2.32 pm*

*Moved by* ***Lord Agnew of Oulton***

That the Grand Committee takes note of the spending review 2020.

**The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con):** My Lords, a spending review is a significant moment in the life cycle of any Government. It is an opportunity to deliver on the priorities of the British people, and, despite the most challenging of backdrops, that is what this spending review achieves.

Given the circumstances, this year's review sets out departmental resource spending and capital spending for the next financial year—2021-22—and devolved Administrations' block grants for the same period. It includes multi-year funding certainty for some key existing projects and priority commitments, including health, schools and defence. Its immediate aim has been to protect people's lives and livelihoods, but it also delivers stronger public services—including new hospitals, better schools and safer streets—and a once-in-a-generation investment in infrastructure.

In their response to the pandemic, the Government have sought to prioritise jobs, businesses and public services. This support has come in many forms, including the furlough scheme, support for the self-employed, grants, loans and tax cuts. There has also been additional funding for councils, schools, the NHS, the charity sector and the cultural sector. This year, the Government are providing £280 billion to help get the country through the coronavirus.

Next year, we will be allocating an additional £18 billion to fund programmes on testing, vaccines and personal protective equipment. We will also be providing, among other things, £3 billion to support NHS recovery, more than £2 billion in subsidies to the rail network to keep the country moving and more than £3 billion to local councils. Much of our response to the pandemic has been nationwide, but we are also providing £2.6 billion to support the devolved Administrations in Scotland, Wales and Northern Ireland. In total, public services funding to tackle coronavirus next year will be £55 billion.

Your Lordships will appreciate that the economic picture is very challenging. The Office for Budget Responsibility forecasts that the economy will contract by 11.3% this year, the largest drop in at least 300 years. The OBR expects that, as restrictions are lifted, the economy will start to recover, growing by 5.5% next year, 6.6% in 2022, then 2.3%, 1.7% and 1.8% in the years following. Economic output, however, is not expected to return to pre-crisis levels until the fourth quarter of 2022. Long-term scarring means that, in 2025, the economy will be roughly 3% smaller than expected in this year's March Budget. The dual impact of the virus and our necessary response has resulted in a significant increase in our borrowing and our debt. The UK is forecast to borrow the equivalent of 19% of GDP this year, a total of £394 billion. Borrowing is projected to drop to £164 billion next year, £105 billion in 2022-23 and then to remain at around £100 billion, approximately 4% of GDP, for the rest of the forecast.

Noble Lords may well consider this a high price to pay, but the price had we not taken the steps we have would have been much higher. The Government understand that this situation is unsustainable over the medium term and that there is a responsibility to return to a more sustainable fiscal position once the economy recovers. Importantly, we have been able to act in this way because the country entered the crisis with strong public finances. Our actions have proved to be right. Indeed, the OBR, the Bank of England and the International Monetary Fund have all said that our economic response has protected jobs, supported incomes and helped businesses stay afloat.

We have three priorities, the first being to protect health and jobs. I have already noted that the Government's immediate priority in the spending review is protecting lives and livelihoods. We are doing more to build on the existing plan for jobs, launched in the summer. Nearly £3 billion in additional funding will be made available to deliver a new, three-year Restart programme to help more than 1 million people who have been unemployed for more than a year find new work.

Protecting jobs is also about taking tough, prudent decisions. The reality is that coronavirus has deepened the disparity between public and private sector wages.

[Lord Agnew of Oulton]

In the six months to September, private sector wages fell by nearly 1% compared to last year. Over the same period, public sector wages rose by almost 4%. Given that context, the Government cannot justify a significant across-the-board pay increase for all public sector workers. Instead, to protect public sector jobs while ensuring fairness between the public and private sectors, the Government are pausing pay rises in the public sector next year—with two important exceptions. Taking account of the pay review body's advice, we will provide a pay rise to more than 1 million nurses, doctors and others working in the NHS. Meanwhile, the 2.1 million public sector workers who earn below the median wage of £24,000 will be guaranteed a pay rise of at least £250. The Government are also accepting in full the recommendations of the Low Pay Commission to increase the national living wage by 2.2% to £8.91 an hour, to extend this rate to those aged 23 and over and to increase national minimum wage rates. Taken together, these minimum wage increases should benefit around 2 million people.

I hope noble Lords will agree that the Government have been right to protect lives and livelihoods now, but it is also a spending review for the future. Next year, total departmental spending will be £540 billion. Over this year and next, day-to-day departmental spending will rise, in real terms, by 3.8%—the fastest growth rate in 15 years. In cash terms, day-to-day departmental budgets will increase next year by £14.8 billion. Crucially, those increases will apply across the entire country. In fact, the spending review increases Scottish Government funding by £2.4 billion, Welsh Government funding by £1.3 billion, and funding to the Northern Ireland Executive by £900 million.

Our second priority is stronger public services. This spending review recognises the priorities of the British people. In the case of the National Health Service, it honours the historic, multiyear commitment the Government have made. Next year, the core health budget will grow by £6.6 billion, allowing the delivery of 50,000 more nurses and 50 million more GP appointments. We are also increasing capital investment in health by £2.3 billion for new technologies and new hospitals. Indeed, the Government are funding the biggest hospital building programme in a generation—building 40 new hospitals and upgrading 70 more.

The Government are also investing in social care. The spending review allows local authorities to increase their core spending power by 4.5% and grants them extra flexibility for council tax and the adult social care precept which, together with £300 million of new grant funding, gives them access to an extra £1 billion to fund social care. This is all on top of the extra £1 billion social care grant provided this year, which will be maintained into next year.

The spending review also prioritises a better education for the country's children. The Government are increasing the schools budget next year by £2.2 billion, in line with our commitment of an extra £7.1 billion by 2022-23. Every pupil will see a year-on-year funding increase of at least 2%. We are also funding the Prime Minister's commitment to rebuild 500 schools over the next decade. Education does not end when a child walks through his or her school gate for the final time. This is why the spending review provides £291 million to pay for more young people to go into further education, £1.5 billion to rebuild colleges, and £375 million to deliver the Prime Minister's Lifetime Skills Guarantee. We are taking steps to extend traineeships, sector-based work academies, and the National Careers Service, as well as improving the way the apprenticeship system works for businesses.

The people of this country also expect their Government to keep our streets safe. Next year, funding for the criminal justice system will increase by over £1 billion. We are providing more than £400 million to recruit 6,000 new police officers—well on track to recruit 20,000—and £4 billion over four years to provide 18,000 new prison places.

I have said that this Government are willing to take tough, prudent decisions. During what is a fiscal emergency, when we are seeing the highest peacetime levels of borrowing on record, it is difficult to justify spending 0.7% of our national income on overseas aid. The Government will continue to protect the world's poorest: spending the equivalent of 0.5% of our national income on overseas aid in 2021, allocating £10 billion in this spending review, which will mean that we remain the second-highest aid donor in the G7. It is our intention to return to 0.7% when the fiscal situation allows.

There are many ways that the UK plays a constructive role in the world. This spending review includes more than £24 billion investment in defence over the next four years, the biggest sustained increase in 30 years, allowing us to provide security not just for our country but around the world. This settlement reaffirms the UK's position as the largest European defence spender in NATO, and the second largest in the alliance. It includes an ambitious package of reform to ensure that we remain ready to meet ever-changing needs.

The third priority of the spending review is investment in infrastructure. Capital spending next year will total £100 billion—£27 billion more in real terms than last year. Indeed, our plans deliver the highest sustained level of public investment in more than 40 years. The Government are introducing a £7.1 billion National Home Building Fund, on top of the £12.2 billion Affordable Homes Programme. We are delivering faster broadband for over 5 million premises across the UK, as well as better mobile connectivity, with 4G coverage across 95% of the country by 2025. We are undertaking the biggest ever investment in new roads, upgraded railways, new cycle lanes and over 800 zero-emission buses. We are also delivering the Prime Minister's 10-point plan for climate change, and making the UK a scientific superpower with almost £15 billion of funding for research and development.

Finally, the Government have announced a new levelling-up fund worth £4 billion. This will allow local areas to directly bid for project funding for what the Chancellor has called

"the infrastructure of everyday life"—[*Official Report*, Commons, 1/12/20; col. 151.]

such as libraries, museums and galleries, and upgraded railway stations. All of that capital investment will help to spread opportunity, create jobs and drive economic growth in every part of the country.

This spending review has taken place at a time of great challenge, but by focusing on three key priorities—protecting health and jobs, stronger public services and investment in infrastructure—it delivers what the British people expect of this Government. The job now is to implement our plans. That is what I and my colleagues in the Government are determined to do in the months and years ahead. I beg to move.

*2.45 pm*

**Lord Eatwell (Lab) [V]:** My Lords, the spending review was a revelation. It revealed how the Chancellor will shape policy over the coming years. The first revelation is found in the Chancellor's statement that

"our economic emergency has only just begun."

Mr Sunak spells out the emergency: debt is

"clearly unsustainable over the medium term."—[*Official Report*, Commons, 25/11/20; cols. 827-28.]

It is clear that Mr Sunak regards government borrowing, necessary as it may be in the face of the pandemic, as a burden on future generations. This is economic nonsense, and the foundation of the austerity that has done so much damage to Britain.

Of course borrowing will need to be repaid—but to whom? Taxes are raised from British citizens to repay the debt owed to other British citizens. What borrowing and the repayment are all about is the distribution of income: funds being transferred from one group of citizens to another group. Mr Sunak has made clear who he expects the funds to come from. The first in line to pay off the borrowing are the public sector workers whose pay has been frozen.

However, in so far as the Government borrow from foreigners, the borrowing can create a future burden. When funds are repaid, spending power is transferred abroad. That is why the OBR estimate of the increased foreign borrowing associated with Brexit is so worrying. Here lies the second revelation. In his review of the coming economic emergency, Mr Sunak fails to mention Brexit at all. For Mr Sunak, Brexit is the love that dare not speak its name. Yet the OBR makes it clear that the scarring from leaving the European Union with a deal is worse than the long-term scarring by the pandemic. If we leave without a deal, the scarring will be twice as bad. Yet from Mr Sunak, not a word about a policy that will add more to government borrowing in the medium term than will the pandemic. Has there ever been a more irresponsible Chancellor of the Exchequer?

*2.47 pm*

**Baroness Bowles of Berkhamsted (LD) [V]:** My Lords, the Government's spending on Covid has been generous—even if some has gone awry—and I do not underestimate the change in mindset that it needed in the Treasury. But lessons of history show that switching too soon into restoring finances slows recovery. The UK was not first in, or alone in, amassing Covid-related debt, and nor does it have to prove a point as it did in the financial crisis. Central banks are no longer seeing low interest rates as an abnormal blip and the IMF advises against an early return to austerity—so why take fright and cut previous growth plans now?

Much of the UK's social infrastructure is already underfunded. Social care has been left on an unsustainable footing by Governments of all stripes, and universal credit has been cut to below liveable amounts. These are not bleeding-heart views but among the conclusions of reports from the Lords Economic Affairs Committee, chaired by the noble Lord, Lord Forsyth, of which I am a member. The very least that should be done on universal credit is to maintain the £20 increase. Post-Covid and post-Brexit life is not going to be any cheaper, and we cannot build a recovery on the backs of hungry children.

Over 1 million people are still not getting the care they need. Training more people to deliver social care and creating a valued career path can be a key route to providing jobs for the future. With an ageing population, it is time to turn the problem of social infrastructure into part of the solution. Building social infrastructure is faster at job creation than building physical infrastructure, and both are deserving.

*2.50 pm*

**Baroness Noakes (Con):** My Lords, I support what the Government are doing to support the economy. I wish that our Covid policies had not themselves been so harmful to the economy—but we are where we are. The resultant debt and deficit forecasts are scary and leave us exposed to interest rates that will inevitably rise at some point. The fiscal challenge is huge, but my simple plea to the Government is: do not turn to taxes as a way to solve this problem.

I have three points to make, and one parting shot. The first is a reminder that the Laffer curve is a real thing. Yield goes down when rates rise. For example, any short-term gain from raising the rate of capital gains tax, as the Office of Tax Simplification has misguidedly suggested, will be illusory, as behaviours will change and asset markets will be distorted. Secondly, raising income tax rates should be off the agenda until the economy is much stronger. All it will do is reduce disposable income and hence demand in the economy. We will need as much demand in the economy as we can get. Thirdly, the business sector must be encouraged to invest. The best way to do that is to reduce the rate of corporation tax and return to the aim of 17% or less.

My parting shot is that the Treasury must take time to understand what it takes for businesses, especially SMEs, to be profitable and to grow. Too many initiatives, such as making tax digital, ignored the real-life problems of SMEs trying to run successful businesses. We need SMEs more than ever now to rebuild our economy.

*2.51 pm*

**Baroness Hayman (CB) [V]:** My Lords, I will speak briefly on issues relating to climate, and I declare my interests as set out in the register, but first I will record my profound disquiet about the decision to reduce our spending on overseas development assistance. This is short-sighted in the national interest, as well as damaging to some of the poorest in the world.

I welcome the commitment in the spending review that:

"Our capital plans will invest in the greener future we promised, delivering the Prime Minister's 10-point plan for climate change."—[*Official Report*, Commons, 25/11/20; col. 831.]

[Baroness Hayman]

Equally positive are other measures such as the proposed national infrastructure bank, the potential net-zero duty for regulators, and the revising of the Green Book to take account of our climate change obligations.

However, there is a widespread understanding that, in themselves, the measures currently in place and planned by the UK are not sufficient to meet our climate change commitments. There is a large gap between aspirations and solid progress on the ground. For example, the IPPR's recent estimates suggest that only 12% of the year-on-year spending needed to achieve net zero has been committed by the Treasury. So there is an urgent need for what has been announced to be supported by clear policy direction and by detailed sector-by-sector road maps, in addition to mechanisms that will help bring investments and new players into low-carbon markets, and by long-term funding commitments.

When the Minister replies to this debate, I hope that he will be able to assure us that, in the year leading up to our hosting of COP 26, the net-zero review will reflect the forthcoming advice of the Climate Change Committee, and that we will see a fully costed road map, including the investment commitment and the sector policies that will ensure we achieve our net-zero target by 2050.

*2.54 pm*

**The Lord Bishop of Portsmouth [V]:** My Lords, I was delighted to hear the Chancellor stress that the Government would continue to support the most vulnerable, but the proof of that assertion will be in how much money the Government are prepared to provide. That will be the barometer of what and who they consider most important. I therefore join my voice to those profoundly deprecating the proposed cut in development aid. I urge the Government to think again.

I also implore the Government to think again by deciding now to maintain the uplift in universal credit beyond the spring, and for it to apply to those on legacy benefits as well. That uplift has kept many from the cliff edge. They now face a winter of uncertainty, which is not ameliorated by warm words from Ministers. Moreover, 160,000 new claimants have had a grace period and not been subject to the benefit cap. That period now comes to an end, which means dreadful uncertainty for many in the run-up to Christmas. The justification that the cap incentivises work does not presently stand up; the jobs are not there to go to. Those who already have little risk suffering more. They are the new impoverished: resourceful, resilient and struggling; decent, hard-working, desperate people who cannot feed and care for themselves or their children. People are getting perilously near to the cliff edge.

It is good theology to attend to the voices of those on the margins. It is also good public policy. Leaving them in limbo is neither just nor kind.

*2.56 pm*

**Lord Reid of Cardowan (Lab):** My Lords, I follow the noble Baroness, Lady Hayman, and the right reverend Prelate in deprecating the cuts to our aid budget. In his spending review, the Chancellor said that it,

"strengthens the United Kingdom's place in the world."—[*Official Report*, Commons, 25/11/20; col. 830.]

He then cut another £4 billion from the aid and development budget. Let me clear: I welcome the much-needed increase in defence expenditure. But robbing the aid budget Peter to pay the defence budget Paul is no way to go about it. I despair. Does the Treasury still not understand that there are three ways in which we exert influence and strengthen our position in the world? The first is by a strong defence posture and capabilities; the second is by assiduous diplomacy; and the third is by extending aid and development to others.

That is not just a moral decision—though assuredly it is. It is much more. First, it is a crucial element of our soft power. Secondly, it is enlightened self-interest. Many of the huge problems that we face, from disease, to conflict, to mass migration, have their very roots in the lack of economic and social development elsewhere in the world. Therefore, such a huge reduction in our aid and development budget is decidedly the wrong thing to do in our own interest in the longer term. It is wrong and short-sighted for us, as well as being wrong for those in other parts of the world who would be the recipients of our aid and development resources.

*2.58 pm*

**Lord Shipley (LD) [V]:** My Lords, I first remind the Grand Committee that I am a vice-president of the Local Government Association. I want to talk about council tax and the deliberate government policy over the past five years to force it up well above the rate of inflation. These increases have been caused in part by the introduction of the adult social care precept in 2016, because central government decided to divest itself of carrying all the responsibility for rising social care costs. At the general election last year, the Conservative Party manifesto guaranteed not to increase income tax, national insurance or VAT across the next Parliament. It was a bold and, undoubtedly, a popular step. This was intended to,

"protect the incomes of hard-working families across the next Parliament."

These three taxes bring in almost two-thirds of UK tax revenue. The decision not to increase them means that the Government intend other taxes to bear the burden through this Parliament. Council tax is one of them, and in the spending review last week, the Chancellor continued government policy towards council tax for a sixth year: that is, increasing council tax well above the rate of inflation. An increase of up to 5% is permitted next year, of which a maximum 3% increase is for the adult social care precept and 2% is for general service provision. This constant rise in council tax forced on councils impacts most of all on poorer families.

The pandemic is impacting most on poorer families. The freeze on public sector pay will impact most on poorer people. The failure to increase the living wage by more will impact most on poorer people. I understand the reason for wanting to avoid tax rises at a national level, to enable the economy to grow again, but why does this policy not apply to council tax?

*3 pm*

**Lord Hamilton of Epsom (Con):** My Lords, I will talk about overseas aid. First, I congratulate the Government on breaking the link with the hypothecation

of government revenues, which is a bad idea in principle and has been proved to be a bad idea by the challenges that face the Chancellor at the moment.

I will speak more broadly about overseas aid. It has had a very chequered history. Much money has been wasted, there has been a lack of accountability, and indeed in places there has been abuse, as we saw with the abuse of young girls in Haiti by Oxfam. It is time that we looked radically at the whole question of overseas aid and made sure that it is more accountable to the people of this country.

I would like to see the overseas aid budget fundamentally abolished, either in part or in whole, and the money paid to people who make contributions to charity. At the moment, if I write a cheque for £100 to UNICEF, UNICEF ends up with £120 because of the 20% extra that it is given by the Exchequer. I would like to see that increased substantially. I do not know how the figures would work out, but if my £100 to UNICEF became, say, £500, there would be an enormous incentive for people to make contributions, and indeed there would be a quite massive increase in the amount of money going to our charities that help out around the world. This would transfer power from the Government to the people who make the contributions; it would make the charitable organisations working in overseas aid much more accountable to the people; and in my opinion it would encourage many more people to pay towards these charities, knowing that their contributions would be so massively increased.

Finally, I will just say that I am not expecting my noble friend the Minister to comment on this in any way whatever—but I hope that he will take it away and think about it in the Treasury.

*3.02 pm*

**Baroness Boycott (CB):** My Lords, I too welcome the spending commitments the Government have made to help us meet net zero. However, I feel that there is a bit of a disjointed approach with some of the announcements: for example, spending vast amounts of money on roads, which will only increase emissions, and a relatively small amount of money on proven, nature-based solutions.

There is at present a great distance between the committed expenditure and the expenditure needed to get us on to the right trajectory. As the noble Baroness, Lady Hayman, has just said, the IPPR thinks that we have committed only 12% of the funds we need.

The Chancellor said at the beginning of the pandemic that he would do whatever it took to save livelihoods, but will the Treasury take the same approach to reaching net zero? When the *Sixth Carbon Budget* is published next week, and then the UK's own NDCs, will the Treasury make funds available to departments so that they can enact these policies?

I do not wish to unduly criticise the Government, and I really welcome the inclusion of net zero and the environment in the Treasury's Green Book review, as well as the confirmation that a net zero road map is in the works. It is important that the transition is well thought out, to maximise the benefits to people's health and well-being. With that in mind, perhaps I may also ask the Minister whether that means that, going forward, all spending commitments will be compatible with the 2019 amendment to the Climate Change Act.

Following on from that, and finally, in anticipation of the publication of the Dasgupta review, I ask the Minister: is the reason that this spending review, and indeed the 10-point plan, is really light on nature that he and his colleagues are waiting to respond to the Dasgupta review before making further commitments? I am sorry to labour the point, but will the Dasgupta review form part of the foundation of the Green Book when it is finalised next year?

*3.05 pm*

**Lord Hain (Lab) [V]:** My Lords, fully three-quarters of the fiscal boost being provided this year is to be withdrawn next year, and over 90% by 2022, according to the OBR's central forecast. Indeed, if the small print in the spending review is to be believed, Rishi Sunak is already planning in the next two years to withdraw fiscal support for the economy at a rate five times faster than George Osborne did so savagely in his first two years at the Treasury.

There will be a £10 billion cut in departmental day-to-day spending in 2021, compared to the levels planned in March 2020, rising to nearly £13 billion in 2024; cuts to public investment plans in the four years from 2021 averaging over £3 billion per year; nothing about raising statutory sick pay to help people testing positive for the virus who have to self-isolate at home; and no extension of the £20 a week temporary increase in universal credit beyond April 2021, even though the Chancellor expects unemployment to soar next year.

The pernicious overseas aid cut of some £4 billion is out of total public spending of over £1,100 billion, equivalent to one-fifth of one per cent of GDP, and a vanishingly small rounding error compared to total public spending. It is a disgraceful and unnecessary cut that is as repugnant as it is right-wing symbolic.

Then there is the public sector pay freeze dressed up as a "pay pause". There is a £700 million cut in the BBC's budget buried away in the OBR report. This is indeed a punitive spending review that will even further damage Britain's growth prospects.

*3.06 pm*

**Baroness Pinnock (LD) [V]:** My Lords, I remind the Grand Committee of my relevant interests as a councillor and a vice-president of the Local Government Association.

The Government have a much-vaunted aim in the levelling-up agenda. Councils are key to this. Sadly, however, there is no sign of that happening in this spending review. The headline figure of a rise of 4.4% in councils' spending power hides the fact that more than half of that is as a result of the expectation that councils will ask council tax payers to pay 3% extra as a social care precept. This sticking plaster for adult social care was introduced in 2015. All told, this means that council tax payers' bills will rise 13% above inflation to shore up escalating social care demands. This is a regressive tax that hits the poor hardest and raises least in the poorest areas of the country, thus expanding inequalities. Perhaps the Minister can explain how this can be part of the levelling-up agenda.

Further discrimination against the poorest towns can be found in the distribution of the Towns Fund, which has resulted in the most needy towns, as defined

[Baroness Pinnock]
by the Secretary of State's own criteria, being refused funding so that other towns selected by Ministers can benefit. These two factors together illustrate that levelling up demands more than capital investment: social capital requires investment, too.

*3.08 pm*

**Lord Lancaster of Kimbolton (Con):** My Lords, the Chancellor has rightly prioritised the Government's approach to spending. Understandably, priority 1 is the need to protect people's lives and livelihoods as the Government respond to coronavirus, and I welcome the plans outlined by the Minister to spend over £280 billion through the furlough scheme, support for the self-employed, loans, grants, tax cuts and tax deferrals. The second priority is delivering stronger public services, and with departmental spending set to be £540 billion, which I think my noble friend said represents a rise in real terms of 3.8%, there will be extra funding for schools, local authorities and the NHS. The third priority, the Government's major investment plans in infrastructure to drive growth, create jobs and level up, though, is where I will focus my comments.

The Government's recently published *National Infrastructure Strategy* appears to be a serious attempt finally to address decades of underinvestment in the UK's infrastructure—a source of frustration to me for many years. I represented in my previous political life a constituency at the heart of the Oxford-Cambridge Arc: this growing regional economic powerhouse's potential to contribute further to the economy has been constrained only by a lack of infrastructure, be that physical infrastructure—I am delighted to see the Government's reconfirmed commitment to the east-west rail project that will connect Oxford, Milton Keynes and Cambridge—or virtual infrastructure, which is why the commitment to delivering superfast broadband is so vital. Indeed, it is made all the more essential now as we embrace a new way of working post Covid, with the creation of homeworking hubs.

With more than half of all infrastructure spending private, I particularly welcome the creation of a new national infrastructure bank to co-invest with private sector partners. However, if we are truly to unleash the economic potential of the UK through infrastructure investment, we must get the delivery right. For many years, my mantra has been "i before e", or "infrastructure before expansion". In areas of high growth such as the south Midlands, there remains a desperate need for new housing to attract skilled workers so that the Arc can continue to be an economic powerhouse. The commitment to a national home building fund to help to match this demand is most welcome.

*3.10 pm*

**Lord Loomba (CB) [V]:** My Lords—[*Inaudible*.] Just one minute, please.

**The Deputy Chairman of Committees (Baroness Barker) (LD):** Please go ahead, Lord Loomba.

**Lord Loomba (CB) [V]:** Yes, I am coming. It is just that—[*Inaudible*.]

**The Deputy Chairman of Committees (Baroness Barker) (LD):** We cannot hear the noble Lord. We will try to sort out the difficulties and come back. For the moment, I call the noble Lord, Lord Bradshaw.

*3.12 pm*

**Lord Bradshaw (LD) [V]:** My Lords, I want to talk about the Green Book, which was published at the same time as the spending review. It contains very welcome reference to

"Non-market Valuation and Unmonetisable Values".

To translate that into English, it takes into account things such as effect on air quality, noise, waste, landscape, water resources and climate change. I want to ask the Minister about something that is a Treasury responsibility. In the past, most infrastructure investment in this country has been dominated by savings in the values of time of people using mostly new roads, sometimes new railways. Now, we are moving to a new, different system of appraisal. Are we going to stop the very expensive process of calculating values of time, which are the present means of justification? How much of the investment will be guided by these other important things? The value of time that is often projected in an infrastructure proposal melts away as you have traffic congestion, which almost always rises to a point where the so-called savings materialise into nothing at all. I would like to believe that, this time, the Treasury will come forward with an alternative method that really values the many, many things that people think are better and more worth while.

*3.14 pm*

**Baroness Neville-Rolfe (Con):** My Lords, as time is short, I will eschew universals and limit myself to two points.

First, on delivering public value, I thank the Chancellor for including as a priority outcome

"a sustainable and resilient local government sector that delivers priority services and empowers communities."

I have always believed in the value of local government as the exemplar of good and innovative management. I think of Andy Street in Birmingham, Boris bikes and congestion charging. It is nice to see this strength appreciated at last during Covid and to note the £3 billion in additional support set out on page 75.

However, I have a concern about parish and town councils, which of course vary in size, from towns such as Salisbury and Tavistock to tiny villages. These are the very backbone of local democracy, yet I hear from the National Association of Local Councils that the Covid money is just not trickling down to them from the higher-tier authorities. This is despite the fact that many parish councils carry out functions such as parking, leisure and voluntary activities, and that their income is right down. Will my noble friend the Minister undertake to look into the facts and sort this out? For example, could they be eligible for the new leisure fund?

Secondly, my noble friend knows my passion for supporting small business. Recently, I expressed my concern to him on financial services. I am still researching the letter that I promised him and would welcome examples from other noble Lords. It is clearly a serious

cultural problem. The spending review mentions small business or SMEs seven times, compared with 35 references to "green" or "greener"—not including the references to the Green Book. How are we going to revive our economy without a better attitude to enterprise, green or not? What are the prospects for the 5.5 million small businesses in this country? As my noble friend Lady Noakes said, we need them now more than ever.

*3.16 pm*

**Baroness Wheatcroft (Non-Afl) [V]:** My Lords, the spending review laid great stress on the need to preserve jobs. The Chancellor accepted that retail, hospitality and leisure have been some of the hardest-hit sectors during the pandemic, yet the review confirms that the Government are persisting in doing away with tax-free tourist shopping. The Office for Budget Responsibility says that the Government's costings on this move are based on a "highly uncertain estimate" of how international tourists will react to the change. However, industry forecasts say that it will cost at least 40,000 jobs as tourists head to centres such as Milan and Paris to spend their money.

I must declare my interest as chairman of the Association of Leading Visitor Attractions. Our members —museums, art galleries, gardens and so on—across the country are desperate to see this measure, which will destroy jobs and reduce government revenues overall, reversed. Will the Minister re-examine this perverse decision?

Secondly, the spending review announced the laudable aims of fostering more building of social housing and the creation of a national infrastructure bank—something that we have long needed. In a report on a consultation also published last week, the Government said that the bank will be able to provide advice to local authorities on local projects. The consultation on future lending, carried out by the part of the Treasury known as the Public Works Loan Board, states that the PWLB will no longer lend to local authorities to invest in commercial property simply for yield, but the Treasury lent billions to local authorities to do just that. Those deals are now going badly wrong, as many predicted they would, so can the Minister tell the House whether he will support those local authorities which now face financial catastrophe as a result of loans fuelled by Treasury lending?

*3.18 pm*

**Lord Razzall (LD):** My Lords, two minutes is obviously a short time in which to deal with this significant Statement. Others have dealt with the absence of any reference to the effect of Brexit or, with outrage, mentioned the cuts to overseas aid. I want to spend my time on debt, which the Chancellor hardly touched on in his Statement.

The numbers are clear: at the end of October, government borrowing was just over £2 trillion. What the Chancellor did not say is that just under 50% of that—nearly £900 billion—is owned by the Bank of England, with interest payments obviously recycled to the Treasury. Since the start of the pandemic, 50% of government bonds issued to fund expenditure have been bought by the Bank of England. Noble Lords may think that this is rather a lot, but it is nothing compared with what is happening elsewhere. In the same period, the European Central Bank has purchased 70% of bonds issued by European Governments and the Bank of Japan has purchased 75% of Japanese Government debt issues.

Milton Friedman, the economist so beloved of the right wing of the Tory party, always said that such action by central banks was dangerous because it would lead to crowding out the private sector, resulting in falling bond prices and rising inflation—but that has just not happened this time. Despite the fears raised by the Chancellor yesterday, does the Minister accept the possibility that, first, interest rates will remain low for the foreseeable future and, secondly, that the market for the sale of gilt-edged securities to pension funds and insurance companies, underpinned by Bank of England purchases, will remain strong? Does he accept that, if these conditions continue, it is just possible that the Government can continue to borrow to fund necessary spending until the economy recovers, without the need for damaging tax increases? What a bonanza that would be for all of us.

*3.20 pm*

**Viscount Trenchard (Con):** My Lords, I thank my noble friend the Minister for introducing this debate today, but I do think the two-minute speaking time limit is absurd. I do not understand why five hours, rather than three, could not have been set aside for this important debate. If there really are good reasons why our time today is so limited, it would have been better to reduce the number of speakers by ballot.

I will therefore concentrate on just one area: the UK's role on the world stage. Having lived and worked abroad for many years, mostly in Japan, I have never doubted that the UK possesses enormous global reach and has perhaps underestimated the extent of its own soft power. I particularly welcome the Government's commitment in the spending review to strengthening Britain's place in the world, and I welcome our commitment to remaining one of the largest spenders of official development assistance, committing £10 billion in 2020-21. The Government's commitment to spending an additional £24 billion on defence will assist greatly in underpinning our influence on the world stage as a force for rules-based trade and enhanced global security.

The UK is the second-largest winner of Nobel prizes, and the decision to establish a new UK infrastructure bank to replace our reliance on the EIB, together with a commitment to providing investment of £14.6 billion in research and development, are both important to our future as a leader in scientific innovation. Does the Minister not agree that the unattractive terms of third-country participation in the Horizon Europe programme suggest that the UK would do better not to seek association but to direct available funding to wider forms of international collaboration?

*3.23 pm*

**Lord Haskel (Lab) [V]:** My Lords, I would like to speak up for the one group largely excluded from government support in this Statement: the 3 million to 4 million self-employed and the many directors of small, limited companies who failed to qualify because of their accounting structure. Let me declare an interest: this was me many years ago, when I started in business. Then, it was prudent to become a limited company

[LORD HASKEL]
because this was the way to manage the risk and the inevitably unpredictable cash flow of a new business. It is not a tax dodge. By not paying income tax and national insurance, you hardly save after paying corporation tax, VAT, dividend tax and other taxes—and you are supporting other jobs.

The lack of assistance to these small companies means that they are massively overborrowed, which puts at risk the many millions of jobs that they are creating and supporting. Such businesses create the competition that keeps prices low. On Monday, the Competition and Markets Authority reported that the most profitable tenth of our companies enjoyed the least competitive pressure over the last 20 years. This, of course, is yet another contributor to the growing inequality that this Government say they are trying to tackle.

Fortunately, I am not alone in speaking up for these businesses. Others have done so in this debate, and the Mayors of Manchester, Liverpool and London have also spoken out, criticising the Government for sending a message that they are not with you if you start up on your own.

So I ask the Minister: is this a message the Statement is intended to give? Do the Government really want to limit competition and encourage inequality? Or is this yet another example of the Government's incompetence and poor management, which has put us among the worst-off for economic damage caused by the pandemic?

*3.25 pm*

**Baroness Humphreys (LD) [V]:** My Lords, I am grateful for the opportunity to take part in this debate. In this brief intervention, I want to confine my comments on the Chancellor's spending review as it applies to Wales to the impact on our farmers.

Life for Welsh farmers is always tough and uncertain, but in 2016 a great many put their futures in the hands of the Conservative Party and voted for Brexit, believing the future painted for them by our present Prime Minister and his colleagues. They were consistently told that funding for Welsh farming would be maintained after we left the EU and that they would not receive a penny less as they moved out of the CAP system. This review has now allocated £242 million for Welsh agriculture, instead of the £337 million that the Welsh Government and farmers' leaders had planned for: a cut of 28% in the budget and a shortfall of some £95 million. The Welsh Government believe that, when projected RDP spend and a 15% Pillar transfer are taken into account, the full loss is £137 million.

However, it is the financial pressures facing farmers that should be concerning us. Some 84% of Welsh farm income comes from basic payments; any lower payments to farmers will result in hardship. Farmers are essential to future environmental projects and are the backbone of the economy of rural communities such as mine. If these payments were meant to replicate European funding, I would be grateful if the Minister could explain why the European averaging-out approach was not used to calculate the allocation of funds. I am also seeking the Minister's assurance that there will be no reduction in basic farm payments as a result of this Statement.

**The Deputy Chairman of Committees (Baroness Barker) (LD):** I ask the noble Lord, Lord Loomba, to stand by to follow the next speaker, the noble Baroness, Lady Eaton.

*3.28 pm*

**Baroness Eaton (Con) [V]:** My Lords, today I shall focus my remarks on the impact of the spending review on councils. Local government has been critical in the fight against Covid-19, protecting the most vulnerable, supporting our local businesses and keeping the country running. Given the commendable leadership from our local politicians and their officials, it is right that the spending review provides some financial certainty for councils next year. A potential increase of 4.5% in council spending power will help support vital local services, albeit that the increase assumes that council tax bills will rise by 5% next year—something that will place a financial burden on households at a time of economic uncertainty.

While the spending review did make progress in helping address the short-term pressures on councils, as it is a one-year settlement there is still much to do. The financial pressures facing local services have increased because of Covid, and the challenge facing councils is stark. It is time for change, which is why I support the LGA's calls for multiyear financial settlements and place-based budgeting, which will give councils long-term certainty, sustainability and, as importantly, the power to innovate.

While every pot of money that national government announces is a tempting opportunity for a ministerial press release, we need to look again at how that approach fragments funding and creates unnecessary complications and duplications. The Levelling Up Fund would be a good place to start this conversation, along with a move back to the community budgets model that I helped pilot a decade ago. By giving councils financial sustainability, certainty and the power to do things differently, we can empower their efforts to level up inequalities and rebuild our national economy, one local economy at a time.

**The Deputy Chairman of Committees (Baroness Barker) (LD):** I call again the noble Lord, Lord Loomba.

*3.30 pm*

**Lord Loomba (CB) [V]:** My Lords, 2020 has been—[*Inaudible*.]

**The Deputy Chairman of Committees (Baroness Barker) (LD):** I am sorry, we cannot hear the noble Lord, Lord Loomba. We will have to go to the next speaker, the noble Lord, Lord Davies of Brixton.

*3.31 pm*

**Lord Davies of Brixton (Lab):** I draw attention first to my entry in the register of interests. I simply want to focus on a single word in the spending review document. On page 20 the word "generous" appears, where the review states:

"Public service pensions are generous".

Well, generosity has nothing to do with it. Pensions, like pay, are simply part of the terms and conditions of employment agreed between the employer and the worker. It is true that public service pensions are better than many found in the private sector, but the policy response should be to see improvements—levelling all up, one might say, at least to the levels suggested by the Pensions Commission and endorsed by my noble friend Lord Hutton in his review of public service pensions.

The choice of words is not a trivial matter, particularly at a time when public service pay is already under attack. I hope that the choice of the word does not betray any lack of commitment to the pensions deal that was reached with the many people who work so hard on behalf of the public services.

*3.32 pm*

**Baroness Randerson (LD) [V]:** My Lords, I wish to speak about transport-related issues. The Chancellor announced an infrastructure package of £100 billion, which obviously covers more than just transport, but the total seems to be £27 billion higher than the amount announced last year, and is therefore welcome. The disappointment comes in the lack of a green strategy running through the package, and only small amounts of money specified for green projects. Likewise, the national infrastructure bank is welcome, but it lacks a green mandate. The Government would have done well to learn the lessons and recreate the principles behind the Green Investment Bank.

Only a tiny percentage of the £100 billion is specifically for reducing emissions. I am particularly concerned that a massive £27 billion has been earmarked for road building. Accepting that the £1.7 billion for road repairs is essential for the maintenance of what we have, the size of the road-building programme belies the Government's professed commitment to reducing carbon emissions. The two are in essence incompatible. Have the Government not learned the lessons of past road projects: build the road and the traffic will come? Pent-up demand will show itself immediately. We are long past the point in the fight against climate change where we can expect to win it on the basis of free market ideology. The Government have to lead: they have to point us in the right direction, through a strategic approach to a mixture of investment and fiscal policy.

While the additional money for HS2 is welcome , it comes at a time when there are serious concerns that the Government are preparing to abandon, or at least slow down, the rollout of the eastern leg, which is so essential to transport links in the north and the Midlands.

I accept that the Government are facing challenges, but the most long-term of those challenges is climate change, and they are behaving like rabbits in the headlights, paralysed into inactivity and indecisive on which way to turn.

*3.35 pm*

**Lord Kirkhope of Harrogate (Con) [V]:** My Lords, the spending review refers a lot to investment: capital investment, public sector investment, investment in economic recovery and targeted investment. All this is required, it explains, in a post-Covid world. It does not refer to an equally important post-Brexit world—and, as others have already stated, it should.

Investment sounds good, as long as we can afford it, but the record of all Governments to date in making wise investment decisions and properly monitoring and controlling outcomes is pretty abysmal. There are many examples; one has only to look at defence procurement to see evidence of waste and the misdirection of funds over the years. I implore my noble friend that this review should also require better monitoring and accountability of this public expenditure, and better reporting mechanisms so that we can make better judgments on their efficacy.

Many people and businesses are anxious to hear more of how the numerous grants and support vehicles received to date from the EU are to be replicated from 2021. Regional and rural development in particular have benefited from these. There is reference in the review to the new UK shared prosperity fund, which it says "will at least match receipts from EU structural funds". But are the same criteria to be applied? If not, what changes in delivery or distribution will the Government make?

There is much talk of a new "global Britain". We have always been a global nation and all improved international collaboration is to be welcomed. But, despite our departure from a long-standing relationship with our European neighbours, I urge that this intended enhanced collaboration starts with them, and is pursued in future in a friendly and positive manner, which clearly will be much to our advantage in the coming challenging years.

*3.37 pm*

**Lord Desai (Non-Afl):** My Lords, what the year has proved since the Chancellor's first Budget in March, and now the spending review, is that no forecast can be trusted to be right. He did not expect the year that was coming when he presented his Budget in March. The spending review relies on some forecasts, but I would advise him not to trust them very much.

What we have seen is that, since the age of austerity under George Osborne, the fear of debt has gone. We concentrate much more on the cost of meeting the interest on debt, rather than the debt-to-GDP ratio. Interest rates right now are either zero or negative. Nobody expected that to happen, but we can more or less rely on interest rates remaining low and the cost of servicing debt not being very high.

We also noticed that the status of being poor, being on universal credit or being unemployed is not permanent for some. It can happen to anybody: it can happen to the self-employed and the employed, and we have furloughs and all sorts of conditions. Right now is a good chance to think of building the universal credit into a citizens' income platform. It would take time and money, but that way you would avoid the effect of economic shocks on people's livelihoods.

Lastly, I advise the Chancellor not to raise tax rates but to remove the concessions and loopholes in the income tax code, for example. There are 1,000 loopholes in the code that save people money. Stop them, keep the same rate and you will make much more money.

*3.39 pm*

**The Earl of Clancarty (CB):** My Lords, it is disappointing that the arts are not more acknowledged in the spending review, including their longer-term economic worth.

[The Earl of Clancarty]

The arts are part of an ecosystem, which includes the currently equally beleaguered hospitality sector, as the Incorporated Society of Musicians pointed out in its response. Can the Minister give more detail on the reference to local arts and culture in the levelling-up fund? Pre Covid, the crisis in arts and cultural funding has primarily been about the cuts to local council grants. According to a recent Fabian Society report, £860 million of arts funding has been lost in the past 10 years in this way—a reduction of 38% since 2009. The £20 million fund for England curiously brackets the arts alongside transport and other projects. Every area should be able to nurture its arts and enable access to them, not be pitted against each other in a bidding war. The cuts to local council funding urgently need to be reversed.

The arts have been grateful for the measures taken to support them during the pandemic, but too many freelancers continue to fall through gaps in support. I welcome the call from the Creative Industries Federation, among others, for a freelance commissioner, and a future work commission. I also support those who call for a creators' council, which would do a very different job to the Creative Industries Council in presenting their needs directly to Government.

I have questions about the announcement that funding is to be put aside for a UK alternative to Erasmus+ in the DfE settlement if we do not continue to participate in that scheme. Would this be a reciprocal scheme with all the attendant benefits? Would it cover the range of opportunities that Erasmus currently provides—not just for university students, but for schools, teachers, apprentices, sport and more—and which already has the global reach that the UK scheme intends? I hope, that in making this announcement, the Government are not taking their foot off the gas in seeking to remain a programme member of Erasmus+ because it would be a huge loss if we lost that membership.

*3.42 pm*

**Baroness Goudie (Lab) [V]:** My Lords, the situation is very challenging. I am most disappointed at the cut in overseas aid. This is disgraceful, especially as we are chairing the G7 and COP 26 next year. Sixty-one per cent of the population of the United Kingdom are women. Thirty-four per cent of public sector workers are women, working on the front line. Forty per cent of SMEs are run by women—the backbone of the United Kingdom. Childcare is becoming more expensive and, in some places, closed. We cannot lose 61% of the population. Women's economic empowerment and participation in the leadership of business is essential to drive business performance ahead at this time. I ask the Government to reconsider and bring back reporting, from January 2021, on gender pay and the number of women on boards.

*3.43 pm*

**Baroness Bennett of Manor Castle (GP) [V]:** My Lords, I start with the Institute for Fiscal Studies. It says this spending review is "austere". The dictionary says that is "having no comforts or luxuries". That might be seen as admirable, when it is a choice, when you start from a condition of adequacy, but of course there is another form of the same word: austerity—something the UK knows a great deal about. We have had a decade of that prescription and the coronavirus has demonstrated the utter inadequacy of the economy, society and environment that that toxic medicine produced. The IFS notes, in this spending review:

> "The … core … decision was to reduce public service spending, other than the £55 billion allocated for Covid, relative to March plans."

That is on top of, outside health, a real-terms public service spending cut of 25% per person over the decade to 2020. What does this austerity mean in the real world? The abandonment of the manifesto commitment, from a year ago, to maintaining international aid spending as 0.7% of GDP means a girl in Africa—the continent from which we have extracted for our own enrichment so much in the colonial period and since—will not get an education. That will scar her entire life and that of her children. It means a family here in Sheffield, a family struggling to get by on universal credit when it had barely even heard the term a year ago, faces losing a £20 a week in April when they are already relying on the food bank now. Their house is cold now; they cannot afford to heat it. At Christmas, it will be colder still and the scant £2 billion of the green homes fund is highly unlikely to help them.

What does an austere environment look like? We already know, in one of the most nature-deprived nations on earth. It means a failure to live up to the climate and biodiversity promises we made and the responsibility we have as chair of COP 26. We are not talking about cutting comforts or luxuries with this austerity. We are talking about leaching the lifeblood out of communities, out of lives and out of our natural world. Bloodletting with leeches is a medieval practice we should long ago have abandoned.

*3.45 pm*

**Lord Goddard of Stockport (LD) [V]:** My Lords, from a Greater Manchester perspective, the commitment to rewrite the Green Book is welcome. For too long, the Government's appraisal process for investment has unfairly favoured London and the south-east to the detriment of communities in the north of England. I hope that the refreshed Green Book will help end that imbalance.

I am pleased by the news that a national infrastructure bank will be set up and its headquarters will be in the north, hopefully in Stockport—the heart of Greater Manchester—a town with a motorway passing through the heart of it, an intercity line to London three times an hour, and the lowest Covid rates in Greater Manchester. This would show real commitment to northern communities, and that this investment could be the start of a long-term strategy to underpin what I hope are substantial investments in the north.

Everyone welcomes the commitment to increase the pay of some in our national health service and the modest pay rise for those on the lowest incomes in other public services. However, I am disappointed that the pay rise does not extend to others across our public sector who have been so integral in our fight against the pandemic. There was no mention of social care workers, who have also been working on the front line, and no mention of police officers, teachers or council workers, many of whom were redeployed at short notice to aid in the fight. They should be recognised for the work they have done.

What are the Government proposing for the 3 million people who are still currently excluded from government support schemes? I was disappointed that the Chancellor could not mention them in his speech. These people account for 10% of the UK workforce and hundreds of thousands of working people across Greater Manchester. It was a missed opportunity by the Chancellor not to announce support for that huge number of taxpayers.

Finally, if Greater Manchester were to receive its share of the so-called levelling-up fund, it would amount to £30 million. This is simply not enough: a £30 million injection of cash for 3 million people and a city region that has suffered for years with underfunding of transport, skills, healthcare and infrastructure. Frankly, this Government must do more for the north and, in particular, Greater Manchester.

*3.48 pm*

**Baroness Buscombe (Con) [V]:** My Lords, finally we have recognised the critical need to increase, in real terms, our defence spending. The key point was the Prime Minister's reference to a unit that will be set up to monitor procurement. Five years' ago, industry personnel told me—lawyer speaking to lawyer—that they would welcome much more rigour in the procurement system. This is critical to counter equipment that arrives too often substandard with long lead-times for spare parts. We also need a strong focus on what inexpensive measures would significantly improve the capabilities of our armed forces personnel—such as much healthier food and natural light replacements in our modern warships—as well as the expensive hardware.

In addition, it is right to reduce to our development spend to 0.5% of GNI in the light of our economic emergency. This crisis also presents a real opportunity to fully review the DAC rules on which we classify our ODA spending.

I have just one thought regarding our spending at home: when I left the DWP, pre Covid, our welfare system was already unsustainable. Although 1,000 additional people were working each day and there were around 700,000 job vacancies, still 13.9% of all working-age households in the UK were entirely workless. This is not sustainable post Covid.

Separately, our reliance on the private sector to create the wealth to pay for all this is fundamental. However, we are now at risk of making the UK the least attractive shopping destination in Europe through changes to tax-free shopping rules that will trigger real and negative behavioural change in high-spending visitors. Post Brexit, we must showcase the very best of the British-made, high-quality and often bespoke for-export goods that we manufacture right across the UK. How will these tax changes help with so-called levelling up when some of those highly skilled jobs could now be at risk? Will my noble friend the Minister agree to keep a close watch on this?

**The Deputy Chairman of Committees (Baroness Barker) (LD):** I remind noble Lords that the speaking limit for today's debate is two minutes.

*3.50 pm*

**Lord Bilimoria (CB) [V]:** My Lords, there is a forecasted drop in GDP of more than 11% this year, the worst in 300 years; the fear of unemployment possibly going up to 7.5%—almost 3 million people—by Q2 2025; debt to GDP more than 100%—the last time that happened was in 1963; and a deficit of £400 billion. The amazing support that the Government have given during the Covid pandemic of almost £300 billion—and counting—and many measures in this spending review are so welcome. The new national infrastructure bank is fantastic and upgrading infrastructure is great, but does the Minister agree that broadband should be at 100% coverage of the country, not 85%?

On the plan for jobs, we need to avoid long-term unemployment. The scarring would be horrible. Young people, in particular, have suffered so much; we cannot have youth unemployment. We urgently need the energy White Paper. Can the Minister confirm that it will come soon? There must be no talk of tax rises, because what would be worst for the recovery—for businesses to bounce back after this—is stifling that recovery by increasing taxes. We need to create growth, which means keeping taxes low. It is that growth and the creation of jobs that will pay the tax that will pay for the public services. That is the best solution.

The approval of the Pfizer-BioNTech vaccine is a major breakthrough against Covid-19. After the loss of so many lives and livelihoods, it now really feels as though there is light at the end of the tunnel. Does the Minister agree that three things are now needed to shore up confidence? The first is the continued, urgent rollout of rapid, mass, affordable antigen lateral flow testing throughout the country, available in schools, workplaces, colleges and universities and at airports and factories—everywhere. That regular testing is a huge part of the solution.

Secondly, firms need clarity about the level of support through to March and beyond. Thirdly, we need transparent trigger points for exiting higher tiers and a robust, evidence-based approach to ongoing restrictions.

**The Deputy Chairman of Committees (Baroness Barker) (LD):** Lord Loomba, please stand by to speak after the next speaker. I call the noble Baroness, Lady Sheehan.

*3.52 pm*

**Baroness Sheehan (LD):** My Lords, the Chancellor says that,

"during a domestic fiscal emergency … sticking rigidly to spending 0.7% of our national income on overseas aid is difficult to justify to the British people".

I wonder: with what evidence does he so impugn the British public? The most recent edition of the World Giving Index, commissioned by the Charities Aid Foundation and compiled by Gallup, puts Britain at number six globally and the second most generous country in Europe after Ireland. I suggest to the Minister—or the Chancellor—that, rather than having to justify helping the world's poorest to the British public, the cut to the aid budget is in fact to pacify the right wing of his party, to the extent of breaking a manifesto pledge.

That is a shame, because evidence from diplomats to the Commons International Development Committee says otherwise. The former UK ambassador to Jordan, Peter Millett, said:

"Our aid programmes certainly enhanced our influence."

[Baroness Sheehan]

The former UK ambassador to Yemen, Frances Guy, said that the UK's aid

"counts towards general respect for the UK in multilateral institutions and gives the UK a bigger voice in multilateral meetings".

It is not just the diplomats. The noble and gallant Lord, Lord Richards of Herstmonceux, said that our 0.7% aid commitment sends

"a strong signal that the UK is a reliable partner for long-term economic, social, environmental and educational advancement across the globe"

and that this is

"cheaper than fighting wars".

Those sentiments were echoed by the noble Lord, Lord Dannatt, in your Lordships' House just last week.

The architects of this reprehensible decision have shown that they know the price of everything and the value of nothing.

**The Deputy Chairman of Committees (Baroness Barker) (LD):** My Lords, once again I call the noble Lord, Lord Loomba.

*3.54 pm*

**Lord Loomba (CB) [V]:** My Lords, 2020 has been an unprecedented year, with many charities—[*Inaudible*.]

**The Deputy Chairman of Committees (Baroness Barker) (LD):** I am sorry, Lord Loomba. Yet again we cannot hear you. I am afraid that we will have to move on to the next speaker. I call the noble Baroness, Lady Redfern.

*3.55 pm*

**Baroness Redfern (Con) [V]:** My Lords, in this incredibly difficult year, I welcome the many positives displayed in the spending review as the Government juggle the nation's finances. The business sector has received grants of £11.6 billion through the pandemic and is now to receive a further £159 million for 2021-22, with an additional £56.5 million supporting British Business Bank start-up loans. We must do all we can to support businesses, large and small, to build back our economy. I am pleased, too, to support the £4 billion levelling-up fund to tackle the fragmented funding system for local areas and £1.2 billion to subsidise the rollout of gigabit-capable broadband.

I turn to energy and growth, where energy demand is still outstripping growth in renewable energy supply, ensuring that declines in emissions are permanent. I welcome the commitment of £12 billion to support our green industrial revolution, prioritising green infrastructure projects and creating more green jobs. Here in this part of the UK, we are home to the largest offshore wind farm, steering the Humber to the forefront of the revolution in carbon capture and storage. I hope that the Humber will benefit from the £1 billion infrastructure fund, which in turn would support our heavy steel and manufacturing industry base.

I also welcome the Government's commitment in the free ports bidding prospectus. What is better than being a free port—particularly here, having the port of Immingham situated on the south bank and handling more than 55 million tonnes of UK cargo annually, playing a critical part in the UK's supply chain? There is a platform that could help to realise a global and national opportunity for the wider Humber region, the energy estuary gateway to Europe. The North Sea is certainly one of the UK's major assets.

We are in challenging times, but as the Government aim for an agenda that can work and which emboldens the UK's determination to do just that, I welcome this Statement.

*3.57 pm*

**Lord Lea of Crondall (Non-Afl):** I have two questions to put to the Minister. I declare an interest, in a sense, as a former head of the TUC economic department donkeys' years ago. One of my jobs was as a member of the Retail Prices Index Advisory Committee. How is it that the Government have referred with prejudice, using the word "discredited"—it is all over the newspapers—to an index that has been around for the best part of 100 years to get an advantage in terms of the relationship to pensions and wages?

A second, statistics-type question relates to net zero. Why have the Government not assessed the need for a moving index of progress towards net zero by tracking the progress of the greenhouse gas coefficient of productivity growth? That is a key thing that the Government have not done. We have to persuade the green family among us that we can have economic growth by reducing the greenhouse gas coefficient.

Finally, this will not work if it is only per head. Africa's population growth is staggering. It may come down, but at the moment it is staggering. The aid budget change that I would have made is to put a lot more effort into the interaction between family planning and the aid budget. The way to get African Governments to stop people trying to swim across the Mediterranean, which we are trying to do with prejudice, is to make sure that the budget ensures progress in governance. It is in the mutual interest of Europe and Africa to agree on that if we are not to make a nonsense of the net zero greenhouse gas coefficient.

*3.59 pm*

**Lord McNally (LD) [V]:** My Lords, this spending review comes as the country faces a spaghetti junction of serious challenges. There is the Covid pandemic, where even our Panglossian Prime Minister warns that we must not get carried away by over-optimism. There are some difficult days still ahead with Covid. Then there is Brexit. Let us be clear that, whatever the outcome of negotiations, Brexit is not done; it is about to begin, and the true costs of our leaving will become clearer than what was ever put on the side of a bus. Then there are the challenges brought about by climate change, the digital revolution, the need for sustainable plans to give care to our elderly and their carers and, at the same time, to give a road map of hope to those born in this century.

I have time to make only two pleas to the Chancellor. I urge him to give further immediate and longer-term relief to workers in the creative and leisure industries, many of them freelance. Pre Covid, these were the fastest growing sectors in our economy, and they can be so again, given the necessary support. I support the call from the noble Earl, Lord Clancarty, for us to continue to associate with Erasmus. I urge the Government

and the Chancellor to look again and abandon the cut in the aid budget. Theresa May once warned that the Tory Party must not become the nasty party. This is a decision by the nasty party, for the nasty party, and the Chancellor's smiling photoshoots will not remove this stain from his record.

Finally, I again urge the Chancellor to listen to the advice of my noble friend Lord Razzall, which can be summed up in the advice from the late Lord Healey: when you are in a hole, stop digging.

*4.01 pm*

**Lord Horam (Con):** My Lords, I agree with what the noble Lords, Lord Desai and Lord Razzall, said about debt. As an economist, I am a qualified supporter of what is called modern monetary theory. MMT says that the economic policy should balance the economy, not the budget. Worrying too much about deficits is a mistake. Thus, Rishi Sunak is entirely right to borrow mind-blowing amounts of money because the essential task is to keep the economy going. Fiscal hawks will say that this all our money and it has to be paid back. Well no, it is not actually all our money. A lot of it is the Government's money, which they generate from the printing presses of the Bank of England. We need to offset this only if we run the economy too fast for its natural speed and thus produce inflation. Then, and only then, do we have the need to raise taxes to damp down demand.

The advantage of MMT is that it enables Governments to concentrate on what should be done to improve the economy and society, and not be perpetually bogged down in arguments about how to pay for it, which often prevents necessary action. Of course, the Government of the day have to make wise choices, and, to my mind, the levelling-up agenda should be top priority at the moment. Regional inequality in the UK is much the worst in western Europe. Also, sheer poverty needs urgent action. Even after all the billions spent on Covid, we still have some fiscal space to do the things that need to be done, so we should do them, though we should, of course, prioritise. I hope that the Government have the courage and judgment to follow this path.

*4.03 pm*

**Lord Hunt of Kings Heath (Lab) [V]:** My Lords, I want to talk about social care. The spending review reduced planned spending by more than £10 billion per year from departmental spending plans. Given the Government's commitments on the NHS, schools and defence, this implies an extremely tight funding situation for social care. Covid-19 hit a sector already weakened by funding shortages, with spending in real terms falling over the past decade, while the number of people needing care rose. Workforce shortages in social care, at around 122,000, added to the pressure.

The care sector finds itself in a vicious cycle. The level of unmet need in the system increases; the pressure on unpaid carers grows stronger; the supply of care providers diminishes; the strain on the care workforce continues; and the stability of the adult social care market worsens. Unfortunately, the Government's response has been to make life even harder for the care sector. The exclusion of most care staff from the new health and care visa will impact on staff recruitment. While the Government have announced that councils will have access to over £1 billion more in funding for social care, around 70% of this must be raised by local councils through tax.

As the noble Lord, Lord Shipley, said, and the Nuffield Trust and have pointed out:

> "Given the economic backdrop, councils are likely to have a very hard time raising the funds this way, with poorer areas hit harder."

My plea to the Government is this: first, they have to stabilise the situation by increasing care packages, to give local government the ability to pay for higher costs. Secondly, we need the equivalent of the NHS people plan for social care to tackle the workforce crisis. The excellent Skills for Care is eminently qualified to do this. Finally, we must have a solution for the long-term sustainability of social care, and we need it fast.

*4.06 pm*

**Baroness Uddin (Non-Afl) [V]:** My Lords, this restrictive spending comes in addition to long-standing, detrimental, financial decisions by this Government as we walk through the biggest slump in 300 years—the bleakest future for public services. It is, therefore, incumbent upon a Government who have consistently defied transparency to publish in full an equality impact assessment of all these proposed measures. As it stands, the equality impact is not good enough or clear enough. In particular, it should re-examine the disproportionate effect on the poorest communities, as well as those living and caring for people with disabilities, and those reliant on social care and a miserly amount of universal credit, which surely must be extended beyond March. I hope that the Government will reconsider their decision on extending the disability premium.

Women have borne the brunt of Covid, with loss of work and suffering increased violence. They are often coping alone with the additional pressures of children and other caring responsibilities, with children's services and voluntary organisations on their knees. Will the Minister and the Government consider the ambition of ring-fencing funds allocated to local authorities to fund programmes for the economic empowerment of women and vulnerable communities?

Finally, the proposed reduction in international aid is a serious misjudgement, given the UK's ambition to strengthen its place in the world.

*4.08 pm*

**Baroness Warsi (Con) [V]:** My Lords, I declare an interest, as shown in the register. I start by lending my voice to the concerns of other noble Lords about the Government's decision to step away from the 0.7% commitment on international aid. It was a flagship policy of the coalition Government and was built on very strong Conservative principles. The current approach is short-termist. While it is politically popular with some at home, it will have a damaging impact on brand Britain at a time when we need a strong brand more than ever.

Two minutes does not allow me time to respond to both matters addressed by the Chancellor in the review, less still those matters not addressed. I shall focus on

[Baroness Warsi]
only one issue: the predicted unemployment figures. The Office for Budget Responsibility's predictions do not make for easy reading, with rates predicted to be from 5% right up to, potentially, 11%. While I welcome the £4.3 billion package of measures which the Government have announced to help people back into work, much of it is aimed at the long-term unemployed. It is not a response to those who have lost, or continue to lose, their jobs during this pandemic-and that will accelerate once the furlough scheme comes to an end.

So I have three questions today for my noble friend. First, what will be the impact of Brexit on the significant rise in unemployment predicted by the OBR? Secondly, how much of the £4.3 billion announced is directed towards those who have lost their job during their pandemic? Thirdly—if my noble friend does not have the answer, perhaps he could write to me—the new Restart scheme, which is being funded to the tune of £2.9 billion, appears to require a minimum 12-month period of unemployment before it can be accessed. Is this correct? It may well be that the guidelines have changed. Those are the only issues I want to deal with today.

*4.10 pm*

**Lord Liddle (Lab) [V]:** My Lords, I will make three quick points—three questions for the Minister. Following on from my noble friend Lord Hunt, does he really believe that another 5% increase in council tax in the coming year is a sustainable way of funding social care in the longer term? Council tax is very inequitable and regressive. Are the Government still committed to a long-term reform of social care, and when will they announce their plans?

Secondly, I know that the Minister is passionate about education, and in particular about educational inequality. Spending on schools is due to grow over three years by 3.9%, as against 10.4% for health and 5.7% for the Home Office. This is not giving a big priority to schools and, given the way in which children—and in particular deprived children—have fallen behind, this is not the right priority at this time.

Thirdly, does the Minister think that the Government are going about the levelling-up agenda in the right way? We have a proliferation of centrally governed funds, including the Levelling Up Fund, the Towns Fund, the Shared Prosperity Fund—I think I could list about 20 of them—for which local government has to bid. MPs will play a big role in choosing how the money is spent. Is this really a sensible way to go about things? Surely, we should go back to the previous commitments that the Government made for a fair funding review, so that local authorities can be funded on a much fairer basis according to their needs. At the same time, we should push forward with a proper agenda on devolution.

*4.12 pm*

**Lord Bourne of Aberystwyth (Con) [V]:** My Lords, it is a great pleasure to follow the noble Lord, Lord Liddle, and I thank my noble friend Lord Agnew for introducing this debate. This short-term spending review is against a backdrop of an economy that, as my noble friend said, is in greater decline than it has been for 300 years. That is the backdrop to the challenges we face.

I believe that central to the question of the review is how bad the economic forecasts are looking, and at the heart of this is the uneven effect of the crisis on the regions and communities of the United Kingdom. I join the noble Lord, Lord Liddle, in his concluding remark by saying how central to this are decentralisation are devolution. This has to be addressed, so that we can provide more local innovation and more local solutions, and I welcome the Government's commitment to this.

Levelling up is indeed central to this agenda, and devolution will help in that regard. Protection of the low paid and key workers is fundamental, as is helping the young, who have had their education disrupted by this pandemic, and apprenticeships of course have been lost.

The spending review confirms funding for the Government's 10-point plan for green recovery, and I very much welcome that. I believe that more will need to be done against the background of Glasgow, COP 26 and the re-engagement of the United States via the Biden presidency embracing once more the Paris Agreement on climate change. More money and more commitment will be needed, but I very much welcome what we have done so far.

To my mind, the Chancellor and the Treasury have performed generally well in this crisis, although I do fundamentally disagree with the percentage cut in UK overseas aid. It is falling anyway, obviously, because it is a percentage of a declining income, so less is being given. I cannot help feeling that it is against our enlightened self-interest, as well as meaning that we are giving up our very strong moral leadership in the world.

*4.15 pm*

**Lord Oates (LD):** My Lords, on 23 October 1984 I, like millions of others, watched Michael Buerk's harrowing report on the Ethiopian famine. The words and images still reverberate with me today, these in particular:

> "This three year-old girl was beyond any help: unable to take food, attached to a drip but too late; the drip was taken away. Only minutes later, while we were filming, she died. Her mother had lost all her four children and her husband."

I was 14 at the time and there was something about that simple statement that overwhelmed me. It was so relatable and so devastating. That is where my politics began.

This spending review takes us back to those days, because then, just like now, the Government were cutting the share of our wealth that we spend on the poorest of the world—from 0.5% of GNI in 1979 to 0.33% in 1984 and just 0.27% in 1990. The lesson is that, once they start cutting the aid budget, they do not stop.

In later years I worked in a number of countries in Africa and saw the impact of our aid: the suffering it alleviated, the huge progress in raising people out of poverty, and the stunning success in tackling disease. So I was immensely proud to be in the Cabinet meeting when it was confirmed that the coalition had met the Liberal Democrat manifesto commitment to spend 0.7% of GNI on development. However, despite that success, we still had not met the Conservative manifesto

pledge, which was to put that commitment into law. So, in 2014, my friend Mike Moore and my noble friend Lord Purvis moved decisively to rescue the Conservatives from this failure by introducing a Private Member's Bill which became the International Development Act 2015, narrowly saving the Tories from betraying their own manifesto commitment.

My noble friends and I intend to provide that service to the Conservative Party once again, by ensuring that the December 2019 Conservative manifesto commitment is upheld, and the shameful policy of penalising the poorest in the world in their hour of greatest need is rejected.

**The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD):** The noble Baroness, Lady Altmann, has withdrawn, so I call the noble Lord, Lord Inglewood.

*4.17 pm*

**Lord Inglewood (Non-Afl) [V]:** My Lords, looking across the northern business landscape, as I do, from the perspective of chair of the Cumbria Local Enterprise Partnership, the prospect is not cheerful. But the spending review is a start—a real start—on the road to employment and prosperity, which are two sides of the same coin.

Having said that, it is far from a complete solution by itself. Levelling up is hugely important and welcome, and infrastructure projects will play a part—albeit a relatively straightforward and visible part—of a much larger, more complicated and less obviously visible process of dealing with the consequences of Covid-19 and the implications of the end of the Brexit transition period. Whatever the latter may bring, there is agreement across all ranges of opinion that there is going to be real economic turbulence and upheaval, likely in many cases to be exacerbated by the existential implications of Covid having taken focus away from both its problems and its opportunities. As I have said on a number of occasions, if you are in a shipwreck, saving your baggage is low on your list of priorities.

My concern in these remarks, based on my own observations and experience, is the plight of small businesses—one-man bands, family businesses with an employee or two: that part of the economy. They do not have sharp-suited, smooth-talking lobbyists in Whitehall and Westminster. Present initiatives do not appear to be reaching them as hoped. These businesses and families are the bedrock of this country. Many have been ruined or enormously damaged financially; they are frightened by what lies ahead and their morale is low. They need the economic equivalent of what the National Health Service is giving Covid patients; they need genuine, relevant assistance and support, based on actual experience and a pragmatic understanding of the real world, not academia, think tanks or governance and administration—and they need it now. The impact of what is happening will last for years, if not decades, and the survivors of this unprecedented chapter in our history will be the launch pad for the next stage of recovery. The cure for the public finances must not be allowed to kill them, because each and every survivor is part of the future, and we need every one.

**The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD):** The noble Lord, Lord McKenzie of Luton, has withdrawn so I call the noble Lord, Lord Sheikh.

*4.19 pm*

**Lord Sheikh (Con) [V]:** My Lords, I very much welcome the spending review and its priorities of protecting lives and livelihoods, strengthening public services and investing in infrastructure. The climate change emergency will be our next biggest challenge. I am pleased that there is significant funding for a green industrial revolution.

I declare an interest as co-chair of the APPG on Islamic Finance. Islamic finance can play a role in the green industrial revolution. As we will issue our first sovereign green bonds in 2021, will my noble friend the Minister consider the issuance of green sovereign sukuks?

Supporting the private sector is essential to building back the economy. Businessmen and entrepreneurs must be given the freedom to drive our economy. Does my noble friend agree that supporting the private sector is the way forward?

I have travelled to many overseas countries, and I know that what we do abroad is very much appreciated and productive. I was disappointed that ODA has been reduced to 0.5%. Can my noble friend the Minister confirm that this will be reviewed periodically?

I welcome the funding to recruit 20,000 additional police officers by 2023. What plans do the Government have to recruit an appropriate number from the BAME community?

During the pandemic, we have seen a rise in mental health issues. Can my noble friend the Minister outline how he will ring-fence money for mental health services within NHS funding?

I have a connection with the charity sector, and I note that there will be a rationing of the Office for Civil Society. Can my noble friend explain what support will be given to charities, as they are suffering financially?

Finally, as someone who supports the Armed Forces, I am happy to see that an additional £24 billion will be invested in national security over the next four years.

*4.22 pm*

**Lord Bhatia (Non-Afl) [V]:** My Lords, on 25 November 2020, the Chancellor concluded the spending review. It contained an update on the amount of funding to be given to public services during the financial year 2020-21, as well as a new set of departmental budgets for the next financial year, 2021-22.

Although the decision to limit this year's spending review to a single year rather than the usual three or four years is sensible, setting budgets for only one year can deprive public services leaders of the certainty they need to plan effectively and efficiently, and arguably adds to the fog of uncertainty already hanging over the wider economy. It is therefore welcome that the Government have indicated that exceptions will be made where multi-year budgets are arguably needed most, notably in funding for major investment projects.

Although this spending review will be more short-term than usual, there are still a number of important things to look out for. My biggest concern is the decision to reduce overseas aid. We have heard what some previous Prime Ministers had to say on this subject. I sincerely hope that the Government reconsider and stick to a contribution of 0.7%.

*4.24 pm*

**Baroness Ritchie of Downpatrick (Non-Afl) [V]:** My Lords, like many noble Lords who have spoken before me today, I want to refer to the cut in the overseas aid budget from 0.7% to 0.5% of GNI, which the Chancellor asserted was "temporary". How long is "temporary"? When will temporary become permanent? Is this cut due to rising costs as a result of the Covid pandemic, or Brexit, or a combination of both?

What makes this decision to cut international aid egregious is that the Government have backtracked on one of their manifesto commitments—an objective supported by all living past Prime Ministers—at a time when Covid is ravaging and deepening poverty in some of the world's poorest regions. Earlier this year, we witnessed the merger of DfID with the Foreign Office, which signalled the downgrading of our overseas aid commitment. Way back in June, I stated that DfID had delivered humanitarian assistance and helped to transform lives by reducing poverty. Scrapping DfID risks jeopardising the global Covid response and the UK turning its back on the world's poorest people. It also risks the Government being unable to make a real, meaningful contribution in responding to the greatest challenges of our time, such as climate change, when the UK is expected to chair the Climate Change Conference—COP 26—next year and is also supposed to chair the G7. Both are important organisations and meetings, dealing with commitments to foreign and overseas aid. It is time that that was reviewed.

I hope that the Minister can indicate when "temporary" will change and we will see an increase back to 0.7% of GNI.

*4.26 pm*

**Baroness Kramer (LD) [V]:** My Lords, the OBR's central scenario anticipates a contraction in the economy this year of 11.3% due to Covid, leading to a permanent economic scarring of 3%. Public sector net borrowing will reach 105% of GDP this year. However, it is the employment numbers, expected to peak at 7.5% next year, that will really shock the British public. Sadly, we have had a foretaste with the collapse of Arcadia and Debenhams, putting 25,000 jobs at risk and closing retailers that have underpinned town centres. Other retailers will follow, especially when the rent holiday ends.

We are in a transition. It is a time of dislocation, and the Government need to provide a soft landing. The noble Baroness, Lady Warsi, raised critical questions about mitigating the immediate impact of job losses. At the very least, furlough and related programmes need to be extended; other countries have promised support through 2021.

My colleagues and I have supported the Chancellor's actions to pump money into the economy. Indeed, we cannot understand why 3 million self-employed people have been excluded from any kind of support. The noble Lord, Lord Haskel, made the point powerfully: it is a travesty that this spending review does nothing for the excluded.

My colleagues and I are shocked that the additional £20 a week in universal credit has not been locked into this spending review and the uplift has not been extended to legacy benefits, as was discussed by the right reverend Prelate the Bishop of Portsmouth. As others have said, the most economically fragile people do not know whether, overnight in March, they will lose 20% of their weekly income.

I also join my colleagues in calling for urgent action to support unpaid carers. I am really tired of hearing them praised but seeing them left to struggle. Many full-time carers rely on the carer's allowance, which is only £67.25 a week. At the very least, they need a £20 uplift to match the uplift in universal credit.

This pattern of saying praise phrases but then actually doing harm applies to this Government's behaviour to a large body of public sector workers, whose income is not just frozen but will actually shrink with inflation. As the Institute for Fiscal Studies has pointed out, the freeze saves the Government between £1 billion and £2 billion, which is pocket money compared to the £400 billion spent on the epidemic. The freeze reduces consumer spending, as pointed out by the noble Lord, Lord Goddard. It has to be pure politics—a deliberate kicking of public sector workers to please the Tory right.

Of course, the kicking is extended to local government. Many local authorities are close to breaking point with the added burdens of Covid, but the additional money offered to them in the spending review is largely a lift in the ceiling for local tax increases of 5%, as illustrated by the noble Lord, Lord Shipley, the noble Baroness, Lady Pinnock, and, indeed, the noble Baroness, Lady Eaton. The tax rises that the Government are avoiding they now start to dump on local authorities. Dumping the blame is the real story, especially as no true devolution goes with it.

As the IFS said, and as the noble Baroness, Lady Bennett, quoted, it was a pretty austere spending review—cutting spending plans by more than £10 billion next year and in subsequent years, with the pain falling largely on the unprotected departments. There will be no Covid-related spending after next year, nothing to deal with the demands of an ageing population on the NHS and social care, as discussed by the noble Lord, Lord Hunt, and little to match the retraining needs of a digital age.

What about the actual spending announcements? The big winner is defence. How much of that is for space projects and for OneWeb, the failed internet company purchased by the Government in their hope of rivalling Elon Musk and Jeff Bezos? It certainly does not raise this Government's standing in the world, especially as it comes with their betrayal of their promise on overseas aid—a point powerfully made by the noble Baronesses, Lady Sheehan, Lady Warsi, Lady Uddin, Lady Ritchie and Lady Hayman, and the noble Lord, Lord Reid, Lord Hain, Lord Bhatia and Lord Sheikh, but perhaps most powerfully by my noble friend Lord Oates. Overseas aid is already reduced because our GDP is reduced, as the noble Lord, Lord Bourne, pointed out. This action removes another £3 billion just as developing countries are in need of more resources than ever to counter Covid. Like so many others, I truly respect the noble Baroness, Lady Sugg, and her decision to resign. She was a terrific Minister and she will be missed.

This spending review was hailed as a new dawn for green and infrastructure projects, but nearly every penny of capital spend is a reannouncement. I accept that public sector net investment will average twice that of recent years, but it has a lot of catching up to do. The green schemes funding especially, at £12 billion in total, is dwarfed by the equivalent commitments in Germany of £42 billion and France of £35 billion. It fails to meet our national ambitions, as pointed out by the noble Baronesses, Lady Hayman, Lady Randerson and Lady Boycott. I am shocked that the levelling-up fund requires money to be spent by the next election, and I hope that it will be free of the political interference of the towns fund. We need the best projects, not political bungs. I appreciate the points made by the noble Lords, Lord Liddle and Lord Bourne, on the need for devolution to use such funds effectively.

What the Government hate to confess is the role of Brexit in this whole bleak scenario. The economic scarring from Brexit—and that assumes a trade deal with the EU—is 4% permanent damage. No deal adds another 1.5% to 2% of permanent scarring, as the noble Lord, Lord Hain, made clear. In case the Minister mentions new trade deals, those are already built into the numbers. Brexit and Covid are a toxic combination, as the noble Lord, Lord Inglewood, described. Covid has crushed sectors such as hospitality, shop-based retail, leisure and transport. Brexit damages much of the rest of the economy, including financial services, manufacturing, life sciences, pharmaceuticals and agriculture—and, frankly, the creative industries are felled by both. If the Government do not pull their head out of the sand and understand the impact of economic Brexit, we will be in an appalling spiral.

Time is running out for this Government to get a grip. Interest rates are very low, largely thanks to £900 billion of QE by the Bank of England, but we have to remember that we are very susceptible to the slightest increase in interest rates. Productivity was at rock bottom even before Covid. New business investment fell sharply following the referendum and now has effectively disappeared. The severe depreciation in sterling since the Brexit referendum has given us wage and economic stagnation.

I will raise one very quick point at the behest of my noble friend Lord Sharkey. Medical research charities, which underpin so much research in this country, are in crisis due to Covid, with a shortfall of £310 million. Will they be allocated funds to cover the gap from the increase in research and innovation funding? If not, we will very likely lose not just the programmes but the scientists that make us a world leader in this field.

Other noble Lords have raised a range of critical issues, and done it brilliantly in two-minute speeches. The noble Baroness, Lady Humphreys, underscored the support crisis in Welsh farming; the noble Earl, Lord Clancarty, and my noble friend Lord McNally raised the challenges to the creative industries; and the noble Baroness, Lady Goudie, raised gender issues. Will the Minister at least write to answer those crucial questions and challenges if he cannot reply today?

*4.35 pm*

**Lord Tunnicliffe (Lab) [V]:** My Lords, this has been an excellent debate, with a range of thoughtful contributions. While we have had several Treasury Statements in recent months, there has not been an opportunity either to look at the economy in the round or to hear from such a range of voices. The Back-Bench contributions may have been short in length, but the Minister has been left with plenty of questions to answer, as well as constructive ideas to take back to the Treasury.

This is the second spending review in a row to duck the challenge of setting out a medium-term plan for the UK economy. While the past two years have been highly unusual in several respects, that makes it even more important to have sight of a comprehensive action plan. We have known for some time that this exercise would be lacking in this respect, which is a disappointment when so many—ourselves included—have spent so long calling for a proper economic strategy.

Why does this matter? When they come under legitimate scrutiny, this Government often seek to turn the tables by asking why others will not simply follow their lead. The reason is simple: confidence. In cases where opposition parties, NGOs and the public have had confidence in the decision-making process, they have lent their support. However, it feels as though major policy and procurement decisions are being taken increasingly on the fly, without due process. Where this happens, it is simply not possible to have confidence in the Government.

The Chancellor's failure to use this opportunity to present a proper economic vision further undermines confidence. That such a plan is needed is beyond doubt, particularly when looking at recent growth statistics and the OBR's new forecasts. The UK has suffered the worst downturn of all the G7 nations. On Wednesday, the OECD forecast that our recovery will take longer than that of the rest of the G7. Even before Covid-19, the economy was posting disappointing GDP growth figures, and the OBR predicts that we will return to annual growth of less than 2% in just a few years' time.

The Government's failure to address structural economic problems over their decade in office means that we are stuck in a rut. This exercise both reflects and exacerbates the lack of certainty around our economic future. With just weeks until the deadline for a deal with the EU, we still have no idea whether there will be one and, if there is, what it will look like. The lack of detail and forward thinking is also a result of the Chancellor's continued refusal to formulate an ambitious green agenda to bolster British manufacturing and create millions of new, well-paid and sustainable jobs. We need a genuine plan that matches the ambition shown by several other major economies, not just catchy headlines and soundbites.

The Minister will no doubt point to various initiatives announced last week, including the so-called levelling-up fund, as evidence of a grand plan. However, given the short-term nature of this spending review, those initiatives are unlikely to deliver the boost that our economy so desperately needs. It is also hard to have confidence in the new schemes that we have been offered, given

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recent experiences with both the towns fund and the procurement of PPE and medical supplies. We need government funds invested in the communities where they will make the greatest difference, rather than where senior Ministers believe they can produce a political dividend at the next election.

I am afraid to say that this spending review fails on several other important fronts. The decision to freeze the pay of many key workers who have helped to get the nation through the pandemic is, quite frankly, a disgrace. Not only does it contradict the Government's warm words from earlier this year; it will also leave less in people's pockets and, by extension, in the tills of businesses up and down the country. This is a time to boost consumer confidence and spending, not suppress it.

I very rarely agree with the former Prime Minister, David Cameron, but I refer noble Lords to his recent comments on the importance of the statutory commitment on overseas aid. The decision to undermine this requirement will be a real knock to those countries that rely on our assistance to address their social, economic and environmental challenges. Following the recent United Kingdom Internal Market Bill debacle, I also worry that this announcement will further undermine our reputation among international partners.

Local authorities can have no confidence in the Government's response to their ongoing plight. They were promised the money that they needed to get through Covid-19, yet the reality has been very different. Ministers have attempted to play city regions and councils off against each other, which has done little for public morale or to foster the kind of collaborative spirit that we need between different levels of government. Rather than working with the Local Government Association and others to address long-standing concerns properly, we have instead seen the announcement of limited grant funding coupled with greater flexibility to increase council tax. This may plug gaps for now, but again, there is no comprehensive and sustainable vision for the future.

Sectors hit disproportionately hard by the pandemic and the restrictions that it has necessitated, such as hospitality, needed additional help in last week's Statement. We support the tier system but we have always said that it must operate alongside appropriate support for those most affected. Earlier this week, we heard that some pubs in tiers 2 and 3 will receive a one-off grant. This amounts to yet another last-minute and reactionary announcement, rather than giving businesses the tools that they need to rebuild. Given the number of areas in tiers 2 and 3 and the likelihood that restrictions will continue for months rather than weeks, it is disappointing that the Government's wider support programmes have not been reformed to address long-standing shortcomings. The self-employed and the self-isolating have also been let down.

Rather than making the £20 universal credit uplift permanent and extending it to recipients of legacy benefits, the Chancellor instead looks set to axe it from April 2021. Confidence in universal credit has been close to non-existent for some time, with its initial record of delays being replaced by a string of other problems. Once again, there has been an opportunity for action to improve the social security net for all. Sadly, Ministers have not made the responsible and proactive decision to take that opportunity.

The test for this spending review was for it to provide evidence of forward movement, instil confidence in the Government's handling of the economy and signal a future centred around recovering jobs, retraining workers and building business. It failed all these tests. We are lagging behind our peers, yet key questions have been left unanswered for another year. Unless urgent action is taken, we cannot make our country the best to grow up and grow old in.

*4.44 pm*

**Lord Agnew of Oulton (Con):** My Lords, I have listened with great interest to the many learned contributions, the extent of which are testament both to the expertise of noble Lords and to the importance of this spending review.

Crucially, a spending review is not an abstract policy exercise; it is about making decisions with real-world, long-lasting impacts. The immediate aim has been to protect people's lives and livelihoods, but it also delivers stronger public services, including hospitals, better schools and safer streets. I will try to address as many of the points raised as possible but, as noble Lords, will know, there have been a great number of contributions. I will try to get to all of them in the time available.

The noble Lord, Lord Razzall, asked about the ability to carry on borrowing if interest rates remain low. The OBR has set a range of scenarios for the outlook of the public finances. In all scenarios, borrowing costs continue to be low, driven by interest rates that are low by historical standards, making the cost of servicing the current debt, and the projected increase in debt, affordable. Over time, and once the economic recovery is secure, the Government will take the necessary steps to ensure that borrowing and debt are on a sustainable path. The current high levels of uncertainty mean that now is not the right time to set out a detailed, medium-term, fiscal strategy. It is still too early to judge the full impacts of the Covid-19 epidemic and the unprecedented fiscal support that has caused the necessary increase in borrowing. However, as I have said, borrowing costs remain low. The OBR forecasts that spending on debt interest will fall further this year to just 1.1% of GDP, compared to 2.4% in 2010.

The noble Lord, Lord Horam, asked about modern monetary theory. The Government have provided one of the largest and most comprehensive packages of measures in the world, with targeted support for public services, workers and businesses. Since March, the Government have announced a total of over £280 billion of support measures.

The noble Baroness, Lady Warsi, asked about the impact of Brexit. The OBR's central forecast assumes that the UK's future trading relationship with the EU follows a smooth transition to a typical free trade agreement at the end of the year. In that forecast, the unemployment rate peaks at 7.5% in the second quarter of next year then starts to decline.

The noble Lord, Lord Kirkhope, asked about better reporting and monitoring of spending. I strongly support the noble Lord in this. There is a significant change in

the way that the Treasury will monitor spending in future. It has created a public value framework, which improves governance and focuses on high-quality evaluation. We have gathered the outcomes for every department, alongside departmental settlements and metrics, through which these will be monitored, and these will be published shortly.

The noble Baroness, Lady Bennett, asked whether austerity has returned. We do not, of course, agree with that statement, but it is in the context of the huge amounts of borrowing that we have had to undertake this year—£394 billion. The spending review announced another £38 billion of support for public services in 2021, bringing the total made available this year to over £113 billion. The spending review provides £100 billion of capital investment next year, a £27 billion increase in real terms, compared to last year.

The noble Lord, Lord Bilimoria, asked about certainty on measures until March next year and a route out of tiering. To support businesses to retain their employees and protect the UK economy, the Chancellor has extended the coronavirus job retention scheme, which has helped to pay the wages of some 9.5 million jobs across the country. This has protected jobs that might otherwise have been lost. The self-employment income support scheme has had some 2.7 million claims and will continue until April 2021. Our responses are designed to complement each other, and the measures adopted with the Covid-19 winter plan. Our package will remain the same as we move out of national lockdown into a tiering system.

The noble Baroness, Lady Uddin, asked about equality impacts. The policy decisions taken by Ministers are subject to parliamentary scrutiny. There is no legal requirement to publish equality impact assessments in respect of the public sector equality duty. The legal requirement is to consider a policy's impacts and to have due examples between the different groups. The equalities annexe provides illustrative examples of what the spending review is doing for those sharing protected characteristics. The list focuses on the characteristics most likely to be disproportionately affected by decisions taken: age, disability, race and sex.

I come to the three priority areas that I set out in my opening comments, starting with health and jobs. The noble Lords, Lord Hain and Lord Tunnicliffe, the noble Baroness, Lady Kramer, and others were concerned about the public sector pay freeze. We have approached this in a very careful way. We will protect those public sector workers who most need their pay to be protected: that is 2.1 million with pay rises—those earning under £24,000—which is actually 38% of the public sector workforce. For everyone else, there will be a temporary pause on pay rises, but performance pay, overtime, pay progression, pay rises and promotion will continue. This is estimated to be worth more than 1% of pay.

It is worth restating that the pension structures for public sector pay are attractive. No one is suggesting that they are not deserved by public sector workers, but it is extremely important that they are considered when comparing the overall remuneration package between private sector pay and public sector pay. Public sector employer contributions average more than 20%. For the teachers' pension scheme, those contributions went up from something like 16% to 23% only last September. The noble Lord, Lord Davies of Brixton, asked about pensions; I hope that I have dealt with that.

The noble Baroness, Lady Humphreys, was concerned about Welsh farmers and funding. We are delivering on our commitment to maintain the funding available to farmers and land managers in every year of this Parliament. This totals £1.1 billion in support for farmers and land managers across the UK, with £240 million going to Welsh farmers in 2021-22. This funding ensures that farmers and land managers in Wales will receive the same total funding in 2021-22 that they received in 2019. This funding is on top of the remaining EU finding that farmers and land managers in Wales will receive for agri-environmental and rural development projects.

The noble Baroness, Lady Goudie, asked about reporting on gender pay. The public sector will accord with any legal duties set out in legislation as an employer.

Several noble Lords, including the noble Baronesses, Lady Bowles and Lady Kramer, and the right reverend Prelate the Bishop of Portsmouth, asked about welfare, low incomes and universal credit. The Government have supported those on low incomes through a wide-ranging package of support, of which the temporary increase of £20 a week and the working tax credit basic element forms one part. It would be wrong to make a decision now in place of extending the temporary uplift, which is in place until April 2021. As we have done throughout this crisis, we will continue to assess how best to support the economy, which is why we will look at the economic and health context in the new year.

To illustrate, extending the £20 increase by a further 12 months would cost more than £6 billion a year—the equivalent of adding a penny on income tax. As it stands, spending on working-age welfare this year is more than £100 billion and already set to be at its highest level on record, both in real terms and as a percentage of national income. Additional welfare measures that the Government have introduced include the suspension of the universal credit minimum income floor to support self-employed people on low incomes. The local housing allowance rate for universal credit for the 30th percentile means that more than 1.5 million households have benefited from just over £600 per year on average in additional support. We are keeping the LHA at the same cash level in 2021-22 to ensure that the claimants continue to benefit from this increase.

The noble Lord, Lord Hain, asked about cuts to public investment plans. The Government have expanded statutory sick pay so that employees can claim if they are asked to self-isolate. We have also changed the rules so that SSP is payable from day one rather than day four. SSP is a statutory minimum, and many employers pay more than that in occupational sick pay. More than half of employees receive more than SSP when they are off sick, so many people will not see any fall in income during their isolation period. People who are instructed to self-isolate by NHS Test and Trace and are on a low income, unable to work

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from home and who will lose income as a result, may be entitled to a payment of £500 from their local authority.

The noble Lord, Lord Goddard, is concerned about public sector pay. We absolutely recognise the contribution that public sector workers make and, indeed, have made this year. The temporary pausing of pay awards for the majority of the sector allows us to protect public sector jobs and investment in services, as coronavirus continues to impact the public finances. The vast majority of care workers are employed by private sector providers, which ultimately set their pay, independent of central government. Local authorities work with care providers to determine a fair rate of pay based on local market conditions. We are providing councils with access to an additional £1 billion for social care.

The noble Lord, Lord Bilimoria, and the noble Baroness, Lady Warsi, asked about our plan for jobs and support for those who have lost their jobs. The Government are taking unprecedented steps to support unemployed people; we are building on the plan for jobs, providing £3.6 billion additional funding in 2021-22 for DWP to deliver employment support to those who need it most, from helping the recently unemployed to swiftly find new work to offering greater support for people who will find that journey harder.

On support for the recently unemployed, we are investing £1.4 billion to build on the plan for jobs commitment, increase capacity in Jobcentre Plus and double the number of work coaches, who are the first point of contact when someone loses their job, providing valuable personalised support to all unemployed claimants. We are also investing around £200 million in other job-search support measures, including the job-finding support offer, which we will launch in January to provide support to those unemployed for less than three months.

The Government also recognise that young people are particularly at risk, and the £2 billion Kickstart scheme will provide young people at risk of long-term unemployment with fully subsidised jobs to give them experience and skills. All young people on universal credit will also benefit from an expanded youth offer, which provides extra support as they search for work. We have also announced a new three-year, £2.9 billion Restart programme, which will provide intensive and tailored support to more than 1 million unemployed universal credit claimants across England and Wales and help them to find work, with approximately £400 million of investment in 2021-22. A programme delivered by expert providers will offer up to 12 months of intensive employment support to universal credit claimants who have been unemployed for over a year, with some additional places available to claimants whose work coaches believe that they could benefit from this extra support.

The noble Lord, Lord Bilimoria, asked about the strategy for mass testing. It is absolutely a top priority of the Government. We are investing some £15 billion in NHS Test and Trace next year so that we can maintain the testing capacity that we have built up this year, keep the transmission of the disease down and keep the economy open, which is absolutely fundamental. This is in addition to the £22 billion for NHS Test and Trace already provided this year. As the Prime Minister confirmed on 23 November, the Government are rapidly rolling out weekly or more frequent testing to all NHS staff and care workers, and in universities, to enable students to return safely home for Christmas, and in high-risk work places, such as prisons and food factories.

The noble Lord, Lord Sheikh, asked about the rise in mental health issues, which many have experienced in the past nine months. We have provided the NHS with a further £3 billion next year, which includes up to £500 million that can be used to boost access to NHS mental health services. We will be finalising arrangements in the coming weeks. This funding will address waiting times for mental health services, following the drop in referrals in the first wave. It will give more people the mental health support that they need.

The noble Baroness, Lady Kramer, expressed concern about public sector workers. The majority of public sector workers will see a pay increase next year. The Government have announced unprecedented support for the public sector: for example, the Treasury has provided £31.9 billion to support health services, much of it for wages. The public sector award was already 7% ahead of the private sector before the coronavirus. If we carried on with blanket, across-the-board pay rises, the existing gap between the public sector and the private sector award would widen significantly. That is why we believe it is right to temporarily pause while the economy recovers.

On stronger public services, the noble Lord, Lord Reid, is concerned, as many noble Lords are, about aid cuts and the armed services. I will deal with those issues together, because there is a lot of overlap. Many noble Lords expressed concern about the cuts to the aid budget. They included the noble Baronesses, Lady Ritchie, Lady Uddin, Lady Sheehan and Lady Kramer, my noble friend Lady Warsi, the noble Lords, Lord Sheikh, Lord Oates and Lord Reid, and my noble friend Lord Bourne, to name but a few. It is important to place on record some of the milestones of our commitment to overseas aid. In 2019, the US spent only 0.16% of GNI on ODA, Japan spent only 0.29% and France spent only 0.44%. All things remaining equal, the UK will be the second most generous ODA spending country in the G7 as a percentage of our national income in 2021. We will still be ahead of France, Japan, Canada, Italy and the US.

We are one of the few countries to meet the NATO 2% target as a percentage of income in the UK. We are also the world's largest donor to the COVAX Advanced Market Commitment, the global initiative supporting the access of developing countries to Covid-19 vaccines. The UK is also the top donor to the World Bank's lending arm for the poorest countries. The Government have committed £1.65 billion in funding over five years for Gavi, the vaccine alliance. The Prime Minister committed in 2019 to double the UK's public international climate finance support to at least £11.6 billion between 2021 and 2025.

Various noble Lords asked about our increases in spending on defence. There is a tremendous overlap here. For example, we are currently the fifth-largest contributor to the UN peacekeeping budget. The UK has recently deployed six UN missions with nearly 600 troops and staff officers to South Sudan, the Democratic Republic of Congo, Somalia, Mali, Libya and Cyprus, and we

continue to provide training for around 11,000 peacekeepers annually on the African continent. I feel that this reaffirms our commitment to overseas aid and that the big increase in defence spending will support that.

My noble friend Lady Buscombe asked for more rigour in defence procurement. As I mentioned in answer to an earlier question on the issue of value in the spending of public money, this is receiving a great deal more attention. We are investing in a long-term programme of modernisation and there will be increased accountability in how the money is spent.

Various noble Lords asked about the long-term association with Horizon. The Government are committed to enhancing the UK's position at the forefront of global science collaboration. Negotiations over our future relationship with the EU, including Horizon, are ongoing, but of course leaving the transition period will provide options for other solutions if that does not come about.

The noble Earl, Lord Clancarty, asked about Erasmus. The Government have allocated funding to prepare for a UK-wide domestic alternative to fund global education mobilities, in the event of the UK no longer participating in Erasmus. The Government will outline further detains in due course.

The noble Lord, Lord Shipley, asked about council tax. The Government are providing local authorities with additional funding to tackle Covid-related pressures, and giving local authorities the flexibility to raise council tax. Local authorities need the ability to raise additional revenue to continue to deliver local services. However, they will need to consider the burden of tax on their ratepayers. To give local authorities additional flexibility in making these decisions, we will allow them to defer up to 3% of the ASC precept for 2022-23.

It has been flagged up to me that I am running out of time. I apologise to noble Lords whom I have not been able to answer in detail in this debate. I will follow up with written answers to those questions that I have not been able to address.

*Motion agreed.*

*Committee adjourned at 5.05 pm.*

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