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PARLIAMENTARY DEBATES
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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

Wednesday 13 January 2021

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Birmingham.

Arrangement of Business

Announcement

12.06 pm

The Lord Speaker (Lord Fowler): 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.

Oral Questions will now commence. Please can those asking supplementary questions keep them short and confined to two points only? I ask that Ministers' answers are also brief.

Covid-19: Vaccine Trials

Question

12.06 pm

Asked by ***Baroness Lawrence of Clarendon***

To ask Her Majesty's Government what assessment they have made of how many people from black, Asian and ethnic minority communities participated in COVID-19 vaccine trials.

Baroness Lawrence of Clarendon (Lab): I beg leave to ask the Question standing in my name on the Order Paper and I declare my interests in the register.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): The NHS Covid-19 vaccine research registry has helped to facilitate the rapid recruitment of large numbers of people into trials. The Government have encouraged a diverse pool of people to volunteer to help researchers to better understand the effectiveness of each vaccine candidate. As of 12 January, more than 28,000 individuals from BAME communities have volunteered to take part in clinical trials.

Baroness Lawrence of Clarendon (Lab): In the first wave of the pandemic and the lockdown a report stated that a high proportion of black, Asian and ethnic-minority people were dying of the virus. In the second and third lockdowns there was no mention of their effect on these communities and on the death rate. With the vaccine being rolled out, I have heard messages from the black community about their mistrust of and lack of confidence in the vaccine. I ask Her Majesty's Government: what proportion of those taking part in the vaccine trials were black, Asian or from ethnic minorities before the rollout?

Lord Callanan (Con): I pay tribute to the work the noble Baroness has done on this important subject. It is vital to point out that the vaccines have been deployed only as they have been proven to be safe and effective by our independent medicines regulator. Everyone from all communities can be absolutely confident that no corners have been cut. The Government are sponsoring content on social media channels and on a range of news media outlets to get this message out to provide information and advice to communities, in many different languages. I can tell the noble Baroness that, in the Oxford trial, 830 BAME participants took part out of a total of 9,531, which is just under 9%. That data is from September 2020.

Lord Naseby (Con) [V]: Is it not the case, though, that the key point is the sample profile, not just the raw numbers? In the case of Covid-19, the research looked at efficacy in adults across all ethnic groups, with some skewing for the older age groups. Against that, will the Minister confirm that the regulator would have been party to signing off the research in the first place?

Lord Callanan (Con): The audio was a little unclear and I did not quite catch all of that question, but I can certainly confirm that the regulator is of course aware of all the information supplied on the research and the trials, and on the participants in the scheme, and signed it off for use by all communities.

Lord Hastings of Scarisbrick (CB) [V]: My Lords, the Government know that there is deep scepticism and distrust, especially in urban and black youth communities and among the under-40s, over the efficacy of the vaccine. There is profound suspicion. Given the prevalence of this fear over reason and the need to build confidence through very local, trusted community facilities such as fast-food outlets, barbers, local pharmacies, community food shops and tech repair centres, will the Government agree to work with a consortium of black-led research and impact agencies to get the rollout done in a trusted way, and not use the standard hyper-expensive PR firms, which do not know this community?

Lord Callanan (Con): The noble Lord makes some very good points. Vaccine misinformation is harmful, and the Government are working with developers, manufacturers, industry and communities to present a clear picture of the rollout process. As I said to the noble Baroness, Lady Lawrence, we are also sponsoring content on social media channels and a range of news media outlets to provide information and advice to communities in numerous different languages.

Baroness Wheeler (Lab) [V]: Ensuring that participants in Covid-19 research proportionately represent the ethnicity of the wider population is vital to ensure that the new treatments and vaccines being investigated are effective for everybody, including people from different ethnicities. What steps are researchers taking to recruit more clinical trial volunteers from ethnic minority communities to take part in urgent public health studies to help tackle these disparities in health outcomes?

Lord Callanan (Con): We have set up the vaccine registry, a new NHS service launched in July 2020, to enable people from across the UK to sign up for information on Covid-19 vaccine trials. This research registry is extremely important and we are using all available channels to encourage people from all communities to sign up for these trials.

Baroness Hussein-Ece (LD) [V]: My Lords, Public Health England published a review last summer which found that people from ethnic minorities were more likely to die from Covid-19. Ministers promised to take steps to reduce disparities and the risk of these outcomes. I raised this point on a number of occasions, but this pledge has not yet been honoured. It is no wonder that there is still mistrust in many communities when apparently no priority has been given to addressing the mistrust that many people from ethnic minorities now have in the vaccine. Will the Minister take steps to ensure that the Government set up a dedicated website with frequently asked questions targeting vulnerable groups, to restore trust and transparency? Also, last June, the Health Secretary indicated that black and ethnic-minority communities could be prioritised when the vaccine was developed. Why has this not happened?

Lord Callanan (Con): I will certainly take the noble Baroness's suggestions back to my department and the Department of Health to look at. It is important to point out that there is no strong evidence that ethnicity by itself or genetics are the sole explanation for observed differences in rates of severe illness and death in minority communities. What is clear is that certain health conditions are associated with an increased risk of serious disease, and these conditions are often over-represented in certain black, Asian and minority-ethnic groups. The prioritisation of people with underlying health conditions will also provide for greater vaccination among those in BAME communities who are disproportionately affected by such health outcomes.

Lord Sheikh (Con) [V]: Following up on the points made by the noble Lord, Lord Hastings, there is increasing evidence of hesitancy to take Covid-19 vaccinations, particularly within some minority communities. It is vital that we persuade as many people as possible to take the vaccine for the fight against this pandemic to be won. I am currently involved in a national community-led campaign to be launched to encourage everyone to take the vaccine. Will my noble friend the Minister meet me and members of the group to discuss ways in which the Government can support us in this important initiative?

Lord Callanan (Con): I pay tribute to the work that the noble Lord is doing. It is through exactly such examples as this, from community leaders and others, that we will help to get that message across. I am very happy to arrange a meeting for him with officials, to see how that work can be taken forward.

Baroness Uddin (Non-Afl): I thank my noble friend Lady Lawrence and echo what she has said about the suspicion and lack of confidence within many communities. Can the Minister confirm the numerous health reports from experts who suggest that there are higher numbers of deaths, admissions and infection among the Bangladeshi community in particular? How many of the 830 who took part in vaccine trials were from the Bangladeshi community? What are the Government doing to ensure that that community is continually consulted and considered?

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, can we please keep questions short? The last few have been far too long.

Lord Callanan (Con): I do not have specific information on the Bangladeshi community and how many took part in the trials. I only have the information on BAME communities as a whole. These distinctions are quite hard to draw sometimes, but certainly if that information is available, I will write to the noble Baroness.

Lord Roberts of Llandudno (LD) [V]: I welcome this Question, because it shows how we are all in this together, without regard to nationality, ethnic group or blood group. The Prime Minister said that the two nurses helping him most when he was in hospital were from Portugal and from New Zealand. The first vaccine came from Belgium. We are all in this together. The virus is no respecter of persons. Neither are we relying on our own people to nurse and to be medics—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): I am sorry, my Lords. We have asked people to keep their questions short, so that everyone can ask their question.

Lord Roberts of Llandudno (LD) [V]: All I ask is for an assurance from the Minister that, when this is over, those on the front line who have been so devoted to us will be allowed to stay in the United Kingdom and not cast to one side.

Lord Callanan (Con): The noble Lord makes some important points. We will certainly look closely at this.

Baroness Warsi (Con) [V]: My Lords, the Minister will be familiar with the polling which shows that, although BAME communities were initially less likely to accept a Covid vaccine than white communities, when they had the opportunity to discuss their concerns with a healthcare professional, they were more likely than white communities to be persuaded to have the vaccine. Is my noble friend familiar with this polling, and what work is being done in government to follow up?

Lord Callanan (Con): My noble friend makes some important points. We are indeed working closely with health experts to provide information and advice at every possible opportunity to all communities across the country. The NIHR launched a public campaign to raise awareness among people from BAME backgrounds, partnering with British comedian Omid Djalili,

alongside Whoopi Goldberg, Sanjeev Bhaskar and other leaders, who can offer examples to the community of how important it is to take part in research and receive the vaccines when they are available.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed. I underline the point made by the Leader, that questions should be kept short and confined to two points. It is unfair to everybody else if that rule is not followed. We now go on to the second Oral Question.

Covid-19: Variant

Question

12.18 pm

Asked by ***Lord Scriven***

To ask Her Majesty's Government when they first became aware (1) of the new variant of COVID-19, and (2) that such a variant of the virus was prevalent in the areas placed into Tier 4 on 20 December 2020.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, the second variant is a very serious matter. On 8 December, analysis of all genomes available in Kent showed that a new variant was circulating. Ministers were notified on 11 December. On Monday 14 December, the Health Secretary informed Parliament, PHE released a statement and the Government held a press conference on the new variant.

Lord Scriven (LD) [V]: My Lords, variant B117 was identified in October. From the second week of December, virus cases started to rocket in London and the south-east, yet the Government's focus was on how to keep people mixing at Christmas, not on dealing with the alarming spread of the virus, ignoring public health experts who said that a tight lockdown was urgently required. What message of apology does the Minister have for those families attending funerals because the Government acted too slowly to help save lives?

Lord Bethell (Con): My Lords, I am afraid that I just do not recognise the noble Lord's proposition. Hundreds, if not thousands, of new variants are appearing all the time. Many of them have passed through the process, but identifying those that are threatening, have more transmissibility and are significantly different is extremely complex. As I said very clearly, it was on 8 December that, after analysing all the genomes available in Kent, we showed that an important new variant was circulating.

Lord Winston (Lab) [V]: My Lords, clearly these variants are extremely—[*Inaudible*]—for all sorts of reasons. Regrettably, the Minister did not answer the question put by my noble friend Lady Thornton yesterday, when she questioned incomplete vaccination. Can the Minister give us clear figures on the risk of mutant varieties of the virus with a longer period between the two injections of the Pfizer vaccine?

Lord Bethell (Con): My Lords, the noble Lord has more medical expertise than me to be able to answer that question, but the briefing that I have is that the significant mutation in the Kent variant is not of a kind that should affect the efficacy of either a single dose or two doses of the vaccine. This comes as a significant relief to the vaccine programme. We remain on the balls of our feet, looking out for any variations that might affect vaccine deployment, but at this stage we have not found anything that poses a significant threat.

Baroness Barker (LD): My Lords, the ONS data in the second week of December showed that the number of cases from all variants of the virus had rocketed. Why did the Government fail to act on that information until late December?

Lord Bethell (Con): The noble Baroness is entirely right that the EpiData showed that the figures shot up in December; that is exactly why we looked extremely carefully at the genomic data from Kent and other places. As she knows, genomic data takes time to process—the tests can take a week to turn around. Looking at all the variants and matching EpiData figures with genomic data is an enormously complicated mathematical task. We moved as swiftly as possible and far faster than in many other countries.

Lord Farmer (Con): My Lords, at the Downing Street press conference of 5 January, we were told that people had protection from the new variant if they had already been infected. What is the Government's estimate of the number of people in the UK who now have antibodies after contracting the virus and are therefore likely to be immune? What is their approach to the large population of such people, estimated by Professor Neil Ferguson to be at 25% to 30% in London, and their need for vaccination?

Lord Bethell (Con): My Lords, PHE weekly seroprevalence data suggests that antibody prevalence among blood donors aged 16-plus in England is 6.9%, which is consistent with other data that we have. The MHRA has considered this and has decided that vaccinating is just as important for those who have had Covid-19 as it is for those who have not.

Baroness Finlay of Llandaff (CB) [V]: How are demographic and NHS outcome data and test results from patients across the UK being collated to identify patterns suggesting further new variants, reinfections, changes in risk factors to severe disease, such as malnutrition, and planning for managing long Covid and modelling ICU provision?

Lord Bethell (Con): The noble Baroness alludes to a world of analytical complexity, which is very much what we have to look forward to. The way in which this new variant has popped up and has been dramatically more transmissible presents a wholly different level of threat compared with the one that we were dealing with just six weeks ago. It is a matter of grave concern to all of us that this mutation has happened. However, I reassure noble Lords that we have very strong genomic

[LORD BETHELL]
capability in this country. Roughly 5% of all tests are analysed. It is only 5% but that is more than in most other countries, and we are putting in the analytical muscle to be able to process that data.

Baroness Thornton (Lab) [V]: My Lords, we are of course facing a terrible and very serious infection, so are the Government contemplating further restrictions? If so, when will we know that there are going to be further restrictions? It seems to me that the ones we have right now are not working.

Lord Bethell (Con): My Lords, the decisions about further restrictions in this country are a cross-departmental matter and are, frankly, above my pay grade. To address the noble Baroness's point directly, the new variant is a very serious matter. It is as though a turbocharger has been attached to the engine of a high-performance car, which is going round the racetrack faster and faster. This mutation is very similar to ones in South Africa and Brazil, and, experts assess, will happen in many places around the world. We are now dealing with a significantly different virus and we have to adapt our reaction to it accordingly.

Baroness Bowles of Berkhamsted (LD) [V]: As part of the science, mathematicians run numbers on the spread of variants in an attempt to see whether one is getting an edge; these saw the new variant gaining in the east of England and London by November. Why did a significant localised increase in one variant not trigger an immediate precautionary response, rather than prevarication that it might be about behaviour? What evidence is there that behaviour can favour one variant over another?

Lord Bethell (Con): I am terribly sorry but the noble Baroness is not right about that chronology. Through backward tracing and by looking at historic data, we were able to identify that the variant had been present in Kent as far back as September, but it was only through backward tracing that we were able to figure that out. Further analysis was commissioned on 18 December and NERVTAG concluded that the variant was much more transmissible than others in circulation. Before that, we relied on hunches. When the science changed, so did our decisions.

Lord Truscott (Ind Lab) [V]: Andrew Miller, president of the Australian Medical Association in Western Australia, said:

"Until we get more data that shows that AstraZeneca is as good as the others, the scientific and medical risk that you take is that you won't get herd immunity. The political risk is that you will get a good vaccine for the rich and a not so good vaccine for the poor."

Is it not just a fact that the AstraZeneca vaccine is better than nothing but it will not stop the pandemic—especially the new variant?

Lord Bethell (Con): I categorically reject that analysis. All the vaccines are effective. The MHRA and the JCVI have been explicit about that, and I invite the noble Lord to look at the data.

Lord Randall of Uxbridge (Con) [V]: My Lords, my noble friend rightly underlines that new variants are appearing not just here but anywhere in the world. Can he explain the process for notifying such variants worldwide and say how any assessment of their characteristics is passed on?

Lord Bethell (Con): My noble friend asks a very challenging question. The honest truth is that we have to look at the systems whereby that data is exchanged. CMOs around the world have extremely regular contact with each other, and a lot of the data is exchanged through the formal links of the scientific community. But I think that there is a case for more structured intergovernmental exchange of data about the new variants, because this will be the major challenge of the year ahead.

Viscount Waverley (CB): The Minister mentioned a number of countries. Is there sufficient exchange between all of them or could more be done in that regard? Is there anything that the public could usefully know about the new variant's transmission traits—whether it is airborne, for example?

Lord Bethell (Con): The exchange of information between the scientific community has worked extremely well during this pandemic and epidemic, and I pay tribute to it for the open-hearted and transparent way in which it has exchanged data across political, cultural and national boundaries. In terms of transmission, the noble Viscount alludes to something that is very difficult to pin down. It is not clear what proportion of the disease is transmitted through the air and what proportion by touch and manual transmissibility. That is a very frustrating conundrum. The CMO guides us to believe that there is more transmissibility through the air than by touch, but it is absolutely essential that people keep their distance and wash their hands.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed. We now come to the third Oral Question.

Extradition Arrangements: European Union Member States

Question

12.30 pm

Asked by ***Lord Thomas of Gresford***

To ask Her Majesty's Government what reciprocal extradition arrangements are in place for the surrender of nationals between the United Kingdom and the European Union member states where the surrender of such nationals to a third country is forbidden or restricted by law.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, some EU member states operate on the fundamental principle that they cannot extradite their citizens outside the EU. We have ensured in our new arrangements that there is a path

to justice in each case—for example, by requiring a member state that refuses to refer the case to its own prosecuting authorities.

Lord Thomas of Gresford (LD) [V]: I thank the Minister for her Answer. We all know about the difficulties with the United States in the tragic Harry Dunn case; despite the pleas of the Foreign Secretary, it refuses to extradite an American lady for serious offences committed on British soil. Is it now the same with Europe? What differences are there between our arrangements today with the 27 EU states in our new status as a third country, so far as they are concerned, and our long-time arrangements with the USA?

Baroness Williams of Trafford (Con): The fundamental difference between then and now is the additional safeguards built into the proceedings, which in my view make them a more effective set of arrangements. There is also the notion of proportionality, which is crucial for both accused and victim.

Lord Morris of Aberavon (Lab) [V]: My Lords, the Home Secretary claims that Brexit makes us safer. Is the sharp decrease in extradition cases at Westminster Magistrates' Court, from about 10 cases a day to about one, a direct result of losing fast access to the European crime DNA databases? Does this reflect the position nationally?

Baroness Williams of Trafford (Con): We are on day 14 of the new arrangements so it is probably a bit difficult to give reliable data at this point. The agreement allows UK law enforcement to continue to share DNA and fingerprints so I am slightly confused by the premise of the noble and learned Lord's question.

Lord Walney (Non-Afl): Will the Minister set out what the extra safeguards are to which she referred and how she envisages they will work in practice?

Baroness Williams of Trafford (Con): The additional safeguards, beyond those in the European arrest warrant framework decision, make clear that a person cannot be surrendered if their fundamental rights are at risk—which might include things such as political views, sexual orientation, race and religion—if extradition would be disproportionate or if they are likely to face long periods of pre-trial detention.

Lord Robathan (Con): My Lords, the late, lamented European arrest warrant certainly brought benefits in cross-border justice, but there is a presumption that the rule of law is the same in all EU states, which it is not. Could my noble friend look at political interference and corruption in any extradition or asylum case, particularly in the case of Alexander Adamescu, a German national fighting extradition to Romania under some very dubious circumstances?

Baroness Williams of Trafford (Con): My noble friend outlines the answer to the previous question about extradition for political reasons. That is not allowed under our arrangements.

Lord Paddick (LD) [V]: My Lords, what assessment have the Government made of the additional cost of trials of those wanted in the UK having to take place in the accused's home country, and to what extent will that be a consideration in deciding whether to pursue a prosecution?

Baroness Williams of Trafford (Con): As I said to the noble and learned Lord, Lord Morris of Aberavon, it is probably quite early to say what those additional costs would be, but the decision on whether to pursue a trial would be based not on costs but on the likelihood of that trial being successful, either for the accused or indeed for the victim.

Lord Moylan (Con): My Lords, many people felt that the European arrest warrant offered insufficient safeguards for the rights of those accused of crimes overseas. Can the Minister assure us that the replacement arrangements for the European arrest warrant offer solid and reciprocal protection, as far as possible, for the rights of the accused?

Baroness Williams of Trafford (Con): I can certainly assure my noble friend that the principle of proportionality is implemented in UK law through Sections 2, 12A and 21A of the Extradition Act 2003. It enshrines the principle of proportionality, which allows the UK to reject warrants where extradition would not be proportionate to the alleged conduct or where other, less intrusive measures could be used to progress an investigation. This is a much-needed improvement on the previous arrangements.

Lord Hope of Craighead (CB) [V]: My Lords, what steps have been taken to identify and appoint those persons who are to serve as our representatives on the very important specialised committee to which Article 83 of the "Surrender" part of the trade and co-operation agreement refers?

Baroness Williams of Trafford: I will have to get back to the noble and learned Lord because I do not know where that is up to.

Lord Rosser (Lab) [V]: As the Minister said, our trade and co-operation agreement with the EU makes clear that extradition can be refused where a person's fundamental rights are at risk or where

"they are likely to face long delays of pretrial detention".

What are the Government going to do to ensure that delays, particularly in the current situation, and an overreliance on detention do not prevent extradition or the pursuit of justice?

Baroness Williams of Trafford (Con): The pursuit of justice is paramount but so are the issues of fundamental rights. There is no reason why the new system should not be as swift but, as my noble friends have outlined, it is very important that some of those fundamental rights are upheld.

Lord Campbell of Pittenweem (LD) [V]: My Lords, what are we to rely on in these matters, the Panglossian statements of the Home Secretary or the experience of a former National Security Adviser, the noble Lord, Lord Ricketts, who has said publicly that our position now in these matters is one of damage limitation?

Baroness Williams of Trafford (Con): By chance, I heard the noble Lord, Lord Ricketts, outlining some of his concerns on the radio. I bow to his expertise but there is probably some difference in our interpretation of what he outlined, particularly on access to databases and the sharing of information.

Lord Carlile of Berriew (CB) [V]: My Lords, together with our departure from the Schengen Information System, there appears to be no replacement for the respective instruments on joint investigative teams, the enforcement of fines, the enforcement of non-custodial measures and prisoner transfer. Please will the Minister tell the House how these gaps will be filled?

Baroness Williams of Trafford (Con): The noble Lord will know that the EU maintained that it was legally impossible to offer SIS II to a non-Schengen third country so we have reverted to Interpol, which is a tried and tested mechanism of co-operation. Regarding the joint investigative teams, the UK will be able to continue running and participating in those with EU member states and third countries on a non-EU legal basis. Prisoner transfers are a Ministry of Justice lead. The EU did not want to include arrangements on them in the agreement but we will continue to transfer foreign offenders back to their home states using the existing Council of Europe convention, as well as accepting the repatriation of any British citizen imprisoned by an EU member state who is eligible and wants to return to the UK to serve their sentence.

Baroness Wheatcroft (CB) [V]: My Lords, on the day when the United States has executed a woman for the first time in 67 years, it is fitting that we should be addressing the subject of extradition. Even without the death penalty, the plea-bargaining system produces unjust results. Would the Minister feel confident about UK citizens being extradited for a vengeful trial in the US legal system?

Baroness Williams of Trafford (Con): The noble Baroness will know that we are against the death penalty in all cases. I have talked about some of the fundamental rights and that may or may not be included in them, but we are against the death penalty. The noble Baroness is talking about the EU; it is important that people are brought to justice but it is also important that their fundamental rights are upheld.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked on this Question, which shows that it can be done with sensible discipline.

Covid-19: Small Businesses

Question

12.40 pm

Asked by ***Lord Stevenson of Balmacara***

To ask Her Majesty's Government what assessment they have made of the number of small businesses at risk of permanent closure as a result of the restrictions put in place to address the COVID-19 pandemic; and what additional support they plan to provide to such small businesses.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): Throughout the pandemic, the Government have recognised the need to support businesses through the impacts of Covid. The Government continue to deliver a comprehensive package of measures to provide that support, including loan guarantees, business grants, tax deferrals and the Coronavirus Job Retention Scheme. We will continue to keep the approach under review and continue to engage with the business community.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, the ONS's index of services shows that, despite the Government's welcome support, all but a few sectors of the economy are significantly down on previous years. The travel, hospitality and creative industries are in deep trouble, registering between 50% and 90% cuts in activity. We have consistently called for a differential approach to sectors with a high level of freelance, seasonal and self-employed workers. Does the Minister agree that it is important to retarget government support going forward?

Lord Callanan (Con): We keep all these matters under constant review. We are supporting self-employed people with the fourth income support grant. We are providing an extra £4.6 billion to protect UK jobs and businesses. Businesses that are self-employed, freelancers and sole traders can benefit from other measures such as mortgage holidays, VAT relief and business loans with generous repayment terms.

Lord Dodds of Duncairn (DUP) [V]: My Lords, many small businesses and retailers say that having an online presence is a major element in creating sustainability for their business in the face of repeated closures. We all want our high streets to succeed and, therefore, the way forward is a mixed click and brick model for small businesses. Can the Government outline what they are doing to help small businesses get online or improve their online presence?

Lord Callanan (Con): The noble Lord makes an important point. There are a range of assistance schemes provided by many local authorities and government agencies to help and support them.

Baroness Verma (Con) [V]: My Lords, I refer to my interests as set out in the register. Would my noble friend help me understand what help will be given to

our high streets? I am particularly concerned about my own city, Leicester, where so many shops have closed down since the pandemic. Can my noble friend please see what more can be done to help those in the supply chain to the hospitality and leisure sectors, especially those in multi-occupancy buildings? They have not received as much support as they possibly could have.

Lord Callanan (Con): I will certainly bear the comments made by the noble Baroness in mind. Local authorities across England have been allocated a further £500 million in discretionary funding via the additional restrictions grant to support businesses from 5 January. This could include businesses supplying the retail, hospitality and leisure sectors or businesses outside the current business rates system which have effectively been forced to close

The Earl of Clancarty (CB): My Lords, are the Government looking at the devolved Administrations? In some cases, they have been more agile in addressing gaps in support for small businesses, such as Northern Ireland's Covid Restrictions Business Support Scheme which provides grants for supply chain businesses. A similar scheme is operating in Wales. This would certainly give some help to the live music sector, which continues to be hard hit. Technical supply companies have seen a disastrous 95% drop in their revenues.

Lord Callanan (Con): As I said earlier, we keep all these matters under review. We are conscious that our scheme is one of the most generous in Europe, with £280 billion-worth of support. Of course, we are always willing to learn lessons from the devolved Administrations or other countries.

Lord Allen of Kensington (Lab) [V]: My Lords, the FSB say that around 70% of small businesses are carrying some form of debt. Almost half of them—some 47%—are using personal loans, family loans, overdrafts, their own credit cards and personal mortgages on their properties to support their businesses. Many, including 710,000 company directors who pay themselves through dividends only when their business is in profit, have been excluded from any form of personal support. This is because the Treasury seems to have put this into the "Too difficult" box. At some point, many of these entrepreneurs will lose not only their businesses but their homes and possessions too—notwithstanding the stress, anxiety and mental health issues. What will the Government do now to stop this happening?

Lord Callanan (Con): We are aware of the issue of dividends highlighted by the noble Lord. We have looked at that, but it has proved very difficult to separate different kinds of dividends. However, we have amended some of the terms of the bounce-back loans—for example, no repayments are due during the first 12 months of the loan term. This gives businesses the space they need to get through the difficult period without the worry of directly repaying in the immediately following months.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, large villages and small market towns are dependent on a varied patchwork of small businesses for both their economic and community well-being. Many of these have already closed during lockdown. Whether they provide retail outlets, services such as hairdressers, or are small engineering subcontractors, they all need and deserve support. Can the Minister give reassurances that rural areas will not be forgotten when considering support?

Lord Callanan (Con): Rural areas are badly affected, as indeed are city areas. Like other SMEs, rural businesses can access support including loan guarantees, business grants and the tax deferrals I referred to. Those needing advice can now access free advice on the right finances from local government-backed growth hubs, which are part of the LEPs. But I totally accept the point made by the noble Baroness.

Lord Shinkwin (Con): My Lords, given that the OBR has warned that the UK economy will shrink by 11.3% this year—the biggest fall for 300 years—and that unemployment will peak in the second quarter at 7.5%, and given that the Chancellor said in his recent spending review that we are facing an "economic emergency", will the Minister agree with me that, as soon as we possibly can, we need to shift the focus from saving lives to saving livelihoods and thereby signal our support to small business people across the UK?

Lord Callanan (Con): I agree with my noble friend that, as soon as we possibly can, we need to lift these restrictions to get the economy moving again, but we are indeed facing a public health emergency at the moment, as he has said.

Lord Sikka (Lab) [V]: My Lords, SMEs are also destroyed by unfair insolvency laws, which enable secured creditors to walk away with most of the proceeds from the sale of a bankrupt business's assets, leaving next to nothing for unsecured creditors, including SMEs. The Carillion bankruptcy affected nearly 30,000 SMEs. Will the Government consider legislating so that SMEs have a higher priority in corporate bankruptcies?

Lord Callanan (Con): The noble Lord makes an important point, and, of course, we constantly review all these numbers. We last looked at the insolvency provisions in recent legislation, and it is always difficult to get the balance between different creditors right when there are insufficient funds available.

Lord Alton of Liverpool (CB) [V]: My Lords, I return to the question of the noble Baroness, Lady Verma. Will the Minister commit to an empirical evaluation of the impact of Covid-19 on our already embattled high streets—in relation to footfall and spending? As the experience in different parts of the country has been bumpy and uneven, will he spell out how the Government are working with local authorities and chambers of commerce to ensure a tailored response, according to local circumstances?

Lord Callanan (Con): We are fully committed to supporting businesses that make our high streets and town centres successful. As the nation responds to the

[LORD CALLANAN]
impact of Covid-19, I can tell the noble Lord that we are investing £830 million through the future high streets fund in 72 areas across England, helping to renew and reshape high streets in our town centres.

Lord Cormack (Con) [V]: Does my noble friend accept that these constant reviews have not done much to help many of the self-employed, a group that includes some of the hardest-working people in our country? In the creative industries, particularly music, there have been some horrific stories. Can we have an immediate review of the help for the self-employed?

Lord Callanan (Con): In my earlier answer to the noble Lord, Lord Stevenson, I outlined the help that we are giving to self-employed people, with the fourth income support grant. We are providing an extra £4.6 billion to protect UK jobs and businesses. We accept, of course, that a lot of these schemes were put together quickly and in haste, and that we need to keep them under constant review to ensure that as many people as possible are receiving that help and support.

Lord Dholakia (LD) [V]: My Lords, we are aware that our diverse communities are substantially and adversely affected by the present pandemic. I have received a large number of complaints about SMEs, including post offices, pharmacies and corner shops, that may go down because of a lack of finances and other resources. I ask the Minister, as I have done before: will he ensure that these businesses are adequately consulted and assisted before they go down, never to recover?

Lord Callanan (Con): The noble Lord makes a vital point. I and my ministerial colleagues regularly having meetings with all the various business representative organisations to ensure that the support we are able to give is carefully tailored, targeted and available to as many different businesses as possible.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have, again, been asked, and that brings Question Time to an end.

12.52 pm

Sitting suspended.

Arrangement of Business

Announcement

1 pm

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, the Hybrid Sitting of the House will now resume. I ask Members to respect social distancing.

Liaison Committee Report

Motion to Agree

1 pm

Moved by ***The Senior Deputy Speaker***

That the Report from the Select Committee *Review of investigative and scrutiny committees: strengthening the thematic structure through the appointment of new committees* (5th Report, HL Paper 193) be agreed to.

The Senior Deputy Speaker (Lord McFall of Alcluith) [V]: My Lords, I shall speak also to the second Motion in my name on the Order Paper, which deals with the sixth report of the committee.

In July 2019, the Liaison Committee published a report on our 18-month review of House of Lords committee activity. That report followed the most comprehensive review of the House of Lords committees ever undertaken and was the first major review for 25 years. It proposed the start of a significant change in the positioning of our committees to put in place a thematic approach designed to ensure more effective scrutiny of all the major areas of public policy.

During the review, more than 50 proposals for new committee activity were received from Members, many of which reflected gaps in our coverage of key issues at that time. A number of measures to address scrutiny gaps, including the expansion of existing committee remits and the creation of a new Public Services Committee, have been put in place since the report was agreed by the House in October 2019. We have also implemented other important recommendations, such as the establishment of a committee chairs forum, which has already proved to be an important means of communication and exchange of ideas, and the introduction of a regular committees newsletter for Members of the House.

In the 2019 report, we noted that many areas of public policy, including the environment and home affairs, had hitherto engaged EU competence and were addressed principally through our European Union Select Committee and its sub-committees. The review "ring-fenced" the EU Committee and its sub-committees, leaving them unchanged at that point, but acknowledged that further work in this respect would be required in due course.

Noble Lords will be well aware of the excellent reputation of the European Union Select Committee and its sub-committees. The scrutiny by the then European Communities Committee was the starting point for House of Lords committee activity in the modern era. Following its establishment in May 1974, the quick success of that committee was built on bit by bit to form the basis of our current EU Committee structure. Many Members and staff over the years have worked tirelessly to support the EU Committee's success. In the context of the debates on Brexit, that work has increased in intensity. As the work of the EU Committee in its present form comes to an end, I invite the whole House to pay tribute to the outstanding work of the noble Earl, Lord Kinnoull, the current chair, and his colleagues.

Last autumn, the Liaison Committee undertook this final element of the review of committees. As previously, we were keen to seek the views of committee chairs as well as those of Members of the wider House. I am grateful to all those colleagues who contributed their views in response to my invitation. We also had a very successful virtual seminar on 3 September on the Lords committee structure post Brexit and post Covid. It featured presentations from the noble Lord, Lord Hennessy of Nympsfield, and a further five Members of the House, before moving on to a good discussion in which almost 60 Members participated. This too informed our decisions.

The fifth report from the Liaison Committee includes our final recommendations in relation to the restructuring of the House of Lords committees. Our report recommends the following new, cross-cutting thematic committees: Built Environment Committee; European Affairs Committee, with a European Affairs Committee Sub-Committee on the Protocol on Ireland/Northern Ireland; Environment and Climate Change Committee; Industry and Regulators Committee, and Justice and Home Affairs Committee.

We also recommend that the International Agreements Sub-Committee be appointed as a free-standing sessional committee for the remainder of this Parliament and that the current COVID-19 Committee should continue until November 2021, when its work will be further reviewed.

Our recommendations tie in with our decision that the existing EU Committee and the EU sub-committees should continue until 31 March this year to allow for an orderly transition to the new committee structure. The new sessional committees will therefore begin their work in April 2021, with the exception of the International Agreements Committee, which will succeed the current sub-committee later this month. The overall number of committees will remain unchanged. It is likely that, despite all the careful planning, the new committees will take a little while to settle in after Easter. I reassure the committee chairs that, once appointed, we will welcome feedback on the operation of the new committees and that the work of the Liaison Committee and committee chairs forum is there to give systematic support to the new structure. My door is always open too. I am always happy to receive comments and feedback on the operation of our committee structure and suggestions for improvement and enhancement.

The recommendations in our fifth report build on the findings and conclusions developed throughout our work on the review of committees. Taken together, they are a significant step forward in strengthening the thematic structure of House of Lords committees. The new committees will have broad, cross-cutting remits which will enable them to adjust flexibly and swiftly to the many challenges which the country will face in the years ahead.

Turning more briefly to the sixth report, I remind the House that, in the light of the exceptional circumstances of the pandemic, in April 2020 the Liaison Committee recommended that the usual special inquiry process be "paused" to allow a degree of re-focusing on Covid-19. The COVID-19 Committee, chaired by the noble Baroness, Lady Lane-Fox of Soho, was established as a result. In July, we recommended the establishment of two new special inquiry committees, on a national plan for sport and recreation and on risk assessment and risk planning. In a separate report in July, we further recommended the establishment of another new committee to scrutinise common frameworks. All these committees are doing valuable work. In the case of the Common Frameworks Scrutiny Committee, which has now been in existence for half a year, the chair, the noble Baroness, Lady Andrews, recently wrote to me. Her letter, which I believe is available on the committee's website, sets out the impressive and wide-ranging work that has already been undertaken and which is likely to develop still further in the months ahead.

Our sixth report recommends the appointment of one further special inquiry committee, on youth unemployment, following a proposal by the noble Lord, Lord Baker of Dorking. We recommend that, like the special inquiry committees on sport and recreation and on risk, the youth unemployment committee should report by the end of November 2021 to enable the next cycle of special inquiries to proceed smoothly in January 2022.

I am once again very grateful indeed to all Members of the House who put forward proposals for special inquiry committees. We considered them all carefully, and I hope that the House will agree that the successful proposals underline the range and breadth of expertise that exists in your Lordships' House.

Over the past 25 years, House of Lords committees have become increasingly important in scrutinising matters relating to the EU and on the wider international and domestic agenda. During 2020, the speed with which our committees adjusted to new ways of working was a visible indicator of their flexibility and continuous innovation. In recommending these two reports to the House, I end on a note of gratitude for the work of all committees. I note, too, that the Liaison Committee's fifth report brings to an end the comprehensive review of committees that began in January 2018. I believe that we were right to proceed carefully and collaboratively, engaging widely within and outside the House in changing the structure that has grown over nearly 47 years and that predates the establishment of the House of Commons departmental Select Committees.

The approach taken by the review is innovative, as it establishes a firm but flexible framework within which our committees will operate. We are now in a position to consider any future adjustments to our committee structure as and when the need arises, particularly during our annual reviews. There is no need for any further set-piece reviews as in the past, since we have succeeded in constructing a built-in continuous review process. In this way, we trust that the comprehensive review will provide committees with a firm foundation for many years to come. I beg to move.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, I have had one definite request to speak and two potential requests to speak. I call the noble Lord, Lord Newby.

Lord Newby (LD): I thank the noble Lord the Senior Deputy Speaker for undertaking an exhaustive review which has produced very sensible proposals. Of all the committees to be created as a result of the review, arguably the new European Affairs Committee is the most important, not least because we have seen within the last week the unilateral decision by the Leader of another place to disband the Commons Committee on the Future Relationship with the European Union and put nothing in its place. As we see from the immediate effects of Brexit, not least in Northern Ireland, clearly there will be a lot for this committee and its sub-committee to look at.

What makes all our committee reports of more value than, say, an equivalent think-tank report is, first, that the Government have to respond to them and, secondly,

[Lord Newby]
that your Lordships' House has to debate them. In both those areas, the current practice is far from satisfactory. For the government response to be effective, it needs to be timely, which simply has not happened in many cases. The most egregious example is the Economic Affairs Committee on social care policy, which reported some 589 days ago and still has not had a government response. It really is incumbent on government to do better in that respect.

Furthermore, it is important that these reports have a timely debate in your Lordships' House. I understand why we have not been doing so in recent months, but it is still unsatisfactory that we now have Select Committee reports that are 22 months out of date, as it were, and have still not had a debate in your Lordships' House. I hope very much that, as the mass of secondary legislation which we have seen in respect of Brexit and coronavirus dwindles to a trickle, or to a more normal level, it will be possible to reinstate a timely system of debates on Select Committee reports. Certainly, even if we cannot do it literally immediately, I hope that when we start a new Session later in the year we will do so with a new resolve to deal with the valuable work and reports of these committees in a way that really makes best use of them.

With those caveats, I and my colleagues welcome these proposals and look forward to seeing the work of the new committees develop.

The Deputy Speaker (Lord Duncan of Springbank) (Con): For noble Lords' information, I should say that the Senior Deputy Speaker has the right to reply. I shall take all questions first and we will go to him afterwards, should he wish to return to them.

Lord Adonis (Lab): My Lords, these are extremely welcome proposals, and we are very grateful to the noble Lord, Lord McFall, and his colleagues for the review that they have undertaken of the committee system in the House and the proposals that they have made. Rather belatedly—but at long last we are getting there—noble Lords are essentially introducing a proper systematic arrangement of committees in respect of domestic policy. Until now we have had a committee system only really in respect of European affairs. It is my view, which I have expressed in the House before, that we have been overweighted. It was good that we had the European Union Committee, but we gave no scrutiny whatever to the great generality of domestic policy, which is hugely important. As I have noted in the House before, in my five years as a Minister, including a period as Secretary of State, I was never once summoned to appear before a House of Lords committee, even though I am a Member of the House of Lords, which is a pretty serious condemnation of the way in which this House has conducted its scrutiny.

In respect of the proposals themselves, essentially we are playing catch-up with the House of Commons. The noble Lord said that our committee on European affairs was 47 years old, which is somewhat older than the Select Committees of the House of Commons. But of course the House of Commons had all the departmental committees in respect of domestic departments in 1980, and it has taken us 40 years before we finally got to a system which, in a very intelligent way, taking domestic policy areas in a cross-cutting way, has given us the capacity to do the same.

The House of Commons has made two big changes in the past 40 years in respect of its committees. The first was to introduce systematic departmental committees, but the second—and I am surrounded by former Members of the House of Commons who might have views on this, but it seems to me to be just as important a development—is that the chairs of those committees are now elected by the House at large. That great outbreak of internal democracy in the House of Commons has, I am told, had a very beneficial effect, not least that it has given much greater prominence to the MPs who chair those committees, and it has given them a strong mandate on behalf of the House as a whole. Indeed, because they are no longer beholden to the Whips, because they are not appointed by the Whips or through a process that involves the usual channels, they are also likely to be—how can I put this delicately?—less subject to persuasion from Ministers as to what they should say in their reports.

I want to ask something of the noble Lord, Lord McFall, a very distinguished former member of the House of Commons Treasury Committee. Now that we have domestic affairs committees worth the name, I encourage the Liaison Committee to adopt the second of the reforms that the House of Commons has adopted and have the chairs of these new committees elected by the House as a whole, as we elect the Lord Speaker, and not continue to be appointed essentially by the Whips in dark recesses of the House through processes which most of us have no knowledge of or capacity to influence. I ask the noble Lord to tell the House whether that is under consideration by his committee.

Baroness Hayter of Kentish Town (Lab): I rise very briefly to pay the same tribute as the noble Lord, Lord McFall, not only to the noble Earl, Lord Kinnoull, but to the chairs of our other committees, who do the most extraordinary work. We owe them an enormous debt of gratitude. Where I disagree with my noble friend Lord Adonis is that I do not think that they do it for prominence. The great shortfall in what he has just said is exactly that MPs do it for their own prominence. One of the many strengths of our system is that our chairs actually do not get prominence; that is not why they do the job—they do it for good hard work and the quality of what they produce.

The funniest thing, though, is the idea that the noble Lord, Lord Forsyth of Drumlean, would in any way be open to persuasion by Ministers. We have seen him jumping up on almost every occasion to get at his own Government's Ministers for having done not very much about the report he has produced, which was raised by the noble Lord, Lord Newby. That is a strength of the sort of people in this House. They do not owe their future to the Whips and they show it. My noble friend of course is a brilliant example of that. He does not owe his future in this House to the Whips and he shows that by his many contributions.

Having mentioned the report from the noble Lord, Lord Forsythe, I echo what the noble Lord, Lord Newby, said. On page 8 of today's green pages there is a list of the reports that are yet to be discussed, of which his is

not even the oldest; there are some older than that. I do hope that we can take forward the comments that have been made about timely reports from Ministers—I am glad to see some nods—and speedy debates. For the moment, I thank the noble Lord, Lord McFall, for all that he has done in making this report possible.

The Senior Deputy Speaker (Lord McFall of Alcluith) [V]: I thank my colleagues for their comments. In fairness to the noble Lord, Lord Newby, the European Affairs Committee will certainly have a lot to do in the coming months. That is one of the reasons why, in discussions with the noble Earl, Lord Kinnoull, we decided that the present committees would extend until the end of March, so that we can view how the land lies. At the end of the day, that was quite a wise decision.

The issue of government reports has been raised in the chairs' forum. I have written to Ministers and engaged with the Leader of the House and the Chief Whip on this in my regular meetings with them; it is a live part of the agenda. This is an issue about which the committee chairs in particular feel strongly. We will continue that process, so that there is maximum engagement with the House. I take the point that there is no use having a report that is not debated in the House.

The noble Lord, Lord Adonis, mentioned a "proper, systematic arrangement" for our committees. I am grateful to him for those remarks, but the essence of our committees now is their flexibility, larger footprint and cross-cutting nature. We can respond to challenges as we see them. For example, we established the COVID-19 Committee specifically to look at the issues of Covid-19. We have also established a Common Frameworks Scrutiny Committee. Only yesterday, I had a meeting with the noble Baroness, Lady Andrews, on that point. These committees are working well, and having this systematic arrangement is important.

The issue of the election of chairs was reviewed quite a long time ago, but it was felt by the Liaison Committee, and those who provided evidence to it, that this was not the time to do it. It is still on the agenda and I am happy to receive any representations on such issues as we go forward, not least from the noble Lord, Lord Adonis.

That touches on the issue of increased powers. I am in touch with the current House of Commons inquiry into Select Committee powers, along with the Leader of the House, regarding greater government participation and Ministers giving evidence. One feature of the review of committees was that the Liaison Committee of the House of Lords would engage with the Liaison Committee in the House of Commons at an annual meeting. That has not yet taken place, but I have written to the chair of the House of Commons Liaison Committee, Sir Bernard Jenkin, to make him aware of what we have been doing. I have no doubt that we will shortly be meeting him, and others, to ensure that there is coherence in our approach to this area as we go forward.

I congratulate the noble Baroness, Lady Hayter, on her participation in the Liaison Committee and her interest in everything that the committee has done, notwithstanding her very heavy workload on the Front Bench. I take her point about the work of all the committee chairs, and I congratulate them and their staff on their work and application. An awful lot of work goes on in the background and there is fantastic staff input to our committees—our work would not be possible without them, so it is important that we congratulate them as well. I will finish on that celebratory note.

Motion agreed.

Liaison Committee Report

Motion to Agree

1.25 pm

Moved by ***The Senior Deputy Speaker:***

That the Report from the Select Committee *New special inquiry committee on youth unemployment* (6th Report, HL Paper 194) be agreed to.

Motion agreed.

Covid-19: Vaccinations

Statement

The following Statement was made in the House of Commons on Monday 11 January.

"With permission, Madam Deputy Speaker, I would like to make a Statement on the Covid-19 vaccine delivery plan. The plan, published today, sets out the strategies that underpin the development, manufacture and deployment of our vaccines against Covid-19. It represents a staging post in our national mission to vaccinate against the coronavirus, and a culmination of many months of hard work from the NHS, our Armed Forces, Public Health England, and every level of local government in our union. There are many miles to go on this journey, but, armed with this plan, our direction of travel is clear.

We should be buoyed by the progress that we are already making. As of today, in England, 2.33 million vaccinations have been given, with 1.96 million receiving their first dose and 374,613 having already received both doses. We are on track to deliver our commitment of offering a first vaccine to everyone in the most vulnerable groups by the middle of next month. These are groups, it is worth reminding ourselves, that account for more than four out of every five fatalities from the Covid virus, or some 88% of deaths. But of course this is a delivery plan for everyone—a plan that will see us vaccinate all adults by the autumn in what is the largest programme of vaccination of its kind in British history.

The UK vaccines delivery plan sets out how we can achieve that noble, necessary and urgent goal. The plan rests on four key pillars: supply, prioritisation, places and people. On supply, our approach to vaccines has been to move fast and to move early. We had already been heavily investing in the development of new vaccines since 2016, including funding a vaccine against another coronavirus: Middle East respiratory syndrome. At the start of this year, this technology was rapidly repurposed to develop a vaccine for Covid-19, and in April we provided £20 million of further funding

[The Senior Deputy Speaker]
so that the Oxford clinical trials could commence immediately. Today, we are the first country to buy, authorise and use that vaccine.

Also in April, we established the UK Government's Vaccine Taskforce, or VTF for short, and since then it has worked relentlessly to build a wide portfolio of different types of vaccine, signing early deals with the most promising prospects. It is a strategy that has really paid off. As of today, we have secured access to 367 million doses from seven vaccine developers with four different vaccine types, including the Pfizer-BioNTech vaccine, which we were also the first in the world to buy, authorise and use. The VTF has also worked on our homegrown manufacturing capability, including what is referred to as the 'fill and finish' process, in collaboration with Wockhardt in Wrexham. Anticipating a potential global shortage early on, we reserved manufacturing capacity to allow for the supply of multiple vaccines to the United Kingdom. Like many capabilities in this pandemic, it is one that we have never had before, but one that we can draw on today. So much of that critical work undertaken early has placed us in a strong position for the weeks and months ahead.

The second pillar of our plan is prioritisation. As I set out earlier, essential work to protect those at the greatest clinical risk is already well under way. The basic principle that sits behind all of this is to save as many lives as possible as quickly as possible. In addition, we are working at speed to protect staff in our health and social care system. All four UK chief medical officers agree with the recommendation of the Joint Committee on Vaccination and Immunisation to prioritise the first doses for as many people on the priority list as possible and administer second doses towards the end of the recommended vaccine dosing schedule of 12 weeks. That step will ensure the protection of the greatest number of at-risk people in the shortest possible time.

The third pillar of our plan is places. As of yesterday, across the United Kingdom, we have more than 2,700 vaccination sites up and running. There are three types of site. First, we have large vaccination centres that use big venues such as football stadiums; we saw many of those launched today. At these, people will be able to get appointments using our national booking service. The second type is our hospital hubs, working with NHS trusts across the country. The third is our local vaccination services, which are made up of sites led by GPs working in partnership with primary care trusts and, importantly, with community pharmacists.

This mix of different types of site offers the flexibility that we need to reach many different and diverse groups and, importantly, to be able to target as accurately as we can. By the end of January, everyone will be within 10 miles of a vaccination site. In a small number of highly rural areas, the vaccination centre will be a mobile unit. It bears repeating that, when it is their turn, we want as many people as possible to take up the offer of a vaccine against Covid-19.

The fourth and final pillar is, of course, our people. I am grateful to the many thousands who have joined this mission—this national mission. We now have a workforce of some 80,000 people ready to be deployed across the country. This includes staff currently working within the NHS of course, but also volunteers through the NHS Bring Back Staff scheme, such as St John Ambulance personnel, independent nurses and occupational health service providers. There are similar schemes across the devolved Administrations.

Trained vaccinators, non-clinical support staff such as stewards, first aiders, administrators and logistics support will also play their part. We are also drawing on the expertise of our UK Armed Forces, whose operational techniques—brought to life by Brigadier Phil Prosser at the press conference with the Prime Minister a few days ago—have been tried and tested in some of the toughest conditions imaginable. I am sure the whole House will join me in thanking everyone who has played their part in getting us to this point, and all those who will play an important role in the weeks and months ahead.

We recognise that transparency about our vaccine plan will be central to maintaining public trust, and we are committed to publishing clear and simple updates. Since 24 December, we have published weekly UK-wide data on the total number of vaccinations and the breakdown of over and under-80s for England. From today, we are publishing daily data for England showing the total number vaccinated to date. The first daily publication was this afternoon. From Thursday, and then weekly, NHS England will publish a more detailed breakdown of vaccinations in England, including by region.

This continues to be a difficult time for our country, for our NHS and for everyone as we continue to live under tough restrictions, but we have always known that a vaccine would be our best way out of this evil pandemic, and that is the road we are now taking. We are under no illusion as to the scale of the challenge ahead and the distance we still have to travel. In more normal times, the largest vaccination programme in British history would be an epic feat, but against the backdrop of a global pandemic and a new, more transmissible variant, it is a huge challenge. With this House and indeed the whole nation behind this national mission, I have every confidence that it will be a national success. I commend this Statement to the House."

1.26 pm

Baroness Thornton (Lab) [V]: My Lords, I thank the Minister for allowing this Statement to be taken. This is a challenging moment in the handling of the pandemic. We have growing infection rates; we are in lockdown; businesses are shut; schools are closed. Tragically, more than 80,000 people have already lost their lives to this awful virus. However, the vaccine provides us with a light. It is a glimmer of hope; a way to beat the virus, save lives and get us back to normal. I congratulate the Government on investing in multiple vaccine candidates —that has definitely paid off. But a vaccine alone does not make a vaccination programme. Given the Government's record with test and trace, and the procurement of PPE, it is right that the Minister will face many questions about the delivery and implementation of the vaccine programme.

The plan that has been launched is quite conventional. Aside from big vaccination centres, it uses traditional delivery mechanisms, operating within traditional opening and access times. If the Secretary of State's target for

the number to be vaccinated is to be reached, exceptional circumstances call for an exceptional response. Why did the Government believe that 24/7 access is something that people would not be interested in? What is that view based on? However, I see that, in a characteristic U-turn, Prime Minister Boris Johnson has said today that the coronavirus vaccine programme will operate 24 hours a day, seven days a week, "as soon as we can". What does this actually mean? When will the details of the plan to provide this service be published? The Secretary of State has said that the only limiting factor on the immunisation programme will be the speed of supply. Can the Minister confirm that this plan will receive the supply which is needed?

I think we can all see that the logistics of vaccinating a nation are huge, and we now hear many anecdotal stories about the reliability of supply, the organisation of vaccination, cancelled appointments and uncertainty of supply. On 17 December, I asked about the inoculation of our NHS staff, as it seemed obvious to me that, if we did not give vaccines to those dealing with the most sick Covid patients, and given the spike we are now experiencing, we would find many of our precious NHS staff becoming ill—as indeed we have. We are now experiencing the consequences. We are currently missing around 46,000 NHS staff for Covid reasons. When will all our NHS staff have been vaccinated?

What consideration has been given to vaccinating patients who are going to be in hospital? I am thinking, for example, about maternity services. Has it been considered that expectant mothers, and those who have just given birth, should also be vaccinated?

London currently has by far the highest rates of Covid in the UK, yet it is receiving fewer doses of the Pfizer and Oxford vaccines per head of population. Will the Minister commit to providing those desperately needed additional supplies urgently?

We are all reassured to see pharmacies included in the plan. They are at the heart of the communities of our country. They are trusted and are all ready to deliver mass vaccination. It is slightly odd that the number being trailed publicly is of 200 participating pharmacies, given that there are in fact 11,500 community pharmacies in England. Can the Minister clarify whether that is right? Why are not more involved, or is that number wrong? Can the Minister share with us what the number is?

On social care, it seems that about 23% of elderly care home residents have been vaccinated compared with 40%—which is brilliant—of the over-80s. Given their top prioritisation, can the Minister tell us when all care home residents will have been vaccinated? Will it be the end of the month, as has been promised?

When is it likely that our school and nursery staff will be vaccinated? I can see that the prioritisation lists are difficult and demanding—there is huge demand on this vaccine—but if we are to return to any semblance of normality, we need to get our children back to school.

Baroness Brinton (LD) [V]: My Lords, I welcome this Statement on the on the vaccine strategy and rollout, which we have been asking for from these Benches, in both Houses, since before the first lockdown. The Government have rightly set themselves stretching targets and we agree with them, especially in the light of the new variant's high levels of transmission. The news this week of the severe problems that our NHS is facing across the country shows how out of control the virus is at the moment. Individuals must comply with the spirit and the rules of lockdown to help to reduce cases as soon as possible.

The Prime Minister has talked repeatedly about a vaccine signalling the end of the pandemic. I fear that lax messaging about the hope that vaccines bring is hampering the message about lockdown. It is a relief to hear in this Statement a more measured tone about this being a staging post in a long journey. Please can somebody tell the Prime Minister? The Minister will know that epidemiologists repeatedly make the point that we are a long way from life returning to normal. I note, for example, that in the debate about the vaccination priority list, the advice to clinically vulnerable people from government is that, even after their vaccine, they must remain shielding until told that it is safe for them not to shield.

On supply, we remain concerned that the Government will struggle to reach 2 million a week by next week—mid-January—given the numbers of vaccines being delivered this week. We are also receiving reports from GP surgeries of fewer doses arriving than ordered or, worse, short-notice cancellation of orders causing administrative chaos for already hard-pressed administrative surgery staff. While the opening of super vaccine hubs is welcome, can the Minister say why the hubs are vaccinating only during the day? If it is truly a priority to vaccinate as many people as possible, arrangements should be made for close to 24/7 delivery. I hear that, in the last hour, the Prime Minister has announced that the Government will try to start a pilot of some 24/7 hubs as soon as supplies permit—but how soon is soon? What are the vaccine supply pinch points? It is clear that targets are already slipping. This week, the target of 2 million a week has moved from mid-January to the end of January, and it is now the end of March instead of the end of February for the top five priority groups. Is this for the supply of all three approved vaccines, or just the AZ vaccine, where there is a much larger order to be rolled out with more substantial delays if there are supply pinch points? Also, it is because of a shortage of glass vials, or vaccine manufacture and regulation checks?

What are the Government doing to ensure that vaccine hubs are not superspreader locations? There have been worrying reports about people being asked to change masks and sit and wait less than two metres away from other people in the vaccine hubs. Given that the first five priority groups are all high-risk people, the last thing the NHS should be doing is encouraging them to go to areas that do not follow the government guidance on "hands, face, space". Inevitably, there are glitches with any new process. We are still hearing of problems with the Pinnacle IT system that is being used for vaccinations. Some hubs were resorting to pen and paper in despair, and there are further problems reported with patients being asked to give the same detailed answers to a group of questions about Covid symptoms and allergies as they arrived, as they were registered and then as they were being given their jab. Any effective IT system should enter

[Baroness Brinton]
that information once. IT delays are reported as causing major delays, queues outside centres and daily targets missed at hubs. Can the Minister say what is being done to remedy these problems?

Can the Minister also say whether the vaccine dashboard will separate out the number of care home residents vaccinated? I see that care home cases are increasing again, which we deplore. As earlier this year, we strongly object to Covid patients being sent from hospitals into care homes, unless they are specialist Covid-designated units separated from other non-Covid residents. Even better would be to follow the example of Southampton hospital, which is using local hotels as step-down facilities. Will the Government endorse this and ensure that care home patients are kept safe through this surge until they are vaccinated?

The Government have announced that fewer than 1,300 surgeries and pharmacies are approved to deliver vaccines. The large hubs are all in urban areas. What will the Government do in rural areas, where elderly people do not have access to transport and may have to travel considerably further than the 90-minute journey for vaccinations announced this week? Are there plans as yet unannounced to increase substantially truly local-level provision, at a high-street level, in every rural village and small town—whether at a local surgery, pharmacy or visiting mobile vaccination unit—to ensure that vulnerable people who cannot travel or take the risk of infection will get access to the vaccine? It is not good enough for the Government to say that vaccines have been offered if the patients concerned cannot get to the vaccination delivery point.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, I am enormously grateful for the detailed questions from the noble Baronesses. In particular, I endorse the words of the noble Baroness, Lady Thornton: it is indeed a remarkable achievement to have invested in such a broad array of candidates and to have purchased such an enormous quantity of doses—367 million. This is indeed a profoundly important step by the Government and one that we should celebrate and take pride in.

However, I acknowledge the searching questions from the noble Baronesses, so let me try to cover as much ground as I possibly can. The noble Baroness, Lady Thornton, asked about the digital backbone. This is absolutely critical to vaccine delivery. In many ways, injecting it into arms is the simple bit. Capturing the records, getting the invitations out right and the process of establishing identity are absolutely critical; in any project of this scale and complexity, that is where the problems are most likely to happen. That is why I pay tribute to colleagues at NHSX, NHS D, Test and Trace, PHE and elsewhere in the NHS who have done an amazing job of bringing together patient records around the nation to ensure that the invitations are sent out promptly and accurately and that the records are captured correctly. That information will be absolutely essential to both pharmacovigilance and the policy assessment of key issues such as transmissibility and efficacy. It employs the yellow card system to spot adverse incidents, and all data will go straight into the GP record, which is profoundly important when it comes to the research and analysis of the rollout of the vaccine. These may seem like prosaic details, but it is the most enormous digital achievement and one that will have an amazing impact on the health of the nation. I enormously encourage everyone in the country to ensure that they know their GP number, that they are properly registered with their GP and that they respond to any correspondence about the vaccine.

The noble Baroness, Lady Thornton, characterised the vaccine rollout as "traditional". Can I just push back gently on that suggestion? There is nothing traditional about the sheer scale of this rollout, or about its speed and complexity. Our approach has been to work through the NHS, and from that point of view it might seem traditional, but I reassure noble Lords that not only is the latest technology being used but there is also the complexity of the collaboration between all the different parts of government—the Army, the NHS and PHE. Every single relevant part of government is being employed in this huge task, and it is something we should be enormously proud of.

The noble Baroness, Lady Thornton, asked about the supply figures. I am pleased to tell her that AstraZeneca has confirmed that it will be supplying 2 million vaccines a week. That is an enormous sum and it will mean that we can hit some really ambitious targets. Some 14.5 million people will be vaccinated by mid-February. Those are in categories 1 to 4, which includes care home residents and residential care workers, and they represent 88% of the mortalities in hospital. That will be transformational to the resilience of our healthcare system and to our approach to the pandemic. Some 17 million further people from categories 5 to 9 will be vaccinated by the end of spring, and all adults over 18—52 million of them—will be offered the vaccine by the autumn. That is a massive achievement.

The noble Baroness, Lady Brinton, quite rightly emphasised that this does not change absolutely everything overnight. She asked, quite reasonably, about schools and workplaces. I can confirm that there is still a huge amount to do by the entire nation to ensure that we do not have high infection rates, that we still deploy testing in order to break the chains of transmission and that we understand how to keep infection down—because the tragic thing about this awful virus is that it hits the old and infirm, who can be protected by the vaccine, but it also hits the young. It has become very clear from recent hospital admissions and from our growing understanding of long Covid that this disease hits all parts of society, and although we will have the most afflicted vaccinated by the spring, this is still going to be a societal challenge for months to come.

The noble Baroness, Lady Brinton, mentioned the letters to those shielding, which suggest that people should still remain shielded. That is a really important point and one we have to resolve, because those who are shielded who may go out into the community can themselves still be vectors of transmission. Those very people who we have done so much to protect may themselves be transmissible. Therefore, people are going from being protected to being potentially dangerous to others, and this is going to be a mind shift that we will all have to go through.

The noble Baroness, Lady Brinton, asked about GP surgeries. I acknowledge her point. There have undoubtedly been stories of GP surgeries which have set up queues of people to be vaccinated and then there has not been a delivery of the vaccine. However, I reassure the Chamber that it has been a very small minority. More than 95% of vaccination deliveries have happened on time, and in the grand scheme of things I take the view that if some GP surgeries have stood people up and asked them to come back another time, that is a small price to pay to ensure that the greatest number of people can be vaccinated as fast as possible.

The noble Baroness, Lady Thornton, asked about London. It is true that if we look at the infection rate, London has a relatively small distribution of the vaccine, but we are a young city here in London, so it makes sense that we have a lower proportion of vaccination. There are 2.8 million people who are more than 80 years old in the country. Not many of them are found in London, which is why the London figures look as they do.

On pharmacies, I reassure all noble Lords who have asked me about this that my colleague in the other place, Nadhim Zahawi, is incredibly energetic in engaging pharmacy chains and community pharmacies. It is true that we have a pilot with hundreds of pharmacies already running in it, but it is very much our intention to work closely with pharmacies to deploy the vaccine. As noble Lords know, vaccines come in plates of 1,000. It is much easier to deploy those plates in large centres than in small ones. We are working extremely hard to break those packages down into smaller groups and to get those groups into smaller locations but, quite reasonably, in order to get the vaccine into the most arms possible, we are starting with the big centres.

The noble Baroness, Lady Brinton, asked me about hygiene management in the distribution of the vaccine. She is entirely right: if you have a small room, such as a GP surgery, and you have a large queue of people, it is going to be extremely difficult to keep them all separated. That is why the development of these seven massive distribution centres in such places as the ExCel and Millennium Point in Birmingham is such an important development, because there is the space to be able to move very large numbers of people safely through the process. They will have a huge impact when they are opened next week.

On 24/7 vaccination, I am pleased to say that the Prime Minister has made an announcement on that. I must share with noble Lords that there has not been an overwhelming consumer demand for vaccinations at 4 am, but we are going to try this out as a process, and if there is indeed a big demand for late-night vaccination, then we will step up to the opportunity.

I was asked about rural distribution. Yes, it is incredibly important to get through to rural communities, particularly as many of the elderly and infirm can be found outside the city centres. I reassure noble Lords that, before very long, we will have vaccination centres within 10 miles of all communities. The noble Baroness, Lady Brinton, is entirely right to say that there will be some people for whom we have to take the vaccination to them; we cannot expect them all to drive to a vaccine centre. Provisions are being made through local health authorities in order to ensure that that is delivered.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, we now 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.

1.47 pm

Lord Blencathra (Con): My Lords, will my noble friend accept my congratulations? The Government have done an absolutely magnificent job on vaccinations. They bought more than enough of the right vaccine, approved it first in the world, injected it first in the world and have vaccinated more people than the whole of Europe put together. I hope the Government will now not be distracted by some of the pathetic media trivia we have heard about how far you can ride a bike, whether a Scotch egg is a meal, whether it is 2 metres or 3 metres, or tier 3 or 4, or whether things have been too fast or too slow. Does my noble friend agree that the only thing that matters now is vaccinating all our people, in the whole of the United Kingdom, as quickly as possible—and 24/7 if vaccine supplies permit—to build on the success we have had so far?

Lord Bethell (Con): My Lords, I am enormously grateful for my noble friend's kind words. I think that, as a Government, we would prefer to be judged at the third act of this important performance, so I think it is probably too early to take too much praise, but I would like to say a massive thanks to the British nation.

In three ways, the nation has really stood up. The amount of collaboration between different groups—I alluded to it in my previous answer—between the Army, industry, the NHS and local authorities has been enormous. At the beginning of this pandemic, there were arthritic elements to the way in which Britain is governed that meant that different parts of our political and administrative machinery did grind into action slightly slowly, but, my goodness, over the vaccine deployment it has been absolutely athletic, and I take my hat off to every part of the machinery of government. On the union, this has been such a strong example of a national solution: all of Britain has come together in order to purchase and deploy the vaccine. Lastly, I would observe the resilience of the British public. It makes me enormously proud that the country puts the elderly and the infirm first and stands by and celebrates the weakest and most vulnerable in our society being put first in the queue. That is a national quality we should all be proud of.

Lord Crisp (CB) [V]: My Lords, I congratulate everyone concerned in the progress being made with the vaccinations, while recognising that there are issues to be addressed, not least that of accelerating the whole process. In passing, I note that I would be very happy to be vaccinated at 4 am if it sped things up. I will ask about testing and vaccination for a particularly vulnerable group; children excluded from school are the among the most vulnerable in the country, and I

[Lord Crisp]
pay tribute to the approved alternative education providers and others working with them during the pandemic. I have been contacted by one of the directors of one of these providers, who tells me that, unlike schools, they are not being provided with lateral flow tests to help them protect children in school and staff. If I write to the Minister, will he take the matter up? Can he ensure that all such approved providers receive the tests and that their staff are given a high priority for vaccination—at least as high as that for teachers?

Lord Bethell (Con): I am grateful to the noble Lord for flagging this important issue. He is entirely right that those who are sometimes overlooked by society and fall between the cracks are often those who either suffer from the disease or are vectors of infection. It is a public health priority to ensure that people such as those excluded from schools are not overlooked or in any way left behind. I would be very grateful if he could write to me with the details.

Lord Winston (Lab) [V]: My Lords, speaking from these Benches, I think it would be appropriate to thank the noble Lord, Lord Bethell, very much for the amazing amount of work he has been doing on this very difficult issue. I hope he will continue to take our concerns back to the Department of Health and the Government in general, because that seems very important. I join my noble friend Lady Thornton in congratulating the Government on getting vaccines out, but, with all due respect, Israel has already vaccinated over one-fifth of its population with a massive vaccine campaign. On the important issue of dividing the time of the Pfizer vaccine, many of us have given informed consent for a period of three weeks between the two injections; by extending that period, we now risk not obeying the consent issue, and therefore there is an ethical problem. Could the noble Lord address that issue, because it is of considerable importance, certainly increasing the risk of suspicion of the vaccine, already very prevalent in parts of the population?

Lord Bethell (Con): I am extremely grateful for the noble Lord's kind words. I know lawyers looked at the question he raises on informed consent; I am afraid I do not have the precise answer at the Dispatch Box right now, but I will be glad to write to him with a clarification.

Lord Scriven (LD) [V]: Up here in the north, the *Yorkshire Post* is running a "shot in the arm" campaign to get the Government urgently to allow the local community pharmacists who are screaming out to get jabs in people's arms to do so. Why are the Government using excuses about batches of 1,000 for the AstraZeneca vaccine getting in the way of using these safe places on the high street that will improve access in the take-up of the vaccine?

Lord Bethell (Con): My Lords, I am not sure we are using excuses; we are observing practical matters. The priority, quite reasonably, is to get the vaccine in as many arms as possible. We are totally committed to comprehensive distribution of the vaccine that reaches into rural communities and will include working with community pharmacies as important distributors. However, be under no illusion: our priority is speed and reach, which is why the deployment has taken the shape it has.

Lord Lancaster of Kimbolton (Con): My Lords, my noble friend Lord Blencathra hits the nail on the head. I add my thanks for the support of the military—my noble friend the Minister will forgive me if I sound like a pedant, but it is not just the Army but also the Royal Navy and the Royal Air Force. However, their support is ultimately unsustainable. Yesterday the Defence Secretary suggested that the NHS should create a reserve of its own. We are certainly not short of volunteers, given the response to the call to arms last year, so is the Minister considering it?

Lord Bethell (Con): My Lords, my noble friend rightly picks me up on my use of words. I profoundly thank all those in the armed services who have made a contribution. They bring particular qualities to such a challenge as the deployment of the vaccine: logistical analysis and project management of the highest level, and the manpower and ability to get things done quickly on the front line. Those are extremely complementary. However, be under no illusion; there are 1.3 million employees in the NHS, and far fewer in the Armed Forces. There is no question of the Armed Forces being able either to replicate or take the role of the NHS in such a large project, though we are enormously grateful for their particular contribution. One lesson of the pandemic has been the remarkable return to work of former NHS workers and the early graduation of some trainees. We should and will look at the use of volunteers in the NHS in months to come.

Lord Loomba (CB) [V]: My Lords, the Government's action plan for the rollout of the vaccine is commendable, with over 2.5 million doses given to date. One issue now appearing is that there are a good many no-shows at vaccine hubs. In an effort not to waste the vaccine, which has a short shelf life, administrators are finding as many people in close proximity as possible to give the unused doses to. While not wasting valuable doses is admirable, does the Minister agree that some back-up system should be in place to ensure that those who need it most are able to get it first when there are so many no-shows daily? Secondly, does he agree that parliamentarians in both Houses should be on a priority list for vaccination?

Lord Bethell (Con): My Lords, no-shows are being managed extremely effectively under the current arrangements. We are extremely grateful to the British public for their perseverance.

Lord Faulkner of Worcester (Lab): My Lords, I am happy to join others in congratulating the Minister on how he has delivered news about the vaccines to your Lordships' House and to everybody concerned with the rollout. I wish it well in every possible respect. However, I am sure he will agree that, as it will take a little while before the vaccine has the beneficial consequences we want, it is essential that we do not drop our guard now. In that context, I return to a

subject I asked him about two weeks ago: the mandatory wearing of face coverings. I asked him then what guidance the Government could give to public-spirited people who try to encourage others who are not wearing face masks in places such as shops and on public transport about whether they are right to do so? Can he give some comfort to those of us who want to intervene but are frankly deterred by the reaction we are likely to get? It is good news that the supermarkets are operating a new policy, and I welcome the announcement by the Metropolitan Police Commissioner. I would like a bit of a lead from the Government as well.

Lord Bethell (Con): The noble Lord is entirely right. The advent of the new variant, with its extremely high transmissibility, means that we all have to rethink our approach to the pandemic. We must all adopt habits that are uncomfortable and frustrating, of which mask-wearing is one good example. I know that colleagues in government are looking at ways in which restrictions should be refined. The Government do not take a view on intervening with members of the public; it is the personal responsibility of individuals to make decisions for themselves. The police certainly have very clear guidance on what interventions they should make, and it is best to leave it to them.

Baroness Jolly (LD) [V]: My Lords, the scale of this rollout is truly impressive, and I join others in congratulating all those who have actually made it work in such a short time span. I live in a very rural area on the edge of Bodmin Moor. My local satellite surgery has closed because it cannot be made Covid secure, and the vaccination site is 18 miles away with no public transport connections. Would it be possible for older people who cannot get to the vaccination site to be vaccinated by a different practice, which is only five miles away by bus but in the other direction?

Lord Bethell (Con): The short answer is yes, and absolutely. The noble Baroness makes a point that we understand vividly and extremely well. Many smaller GP surgeries simply are not physically capable of being Covid secure, as she rightly points out. We are taking a panoptic view of health records to ensure that the right GP surgeries which are open can offer the service to those who would not normally be reached.

Lord Fairfax of Cameron (Con) [V]: My Lords, I would like to ask my noble friend the Minister two questions, if I may. Like many others, I first congratulate him and the Government on the progress made so far with the vaccination programme. But what plans do they have to further turbo-charge the vaccine deployment programme? I am, of course, thinking of a 24/7 vaccine centre, as many others have referred to already. Reference has also been made to Israel's much greater progress, so far. But is the Minister aware of the comment of the highly respected Professor Bell of Oxford, who said that we could vaccinate the whole country "in five days" if we had the will, subject, of course, to supplies of the vaccine? Professor Bell went on to say that this vaccine rollout is a "war" and should be treated as such by the Government. Therefore—in my respectful submission—to refer to consumer demand is not necessarily consistent with that status of war. On my second question, the Government have said that they expect all nine high-risk groups to be vaccinated "by the spring". Can the Minister tell us what exactly the Government mean by the spring—in other words, months and days or dates?

Lord Bethell (Con): My Lords, on turbo-charging the vaccine deployment, the two key focuses are: first, on very large centres, which can have a very large throughput of people, as these will make an enormous difference and bring an industrial energy to the process; and, secondly, to extend the reach into the hard-to-reach communities, whether those are rural or where people are not in the mainstream of British life. Regarding the noble Lord's point on the "war", while it might seem obvious to him that everyone will step forward for the vaccine that is not, strictly speaking, right. Some people are going to make careful decisions before stepping forward to have it, so we have to think about making it attractive and reasonable to as many people as possible, particularly those who are vulnerable to the disease. I do not think it is right that we cannot have a consumer mentality to this. We have to treat the public with consideration and thoughtfulness, because they will decide whether they are going to step forward or not.

The Deputy Speaker (Baroness Morris of Bolton) (Con): I now call the noble Baroness, Lady Meacher. Lady Meacher?

Baroness Meacher (CB) [V]: Sorry, I could not get myself unmuted. My Lords, as a Covid sufferer, which I am, I too applaud the Government's amazing vaccination programme. I just have a few points of clarification. First, when the Government talk about offering a vaccination to all four top vulnerability groups by mid-February, do they mean all those groups will have a vaccination by mid-February or an invitation for one, which, of course, could be for a vaccination in March or April? Secondly, is there any progress yet on bringing forward the second vaccination—we are talking about the country here—from the 12-week point, bearing in mind the greater risk of mutations while we have this rather long wait between first and second vaccinations? Thirdly, if I may, can the Minister contradict the anti-vax story, which I regard as very dangerous, that the vaccinations contain polyethylene glycol which could be dangerous for allergic people? These stories just have to be crushed, if we can.

Lord Bethell (Con): My Lords, the four priority groups that the noble Baroness alludes to are: care home residents; residential care workers; the 80-plus; healthcare workers; social care workers; 75 to 79 year-olds; 70 to 74 year-olds; and the clinically extremely vulnerable. It is a huge proportion of those who are most vulnerable to the disease. We can only offer people a vaccine; we cannot force them to have it. Certainly they will be offered it, but the encouraging news is that a very large proportion of people seem to be stepping forward, and attitudes towards the vaccine so far seem to be extremely positive. I reassure all those who have seen anti-vax messages that this is not something that those

[Lord Bethell]
with allergies should be frightened of. On the second dose, the MHRA has been clear that there is no evidence that the current round of mutations we have seen has any impact on the vaccine, and that it in no way increases the need for an accelerated second dose.

Viscount Younger of Leckie (Con): My Lords, I would urge speakers to keep their questions short—one question, please—to allow all speakers to contribute.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, based on the scientific and medical evidence, which undoubtedly will be gathered throughout this vaccination process, can the Minister indicate if there will be annual rollouts of the vaccination programme from 2022 onwards?

Lord Bethell (Con): My Lords, I cannot look into the future with that much clarity, but the noble Baroness raises a possibility that surely must be accounted for. It is possible that this kind of coronavirus may mutate; it may need to be managed, as we do other flus. It is too early to make that call but that is the kind of thinking that goes into the development of the NIHP—the new National Institute for Health Protection.

Lord Rooker (Lab) [V]: My Lords, I declare an interest as someone who is shielding. I too congratulate everybody involved in the vaccine project. The Minister alluded to the targets; I have to assume that we are going to vaccinate 350,000 today, so that we can maintain the target. That is really important. On the rural aspect, I live in Shropshire. Those who run Shropshire live in the north and tend to forget south Shropshire, so the issue of rural vaccination is pretty crucial. But can I make one final point relating to the point that my noble friend Lord Winston raised earlier on? I am in a position to ask the Minister a question today only because I gave my informed consent on three or four occasions in the last 12 months. I did not look on that as a specific performance contract by the NHS; I looked on it as allowing the NHS to do things to my body to help me survive. If they come along and change their opinion about the way they want you to survive, we should go along with their advice.

Lord Bethell (Con): The noble Lord makes the point extremely well, and I agree.

Baroness Sheehan (LD) [V]: My Lords, no one is safe until everyone is safe. Does the Minister agree? If so, what thought have the Government given to supporting the temporary TRIPS waiver proposal by South Africa and India, given that it will help the WHO's efforts to co-ordinate the local supply of vaccines through its C-TAP initiative?

Lord Bethell (Con): My Lords, I would put the truism slightly differently: the vaccine makes you pretty safe, but it does not mean you are not dangerous to other people. I think we all have to get used to that. Regarding the South African variant and the other variants popping up in Brazil and elsewhere, this is a manifestly different disease that is growing up around the world. It has a huge implication for international travel. We are working with the WHO and other groups to try to understand this, but it is certainly of grave concern to the country.

Lord Farmer (Con): My Lords, I join many others in applauding the Minister and the Government on their vaccination energy and foresight, and for being leaders in the world, frankly. Given the Minister's zeal and energy, he informed the House on 30 November that the SIREN and Oxford healthcare workers studies would report on the level of sterilising immunity provided by natural infection before the end of 2020. Have they concluded that antibody protection can be relied upon for at least six months after infection, or longer, and what are the implications for herd immunity?

Lord Bethell (Con): My Lords, the SIREN study is an important study on antibody protection. My understanding is that it is due to be published very soon indeed, and when it is, I will be glad to share the insight with my noble friend.

Lord Walney (Non-Afl): Further to the question from the noble Baroness, Lady Richie, the Minister told your Lordships' House yesterday that was there was a very real threat that a variant could start escaping the vaccine. In those circumstances, could there not be a need for a massive standing vaccination programme, far beyond the national flu jab scheme, and are the Government therefore making contingency plans for such a challenge?

Lord Bethell (Con): That is a gruesome prospect and not one that I like to see in a debate like today's, where there is so much positivity. However, the noble Lord is entirely right that mutations may go that way. The good news is that the current round of mutations that have been seen in Kent, South Africa and Brazil seem to be about transmissibility, not escapology. It is as though the car had driven into the pits and had a turbo attached to it, but not camouflage equipment. But that could happen, and if it did, we would indeed have to look at much more emphatic and systematic long-term vaccination programme.

Baroness Altmann (Con) [V]: My Lords, I too congratulate the Government and the Minister on all the tremendous work that has been done, especially on the vaccine. Can he say what the hold-up would be for a 24/7 programme, what the scale of supply is, and when a supply chain might be available that could deliver 24/7 vaccination? The scale of damage to other aspects of the health of our nation as well as to the economy is unsustainable. This is like a war effort but we absolutely need to be rolling out this vaccine as quickly as we possibly can.

Lord Bethell (Con): My Lords, I completely hear my noble friend's encouragement, and her advocacy on behalf of business and a return to normal is heard loud and clear. The deployment is happening literally as quickly as we can possibly make it. I suggest to her

that even NHS workers have to sleep, they have families, and it is not possible to run operations through the night on a mass scale. You cannot force people to turn up for a vaccine. I am not sure that the idea that millions of people will turn up at 4 o'clock in the morning for a vaccine is entirely realistic. However, my noble friend's point about scale and whether we can move faster and turn around the situation more quickly is extremely well made. I reassure her that we are doing everything we possibly can.

Baroness McIntosh of Pickering (Con) [V]: Will my noble friend join me in congratulating dispensing GPs in rural areas on hitting the main target group of over 80 year-olds? Can he confirm that the latest spike in care homes may be attributable to the fact that a second dose is not being administered within 21 days? Will he revert to that practice as far as possible and ensure that the same vaccine is given for the second dose?

Lord Bethell (Con): I pay tribute to the role of dispensing GPs, who will play an incredibly important role in the rollout. However, I reject the suggestion that any spike in care homes is in any way related to decisions on the second dose. The new variant has spread throughout society, including care homes, and that is the explanation for the spike.

Baroness Bennett of Manor Castle (GP) [V]: Can the Minister assure the House that the Government have a co-ordinated plan involving not just vaccination but improved test, trace, self-isolate and support, and flexing controls on commercial and social activity to reduce and control the levels of the virus over the coming weeks and months? Can he tell us when the Government plan to publish such a plan? Obviously, events will have an impact, but now that we have had a year of learning about the virus, surely the Government have an overall vision of how we as a nation will emerge from the pandemic, and it would help us all if that was shared with the nation.

Lord Bethell (Con): The noble Baroness is right that we have the vaccine today but that does not mean that we will not need to be testing, distancing and washing tomorrow. In fact, there will be a very large number of people—tens of millions—who will not be vaccinated through the summer but who could still catch the disease. We have to make provisions for our public health to protect those people in the workplace, in society and in their homes. The plan is very clear—it is the plan that we have already. However, the noble Baroness is right that we have to be focused on it and ensure it is kept up to date and deployed with energy and enthusiasm.

Lord Randall of Uxbridge (Con) [V]: I thank my noble friend for his assiduous and clear briefing to the House. Can he thank those who have already delivered vaccines to our overseas territories? Perhaps in due course he can let me have details of what has been delivered to individual OTs and the plans for the coming weeks.

Lord Bethell (Con): I pay tribute to colleagues in the FCDO, which has been a tremendous advocate for overseas territories. We have made considerable provisions to ensure that vaccine supplies are provided to the far-flung territories, where we have strong relationships and a duty of care. I would be glad to write to him with the details of that deployment.

Baroness Uddin (Non-Afl): My Lords, anyone questioning the horror of the disease and the pressures on the NHS need look no further than outside their local hospitals, as I did, notwithstanding that questions on efficacy, information and choices are the fundamental right of every patient. The Minister will know that the Bangladeshi community has a very high vaccination compliance rate, but in this case there has been quite a lot of confusion. Can he yet again confirm that sufficient bilingual material is being made available to the community, and will he agree to meet with me and some experts on this issue?

Lord Bethell (Con): My Lords, that is a very good reminder. I will be glad to return to the department and check that the bilingual material is as she asks, and I will write to her with the details.

Lord Mann (Non-Afl) [V]: My Lords, the NHS has been put in charge of this and is delivering big time, and everyone I speak to is delighted about the way the rollout is going. When we move into the next phase, will workplaces be targeted, so that they are able to do their own logistics and get thousands done at a time, quickly, cheaply and easily?

Lord Bethell (Con): My Lords, that is a decision for the NHS deployment team. I do not know the precise answer but frankly, based on experience I would guess that NHS environments are probably the focus for the deployment—that the focus is on where NHS staff can have safe, hygienic environments, rather than on workplaces. However, I will take the noble Lord's idea back to the department and write to him to see whether that is being considered.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, all questions have been asked.

Antique Firearms Regulations 2020

Motion to Approve

2.18 pm

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

That the draft Regulations laid before the House on 25 November 2020 be approved. *Considered in Grand Committee on 6 January.*

Motion agreed.

Arrangement of Business

Announcement

2.19 pm

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, we now come to day 2 of Report 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. Interventions during speeches or "before the noble Lord sits down" are not permitted and uncalled speakers will not be heard. Other than the mover of an amendment or the Minister, Members may speak only once in each group. Short questions of elucidation after the Minister's response are permitted but discouraged. A Member wishing to ask such a question, including Members in the Chamber, must email the clerk.

The groupings are binding and it will not be possible to degroup an amendment for separate debate. A participant who might wish to press an amendment other than the lead amendment in a group to a Division must give notice either in the debate or by emailing the clerk. Leave should be given to withdraw amendments. When putting the Question, I will collect the voices in the Chamber only. If a Member taking part remotely wants their voice accounted for if the Question is put, they must make this clear when speaking on the group.

Covert Human Intelligence Sources (Criminal Conduct) Bill

Report (2nd Day)

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

2.20 pm

Clause 1: Authorisation of criminal conduct

Amendment 12

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

12: 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, in moving Amendment 12, which seeks to prohibit the granting of criminal conduct authorisations to children, I wish to speak to Amendment 13, which does the same for vulnerable adults and victims of trafficking. These amendments build on proposals from me and other noble Lords in Committee. I will then say a brief word about Amendment 24 in the name of the noble Baroness, Lady Kidron, to which I have added my name. It does not offer all the protection of my amendments, but it is a useful advance on where we are at the moment and may provide the basis for consensus. The arguments for Amendments 12 and 13 apply with equal force to Amendment 24.

Let me begin by thanking Ministers for the extensive discussions between Committee and Report, and for facilitating a presentation by those in the Met Police who are at the operational end of the policy and a briefing with IPCO. Both were helpful in getting an insight into the reasons for using underage CHIS and the way the regime is supervised. I am also grateful to my noble friend the Minister for recognising the concerns expressed by me and others in Committee, and for tabling amendments with additional safeguards. As always, she has gone the extra mile to try to reach a compromise; it sounds churlish against that background to say that I still believe it wrong to use children.

Let me briefly summarise the argument for banning the use of children as CHIS—a reform whose time will surely come, when what happens now will be regarded as Dickensian. First, we have the clearly stated view of the Children's Commissioner, who has a statutory role to advance and monitor the UN Convention on the Rights of the Child:

"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."

That is pretty unequivocal.

Secondly, we have the Children Act 2004. 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".

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."

How can one promote the welfare of a child or act in its best interests by tasking some of the most vulnerable children in this country—some as young as 15—with infiltrating some of its most dangerous organisations and groups, including drug cartels, sex-trafficking rings and, potentially, terrorist cells? The circle cannot be squared. Either the interests of children are paramount or they are not.

Thirdly, children—often vulnerable, yet to come to terms with adulthood—are unable properly to assess the risk of what they are being asked to do, or even the extent of the mission. Those under 18 are legally children, whom Parliament has decided cannot be entrusted with a vote, get married or, indeed, buy alcohol. How can 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—and, indeed, the incentives that we have heard are being offered—from people whom they should trust and who might have been expected to save them?

Fourthly, related to that, far from encouraging children to get further entangled in criminal activities, those who have the best interests of children at heart should do precisely the opposite: disengage them from that

environment at the earliest opportunity and so help them to rebuild their lives away from crime. The police should be pulling children away from criminality at every turn instead of pushing them further into the arms of serious criminals, often being asked to continue a harmful relationship, commit crimes and penetrate criminal gangs.

Fifthly—and finally—using underage CHIS is risky, as everyone recognises. However careful the authorisation, harm may come to a child. Their cover may be blown; reprisals may be taken. I make one prediction: if, tragically, an underage CHIS were to be killed, the policy would be reversed the next day after a public outcry and incredulity that this was permissible. What is proposed in the Bill is that the state should have immunity for conduct for which it regularly takes parents to court. It is creating a statutory mechanism expressly to permit the harming of children, and Parliament should stop it.

In Committee, there were 14 Back-Bench speakers, a large majority supporting the amendment and others seeking greater justification for the policy before deciding. I mention one or two contributions from among the many remarkable speeches. There was the noble Lord, Lord Dubs, who, before the debate, believed that there were circumstances when the policy could be justified but, having listened to the arguments, declared himself in favour of an outright ban. There was the noble Baroness, Lady Young of Hornsey, who powerfully asked us to consider putting our own 15 or 16 year-old into the role of a CHIS. Unsurprisingly, my noble friend the Minister acknowledged that this would be very difficult indeed for her to imagine.

In her speech, my noble friend pointed to the judgment of Mr Justice Supperstone, in which he considered this very issue of children's welfare. She also referred to it in the email that we received at 1.58 pm. Understandably, I have not time to absorb that fully, but the Supperstone case does not apply exactly to the question at hand. Because of the scope of the Bill, the amendment cannot, sadly, prohibit the tasking of children as CHIS; it can only prohibit them being granted criminal conduct authorisations. There is a difference between passively observing criminal activity, as in the judgment, and blessing in advance the commission of a crime, as in the Bill. Further, the court recognised:

> "The very significant risk of physical and psychological harm to juveniles from being a CHIS in the contact of serious crimes is self-evident".

The Bill goes above and beyond what courts have previously assessed by enlarging the scope of activity for underage CHIS.

After the debate, the Minister kindly arranged for the noble Earl, Lord Russell, and me to talk to two police officers from the Met with direct experience of handling underage CHIS. I was impressed by their determination to ensure that the law and guidance were properly followed. Records are kept, decisions and reasons are recorded, and alternatives are considered before authorisation.

I make two comments, which are not criticisms. First, once the case has been closed, there is no way that they would know if there had been any long-term impact on the child, who may by then be over 18, or what they had been through—a point well made by the noble Baroness, Lady Bull, in her speech in Committee. We know that trained police officers going undercover suffer from the consequences. Those who are underage will be even more vulnerable.

Secondly, their interpretation of whether the circumstances are so exceptional that an underage CHIS should be used comes from the perspective of the police. Their very mission is the prevention and detection of crime. Their interpretation may be different from that of, say, the Children's Commissioner, who, as I have said, believes that there are no circumstances where this is justified. The children's social workers or parents, none of whom have to be consulted or informed, might similarly come to a different view as to whether the circumstances warranted a CHIS. The decision is essentially a subjective one.

I am grateful to the Minister for listening to the debate and for tabling amendments; it is welcome that the Government have come forward with them. However, it is with some regret that I say that those amendments would not make a material difference to the lives of child CHIS. Indeed, they would make no difference at all to vulnerable individuals or victims of trafficking, since they are not contemplated whatever—something my Amendment 13 would put right.

2.30 pm

My concerns with the government amendments in this group are threefold. First, the proposals go no way to tightly defining the exceptional circumstances in which a child can be deployed. As I have said, there is an element of subjectivity about this. What level of risk of harm do the Government consider it appropriate for a child or, indeed, a vulnerable adult to endure? Secondly, the additional "protections" provided appear to be minor additions, or mere reflections, of pre-existing measures already found in the code of practice or the order. Thirdly, the supposed safeguards are provided by way of secondary legislation. My preference would be for any provisions to be detailed in the Bill itself, given the lesser amount of scrutiny provided to such instruments, as well as the fact that it is much easier for future Governments to remove, amend or water them down, should they so desire.

Amendment 13 extends the exemptions to vulnerable adults and victims of trafficking and many of the argument are similar, so I will not repeat them.

Finally, I have co-sponsored Amendment 24, along with the noble Baronesses, Lady Kidron and Baroness Hamwee, and the noble Lord, Lord Kennedy of Southwark. While that amendment would not prohibit the practice entirely, it would serve as a marked improvement on the status quo and ensure that the circumstances in which such groups are deployed are truly exceptional. There would be a guarantee that they could be engaged only where such authorisation is necessary and proportionate, considering the welfare of the source. The practice should be compatible with, and not override, the best interests of sources under the age of 18. Deployment could be granted only after all other methods to gain information have been exhausted, and if the source is not at risk of any reasonably foreseeable harm, both physical and psychological, arising from such deployment.

[LORD YOUNG OF COOKHAM]

These requirements should make the deployment of children, vulnerable adults and victims of trafficking very difficult indeed, and impossible where there exists any risk to their physical and psychological well-being—risks that are certainly imposed on many of those currently deployed.

Depending on the contributions to this debate, particularly those of the official Opposition, I reserve the right to test the opinion of the House on Amendments 12 and 13, but I hope that the noble Baroness, Lady Kidron, when the time comes, will press Amendment 24 if it is not accepted by the Government. I beg to move.

Baroness Massey of Darwen (Lab) [V]: My Lords, the noble Lord, Lord Young, has spoken passionately and eloquently about protecting children, as he did in Committee. He made an excellent start to this debate.

I shall speak to Amendment 14, which prohibits the authorisation of criminal conduct by children without specific prior judicial approval. I thank the Minister for arranging for my noble friend Lord Dubs and me to meet officials in the Home Office to discuss this amendment. This was useful and informative but my concerns remain about the use of children in criminal circumstances.

The Joint Committee on Human Rights, of which I am a member, reported on the Bill last November. The government response to the report was published on Monday and makes substantial reference to criminal conduct by children, for which I am grateful. I shall refer to those reports.

I come to the Bill as someone who has worked with children—anyone under the age of 18, as defined in the UN Convention on the Rights of the Child—for many years. I am not sentimental about children, but I believe that they have rights as set out in the UNCRC—not just legal rights, although they are important, but moral and ethical rights such as protection, safety, family life and the right to be heard. Societies that nurture, cherish and attend to the total welfare of children are civilised societies. No society should endanger children. They need protection but also empowerment to take responsibility for themselves and others, and to learn to express opinions constructively. I like to think that the UK aspires to these principles of the UNCRC which it has ratified. We are fortunate in this country in having an articulate, dedicated voluntary sector for children that keeps us vigilant to their needs.

I cannot see how a child could be used to commit a criminal offence without there being a risk of danger, physical or psychological. As the noble Lord, Lord Young, said, I would prefer children not to be working as CHIS at all, but if they do we must make the situation as watertight as possible. I and other noble Lords know of cases where children have been let down and exploited by systems, and fallen through the net to physical and psychological harm, sometimes death. That must be prevented at all costs. It is why my amendment seeks high-level judicial approval before a child can take part in criminal conduct. The organisations Justice, Just for Kids Law and the Children's Rights Alliance for England call that "meaningful safeguards".

Amendment 24 in the name of the noble Baroness, Lady Kidron, and other noble Lords is very worthy. The noble Lord, Lord Young, referred to it as a useful advancement. I recognise also that she and her co-signatories are people who also care deeply about children's welfare. That amendment extends additional protection not only to children but to vulnerable adults. That is important but, and this is a big "but", it does not provide for independent judicial scrutiny of a CCA being made in respect of a child or other vulnerable person. It imposes a requirement that there should be exceptional circumstances before an authorisation is granted and makes it clear that other interests cannot be more primary than the child's, and that it must have been determined that the child will not be in any danger of foreseeable physical or psychological harm. That amendment also makes compulsory the presence of an appropriate adult for all under-18s when meeting with the investigating authority. It requires any use of a CCA in respect of a child to be reported to the Investigatory Powers Commissioner within 18 days.

Amendment 24 meets most of the concerns of the Joint Committee on Human Rights about the welfare of children under CCAS. However, a major concern is that there is no independent decision-maker—only independent review after the event by the IPC. This system can pick up an abuse of power only when it has happened. Tough, independent assessment of whether a child should be used as a CHIS should be made before the child moves into a dangerous situation. I am sure the people working with these children are caring and professional, but this is such a serious issue for children that a judicial commissioner should look at each case and make the final decision.

I know that the Minister, speaking on different amendments on Monday, said that she could not agree with prior authorisation. I am not sure why. It may be that she can tell me more. There are not that many children in such a position—between 12 and 17 between 2015 and 2018. Undue delay would therefore be unlikely and the children's cases would have double scrutiny, which is what they deserve, due to the seriousness of what they are being asked to do. If Amendment 24 is accepted by the House, I shall not put my amendment to the test but will suggest further action. The government amendment does not add much to what we have already heard, and we need to go further. That amendment, however, recognises that there are concerns about authorising children as CHIS and makes efforts at reconciliation, as the noble Lord, Lord Young, said.

This issue is not new. The Joint Committee on Human Rights raised concerns in 2018 and 2019 with the Minister for State for Security and Economic Crime and the Investigatory Powers Commissioner. In 2019, the High Court assessed whether the scheme in place to regulate the use of children as CHIS provided sufficient safeguards to comply with Article 8 of the European Convention on Human Rights. The court concluded that the scheme was compliant. However, it was accepted that the use of a child as a CHIS was

"liable to interfere with the child's 'private life', which covers the physical and moral integrity of the person. The dangers to the child of acting as a CHIS in the context of serious crimes are self-evident."

The Joint Committee on Human Rights concluded that the Bill must be amended to exclude children or to make clear that children may be authorised to commit criminal offences in only the most exceptional circumstances. I suggest that those exceptional circumstances should have independent consideration at the highest level.

The Government's response to the JCHR report gave considerable space to discussion of these issues in relation to chapter 6 of the report. But they came up with, to me, a rather tenuous argument, stating that

"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 … 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 … 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".—[*Official Report*, 3/12/20; cols. 937-8.]

I can see absolutely no logic in that statement.

Indeed, a former undercover police officer, with experience of being a CHIS, has said that

"Children recruited as informants are also highly likely to end up getting drawn back into criminality and feeling trapped in their situation."

I am aware that the noble Baroness, Lady Hamwee, knows something about those situations.

A leading and highly respected child psychiatrist has said that

"the deployment of children as a CHIS could incur significant … emotional damage to the child and could in fact engender the creation of new criminals by placing them in criminogenic environments."

This is not child protection; it is not respecting children's rights. It is dangerous and potentially destructive. Every care must be taken, and we have a duty to see that that happens.

I have the greatest respect for the Minister and admire her common sense, sensitivity and practicality. Might I suggest that this whole operation needs to be taken away and looked at again very carefully, with an independent review? This should cover: the types of involvement by children; how children are assessed as suitable for such work; how the views of children, parents if appropriate and those accompanying children are taken into account; what psychological support is offered; and how children are assessed and supported after their involvement as CHIS, and for any long-term effects.

This may result in a recommendation not to use children in this fashion—I would welcome that—or in more stringent methods of prior independent authorisation being employed, as suggested by my amendment. The current situation in which children are used as CHIS cannot remain the same. I hope that the Minister will consider this suggestion. This issue is not going to go away; indeed, it is likely to intensify. I look forward to her comments and thank noble Lords for their time.

Baroness Kidron (CB) [V]: I speak to Amendment 24 in my name and that of the noble Lords, Lord Young of Cookham and Lord Kennedy of Southwark, and the noble Baroness, Lady Hamwee. This sets out the safeguards and protections that should exist if we ask a child to commit a crime as a covert human intelligence source. I pay tribute to the work that many have done on this issue, including the noble Lords who support this amendment; the noble Baroness, Lady Young of Hornsey, who raised these concerns so admirably in Committee; the right reverend Prelate the Bishop of Durham, who has left us with no doubt where right lies; and my noble friend Lord Russell of Liverpool, who has taken time to go through the interlocking amendments and considerations with me.

I also acknowledge the tireless efforts of Stella Creasy MP, in bringing this issue forward in the other place, and the children's rights advocates Just for Kids Law, which brought the court case on this matter last year. I have taken up the baton for this work at their request. As many of your Lordships know, my time, both in the House and beyond its walls, is spent as an advocate for children's rights online and offline. I have great sympathy for the other amendments in this group, but I speak to Amendment 24 only and will make some points about government Amendment 26. I note and take to heart the words of both the noble Baroness, Lady Massey, and the noble Lord, Lord Young of Cookham; while I have their support for what I propose, it is the absolute minimum that children require and is not ideal, in their view. I declare my interests set out on the register.

Children do not all have the same circumstances. It is simply a fact that some children will not be as well-loved as others, some not as well-cared-for and some not as well-behaved. None the less, whether they are loved, cared for or well-behaved, any person under the age of 18 is a child. In a context where a person under the age of 18 is being asked to be a covert source and do something illegal, we must ensure that they remain a child in the eyes of all who play a part. In every other interaction with the criminal justice system, we try to remove children from criminal activity to take them away from harm and towards safety, but before us is legislation that formalises our ability to do the opposite.

2.45 pm

The Government have said that

"Participation in criminal conduct is an essential and inescapable feature of CHIS use, otherwise they will not be credible or gain the trust of those under investigation."

If, and it is a big "if", we make this extraordinary demand of a child, we must set a very high bar for the circumstances in which that happens. Amendment 24 does just that. It writes into the Bill the principle that no child should be asked by the state to commit a crime except in exceptional circumstances. It determines that a child can be asked to do so only when there is no possibility that they will come to harm. It upholds our obligations, under the Convention on the Rights of the Child, to treat all children under 18 as children. It ensures that all children get the support of an appropriate adult, currently offered only to children under 16.

If a child is arrested for shoplifting at 16 or 17, an appropriate adult would oversee their interactions with the police on the understanding that there is a fundamental power imbalance between the accused and the police, particularly when the accused is a child. Under the

[Baroness Kidron]

Government's current plans, there is no such obligation to appoint a person for children who are 16 and 17, meaning that they can be recruited by the police with no one knowing—not their parents or a social worker—and then asked to inform on people, even their own parents, and to remain in dangerous situations, at great personal risk. They have no legal advice or independent voice to question or support.

The Government have suggested that this is because

"a child becomes increasingly independent"

and mature

"as they get older and that parental authority reduces accordingly."

It is true that children have an evolving capacity as they approach adulthood, but it would be ludicrous if we determine in law that a child who shoplifts is in need of a guardian when they talk to the police, but that a child, under these most extreme of circumstances, who is asked to commit crimes at the behest of the police is deemed sufficiently mature and in no need of such support. This anomaly flies in the face of our traditions and culture and is a failure to uphold the Convention on the Rights of the Child, to which the UK is a signatory.

Amendment 24 also extends the protection of having a second pair of eyes and the principle of exceptional circumstances to vulnerable adults—victims of trafficking or modern slavery who may be older than 18 but are no less at risk of being placed in harm's way. It complements the amendment of the noble Lord, Lord Anderson, which will ensure that the IPCO needs to be notified of a CHIS authorisation, by ensuring that it is also notified about the exceptional circumstances that justify the use of a child or vulnerable person.

Before turning to the government amendment, I will say something about the circumstances of the children who find themselves in this situation. Most of the children of whom we will demand this extraordinary service, on behalf of the state, are already vulnerable: those 46,000 children in the UK that the Children's Society estimates are in gangs; those in exploitative relationships; those in criminal families; or those like the 17 year-old girl in the tragic story that the noble Baroness, Lady Hamwee, set out previously, who, while being prostituted by her boyfriend, was asked to continue in that situation to provide the police with information, and did not pull out until after she had witnessed a murder. She was a child in a situation spiralling out of control.

It is true that these children are few—reportedly, 17 children over three years—but even one child deserves the protections I have outlined, and the fact is that, in June 2018, the then Security Minister said that there was "increasing scope" for young people to be used as CHIS, since they are increasingly involved in criminal activity, particularly county lines gangs. This unhappy logic means that, as criminals increasingly exploit vulnerable children, we will demand their involvement in crime, on behalf of the state, more frequently. These are not simply covert human intelligence sources; they are also kids and must be treated as such.

I turn to the differences between Amendment 24 and government Amendment 26, which has been brought forward to tackle the same issue. It is a welcome admission that as it stands the legislation does not offer the safeguards that children require, but for the most part Amendment 26 simply repeats the status quo. It relies on amending the Regulation of Investigatory Powers (Juveniles) Order 2000. While Ministers may argue that it is better to keep all legislation regarding children and intelligence in one place, it can equally be argued that legislation that authorises criminality should also be in one place.

Where Amendment 24 writes into the Bill the principle of "exceptional circumstances", Amendment 26 offers only secondary protections via an order that has been amended before without the full scrutiny of Parliament. Where Amendment 24 defines "exceptional circumstances" in a way that ensures that there must be no foreseeable risk of harm to the child, Amendment 26 states only that

"the person granting or renewing the authorisation believes that taking the relevant risks is justified."

CHIS authorisations should involve only justifiable risks; this is not a sufficient test of exceptional circumstances where the CHIS is a child.

Amendment 26 states that children under the age of 16 cannot be used if they are asked to spy on their parent or someone who has parental responsibility. This is not additional; it already forms part of Article 3 of the existing RIPA order. Equally, the amendment says that the risks should be properly explained and understood by the child and that the best interests of the child should be the primary consideration. As we have already heard, this is also not additional; that we should act in the best interests of children is a right that all UK children already have. I have already pointed out at length the failure to consider the entitlements of 16 and 17 year-olds so I will not reiterate that but, given that the Government's plans do not offer them their entitlements, perhaps the Minister will say whether a child rights impact assessment has been carried out on the legislation, and why the Home Office feels able to ignore our obligations under the convention when the Department for Education has recently reaffirmed them.

Finally, proposed new Article 11 provides for children to be authorised to commit crimes for four months, but this is already the case. More worryingly, there is no limit to the number of times such an authorisation can be renewed—no maximum time limit that a child can spend undercover.

I do not doubt the good intentions behind Amendment 26, and I recognise that the Minister and her team have been active in trying to meet the concerns that so many noble Lords have outlined but, as I have set out the limitations of the Government's amendment in some detail, I hope that she will agree that it does not go far enough and undertake to take another look. Nothing would make me and my fellow signatories happier than for the Government to adopt Amendment 24. It would bring clarity and transparency to those who demand such a sacrifice from a child, and it would ensure that children who may be in all sorts of trouble are protected in those rare times when staying in a place of danger may help to tackle the source of danger itself.

I have informed the clerk that I intend to test the opinion of the House. I ask for noble Lords' support on behalf of children who find themselves in this extraordinary situation—children of all ages, children who are already vulnerable, children let down by so many adults and institutions that should have offered them protection but did not. Let us not be counted among them.

Lord Cormack (Con) [V]: My Lords, it is a real pleasure to follow the noble Baroness, Lady Kidron. She spoke movingly, authoritatively and with passionate conviction, as did the noble Baroness, Lady Massey of Darwen, to whose amendment I added my name, and my noble friend Lord Young, who launched the debate on exactly the right note.

It was quite clear in Committee, when I tabled an amendment on this subject, that there was widespread concern in all parts of the House at the use of children. This is the single most serious aspect of the Bill. We are in fact being asked to pass into law something that in any other circumstance would be illegal. This conundrum was referred to by a number of speakers in the debates we had on Monday. Now we come to the nub of the matter.

I am grateful to my noble friend Lady Williams of Trafford for the attempt she has made with her amendment, but I agree emphatically with the noble Baroness, Lady Kidron, that it just does not go far enough. I am also grateful to my noble friend for affording me the opportunity of discussing this matter and my concerns in two hour-long meetings organised by Mr Arthur Lau in her private office. I am grateful to all those who took part. I was reassured on one or two issues. We will come to those at a later stage.

I was to some degree won over by the arguments of a senior police officer—clearly a man of unimpeachable integrity—who talked about the need to employ occasionally young people in tackling things such as county lines and sexual assault of young girls. He convinced me to some degree to table my Amendment 19, which would in exceptional circumstances allow 17 and 18 year-olds to take part as CHIS, but would draw the line at those aged 16. There are precedents for drawing the line at 16, such as the age of consent et cetera.

I am not sure whether I will put my amendment to the vote. It depends on what is said in this debate, particularly by my noble friend the Minister. There is a logic to the age of 16. It is a very sad fact that a great many crimes, many of them violent, are committed by 16 and 17 year-olds. Many of the stabbings in London and in other parts of the country have involved young people of that age and thereabouts. There is no point denying that county lines depend to a very considerable degree on the exploitation, manipulation and abuse of young people. I can see that there is a certain logic in using 16 and 17 year-olds in exceptional circumstances, much as I deplore and regret it.

However, I believe emphatically that the line has to be drawn somewhere. If it is drawn at 18 by the will of your Lordships' House I shall be entirely content. If it is drawn at the age of 18 but with very real conditions attached, as they are in the amendment from the noble Baroness, Lady Kidron, I will be tolerably satisfied that we have made a step forward, but there is much to be said for being clear and emphatic, and for having a specific age in the Bill below 18 but not below 16 in any circumstances.

3 pm

It is a very troubling provision of this Bill. The nation has rather lost its moral compass in the last two or three decades, and I believe very strongly that this is not something that we should gently accept. We have to put back into public and private life the standards that, formerly, when I entered the House of Commons in 1970, were more or less taken for granted. I say to my colleagues on the Front Bench that I cannot support the Bill as it is in this regard. Much as I accept totally her utter sincerity, I cannot accept Amendment 26, put down by my noble friend, as being "adequate and fit for purpose", to quote the noble Lord, Lord Reid of Cardowan—a phrase that has now entered the lexicon.

We are contemplating doing something that is completely against the grain for those of us who believe in the rule of law and a law-abiding society. If we are to do it, with the greatest of reluctance, we must heed the words of my noble friend Lord Young, who has put his name to Amendment 24, the noble Baroness, Lady Kidron, who introduced it so passionately and movingly a few minutes ago, and the noble Baroness, Lady Massey of Darwen. We must not let this Bill leave your Lordships' House unamended.

The very best solution would be to have no Division at all today, but for my noble friend the Minister to hold a round table with all those who have concerns and to try to put down something in her name which reflects those concerns. If that is not done, I reserve my right to move my amendment. I also declare unequivocally that, if she does not do that, I cannot give my vote to government Amendment 26, or withhold my vote from the amendment that seems to be commanding a consensus within your Lordships' House.

Baroness Hamwee (LD) [V]: My Lords, I was very pleased to put my name to the amendment in the name of the noble Lord, Lord Young, and the amendment in the name of the noble Baroness, Lady Kidron, and to be in the company of those who have spoken so far. At a point when I thought that the issues around the granting of criminal conduct authorisations to vulnerable people might be lost because of the detail of our procedures, I tabled Amendment 25, but the point was not lost in the amendments from those of us who are not satisfied by the Government's proposals.

Many noble Lords have been very clear about what ranges from discomfort to the widely held deep anxiety about using a child as an agent, and the even greater anxiety about authorising—which must often be heard as instructing—a child to commit a crime. We know what we think about grooming: we condemn it and we support measures to prevent or, if need be, respond to it. We are aware of the complexities of the development of a child's brain—indeed, of its development well into an adult's 20s. The noble Baroness, Lady Bull, was very clear about this at an earlier stage. I am bluntly opposed to involving someone under the age of 18—a child—in such activities. I feel that I would be complicit in something that I abhor by giving conditional approval, and very uncomfortable about

[Baroness Hamwee]
applying the art of the possible to assessing what might be agreed by the House in the case of a child. Weighing two moral goods against one another tests anyone.

I understand the point made by the noble Baroness, Lady Massey, about prior judicial approval—I fear that that ship has sailed, for the moment, at any rate—as distinct from notification, as mentioned by the noble Baroness, Lady Kidron. It is, as I said, the art of the possible. However, better that there is something rather than nothing. I am not dismissing explanations of the situations in which only someone very young would be credible, nor of steps taken by the authorities now, to which the noble Lord, Lord Young, referred.

Therefore, while supporting the amendment tabled by the noble Lord, Lord Young, I have added my name, on behalf of these Benches, to Amendment 24, tabled by the noble Baroness, Lady Kidron. It covers, as it should, people who are vulnerable—in the words of the amendment—who are often involved in county lines, as cuckoos, for instance, and victims of modern slavery or trafficking, about whom the noble Baroness, Lady Young of Hornsey, has spoken so clearly.

On the one hand, we want to support and protect the people described in the amendment

"against significant harm or exploitation".

On the other hand, we are prepared to put them in the way of exploitation or mental and emotional harm, which they are not equipped to deal with. On the one hand, we congratulate ourselves on our world-leading legislation and activities to deal with modern slavery and trafficking, and on what we do to support those who have escaped or been rescued from it. On the other hand, we are prepared to make use of them in such a way as to run the risk of further harming survivors, who need to recover, and whose view of authority figures in Britain needs not to be undermined.

The Minister will direct us to the term "proportionate". That needs the detail of the factors that apply, hence the words "exceptional circumstances" in proposed new Section 29C(7). Our amendment brings the welfare of the child into the requirements of "necessity" and "proportionality". The criminal conduct authorisation must be compatible with, and not override, the best interests of the child. More than it being "a primary consideration", in the words of the convention, I wonder whether the convention's authors contemplated this situation. All other methods must have been exhausted and, most importantly, there must not be a risk of reasonably foreseeable physical or psychological harm.

The Government's amendment may at first glance seem beguiling. It does more than double the length of the 2000 order, but it does not even put the safeguards of that order, as it is now, on the face of the Bill—it merely amends the order. This is secondary legislation, or secondary protection, to pinch the phrase used by the noble Baroness, Lady Kidron. The importance of primary legislation is something that we have alluded to a good deal. Essentially, it deals with CCAs under Section 29B, separately from the engagement of a spy or source under Section 29, without materially adding to the limitations. Incidentally, I am amused, given our debate on Monday, to see that a CCA granted to a child is limited to four months.

I note, of course, Amendment 40, which requires the Investigatory Powers Commissioner to keep under review "in particular" whether authorities are complying with requirements in relation to children's CCAs. Either this is unnecessary—and we should think so, in the light of what we have heard from the Minister regarding review—or it weakens the IPC's duties regarding adults.

There is nothing in the amendment about the vulnerabilities of those explicitly and rightly included in the amendments tabled by the noble Lord, Lord Young, and the noble Baroness, Lady Kidron. I congratulate the noble Baroness on taking up this baton and arguing the case so powerfully.

Baroness Chakrabarti (Lab) [V]: My Lords, it is a privilege to follow the noble Baroness, Lady Hamwee, and all those who have spoken, but it is a sad one indeed. Before we, to use her words, congratulate ourselves on our caveated, compromised support for children's rights, I want to be absolutely clear that, during the passage of this Bill, absolutely no one in your Lordships' House has done more than the noble Lord, Lord Young of Cookham, to truly attempt to protect children's rights, so my ultimate tribute is to him.

I was also incredibly grateful to my noble friend Lady Massey for her brilliant exposition of the Joint Committee on Human Rights' views on this aspect of the legislation. Its report on the Bill overall is one of the finest I have seen from any committee of either House when it comes to analysing and apply human rights principles. I offer great thanks to her on behalf of the whole committee, which is chaired by Harriet Harman in the other place, of course.

The road to hell is paved not just with good intentions but with "exceptional circumstances" as well. While the noble Baroness, Lady Kidron, also made a very passionate speech, I am afraid that even Amendment 24 contains too many caveats and holes to give proper protection to children from what is, ultimately, I am sorry to say, state-sponsored child abuse. To use a child as a CHIS is, I am afraid, just that. The noble Lord, Lord Young, put it very well when he said that, were there to be a scandal involving a child CHIS, the pendulum would swing very quickly. I hope that this time will come sooner rather than later—without such a scandal and the great damage to, or loss of, a child.

Of course, it has to be said that the scope of this Bill never allowed us to do what we really should be doing: banning the use of children as undercover operatives altogether. We were never allowed that opportunity by the Long Title of the Bill. That is the game that those engaged with drafting government legislation play. I was a Home Office lawyer for some years, and I know that the game is to make the Long Title sufficiently narrow to prevent a whole wealth of amendments. However, we should not have been looking at undercover operatives just in relation to criminal conduct without being able to look at the overall scheme, including judicial authorisation, not just of children or criminal conduct but undercover operatives altogether. As such, we start from a very imperfect place.

I am afraid that even Amendment 24 allows a relevant agency to decide whether an adult, including "the parent or guardian" of the child, is "deemed

appropriate". Crucially, in defining "exceptional circumstance", the amendment uses the words "necessary and proportionate"—not even the higher human rights standard of "strict necessity". That is very unfortunate indeed.

I will be clear: the best way—although it is still not perfect—to protect children in this group would be to support Amendments 12 and 13, in the name of the noble Lord, Lord Young of Cookham, and the Joint Committee on Human Rights' Amendment 14. That package is the best we could do to do right by children—but, of course, I heard the signal from the noble Lord, Lord Young. I hope that both Front Benches will get behind his position, the human rights position. If they do not, I will follow his lead and vote for the sticking plaster over the gaping wound of child abuse that is Amendment 24, but I would do so with an incredibly heavy heart and more than a little embarrassment. I do not blame the noble Baroness, Lady Kidron, but, as I say, her speech, at its best, was an argument for Amendments 12, 13 and 14.

3.15 pm

I will also address the noble Lord, Lord Cormack, his wonderful speech and the principled positions that he has explained throughout the passage of this legislation. He is quite right that, if even 18—the age given in the United Nations Convention on the Rights of the Child—is not good enough, surely 16 would be an absolute line. Is there no absolute when it comes to child protection?

This is a very upsetting part of this debate, and I cannot help but recall that, on an ongoing basis, when it comes to assessing young people in another area of Home Office practice—asylum seekers—the Government take a very different view. When a young person presents as an unaccompanied minor to claim asylum in our country, looking as if they might be under 18 years old, the Government and Home Office take the opposite view to the one they take here: they are very quick to say that, actually, that young person is much older but just looks younger than they are.

When it comes to county lines or any other real and pressing danger to our communities, it would be perfectly possible for state agencies to engage and employ 19, 20 or 21 year-old people who look younger than they are. That would square the circle without doing this terrible injustice—this enormous breach of human rights—and putting our children and young people in danger. So, I urge all Members from across the House to get behind Amendments 12, 13 and 14 and to follow the lead of the noble Lord, Lord Young.

The Lord Bishop of Durham [V]: My Lords, it is humbling to follow the passion and wisdom of the noble Baroness, Lady Chakrabarti, and the wisdom of the noble Lords, Lord Young of Cookham and Lord Cormack, and the noble Baronesses, Lady Massey of Darwen, Lady Kidron and Lady Hamwee. I associate myself strongly with the points they have made.

I speak in favour of Amendments 12 and 14, in the names of the noble Baroness, Lady Massey of Darwen, and the noble Lords, Lord Dubs and Lord Cormack, to which I have been pleased to add my name. I also speak in favour of Amendment 24, whose sponsoring group, made up of the noble Baronesses, Lady Kidron and Lady Hamwee, and the noble Lords, Lord Kennedy of Southwark and Lord Young of Cookham, is wonderfully cross-Bench.

Therefore, it will be clear that my concerns relate to the situation of those who are children in law because they are under 18. My absolute preference lies with Amendment 12, which would make it illegal for anyone under 18 to be used as a CHIS. However, concerned that this will not be agreed, I wish to ensure that full safeguards are in place for those who are children in law. In doing so, I recognise, as we all do, that the number who are so used is very small and are mainly 16 to 17 year-olds.

I apologise to the House that, due to the time taken in Committee, it proved impossible for me to speak on the two amendments to which I had added my name when they were finally taken, and I am very grateful to my right reverend friend the Bishop of Carlisle for speaking for me.

I am here to reiterate the simple, immovable, moral truth that children must be treated as children, as many of my noble friends argued in Committee. It is not a question of ifs, buts or whens. We, as adults, have a moral obligation to protect children and safeguard their care and well-being in all respects: physical, mental, social and spiritual. Knowingly placing a child in harm's way and encouraging them to remain in harmful situations or with harmful behaviours may be in our interest, but it is not in the child's best interests. This is exacerbated by the likelihood that the small number of children recruited as CHIS are from a potentially vulnerable background and are already deeply damaged. We should be seeking their healing, not risking damaging them further.

In Committee, my noble friend the Minister said that "becoming a CHIS can, potentially, offer a way" for a child "to extricate themselves from such harm." While this sounds like a laudable thing, before being able to extricate the child, are we not potentially exposing them to more harm by encouraging them at times to remain involved in a criminal situation or behaviour? The Minister also argued in Committee that "appropriate weight is given to a child's best interests", but being a CHIS is surely never in a child's best interests. The use of child CHIS was justified in Committee through how it can help to remove them and others "from the cycle of crime". However, is the hypocrisy here not evident in first encouraging the child to continue in criminal behaviours and settings? We rightly condemn the use of child soldiers around the globe for the atrocity that it is. Let us not slip into a dangerous grey space where we permit the use of children to fight our battles against criminal gangs and county lines. Let us protect their vulnerabilities.

The various arguments made in Committee conveying how the use of child CHIS has not yet been abused were exactly what we wished to hear; why not ensure that this will always be the case? I note the remarks of the Minister that

"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

[The Lord Bishop of Durham]

public authority's duty of care to the child are key considerations in the authorisation process."—[*Official Report*, 3/12/20; col. 937.]

It is reassuring to hear that that has been the case to date. However, the purpose of this Bill is to put the future use of CHIS on a clear and consistent statutory footing. It seems to me that placing in this Bill the most comprehensive safeguards possible when it comes to children is wholly in keeping with the Bill's overall purpose. It is a necessary step for keeping the welfare and well-being of children as a primary consideration.

I welcome the Government's recognition in their Amendment 26 of the need to have authorisation in the Bill and not simply in a code of practice. I also welcome the need to protect those aged under 16 more fully than 16 and 17 year-olds. However, I remain concerned that the proposals in Amendment 26 do not go far enough—as already argued by the noble Baronesses, Lady Kidron and Lady Hamwee. I want to see the independence of a judicial commissioner in place for the authorisation of those aged under 18 as CHIS, with the parameters laid out in Amendment 14.

Amendment 24 has also been very carefully worked through by a wide range of organisations and people involved in concerns around the protection of the child. Therefore, I continue to support both these amendments. They recognise that our first and most important duty is to protect and support children and vulnerable people. If the mind of the House is tested on these amendments, I shall vote in favour of them. If the House supports them, I hope that the Government will undertake to accept them.

In relation to the proper protection of children, I reiterate my preference for Amendment 12. It would prevent the granting of criminal conduct authorisations to any child in clear and unambiguous terms. This is the clearest and simplest way of guaranteeing the protection of children and resisting the temptation to use them as assets in the fight against crime. I recognise that many in this House may see that as too absolute, thus I am also glad to put my name to Amendment 14, which would at least establish more effective safeguards for those aged under 18 in ensuring prior judicial approval that explicitly considers the potential for both physical and psychological distress.

I also support Amendment 24, which lays out specific and clear additional safeguards to ensure that children can be used only when there is no foreseeable risk of physical or psychological harm—or, I wish it also said, spiritual harm. It also lays out that the circumstances should occur only as a last resort and with the oversight of an appropriate adult. Combined, they amount to much better protections than those in Amendment 26. It is inherently wrong for those aged under 18 to be used as CHIS, hence my support for Amendment 12. If not that, we need the amendments that protect children most effectively. Let us keep the best interests of children at the fore.

Baroness Jones of Moulsecoomb (GP): My Lords, it is a pleasure to follow the right reverend Prelate the Bishop of Durham. His speech was passionate, as was the speech made by the noble Baroness, Lady Chakrabarti. I have raised this issue here in your Lordships' House several times over the years; it has never caught fire in this way. I do not understand. The noble Lord, Lord Young, spoke about public incredulity. If I ever mention this issue to members of the public, they are astonished that it was allowed to happen. This issue has caught fire because a Tory Lord—an hereditary Baronet—raised it in a very principled way. Suddenly, people heard it. I would welcome comments on why it was not heard from a Green. Why is this? Do people think I am too radical? Do they think I am making it up? I have no idea. I am sure that some noble Lords might like to comment on that.

In a previous day of debate this week, the noble Lord, Lord Cormack, corrected my use of "police spies" as being too limited because we are debating spying not only for the police but also for the security services and a host of other organisations. I accept that telling off in good grace. I could just use "spies" in the hope that it does not sound too glamorous.

On the appropriate words to use, the phrase "juvenile CHIS" is a fantastic piece of wordsmithing because it so effectively obscures what we are actually talking about. These are child spies. They are children and young people who have got themselves into some sort of trouble. When they caught by the authorities, instead of being rescued from that dangerous situation, taken into care and helped to rehabilitate themselves and change their lives, they are being returned to harm's way. They are put into what could be deadly danger. How is this even conceived of by the Government, the security services and the police? How on earth can they not see, as the noble Baroness, Lady Chakrabarti, said, that this is state-sponsored child abuse—a phrase I have used before.

After years of probing the Government on the use of child spies, I am yet to see or hear a single example of how the risk to the child is justified. I have heard stories of children being used, especially for county lines policing, where gangs use children and young people to extend their networks into smaller towns and expand their reach. However, we all should know that closing down any drug ring or network is a very temporary hitch in the supply of and demand for drugs. A rival or reconstituted gang will be up and running in days, if not hours. We have to understand that using children in this way is unacceptable because, in addition to everything else, it does not work.

That moves us on to drug policy, which needs drastically changing. I will look to the noble Lord, Lord Young, to pick that up in future. We can work together on amending drugs law because that urgently needs work.

I also deeply regret that the scope of this Bill is limited to prevent us banning the use of child spies entirely, but at least we can prevent them being permitted and encouraged by the authorities to commit further crimes. Obviously, I support Amendments 12 and 13, which have my name on. I also support Amendment 14. I am slightly iffy on Amendment 19, but I can see its value. If the noble Lord, Lord Young, does not push his amendment to a Division, I will vote for Amendment 24 in the name of the noble Baroness, Lady Kidron, because it is of value and it is better than nothing—but it is not as good as Amendment 12. I wish that the Labour Front Bench supported Amendments 12 and 13.

I was brought up in a Labour-loving household. My parents voted Labour all their lives, and their perception of the Labour Party was that it would always fight the big battles for the little people and that we could trust it to do the right thing. I would rather see a Labour Government than a Conservative Government, but, quite honestly, I feel that Labour has failed us here and I am extremely sad about that.

3.30 pm

I am very grateful to the broad coalition of noble Lords who are clearly against the use of child spies. All the amendments are cross-party, which should give the Government some pause for thought. If there is so much feeling about this issue among a mixed bunch of Peers, I think they should go a little further than their attempt with Amendment 26. Therefore, I urge the noble Lord, Lord Young, to push his amendment to a vote, but I shall understand if he objects to doing that, in which case I shall support Amendment 24.

Lord Dubs (Lab) [V]: My Lords, it is a privilege to take part in the debate on this amendment, with the many excellent speeches that we have had so far.

First, I thank the Minister for having arranged for my noble friend Lady Massey and me to meet some of her officials and police officers, and for the opportunity to have a long debate about the issues concerning children.

In introducing Amendment 12, the noble Lord, Lord Young, referred to the fact that I changed my mind in Committee, as though that was a very eccentric thing to do. I thought that the point of debates was to persuade other people to change their minds. He is absolutely right: I did change my mind—from a relative position to an absolute position on children not being used as CHIS—so I thank him for referring to that.

My noble friend Lady Massey set out the ground extremely well, competently and coherently. She and I are both members of the Joint Committee on Human Rights and, in a way, she has spoken for me as well, so I shall make only a few brief comments in support. I also welcomed the very powerful speech of the noble Baroness, Lady Kidron, although her amendment does not go as far as I would like. My preference is to fully support the amendment of the noble Lord, Lord Young.

I have three points to make. The first concerns the safety and well-being of children, the second is to do with mental health and the third concerns informed consent, and I want to say a brief word about each.

First, it is slightly curious that public authorities whose job it is to protect the welfare, well-being and safety of children should also, in a sense, be complicit in authorising or encouraging them to commit criminal offences. I fear that involving children as CHIS can damage their welfare and safety, and cause them harm in their lives many years later. We are subjecting them to enormous pressures by doing this and I am not happy about it.

Secondly, as an extension of that argument, there is the question of mental health. We are talking about young people who must, in the main, be extremely vulnerable. Very often they have deprived backgrounds, they have not had much going for them and they have suffered physically and emotionally. The mental health considerations seem sufficiently serious for us to say that we do not want to use children in this way.

Thirdly, there is the question of informed consent. My understanding is that, before anybody can become a CHIS, they have to give their informed consent. I just wonder whether a young person who is vulnerable, already involved in criminality, not sure of themselves in life and possibly with mental health problems can give their informed consent to taking part in these activities. How can a young person understand the full implications of going along with this? It seems a crucial step and they could be damaged for many years; indeed, they might never recover. It is a dangerous thing to ask them to do and I would prefer that we did not do so.

That is why my first preference, if I may put it that way, is for the amendment in the name of the noble Lord, Lord Young. My second preference is for Amendment 14, in the name of my noble friend Lady Massey. My third preference is to support the noble Baroness, Lady Kidron. I do not think that we can leave the Bill as it is. It is unacceptable that we should subject young people to such a dangerous situation. It is not a healthy or proper thing to do, and I hope that we will agree to one of the amendments—preferably that of the noble Lord, Lord Young.

Baroness McIntosh of Pickering (Con) [V]: My Lords, this is a fascinating debate. I thank the Minister for bringing forward her Amendment 26 and for the opportunity that she gave me to speak to professionals, particularly the police, operating in this field.

My starting point is obviously the same as that of others: Article 3 of the United Nations Convention on the Rights of the Child and the protection of the interests of the child. I find myself in agreement with paragraph 63 of the report of the Joint Committee on Human Rights. It concludes:

"The Bill must be amended to exclude children or"—

I agree in particular with this part—

"to make clear that children can only be authorised to commit criminal offences in the most exceptional circumstances."

Of course, it is entirely regrettable that we might have to rely on children—those below the age of 18 and sometimes, as we heard in Committee and today, over the age of 12—in any shape or form. However, I remember from the limited time I spent in practice at the Scottish Bar that it was impressed on me that there are such circumstances. For the purposes of today's debate, there are two separate circumstances that we need to focus on.

One is where a child might be asked to put themselves in a situation of risk—a situation that would rely even more on their consent than might otherwise be the case. But the situation that I think we should especially cover is where a child might already be in a situation of great risk to themselves or to their near family, particularly if they are migrants and are at risk of exploitation through trafficking for whatever reason—for example, modern-day slavery and sexual exploitation. I do not believe that currently the voices of those children are always heard. If they seek out a situation where they are prepared to keep themselves in harm's way for the

[Baroness McIntosh of Pickering]
purposes of bringing evidence to the police and other authorities to enable and facilitate a successful prosecution, it would be absolutely mad for them to extricate themselves from that situation, provided they are given protections. Therefore, reluctantly, I accept that there are situations where children under the age of 18, and sometimes as young as 12, are already at risk but are doing themselves, their immediate peers, who might also be in that position, and indeed the justice system a great service by empowering evidence to be brought forward and to bring a successful prosecution.

I know that my noble friend Lord Young has put an enormous amount of work into his amendments, but the problem that I have—I think he recognises this himself—is that Amendment 12 is simply too prescriptive both on age, as it would remove this cohort of children between 12 and 18 completely, and in that it does not enable them to be used as CHIS in limited circumstances, provided the protections are there. I do not believe that Amendments 12, 13 and 14 lend themselves to the situation that already exists and which I would like to see continue, provided the protections are in place.

That brings me to Amendments 24 and 26. Here, I am entirely in the hands of my noble friend the Minister, who will need to convince me that her Amendment 26 is as good as Amendment 24 in providing protections in the situation which I have set out and which I would like to see put in place in these circumstances. Normally, I would be minded to support Amendment 26, but I will be unable to do so unless she is unable to convince me that the protections clearly set out in Amendment 24 will be in place.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I am very pleased to take part in this debate. We have already heard some truly excellent speeches and I am sure there are more to come. I support Amendment 24, which has been so ably proposed by the noble Baroness, Lady Kidron, and am very happy to have added my name to it. I have huge respect for the noble Lord, Lord Young of Cookham. I agree with virtually all the points that he made in proposing Amendment 12. I join him in paying tribute to the noble Baroness, Lady Williams of Trafford, who always engages with the House on issues and seeks to find a way forward. It is important that we do that. However, what we have from the Minister at the moment in government Amendment 26 does not go far enough to address the concerns we have heard from around the House, although I accept that considerable efforts have been made to seek a way forward. I know that those efforts are still going on.

I certainly want to seek an improvement and get something detailed into the Bill that provides further protections for children; that is the most important thing for me. If we are to deploy CHIS then, in the very rare and exceptional circumstances where we need to do that, we must have those protections. That is why I support Amendment 24: I believe it sets out the way to get the right balance and, in those exceptional and rare circumstances, allows for that better oversight to be provided. In a way, I will vote for Amendment 24 to give the Government an opportunity to carry on discussions with people around the House and outside it. If we pass it, I hope that a better amendment will come back from the other place on ping-pong that builds on Amendments 24 and 26, and seeks to address the concerns that the Minister can surely hear from around the House, to get something in the Bill that is better than what we have now.

For that reason, I will not be supporting Amendment 12 by the noble Lord, Lord Young; I just do not believe that the Government are going to support that position, so it is a practical consideration that leaving a little room there for the exceptional circumstance, with the right protections, is the way to go. We need to build on the constructive discussions that we have had outside the House, and the debates we have had on this issue in the House, to find the way forward. I want to apply protections for children and vulnerable adults, and the process outlined in the amendment is the way to get them.

I bring my remarks to a conclusion by paying tribute to the many noble Lords around the House who have been engaged in this issue. I thought my noble friend Lord Haskel raised it on an SI some years ago, so I do not know who started it; maybe it was the noble Lord, Lord Young of Cookham, or the noble Baroness, Lady Jones. Certainly a number of people have raised this issue and everyone has been vitally concerned to protect children, put safeguards in place and get us to a better place, so I thank everyone in the House who has been involved in this. I thank the noble Baroness, Lady Kidron, for tabling her amendment and my honourable friend in the other place, the Member for Walthamstow, Stella Creasy, who has been heavily involved.

I believe that this is one of those debates in the House where you can hear the concern on all Benches from numerous highly respected noble Lords. We as a House need to send Amendment 24 to the other place, which will enable us to get something back from the Government that I hope will satisfy all noble Lords and get us to a better place.

3.45 pm

Lord Judd (Lab) [V]: My Lords, I support Amendment 25 because it seems essential for us to have safeguards in place if we go down this road at all. The noble Baroness, Lady Hamwee, spoke very convincingly on this matter. I am glad to support her on this and I do not suppose it will be the last time in my parliamentary career that I support her in her initiatives. While we are debating this group, I want to say how much I applaud Amendment 12 by the noble Lord, Lord Young of Cookham, and Amendment 19 by the noble Lord, Lord Cormack. In the operation of our society and our legal systems, we need some clear-cut cornerstones about what is permissible and what is not. I like the forthright language that they use in their amendments because it cuts out all the grounds for rationalising and talking ourselves into situations where we should not be at all. The point is that vulnerable people of the kind described in the amendments, and children, should not be involved in this kind of activity.

We are signatories to the conventions on the rights of children, and we have reaffirmed on many occasions our commitment to them. Are we just sentimentalists

or are we real? If we are real, and if we want to give muscle to our expressed sentiments in those directions, that becomes very applicable in this kind of activity. We are also signatories to, and have frequently expressed our adherence to, the European Convention on Human Rights. I would always go further in this context and say that what matters even more is the Universal Declaration of Human Rights and the reasons why it was put in place. Again, if we are serious and not just sentimentalists, it is in matters of this kind that adhering firmly to the principles set out in those conventions becomes so important.

All these matters become particularly poignant—it is interesting that we have not dwelt much on this—given what is happening on the other side of the Atlantic. All of us, particularly perhaps in this Chamber, operate in the context of a political family in which it is expected and assumed that certain rules of decency, honesty and integrity will apply. We cannot be certain that will always be the case. I have always felt this about legislation: what matters is not just the people who are in place at the time of the legislation is passed, but how firmly that legislation establishes principles that it would be difficult for anyone who comes afterwards to vary. For that reason, it is significant to look at events in the States and wonder, when we talk about the kind of society that we want to be, whether we are really taking seriously our obligations, duties and concern for children and young people who have perhaps been asked to undertake activity that is very much against so much that is established as the norm for behaviour that is required in our society, for all the reasons that we have discussed on many previous occasions on this legislation. If we take those responsibilities seriously, we need the firmness of Amendments 25 and 19.

I am sure that I must be among many Members on all sides of the House who are deeply fearful about the implications of what is happening on the other side of the Atlantic. At moments such as this, where we still have the context of our own society—thank God—we need to be explicitly clear about what is acceptable and what is not. I cannot say more strongly that it is not acceptable for children to be involved in activity of this kind. That is the point: it is not acceptable; it is not something we can rationalise our way out of by saying that there are exceptions in this particular case. There are not; it is a principle that children should not be involved in such activity. Similarly, when we think of what vulnerable people have been through mentally and physically and all the traumas of their life, it is not acceptable to involve them in any way in activities which may have serious implications for their stability and well-being and for their safety.

From these standpoints, I am very glad that we have this group of amendments before us. I again say that the noble Lords, Lord Young and Lord Cormack, have been exemplary in stating a principle on which the rest of our activity should be founded.

Lord Hope of Craighead (CB) [V]: My Lords, as the speeches that we have been listening to in this debate have made so very clear, this surely is the most difficult part of the Bill and, as we search for a solution, for each of us making up our own minds this group presents a real challenge. The solutions range from an absolute bar—the "clear-cut cornerstones", as the noble Lord, Lord Judd, has just described it—on granting authorisations to anyone under 18, in Amendment 12, and anyone under 16, in Amendment 19, to which the noble Lords, Lord Young of Cookham and Lord Cormack, spoke so movingly, to the more nuanced and carefully worded procedures proposed in Amendments 23, which would require the prior approval by a judicial commissioner, and Amendments 24 and 26, which have no such requirement.

I entirely recognise the force of the principle that the child's best interests are paramount, and I appreciate the attraction of a clear and simple absolute bar—a red line—by reference only to a person's age. That is right when dealing with, for example, the age of criminal responsibility, but I am not so sure that it is right here, where we are being asked to balance the protection of the best interests of the child against the need to protect the public against serious crime, such as that perpetrated by county lines where children are, sadly, so much involved. Recognising that a child's best interests are paramount does not entirely exclude the possibility of looking at all the circumstances and balancing the interests of the child against other interests, as judges have to do from time to time, but of course it has a crucial bearing on how that exercise is carried out.

Looked at from that point of view, I suggest that one can take account of the fact that children do not all have the same circumstances, as the noble Baroness, Lady Kidron, has said. Also, the facts and circumstances may differ widely as to nature of the case and the extent of any risk of physical and psychological harm to the particular child who may be involved—I was interested in the points made by the noble Baroness, Lady McIntosh of Pickering, based on her own experience of the Scottish Bar. The fact is that we are not in possession of all the information that would guide those taking such decisions. I would therefore prefer to leave the door open for the use of children in strictly and most carefully limited circumstances, taking every possible care in full recognition of all the risks, rather than closing it firmly against their use in any case whatever. Had Amendment 12 been qualified in some way, by reference, for example, to "exceptional circumstances", I would have found it easier to accept, but, of course, as soon as one adds such words, one has to explain what they mean. That is why I am drawn to Amendment 24, to which the noble Lord, Lord Young, has also put his name. It contains that qualification and then defines what such circumstances are. I pay tribute to the clarity with which it is expressed.

Then there is government Amendment 26. It seems to fall short of what is needed, not only because it lacks that qualification about exceptional circumstances but because it lacks the protection which Amendment 24 would give to vulnerable individuals and victims of modern slavery, whom we must also consider. I look forward to listening carefully to what the Minister has to say in support of her amendment, but, for the moment, my preference is for Amendment 24 and for supporting it if the noble Baroness, Lady Kidron, presses it to a vote.

Lastly, I am grateful to the Minister for her letter of today's date about territorial extent. As she may tell us later on, she informs us in it that the Scottish Government

[Lord Hope of Craighead]
have confirmed that they will recommend to the Scottish Parliament that it should withhold its consent to the Bill. It was for the Scottish Government to take that decision and we must respect it. I am sure that the Minister is right, respecting the Sewel convention, to remove from the Bill the ability to authorise participation in criminal activity for devolved purposes in Scotland. It is not for us to question the decision of the Scottish Parliament and she is right to proceed in that way.

Lord Naseby (Con) [V]: My Lords, I want to speak briefly to Amendments 12, 13 and 14. In relation to the first, I have recently done some research on military national service, introduced by a Labour Government with the support of a Conservative and Liberal Opposition in 1947 and lasting for just over 10 years. This recruited at age 18 young men to serve in the forces and possibly to face death. There was an element in that Act which allowed 17 and a half year-olds to be recruited, so it was not a carte blanche cut-off at 18; it actually started at 17 and a half.

Against that background, it seems to me—it is quite a long time ago now, but I was one of those who did my national service—today's young people are certainly more experienced than we were at that age. Also, there is this great move afoot to give 16 year-olds the vote. That is a conundrum, is it not? If that were to happen—Scotland is in the lead on that—are those who get the vote at 16 still children or are they adults? For my money, on Amendment 13, there should be a cut-off age of 18, but subject to particular exceptions.

4 pm

I come to Amendment 13. Of course, vulnerable individuals should be exempt; we should not go down that route at all. I am not so sure about victims of modern slavery. I suspect that not too many of your Lordships know very much about that world. I certainly do not claim to know a lot about it. Those who will know a lot about it are some of the 17 year-olds who have one way or another got involved with it. Would not it be better and sounder, in certain exceptional circumstances, to have somebody working there who understands the ropes?

Lastly, Amendment 14 talks about a judicial commissioner. I am none too sure, as we discussed the last time we debated this Bill, whether the judiciary is ideally placed for some of these decisions. At this point, I am going with the Minister. I will listen carefully, but let none of us forget that whatever actions are taken are often taken in the interests of society, given the danger from terrorism and all that area of life.

The Deputy Speaker (Lord Duncan of Springbank) (Con): The noble Lord, Lord Mann, has scratched from the debate, so the next speaker is the noble Baroness, Lady Bull.

Baroness Bull (CB): I rise principally in support of Amendments 12 and 13. My strong preference would be for these straightforward amendments, which would prevent all use of children and vulnerable adults in the way the Bill proposes to allow. If the noble Lord, Lord Young of Cookham, presses this, I shall vote with him. If the House cannot align behind this absolute position, I shall support Amendment 24, so effectively argued by the noble Baroness, Lady Kidron.

I have heard nothing in previous stages of the Bill to convince me to drop my fundamental opposition to the use of children as covert intelligence sources, and certainly nothing to persuade me that this further expansion of their use in authorised criminal activities should be allowed. Encouraging children into criminality to serve the ends of the law stands in direct opposition to what should always be our priority, which is to extract children and other vulnerable people from situations and relationships that promote criminality. It also contravenes existing child protection laws, including the UN Convention on the Rights of the Child. As the noble Lord, Lord Young, said in his as ever excellent speech, they make it clear that a child's best interests must be a primary consideration in all decisions regarding that child. As the helpful joint briefing that many of us received from Just for Kids Law, Justice and the Children's Rights Alliance for England points out, if a parent were knowingly to place a child in a dangerous, criminal situation, the law would rightly take action to remove that child to a place of safety. Yet that is exactly what the Bill authorises the law to do.

We also know, as the noble Baroness, Lady Kidron, so forcefully reminded us, that the children most likely to be recruited as covert sources are already among the most vulnerable, at risk of being targeted by criminal gangs and more likely to come from disadvantaged backgrounds, to live in deprived areas, to have fewer opportunities and to have suffered from trauma, substance misuse, mental health issues and learning disabilities. These children need the law to protect them, not to exploit them.

Nor have I heard anything to persuade me that the value of children's covert activities would be such that it overrides these moral concerns. In fact, there is good evidence to the contrary—that teenagers are not particularly effective covert sources, because of the status of their neurological development. As the brain develops into adulthood, the connections between the rational and emotional parts of the brain grow stronger and more effective. But in teenagers, this process is still under way, and adolescents process information with the part that deals with emotion. That is why teenagers are more likely to act not on the basis of reason but on instinct; it is why they are more likely to engage in risky behaviour and less likely to consider the consequences of their actions.

Added to this, most young people involved in gangs and drug supply are themselves regular users, often because they need to fit in with a prevailing drug culture. Drug use also impacts on brain development, delaying further the development in the connections between the logical and emotional parts of their brains. So alongside the moral question of whether it can ever be right to encourage children into situations of criminality, we have to set an equally serious consideration about the accuracy, consistency and completeness of any information they are likely to provide. In this case, as in so many, the end result does not justify the means.

Amendment 13 would prohibit granting of criminal conduct authorisation to vulnerable individuals, victims of modern slavery or trafficking. I have raised at

previous stages the concern of Anti-Slavery International: people who have been trafficked or enslaved are unlikely to be able to give informed consent, because of the experiences of manipulation and control they have endured and the long-term psychological implications of this on their ability to take independent decisions. This amendment would give vulnerable and already traumatised people the protection that they deserve. Alongside this, however, I would welcome a commitment from the Minister to address the omission from the code of practice of any reference to mental capacity and the specific issues to be taken into account when dealing with individuals with impaired decision-making capacity.

The Government's own Amendment 26 seeks to introduce safeguards to the granting of criminal conduct authorisations to children used as CHIS. However, as we have heard—I shall not repeat the reasons—this amendment falls short of addressing the concerns expressed by this House. It largely reiterates existing safeguards and still fails to ensure that 16 to 17 year-olds and vulnerable adults have access to an appropriate adult at all meetings.

Amendment 24 would place protection for children, victims of modern slavery or trafficking and vulnerable adults on a statutory footing. These are some of the most vulnerable people in our society. Their protection needs to be enshrined in law and, if the noble Baroness, Lady Kidron, decides to divide the House, I will be voting with her.

Lord Holmes of Richmond (Con) [V]: My Lords, I support Amendment 12 in the name of my noble friend Lord Young of Cookham. It is clear, coherent and consistent. It seems to me that my noble friend's parliamentary career from the outset has been marked out by two great skills. First, he has the ability of get to the essence of the issue in front of him at the time. His second—and greater—skill is the ability to see where things are going, not least in the near and mid future. In his excellent opening speech, he demonstrated both skills perfectly.

I urge him to press Amendment 12 to a Division. A majority of noble Lords have spoken in favour of it. It is a matter of testing the opinion of the House on what is right, rather than what may fit with a particular day's parliamentary arithmetic. I cannot improve on any of his words in his introduction, save to say that I agree with every last detail, and I urge him, as have a majority of other noble Lords, to press his amendment to a vote.

Lord Russell of Liverpool (CB) [V]: My Lords, I will speak to Amendment 24. I am grateful to my noble friend Lady Kidron for taking the lead on this amendment, to Stella Creasy for working with us so effectively from another place, and to a wide range of parliamentarians across all parties in both Houses.

As my noble friend Lady Kidron said in her comprehensive introductory speech, we are dealing with children, a point made forcefully just now by my noble friend Lady Bull—children, physically and mentally; children often abused, vulnerable, confused and frightened; children whose moral compass and sense of what is normal and of what is right and wrong may be tragically awry. Whatever they may have done, and whatever they may have become involved in, they are still children in statute, in international charter and in conscience. They need and deserve protection.

I pay tribute to the Minister, to her colleagues, and in particular to her friend James Brokenshire, who was mentioned on Monday and is in all our thoughts—I reiterate on behalf, I suspect, of everybody speaking today our best wishes for his speedy recovery—to the Bill team, and to the different individuals she has linked many of us up with to deepen our understanding of this complex background. She has made clear from the start that she understands our concerns, is sympathetic in principle and is keen to find ways to build in additional safeguards that will protect the child but also, very importantly, will build greater trust both within and without Parliament. Government Amendment 26 is not a bad start but, for the reasons stated eloquently by my noble friend Lady Kidron and others, I fear it is not good enough. A slightly enhanced re-emphasis of the status quo is not going to make a material difference to these children.

I entirely support the spirit behind Amendment 24 and I am grateful that the Government, even if they feel unable to accept it today, have acknowledged that our concerns are genuine and that there may be further work to be done before the Bill becomes law. In addition to what is stated in Amendment 24, I would like to place on the record four additional ways in which safeguards and processes might be enhanced and improved. I have already shared these with the Minister. First, I ask the Government to consider involving IPCO from the very inception of the authorisation of a child deployment. I share the confidence of my noble friend Lord Anderson in the capacity of IPCO to oversee these highly sensitive issues, and I suspect that IPCO itself would be broadly receptive to this idea and that it could undertake this using its current resources. This would mean that, with child deployments, IPCO would be being proactive, not primarily reactive.

Secondly, for children in care who may become child CHIS, how can we enable the relevant social worker to be appropriately involved? There are many cases where the social worker is unable to do so for a variety of reasons, personal, organisational or legal, and we have work to do to ensure that there are always effective substitutes to hand. Thirdly, can we commit to a comprehensive audit and review process at the end of every child deployment to assess what went well, what went less well, what we learned and what we are going to do about it? Lastly, do we not have a duty of care to follow up with ex-child CHIS to monitor their welfare, to help and guide as necessary, and to measure the effects, if any, of their experience during deployments? This would truly be putting the interests of the child at the centre of the process and would acknowledge our responsibility to help them ensure a successful transition to adulthood.

I commend Amendment 24 to the House. I applaud the Government for being in listening mode and I urge all noble Lords to agree to this amendment, to send a clear message that we have more to do but that we intend to work with and not against the Government to achieve this.

4.15 pm

Lord Paddick (LD) [V]: My Lords, I thank the noble Lord, Lord Russell of Liverpool, for the leading role he has played in achieving consensus around Amendment 24. I start by reminding the House of the contribution of the noble Lord, Lord Young of Cookham, in his summary of a similar group of amendments in Committee. He used the analogy of torture, where the ends do not justify the means, in the same way that using children as informants or agents is difficult to justify under any circumstances. Regrettably, banning the use of children as covert human intelligence sources is outside the scope of the Bill. He went on to recall the contribution of the noble Baroness, Lady Chakrabarti, who suggested as an alternative to using children using people over 18 who look younger, as the acting profession often does, particularly when dealing with adult themes.

My noble friend Lady Hamwee pointed out that there is a very fine line between grooming and persuading children to act as covert human intelligence sources. My noble friend Lady Doocey quite rightly pointed out that these children are already vulnerable and exploited, particularly in the case of county lines, without the need for them to be further exploited by the police. We do not send children into war, so why do we send them into potentially more dangerous situations as CHIS, as a number of noble Lords have asked this afternoon? A very experienced police handler of informants told me that, in his experience, even adult CHIS are open to manipulation, let alone children. If you are a child, a non-documented migrant or a victim of human trafficking caught by the police committing crime, you are likely to look for any available way out. You do not need to be blackmailed in such a situation; you are likely to grab at any opportunity, including being tasked to commit crime as a participating informant, a point made by the noble Baronesses, Lady Jones of Moulsecoomb and Lady Young of Hornsey, in Committee. As the noble Baroness, Lady Kidron, said, we are talking about the power imbalance between the police and these vulnerable people, including children.

The Minister's response in Committee was to cite a High Court judge, Mr Justice Supperstone, who was convinced by the police that it was okay to use children in this way. They appear to have been less successful in convincing the noble Lord, Lord Young of Cookham. When I was seeking promotion to the most senior ranks in the police service, on a six-month course at the national Police Staff College, we were told that we were moving from superintending ranks, where we had to operate within the existing paradigm, to ACPO ranks, where our responsibility was to change the paradigm. Despite the High Court's decision, we need to change the paradigm. As the noble Lord, Lord Young, says, the court did not consider the active involvement of children as CHIS in crime.

The Government, in response to our deliberations in Committee, have come up with their own alternative. I am as unimpressed as the noble Lord, Lord Young, with this attempt. First, in relation to authorising the use of children, it amends secondary not primary legislation—much easier for the Government to subsequently change and impossible for us to amend. The only change to primary legislation is on post-event reporting. The government amendments, particularly Amendment 26, prohibit the use of children under 16 to commit crimes against their parent or guardian, but not 17 and 18 year-olds: this is already the case, as the noble Baroness, Lady Kidron, said. It creates the position of a "relevant person" who is responsible for the risk assessment and for ensuring that an "appropriate adult" is present if the child is under 16. This risk assessment and the presence of an appropriate adult are already required in legislation. In the case of 17 and 18 year-olds, the appropriate person has only to consider,

"whether an appropriate adult should be present".

Again, that consideration is already required.

Saying that a child criminal conduct authorisation should be limited to four months instead of 12 is also not a real change. Child CHIS can only be authorised for a maximum of four months and a CCA cannot be granted unless the child has been authorised to be a CHIS, so a review after four months is already inevitable. Overall, I would summarise the proposed alternatives the Government are putting forward as too little, too late.

Amendment 24, proposed by the noble Baroness, Lady Kidron, has been a long time in the planning. I join with the noble Baroness in thanking Stella Creasy MP and Just for Kids Law. It covers vulnerable adults as well as children—the case for which was made strongly by my noble friend Lady Hamwee this afternoon—which the government amendment goes nowhere near. The presence of an appropriate adult would be mandatory for all children and vulnerable adults under this amendment, instead of being compulsory only for under-16s, as in the Government's alternative. It sets out the very limited circumstances when a child could be used, where the best interests of the child must be paramount. The child or vulnerable adult is not to be put at risk of physical or psychological harm, and the Investigatory Powers Commissioner must be informed. The Minister may say that these restrictions are so limiting that it may result in children and vulnerable adults not being used at all. That is a risk we should be willing to take.

In the absence of Amendments 12 and 13, we support Amendment 24 as the best of the available options, though I agree with the noble Baroness, Lady Massey of Darwen, that it does not involve the independent prior authorisation contained in her Amendment 14. However, as I have just said, it does include informing the Investigatory Powers Commissioner as soon as possible. If anyone thinks that 16 might be an appropriate age for drawing the line, I would urge them to watch the film "County Lines", directed by Henry Blake. It brings out the horror of the impact of county lines drug dealing on teenagers, including older teenagers, and powerfully makes the case for immediately removing children from these circumstances. Important points were made by the noble Baroness, Lady Massey of Darwen, and the noble Lord, Lord Dubs, about the lifelong impact of adverse childhood experiences such as involvement in county lines. Regrettably, contrary to the assertion of the right reverend Prelate the Bishop of Durham, Amendment 12 does not prevent using a child as a CHIS; it only prohibits tasking them to commit crime. As my noble friend Lady Hamwee pointed out, some adults are at least as vulnerable as some children.

Amendment 24 is a compromise, but it is comprehensive in that covers both vulnerable adults and children, and we support it strongly for the reasons so clearly expressed by the noble and learned Lord, Lord Hope of Craighead.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I start by thanking the noble Lord, Lord Russell of Liverpool, for his kind words about my right honourable friend James Brokenshire. I inform the House that he read all the lovely comments from Monday's debate and was very touched by them.

Also, in response to my noble friend Lord Young of Cookham, I apologise for the late arrival of the letter. I hope he has had a chance in the course of this debate to look at it.

This has been a very thoughtful debate on an incredibly important issue. I have listened very carefully to the points made by all noble Lords throughout the preceding debates on the safeguards that should apply to children. At this stage, I must say to my noble friend Lord Cormack, who bemoaned the advent of certain behaviours over the last 20 or 30 years, that I am afraid to tell him that they go back far longer than that. I also thank all noble Lords who have engaged with me on this issue directly, in particular the noble Lords, Lord Kennedy and Lord Rosser, who gave up their Saturday afternoon, together with Stella Creasy, to speak to me and my right honourable friend James Brokenshire. I must say that I think we all found that conversation very helpful.

I hope that all noble Lords will recognise the substantial amendments that the Government have put forward to ensure that robust safeguards are in place in legislation for the very rare circumstances in which a juvenile CHIS may be tasked to participate in criminal conduct. Noble Lords have been told that the courts have found these safeguards to be inadequate. That is not the case at all. The High Court considered the safeguards for juvenile CHIS in 2019 and expressly found them to be lawful. In fact, Mr Justice Supperstone explicitly rejected the contention that the scheme is inadequate in its safeguarding of the interests and welfare of juvenile CHIS. He also 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."

The noble Baroness, Lady Kidron, asked whether a child impact assessment has been conducted, and the noble Baroness, Lady Massey, suggested an independent review of authorisations of juveniles. This has happened. The independent Investigatory Powers Commissioner conducted a review of all public authorisations of juveniles and the conclusions of that review were reported in March 2019 to the JCHR. The IPC was satisfied that those who grant such authorisations do so only after very careful consideration of the inherent risks and concerns around the safeguarding of children. The public authority's duty of care to the child is a key consideration in the authorisation process. 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 are made only where this is the best option for breaking the cycle of crime and the danger for the individual.

In moving the government amendments today, I will not move Amendments 35, 38 and 49, which relate to devolved activity in Scotland. This is because, as I hope noble Lords have seen in the letter I issued earlier today, the Scottish Government are unable to support the Bill. Respecting the Sewel convention, the Government will not legislate without the consent of the Scottish Government. Therefore, at Third Reading I will bring forward amendments to remove from the Bill the ability to authorise participation in criminal conduct for devolved purposes in Scotland. Authorisations necessary for the purpose of national security or the economic well-being of the United Kingdom relate to reserved matters and the relevant public authorities will still be able to grant authorisations for these purposes for activity in Scotland through the powers contained within this legislation. An authorisation necessary for the purpose of preventing and detecting crime or preventing disorder is not in itself reserved. An authorisation granted for the purpose of preventing and detecting crime or preventing disorder may therefore relate to devolved matters, and it will be these matters to which the Bill will not apply.

4.30 pm

This means that, for these authorisations in Scotland, public authorities will in the immediate term continue to rely on the existing basis for an authorisation. Were that position to change in the future, it would be for the Scottish Government to bring forward legislation that places this conduct on a clear and consistent statutory basis. The UK Government have worked with operational partners to minimise the immediate operational impact of the legislation not applying UK-wide.

Turning back to the issue of juvenile CHIS, the government amendments make very clear that the authorising officer is under a duty to safeguard and promote the best interests of the juvenile, and that this must be a primary consideration whenever they are considering whether to authorise a juvenile CHIS to participate in criminal conduct. This reflects the requirements of Article 3 of the UN Convention on the Rights of the Child. It also sets out a statutory requirement for juvenile CHIS to be authorised to participate in criminal conduct only in exceptional circumstances.

In addition to those requirements, we are applying the same statutory safeguards that are in place for CHIS use and conduct authorisations to the new criminal conduct authorisations and requiring the IPC to keep these enhanced safeguards under particular review. These enhanced safeguards include: a prohibition on under-16s reporting on their parent or guardian; requiring an appropriate adult to be present in meetings with CHIS who are under 16, with a requirement to consider this on a case-by-case basis for 16 and 17 year-olds; a requirement for an enhanced risk assessment; and a shorter duration, of four rather than 12 months, for authorisations. Let me also be clear that the notification

[Baroness Williams of Trafford]
process, as supported by this House in an earlier vote, will also apply to any deployments of juveniles or, indeed, vulnerable people.

The noble Lord, Lord Young, suggested that the duty of care for juvenile CHIS does not extend beyond the time they are authorised as CHIS. This is simply not true. While an enhanced relationship is in place for the duration of any deployment, the duty of care for that person exists for the lifetime of that individual. There is relevant case law here in Swinney v Chief Constable of Northumbria, to which I refer noble Lords. This also relates to the point made by the noble Lord, Lord Russell, about duty of care beyond the deployment. This package does put in place robust and extensive safeguards for criminal conduct authorisations for juveniles but has been carefully drafted to ensure that there are no unintended consequences which may affect the workability of the power or the safety of the juvenile.

It may sound illogical when I say that sometimes the safest way of extricating the young person from the cycle of crime that they find themselves in is to grant such an authorisation. The duty of care that an authorising officer has to that young person will always be at the forefront of their mind. An authorisation will never be granted for operational benefit alone, but there are some examples where authorising criminal conduct by a juvenile is the right course of action. I will give an example, to demonstrate how authorisations for juvenile CHIS are managed in reality by the police, which is taken from the Investigatory Powers Commissioner's most recent annual report:

"In one such case, a juvenile was carrying out activity on behalf of a 'county line' drug supply group. The juvenile owed money to the group and approached the police wishing to provide information. A referral under the Modern Slavery Act was made by the police and a care plan was drawn up with Children's Services, including relocating the juvenile and finding them a training course. Once this had been done, as an authorised CHIS, the juvenile was able to provide intelligence to the police regarding the 'county line' crime group."

I hope that this example illustrates the great care that is taken by the police and the way in which this power can be used to make a positive difference to the juvenile's life.

I will also provide an example of where, after considering the well-being of the juvenile, an authorisation was not granted. In this case, police became aware of a vulnerable young person who was in a position to provide considerable intelligence opportunities in an extremist network. Those opportunities were balanced against the welfare of the young person and their long-term well-being, with the welfare of the child being a primary consideration. The local authority social services were consulted, and a child protection plan was instigated. However, in the end, it was not considered proportionate or appropriate to authorise that young person as a CHIS, despite the intelligence benefits that could have been gained. The decision to authorise a juvenile to participate in criminal conduct is not taken lightly, nor without consideration of the well-being of that juvenile.

There are robust safeguards in place and the government amendments further enhance these. We think that we have the balance right, and I note that both the High Court and the IPC, when considering this issue, also agree with this assessment. In response to noble Lords who have speculated about individual examples, I note that this creates significant risks to the children that it seeks to protect. What is important here is that IPCO, which has the role of independently scrutinising all juvenile CHIS authorisations, has not raised concerns that match that speculation.

Turning to vulnerable people and those who have been victims of modern slavery and human trafficking, I first reassure noble Lords that the definition of vulnerable people that is included within the CHIS code of practice is deliberately broad, so as to capture a wide range of circumstances, including victims of modern slavery. I recognise the importance of ensuring that appropriate safeguards are in place for all vulnerable people, regardless of age. That is why there is already a requirement for them to be authorised only in the most exceptional circumstances and at an enhanced authorisation level. For example, an authorisation by the police for someone who may be vulnerable must be granted by an assistant chief constable.

On the point made by the noble Baroness, Lady Bull, an individual, including someone who is considered vulnerable, will never be coerced into becoming a CHIS. However, they may decide that they wish to support the process by which their perpetrators can be brought to justice. If they cannot give informed consent, because of their vulnerability, they will never be authorised as a CHIS in the first place. Placing a prohibition on the authorisation of vulnerable people comes with the same risks as it does for children; we must avoid a situation where these people are drawn further into crime because of the requirements that we put in the Bill. The safeguards contained in the CHIS code of practice are the right ones, and there will be a full consultation on the full safeguards applicable to criminal conduct authorisations, followed by a debate in both Houses, in due course.

I turn to the alternative amendments which deal with this issue. I appreciate and understand the spirit of these amendments; they all seek to protect the welfare of young people. However, we think that the Government's proposal is the right one in this instance. Amendments 12, 13 and 19 seek to place blanket prohibitions on the use of juveniles or vulnerable groups as CHIS. I cannot stress any more strongly that this would actually put children at greater risk. If a criminal gang has the choice of using a 19 year-old, who may or may not be a CHIS, or a 15 year-old who is definitely not a CHIS, then they are going to involve children in their activities in increasing numbers. Amendment 14 requires prior approval before a juvenile CHIS can be granted a criminal conduct authorisation. This again creates risk in that it takes the authorising role away from the authorising officer who is best placed to consider the welfare of the juvenile involved and the specifics of the authorisation.

Amendment 24—tabled by the noble Baroness, Lady Kidron—has a number of similarities to the government amendments, although our amendment includes additional safeguards for juveniles. It also includes some differences, the workability of which means we cannot support this amendment as drafted.

While public authorities are already under a legal duty to protect the welfare of their CHIS, extending the appropriate adult requirement more widely risks making this power unworkable. It is not clear, for example, who could be approached to act as an appropriate adult for all vulnerable individuals, bearing in mind the duty of care of a public authority to protect the identity of the CHIS and the fact that these individuals may not have a parent, guardian or other person responsible for their welfare. This would mean finding someone outside the public authority to act as an appropriate adult, which could be very difficult in practice—particularly in an urgent situation where any risks need to be managed quickly.

The amendment also defines exceptional circumstances as when

"other methods to gain information have been exhausted".

This requirement jeopardises the workability of the power and, crucially, the safety of the juvenile. There may be occasions where there are other ways to gain information but using the juvenile involved as a CHIS can in fact be the best way to extricate them from the situation and lead to the best outcome for them.

The approach of this amendment also takes the decision-making power away from the individual, who may have taken an independent decision to support the police in helping bring their perpetrators to justice. This could take away an important way for that person to seek redress by preventing them supporting the investigation and prosecution of these criminals.

For those reasons, we cannot support the amendment as drafted. I understand the spirit of it, as the noble Lord, Lord Kennedy, knows, and agree with its intent, but it would have a significant impact on the ability of law enforcement to use this tool to protect the public and support the juveniles, other children and vulnerable individuals who are similarly caught up in this activity.

We discussed this issue in great detail in Committee, and my right honourable friend James Brokenshire and I have had a lot of conversations since then. Noble Lords have also had the opportunity of sensitive briefings from operational partners. In response to the points made by noble Lords, the Government have put forward significant amendments that, importantly, still ensure operational workability. I urge all noble Lords to support the amendments put forward by the Government. However, if a noble Lord wishes to test the opinion of the House on a further amendment, they should do so now.

The Deputy Speaker (Lord Duncan of Springbank) (Con): I have received requests to speak after the Minister from the noble and learned Lord, Lord Mackay of Clashfern, the noble Lord, Lord Russell of Liverpool, and the noble Lord, Lord Kennedy of Southwark.

Lord Mackay of Clashfern (Con) [V]: My Lords, due to a mistake I have made, I am not able to participate. My concern is the possible difficulty of preventing criminal communications with children.

The Deputy Speaker (Lord Duncan of Springbank) (Con): Short and sweet. The next speaker is the noble Lord, Lord Russell of Liverpool.

Lord Russell of Liverpool (CB) [V]: My Lords, I have a specific question for the Minister. She mentioned the lifetime duty of care to the CHIS that whichever authority is managing them has after the deployment. In the case of children who have been deployed, if and when the person managing the child CHIS retires from the force or moves on to another role, what mechanism is there to replace the individual or individuals tasked with following up with the CHIS? Secondly, is there any sort of formal reporting mechanism that loops back how those ex-CHIS are doing, so that they can be monitored? Also, is that recorded in any way and can it be reported to Parliament?

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the noble Baroness for her very detailed response to this long and important debate. I want to push her a bit further. She said that the Government cannot support Amendment 24 in its present form but understand where we are coming from. I equally understand where the noble Baroness and the Government are coming from. However, if the House voted for Amendment 24 and it was sent to the other place, I am sure that she would want to engage constructively with its movers—and other colleagues in this House and elsewhere—so that we could bring back through the ping-pong process something that the whole House could unite behind, taking the best points of her government amendment and the points in Amendment 24 that were carried. It would be useful for the House to know whether that would be possible.

4.45 pm

Baroness Williams of Trafford (Con): I think that the noble Lord knows me by now. If Amendment 24 is carried, I will of course continue to work with him. The same is true for any other amendment that is successful on Report. I think that most noble Lords come from the same standpoint: they want to protect children but recognise that, sometimes, children may have to be involved in criminal activity. I know that my noble friend Lord Young does not take that view, but I think that most noble Lords recognise it. I will continue to work with the noble Lord, Lord Kennedy, Stella Creasy and others, whatever the outcome of today's votes.

The noble Lord, Lord Russell, asked what happens if a person retires. That lifetime duty of care would probably necessitate certain people retiring and others taking over, but that does not mean that the duty of care does not extend over the young person's whole life. On the formal reporting mechanism, we have IPCO and I am sure that there are other such mechanisms through the person tasked with that duty of care to the CHIS. If there are any other formal reporting mechanisms, I will notify the House of them.

Lord Young of Cookham (Con): My Lords, this Bill has generated a series of debates about the role of the state in protecting society, including where the boundaries lie and the extent to which they impinge on civil liberties. This debate has been no exception, as the noble and learned Lord, Lord Hope, said. I am grateful to all those who have spoken; I will come to some of their comments in a moment.

[LORD YOUNG OF COOKHAM]

The argument in favour of the use of underage CHIS has basically been that, in exceptional circumstances, the end justifies the means. Permitting a child to commit a crime and take risks is justified by the prospect of catching criminals. The contrary argument is that the end does not always justify the means, as the noble Lord, Lord Paddick, said; if it did, we would allow the waterboarding of suspected criminals and terrorists to save lives—but we do not. The debate has really been over where the risk/reward ratio, if I can call it that, falls in this case.

I am grateful to all those who have spoken. The noble Baroness, Lady Massey, referred to the UN convention and the inevitability of an element of risk if we go down this road. She also offered some additional safeguards of her own—namely, prior judicial approval.

The noble Baroness, Lady Kidron, along with others, paid tribute to the work of Stella Creasy. I do so as well. She has been heroic in liaising with your Lordships in taking this agenda forward. As the noble Baroness said, the Bill formalises the ability of the state to harm a child. She made the very valid point that a guardian is required if someone underage is charged with shoplifting but that there is no such protection if they become a CHIS. She also analysed the difference between Amendment 24 and government Amendment 26.

My noble friend Lord Cormack came up with a different limit—namely, under 16—but said that he would be tolerably satisfied with Amendment 24, which may indeed be where we end up.

The noble Baroness, Lady Hamwee, again made the important point about how you distinguish between grooming on one hand, which we do not approve of, and using a child as a CHIS, which we, on occasion, do. I think she said that her party's preference was for Amendment 24 rather than Amendment 12.

I am grateful to the noble Baroness, Lady Chakrabarti, for her kind words. She pointed out that having exceptional circumstances always allows a degree of flexibility and subjectivity which one cannot get away from. She pointed out that, even if the amendment was carried, we still cannot ban the use of underage CHIS. Again, she made the useful point, which I think picks up on a point the Minister made, that many people look younger than they are—they are over 18 but look younger. Could not more use be made of them to avoid the dilemma that some of us find ourselves in?

The right reverend Prelate the Bishop of Durham emphasised the moral imperative of safeguarding a child. I think he said that, while his first choice would be Amendment 12 and then Amendment 14, Amendment 24 ended up as his third choice.

The noble Baroness, Lady Jones, rightly pointed out that people are unaware at the moment of what is going on. She referred to them as "child spies". Again, if push came to shove, the noble Baroness would support Amendment 24. She seemed amazed that an aristocrat—if I can call myself one of those—should bring forward social reform, but if she looks at the whole history of the 19th century, she will find that a lot of social reform was indeed pioneered by aristocrats.

The noble Lord, Lord Dubs, was the swing voter in the last debate. He remains pro-Amendment 12, and I am grateful for that. Amendment 24 was his third preference. He referred to the long-lasting impact on the mental health of a child and cast doubt on whether they could give informed consent.

My noble friend Lady McIntosh also referred to UNCRC and came down, on balance, in favour of allowing CHIS in the most exceptional circumstances. But she needed convincing that Amendment 26, the government amendment, was better than Amendment 24.

The noble Lord, Lord Kennedy, was in favour of Amendment 24 and felt that Amendment 26 did not go far enough. He was in favour of using CHIS in exceptional circumstances and made it clear that he cannot support Amendment 12. I am disappointed by that, and I will come back to that in a moment.

The noble Lord, Lord Judd, spoke in favour of Amendments 25 and 19, and was against the use of CHIS.

The noble and learned Lord, Lord Hope, favoured the more nuanced approach of Amendment 24, rather than the absolute approach of Amendments 12 and 14.

My noble friend Lord Naseby agreed with the arguments that the vulnerable should be exempted, but he had some doubts about modern slavery.

The noble Baroness, Lady Bull, remains pro-Amendments 12 and 13, and I am grateful for that and for her support. She has not been persuaded by the argument. She made the point that parents who did what the Bill allows the police to do would find that their child would be taken into care. She also made the point that teenagers quite often act on emotion rather than reason.

I blushed when my noble friend Lord Holmes said his kind words about me. The high esteem in which he currently holds me may be lowered by what I have to say in a few moments.

The noble Lord, Lord Russell, has played a key role behind the scenes in trying to find a way through, and I pay tribute to that. He also mentioned James Brokenshire, somebody with whom I served in government for many years; I join those who wish him well and a speedy recovery. The noble Lord made four suggestions as to how we could build on what the Government have proposed, with a view to finding a solution.

The noble Lord, Lord Paddick, was unimpressed by the government amendments and ended up pro-Amendment 24.

I have had a bit of time to read the Minister's letter. In her wind-up speech, she made the point that Amendment 24 would be unworkable because of the difficulty of finding appropriate adults. But appropriate adults are already there; they have to be there for under-16s and for those who are vulnerable between the ages of 16 and 18. One could draw on the same cohort to meet the requirements of having an appropriate adult for others. I listened to her example, but in it the child is extricated only after the information has been procured. The argument many of us have put forward is that the child should be extricated at the earliest possible opportunity, rather than after they have done their bidding.

In a former life, I was a Chief Whip, and one of the qualities needed in a Whip is the ability to count. I have looked at the fate of amendments to this Bill

where the Opposition has withheld support, and they have gone down by three-figure majorities. I also note the reservation of several on the Cross Benches whose views I respect, such as the noble and learned Lord, Lord Hope. I do not believe that dividing the House is a useful use of its time, particularly given the position of the Opposition. Against that background, I will not test the opinion of the House, but I hope that all those who spoke in favour of Amendment 12 will back Amendment 24. I beg leave to withdraw my amendment.

Amendment 12 withdrawn.

Amendments 13 and 14 not moved.

The Deputy Speaker (Lord Duncan of Springbank) (Con): We now come to the group consisting of Amendment 15. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press the amendment to a Division must make that clear in debate.

Amendment 15

Moved by ***Baroness Massey of Darwen***

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

"(8A) A criminal conduct authorisation may not authorise any criminal conduct—

(a) intentionally causing death or grievous bodily harm to an individual or being reckless as to whether such harm is caused;

(b) involving an attempt in any manner to obstruct or pervert the course of justice;

(c) amounting to an offence under the Sexual Offences Act 2003, the Sexual Offences (Scotland) Act 2009 or any offence listed in Schedule 3 to the Sexual Offences Act 2003;

(d) subjecting an individual to torture or to inhuman or degrading treatment or punishment, within the meaning of Article 3 of Part 1 of Schedule 1 to the Human Rights Act 1998; or

(e) depriving a person of their liberty, within the meaning of Article 5 of Part 1 of Schedule 1 to the Human Rights Act 1998."

Member's explanatory statement

This amendment establishes a prohibition on the authorisation of serious criminal offences, in similar terms to that appearing in the Canadian Security Intelligence Service Act 1985.

Baroness Massey of Darwen (Lab) [V]: My Lords, I thank my noble friends Lord Dubs and Lord Rosser and the noble Lord, Lord Paddick, for adding their names in support of this amendment.

The bottom line on this amendment is to include a prohibition on the authorisation of serious criminal offences. It establishes a prohibition on such offences listed in my amendment; these are in similar terms to those in the Canadian Security Intelligence Service Act 1985, which I will refer to later.

I am a member of the Joint Committee on Human Rights, as is my noble friend Lord Dubs, and I will refer to its report on the Bill, published last November. The committee had serious concerns about this part of the Bill, and I shall put this amendment to a Division unless I receive a thorough reassurance from the Minister.

In chapter 4 of the JCHR report, four issues are discussed: first, there being no express limit in the Bill on the type of crime that can be committed; secondly, consideration of the approach taken in other jurisdictions; thirdly, the power to prohibit certain conduct by order; and fourthly, the Human Rights Act as an effective safeguard.

In their written response to the JCHR report, published on Monday, the Government give detailed consideration to the recommendations in this amendment. I am grateful for that, but I do not think it covers all our concerns as a committee. The Minister will perhaps reflect these considerations in her response. It is helpful that the Government restate their commitment to human rights in the response at the end of section 3. They say that

"the United Kingdom is committed to human rights and will continue to champion human rights at home and abroad. The United Kingdom is committed to the ECHR."

But evidence of the commitment to human rights has to be demonstrated and reinforced, and I am concerned that by not expressing limits in the Bill on the type of crime that can be authorised, human rights are not being defended.

The Joint Committee on Human Rights has expressed the concern that:

"The Bill contains no express limit on the types of criminal conduct that can be authorised. Even the most serious offences such as rape, murder, sexual abuse of children or torture, which would necessarily violate a victim's human rights, are not excluded on the face of the Bill."

The Home Office, in its guidance on limits of authorised conduct, consider this necessary because

"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."

In their joint written submission to the JCHR, the NGOs Reprieve, the Pat Finucane Centre, Privacy International and Big Brother Watch note that under the Canadian Security Intelligence Act there is a power to authorise criminal conduct similar to that proposed in the Bill. However, the Canadian legislation expressly provides that nothing in the Act justifies the issues set out in my amendment. They are, to summarise: causing death or grievous bodily harm; perverting the course of justice; any offence under the Sexual Offences Act 2003 or the 2009 Act in Scotland; subjecting an individual to torture, inhuman or degrading treatment or punishment, as in the meaning of the HRA 1998; or depriving a person of their liberty.

5 pm

The government position is that the Human Rights Act provides a guarantee against certain criminal conduct. However, paragraph 40 of the Joint Committee on Human Rights report points out:

"Reliance on the HRA as providing an effective limit on the conduct that can be authorised appears inconsistent with the Government's justification for its refusal to exclude specific offences on the face of the Bill. 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 HRA."

The Committee did not think it

"appropriate to legislate by providing open-ended powers and relying on the HRA as a safety net."

[Baroness Massey of Darwen]

Paragraph 42 of the Joint Committee on Human Rights report states:

"The Government should not introduce unclear and ambiguous laws that would, on their face, purport to authorise state-sanctioned criminality that would lead to serious human rights violations such as murder, sexual offences and serious bodily harm. The existence of the HRA does not alter this."

The Committee noted that the Human Rights Act

"has not prevented previous human rights violations connected with undercover investigations or CHIS. For example, the HRA was in force for much of the period when undercover police officers of the National Public Order Intelligence Unit were engaging in intimate relationships with women involved in the groups they had infiltrated."

The JCHR states that

"The position taken by the Home Office in the ECHR memorandum is concerning. In respect of criminal conduct that violates absolute rights, such as the right to life and the prohibition on torture, the intention behind that conduct cannot justify the violation."

One of the witnesses to the JCHR inquiry stated that

"to suggest the state bears no responsibility because the conduct may have taken place even without an authorisation is wholly unconvincing."

The committee noted—as described in some detail in our report—that other countries with similar legislation, including Canada, the USA and Australia, have expressly ruled out enabling the more serious offences. It 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 protections provided by the HRA are important. However, reliance on the HRA to make up for the lack of any specific constraint on the type of criminal conduct that can be authorised is inadequate. A power as exceptional as that provided by the Bill requires careful and specific constraints … The Bill requires amendment to include a prohibition on the authorisation of serious criminal offences, in similar terms to that appearing in the Canadian Security Intelligence Service Act."

I beg to move.

Lord Hope of Craighead (CB) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Massey of Darwen, and to express my support for the amendment she has just moved.

I have to say that I am wholly unconvinced by the argument that adherence to the Human Rights Act is all that is needed. The fact is that the convention rights set out in the schedule to that Act were not designed for this situation at all. Their purpose is to define the rights of individuals against the state, as represented by public bodies. It is not a catalogue of what individuals may or may not do to each other. Of course, the sources that the police may use must have these protections against those who use them. But to use the convention rights in the Human Rights Act to define what the sources may do to other people or may be encouraged to do to other people is to take those rights completely out of context.

Furthermore, reference to these rights lacks the precision and clarity that is needed to deal with what a source may or may not be authorised to do. If you look at Article 2 of the list of convention rights—the right to life—what is really dealt with there is the right to life as against the things that a state may do: depriving the individual of his life except in circumstances where that may be absolutely necessary; and the circumstances are set out there. Article 3 deals with the prohibition of torture, although I notice that it omits the word "cruel" before "inhuman", which is in the Universal Declaration of Human Rights and in the UN convention against torture. Therefore, if one was trying to define the prohibition or the control against the misuse of sources, one would want to put in the word "cruel", which is more easily understood than the word "inhuman". Article 4 deals with the prohibition of slavery and forced labour, which is drifting far away from what we need to have as reassurance in the matter we are dealing with here. So it is with Article 5, which is the right to liberty and security, and which really deals with the circumstances in which an individual may be arrested or detained by the police. Furthermore, there is no mention in the convention rights of rape or other sexual offences, no doubt because that is what people do to each other, not what public authorities do to their citizens.

That said, I have to confess, if the noble Baroness will forgive me, that some of the wording of amendment 15 troubles me. The criterion we must apply is that what we have asked to be set out in the statute should be clear and easily understood. Proposed new subsection (8A)(b), which is given in Amendment 15, refers to

"an attempt in any manner to obstruct or pervert the course of justice."

That is a very wide-ranging crime, and I am not sure that it would be sensible to include it in this list because very often it may be a relatively minor thing to do, with no psychological or physical consequences to anybody; it is just obstructing the interests of justice. Paragraphs (d) and (e) refer to the Human Rights Act, but for the reasons I have given, I would prefer that that reference was omitted. The Canadian example to which the noble Baroness referred is clearer in its wording. For example, when dealing with obstructing or perverting the course of justice, it includes the word "wilfully", which would be wise if one is trying to strike the right level of balance in dealing with these matters. It refers to the torture convention when defining what is meant by torture, which I would support, particularly because it includes the word "cruel". As for paragraph (e), when the amendment refers to depriving a person of their liberty, it really means detaining an individual, which is what the Canadian example gives. The Canadian example adds another point: damaging property. It might be wise to think of including something along those lines too. To take the example of committing or participating in arson, that would give rise to a serious risk to individuals who are in the building and it would be as well to include that along the same lines and for the same reasons as the others in the list. I suggest that some matters might have to be looked at again if the amendment is to be taken further.

I wish to emphasise one thing, as I did at Second Reading, which is that great weight must be given to the obligation in the torture convention. That convention does not merely require states to abstain from torturing people. It requires them to do more than that; it requires them to do everything in their power to avoid torture in any circumstances. I would therefore support an amendment which particularly includes the reference to torture as something that would never be authorised in any circumstances whatever.

Despite these misgivings, and extending again my apology to the noble Baroness for criticising her carefully drafted amendment, and because I believe the Government must think again, I support Amendment 15.

Lord Rosser (Lab) [V]: Speaking for the Opposition, I reiterate our appreciation of the work that our police and security services do on our behalf to keep us safe and our country secure. We know only too well that what they do makes a real difference.

Amendment 15, so ably moved by my noble friend Lady Massey of Darwen and to which my name is also attached, would put limits in the Bill on the crimes that could be authorised under a criminal conduct authorisation. The serious crimes that could not be authorised would cover murder, grievous bodily harm, torture and degrading treatment, serious sexual offences, depriving someone of their liberty and perverting the course of justice.

The Government have given an assurance that the Bill

"would not allow the public authorities named in the Bill to grant CHIS unlimited authority to commit any and all crimes. To allow this would breach the Human Rights Act 1998".

In that context, I note the comments that were just made by the noble and learned Lord, Lord Hope of Craighead, about the Human Rights Act 1998. However, the Bill itself contains no explicit limit on the types of criminal conduct that can be authorised. The Government say that to have a list of offences excluded from being given a criminal conduct authorisation would lead to covert human intelligence sources being tested against that list. But placing no explicit limit on the types of crimes that can be authorised is not the approach that has been taken in other jurisdictions, where the same risks of CHIS being tested would apply. As my noble friend Lady Massey has said, the Canadian Security Intelligence Service Act contains a power to authorise criminal conduct similar to that proposed in the Bill, but the legislation provides that nothing in that Act justifies many of the serious crimes also excluded under this amendment.

The FBI in the USA operates under guidelines that do not permit an informant to participate in any act of violence, except in self-defence. In Australia, the legislation provides protection from criminal responsibility and indemnification for civil liability only where the conduct does not involve the participant engaging in anything likely to cause death or serious injury to, or involve the commission of a sexual offence against, any person. The Government maintain that countries which have lists of such offences do not have similar criminality to us, but it is not clear what the established basis is for that assertion.

The Government then say that such a list of serious offences is not necessary, because the Human Rights Act provides all the protection needed against such serious crimes being given a criminal conduct authorisation. But if a criminal or terrorist group was sufficiently conversant with the terms of legislation excluding specific offences from being authorised to be able to test a CHIS, it would almost certainly also be sufficiently conversant with the protections against serious crimes being authorised in the Human Rights Act to test a CHIS if, as the Government presumably believe, those protections are clear-cut.

However, the Bill does not preclude specific criminal conduct being prohibited through a list, since it gives the Secretary of State the power, through secondary legislation, to prohibit the authorisation of any specified criminal conduct. Since it would be secondary legislation, Parliament would not get the right to amend what was put forward by the Secretary of State, as it would with primary legislation. Since the Government, presumably, do not believe that whatever criminal conduct might be prohibited from being authorised through such publicly available secondary legislation could be used by criminals as a checklist against which to test a covert human intelligence source, and put such sources at risk, it is not clear why explicit limits cannot also be set out in primary legislation.

5.15 pm

The Government say that the Human Rights Act imposes an effective limit on criminal conduct that could be authorised under the Bill, since all public authorities are bound by the HRA and the need to comply with the European Convention on Human Rights. That does not make it appropriate or desirable to legislate without some key details in respect of serious crimes in the Bill—serious crimes that are surely well above the nature of criminal conduct that one might expect would be authorised for a CHIS—so that a refusal to commit such crimes could hardly be proof of a CHIS, as no doubt many others involved in a gang would have limits on how far they are prepared to go when it comes to the serious crimes we are talking about.

The Bill needs to be clear that certain offences or categories of offences are incapable of authorisation. Powers as exceptional as state-authorised criminality, under the terms of this Bill, must have clearly stated constraints on what crimes can be authorised. This amendment provides such an appropriate safeguard.

Lord Bruce of Bennachie (LD) [V]: My Lords, I have not intervened on the Bill to date. It has been well-served by the wide range of expertise across the House. I am grateful to the noble Baroness, Lady Massey, the noble and learned Lord, Lord Hope, and the noble Lord, Lord Rosser, for their coherent explanations of support for this amendment. My brief intervention now is in the light of the Scottish Government's current withholding of consent to the Bill. I appreciate that the first response to that action might be to dismiss it, as it is consistent with the Scottish Government's reaction to other consent issues.

However, while the Scottish Justice Minister Humza Yousaf accepts that there is a case for the law, he is concerned that the Bill is drawn too widely and lacks adequate safeguards. His views are entirely consistent with the concerns expressed across the House. He has explained his preference for prior approval by a judicial commissioner, which has been debated and raised responses, although that consideration is still being argued. This amendment, coupled with that which was carried on Monday inserting an expectation of reasonableness, would go some way to addressing these understandable concerns.

It is widely understood and accepted that undercover agents operate to protect the state and its citizens from hostile actions. This necessitates behaviour that, in

[LORD BRUCE OF BENNACHIE]
normal circumstances, might be considered criminal. Both operatives and citizens need to be reassured that actions will be reasonable and proportionate, and that this is not a gratuitous licence. A number of cases where actions were not deemed appropriate have been mentioned in our debates, but so has an understanding that undercover agents carry out vital work that saves lives. The law needs to protect them in their duties—we are talking of the police and Prison Service, in Scotland—and people who might be directly affected by their actions.

It is also clear, as asserted in all contributions to the debate so far, that the Human Rights Act alone is not an adequate safeguard. As an aside, it does not apply to British sovereign bases in Cyprus, for example. The noble and learned Lord, Lord Hope, despite his reservations about some of this amendment's wording, clearly recognised the need to have human rights issues summarised and incorporated in the legislation. The noble Lord, Lord Rosser, made the same case and the interesting comparison that, as the Human Rights Act is well known, there is no reason for not putting these specific exclusions in the Bill.

As was said by the noble Baroness, Lady Massey, this amendment's terms are similar to those in the Canadian Security Intelligence Service Act 1985. Can the Minister indicate whether Canada has experienced any problems with this element of its law, which has been in place for some years? After all, to commit murder, to inflict serious injury deliberately or to perpetrate rape, sexual offences, torture or imprisonment is not what we could reasonably expect of our agents.

I understand that, as of today, the Scottish Minister does not yet consider that the Bill is ready for him to recommend, and this amendment alone will not do it. He is still looking for amendments to the Regulation of Investigatory Powers (Scotland) Act 2000. Can the Minister indicate whether the concerns of the Scottish Minister can be met and the Government's view about those reservations? I do not believe the citizens of the United Kingdom would argue for a lower standard than that set by a close and valued ally and friend, such as Canada. I am sure that the Minister will want to give assurance that the safeguards are adequate and sufficient, and in so doing ensure that this law secures the consent of all parts of the UK.

In conclusion, I can say only that the balance that the Bill is striving for has raised legitimate questions and concerns about a whole range of issues, of which this is just one. The reservations of both the Government and Parliament of Scotland are, I am told in good faith, a desire to ensure that the Bill is structured in a way that meets the objectives of the Government but also the safeguards being sought by Members of this House and the Scottish Parliament. In those circumstances, I hope the Minister can assure us that it will be possible to bridge that gap, because it would surely be far better for the Bill to be passed with the consent of the Scottish Government and the Scottish Parliament than not.

Lord Dubs (Lab) [V]: My Lords, I welcome the opportunity to speak to the amendment. I speak, of course, as a member of the Joint Committee on Human Rights, a position I share with my noble friend Lady Massey, and her amendment reflects very effectively the concerns of the committee about this issue—although the committee was, of course, also concerned by a whole range of other aspects of the Bill.

I can be very brief, but it can surely never be right for the state to authorise the gravest of crimes: torture, murder or extremes of sexual violence. That is the basis of this amendment, which I therefore fully support.

The Government have said that if we set limits on the offences to be covered by the Bill, that will risk that agents could be tested by the groups that they have infiltrated—in other words, that they would then challenge the CHIS, if they suspect them to be a CHIS, to commit one of those offences and therefore he or she would be revealed. As has already been said, other countries have the same safeguards: the United States, Australia and Canada. They already place express limits on the crimes CHIS can commit. If that works for the security services in Australia, the United States and Canada, it can surely apply to us.

The Government have said that the limits can be safeguarded by the Human Rights Act. Frankly, that is not certain at all. The Government have been hesitant about the Human Rights Act anyway, and I believe—the Minister may confirm this—that the Human Rights Act does not apply to abuses committed by agents of the Government. There is concern that this aspect of the Bill may be relevant to criminal conduct authorised overseas. That is a very dangerous situation indeed, and again I would welcome the chance to hear from the Minister whether or not that is so.

The Government produced comments on the report of the Joint Committee on Human Rights, and in particular said that we cannot go down the path of Canada, the United States and Australia because they are not under the European Convention on Human Rights and we are. That is not a straightforward argument. Canada has its own version of the European Convention on Human Rights and the United States has its own Bill of Rights, so it would be wrong to say that they are not protected by a human rights convention such as covers us. That is not a very good argument. In any case, in the United States, the FBI, as we are learning from the events of last week, has thousands of agents each year operating within terrorist and mafia groups which pose grave threats to the public, yet the United States places express limits on what crimes the FBI's covert agents can commit.

The amendment is a proper one; it is a proper safeguard; it is something that those of us who believe in human rights would say ought to be there. We need the extra protection of the amendment: the Human Rights Act itself is not sufficient.

Lord Cormack (Con) [V]: My Lords, like the noble and learned Lord, Lord Hope of Craighead, I believe the amendment could be improved; nevertheless, like him, I support it. I support its basic principle. I support what the noble Baroness, Lady Massey of Darwen, said.

I was very glad the noble Lord, Lord Rosser, began by paying tribute to the police and those who keep us safe, following that splendidly spirited speech from the

noble Baroness, Lady Manningham-Buller, on Monday, when she talked about the bravery of many who serve in the Secret Service. All that I endorse, but it cannot be right for the state to connive at the committing of heinous crimes: rape, murder or torture. I tabled an amendment in Committee specifically citing those crimes. When I saw the amendment of the noble Baroness, Lady Massey, on the Order Paper, I decided not to resubmit mine because she seemed to have covered it.

The noble and learned Lord, Lord Hope, made a wonderful forensic demolition of the Government's citing support for resisting amendments such as this from the Human Rights Act. That really does not wash. I am bound to say that, in the various conversations I had with officials in the Home Office—I again thank my noble friend for making them possible—the only area where I felt the defence was very weak was in the opposition to an amendment along these lines. We have heard colleagues cite Canada and Australia, and again surely we cannot say that what has worked for almost 40 years in Canada without any apparent obstacle could not work here.

We are a civilised country that always proclaims its belief in the rule of law, the prime requirement of which is to defend all our citizens—hence this unpleasant but necessary Bill—and I submit to your Lordships that it would be completely wrong not to have a brake on the powers that a CHIS can be given. We have seen in the rather unpleasant stories that have come out in the recent inquiry, where women have been seduced when organisations that do not place the state in danger have been infiltrated, that things can get out of hand. I do not want to be part of any endorsement of the commission of murder, rape or torture. That is why, although I believe the amendment can be improved during ping-pong, if it is put to the vote, I will support it.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, the noble Lord, Lord Blunkett, has withdrawn, so I now call the noble Baroness, Lady Chakrabarti.

Baroness Chakrabarti (Lab) [V]: My Lords, I will be short on this, not just to please my friend the Government Whip but because I want us to move to a vote as soon as possible—certainly before the black dog that is conjured in my mind as a result of our not being able to improve the Bill so far overwhelms me. It almost certainly will if we do not achieve some improvement pretty fast. I completely associate myself with the eloquent remarks of my noble friends Lady Massey, Lord Rosser and Lord Dubs in particular, but the noble Lord, Lord Cormack, has once more spoken from such a principled position in his constructive criticism of the Bill.

Briefly, the Human Rights Act is not enough to prohibit criminal offences. The European convention and the Human Rights Act require states to have effective criminal law, but if the Act or the convention were enough by themselves, we would need no criminal law at all. Clearly that is a nonsense. These are high-level, international protections that must be implemented in detail by criminal law; otherwise, there will be violations of the very convention rights on which the Government seek to rely.

5.30 pm

Secondly, the checklist argument—I think it was referred to in the other place as the "Sopranos" arguments—on which the Government rely in opposition to suggestions of the kind in Amendment 15 is both circular and hollow. If the authorising officer and the undercover CHIS agent being authorised understood in all circumstances, for example, that rape or GBH are contrary to Article 3 of the convention, I put it to your Lordships that so would sophisticated organised criminal gangs and terrorist organisations. The convention, if it were so effective for these purposes, would be its own checklist.

For those reasons and the obvious reasons that the state cannot authorise these sorts of grave crimes in any circumstances and comply with common decency, equality before the law and human rights, I urge all Members of your Lordships' House to support Amendment 15.

Baroness Jones of Moulsecoomb (GP): I congratulate the noble Baroness, Lady Massey, on tabling the amendment. I am deeply sad that it needed to be tabled. It is staggering that the Government could even try to legislate in such broad terms to permit people to commit murder or any sort of outrage without limits and with blanket legal immunity. I would have used the word "inconceivable", but obviously at some point somebody has conceived that this would be all right. I very much dispute that.

The Government's response is also that some sort of ethereal legal soup will magically prevent these powers being used for murder, rape or torture. That just is not good enough. This question has to be put beyond any doubt.

The amendment also covers the issue of obstructing or perverting the course of justice. The people who use the powers in the Bill are the very people entrusted by society to uphold the law and fight for justice. The fact that the Bill even puts into any question that they might obstruct or pervert the course of justice is frankly embarrassing.

I mentioned earlier public incredulity, as the noble Lord, Lord Young, put it, from anyone not involved in day-to-day policing, because when they are told of this practice of advanced immunity, they are frankly horrified. When I was buying a coffee today in my local grocers, I explained this part of the Bill to Max, who was making my coffee. He was shocked and said, "It's a licence for crime. It's a licence to kill. It's a licence to commit endless perversions of the law." The rule of law demands that we pass the amendment and insist on it at ping-pong.

Viscount Brookeborough (CB) [V]: My Lords, I had not intended to intervene—[*Inaudible*]—discussed in the context of CHIS operating in non-terrorist criminal organisations and rather less of those in terrorist groups. Because the Bill covers both at once, I feel there is a danger—[*Inaudible*]—extent that it might seriously inhibit the latter, which is the fight against terrorism. I therefore cannot fully support the amendment as a whole, but I would support proposed new subsection (c) on sexual offences on its own if I could do so.

[Viscount Brookeborough]

The major difference between non-terrorist crime and terrorism is that the former—[*Inaudible*]—of death. Terrorism always has death and destruction as its aim. I know little about the former apart from what I have read in the press and heard in the very excellent debates on the Bill. However, I have some knowledge of—[*Inaudible*]—we remember the serious nature of the criminality that terrorist groups seek to carry out. The intelligence that CHIS gather prevents large numbers of deaths and serious harm to the public.

There have been, I believe, some misconceptions in these debates about the terrorist world. There has been mention of informer—[*Inaudible*.] All agents are informers, but not all informers are agents. The single-use informer is a person who is short term only and would probably be paid off or given another life after the operation, such as the dismantling of a drug-dealing gang. This is because he will have been exposed by the arrest—[*Inaudible*]—operator in a large organisation that provides ongoing information that can go on for years or even decades. The noble Lord, Lord Paddick, suggested that a CHIS operating under one of these authorisations is called a participating informer. Perhaps that was so in the areas of his experience, but it was not so in mine, when—[*Inaudible*]—these types of agents, strategic agents in a terrorist group or short-term criminal informers.

In Committee, the noble and learned Lord, Lord Stewart of Dirleton, said:

"Let us suppose that in becoming a member of a terrorist organisation, a CHIS is required to fill out a membership form … The handlers may therefore assist"—[*Official Report*, 24/11/20; col. 151.]

in filling the form out. I hesitate to disagree with such an eminent noble and learned Lord, and while I do not doubt that this might be the case for other groups, I am not aware of any terrorist organisation that produces a membership application—although the IRA had a green book that was given to people once they were inducted.

[*Inaudible*]—in Northern Ireland for 23 years of the Troubles. More recently, I am well aware of the agent-handling protocols from the Troubles era and that they have been adapted and improved for use in Iraq and Afghanistan. For centuries, perhaps for all time, there have been spies and intelligence gatherers at state level, where it is basically strategic intelligence within a pyramid of government structure. This is, if you like, the Le Carré world. Spies rarely have to commit crimes, such as planning and carrying out a bombing—[*Inaudible*]—in the last 60 years is worldwide terrorism and the need to have long-term deep plants or active terrorists who have been turned.

[*Inaudible*]—that states have. Terrorist organisations are very flat in structure and every person from the top to the bottom is—[*Inaudible*]—for want of a better word. They are active terrorists. It is also important to realise that it is very difficult to—[*Inaudible*.] In 40 years of the Troubles, there were only, I believe—[*Inaudible*]—figures of such people. We saw what happened when Robert Nairac thought he could become a member of a family. As a result, most CHIS are turned terrorists or at the very least members of the same communities. They will have committed and will almost certainly continue to commit crime—[*Inaudible*]—a big part of the induction process in the first place. There are no convenient forms to sign, and any reluctance to take part, from initiation onwards, is suicidal.

Imposing these legal limits, as laid down in the amendment, could put CHIS in the terrorist world at substantial risk. After being inducted into a terrorist organisation, every part of that individual's life from then on contributes, one way or another, to the terrorist aims, death and destruction—criminality of the highest order. Becoming a CHIS cannot change that much. However, the outcomes of their provision of intelligence saved many lives.

I shall give a true example of a small event. An agent turned up at a meeting of his IRA ASU—active service unit—in the county where I live. He was told to deliver a car bomb immediately. He could not refuse. He delivered the car and, luckily, the TPU—the timer power unit—gave him time to call his handler from a call box before the bomb was to blow up, thereby avoiding loss of life. If I may say so, that is not the most extreme case.

Of course it is right that CHIS activity should be regulated and the Bill does just that. There are protections in place such as the Human Rights Act. However, there may be times when participation in serious crime is necessary and at short notice. Any refusal to be involved would result in the loss of an agent, and no further information from that source. It may have taken years for him to become so deeply involved. This is real life in that terrifying world. The running of the protection of such people is vital and complex. There has to be a way in which to manage them. Inserting increasingly tight legal limits on what they can and cannot do is not the way forward, as those limits may be largely unenforceable in those circumstances.

I will not go into examples of the protection. However, there is an analogy which shows the value of sources. The Enigma was a provider of intelligence, albeit a machine, rather than a person. When the code was broken, the first signal referred to an immediate attack on a convoy by U-boats. It struck me that that was a similar situation to those of some agents. Turing's colleagues said quickly, "We must warn the convoy." He said, "No. We cannot risk such a valuable source for the future, or that will be the end of it." That is one of the problems for the CHIS.

Terrorism is—[*Inaudible*]—operations alone. The use of many long-term, deep-intelligence CHIS creates a cancer within the terrorist organisations that does so much damage to them that, although they do not admit defeat, they begin to realise that they cannot win. That turning point is sought after by Governments worldwide, and very much due to CHIS.

In the months prior to the ceasefire in Northern Ireland, over 90% of planned terrorist operations failed or did not take place, largely as a result of long-term deep CHIS. I and my family were among the beneficiaries of such intelligence. I believe that this and some of the other amendments will inhibit the fight against the worldwide terrorist threat.

Lord Paddick (LD) [V]: My Lords, we support the amendment in the name of the noble Baroness, Lady Massey of Darwen. I have added my name to it.

The noble and learned Lord, Lord Hope of Craighead, seems to have blown the Government's reliance on the European Convention on Human Rights out of the water. Even if he was wrong, which I very much doubt, I fail to understand the difference between a list of offences that can be deduced from the convention and an offence listed in the Bill. The Government's argument seems to be solely based on the danger of the CHIS being tested by asking them to perform prohibited acts. Yet as the noble Lords, Lord Rosser and Lord Cormack, have said—the amendment being based on the Canadian Security Intelligence Service Act 1985—the Canadians seem to have had no such qualms or difficulties.

In any event, is the cat not out of the bag already? Do criminals read *Hansard*? That is about as likely as they are to read primary legislation, in my experience. We have the list of prohibited offences published as a proposed amendment. The Minister is saying that those offences would be prohibited anyway under the ECHR, so what is to be lost? I understand the reservations of the noble and learned Lord, Lord Hope of Craighead, about the wording of the amendment, but if the Government do not give an undertaking to bring this matter back at Third Reading, it can be approved on ping-pong, as the noble Lord, Lord Cormack, said.

5.45 pm

I go back to what the Minister said in a different context in Committee:

"We have been consistently clear that we want this important legislation to command the confidence of Parliament and the public".—[*Official Report*, 1/12/20; col. 651.]

Here is an excellent opportunity to achieve that. I urge the Government to accept the amendment.

My noble friend Lord Bruce of Bennachie talks about the concerns of the Scottish Government and their call for prior judicial authorisation. After we have considered the amendment, we will come to the previously debated Amendment 17. It is this House's last chance to insert prior judicial authorisation into the Bill, and I will be testing the opinion of the House on that amendment after we have, I hope, agreed to this one.

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have spoken in this debate. Although the line was not particularly good, the House will have found valuable the operational experience of the noble Viscount, Lord Brookeborough. If I heard him correctly, he said that during the Troubles he thought that 90% of terrorist operations failed because of CHIS activity, clearly making the UK a far safer place.

The limits on what could be authorised under the Bill are provided by the requirement for any authorisation to be necessary and proportionate, and for an authorisation to be compliant with the Human Rights Act. Any authorisation that is not so compliant would be unlawful—for example, if, on the particular facts, an authorisation would amount to a breach of, say, Article 3, the prohibition against torture. The HRA also places protective obligations on the state, as the noble and learned Lord, Lord Hope of Craighead, pointed out. Where the state knows of the existence of a real and immediate threat to a person, it must take reasonable measures to avoid that risk. That protective obligation is at the heart of CHIS authorisations. I have made the point before but I say again that nothing in the Bill seeks to undermine the important protections in the Human Rights Act. Public authorities will not and cannot act in breach of their legal obligations under the Act. All criminal conduct authorisations will comply with the Human Rights Act as well as with relevant domestic and international law.

The aim of a CHIS authorisation is to disrupt the activities of terrorist and criminal organisations. The authorisation is focused on enabling the CHIS to provide intelligence to do just that. The activities and conduct of those against whom the CHIS operates must not be confused with the CHIS's conduct.

I highlight again to noble Lords the risks that we create by putting explicit limits in the Bill. These are not just risks that the Government have identified; we are being led by the advice and expertise of operational partners. The decisions that we have made throughout this Bill, particularly on this issue, are based entirely on the reality that our operational partners experience in the field—not on the views of myself or any other noble Lord but entirely on the reality that operational partners have told us about, from all parts of the UK. We have heard some very powerful examples from the noble Viscount, Lord Brookeborough.

We must not seek to make amendments to this very important Bill that have unintended consequences both for the CHIS themselves and the wider public. If we create a checklist in the Bill, we make it very easy for criminal gangs to write themselves a list of offences that amount to initiation tests. We have no doubt that some of those criminals seeking to demonstrate that they are not a CHIS will go away and do exactly what is asked of them, perhaps committing rape, in order to demonstrate their loyalty to the cause. Some of those who do not will suffer the consequences of wrongly being thought to be a CHIS, which is a point worth digesting.

This does not mean that, if a CHIS were asked to commit any crime as part of an initiation process, they could do so, not least because the Human Rights Act and necessity and proportionality tests already provide limits. It is simply that we need to avoid a refusal to conduct these awful actions being a strong indication to senior terrorists and criminals that a person is a CHIS. The consequences of presenting such a checklist would ultimately be felt by the public: because CHIS cannot be kept in play, there will be more successful terrorist attacks and more children will suffer sexual abuse.

I will again address remarks pointing to an apparent contradiction in the Government saying that we cannot provide limits because sophisticated groups will conduct CHIS testing—and that the Human Rights Act provides limits that these groups cannot identify. The people who are the subject of CHIS operations are many and varied; some are very sophisticated and capable organisations that will invest real effort to understand and frustrate our covert capabilities. These groups, which will include hostile states, will go to lengths to try to convert the HRA obligations into specific offences that they can then test against. They may feel that they have reached clear conclusions on some offences but

[Baroness Williams of Trafford]
will not know for certain in every case that their analysis is sound. This margin of uncertainty can be enough to keep CHIS working safely and effectively.

Let us go to the other end of the spectrum of our opponents: individuals and small groups that are no less committed to their crimes but are unsophisticated. Their effectiveness might often lie in their willingness to act quickly and violently. This kind of group will not have a sound understanding of the Human Rights Act or, indeed, any other deep legal analysis. If we simply presented them with a list of offences, we are certain that many of them would just use it as a means to try to identify CHIS. Of course, the reality is that they get it wrong very often, meaning that negative consequences would fall on people wrongly suspected of being CHIS as well as on the CHIS themselves. Let us do our best to avoid handing over a ready-made checklist to criminals and terrorists to carry out these checks.

Before I finish, I will respond to the noble Lord, Lord Bruce of Bennachie, who talked about the problem with Scotland and the LCM. Conversations are ongoing, but he is absolutely right that prior judicial authorisation seems to be a sticking point, and we will do our best to resolve it. With those words, I hope that noble Lords will take great care when they consider whether to vote for these amendments.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, I have received a request to speak after the Minister from the noble and learned Lord, Lord Mackay of Clashfern.

Lord Mackay of Clashfern (Con) [V]: My name was down due to a fault of mine; I apologise for interrupting.

Baroness Massey of Darwen (Lab) [V]: I have reservations about some of the issues the Minister raised in summing up this excellent debate—most of them have been addressed by noble Lords. I thank all noble Lords for their varied and incisive comments and useful examples in this valuable, interesting and important debate.

I am particularly delighted that the noble and learned Lord, Lord Hope of Craighead, immediately followed me in this debate; he raised many issues and provided excellent analysis and clarifications. I accept his comments and am delighted that he feels he can support what he has called an imperfect amendment. He is also right in saying, as did the noble Lord, Lord Cormack, and others, that great weight must be given to the issue of torture, which should never be authorised.

Other noble Lords have contributed varied arguments on my amendment. The noble Lord, Lord Bruce of Bennachie, made a useful contribution from the point of view of Scotland, where, interestingly, the Bill was found to be inadequate, as he said. That has been a theme throughout the debate, especially when discussing the Human Rights Act as an inadequate safeguard to prevent criminal offences. The noble Baroness, Lady Chakrabarti, among many others, raised this issue, saying that we cannot legislate in such broad terms; it is not all right to do so.

In thanking noble Lords for participating in this debate, I note that, although I understand what the Minister is saying, the consensus is that there are too many inadequacies. Given those inadequacies, I beg to test the opinion of the House.

5.57 pm

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6.11 pm

Amendment 16 not moved.

The Deputy Speaker (Lord Alderdice) (LD): We come now to Amendment 17 in the name of the noble Lord, Lord Paddick. Does the noble Lord wish to move his amendment?

Amendment 17

Moved by ***Lord Paddick***

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

"(8A) Where a criminal conduct authorisation has been granted, the covert human intelligence source so authorised cannot be deployed unless the conditions under subsection (8B) have been fulfilled.

(8B) The conditions are that—

(a) notification has been given to the Investigatory Powers Commissioner of—

(i) the purpose and extent of the deployment, and

(ii) the type of criminal activity it is anticipated the covert human intelligence source would participate in, and

(b) the Commissioner has considered the likely operational dividend against the likely intrusive effects, including the potential for collateral damage or injury, and has approved the deployment.

(8C) In the event of urgency, prior approval is not required but notification must be given to the Investigatory Powers Commissioner as soon as reasonably practicable and in any event not later than seven days after the deployment.

(8D) A notification under subsection (8B) or (8C) must be given in writing or transmitted by electronic means."

Lord Paddick (LD) [V]: I beg to move and I wish to test the opinion of the House.

6.12 pm

Division conducted remotely on Amendment 17

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Amendment 17 disagreed.

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6.24 pm

Amendments 18 to 21 not moved.

Amendment 22

Moved by ***Lord Anderson of Ipswich***

22: Clause 1, page 3, line 16, at end insert—

"( ) Notwithstanding section 27, injury sustained by any person shall not be excluded from the scope of the Schemes provided for by the Criminal Injuries Compensation Act 1985 and the Criminal Injuries Compensation (Northern Ireland) Order 2002 by virtue of the fact that the conduct causing such injury was authorised under this section."

Member's explanatory statement

This amendment seeks to ensure that victims of violent crime are not rendered ineligible for criminal injuries compensation by reason of the fact that the crime was the subject of a criminal conduct authorisation.

Lord Anderson of Ipswich (CB) [V]: I beg to move and I wish to test the opinion of the House.

6.25 pm

Division conducted remotely on Amendment 22

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Amendment 22 agreed.

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6.37 pm

Amendment 23 not moved.

Amendment 24

Moved by ***Baroness Kidron***

24: Clause 1, page 3, line 16, at end insert—

"29C Criminal conduct authorisations: granting to children and vulnerable sources

(1) This section applies when the source is—

(a) under the age of 18,

(b) a vulnerable individual, as defined in subsection (5), or

(c) a victim of modern slavery or trafficking, as defined in subsection (6).

(2) No criminal conduct authorisations may be granted for a source to whom subsection (1) applies unless the authorising officer believes that exceptional circumstances apply that necessitate the authorisation.

(3) Where a criminal conduct authorisation is granted for a source to whom subsection (1) applies, the arrangements referred to in section 29(2)(c) of this Act must be such that there is at all times a person holding an office, rank or position with a relevant investigating authority who has responsibility for ensuring that an appropriate adult is present at all meetings between the source and a person representing any relevant investigating authority.

(4) In subsection (3) "appropriate adult" means—

(a) the parent or guardian of the source;

(b) any other person who has for the time being assumed responsibility for his or her welfare; or

(c) where no person falling within paragraph (a) or (b) is available and deemed appropriate, any responsible person aged 18 or over who is neither a member of nor employed by any relevant investigating authority.

(5) A "vulnerable individual" is a person who by reason of mental disorder or vulnerability, other disability, age or illness, is or may be unable to take care of themselves, or unable to protect themselves against significant harm or exploitation.

(6) A "victim of modern slavery or trafficking" is a person who the relevant investigating authority believes is or may be a victim of trafficking as defined by section 2 of the Modern Slavery Act 2015 (human trafficking), or exploitation as defined by section 3 of that Act (meaning of exploitation).

(7) The "exceptional circumstances" in subsection (2) are circumstances—

(a) where authorisation of the criminal conduct authorisation is necessary and proportionate considering the welfare of the covert human intelligence source;

(b) where, if the covert human intelligence source is under 18, the relevant investigating authority has determined in its assessment that the criminal conduct authorisation remains compatible with and does not override the best interests of the covert human intelligence source;

(c) where all other methods to gain information have been exhausted; and

(d) where the relevant investigating authority has determined in its assessment that the source to whom subsection (1) applies will not be at risk of any reasonably foreseeable harm (whether physical or psychological) arising from the criminal conduct authorisation.

(8) Where a person grants a criminal conduct authorisation to anyone specified in subsection (1), that person must give notice of that authorisation to the Investigatory Powers Commissioner.

(9) A notice under subsection (8) must—

(a) be given in writing;

(b) be given as soon as reasonably practicable, and in any event within seven days of the grant; and

(c) include the matters specified in subsection (10).

(10) Where a person gives notice under subsection (8) in respect of the granting of a criminal conduct authorisation, the notice must specify—

(a) the grounds on which the person giving the notice believes the matters specified in section 29B(4) are satisfied;

(b) the conduct that is, or is to be, authorised under section 29B(8); and

(c) the reasons for believing that "exceptional circumstances" as set out in subsections (2) and (7) apply."

6.38 pm

Division conducted remotely on Amendment 24

Contents 339; Not-Contents 235.

Amendment 24 agreed.

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6.51 pm

Amendment 25 not moved.

The Deputy Speaker (Lord Alderdice) (LD): Would the noble Baroness, Lady Williams of Trafford, like to move Amendment 26 formally?

Baroness Williams of Trafford (Con): I will not move Amendment 26. Given the strength of the House on Amendment 24, I think it is probably best to go away and, as discussed earlier, have some more discussions on both the government amendment and Amendment 24.

Lord Kennedy of Southwark (Lab Co-op): I thank the noble Baroness and the Government very much for that. I am sure we can get an agreement and all come together. Thank you so much.

Amendment 26 not moved.

The Deputy Speaker (Lord Alderdice) (LD): We now come to the group beginning with Amendment 27. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate. I should inform the House that, if this amendment is agreed to, I cannot call Amendments 28 to 31.

Clause 2: Authorities to be capable of authorising criminal conduct

Amendment 27

Moved by ***Baroness Hamwee***

27: Clause 2, page 4, leave out lines 3 to 23 and insert—

"RELEVANT AUTHORITIES FOR THE PURPOSES OF S. 29B

Police forces etc

A1 Any police force.

B1 The National Crime Agency.

C1 The Serious Fraud Office.

The intelligence services

D1 Any of the intelligence services."

Member's explanatory statement

This amendment would limit the public authorities entitled to grant criminal conduct authorisations.

Baroness Hamwee (LD): We have Amendments 27, 29, 30 and 45 in this group. Amendment 27 is the central amendment. I appreciate that it may not be immediately obvious, but it responds to how the Bill is constructed, so I will try to explain.

The Regulation of Investigatory Powers Act—RIPA—allows for a number of authorities to deploy sources. That number is reduced by this Bill, and we support that. However, at the same time, all authorities that remain on the list are relevant authorities, which are also able to grant criminal conduct authorisations. Our amendment would leave out what is a repeal of the list in RIPA—that repeal follows from the Bill's new Part A1 of the RIPA schedule—but it puts back

[Baroness Hamwee]
the police, the National Crime Agency, the Serious Fraud Office and the intelligence services for the purposes of new Section 29B, which is for new criminal conduct authorisations. In short, amendments 27 and 45 would mean that all the authorities listed in Clause 2 are relevant authorities for the purposes of the sections of RIPA that continue and so can deploy sources, but only the police, the NCA, SFO and intelligence services can grant CCAs. Simply taking out a number of authorities from the Bill does not achieve that, though it took me a while to work out how to get there and we got it wrong in Committee. The Minister was kind enough not to rub that in.

At the last stage, the noble Baroness, Lady Massey, and the noble Lord, Lord Dubs, explained the concerns of the JCHR, and they have tabled their amendment again. Other noble Lords had amendments and spoke to concerns about what the noble Baroness, Lady Chakrabarti, called overreach. The noble Lord, Lord Cormack, proposes leaving off the list the five authorities which have caused the most surprise among a number of noble Lords.

At the last stage and on Monday, I felt several times that those of us who have been putting forward amendments to the Bill, in what I described then as attempts to buttress safeguards to the granting of CCAs, while on the whole accepting their use, were thought to be attacking the use of agents. We were not. We understand the safeguards in the Bill and the draft code of practice—necessity and proportionality, as well as the procedural safeguards. Of course, most of us do not have the direct experience of other noble Lords, and most of us could not do what they do or have done. But I hope they do not regard it as disrespectful of them if I say that one of the attributes of this House is that we blend expertise and experience with, I hope, reasonably informed and intelligent generalism. It would not be good for democracy—I am aware of the irony of an unelected politician making the point—if experience in a particular area were not leavened by other experiences, including life experience.

Questioning the authorities that can grant criminal conduct authorisations is not questioning the use of agents. I understand the argument that it may be better not to split activities and that, if criminal conduct is to be authorised, it is better to authorise an agent already placed in the authority, perhaps even an employee. On Monday my noble friend Lord Paddick made the counterargument that, if the situation is so serious that a CCA is contemplated, it should be a matter for the police. It is a judgment between the two positions. I regard the granting of a CCA—permission to commit a crime for the greater good—as so serious that it should be more limited than the deployment of an agent. I do not dispute that some of what the authorities in contention, if I may put it that way, deal with is extremely serious; but I started to wonder why we would take out of the list of those who can deploy a CHIS the Gangmasters and Labour Abuse Authority and the Marine Management Organisation while retaining, for instance, the Environment Agency.

Our other amendments, which would be pre-empted if Amendment 27 is agreed, are to limit the authority of the Armed Forces to the police of the three services—the reference to the intelligence services is unaffected—as we assume, or hope, that it is not intended that every part of the Armed Forces should be entitled to give agents the authority to commit crime. In the case of the Home Office, we would limit the Home Secretary's right, in effect, to authorising herself to prevent or detect modern slavery and trafficking, picking up on the Minister's explanation of the inclusion of the Home Office being specifically related to immigration enforcement—she gave an example. I beg to move.

Baroness Massey of Darwen (Lab) [V]: My Lords, I thank the noble Baroness, Lady Hamwee, for her explanation of this set of amendments. I shall be brief in presenting Amendment 28. I am a member of the Joint Committee on Human Rights, which considered the Bill and the issue of granting authorisations. This amendment would restrict the authorities that can grant criminal conduct authorisations to police forces, the National Crime Agency, the Serious Fraud Office and the intelligence services.

The recent Joint Committee on Human Rights report considers the wide range of public bodies in the Bill unnecessary and unproductive. Criminal conduct authorisations, from a human rights perspective, must first consider whether the exceptional power to authorise crimes to be committed without redress is truly necessary for all these public authorities.

7 pm

The second issue is whether granting that power would be proportionate to the human rights interferences likely to result. The Government have provided limited and insufficient justification for the authorisation of criminal conduct by bodies such as those listed here. The Home Office has provided brief guidance on this—a series of operational case studies and hypothetical examples of where CCAs might be used by, for example, the Environment Agency and the Food Standards Agency.

The key question is: why would the police, or another body whose function is totally focused on the prevention of crime, not take responsibility for any need to authorise criminal conduct in the course of undercover work that falls within the purview of these organisations? The JCHR concluded that

"in the absence of satisfactory explanation from Government, it is hard to see any justification for extending the use of CCAs to bodies whose central function is not protecting national security or fighting serious crime … The power to authorise criminal conduct should be restricted to public authorities whose core function is protecting national security and fighting serious crime."

Lord Judd (Lab) [V]: My Lords, I rise—as it were—to support Amendments 27, 28 and 29. These are important. We are dealing with very grave matters, as we have frequently emphasised in our discussions, and it is essential that they are in the hands of bodies and people who are part of organised, disciplined and accountable elements in our state. For that reason, these amendments are self-evidently necessary.

I also commend the amendment that deals with people in the armed services who can authorise. This should be limited to the police in those services. It is very important that those involved in the work should

be part of that disciplined body. I am not happy with a situation in which we use Tom, Dick and Harry to do work on our behalf. That is not healthy in a democracy and it is not in the spirit of everything we are about. We need to make sure that professional people are doing this work who, we hope—I emphasise "hope"—understand that they are doing it in the cause of defending democracy, freedom, accountability, the rule of law and justice. I am glad to support these amendments.

Baroness McIntosh of Pickering (Con) [V]: My Lords, this group of amendments is of particular interest to me as, when we first looked at the Bill in Committee, I had great difficulty in understanding why the provisions of this clause extended to the Food Standards Agency and Environment Agency. I was fortunate to have a helpful briefing arranged by my noble friend the Minister. I also looked back to the evidence we took almost 10 years ago in the Environment, Food and Rural Affairs Committee in the other place, when the "horsegate" incident arose—in which horsemeat was passed off as beef and other types of meat. Regrettably, this is a potentially multi-million-pound business, as is fly-tipping, which is the bane of public life in rural areas. As I see it, if this is organised crime perpetrated by criminal gangs, one of the only ways we can tackle it, provide evidence and bring successful prosecutions is by granting agencies the tools under this clause.

I requested case studies and I understand that this is early days and that the provisions obviously have not yet applied—perhaps my noble friend could confirm that. However, it is envisaged that the provisions under this clause would enable the Food Standards Agency to tackle the type of fraud that was experienced in the horsegate scandal and prevent it happening in the future—one hopes, at the earliest possible stage—and the Environment Agency to use the intelligence to bring a successful prosecution in incidents of fly-tipping and other forms of illegal waste disposal.

Against that background, I would like these two agencies to remain in the Bill. I presume that my noble friend will able to confirm in the absence of current case studies—which I understand to be the position—that Parliament will have the opportunity to review the arrangements through the annual IPC report. It would be helpful to have that understanding. If we were to delete the agencies entirely, as is the purpose of Amendment 27, or, as the noble Baroness, Lady Hamwee, eloquently outlined, to prevent officers of these two agencies granting CCAs, we would be tying their hands in what is a seriously fast-moving crime.

Baroness Chakrabarti (Lab) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady McIntosh of Pickering. The nature of our hybrid proceedings allows us to see her beavering away almost by candlelight, keeping warm but still with us. We have not always agreed on this Bill, but she has been a stalwart scrutineer during these proceedings.

The various safeguards that noble Lords have tried to add to the legislation are a patchwork. One could be relaxed about dispensing with some if one had others. I personally would have been much more relaxed, even about this extensive list of agencies, but for not being supported by sufficient noble Lords on that vital constitutional issue of immunity, which I am afraid has completely changed the game on CHIS criminal conduct.

I hear the arguments about the need to protect the environment and the markets, and to protect gambling from corruption et cetera, but if such scandals and organised crime were so serious, the police could be engaged to assist a relevant agency or commission in appropriate cases. That is what happens with powers to enter and powers to arrest all the time. If there was not something special about trained Security Service officers or trained police officers, we would grant a whole range of serious powers to enter and arrest to many more state departments and agencies than we do.

I understand the argument about resources because the police are so pressed, but that is an argument for giving them the financial resources and personnel they need to engage in serious crimes, including those relating to unsafe food and so on. So, I support limiting the agencies in the manner suggested by Amendments 27 and 28. We should leave it to the trained police or the trained security agencies. I would include the National Crime Agency and the Serious Fraud Office, but not a whole host of state agencies and government departments; otherwise, there could be a serious constitutional concern and a great many scandals well into the future.

Lord Cormack (Con) [V]: My Lords, I first raised this issue at Second Reading and I tabled an amendment in Committee.

I very rarely disagree with my noble friend Lady McIntosh of Pickering, but the logic of her argument is that you cannot tackle crime without giving a multitude of bodies the opportunity to enlist people to commit crime. I just do not accept that. I have deleted the bottom five organisations in the list—the ones on which, as the noble Baroness, Lady Hamwee, said in her admirable introduction, people have focused most attention by asking, "Why are they there?"

I completely understand the argument about police forces and the National Crime Agency, et cetera. Having had conversations with officials in the Home Office and HMRC, I even understand the introduction of HMRC into the Bill, but, for the life of me, I just cannot see why, as the noble Baroness, Lady Chakrabarti, said a moment or two ago, police forces cannot deal with such bodies as the Environment Agency, the Food Standards Agency and the Gambling Commission.

Having a proliferation of bodies that are able to sanction people to commit crimes sends out a very bad signal. We take pride in our police forces and they should of course have the resources necessary to investigate all manner of crimes. People who commit crimes, whether within the orbit of the Environment Agency or the Food Standards Agency, should be brought to justice and punished if they are found guilty. But I just do not see a justification for this long list in the Bill. I very much hope that, when the Minister comes to reply, she will be able to convert and convince me, but I really do not think that she will. Whether I move my amendment to a vote will depend on what I hear, but I give notice that I might.

Lord Dubs (Lab) [V]: My Lords, it is a pleasure to follow the noble Lord, particularly as on this occasion, as quite often, I find myself in agreement with him.

[LORD DUBS]

When I listened to the noble Baroness, Lady McIntosh, I initially thought that there was something in her argument. Then I pondered again for a moment or two and decided that this was not an acceptable way of going forward, particularly as we could get into the position of mentioning a lot of other agencies and public bodies, all of which might have a similar claim to being included in the Bill as some of these have. It is going too far. When this issue got to the Joint Committee on Human Rights, we were quite puzzled by it all. I noticed that the media—certainly the national newspapers—had fun at the expense of the list.

I do not think that we can justify it. If we said that every public body had the right to be included in the list, that would be absurd. We should confine ourselves to bodies that deal with fighting serious crime and terrorism—major national and security issues. As I said, I think that this has gone too far. When I first heard about the list, I was not inclined to take it too seriously, but then I saw it on page 4 of the Bill. It does not seem to be a good idea, and I very much hope that we will pass one of the amendments that cleans up the list and makes it smaller and more sensible.

7.15 pm

Lord Naseby (Con) [V]: My Lords, these amendments are all about which specific public authorities should have the power to grant criminal conduct authorisations. Frankly, I disagree with my noble friend Lord Cormack and the noble Lord, Lord Dubs. I see no need to be restrictive; all sorts of public authorities may need to use the sort of, in effect, facilities to use criminal conduct authorisations. In addition to the list here, how about the Civil Aviation Authority? One knows—and I am deeply involved in civil aviation matters—that that area is riddled with challenges of illegality. The same applies to Customs and Excise, and so on. Surely the issue is not who should have the power, but deciding, after a thorough assessment of need, who is the most relevant and has the right expertise. Otherwise it becomes a bureaucratic nightmare, rather than a carefully planned and executed operation.

Lord King of Bridgwater (Con) [V]: My Lords, I am pleased to have the opportunity to follow the noble Lord, Lord Naseby, who is rather closer to my position than most of the other contributors to this debate.

I think we start, after these exhaustive Committee and Report stages, with a pretty wide recognition across the House of the value that can come from covert sources and the vital need to ensure that, in maintaining law and order and a safe country, we do not lose the opportunity of using covert sources. They may be the only way to get the results we want and to prevent very serious crime and damage to our country.

But I think the reason why perhaps we have the problem of these amendments—all of which I oppose—is that many people ask the Government for lots of examples of all the ways in which the various bodies that people wish to delete have actually had any success with covert sources. Of course, the difficulty the Government have, which I understand, is that it is very difficult in many cases. There may be ongoing issues, or they may endanger existing covert sources by giving too many examples of the ways in which we have managed to prevent crime and get the success that we want.

I certainly think that there is general agreement that, if we do have the operation of covert sources, it has been made very clear that we want to be satisfied that they are properly operated; that it is necessary and proportionate; that it is subject to effective scrutiny and inspection; and that there are clear limits on the number of authorities permitted and able to operate it.

When one looks at the list of the authorities, I was not impressed with the noble Lord, Lord Judd, talking about any Tom, Dick or Harry. These are major organisations in our country—public authorities with major responsibilities. I would just make this point: it is not just any list. We know that it would be wrong to have too many. The Minister may correct me, but I believe that there were 34 originally which, under the previous arrangements, could operate. This has now been reduced to 14, which seems to me the right approach to take.

Looking at some of the issues that there are, in my previous contributions I have drawn on the contribution of James Brokenshire, and I join in our best wishes to him. I will just repeat once the evidence he gave on the devastating amount of crime and serious events: in a year alone in London, covert sources helped ensure 3,500 arrests, the recovery of more than 500 weapons, the seizure of more than 400 kilograms of class A drugs and the recovery of more than £2.5 million in cash. The only thing that that does not actually say is which of these agencies in London were part of that. That is part of the problem the Government have had in getting across the message of why these agencies are important.

In the current situation, in the middle of the Covid-19 pandemic, when I think we are about to have global challenges in the supply of vaccines and some new medicines thought to help with treatment, with the struggle there may be and the opportunities for organised crime to get into that area, for the Government to delete the Department of Health and Social Care and its medicines and healthcare products section from being involved in this area—they could be vital; they are needed in those situations—and say that they have decided on this occasion to deprive them of what may be a vital source of intelligence to protect the nation's health would be unforgivable.

In passing, I note the decision to delete the Home Office from the list except in cases of slavery. I do not know how many noble Lords saw the letter in today's *Times* from the Reverend Jonathan Aitken, the chaplain to Pentonville prison. He made the case that in prisons at the moment, where a number of staff are having to self-isolate and are under great pressure and there are opportunities for criminal gangs to get up to dangerous operations of one form or another, it is essential that we do not at this moment take away one of their sources of possibly vital intelligence.

I will not go on about it, because the other thing I see coming—just to cheer everybody up—in our present dramas is a real risk of world food shortages. If there is a challenge of that kind, with the opportunities for organised crime to get into the food area and cause huge problems for different people, that choice moment

to delete the Food Standards Agency from being able to keep the fullest possible checks on what is happening seems very unwise. I certainly agree that there should not be a huge range of different agencies, but I do not support any of these amendments. All these agencies have good justification at the moment; it is vital we keep our defences up.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I find myself agreeing with a lot of the comments of the noble Lord, Lord King of Bridgwater.

I absolutely recognise the concerns of Members about the range of organisations listed in the Bill. It is right that we probe, question and justify to ourselves as a House which organisations are listed here—as we have heard, that is now a reduced number—but it is also important that, as this Bill passes through the House, we empower a number of organisations to have the ability, in limited circumstances, to employ a covert human intelligence source.

If you look at the organisations here and think about the potential crimes that could be under their remit—HM Revenue & Customs in terms of tax fraud, the Food Standards Agency in terms of passing off out-of-date meat, the Environment Agency in terms of discharging all sorts of stuff into our rivers or the Competition and Markets Authority in terms of many activities which are illegal and very detrimental to our country—it is right that we have this range.

It is fair to say that some organisations listed here would potentially use the power much more than others. That is fair. I am clear that the Investigatory Powers Commissioner has some oversight here, but it would be useful if the noble Baroness could be clear in responding that an organisation that used this power very infrequently would have the ability to go to the Investigatory Powers Commissioner for advice and guidance, and maybe also to other agencies that are more used to using this power.

I absolutely see the point that we need to have organisations in certain areas empowered to do this work. These are potentially very dangerous situations. This is about keeping our country safe and protected in these difficult times. Although I understand the concerns raised by noble Lords in the amendments in this group, we on these Benches would not support any votes on them.

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have spoken in this debate. Like the noble Lord, Lord Kennedy, I found the contribution from my noble friend Lord King very compelling. I hope that all noble Lords have received and read the business cases for the wider public authorities that I sent to all Peers last week. On the basis of those, I hope that noble Lords will appreciate the requirement that these public authorities have for the use of this power. I can again offer reassurance that they will be low users of the power but that it nevertheless remains an important tactic in detecting and preventing crimes that have a significant impact on the lives of the public.

Regarding why the police cannot just authorise for these wider public authorities, the police have a range of priorities and we have given various organisations specific law enforcement responsibilities. That is why these public authorities have their own investigative functions, and they therefore need the tools to fulfil those functions.

If noble Lords support Amendment 33, in the name of the noble Lord, Lord Anderson, as the Government will, IPCO will have close to real-time oversight of every single criminal conduct authorisation granted by each public authority. This will be another important safeguard to ensure that the power is being used properly and appropriately. IPCO will almost definitely flag where this is not the case, or if there are training requirements.

I can confirm that my noble friend Lord King is absolutely right: there were originally 34 authorities. There are now 14, so, far from expanding that list, we are contracting it. In response to my noble friend Lady McIntosh of Pickering, I can confirm that the IPC will consider the authorisation of wider public authorities in his annual report, which will be public.

I would like to give a very topical example of how this power might be used by one of our wider public authorities, the Medicines and Healthcare products Regulatory Agency, which comes under the umbrella of the Department of Health and Social Care in the Bill. The MHRA has responsibility for protecting public health through the regulation of medicinal products, medical devices and blood and blood products in the UK. These products are not ordinary consumer goods and have the ability to cure, prevent and diagnose disease and enhance life. However, they can also cause serious harm. In particular, prescription medicines are, by their very nature, potent and are prescribed to patients by a healthcare professional based on clinical judgment and a patient's history.

In the UK, strict legal controls govern these products and breaches of these regulations are criminal. Crime involving medicines and medical devices is increasing; they are profitable commodities and unscrupulous individuals and organised crime gangs, which put financial gain before human health, face less risk and less severe penalties compared to trading in, for example, narcotic drugs. The MHRA relies on powers under RIPA, including the power to authorise the use and conduct of CHIS, to investigate and disrupt criminal activity in this area.

7.30 pm

We are all aware of and welcome the fact that three vaccines have been authorised for use in response to Covid-19. Unfortunately, as a result, there is a risk of opportunities for a range of criminal activity relating to diverting authorised vaccines and supplying unauthorised versions. The results of that could be catastrophic for the health of the British public. The authorisation of CHIS to participate in offending is a crucial part of the MHRA's armoury in tackling crime involving these products. The following is a hypothetical example of how it might deploy a participating CHIS in these circumstances.

A CHIS is deployed to engage with a corrupt healthcare professional who is offering medicines subject to control under misuse of drugs legislation and with links to an organised crime group. Large quantities of

[Baroness Williams of Trafford]
Covid-19 vaccines that had been diverted from the legal supply chain are offered to the CHIS. An authorisation for CHIS participation in criminal conduct is issued to enable the CHIS to engage with the OCG to seek samples and conspire with those involved to purchase and distribute these diverted medicines into the black market.

The authorisation allows the CHIS to develop relationships with the OCG and work their way up the network by purchasing samples and discussing purchase prices for bulk supply. Information obtained by the CHIS ultimately assists the operational team in identifying those involved, including the licence holder responsible for the diversion from the legal supply chain and into the black market. In this scenario, we would expect that a number of arrests would be made and the supply chain secured, without the loss of this valuable product or confidence in the legitimate supply of the vaccine. This is a theoretical example but I am sure that noble Lords can see the potential for this to happen. My noble friend Lady McIntosh of Pickering mentioned the horsemeat scandal. The example I have given is just one instance of the very important work that these public authorities undertake to keep us all safe from harm. Each body that has been included in the Bill has provided operational case studies setting out its requirement for the use of this power, and they will all be subject to robust and independent oversight by the IPC.

The amendments in the name of the noble Lord, Lord Paddick, are more specific and restrict what the Armed Forces and the Home Office can authorise. My noble friend Lord King opined on that.

The use of CHIS, including in the context of criminality, is not restricted to military police forces. Other highly trained units of the Armed Forces are involved in national security investigations that involve the use of CHIS, including countering activities by hostile states, insider threats or terrorists—the noble Viscount, Lord Brookeborough, gave this example earlier—and this may require the authorisation of criminality. This work is comparable to that of the security and intelligence services and, like them, the wider Armed Forces continue to require these powers.

Similarly, Immigration Enforcement, under the umbrella of the Home Office, does very important work which goes much wider than modern slavery. It carries out criminal investigations into organised crime groups involved in organised immigration crime, document fraud, clandestine entry into the UK, human trafficking and money laundering the proceeds of crime.

We must not create unintended consequences by reducing these public authorities' tools for keeping the public safe. I hope that the noble Baroness will withdraw the amendment.

Baroness Hamwee (LD) [V]: I repeat what I said at the start of this debate: that the reduction in the list is not about reducing the number of authorities which can engage covert human intelligence sources. It is about which of those authorities can grant criminal conduct authorisations—as the noble Lord, Lord Cormack, put it, fighting crime by allowing the commission of crime.

I acknowledge the reduction in the number of authorities that can engage human sources. I had hoped that I had explained that at the start of the debate, when I sought to explain the structure of Amendment 27. I do not dispute that a lot of what all the authorities in question deal with is very serious, including organised crime in some instances, but I have to say that I end this debate far more disturbed and distressed than I was half or three-quarters of an hour ago. We seem to be sliding into an acceptance of the position that, if there can be a CHIS, subject to the safeguards in particular cases that we have spent quite a lot of time on, there can be a criminal authorisation.

Should every public body have what has been described as a tool? It is a tool, but it should be a tool employed and allowed in only the narrowest, most specific and most extreme of circumstances, which is what the agencies that remain on the list of those able to grant criminal conduct authorisations deal with. They deal with extreme circumstances, and that includes the police. If every public body or public authority on this list has a tool, how should we regard the police? How should we think about society's attitude to using crime to fight crime? I should have thought, for instance, that it should be for the police to deal with the theft of vaccine. I had hoped that I had distinguished very clearly between the two different situations.

I was puzzled by the noble Baroness, Lady McIntosh, saying that she understood that no case studies could be provided for some of the authorities because the provisions were not yet applied. I had thought that the whole Bill was about putting on a statutory basis what had been going on without that statutory basis. However, having said that—quite emotionally, I accept, because I do feel that this is emotional as well as something to which we should apply rigour and judgment, and I had hoped that that was what we were doing—I think it is about how we regard how we run our society, the place of the police in it and the trust that we have in public authorities. However, we have heard Labour say that it cannot support this amendment, so I shall not take the time of the House on a Division and I beg leave to withdraw.

Amendment 27 withdrawn.

Amendments 28 to 32 not moved.

Amendment 33

Moved by ***Lord Anderson of Ipswich***

33: After Clause 2, insert the following new Clause—

"Notification to a Judicial Commissioner

After section 32B of the Regulation of Investigatory Powers Act 2000 insert—

"32C Notification of criminal conduct authorisations

(1) This section applies where a person grants or cancels an authorisation under section 29B.

(2) The person must give notice that the person has granted or cancelled the authorisation to a Judicial Commissioner.

(3) A notice given for the purposes of subsection (2) must be given—

(a) in writing as soon as reasonably practicable and, in any event, before the end of the period of 7 days

beginning with the day after that on which the authorisation to which it relates is granted or, as the case may be, cancelled; and

(b) in accordance with such arrangements made for the purposes of this paragraph by the Investigatory Powers Commissioner as are for the time being in force.

(4) A notice under this section relating to the grant of an authorisation under section 29B must—

(a) set out the grounds on which the person giving the notice believes that the requirements of section 29B(4) are satisfied in relation to the authorisation; and

(b) specify the conduct that is authorised under section 29B by the authorisation.

(5) Any notice that is required by this section to be given in writing may be given, instead, by being transmitted by electronic means.""

Member's explanatory statement

This new clause requires a person who grants or cancels a criminal conduct authorisation under new section 29B of the Regulation of Investigatory Powers Act 2000 to give notice to a Judicial Commissioner (appointed under the Investigatory Powers Act 2016). It provides for when and how the notice must be given and requires that it contains certain information. The references in the new clause to the grant of an authorisation include the renewal of an authorisation (see section 43(5) of the 2000 Act).

Lord Anderson of Ipswich (CB) [V]: I beg to move.

Amendment 34 (to Amendment 33)

Moved by ***Lord Thomas of Cwmgiedd***

34: After Clause 2, at end insert—

"(6) If upon notification under subsection (3) a Judicial Commissioner determines that the authorisation should not have been granted, the person who granted the authorisation must be immediately informed and all further activities that will or might be undertaken pursuant to the authorisation must cease forthwith, subject to the power of the Judicial Commissioner to allow actions specified by the Judicial Commissioner to continue for the purpose of discontinuing the activities for which authorisation had been granted."

Member's explanatory statement

This amendment is to ensure that on a determination by a Judicial Commissioner that an authority should not have been granted, activities under the authorisation cease forthwith.

Lord Thomas of Cwmgiedd (CB) [V]: I beg to move.

7.41 pm

Division conducted remotely on Amendment 34 (to Amendment 33)

Contents 298; Not-Contents 259.

Amendment 34 (to Amendment 33) agreed.

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7.54 pm

Amendment 33, as amended, agreed.

Clause 3: Corresponding provision for Scotland

Amendment 35 not moved.

Schedule 1: Corresponding amendments to the Regulation of Investigatory Powers (Scotland) Act 2000

Amendment 36

Moved by ***Lord Paddick [V]***

36: Schedule 1, page 7, line 9, after "is" insert "reasonably"

Member's explanatory statement

This amendment would insert a requirement that belief in the necessity and proportionality of a criminal conduct authorisation, and in the existence of satisfactory arrangements, be reasonably held.

Amendment 36 agreed.

Amendments 37 and 38 not moved.

Clause 4: Oversight by the Investigatory Powers Commissioner

Amendments 39 to 41 not moved.

The Deputy Speaker (Baroness Watkins of Tavistock) (CB): We now come to the group consisting of Amendment 42. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division must make that clear in debate.

Amendment 42

Moved by ***Baroness Whitaker***

42: After Clause 4, insert the following new Clause—

"Commissioner approval for authorisations to identify or confirm journalistic sources

(1) Subsection (2) applies if a designated person has granted a criminal conduct authorisation for the purposes of identifying or confirming a source of journalistic information.

(2) The authorisation is not to take effect until such time (if any) as a Judicial Commissioner has approved it.

(3) A Judicial Commissioner may approve the authorisation if, and only if, the Judicial Commissioner considers that—

(a) at the time of the grant, there were reasonable grounds for considering that the requirements of this Part were satisfied in relation to the authorisation, and

(b) at the time when the Judicial Commissioner is considering the matter, there are reasonable grounds for considering that the requirements of this Part would be satisfied if an equivalent new authorisation were granted at that time.

(4) In considering whether the position is as mentioned in subsection (3)(a) and (b), the Judicial Commissioner must, in particular, have regard to—

(a) the public interest in protecting a source of journalistic information, and

(b) the need for there to be another overriding public interest before a relevant public authority seeks to identify or confirm a source of journalistic information.

(5) Where the Judicial Commissioner refuses to approve the grant of the authorisation, the Judicial Commissioner may quash the authorisation.

(6) This subsection applies to all authorisations pertaining to sensitive journalistic information, material or communications data, other than when the authorising officer has a reasonable belief that any delay in the authorisation would cause an immediate threat to life, in which case the authorisation may only be granted—

(a) by an official at a senior level in the agency concerned, and

(b) where appropriate safeguards relating to the handling, retention, use and disclosure of the material are in place.

(7) The Secretary of State may by regulations made by statutory instrument determine the appropriate agency under subsection (6)(a).

(8) A statutory instrument containing regulations under subsection (7) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(9) Any authorisation granted under subsection (6) must be reported to the Investigatory Powers Commissioner within seven days, specifying any sensitive journalistic

information, material or communications data that has been obtained, or retained other than for purposes of destruction.

(10) In this section "journalistic material" means material created or acquired for the purposes of journalism."

Baroness Whitaker (Lab) [V]: My Lords, I speak to Amendment 42 in my name and those of my noble friend Lady Clark of Kilwinning, who regrets she cannot be here tonight, the noble Baroness, Lady Jones of Moulsecoomb, and the noble Lord, Lord Marlesford. I thank the National Union of Journalists for its advice and declare that I am a former member, and that my daughter has written on the subject of the amendment.

This amendment would ensure that any new powers enshrined in the Bill did not override existing legal protections on press freedom. It seeks to maintain the protections that whistleblowers currently enjoy and to enable journalists to continue to carry out their roles. As it stands, the Bill creates an avenue to access confidential journalistic material and sources without any prior judicial oversight. I hope that this is not the intention of the Government and that the current legislative framework of protections can be maintained. I intend to seek the opinion of the House if the Government cannot reassure me.

The amendment requires that a judicial commissioner give prior approval for authorisations to identify or confirm journalistic sources. The commissioner would need to have regard for both public interests in protecting the source of journalistic information, and the need for there to be another overriding public interest before a public authority seeks to identify or confirm a journalistic source. This reflects the requirement of the Investigatory Powers Act 2016 that, when any application is made to identify confidential journalistic sources, prior authorisation is required by a judicial commissioner. Our amendment respects the contingency that there could be in some cases be an immediate risk to life. In such circumstances, it relaxes the requirement for prior approval by a judicial commissioner, so it meets government objections previously raised.

I understand that the protections enshrined in the Investigatory Powers Act 2016 honoured a commitment in the Conservative Party election manifesto. This commitment followed detailed and sustained representations by the National Union of Journalists and others. They outlined their serious concerns that compromising journalistic confidentiality and the protection of sources was undermining the ability of whistleblowers to make disclosures to journalists in the public interest, and rendering journalists unable to uphold their own ethical commitments to professional privacy.

8 pm

Naturally enough, the Government spoke in support of this principle on a number of occasions. I ask the Minister for an explanation of the Government's rationale for abandoning their support for the principle of the protection of journalistic sources. This principle is, of course, a fundamental right in a free society and there has been considerable case law on it, including at the European Court of Human Rights. Through case law it has been accepted that this kind of protection is required by Article 10 of the European Convention on Human Rights, on freedom of expression. The right to protect journalistic sources is recognised by international law, the United Nations, the Council of Europe and many other international institutions as key to freedom of expression.

A free press is fundamentally hampered if sources fear exposure by giving information to journalists and, for that reason, hold back. It therefore follows that only in a regime underpinned by that other pillar of democracy, an independent judiciary, should such exceptions to the rule of non-disclosure of sources be permitted, if it is in a wider public interest. That is why the amendment specifies a prior judicial role in granting authorisations for disclosure. I beg to move.

Baroness Jones of Moulsecoomb (GP): I declare an interest as the mother of a journalist and the friend of journalists, even. It is a pleasure to follow the noble Baroness, Lady Whitaker, who laid out the reasons for the amendment extremely well. I would add that because of journalists' work in reporting important issues and holding power to account, they are often the target of police and state interference, as we have seen many times. Journalists and their sources need extra protection in the Bill. That must be nothing short of judicial oversight and approval. Again, I express my total exasperation that the issue even has to be debated. It seems so obvious that journalists need this protection. State abuses of power and criminal acts will be committed as a result of the legislation, and we must protect journalists.

Lord Marlesford (Con) [V]: My Lords, we must consider carefully the extent to which the legitimate functions of the media in a free society may be compromised by requiring journalists to disclose their sources of information. Good government has maximum transparency, subject to national security. Our amendment seeks to maintain at least the present level of such transparency. I refer the Minister to Chapter 3 of the 2012 report into investigative journalism by the House of Lords Communications Committee, which was then chaired by my noble friend Lord Inglewood. I submit that it justifies our amendment.

I must make a clear distinction between the traditional printed or broadcast media and the large number of widespread, rapidly growing—and now, all too often, highly malignant—vehicles of social media. It is from social media that the new concept of fake news emerged. Social media has been weaponised by several authoritarian Governments operating through channels of dark diplomacy and is a threat to western democracies. It is therefore relevant to the objectives of the Bill and I suggest that the Government and Parliament investigate it carefully.

While unregulated social media is by its nature anarchic, traditional media in the UK is already subject to multiple levels of control and invigilation. First, there are the proprietors, who are in business for profit, influence and sometimes vaguer satisfactions. Noble Lords may remember the famous 1931 speech written for him by Rudyard Kipling, when Stanley Baldwin described the press lords as seeking

"power without responsibility—the prerogative of the harlot throughout the ages".

Since those days, we have moved on. Today proprietors are under financial pressure, with more competition for advertisers, as well as from the views of their editors and journalists and, not least, their viewers. There is much greater awareness and intolerance of media misbehaviour than there was 90 years ago. Any statutory power to compel journalists to disclose sources should be defined clearly, with the key protection of independent judicial review on both the need and proportionality in each case.

This amendment proposes a process of adjudication. It starts from the assumption of there being a public interest in non-disclosure and then suggests the need for another overriding public interest before requiring disclosure. More guidance on the nature of this overriding public interest should be introduced by law, and I suggest that there are a couple of principles which should or should not be included in that definition. Embarrassment of privacy should not be included, while national security and the need to assist investigation of serious crime should, of course, be included. Embarrassment can range from media intrusion into private lives through the behaviour of politicians or Governments. The law as it has developed since the Leveson inquiry should confine itself to seeking identification and penalties for any illegal methods of intrusion in seeking information. Whistleblowers on bad practices of organisations, whether public or private, must be protected from identification and consequent persecution. Nor should any law seek to enforce the disclosure of journalistic sources that are claimed to have resulted in the embarrassment of privacy of individuals, all too often people whose lives are focused on maintaining their celebrity status while merely seeking to control the timing of their own publicity. Many so-called celebs employ a publicist to keep them in the public eye.

When we consider national security, there must be a strict test. Some secrets must be kept, especially those in the world of intelligence and nuclear weapons. Open societies must be sensitive to this. On leaks from government and leak inquiries, in my view it is for Governments to keep their own secrets. In practice, leaking is part of the process of politics and sometimes part of the machinery of government. It is rare that there is a public interest dimension against a leak that justifies compelling journalists to reveal sources. Indeed, leaking, even on sensitive issues, can sometimes be in the national interest. The leaking by Foreign Office officials to an out-of-office Winston Churchill that revealed Hitler's preparation for war is an obvious example of a fully desirable leak.

The Conservative Party has long had a policy of a specific commitment to protect the freedom of the press. The Investigatory Powers Act 2016 provided important safeguards for that purpose. I at any rate intend to hold the Government to that obligation and to resist any attempt to make life easier for Whitehall to operate inside a cocoon of comforting but excessive security.

Baroness Chakrabarti (Lab) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Marlesford. I have ringing in my ears his commitment to protecting press freedom and that, he says, of his party. I am happy to support this amendment to protect journalistic sources, and I hope everyone else will.

I hope that my noble friend Lady Whitaker will press the amendment to a vote and that everyone will support it, but when they do, I hope that some will consider why they would support this limited protection for journalistic sources yet they did not support Amendment 11 to ban agents provocateurs, which would have protected journalistic agencies as well as other parts of civil society such as human rights NGOs and trade unions. Never came there once—not from either side, I have to say—an explanation of why that protection was unnecessary.

I have yet to pay proper tribute and give proper thanks to the noble Baroness, Lady Hamwee—although I fear that she may not be on the call any more—because never has there been a more modest or consistent defender of rights and freedoms in your Lordships' House. I say to her that I share her sense of bleakness about how little we have achieved in providing protections in this legislation. A Rubicon has been crossed and probably will be again. There will be impunity for agents of the state to commit even serious crimes; there is no judicial authorisation; and the agencies were not limited. I feel very bleak about that.

The noble Baroness, Lady Manningham-Buller, was perhaps the most eloquent voice for security, as she so often is in this debate. Like everyone else, I was moved by her story about a CHIS, an undercover operative, who told her on a radio programme that he did what he did because he had to look in the mirror and be proud of himself. However, as legislators, dare I say it, we have to look in the mirror as well.

While I support this amendment and hope it passes, I feel very bleak about other parts of civil society and ordinary citizens who are losing their very important rule-of-law protection as I speak. I fear that history will not judge us kindly, nor will critics of our unelected House. It is a very difficult system and Chamber to defend but, when I have looked for a defence, I have always thought about the importance of independence, and independent legislators at least having the ability to defend human rights and the rule of law from populist attack. I fear that we have not perhaps done our best or most successful work on this Bill.

That said, I wish this amendment every success and hope that my noble friend Lady Whitaker will press it.

The Deputy Speaker (The Earl of Kinnoull) (Non-Afl): The noble Lord, Lord Mann, has scratched. Accordingly, I call the noble Lord, Lord Paddick.

Lord Paddick (LD) [V]: My Lords, I thank the noble Baroness, Lady Chakrabarti, for her kind remarks about my noble friend Lady Hamwee. I can assure her that my noble friend will be watching and listening intently as we come to the end of this Report stage.

We support Amendment 42 in the name of the noble Baroness, Lady Clark of Kilwinning. The noble Baroness, Lady Whitaker, ably and comprehensively explained the amendment, which means that I can be brief.

8.15 pm

Protection of sources of journalistic information is covered by the Investigatory Powers Act 2016, which requires the Investigatory Powers Commissioner to

[Lord Paddick]
have regard to the public interest in protecting such sources and the need for there to be an another overriding public interest before a public authority seeks to identify or confirm such a source—as set out in Section 77(6). The wording of this amendment mirrors that of the 2016 Act.

If other ways of identifying journalistic sources covered by the 2016 Act require this level of protection, there is no reason why the granting of criminal conduct authorisations should not also be covered. We will vote for this amendment if the noble Baroness divides the House.

Lord Rosser (Lab) [V]: As has been said, Amendment 42, moved so succinctly by my noble friend Baroness Whitaker, requires a judicial commissioner to give approval for authorisations that would identify or confirm journalistic sources. It also requires the commissioner to have regard to both the public interest in protecting a source of journalistic information and the need for there to be another overriding public interest before a public authority seeks to identify or confirm a journalistic source.

As others have commented, the Investigatory Powers Act 2016 introduced a requirement for prior authorisation from a judicial commissioner when any application is made to identify confidential journalistic sources. The concern is that this Bill creates a means to access confidential journalistic material and sources without any prior judicial oversight. Statutory provisions in a Bill such as this on criminal conduct authorisations which might allow a way round the existing legal protection of journalistic sources would deter those sources from coming forward in future, at the potential expense of journalists being able to expose illegal, corrupt, exploitative or anti-social activity—a vital role in a democratic society.

The current Secretary of State for Justice has previously said that the ability of sources to provide anonymous information to journalists needs to be protected and preserved. That will not happen if those sources are liable to be exposed by the activities of covert human intelligence agents authorised to commit criminal conduct with no prior judicial oversight.

We need to ensure that the current protections for whistleblowers and journalists are maintained and cannot be weakened or compromised by this Bill. This amendment, requiring prior judicial approval for authorisations relating to journalistic sources, would achieve that objective. We support Amendment 42.

Baroness Williams of Trafford (Con): My Lords, the amendment from the noble Baroness, Lady Clark, outlined by her noble friend Lady Whitaker, would require prior judicial approval for a criminal conduct authorisation seeking to identify or confirm a source of journalistic material. I set out earlier in the debate why the Government do not consider prior judicial approval to be a workable option for any CHIS authorisation, so I shall not repeat those arguments. However, I will say again that where an authorisation is likely to result in the acquisition of confidential journalistic material there are already greater safeguards in place which are set out in the CHIS code of practice.

There will also now be notification of every single authorisation to IPCO soon after they have been granted. That will of course include any authorisations that are likely to result in the acquisition of confidential journalistic material. Judicial commissioners will therefore be able to consider the necessity and proportionality of an authorisation and check that the proper safeguards have been followed. I hope that provides the noble Baroness with the necessary reassurance and that she can withdraw the amendment.

The Deputy Speaker (The Earl of Kinnoull) (Non-Afl): I have received no request to ask a short question. Accordingly, I call the noble Baroness, Lady Whitaker.

Baroness Whitaker (Lab) [V]: My Lords, I thank the Minister for her typically considered response. After such a long session on Report, I will not comment in detail on the contributions, other than to say that the Government's response to the 10th report of the Joint Committee on Human Rights—on the general point of judicial authorisation—underestimates the capacity of people trained and experienced in the judiciary to weigh up the implications of actions within a framework of the limits that should be set on behaviour. They are accustomed to doing this with a variety of warrants. The Government's proposal, which the Minister has not offered to modify in any way, omits the essential requirement of prior authorisation; she insists that this is vital. However, judges are used to making prior authorisations very quickly. Even magistrates are woken up in the middle of the night to approve warrants. The Minister's objections are not strong enough to warrant my withdrawing the amendment, so I wish to test the opinion of the House.

8.21 pm

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Shields, B.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Smith of Kelvin, L.
St John of Bletso, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Strathclyde, L.
Stroud, B.
Stuart of Edgbaston, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
Tebbit, L.
Thurlow, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Tyrie, L.
Ullswater, V.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Vinson, L.
Wakeham, L.
Walker of Aldringham, L.
Walney, L.
Wasserman, L.
Watkins of Tavistock, B.
Waverley, V.
Wei, L.
West of Spithead, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

8.34 pm

Amendment 43 not moved.

Schedule 2: Consequential amendments

Amendment 44

Moved by ***Lord Anderson of Ipswich [V]***

44: Schedule 2, page 9, line 9, at end insert—

"2A_ In the heading before section 32A (authorisations requiring judicial approval), after "approval" insert "or notification"."

Member's explanatory statement

This amendment is in consequence of the new clause which inserts section 32C of the Regulation of Investigatory Powers Act 2000 on judicial notification.

Amendment 44 agreed.

Amendment 45 not moved.

Amendment 46

Moved by ***Lord Anderson of Ipswich [V]***

46: Schedule 2, page 11, line 14, at end insert—

"Coronavirus Act 2020

15_(1) Sub-paragraph (2) applies to—

(a) section 22 of the Coronavirus Act 2020 (appointment of temporary Judicial Commissioners),

(b) regulation 3(1) of the Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020 (S.I. 2020/360), and

(c) any appointment which was made under that regulation and has effect immediately before the coming into force of this paragraph.

(2) In section 22(1), regulation 3(1) or the appointment, references to functions conferred on Judicial Commissioners by—

(a) the Regulation of Investigatory Powers Act 2000,

(b) the Regulation of Investigatory Powers (Scotland) Act 2000, and

(c) the Investigatory Powers Act 2016,

are to be read as including references to functions conferred on Judicial Commissioners by those Acts by virtue of amendments made by this Act."

Member's explanatory statement

This amendment allows for functions conferred on Judicial Commissioners by virtue of the Bill to be performed by temporary Judicial Commissioners appointed under regulations made under section 22 of the Coronavirus Act 2020.

Amendment 46 agreed.

Clause 6: Commencement and transitional provision

Amendments 47 and 48 not moved.

Clause 7: Extent and short title

Amendment 49 not moved.

Joint Committee on the Fixed-term Parliaments Act

Message from the Commons

A message was brought from the Commons that, notwithstanding the Resolution of that House of 10 November 2020, it be an instruction to the Joint Committee on the Fixed-term Parliaments Act that it should report by Wednesday 31 March 2021.

House adjourned at 8.35 pm.