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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Grand Committee

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The abbreviation [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 SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
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 or for the Lords spiritual.

House of Lords

Monday 1 November 2021

2.30 pm

Prayers—read by the Lord Bishop of London.

Introduction: The Lord Bishop of Chelmsford

2.36 pm

Gulnar Eleanor, Lord Bishop of Chelmsford, was introduced and took the oath, supported by the Bishop of Ely and the Bishop of London, and signed an undertaking to abide by the Code of Conduct.

Retirement of a Member: Lord Hunt of Chesterton

Announcement

2.40 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, I should like to notify the House of the retirement, with effect from Saturday 30 October, of the noble Lord, Lord Hunt of Chesterton, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank the noble Lord for his much-valued service to the House.

Arrangement of Business

Announcement

2.40 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, before we start Oral Questions, I would like to take this opportunity to highlight the fact that, as I wrote to you last week, the Covid infection rates are rising across Parliament. Noble Lords will know that Covid is a very serious disease and in my view our behaviours in this place should be reflective of the current situation. In order to keep one another safe, and to keep staff safe, I would like to emphasise how important it is that we all wear face coverings in the Chamber, in committees and when moving around the Estate. The staff of the House are now required to wear face coverings and in my view it would be courteous if Members did the same. I would also like to remind Members of the importance of regular testing; testing services are available in the Bishops' Bar.

Net Zero: Social Market Foundation Report

Question

2.41 pm

Asked by ***Baroness Scott of Needham Market***

To ask Her Majesty's Government what assessment they have made of the report from the Social Market Foundation *Zeroing in: Net Zero disruption and opportunity at a local level*, published on 14 September.

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): My Lords, the Government welcome the report and its conclusions. The net-zero transition will bring many challenges at the local level, but it will also create vital opportunities to level up. The Government are already doing many of the things that the report recommends. The net-zero strategy sets out our approach to maximising the opportunities that exist and how local and devolved administrations can contribute and benefit from the transition.

Baroness Scott of Needham Market (LD): The report highlights some of the challenges that will be faced by rural areas in the transition to net zero. Does the Minister accept that solutions tailored to urban areas may very well not be appropriate in the countryside? Can he consider the recommendation that there should be a bespoke net-zero approach to rural areas to ensure that they do not get left behind?

Lord Greenhalgh (Con): My Lords, the Government are absolutely committed to rural areas not being left behind and take the point that they are essentially very different from urban areas. However, we do not consider that we should have a separate rural strategy but consider it to be part of all our activities.

Baroness Warwick of Undercliffe (Lab): My Lords, I declare my interest as chair of the National Housing Federation. I know from talking to housing associations over the last few months how determined and ambitious they are to make homes greener and warmer for residents and to tackle climate change, but it cannot be done alone. They are already planning to invest £70 billion in future-proofing, but our new estimates, produced by Savills, show that it will cost an extra £36 billion to reach full decarbonisation by 2050. I welcome the additional £800 million announced last week, together with the heat and buildings strategy—a great step forward—but neither addresses the long-term funding gap to 2050. Can the Government work with the sector to bridge this gap and to achieve the country's net-zero ambitions?

Lord Greenhalgh (Con): My Lords, we recognise that there are considerable challenges in decarbonising our homes. I made a commitment that we will work together to help housing associations address those challenges.

Lord Flight (Con): My Lords, by how much is it estimated that the cost of energy will increase for identified UK user groups as the result of achieving net zero?

Lord Greenhalgh (Con): Price and bill impact will depend on electricity market developments and consumption patterns. Policies that improve energy efficiency of homes will reduce bills and benefit fuel-poor households. My noble friend will be pleased to know that we expect wholesale prices under a renewable-based electricity system to be lower than our current one, which is based on fossil fuels.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I refer the House to my interests, as set out in the register. I will follow up on the Question of the noble Baroness, Lady Scott of Needham Market. Rural areas, communities and local authorities face a range of problems, such as a reliance on private cars, a lack of charging points and distance from the decarbonisation of industrial clusters. Does the noble Lord agree that the specific, unique issues of the countryside need addressing to ensure that no one is left behind? If he does—he said that the Government do not plan to have a separate strategy—what is he doing to meet this challenge?

Lord Greenhalgh (Con): The Government are providing many mechanisms to support rural areas. I point to the community energy projects, through the rural community energy fund, which is a £10 million fund to support community-run projects in England that benefit the transition to net zero. Net zero is half the story; adaptation to the consequences of climate change is equally important, and the Government are committing £2.8 billion in a six-year capital investment plan to reduce flood and coastal erosion risk.

Baroness Tyler of Enfield (LD): My Lords, local authorities are critical to achieving the Government's net-zero target, but will struggle to do so without sufficient resources. Some 95% of local authorities have said that funding is a barrier to them tackling climate change. The Climate Change Committee recommended increased resourcing for local government as a priority. Can the Minister say whether and when the Government intend to give local authorities new capital-raising and revenue-raising powers to support the transition to net zero, as recommended in the SMF report?

Lord Greenhalgh (Con): My Lords, I point out that the Government have committed £1.2 billion for local action on climate change. There are currently no plans to devolve additional tax-raising powers, but the Treasury will keep this under review.

Lord Berkeley (Lab): My Lords, this follows the questions of my noble friend Lord Kennedy and the noble Baroness, Lady Scott of Needham Market, on the report that is the subject of this Question. Does the Minister agree that there is an enormous difference in the levelling-up agenda because there are problems in the north, particularly the north-east, where 90% of new-build houses are still heated by gas? Where is the policy to convert this to something more meaningful and at lower cost, whether electricity or hydrogen, and what are the Government doing about it? This will be a serious problem. London seems all right, but the rest of the country is going to suffer serious extra costs as a result.

Lord Greenhalgh (Con): My Lords, it is right that it is easier for London to hit the target of net zero by 2050, given its starting point. But levelling up is about improving living standards and unleashing enterprise and growth across all parts of the UK, and spreading opportunity. It is important to see how the £4.8 billion levelling-up fund is allocated to deal with the noble Lord's point, but we also need to leverage private sector funding. Our estimates are that the fund will leverage substantial private sector income to achieve the green revolution that we all want.

The Lord Speaker (Lord McFall of Alcluith): My Lords, all supplementary questions have been asked and we now move to the next Question.

Trees: Ips typographus

Question

2.48 pm

Asked by ***Lord Colgrain***

To ask Her Majesty's Government what assessment they have made of the impact of the arrival of the tree beetle *Ips typographus* in spruce trees in the southeast of England on the timber industry in the United Kingdom; and what steps they are taking to prevent further damage.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, swift action is being taken to eradicate Ips typographus on 13 sites in the south-east. Infested trees are being removed, a surveillance programme is in place and emergency legislation has been introduced to reduce the risk of spread. Both Norway and Sitka spruce are susceptible species, but the pest has been detected on only Norway spruce in the outbreak area. The commercial standing value of Norway spruce in this area is estimated at £16 million.

Lord Colgrain (Con): My Lords, I refer to my interests in the register. I am grateful to my noble friend the Minister for his reply and to the officials from Defra and the Forestry Commission, who are being so effective in endeavouring to contain the current infestations to prevent a further catastrophe that could prove comparable to Dutch elm disease and ash Chalara. Given that this beetle is airborne and has been blown in from Europe, does he not agree that establishing a cordon sanitaire is fated to be ineffectual? Thus, does he not further agree that instruction should be given to ensure that spruce trees are not planted as part of Her Majesty's green canopy, and that the same should be true of the Government's own new tree-planting initiatives?

Lord Benyon (Con): We are grateful, in turn, to my noble friend for his speedy resolution of a particular problem where he lives. He is right that this is a containment problem. We have an area that goes as far as Greater London and takes in parts of East Sussex and West Sussex, all of Kent and parts of Surrey. We are working hard to remove every spruce tree in that area. We are working with landowners, using aerial assets to identify where spruce trees exist so that we can create that cordon sanitaire, which will prevent this beetle from spreading over from the continent and thereby further into the United Kingdom. I will get back to him on the Queen's canopy. That is a very important issue. I think we are using only native species.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, the eight-toothed spruce bark beetle is only 4.2 millimetres to 5.5 millimetres long and therefore very difficult to spot and identify. How can the Government be absolutely sure that it is not more widespread than the demarcated areas to the south and east of London?

Lord Benyon (Con): I am very happy for the noble Baroness to have a detailed briefing on the measures we are taking, but we have an extensive trapping system, using pheromone traps to attract the beetle. We are counting it in infected sites and working in the containment area and beyond to make sure that it is not spreading. The phytosanitary measures we have put in to retain diseased timber in that region are also very important.

Lord Carrington (CB): My Lords, the emergence of this dreadful disease affecting spruce underlines the need to encourage the development of pesticides if we are serious about combating these new diseases, particularly if biosecurity measures are not effective. Please will the Minister confirm that the Government will support research and development in this sector and resist attempts to introduce further disincentivising and unnecessary restrictions?

Lord Benyon (Con): The noble Lord is aware that this is a very difficult area to get right. The beetle in question affects only mature spruce trees. It is very hard to use an insecticide on mature trees that would, first, be effective with the beetle, and secondly, not be further damaging to other species. It is part of the ongoing discussion with the Forestry Commission and its scientific experts.

Lord Jones of Cheltenham (LD) [V]: My Lords, for more than 200 years trapped trees, pheromone traps, which the Minister mentioned, treated trapped trees, standing trapped trees and lure-baited fallen wood have been used to capture and reduce numbers of this beetle. Does the Minister consider this a more environmentally sound way of dealing with the beetle than spraying with insecticides? What research is being carried out to discover whether these tried and tested techniques are no longer working?

Lord Benyon (Con): We constantly ask ourselves whether we are getting this right. As things stand, the pheromone traps are very effective in identifying the range and quantity of beetles as they move around the country, but we have this matter constantly under review.

Baroness Jones of Whitchurch (Lab): My Lords, can the Minister say what impact the restrictions put on the movement of spruce trees around the south-east of England as a result of the discovery of this pest are likely to have on the availability of spruce Christmas trees this year? Does this mean that another traditional feature of Christmas is likely to be hit by shortages?

Lord Benyon (Con): In a word: no. The beetle does not affect trees under three metres. Some Christmas trees are higher than three metres, so I qualify what I say, but it is not expected to have any effect on Christmas or Christmas trees.

Autonomous Weapons Systems

Question

2.55 pm

Asked by ***Lord Clement-Jones***

To ask Her Majesty's Government what assessment they have made of the calls made at the August meeting of the Group of Governmental Experts on Lethal Autonomous Weapons Systems at the Convention on Certain Conventional Weapons for a legally-binding instrument, including both prohibitions and positive obligations, to regulate autonomous weapons systems.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, the UK is an active participant in United Nations discussions on lethal autonomous weapons systems, working with partners to build norms to ensure safe and responsible use of autonomy. The UK and our partners are unconvinced by the calls for a further binding instrument. International humanitarian law provides a robust principle-based framework for the regulation of weapons deployment and use. A focus on effects is most effective in dealing with complex systems in conflict.

Lord Clement-Jones (LD): My Lords, the Minister's reply is pretty disappointing. It puts the Government, despite statements in the integrated review, at odds with nearly 70 countries and thousands of scientists in their unwillingness to rule out lethal autonomous weapons. Will the Minister commit to rethinking government policy in terms of giving our representatives at the next meeting of the Convention on Certain Conventional Weapons on 2 December a mandate to go ahead with negotiations for a legally binding instrument, which, after all, has been called for by the UN Secretary-General?

Baroness Goldie (Con): I am sorry that the noble Lord is disappointed, because I know the extent of his interest in this issue. I have tried to facilitate engagement with the department to enable him to better understand what the department is doing and why we take the views that we do. He will be aware that international consensus on a definition of laws has so far proved impossible. At this time, the UK believes that it is actually more important to understand the characteristics of systems with autonomy that would or would not enable them to be used in compliance with IHL, using this to set our potential norms of use and positive obligations.

Lord West of Spithead (Lab): My Lords, nations are sleepwalking to disaster. Engineers are already making autonomous drones the size of my hand that have cameras that act completely autonomously. They can, for example, have facial recognition and carry a small shaped charge, and will kill a person that that facial recognition shows. Once you release them, you release them and off they go. The firms producing these are talking in terms of, "Yes, if we had several thousands of these, gosh how wonderful, because we could kill a great chunk of a city without damaging it at all and get rid of the people there." I find this quite

[Lord West of Spithead]
horrifying. Also, these things are AI: they learn; therefore, they will learn how to kill even more than they have been programmed to. This is extremely dangerous. Do the Government agree completely that, wherever there is a kill-chain that ends up with a dead human being, there should be a human somewhere in that kill-chain to make that decision, rather than a robot?

Baroness Goldie (Con): All weapon systems, whether with autonomous functions or not, must fully comply with the principle-based international humanitarian law framework. A robust application of that framework, I would suggest, is the best way of ensuring the lawful and ethical use of force in all circumstances. That applies to all states that might be developing autonomy in their weapons systems.

Lord Lancaster of Kimbolton (Con): Can my noble friend the Minister confirm that the UK has agreed not to develop autonomous weapons? Of course, we run the risk sometimes of confusing autonomous weapons with automated weapons, where there will be a human being in that decision-making cycle. While some are concerned about the UK's definition of autonomous weapons, I think it is quite far-sighted because it will take into account future developments. Perhaps my noble friend could offer some clarity as to where in that chain, from targeting to operating that weapon, there will be human intervention.

Baroness Goldie (Con): I thank my noble friend for acknowledging the difficulties that accompany definitions and prescriptive attempts to define. UK Armed Forces do not use systems that employ lethal force without context-appropriate human involvement. This is an important area; it is clearly an area of evolving policy and it is an area where we are absolutely clear that the best way forward is to continue our international engagement with the group of governmental experts.

Lord Coaker (Lab): Artificial intelligence is clearly an increasing part of the modern way of warfare but, as we have just heard from the noble Lord, Lord Lancaster, and my noble friend Lord West, it brings with it enormous moral challenges. I think what the House wants to hear is for the Minister to say unequivocally, and as a matter of principle, that there will always be human oversight when it comes to the use of artificial intelligence; in particular, that human oversight is involved whenever there is any decision about the lethal use of force.

Baroness Goldie (Con): It is not possible to transfer accountability to a machine. Human responsibility for the use of a system to achieve an effect cannot be removed, irrespective of the level of autonomy in that system or the use of enabling technologies such as AI.

Baroness Smith of Newnham (LD): My Lords, I have been listening closely to the Minister and I am still not quite sure whether she has said that the Government will unequivocally state that no autonomous drone or other AI could take a life, and that every decision would have to have human engagement. Can she confirm that that is the case? I declare an interest as an officer of the APPG on Drones and Modern Conflict.

Baroness Goldie (Con): I simply repeat to the noble Baroness what I said to my noble friend Lord Lancaster: that UK Armed Forces do not use systems that employ lethal force without context-appropriate human involvement.

Lord Browne of Ladyton (Lab): My Lords, the *National AI Strategy* was published in September and promises were made that, before the end of the year,

"details of the approaches the Ministry of Defence will use when adopting and using AI"

will be published. However, on 22 October the AI strategy for NATO, which presumably we agreed to, was published and it emphasised the principles of lawfulness, responsibility and accountability. Does the Minister not agree that it is now time for the UK to publicly reaffirm our commitment to ethical AI, including international law and human rights, and to tell our public and the international community that our Government are ready, as our Governments always have been, to show global leadership on these issues, particularly on lethal autonomous weapons?

Baroness Goldie (Con): The noble Lord is quite correct that the department has said that it will publish a defence AI strategy. When I was told it would be in the autumn, I pointed out that the autumn had pretty well come and gone. I am reassured that significant work has been done on the strategy and we can expect publication in early course. It will set out our vision to be the most effective, efficient, trusted and influential defence organisation of our size, and have principled components to it. I would not wish to pre-empt what the strategy will say, but I would hope that it will serve to answer many of the noble Lord's questions.

Lord Holmes of Richmond (Con): My Lords, I declare my technology interests as set out in the register. Does my noble friend agree that, whether in safety or security, the public good or economic growth, the UK has a unique opportunity for the development and deployment of ethical AI? Further, does she agree that we urgently need public debate and engagement if we are to achieve, not just in defence but across all potential applications, optimum outcomes?

Baroness Goldie (Con): I say to my noble friend, building on what I have already indicated to the Chamber, that AI and autonomy clearly have the potential to transform all aspects of defence, from the back office to the front line. They are a strategic priority for defence and we take that evolution of policy seriously. As I indicated to the noble Lord, Lord Browne of Ladyton, more will be disclosed when we publish our defence strategy in early course.

The Lord Speaker (Lord McFall of Alcluith): My Lords, all supplementary questions have been asked and we now move to the next Question.

Farming Rules for Water
Question

3.04 pm

Asked by ***Lord Carrington***

To ask Her Majesty's Government what assessment they have made of the application of the Farming Rules for Water on the use of organic forms of nitrogen in (1) the autumn, and (2) the spring; and in particular, the implications of using organic manure, slurries and biowastes on ammonia and phosphate levels at different points of the year.

Lord Carrington (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and, at the same time, declare my interests as a farmer.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, some agricultural activities can be harmful to the water environment, which is why it is essential that farmers follow the farming rules for water and apply only the nutrients needed to feed their crops. Cropping patterns change from year to year, so the amount of nutrients needed will vary. Provided farmers follow the rules and related best practice, manures may be used safely at any time.

Lord Carrington (CB): My Lords, I thank the Minister for his response. However, while his response is welcome, key areas of uncertainty remain. There is a reluctance by the Environment Agency to discuss the interpretation of rule 1. Farmers need to know what compliance with rule 1 means in practice: what soil and what the crop need is, when it can be satisfied and how pollution risk is judged. Farmers are struggling to make sense of the Environment Agency's regulatory position statement. Please can the Minister either instruct the Environment Agency to retract the RPS or provide far greater clarity to farmers?

Lord Benyon (Con): I am sure the noble Lord will agree that there is a problem here, with watercourses and rivers affected by a variety of different pollutants, some of them from farmland. The *Code of Good Agricultural Practice*, going back to 1985, was the basis of the rule that now applies. We understand that it is challenging for farmers and are working closely to achieve clarity. The Minister for Agriculture, my friend Victoria Prentis, has set up a working group with the NFU, the Environment Agency and others. It is seeking to iron out these problems urgently so that, from next year, farmers will be much clearer on how to apply the rule.

Lord Colgrain (Con): Have the Government considered using a risk-based approach to the autumn application of organic material? This would allow continued application of such organic material in the autumn on arable land where the risk to water is considered low, rather than the current blanket ban. It would also assist to reduce the requirement for artificial fertilisers and the environmental costs associated with their manufacture.

Lord Benyon (Con): I will discuss my noble friend's suggestion with the Farming Minister. Life is quite complicated for farmers at the moment. If we start trying to map the country in terms of how we allow different levels of manures to be applied, there may be a further problem—but I take his point, which is well made.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, the National Pig Association has warned that the Environment Agency's long-awaited statement on the farming rules for water could have significant impacts on pig and arable producers. Many pig producers will not be able to comply with some of the conditions, such as preventing application on sandy or shallow soil. Discussions have taken place between the EA and the NPA, providing clarity that will resolve the issue for only some producers and for only this growing season. There is concern that the majority of producers will still not be able to use the RPS. Would the Minister care to comment?

Lord Benyon (Con): I would. The noble Baroness makes an important point in relation to some pig farmers, but we want to make sure we are cleaning up our rivers. That means working with farmers to find a sensible system of rules that apply long-established good farming practice so that manures are applied only to crops that will take up those nutrients and none will leach through into catchments or river courses.

Lord Randall of Uxbridge (Con): My Lords, I declare my interest as a member of the advisory board of River Action. Does my noble friend agree that we have a serious problem in our rivers, and that pollution from farming is part of it? You have only to look at the River Wye and what has happened there. While we need to help farmers to comply, is there not a real urgency about cleaning up our rivers?

Lord Benyon (Con): My noble friend is absolutely right. We should see the fact that only a very small percentage of our rivers are fully functioning ecological systems as something of a national disgrace. We have spent many hours debating the Environment Bill here and are moving to a much better place—but we can do much more, working with the farming community and recognising that it is only part of the problem and that there are other polluters as well. We want to make sure that we are abiding by our commitments to get our rivers in good ecological state in a very short space of time.

Baroness Hayman of Ullock (Lab): Clearly, sorting out pollution in our rivers is absolutely critical. As the Minister said, we have talked about this time and again on the Agriculture Act and the Environment Bill. My understanding is that a statutory review of the regulations was undertaken by Defra at the turn of the year and was due to report last April, but we have not seen this yet. Can the Minister explain the delay and when we are likely to see it? He mentioned the working group. Is this something that the working group will look at and report on?

Lord Benyon (Con): The noble Baroness is perhaps referring to the amount of money the Government had said they would put into the transition scheme to assist farmers in changing their system to invest in better slurry systems. After consultation with the farmers, it has been decided to do that in a different way. We have the incentive fund, which is there for farmers to access, but they have said that they want the money spent on environmental measures to be looked at much more holistically across the whole farm, and that is what we are doing.

Baroness McIntosh of Pickering (Con): My Lords, does my noble friend not agree that the real emergency is giving farmers, particularly organic and livestock producers, clear and simple rules to follow? Is it not true that we simply do not know what the safe level of nutrients in the soil should be, so there should be no change to the rules or the regulatory policy statements until we have the science on which to base them?

Lord Benyon (Con): We do have a lot of science on this. If we were to indulge in many years of further scientific investigation, it would be too late for certain rivers, which—I am using strong words here—will be ecologically dead if we do not take action. The rules are there and they have been set out in the code for good agricultural practice since 1985. We are working with farmers to make sure that we apply them proportionately and to assist them in changing their businesses to deal with what is a very real and present problem.

Baroness Jones of Moulsecoomb (GP): When will the Government be as tough on water and sewerage companies as they are on farmers? They seem to be very firm on the rules for farmers, yet last week, in a vote in the other place, they were quite happy to turn a blind eye to the sewage discharges of water companies that have been going on for 30 years. When will the Government be tough on water companies and their sewage discharges?

Lord Benyon (Con): If I may say so, I think the noble Baroness is being unkind to the Environment Bill. It sets out many measures that will stop the current releases, which have been going on for decades, even centuries. We have probably one of the most advanced pieces of environmental legislation anywhere in the world. Is it enough? No, because we have to work across a great many other areas, including dealing with the problem from farming and other polluters.

Fishing: France

Private Notice Question

3.12 pm

Asked by ***The Lord Bishop of St Albans***

To ask Her Majesty's Government what steps they are taking to reassure the UK fishing industry following the seizure of a UK vessel by the French authorities.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, I cannot comment on the specifics of this case, given that legal proceedings are under way. More broadly, however, we are disappointed at the French Government's recent actions, culminating in threats that were issued on Wednesday. We have raised our concerns with the French Government and the Commission. The Government have been clear that, if these actions were to be taken, they would put the EU in breach of the TCA. Our approach to licensing has been reasonable and fully in line with the TCA.

The Lord Bishop of St Albans: I thank the Minister for his reply and congratulate our Prime Minister on his robust approach to supporting the UK fishing industry. Fishing businesses are rightly concerned that further escalation would damage them economically. Should the situation escalate and tighter custom controls and checks be enforced, what contingency financial support will the Government consider for the UK fishing industry until a permanent solution can be found?

Lord Benyon (Con): The Government have sought to support the fishing industry through the difficult period of transition and are currently pushing roughly £100 million out of the door to support it, including, where possible, by moving it to sustainable systems of fishing. What we have here is a triangular issue between the UK, the Commission and the Channel Islands. It is a complex situation. We are sticking to the rules and we are absolutely clear about what we want to achieve to support our fishermen, and to deal with a problem that the EU has to reflect on as well.

Lord West of Spithead (Lab): My Lords, for some 450 years the Royal Navy Fishery Protection Squadron looked after our fishermen in UK waters and on the high seas, and generally did so keeping well below the political radar, without great spats between nations. The squadron is now down to three or four ships. Does the Minister believe that is sufficient to do the job asked of it? I do not and if he agrees, what does he think should be done about that?

Lord Benyon (Con): I am lucky to have been out with the Fishery Protection Squadron when I was at Defra. It is the oldest squadron in the Royal Navy, and I have huge admiration for the job that the Royal Navy has done. However, it is only part of our measures to protect our fisheries, which include using aerial assets and satellite information. If the noble Lord were to go to the ops room of the Marine Management Organisation in Newcastle, he would see a real-time policing operation using state-of-the-art data collection, which is also very important to resolving this issue.

Lord Purvis of Tweed (LD): My Lords, on 17 August Jacob Rees-Mogg was interviewed about the consequences of Brexit and the Government's TCA with the EU for the fishing communities. The interviewer said:

"The fishermen are angry, really angry, and if you drove from your constituency an hour and a half, two hours, south-west to Brixham market—I recommend you don't at the moment—they really are jolly angry about the way it's worked out."

The interviewer was a certain Nigel Farage. Fishing communities north, south, east and west have already felt let down because of the Government's negotiated deal with the EU.

Last week the Minister said that the Government were seeking urgent clarification from Marine Scotland regarding whether or not fishing vessels had the appropriate licences to be fishing within those waters. Can he update the House on where the fault may lie: with Marine Scotland, the UK Government, the European Commission or the French Government?

Lord Benyon (Con): As I said, this matter could involve a judicial process and I do not want to prejudice that. It is being dealt through very close working between my department, the Marine Management Organisation and Marine Scotland. Discussions are ongoing—indeed, they are happening today—with the commission to try to resolve this issue.

Viscount Hailsham (Con): My Lords, I am sure my noble friend would agree that it is essential to have harmonious relations with the French Government. Given that criteria are available for judging whether licences should be issued, is it not sensible to contemplate appointing an arbitrator to consider individual cases where there is a dispute and determine whether the criteria are met?

Lord Benyon (Con): I am grateful to my noble friend. Licences for UK waters are issued on the basis of five reference years, and a French vessel has to prove that it has fished at least one day a year in four of those five years. On the basis of that, I think I am right in saying that we have issued 98% of all licences applied for by French vessels to fish in our territorial waters. So, I am clear that we are doing our bit to stand by the terms of what has been agreed with the EU. It is for them to resolve the allegations they have made and the circumstances of this particular dispute.

Lord Hannay of Chiswick (CB): My Lords, does the Minister appreciate that the House would be in a better position to understand the facts of this extremely complex matter if only the Government had reported to this House and its committees what was going on—this issue has been brewing for several months now—and will he remedy that? Does he agree that this is a moment when it would be good if both Governments could put away their megaphones and do a bit of real diplomacy?

Lord Benyon (Con): It is actually longer than that. I hate to disagree with the noble Lord, who knows so much about these matters, but I can remember a dispute in the Baie de Seine long before Brexit, so this has been a disputed area of fisheries. However, I can tell him that we are in the business not of escalating this dispute but of resolving it for the benefit of the fishing industry and the sustainable harvesting of marine benefits. There is no desire for this to be escalated any more. It is for the European Commission, as part of the TCA process, to address the accusations and threats made by the French Government.

Lord Grocott (Lab): My Lords, on the issue of escalating—

Baroness Hayman of Ullock (Lab): My Lords—

Baroness Bloomfield of Hinton Waldrist (Con): We should hear from the Front Bench; there will be time for another question afterwards.

Baroness Hayman of Ullock (Lab): My Lords, it is appalling how much this has escalated over the weekend. What conversations, if any, has Defra had with the noble Lord, Lord Frost, to urge him to help to resolve the situation? Exactly what urgent talks are taking place with Defra's French counterparts to de-escalate the situation so that British and French fishers can get on with their jobs safely? Licences were mentioned; was the Minister saying that because of the judicial process he cannot clarify whether the trawler had the correct fishing licence? We need to know this and whether it was included on the list of licences given to the French. If not, why not? Is it not possible for the Government to publish the list to put an end to confusion?

Lord Benyon (Con): On the vessel that has been seized, I cannot give the noble Baroness that assurance at the moment, but I can promise that we are working closely to find out some rather complex details that lie behind it. I can assure her that we are talking regularly across government and directly with the Commission. Madame Girardin, who is the French Minister, has the number of my ministerial colleague, Victoria Prentis, on speed dial. We will continue to talk to the Commission, which is the responsible body, to resolve this.

Lord Forsyth of Drumlean (Con): My Lords, will my noble friend join me and the right reverend Prelate the Bishop of St Albans in congratulating the Prime Minister on his robust stance in the interests of British fishermen? As for those in this House who seem to think that the fault lies on our side, might he reflect on the remarks by the French Prime Minister that somehow Brussels should punish us for following the democratic wishes of the British people? Will he urge the European Union to stand up for democracy and against this kind of blackmail?

Lord Benyon (Con): The Commission has a duty to abide by the trade and co-operation agreement and discussions are now taking place on that. I hope that all sides of the House have been disappointed by some of the rhetoric that has been coming our way. I am pleased that the Prime Minister had a thorough and open conversation with President Macron in Rome, and those conversations will no doubt continue in Glasgow.

Lord Wallace of Saltaire (LD): My Lords, the Minister referred to the triangular relationship between Great Britain, the Channel Islands and France. Can he explain that relationship to us? Do the Channel Islands issue their licences entirely autonomously? Can they be overridden by the UK? How is the process co-ordinated between the Crown dependencies and Her Majesty's Government?

Lord Benyon (Con): Your Lordships will grumble if I go on too long and into too much detail but, broadly speaking, to give the noble Lord an example, Jersey

[Lord Benyon]
has issued licences to 113 French vessels for access to Jersey waters, with 166 applications for non-vessel monitoring system vessels—the smaller ones—and further applications are being considered. That is done directly with them and the Marine Management Organisation is very much part of that conversation. There are other Channel Islands which also issue licences to French vessels.

Lord Grocott (Lab): My Lords, I think we can probably understand that the Minister does not want to publicly escalate the issue, but none the less there were comments, reportedly from the French Government, that Britain should be punished for leaving the European Union. Perhaps diplomatically, in private and gently, he could point out to his French counterparts that no punishment from the European Union now could compare with the damage to our coastal communities that was caused during our membership of the European Union and the common fisheries policy.

Lord Benyon (Con): I have been quite surprised by the attack line on this from members of the Scottish National Party in the other place. They seem to want to revert to the common fisheries policy and to find blame somewhere on our shores, which the facts—in response to the disappointing threats from certain people in France—have highlighted.

Lord Cormack (Con): My Lords, having heard the right reverend Prelate's supplementary question, I cannot wait for the sermon. Would it not be sensible, in an attempt to defuse this to a degree, for Victoria Prentis to use her speed dial, sit down with her opposite number and try to come to a sensible conclusion? This is being escalated out of all proportion.

Lord Benyon (Con): It is actually for the European Union to resolve this—it is the other party. If any member state of the European Union were to try to breach the terms of the trade and co-operation agreement, that would be a matter for the European Union and its legal offices to address.

Baroness Smith of Newnham (LD): My Lords, the Minister has talked about a judicial proceeding, and the Foreign Secretary has talked about taking legal action. Will the Minister tell us which courts he envisages using?

Lord Benyon (Con): I was referring to a vessel that has been seized, against which there are allegations of fishing illegally. I do not want to comment on that, because that could be the basis of a judicial process. There is, in parallel, a mechanism within the TCA to resolve these sorts of disputes. But we hope we can deal with it as friends and neighbours rather than going to law.

Lord Newby (LD): My Lords, I wonder whether the Minister could have another go.

Lord Benyon (Con): I am sorry, I missed that.

Lord Newby (LD): My noble friend asked the Minister which court, and I am afraid I missed the answer in the noble Lord's reply.

Lord Benyon (Con): I was explaining that the vessel that has been seized may be the subject of a judicial process, which I would not want to prejudice. It is in a port in France. There are other mechanisms for resolving trade disputes within the TCA, which I am sure the noble Lord is aware of.

Lord Dobbs (Con): My noble friend mentioned a judicial process. Since when did the French presidential election become a judicial process?

Lord Benyon (Con): I am sure my noble friend will understand if I do not get involved in impending elections in any other country.

Police, Crime, Sentencing and Courts Bill

Committee (4th Day)

3.29 pm

Amendment 106

Moved by ***Lord Moylan***

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

"Retention by the police of personal data relating to non-criminal conduct perceived to be motivated by hostility

(1) The processing of relevant data by a police authority in accordance with Article 6(1) of the GDPR and section 35 of the Data Protection Act 2018 is not lawful unless it is undertaken in accordance with regulations made by statutory instrument under this section.

(2) In this section, "relevant data" means personal data relating to a data subject which is based in whole or in part on the perception by another person that the conduct of the data subject was motivated wholly or partially by hostility or prejudice towards any group of people sharing a characteristic and where the conduct in question is unlikely to constitute a criminal offence.

(3) In this section, "a police authority" means—

(a) a person specified or described in paragraphs 5 to 20 of Schedule 7 to the Data Protection Act 2018;

(b) a person acting under the authority of such a person.

(4) Subsection (1) does not apply in respect of the processing of information—

(a) pursuant to an ongoing criminal investigation;

(b) for the purposes of the internal administrative functions of the police authority.

(5) Regulations under this section must—

(a) identify different categories of personal data and processing of the personal data in question;

(b) include provisions by reference to each of the various categories of processing and personal data as to—

(i) the person or persons whose authority is required for the processing of the personal data;

(ii) the notifying of the data subject of the processing of the personal data;

(iii) the period for which the personal data can be retained (including provision for the granting of authority for extending that period);

(iv) the disclosure of the personal data to third parties;

(c) have particular regard to the importance of the right to freedom of expression and the extent to which that right is adversely affected by the processing of relevant data by any police authority.

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

(7) In section 113B of the Police Act 1997, after subsection (3) insert—

"(3A) An enhanced criminal record certificate must not give the details of a relevant matter to the extent that doing so would result in the disclosure of relevant data as defined at subsection (2) of section (Retention by the police of personal data relating to non-criminal conduct perceived to be motivated by hostility) of the Police, Crime, Sentencing and Courts Act 2021."

(8) In this section—

(a) the terms "personal data", "data subject", "processing" and "the GDPR" have the same meanings as under section 3 of the Data Protection Act 2018;

(b) the term "characteristic" includes but is not limited to any protected characteristics under section 4 of the Equality Act 2010."

Lord Moylan (Con): My Lords, I rise to speak to Amendments 106, 326 and 330 in my name. In doing so, I have been requested to offer the apologies of the noble Lord, Lord Macdonald of River Glaven, who wished very much to speak on this amendment and whose name is on the list of supporters, but he was not able to be here because of professional obligations.

Amendments 326 and 330 are essentially minor consequential amendments; the meat, if you like, of the debate on these amendments is in Amendment 106. These amendments concern non-crime hate incidents. They are a subject of controversy and much debated, but I hope to persuade your Lordships' House that this amendment is largely not controversial because it is essentially procedural in character and does not change current practice for recording those crimes.

With so many distinguished lawyers having indicated that they wish to speak in this debate, I hesitate to start by giving a brief summary of the legal background, but I shall do so tentatively and subject to their correction. A hate crime is a crime—it may, in principle, be any crime—that is conjoined with a motivation, on the part of the perpetrator, of hatred towards a particular or specified group. That hatred needs to be perceived either by the victim or by one of a number of other groups of people acting reasonably—for example, a witness, such as a police constable or whatever. It is an alloy, if you like, of a crime and a motivation.

But what happens if one part of that alloy is missing—if there is evidence of a motivation of hate but there is actually no crime or no action that constitutes a crime or meets the threshold for bringing a prosecution? That is the essence of the non-crime hate incident: a hate incident that occurs without being conjoined with a crime. Such non-crime hate incidents are often recorded by the police, and, if the perpetrator is known, they are recorded against their name, so to speak: they go to a record in the name of that person. At the moment, all this happens under guidance issued by the College of Policing. This guidance is quite extensive and elaborate, if you choose to look it up, but it has no statutory force or democratic supervision, and it is inconsistently applied between police forces.

I think that most noble Lords would agree that this is not a satisfactory position. The bulk of this amendment—all of it, apart from one subsection that I will come to shortly—effectively obliges the Home Secretary to issue guidance within six months of the passage of the Bill and to take account of certain matters in doing so, one of which is the human right to freedom of expression. It does not tell her what the guidance that she issues should contain or prevent her from adopting the existing guidance wholesale, should she wish to do so, but it brings the whole matter under political oversight for the first time. Because it is proposed that this should be done through a statutory instrument made under the affirmative procedure, it brings it to the attention, and makes it available for the comment, of both Houses of Parliament. So democratic accountability will be brought to this process for the first time, and I think that that can only be widely welcomed by Members of this House.

This amendment does not explicitly affect police practice in relation to any current police investigation. It does not apply to any police action in relation to hatred expressed towards an individual as opposed to that motivated by hatred of a group. Cases of stalking and things of that character directed at an individual would not be caught by the amendment.

That deals with the bulk of the amendment—all the parts of it—except subsection (7) of the proposed new clause. I am going to come to that separately because it is slightly different. Subsection (7) prohibits the police from including this data, if they have recorded it, when responding to requests for an enhanced criminal record check. As I say, it has a slightly different character to the rest of the amendment, but it addresses what I—and many others—perceive as an injustice.

Other noble Lords may speak later, giving instances of that injustice by referring to particular cases. I would like to address what I regard as the principle of the injustice. If you are accused of a crime, you have the opportunity to state your case and protest your innocence in an open court in front of an impartial judge and a jury. That is not the case if you have a non-crime hate incident recorded against your name. There is no process that those who believe themselves to be innocent of that allegation can pursue to clear their name apart from judicial review which, as we know, is an expensive and arduous process and not available to most people.

This can attach a stigma to a person's name that will potentially last for the rest of their life. They will be stigmatised for many years for not committing a crime. That seems to be a real and serious injustice, but it is not merely abstract and, as other noble Lords may explain, particular cases illustrate it. Given that this is a largely procedural amendment that adds democratic accountability to a process, I hope it will find support on all sides of the Committee and, indeed, from the Government. I beg to move.

Lord Sandhurst (Con): My Lords, it is a privilege to follow and support my noble friend Lord Moylan. If this speech is a little bit longer than I originally intended, it is to cover some of the ground that I understand would have been covered by the noble Lord, Lord Macdonald of River Glaven.

Making non-crime hate records has real-life consequences for an individual that are too important to be left unregulated. As we have heard, non-crime hate records are kept when no crime has been committed but the police decide that they have grounds for concern about how that person might behave in the future. Once such a record is made, it can remain for ever, without review. It will be disclosed in an enhanced criminal record request. It does not take George Orwell to show where that can lead. I suggest Sir Robert Peel would have been astonished.

I turn to the real-life case of Harry Miller of Lincolnshire. In 2018 and 2019, he posted tweets about transgender issues on Twitter. He holds gender-critical views but denies being prejudiced against transgender people. To quote from the judgment in the subsequent judicial review:

"He regards himself as taking part in the ongoing debate about reform of the law".

Mrs B, a transgender woman, read the tweets and regarded them as transphobic. She reported them to Humberside Police, which recorded this as a non-crime hate incident. She was the only person to complain. A police officer visited Mr Miller at work to speak to him—in his workplace—about these tweets and left Mr Miller with the impression that he might be prosecuted if he continued such tweeting. In a subsequent press statement, an assistant chief constable raised the possibility of criminal proceedings if matters escalated. Imagine what that felt like for Mr Miller. He, however, applied for judicial review.

Mr Justice Julian Knowles, in a very fine and lengthy judgment, found that the police's action towards Mr Miller disproportionately interfered with his right of freedom of expression. He reminded us that free speech is an essential component of democracy and of these words in the unpublished introduction to *Animal Farm*:

"If liberty means anything at all, it means the right to tell people what they do not want to hear."

As the judge stressed, true free speech includes

"the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative."

On the facts, the judge concluded that the tweets were lawful and there was not the slightest risk that Mr Miller would commit a criminal offence by continuing to tweet. That is the judgment in the High Court. Further, he said the police visit to the place of work, coupled with the subsequent press statement, combined to create a disproportionate interference with Mr Miller's right of freedom of expression. He found that this had a potential chilling effect.

Therefore, the police should not continue to record non-criminal speech without proper oversight—that is what we ask. There must be clear criteria applied by all police forces uniformly. At present, the College of Policing lays down guidelines, but they are no more than guidelines: a police force is free, in principle, to depart from the guidelines. Indeed, the current guidelines state that:

"The recording system for local recording of non-crime hate incidents varies according to local force policy."

That is not acceptable. These records, by definition, are of a non-crime; they are subject to no time limits; and the guidelines do not provide for mandatory periodic review, whether after one year, five years or 20 years. This is too important to be left to varying and uncertain police practice. Policy and practice in this field cannot properly be left to the wide discretion of different police forces. It should be for the Secretary of State, answerable to Parliament, to decide when, if at all, and in what circumstances and how such records may be made and kept.

A person's reputation is of inestimable value. If a confidential record is made that he or she has spoken or behaved in a way that someone else has perceived to be motivated by hostility but which does not amount to a crime, that individual becomes a marked man or woman when a request is made by a current or prospective employer for an enhanced Disclosure and Barring Service check. As matters stand, that mark or stain can remain for ever, so what is at stake is very serious. This amendment will ensure that regulations set a definitive framework to ensure fairness; to ensure a consistent and fair process of selecting and recording personal data, identifying the different categories of personal data and its processing, identifying the persons whose authority is required for such processing, ensuring they are of suitable rank, the notification of the individual who is the data subject, how long the data may be retained and with what reviews. If someone is to be denied employment, we must be confident that the basis for this is sound and properly managed.

We have heard from my noble friend that the provisions will not apply to the processing of information pursuant to ongoing criminal investigation, nor for the purposes of administrative functions of the police authority. There will be no interference with operational policing. These amendments are needed to ensure that freedom of speech and opinion is not subjected, as the European court has said, to the heckler's veto, and to create a proper balance between public safety, freedom of speech and protection of reputation.

3.45 pm

Lord Pannick (CB): My Lords, I have added my name to these amendments. It is a great pleasure to follow the noble Lords, Lord Moylan and Lord Sandhurst. In the light of their comprehensive description of the purpose of these amendments, I can be brief.

Much of the data with which the amendments are concerned relates to freedom of expression. Views are expressed or opinions are stated which offend or annoy other people but do not constitute criminal offences. The views or opinions may relate to religion, transgender issues, Brexit or a whole range of other sensitive and controversial questions. Sadly, many people have lost the willingness to discuss and debate; to say, "I disagree with what you say but I will defend your right to say it." In today's world a more typical reaction to opinions with which you disagree is to take offence, to demand

a safe space, or to complain that your identity has been challenged or that your truth has been denied. Even though no crime has been committed, the police are asked to record the grievance and to retain the data.

I agree with the noble Lords that for the police to have an unregulated power—that is what it is—to retain and use data about such exercises of free speech deters the vigorous debate and discussion on which a free society thrives. It may be appropriate, in some circumstances, for such data to be retained and to be used. None of us is disputing that. But that should be according to law, authorised by Parliament and not just by the discretion of police authorities which choose to apply, or not to apply, guidance from the College of Policing.

I hope that the Minister will consider these amendments constructively and that she will be able to give them the Government's support, whether in a revised version or otherwise, on Report.

Viscount Hailsham (Con): My Lords, I strongly support the proposed new clause and I will give it all the support I can. The arguments put forward by my noble friends are, frankly, unarguable against.

There are three propositions that I think are affronted by this notification of non-crime hate incidents. The first is the chilling effect on free speech. The noble Lord, Lord Pannick, illustrated that very clearly. One has to be assured of the right to express one's views without the risk of having this notification made against one.

Secondly, one has to recognise that these are very long-standing notifications, which can have a seriously prejudicial impact on individuals. That is thoroughly undesirable, especially as the individual has no right of appeal or an effective way of challenging. Judicial review, for most people, is not an effective way of challenging.

Thirdly, there is the point made by all noble Lords who have spoken so far. There is no statutory guidance; it is local police policy which influences the way these notifications are made. That is inherently unjust, having regard to the impact that this could have.

Finally, I welcome very much that the regulations are to be made by the affirmative procedure. However, as I have said in this House and elsewhere on many occasions, while that is a good thing in the sense that the comments made by your Lordships and those in the other place can be heeded, we do not have the power to amend the statutory instrument. I have long argued that this House and Parliament in general should have the power to amend the contents of statutory instruments. This is a good example of where that would be beneficial.

Baroness Fox of Buckley (Non-Afl): My Lords, I enthusiastically endorse these amendments and thank the noble Lords, Lord Moylan, Lord Pannick, Lord Macdonald and Lord Sandhurst, for raising this crucial issue. The issue of non-crime incidents has been of concern to a number of us for some years and it is good that it is getting some parliamentary attention at last. I particularly credit those organisations and publications that have persistently raised it in the public realm and whose research informed my remarks, especially the Free Speech Union, of which I am on the advisory council, the anti-racist campaign Don't Divide Us, and Spiked online.

Too many avoid the issue because it is rather tricky and contentious. One of the reasons it is difficult to raise is because nobody wants to look as though they are being soft on hate incidents. However, I am concerned that this in itself has led to a degree of chilling self-censorship and allowed some confusion to arise about what is and is not a crime when the police are involved.

When the public hear the phrases "hate", "hate crime" or "hate incident", they instinctively think of, for example, someone being beaten up because of their skin colour or being harassed in the street because they are gay, and they are appalled and shocked. We assume the worst kind of bigotry and our instinct is that something must be done. However, it is not so clear cut. According to the hate crime operational guidance issued by the College of Policing, hate crime is often an entirely subjective category, based on the perception of the alleged victim; I will come back to this.

What is extraordinary about the guidance on hate crime is what the police consider to be successfully tackling hate crime. The guidance says:

> "Targets that see success as reducing hate crime are not appropriate".

That completely befuddled me. The guidance says instead that the measure of success for the police is

> "to increase the opportunities for victims to report".

I fear that, in this act of enthusiasm to get more people to report hate, the police have muddied any clear distinction between what is criminal and what is not.

The focus on reporting initiatives led earlier this year to rainbow-coloured hate crime police cars patrolling local areas, with the aim of giving communities the confidence to come forward and report hate crime. However well-meaning, such awareness-raising initiatives often encourage people to come forward and report things that are not crimes at all. In fact, earlier this year, a police digital ad van trawled around the Wirral, warning that

> "being offensive is an offence".

Actually, being offensive is not a criminal offence. After a backlash, local police clarified that this was an error. Why did the police get it so wrong in terms of what is a crime?

This is not an isolated incident. A few years ago, Greater Glasgow Police tweeted an ominous warning:

> "Think before you post or you may receive a visit from us this weekend."

This was posted alongside a graphic that warned social media users to consider whether their treats were true, hurtful, unkind, necessary and then, right at the end, illegal. Then there was the South Yorkshire Police Hate Hurts campaign, which asked people to report any "offensive or insulting" social media posts to police officers. None of these is a crime and, in relation to a Bill named the Police, Crime, Sentencing and Courts Bill, it is a concern if the police do not

[Baroness Fox of Buckley]
know what is or is not a hate crime, so much so that Cheshire Constabulary recently admitted to conflating crime and non-crime in its hate crime statistics.

This amendment can potentially start unpicking this muddle, because the source of the confusion about what is or is not a crime lies in the creation of the category of non-crime hate incident. As we have heard, this category was established by the College of Policing and its guidance encourages police officers to overreach and police non-crimes. It is worth telling noble Lords how this is posed in the guidance. The NCHI guidance states:

"Where it is established that a criminal offence has not taken place, but the victim or any other person perceives that the incident was motivated wholly or partially by hostility, it should be recorded and flagged as a non-crime hate incident."

Note the use of the word "victim" to describe the reporter or accuser, when no evidence exists that any crime has been perpetrated against him or her. The victim has to claim only that some action or speech was

"motivated wholly or partially by hostility".

"Hostility" itself is a vague and subjective term. The guidance continues:

"The victim does not have to justify or provide evidence of their belief, and police officers or staff should not directly challenge this perception."

Furthermore, any other person's perception can be the basis for this, which is even further removed from any real incident, let alone crime.

Finally, the guidance notes:

"Police officers may also identify a non-crime hate incident, even where the victim or others do not."

Why? It is because:

"Victims … may not be aware that they are a victim of a non-crime hate incident, even though this is clear to others."

I find this a kind of dystopian, Orwellian, nightmare world. Imagine untangling your way through that; your name, unknown to you, can appear on a database intended for recording details of criminal offences and be subject to checks by vetting officers when you apply for jobs, as we have heard from noble Lords.

I hope noble Lords can see the dangers here. The subjective nature of the NCHI guidelines creates a real possibility of abuse of the system by people acting in bad faith. The NCHI guidance means that unfounded, spurious and malicious reports can be filed and never tested, let alone the fact that this data gathering distracts the police from pursuing real criminals. I was contacted by one person ahead of this debate, who said, "I had a visit from the police because a member of staff offended another member of staff, who works for me. No crime was reported. The police spoke to me for 40 minutes. In the meantime, the 200 pallets that I reported stolen the week before did not generate a phone call or visit." Then there is the chilling effect of NCHIs on free speech, as other noble Lords have vividly spelled out. NCHIs can act as a threat, a kind of surveillance of free speech, by people who say it will eventually lead to crime. Anyone who is following the fate of gender-critical feminists, who are constantly accused of hate by a particular brand of trans activist, will understand just how damaging that is to free speech.

This Government tell us all the time that they are keen to oppose cancel culture. I fear that these NCHIs inadvertently contribute to that censorious climate of denunciation and the toxic climate of hate, which we are all keen to combat. I therefore urge the Government to consider these amendments carefully and remove this contradictory anomaly, which, I fear, brings the police and criminal law into disrepute.

Baroness Jones of Moulsecoomb (GP): My Lords, I was not going to speak on this, because there are much bigger issues coming up later, but I had seen this in a reverse way. It is not completely clear, if you do not have a QC's training or legal training of any sort, whether this amendment is trying to help or hinder the collection and retention of data.

To me, this seems like a good opportunity to talk about misogyny and other abusive behaviour that falls short of a criminal offence but none the less should be recorded on a person's police record. The biggest benefit of retaining that data is that it might help in the future investigation of criminal offences. For example, if someone is a notorious misogynist but it has never reached the threshold of criminality, this will help the police's line of inquiry if said person is later a suspect in a violent attack against a woman. As we all know, the justice system is biased very strongly against women committing crimes.

What I did agree with from all those offering support for the amendment is that proper oversight is absolutely necessary. There should be some regulation about this, because some of the anecdotes mentioned seem ridiculous. I still have not decided whether I support this; it would depend on how it dealt with proper oversight.

4 pm

Lord Cashman (Non-Afl): My Lords, I was not going to speak to this amendment, but like the noble Baroness who spoke before me, having listened I am so minded. I will study the amendment very carefully, but a balance has to be struck. That is always most difficult on issues of human rights and freedom of speech.

We have to deal with the reality that hate speech, whether intended as hate speech or not, can often incite physical acts of violence. During the pandemic we have seen not only homophobia—as a gay man I have a particular interest in that, but my interest is in all physical hate crimes—but an enormous rise in physical hate crimes, some of them reported as happening on the crowded Underground or in domestic situations, because people are in much closer quarters than they would otherwise be.

My reason for speaking is to add a note of caution about how we proceed. I will study the amendment in detail, as I said, but we must respect that speech that could be defined as hate speech, or perhaps is not, can often encourage individuals to take actions against people who they feel should not be within their communities or do not belong.

Baroness Noakes (Con): My Lords, I support my noble friend Lord Moylan's amendments in this group. Somehow, we have ended up in a position where freedom of speech—a precious part of our way of life—has been seriously constrained by something the police have invented themselves around perceptions of

hostility. I find it incomprehensible that the Government have allowed the police to carve out this territory unchecked. Why has the College of Policing—a wholly unaccountable body—been allowed to invent a wholly new form of recording of behaviour that, by definition, is not criminal? Can my noble friend the Minister explain how we got here?

The recording of non-crime hate incidents is not trivial. It drains police resources from the other things they should be doing: reducing knife crime; actually solving crimes rather than recording them; or making women feel safe on our streets—just a few of the things that ordinary people think are more important. As we have heard, those who have non-crime hate incidents recorded against them are often completely unaware that it has happened, which, if nothing else, is a denial of justice. The information can be kept indefinitely and, most chillingly, can be reported to third parties under the Disclosure and Barring Service. This means that the police have created for themselves the ability to wreck people's careers.

We live in a society where the expression of views that others disagree with is becoming dangerous. The case of Dr Kathleen Stock is the latest example of this. Disagreement is too often and too rapidly equated with hate or hostility. The mere existence of non-crime hate reporting fuels this intolerance. The police are actively encouraging non-crime hate reporting by giving a platform to people who claim to be offended by the views of others. It is a cancer in our society that we should eliminate before it becomes dangerously pervasive.

Amendment 106 is a complex amendment and I pay tribute to my noble friend Lord Moylan for his clear introduction of it. I hope that my noble friend the Minister will not hide behind a critique of the amendment but engage positively with the substance of the issues that my noble friend and others have raised.

Baroness Butler-Sloss (CB): Having listened with great interest to what the noble Baroness, Lady Fox, read out as to the current guidance given by the College of Policing, and given the balance referred to by the noble Lord, Lord Cashman, it seems that the very first thing is that the guidance should be scrapped. It should not be waiting for the conclusion of this rather long-winded Bill. Somebody should be getting in touch with the college and either telling those there not to give any guidance at all or getting the Government to tell them in the meantime the sort of guidance that could go forward pending this excellent amendment, which I support.

Lord Forsyth of Drumlean (Con): My Lords, I did not participate in Second Reading on the Bill, but I did get some correspondence that explained to me what was going on, and I just could not believe it. I am not going to repeat the arguments which were so eloquently put by the noble Baroness, Lady Fox, and the supporters of the amendment but I could not believe it. As an employer, I am required to do criminal record checks and if I got a response that said someone was guilty of hate crime, I am afraid their application would go straight in the bin. Yet we discover that people can be put on such a list without their knowledge, as my noble friend Lady Noakes said, and that their name will stay there indefinitely. That of course does not apply to people who have actually been convicted of crimes, so they are in the worst of all positions.

Then there is the arbitrary nature of this recording, so I wondered how big a problem this is. I am told that there have been 119,934 of these incidents recorded by 34 police forces and that 2,130 of them were done by children. It is extraordinary that this could be happening and is part of a wider concern where our free speech is being undermined. I went on Twitter; I think I lasted about three months. I have spent 40 years offending and upsetting people with the things that I said. So far as I know, I am not on a list as having committed a hate crime.

However, the essence of our democracy is that there should be free speech and that our police should be in the business of finding out what the evidence is, not turning into the people who conclude and are, in effect, prosecutors. I will not detain the House but among the examples given was someone who expressed the view that trans women should not have access to women-only spaces. Well, I believe that; is it a hate crime? Am I not allowed to say that? The fact that someone could be put on such a list indefinitely offends against our democracy.

I am sure my noble friend the Minister will have a brief, because all Ministers always do. I am sure she will have her brief from the Home Office—I worked in the Home Office for a while—and it will say that the amendment is not perfectly drafted and that some provision elsewhere could cover it, and all the rest. I hope she will throw that away and give an undertaking not only to bring forward a government amendment but, this very day, to get on to the College of Policing and end this absolute outrage.

Baroness Chakrabarti (Lab): My Lords, I think I am probably quite woke, and proud to be so; none the less, I support the broad thrust of the amendment from the noble Lord, Lord Moylan, subject to a couple of caveats. The first caveat is a slightly light-hearted one. As a serial offender, I gently say to noble Lords and friends across the Committee that the overuse of adjectives named for great writers does not always help the cause of human rights. We have all done it: "Dickensian" for socioeconomic rights and "Orwellian" or even "Kafkaesque" for civil liberties. "Chilling" is similar. In fact, an online wit once said of my overuse of these terms: "That Chakrabarti woman finds everything chilling. She sees refrigerators everywhere." That is just a gentle point about the way we frame this.

I support the broad thrust of this, but the problem is not just about allegations of hate. It is about soft information, as it is sometimes called, or allegations that are not capable of sustaining a criminal charge and should not sit on databases for years and years, or indefinitely. This problem has been growing for many years with the rise of the database state and the potential to hold all sorts of data, even if it never matures into a charge. That is dangerous.

In my previous role as director of Liberty, I saw many cases of this kind. Not all involved free speech. I remember one woman who had allowed her small children to play in the park while she went to a kiosk,

[Baroness Chakrabarti]
and people thought they were unattended. She was cautioned by the police because she was at the borderline, they thought, of neglect, but there was no question of pursuing a charge. None the less, this data sat around for years and was hugely detrimental to her when she sought to work in positions of care.

This is not just about the glorious culture wars that have got everyone to their feet today. It is not about your views on trans inclusion or not, but about whether so-called soft information or police intelligence that never matures into a charge should sit unregulated, off the statute book, as a matter of police discretion and administration. Whatever our views on the free speech point, we surely have to agree with procedural point that the noble Lord, Lord Moylan, was right to make clear.

I remind noble Lords that free speech is a two-way street. It is not just about the woke and so-called cancel culture; it is also about protesters who feel that they attend demonstrations and sit on police databases for many years just because they have been caught on CCTV. We in your Lordships' House would do a great service to the nation if, whenever we consider these so-called culture wars that centre around identity politics and in particular free speech, we remember that it is a two-way street. It is people on either side of very contentious arguments who sometimes want to "cancel" each other, and we should remember that.

My final point is a substantive one about the way I urge the Minister to take this forward. Given that the concern is about not just hate incidents but all soft information that may be held indefinitely, can the Minister's response today—or on Report, with, I hope, substantive government safeguards—be comprehensive and address not just non-crime hate incidents but all soft intelligence and all police data about individuals that could be to their detriment going forward, whether it touches on free speech rights or other rights such as Article 8 rights to privacy and autonomy? Can this soft information that has been held administratively by the police be on the statute book and brought under proper regulation and control?

Lord Judge (CB): My Lords, the issue is very simple. We surely have to decide whether hate crime and non-hate crime, and all their different manifestations, should be left to police guidance, or whether the issue is far more important than that and should be brought under the process of Parliament—legislative control and legislative process. To me, the answer is perfectly clear: the latter.

4.15 pm

Lord Dobbs (Con): My Lords, like the noble and learned Lord, I shall attempt to be very brief indeed. My understanding of the law is that it should bring about a degree of certainty in society and a degree of reconciliation. I fear that the Bill as it stands does neither: in fact, it does the opposite. It has the perverse impact of making division and intolerance more likely because it points the finger of accusation at people who have done no wrong. As such, it seems to me to be an intrusion too far. The perverse consequence of trying to stamp out hate plays into the hands of the oversensitive and the intolerant, and actually gives strength to those who want to damage others by making outlandish or, indeed, even malicious accusations.

Two weeks ago, we stood in this House paying tribute to Sir David Amess. The Chamber was filled with voices of alarm that social media and everything else had fuelled intolerance and injustice. These provisions might well be misused to pour petrol on those flames. The test of innocent until proven guilty is turned on its head: that is unacceptable. When officialdom is given the power to police the thoughts of the people, it crosses a dangerous line. I have said enough; I said I would be brief, but I am following in the footsteps of some very powerful speeches. I wholeheartedly support these amendments, and I hope that the Government and the Minister are in listening mode.

Baroness Meyer (Con): My Lords, I want to make a point about something that is not directly related, but which I found quite odd. A few weeks ago, I was arrested for speeding. It was the first time in 40 years that I had actually done anything wrong while driving. Interestingly, the notice I received clearly said that the fact that I had no other points on my licence was irrelevant because that would be unfair to others. I do not understand how, if you have been a good guy and have never done anything wrong, that cannot be a positive factor, yet in this Bill we are accusing people and putting them immediately in the negative, even though there is no serious proof. I therefore support the amendment.

Lord Marks of Henley-on-Thames (LD): My Lords, on behalf of these Benches, I too support these amendments, for all the reasons given by the noble Lords who tabled them. Of course, the principal amendment seeks regulations and lacks specificity. It does not seek to define all the circumstances for retaining, recording, using or disclosing personal data relating to hate crimes or non-criminal hate incidents or otherwise. That is sensible, and it is now for the Government to accept the principles that underly this amendment and come forward with proposals. Of course, I accept the caution which the noble Viscount, Lord Hailsham, brings to the question of regulations that are unamendable; nevertheless, this is a complex area that needs a complex response.

The principles engaged are important. As the noble Lord, Lord Moylan, pointed out, this amendment is not concerned with established hate crime or in any sense with defending hate crime. It starts from the principle that personal data deserves protection from the arbitrary retention, use and disclosure by the police, enforcement agencies and authorities generally, and the converse principle that disclosure should be subject to the rule of law and to principles of accountability—points made by many in this debate, and briefly but eloquently by the noble and learned Lord, Lord Judge, a few moments ago.

The conduct with which these amendments are concerned is not provably, still less proved, criminal—a point made by many. They seek to control the arbitrary retention, use and disclosure of personal information, based on a subjective perception of a citizen's motivation,

in the absence of solid evidence or proof. It is subjective, one notes, because it is often based on the subjective view of another citizen—no better informed, necessarily, than the citizen about whom the information is then held.

The noble Lord, Lord Moylan, spoke on the basis that subsection (7) was in a different category from the rest of the clause. I prefer the way that the noble Lord, Lord Sandhurst, put it, when he set out the principles that underlay the whole of this amendment. It is not often that I find myself agreeing with almost everybody in the House, including, at one and the same time, the noble Lord, Lord Forsyth of Drumlean, and the noble Baroness, Lady Chakrabarti—but I do. Even on this occasion, although I understand the hesitations voiced by the noble Baroness, Lady Jones of Moulsecoomb, she and the noble Lord, Lord Cashman, accepted the need for regulation in this area.

The amendment is directed at achieving sensible limitations on the retention, use and disclosure of data to others. This is an area where the Government ought to act and that has become controversial, with the emergence of guidelines that are, frankly, offensive to justice and parliamentary democracy. I therefore invite the Minister—I believe that I speak for the House in doing so—to return to the House with proposals that accept the principles that we have enunciated and will give rise to amendment of the Bill, to its vast improvement.

Lord Ponsonby of Shulbrede (Lab): My Lords, as the noble Lord, Lord Marks, said, it is unusual to have such unanimity across the House in Committee on something that is superficially a very complex matter. I agree with two noble Lords in particular. The noble and learned Lord, Lord Judge, was very succinct: he said that the information that the police retain should be subject to parliamentary or government control and not to police guidance. I also agree with the noble Lord, Lord Marks, in being cautious about regulation and having a full role for Parliament in any rules that are introduced.

I am sure that this is a very complex matter. I have just been wondering whether, in my role as a sitting magistrate in London, I would see this information. I obviously routinely see the police national computer—PNC—list, which includes convictions, cautions and bail conditions. If we go ahead and have a "bad character" application for a trial, additional information may be disclosed to us—to do with allegations of, say, a domestic abuse nature.

I was also thinking about my role sitting as a magistrate in family court, where I routinely see allegations that have not been substantiated in any court but have been recorded over many years in social services reports. I think that it is right that I see those allegations when we as a court are making decisions about the way that children should be treated in the context of a family court.

I give those two examples, which are different to what noble Lords have spoken about, to acknowledge the complexity of the situation with which we are dealing. I am sympathetic to the points that have been made by noble Lords, but I am also sympathetic to the Government addressing this with an open mind. I will listen with great interest to what the noble Baroness says about whether they propose bringing back any amendments at a later stage of the Bill.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank all noble Lords who have spoken in this debate, which has been very constructive. I thank my noble friend Lord Moylan for tabling the amendments. I applaud the noble Lord, Lord Cashman, for promoting the need for balance, and the noble Lord, Lord Ponsonby, for his concluding words.

I say at the outset that the Government do not disagree with my noble friend's view that people should not be inhibited from saying what they think, provided that it does not transgress the legal framework that this Parliament has put in place. Noble Lords would all be concerned if the activities of the police were—even if inadvertently and quite possibly for the best of motives—having an adverse effect on particular individuals who had committed no crime. If that possibility were having a chilling effect, as the noble Lord, Lord Pannick, said, or causing people to temper their quite lawful remarks, that would be a most unsatisfactory state of affairs.

That is my starting point. I will try to set out some of the background to the issues raised by the amendments that are before noble Lords. My noble friend Lady Noakes asked: how have we got here? It is a key legacy of the Macpherson inquiry, set up to consider the issues surrounding the murder of Stephen Lawrence, and is intended to give the police the means to understand tensions within communities before they escalate to serious harm.

As the name implies, the data pertains to incidents that are not crimes. It can include location data to know where repeat incidents of apparent tension and hostility might occur—for example, outside a place of worship. In this respect, the data is vital for helping the police build intelligence to understand where they must target resources to prevent serious crimes that may later occur. The importance of such intelligence has been illustrated where its use could have prevented real harm. The tragic case of Fiona Pilkington and her daughter, subjected to persistent hate and abuse and where the police failed to draw the links to repeated incidents of harassment, is a prime example.

Of course, non-crime hate incidents may also include the collection of personal data. Some of these records will include an accusation of hate crime that has been made against a person but was not proven. I know there has been concern that such data might appear in enhanced criminal record checks, which are required for jobs such as working with children and vulnerable adults, and that a person could be inappropriately disadvantaged for expressing a sentiment that is in no way criminal.

Precisely to guard against that possibility, the disclosure of non-conviction data in such checks is covered by statutory guidance issued by the Home Office to chief officers of police. This makes it clear that the police should disclose such information only after careful consideration and when it is proportionate and relevant to the job in question. Data of this kind can be disclosed only on the say-so of a senior officer, who

[Baroness Williams of Trafford]
should also consider whether the individual concerned should be given the opportunity to make the case that the information is not shared. Individuals also have the right to request an independent monitor to carry out a review of whether information is relevant to the role for which they are applying.

In practice, it is rare for the police to disclose non-conviction information of any kind: only 0.1% of enhanced certificates included such information in 2019-20. However, I fully understand that the public are concerned with how the collection of non-crime hate incident data might infringe fundamental liberties, particularly free expression, and may harm a person's future prospects. However, I do not think that it is as simple as saying that the issue could be resolved through the introduction of more stringent regulations governing the processing and disclosure of data. We need to avoid unintended consequences through any reform of this practice. First, we need to ensure that we do not tie the hands of police in collecting the non-personal location data that I describe, and which can be vital in building an understanding of hotspots where serious harm might occur; this takes us back to the point made by the noble Lord, Lord Cashman, about balance.

Secondly, it is important to remember that the process of determining whether a crime has occurred is not always linear or simple. While the law on hate crime is clear, the process of determining whether an offence was committed may not be. The use of non-crime incident recording can exist in the grey space between the police making initial inquiries and making records such as this, and a decision to take no further action due to lack of evidence, or where a suspect cannot be identified. Non-crime hate incident records often form part of the normal record-keeping of early criminal investigations.

4.30 pm

The data recorded may prove material to establishing a pattern of conduct when an investigation is reopened, or where further criminal complaints are made. Simply put, suggesting a clear dividing line between work to tackle crime on the one hand, and this form of data collection on the other, is not entirely accurate. The data is part and parcel of crime prevention. It must, however, be fair and proportionate to the harm that it is seeking to avoid. The public must also have faith that it does no more than strictly necessary to tackle this harm and preserves free speech. I set this out to make it clear that this is not a simple issue, as the noble Lord, Lord Ponsonby, said, nor one that can be solved just by the stroke of a pen.

However, as I said at the start of my remarks, the Government have considerable sympathy with the intention behind my noble friend's amendment. Earlier this year my right honourable friend the Home Secretary wrote to the then acting chief executive officer of the College of Policing, and to the relevant lead in the National Police Chiefs' Council, to ask them to explore further and consider whether there are realistic and credible options for reforming non-crime hate incident recording to improve personal data protections for those connected with incidents which do not lead to a criminal charge. That is to address the question raised by the noble and learned Baroness, Lady Butler-Sloss, and to agree with my noble friend Lord Forsyth of Drumlean. I am happy to say that the College of Policing has given this issue serious consideration and come up with some suggestions which the Government are now considering. The college has also pointed out that there is ongoing litigation which is very pertinent to this issue. Accordingly, it would not be appropriate for me to set out a definitive position on what happens next. To all noble Lords, I say wait and see. We will need to see how the litigation pans out and to engage in ongoing dialogue with the College of Policing.

Lord Forsyth of Drumlean (Con): My Lords, I am not a lawyer, but can the Minister explain why she thinks that this is a matter for the College of Policing and not for Parliament and the Government?

Baroness Williams of Trafford (Con): I am simply pointing out that the Home Secretary has been in touch with the College of Policing to see if this issue can be improved and reformed further. I was saying, "Let's count nothing in and nothing out." I hope that my noble friends Lord Moylan and Lord Forsyth of Drumlean will take comfort in my right honourable friend the Home Secretary having identified a problem for which she is seeking a solution.

There will be more to be said in the coming months, but I hope that for now I have said enough to reassure my noble friend Lord Moylan and that he will see fit to withdraw his amendment.

Baroness Noakes (Con): My Lords, my noble friend invited the House to wait and see. Can she give us some idea of how long that wait might be?

Baroness Williams of Trafford (Con): I can certainly promise my noble friend and noble Lords who have been involved in the debate this afternoon that I will go back and see if I can put a timeframe on it.

Lord Moylan (Con): My Lords, when I tabled these amendments, I had no idea that they would find universal approbation in all parts of the House or attract the support of so many distinguished legal figures. It is quite humbling to look at the list and see my noble friends Lord Sandhurst and Lord Hailsham, the noble Lord, Lord Pannick, the noble and learned Lord, Lord Judge, and the noble and learned Baroness, Lady Butler-Sloss—all highly distinguished figures in one department of the law or another. Indeed, I may have missed some speakers whose careers I am not equally familiar with. They are all united on two fairly straightforward points: first, that the operation of the current system of recording can cause genuine harm, unjustly, to particular individuals; and secondly, that this process should be subject to statutory and parliamentary supervision. Really, that is the essence of the entire case for supporting these amendments.

There were many speeches, for which I am grateful. I do not have time to thank everybody but it was an excellent debate, with speeches made by many people who, like myself, do not have any pretensions to legal expertise, such as the noble Baroness, Lady Fox of

Buckley, my noble friends Lady Noakes, Lord Forsyth of Drumlean and Lord Dobbs, the noble Baroness, Lady Chakrabarti—

Noble Lords: Oh!

Lord Moylan (Con): Did I make a mistake there? Sorry. I am very grateful to everyone who has spoken.

I particularly draw attention to the remarks made by the noble Baroness, Lady Jones of Moulsecoomb, and the noble Lord, Lord Cashman. They both made a very important point, which is that it can be useful to the police in preventing crime in the future to have access to this information and, in certain cases, to retain it. I do not pretend that the drafting of the regulations envisaged by these amendments is going to be simple. It will have to take account of the important points that they made. But these amendments do not prejudge the weight to be given to those various factors when the Government come to draw up the guidance envisaged. I am very sympathetic to the points they made.

I would like to give everybody a gold star for their speeches, except possibly my noble friend on the Front Bench, who sadly struggled; it is a matter of bitter regret to me that goes to my heart. My noble friend Lord Forsyth of Drumlean put his finger on this: she struggled to explain, and did not really even attempt to explain, why these provisions should not be the subject of statutory supervision. She gave an example of harassment of an individual as to why this information should be retained. In my explanation of the amendment, I tried to point out that it would not affect harassment of individuals in individual cases. But if she feels that is not sufficiently clear in the amendment, I would be happy to accept further amendments from the Government that would make it abundantly clear. I hope that deals with one of the points she made.

My noble friend also said—and this is always an argument for doing nothing—that we must beware of unintended consequences of more stringent regulation. We have not asked for more stringent regulation or indeed for less stringent regulation; we have simply asked for proper regulation by properly constituted bodies. We are leaving it very much in the hands of the Home Office and my noble friend to come forward with something that they think appropriate.

I am very encouraged—if I can give some consolation to my noble friend—by her remark that her colleague the Home Secretary recognises that there is a problem and that some indication of some possibility of action was implied by that. Taking heart from that comment, I beg leave to withdraw the amendment.

Amendment 106 withdrawn.

Amendment 106A not moved.

Schedule 3: Extraction of information from electronic devices: authorised persons

Amendment 107 not moved.

Amendments 108 and 109

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

108: Schedule 3, page 202, line 6, at end insert—

"An officer of the department of the Secretary of State for Business, Energy and Industrial Strategy."

Member's explanatory statement

This amendment provides for an officer of the department of the Secretary of State for Business, Energy and Industrial Strategy to be an authorised person for the purposes of Clause 36.

109: Schedule 3, page 202, line 18, at end insert—

"The Police Investigations and Review Commissioner.

A person designated by the Police Investigations and Review Commissioner under paragraph 7B(1) of Schedule 4 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10).

An officer appointed by the Police Ombudsman for Northern Ireland under section 56(1) or (1A) of the Police (Northern Ireland) Act 1998."

Member's explanatory statement

This amendment provides for the Police Investigations and Review Commissioner in Scotland, persons designated by the Commissioner in Scotland and persons appointed by the Police Ombudsman for Northern Ireland to be authorised persons for the purposes of Clause 36.

Amendments 108 and 109 agreed.

Schedule 3, as amended, agreed.

Clause 43: Pre-charge bail

Clause 43 agreed.

Amendment 110

Moved by ***The Lord Bishop of Gloucester***

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

"Bail and primary carers

(1) Section 4 of the Bail Act 1976 is amended as follows.

(2) After subsection (9), insert—

"(10) Where a court determines whether to grant bail in criminal proceedings to a person to whom this section applies who is a primary carer for a child or pregnant, the court must—

(a) consider the impact of not granting bail on the child or unborn child; and

(b) presume (subject to victim impact or other relevant considerations) that it is in the best interests of the child or unborn child for bail to be granted.

(11) In this section—

(a) "child" means a person under the age of 18, and

(b) "primary carer" means a person who has primary or substantial care responsibilities for a child.""

Member's explanatory statement

This Clause reflects the requirement for judge to consider the impact of not granting bail on a child when determining, in criminal proceedings, whether to grant bail to a primary carer of a dependent child.

The Lord Bishop of Gloucester: My Lords, I am pleased to move this amendment, which has the support of the noble and learned Lord, Lord Falconer, the noble Lord, Lord Dubs, and the noble Baroness, Lady Massey. I am grateful for the knowledge and wisdom they will bring to the debate. I declare an

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interest as Anglican Bishop for Her Majesty's Prisons in England and Wales and president of the Nelson Trust.

The sentencing of a primary carer can have a serious detrimental impact on the rights of a child and their life chances, yet the fact that they are a primary carer is not consistently considered by the court making the sentencing decision. Amendment 110 would require judges to consider the impact on a child of the decision of not granting bail when determining in criminal proceedings whether to grant bail to a primary carer of that dependent child. Amendments 215 to 217 aim to address inconsistencies in sentencing by requiring judges and magistrates to give due regard to the impact of a sentence on any dependent children and their welfare when sentencing a primary carer. The intention of Amendment 218 is to gather the relevant data about the number of prisoners who are primary carers and the number of children who have a primary carer in custody. Given that there are five amendments here, I hope noble Lords will bear with me.

I know other noble Lords will cover in greater detail the recommendation of the Joint Committee on Human Rights that the rights of children whose primary carer is in prison be upheld. In the vast majority of cases, the primary carer is the mother, and this will be my point of reference today. However, I acknowledge that for some children the primary carer may be someone else. My starting point with these amendments is not that primary carers—mothers in the most part—should never be given a custodial sentence. It is instead that we must find a way for the least harm to be caused as a consequence of sentencing. Custodial sentences for mothers punish children, including the unborn, and that is not justice.

I believe not only that every person is created precious and with unique potential but that we are created as people of relationships and that perfect wholeness and harmony—shalom—is about everything in a perfect interdependent relationship: humanity and all creation; of course, I would add, rooted in God. If we want a criminal justice system which is about justice, safety, transformation and the flourishing of individuals, communities and society, we have to attend to the whole picture of relationships—the whole system, and indeed, the long term. If we are to strengthen family ties, reduce reoffending and disrupt intergenerational cycles of abuse, trauma and offending, there must be consideration of where and how a mother serves her sentence.

So often prison is not able to meet the rehabilitative needs of the people who are sent there and will also not be about enabling the better safety of the public or strengthening communities and society. Many women are often in prison for only a few weeks. The majority of women are there for less than six months and, according to the Prison Reform Trust:

> "72% of women who entered prison under sentence in 2020 have committed a non-violent offence."

Alternative community-based provision must be available, well funded and trusted by those making sentencing decisions.

4.45 pm

Last month, the Lord Speaker graciously allowed me to host an event here in the River Room. The most powerful speaker at that event was a young mother who shared her lived experience of addiction, domestic violence and a point-of-arrest diversion programme facilitated by the Nelson Trust through Avon and Somerset Police. I am grateful to have further opportunities to speak about the need for diversion later in Committee, so in this debate I will simply repeat Chloe's powerful testimony of restoration. She said: "I now have my family back. I see my daughters every day. They stay overnight with me and together we are making happy memories. I am the happy, confident, healthy mum I always wanted to be and now I am one year sober."

Some 95% of children have to leave their home when their mother goes to prison. Parental imprisonment is recognised as an adverse childhood experience that could have a substantial negative impact on children's long-term health and well-being as well as their educational attainment. It can also seriously affect their life expectancy and the likelihood of going to prison themselves. According to Dr Shona Minson,

> "children suffer short, medium, and long term and lifelong harms from being deprived of their parent by imprisonment."

So often, these children—and the impact on their lives—lurk in the shadows unseen and the light needs to be shone there if we are to see the full picture and the consequences of our failing to uphold the right of the child within our criminal justice system. We also need to recognise that the impact on these children may not remain hidden in the long term. The intergenerational impact of imprisonment is well documented. Reportedly, 65% of boys with a convicted parent go on to offend themselves and children of prisoners have twice the risk of antisocial behaviour compared with their peers.

Three weeks ago, I visited Adelaide House, the female approved premises in Liverpool. One of the women there recalled how her mother was in and out of prison. She said: "I was passed from pillar to post, which resulted in my becoming dependent on drugs at the age of 13, just to get me through the day. This has been ongoing throughout my adult life. Looking back, I recognise that my mother had mental health issues and dependencies and received no support." Holistic, trauma-informed support, including parenting education, is available in community interventions such as those provided by women's centres, which is where the money needs to be channelled.

I have said before in this House that even if someone is utterly callous and cares little about the offender and their family, the financial aspects alone make no sense at all. The report, *Counting the Cost of Maternal Imprisonment*, published by Crest Advisory last week, states:

> "Our research shows that interventions with children affected by maternal imprisonment were costing the taxpayer as much as £265,008 per family when the cost of the mother's custodial sentence is taken into consideration."

We must be better at seeing the whole picture, and considering the child's rights here is the ultimate early intervention.

Sarah Beresford's 2018 report for the Prison Reform Trust and Families Outside found:

"Every aspect of a child's life is disrupted when a mother goes to prison".

The report recommended introducing child impact assessments to ensure that children are listened to at every stage of their mother's journey—arrest, court, imprisonment or community sentence, and on release—and that they are meaningfully and appropriately involved in decision-making about their care and any support needs they may have.

At this point, I want to mention the unborn child too. I am sure many noble Lords will be aware of the upsetting report published in September regarding the death of Baby A in HMP Bronzefield. The mother had not been sentenced; she was on remand. It is a tragic case and of course a complex one, but I stand with organisations such as Birth Companions, Level Up and Women in Prison in calling for an end to the imprisonment of pregnant women in all but the most exceptional circumstances. Through these amendments, we hope that sentencing judges will consider the real impact on the unborn child of imprisoning their mother.

In all this, I want to keep focused on the big picture, and communities and societies as a whole. That is surely vital if we are to keep victims of crime clearly in our view too. From the review by the noble Lord, Lord Farmer, into the importance of strengthening female offenders' family and other relationships, published in 2019, we know that family ties are a factor in reducing reoffending, with benefits for society as a whole.

The Government's own female offender strategy, published in 2018, acknowledged that:

"Custody results in significant disruptions to family life"

and that many women

"could be more successfully supported in the community, where reoffending outcomes are better."

Indeed, it recognised

"the negative impacts on families of imprisoned mothers and the heightened risk of intergenerational offending"

and committed to rolling out the "Safeguarding Children When Sentencing Mothers" training material developed by the aforementioned Dr Minson, saying:

"This training raises awareness of the diverse implications of maternal imprisonment for children."

So we can see that attempts have been made to reduce the impact on children, but they are not applied consistently. The Joint Committee on Human Rights found that, despite the Sentencing Council strengthening its guidance to judges and magistrates, evidence to the inquiry clearly indicated that the guidance was not being satisfactorily adhered to, and questions remain about whether these steps go fast or far enough to guarantee children's rights.

We need to know the full picture but at present that is distinctly lacking. Joining up social services, whose primary responsibility is the welfare of the child, needs data. In 2019 Crest Advisory estimated that 17,000 children per year are affected by maternal imprisonment, but that is just an estimate. The Government do not know the true figure. In response to my Written Question in December last year inquiring how many women in prison are pregnant or are mothers with primary caring responsibilities, I was told:

"Pregnancy data is collected locally by individual prisons, to ensure the appropriate support can be provided to women in our care. Currently, there is no central collection of this data."

So there is local data but no national picture. If we do not know where those pregnant mothers are, how can we adequately support them? I am aware of the argument that prisoners may not wish to disclose that they are parents for fear of social services' involvement, but there must be a solution to this. I am heartened that in the same reply to my Written Question the Government said they were

"considering how to monitor and publish this information".

I would be grateful for an update from the Minister in that regard.

In summing up, I reiterate that my view is not that primary carers should never be sentenced to a custodial sentence, but the Government must use the timely opportunity provided by this Bill to consider the big picture and ensure that the rights of children and the impact on their lives are brought to the fore. Doing that would of course also enable the Government to make progress on their own ambitions to radically reduce the number of women in prison, included in their female offender strategy and their national concordat on women in the criminal justice system as well as in the recommendations of the Farmer review on women. I ask noble Lords to support these amendments, and I beg to move.

Lord Falconer of Thoroton (Lab): My Lords, it is a pleasure and a privilege to follow the right reverend Prelate. My name comes after hers on this amendment, and I strongly support what she has said. This is a very important set of amendments and I really hope the Government will take the opportunity that they give. The right reverend Prelate is not saying that those who have primary caring responsibility, or where an unborn child is involved, would get a free pass in relation to the sentencing regime or the bail regime. She is saying, with these carefully thought-out amendments, that there have to be proper arrangements for the courts to take these matters into account and recognise that they are a significant factor in many cases in determining a sentence.

If I could just take the Committee through these amendments, Amendment 110 says that where a court is considering whether to grant bail to somebody—that is, somebody who is not convicted of any criminal offence—they should have regard to the impact of not granting bail on a child for whom the defendant is the primary carer, or an unborn child, and that the court should presume, subject to victim impact or other relevant considerations, that it is in the best interests of the child or unborn child for bail to be granted. The right reverend Prelate is saying, "Weight the scales in favour of granting bail where there is a child for whom the defendant is the primary carer, or there is an unborn child." That is sensible and should be the approach anyway.

Coming to the right reverend Prelate's four other amendments, Amendment 215, which comes after Clause 131, says that the court should be under an obligation, through pre-sentencing inquiries, to discover whether the defendant is a primary carer for a child. That is obviously sensible, and no court would want to

[Lord Falconer of Thoroton]
be in ignorance of that should it be sentencing somebody who is a primary carer. Amendment 216 says that where the defendant is a primary carer, the court must give reasons as to how it has dealt with the issue of primary caring. Again, that seems to be common sense. Amendment 217 says that where a court is considering imposing a custodial sentence on a primary carer or a pregnant woman, it must consider the impact of a custodial sentence on the child or unborn child and presume it will be detrimental to them. Amendment 218 would make sure that proper data is collected so that the criminal justice system is aware of the extent to which primary carers are imprisoned.

These amendments would mean that the interests of the child of which the defendant is the primary carer, or an unborn child, have to be explicitly considered and they are a weight—in many cases, a very considerable weight—in the scales. If we put these amendments into the Bail Act 1976 or the Sentencing Act 2020, which is where the right reverend Prelate is proposing they go, it will have an impact on sentencing. It is not enough, and it is a complacent view, as the Human Rights Committee found, to say, "Don't worry; the judge has already taken it into account, it is referred to in the sentencing guidelines." The evidence before the Human Rights Committee is that that was not the case. Put it into the Sentencing Act, as these amendments propose, and we will find that it then becomes a much harder thing for a court to avoid; it should be thinking of the rights of the child of which the defendant is the primary carer, or an unborn child. This is a significant opportunity for the Committee to make this Bill better, and I strongly support the right reverend Prelate.

Baroness Massey of Darwen (Lab): My Lords, the amendments in this group are about ensuring the best interests and welfare of the child. We must remember that children are those under 18, not just little ones. The arguments have been admirably set out by the right reverend Prelate the Bishop of Gloucester and my noble and learned friend Lord Falconer. It is an honour to follow them both.

5 pm

I simply wish to emphasise some of the points from their arguments. Like my noble friend Lord Dubs, I am a member of the Joint Committee on Human Rights, which has considered this aspect of the Bill very carefully. Over many years, the committee has supported the rights and best interests of the child, as set out in the UN Convention on the Rights of the Child, ratified by the UK in 1992. The Joint Committee on Human Rights, in its report *The Right to Family Life: Children whose Mothers Are in Prison*, recalls that the JCHR has produced a number of reports on the right to family life, which is one of the articles of the UN convention.

It is clear that sentencing a person to prison affects not only their life but their family. Children should not suffer when a primary carer, so often a mother, is sent to prison. The committee also pointed out that children's voices are not heard or listened to when their mother or primary carer is sentenced, despite case law and guidelines that should ensure that their best interests and welfare are considered. The Government have promised "an ambitious programme of sentencing reform". I hope the Minister tells us that the impact on children will be at the forefront of that reform.

I am also a Member of the Parliamentary Assembly of the Council of Europe and I am working on a report focused on taking the voice of the child into account in matters which concern them—an issue relevant to this Bill and one that requires more attention when legislating for child welfare and the well-being of families. It is sad that the Government do not have adequate data on the number of mothers in prison who have dependent children or on how many children are separated from their mothers by their imprisonment. Could the Minister clarify this?

When the JCHR took evidence in 2019 for the report *The Right to Family Life: Children whose Mothers Are in Prison*, we heard from a girl who was 15 when her mother was sentenced to prison. She told us that she wanted the judge to reconsider her and her brother when their mother was sentenced. Our committee considered there to be a lack of awareness in the criminal courts of the impact on children of sentencing their mother—if only they had considered this case, and that the voice of the child is important. The welfare of children whose parents are sentenced must be put on a statutory footing.

The Youth Justice Board points out that a specific children's rights impact assessment has not been published on this Bill, as has been said before. An assessment of this kind would surely help to highlight the unique position of children in society and to influence relevant clauses of the Bill. The Youth Justice Board's full vision for a youth justice system is one that treats children with respect and care. Such a system would prioritise the best interests of children and recognise their needs, capacities and potential. It would promote children's strength and capacities and would lead to safer communities and fewer victims. It would encourage children's active participation in resolving problems and promote social inclusion.

An emphasis on a child-first approach would not only benefit children but contribute to social awareness. The Government speak of levelling up; instead, a lack of respect for children and their potential for building a better society is detrimental to this achievement and shows the negative side of a justice system that should treat people fairly and build on the positive, rather than the negative.

The Joint Committee on Human Rights made it clear in 2019 that, when the criminal court sentences a parent with a dependent child or children, Article 8 of the European Convention on Human Rights, on the right to respect for private and family life, is affected. Can we imagine the impact of this on a child? How must they view our justice system? How will it affect their growing up? The Joint Committee on Human Rights, in its first report on this Bill, concluded that the best interests of the children are not being sufficiently prioritised as a consideration when a parent is sentenced.

These amendments seek to require sentencing judges to consider the welfare of children when sentencing their primary carer. The new clauses reflect what should happen, but sadly often does not, in order to respect the rights of the child or consider their views when a

primary carer is sentenced. The JCHR hopes that inclusion in statute will help ensure that the rights of these children will not be neglected in future.

This Bill is an opportunity the ensure that the best interests of the child are upheld when sentencing a primary carer and therefore influencing the well-being of the family. I strongly support these amendments.

Viscount Hailsham (Con): My Lords, I have a brief point to make. I find a great deal of attraction in the thinking behind the new clause. It has great force and has been eloquently moved. But the question I ask myself is: if one is going to extend these provisions to the primary carer of children, what about others for whom the primary carer is in charge? What about the vulnerable, the educationally challenged, the disabled and the aged? Once you begin to accept that the interests of the primary carer for children should be addressed in the way contemplated by the new clause, there is a lot to be said for widening its scope so that it applies to primary carers across the spectrum.

Lord Thomas of Cwmgiedd (CB): My Lords, I rise very briefly to support the principle of these amendments. I warmly welcome what the Government are trying to do to roll back the use of prison for women. Everyone accepts that sending a woman to prison is generally something to be avoided at all costs. We need alternative provision as quickly as possible. However, we all know that this will take time. We have to deal with the situation in the interim.

In considering these amendments, I am acutely conscious of the burden that legislation is placing on the judiciary. One has only to read the Sentencing Code to realise what Parliament is actually doing to the judiciary in terms of complexity. However, what is important about the role of Parliament is to set out the principles. If I might try to answer the question raised by the noble Viscount, it is the interests of the child that we need to put at the heart of sentencing. We have put other interests there, but we need clearly to specify that one of the factors judges must take into account, whether on bail or in sentencing, is the interests of the child. Extensive work has been done in Wales and elsewhere: modern research shows that imprisoning a mother has a very serious effect.

Viscount Hailsham (Con): I entirely accept what the noble and learned Lord is saying, but I am not sure I see the distinction in principle between having regard to the interests of a child—I accept that that is a very important consideration—and having regard to a vulnerable old person, or a person with serious educational disabilities. It seems to me that all of them are equally worthy of consideration in statute if you go down this particular road.

Lord Thomas of Cwmgiedd (CB): If I might attempt to answer the noble Viscount's question, paramount importance is given to the interests of the child because evidence has shown that, where there is abuse of children and where mothers are imprisoned, you pass on criminality to a new generation. That is the distinguishing factor. I therefore very much hope that we can look at these amendments for the principle. I am possibly not as keen as others on the detail, for the reasons I have given, but we need to show that one of the fundamental principles of sentencing is to take into account, through the interests of the carer, the interests of the child.

Lord Carlile of Berriew (CB): My Lords, I agree entirely with my noble and learned friend who has just spoken that there is a principle here that needs to be considered rather than the granularity of these amendments. Indeed, I would say to the noble Viscount that, although we should try to achieve the protection of all people who are vulnerable, you cannot do everything at once. It is the whole of the life of the child in front of them that is affected if a parent is in prison.

The right reverend Prelate moved these amendments eloquently. I will say, very respectfully, that I think she omitted one or two key elements. These may lead one to the conclusion that we do not need quite complicated amendments but can achieve her aims, which I share, by a simpler method that is more evolutionary in its process. I might perhaps raise a couple of specifics. First, the information that the right reverend Prelate referred to is sometimes simply not before the court. That is because legal aid does not now provide solicitors with the earning potential—and it is not a high earning potential—to go out and investigate the reality of a child's position. This means that the necessary information may not get in front of the court at all.

I had a conversation some time ago with somebody who was working as a manager of excluded primary school children in one of the London boroughs. She told me that she often rang the solicitors for 11 year-olds right at the top of the primary sector, or sometimes when they had just moved from the primary sector, to ask if they were aware of certain aspects of the child's life—and they had no idea. They do not have the resources to make those inquiries. Furthermore, when cases come before the court, it is nowadays very rare in the Crown Court for a solicitor to be there instructing counsel in such cases, and, in the nature of the profession and the fees payable, counsel may have received the brief only the night before, and it may be a very junior counsel. These are the practical issues that judges encounter all the time.

I want also to say something about judges; I have a family interest in this, which I will not go into in great detail, despite the urgings of my noble and learned friend Lord Garnier. It is this: judges should be given credit for understanding the problems that the right reverend Prelate raised; she perhaps did not quite get there. Judges, many of whom are mothers themselves, hear these cases and understand perfectly well. They do not need a statute to tell them that it is not in the interests of a child for that child's mother to be sent to prison .They do everything they can—on the basis of the information they are given, which may give rise to the real problem—to ensure that, if at all possible, a woman who has primary caring responsibility for a child is not sent to prison.

Lord Falconer of Thoroton (Lab): I apologise for interrupting. The right reverend Prelate's Amendment 215 says:

[Lord Falconer of Thoroton]

"A court must make inquiries to establish whether the offender is a primary carer for a child",

and, if those inquiries suggest that the defendant is a primary carer, then, according to the amendment, the court has to direct a pre-sentence report on the circumstances of the child. Does the noble Lord object to that burden on the courts?

Lord Carlile of Berriew (CB): I do not object to that burden on the courts, but I am surprised that it has to be placed upon the court. My view is that that sort of report should be part of the process when a young mother, for example, appears before the court. Mechanisms already exist that can ensure that such information is given. I am saying that we can achieve the same purpose more simply—for example, by the use of the Sentencing Council, if it is asked to concentrate on these issues.

I simply add this. The last statistics I have seen for women in prison, for 2020, show that 3.4% of prisoners are women. This is the lowest percentage it has ever been, and it is continuing to fall because the courts absolutely understand what those who tabled these worthy amendments are saying.

When the Minister replies, I hope he may be able to provide reassurance that the ends of these amendments will be achieved but in a more flexible way that can evolve over time, rather than by slightly clunky statutory provisions that, in my view, should not be necessary. Do we really need an Act of Parliament to ensure that courts give proper account to the paramount interests of children, which my noble and learned friend referred to a few moments ago?

5.15 pm

Lord Bradley (Lab): My Lords, I rise to make a short contribution to fully and strongly support the amendments. I declare my interests in the register, particularly as a trustee and vice-chair of the Prison Reform Trust. I first compliment the opening address by the right reverend Prelate the Bishop of Gloucester and fully associate myself with the arguments she made in opening this debate.

I will briefly give some background to these amendments. Following the publication in 2009 of my independent report to government on mental health, learning disabilities and the criminal justice system, a programme to establish liaison and diversion services across the country was commenced. This has continued to this day, supported by all Governments, with 100% geographical coverage of the country now achieved.

These services are based in police stations and courts and are made up of multidisciplinary teams comprising mental health nurses, learning disability nurses, speech and language therapists and other disciplines working together with drug and alcohol staff to assess the needs of the arrested person to determine whether it is appropriate to divert them away from the criminal justice system, depending on the nature of the offence, or to help and support the police in determining whether they should be charged. If they are charged, this assessment information passes through to the courts and, in partnership with the court staff and probation staff, they try to ensure that a more comprehensive picture of the often complex needs of the individual is available in the magistrates' courts and the Crown Court at first appearance.

However, one crucial piece of information that is not necessarily available—for a variety of reasons that we have already heard in this debate—is whether the offender, most often when it is a woman offender, is a primary carer. In January 2021, I asked a Parliamentary Written Question about

"how many children were taken into care because their mother was given a custodial sentence in each of the last five years".

Extraordinarily, the answer was that the data requested is not something that Her Majesty's Prison and Probation Service records. It went on to say:

"In practice, it is Local Authorities overseen by the Ministry for Housing, Communities and Local Government … who are responsible for delivering operational support to families on child safeguarding, including for children affected by parental imprisonment."

It further stated that the Ministry of Justice

"acknowledges that parental separation due to imprisonment disproportionately affects women. Individual women's prisons"—

I have visited all of them over the recent past—

"collect information on caring responsibilities at the point of reception"

into prison.

There are many problems with this reply, but it essentially confirms the siloing of the information on primary carers away from the criminal justice system, and that first knowledge of such caring responsibilities is at prison reception. That is simply too late, as the damage to the family is already in train; we know that about a third of women in the prison population are on remand, and that, on 2019 figures, 33% of women remanded by magistrates' courts and 40% by Crown Courts, did not receive a custodial sentence. We also know that about 50% of women were sentenced as we have already heard this evening, to fewer than six months in prison. Surely, therefore, as this group of amendments makes clear, by collecting this information on whether the offender is a primary carer—predominantly women, but also sometimes men—and ensuring that the judiciary properly considers this information and the best interests of the child, the damage to the family that remand and short custodial sentences inflict can be mitigated against.

Each of these five amendments contributes to this outcome, particularly pre-sentence reports, but it is important to stress that it is essential that pre-sentence reports are available to the court for all offenders, as this is a primary means through which sentencers can be informed of dependent children. This is clearly not the case at the moment, but sentencing legislation directs that sentencers must obtain a pre-sentence report for all cases unless they deem it to be unnecessary and are transparent in that decision.

As the charity Women in Prison identified in its supplementary evidence to the Justice Select Committee, the evidence from Her Majesty's Prison and Probation Service showed that there was a decline in pre-sentence report volumes over the past decade. For example:

"In 2010, pre-sentence reports were received for 62% of all court disposals reducing to 53% in 2018. Therefore, almost half (47%) of sentences which result in a custodial or community order have no new PSR prepared to inform the sentence."

Furthermore:

> "There is a lack of data to disaggregate these figures according to gender and in answer to a parliamentary question in 2019, the Government could not say how many women in England and Wales had been imprisoned without a PSR."

This is totally unacceptable. I hope that the new focus on this issue by the reconstituted national probation service will quickly achieve better results.

As a committed member of the Government's advisory board on female offenders, I am pleased that the agreed strategy, which we have heard something about already today, includes strongly advocating for effective community sentences with continued investment in local women's centres, as recommended by my noble friend Lady Corston in her groundbreaking report some years ago. Such an approach would help to ensure the successful completion of the community sentences and, crucially, would also ensure that children are not unnecessarily taken into care, that the primary carer does not lose their home or their employment, and that family responsibilities and commitments are protected.

I believe that the role of the liaison and diversion services can play a real part in helping to collect this information about primary carers, with agreed protocols on information sharing and confidentiality. Its timely presentation at first appearance in the courts will facilitate the reduction in the use of remand, the better use of bail and an increase in the use of community sentences, with the interests of the child and the role of the primary carer transparently considered by the judiciary. I therefore ask the Minister if he would clearly explain the Government's position regarding primary carers and their children, and I urge the Minister to accept these invaluable amendments.

Lord Garnier (Con): My Lords, it is a great pleasure to follow my fellow trustee of the Prison Reform Trust, the noble Lord, Lord Bradley. The whole House could agree with everything that he said. I thank the right reverend Prelate for introducing these amendments because, again, I do not think that they are, in their thrust, controversial at all.

I have stopped being a sentencer. I was a Crown Court recorder from 1998 until 2015, with a short gap when I was a Minister, and it became an increasingly difficult part of my judicial life. With the greatest respect to the noble and learned Lord, Lord Thomas, I suspect that he may once have been a recorder, but he spent most of his judicial life as a High Court judge, a Court of Appeal judge and the Lord Chief Justice. Essentially, when you get to that great height within the judicial system, you are dealing with life sentences and trying to work out the tariff that a murderer should get. You are not dealing with what a woman, probably in her late teens or early twenties, with a child should receive for her 10th offence of shoplifting—unless, of course, it came to the Court of Appeal Criminal Division. I have absolutely no doubt that the noble and learned Lord will have dealt with those sorts of cases on appeal with the attention, intellectual rigour and humanity that we would all have expected of him.

It may only be the noble Lord, Lord Carlile, and possibly the noble and learned Lord, Lord Falconer, who, like me, have sentenced what I might call "ordinary" criminals in the Crown Court. The noble Lord, Lord Carlile, is of course too modest to mention that his wife, Judge Levitt, now deals with these matters on a daily basis in the Crown Court. But one of the things that recorders and amateur judges like me, who perhaps do four or five weeks in a Crown Court during the course of a year, have to cope with is the sad people—be they men, women, young teenagers or adults—who come before us for repeated low-level but very annoying criminal offences, such as shoplifting in order to fund a drug habit and so forth.

The one thing that we were determined to do—I do not think that this is controversial—is not send people to prison when it would cause more damage than benefit, both to them, as individual defendants, and their children. Remarkably, the older teenagers and young people in their early twenties who had not just one but two or three children were our daily bread and butter, and we were anxious not to send them to prison if we could possibly help it because of the effect that it would have on their children.

I hugely thank two people, one of whom is in this Chamber, for their influence on my coming to understand the difficulties of sentencing and putting people in custody, particularly women. One was James Jones, the former Bishop of Liverpool, who was the right reverend Prelate's predecessor but one—perhaps her immediate predecessor. The other is the noble Lord, Lord Ramsbotham, who, for me, is the source of information about the prison system. If you read his book about it, and the opening chapter, which concentrates on Holloway—now shut, thank God—you will begin to understand just a bit of the difficulties that amateur sentencers, magistrates and Crown Court recorders, but also the equivalent of Judge Levitt, have to cope with, day in, day out. These are anxious decisions about what to do with women and children whose offences are sufficient to cross the threshold for custody—but, if they are sentenced to prison, what collateral damage does that cause to others?

5.30 pm

My noble friend Lord Hailsham is entirely right: when we think about this, we should of course think about others, such as those with learning difficulties or physical disabilities. However, the right reverend Prelate's amendments and new clauses are about women, so let us think about them. Everything that she said in her introduction and that others have said in their remarks today is utterly uncontroversial. If you sit in a Crown Court in inner London, Manchester, Leeds, Bristol, Leicester or wherever it may be, the concerns that the right reverend Prelate and others have expressed are the very thoughts and concerns that we as sentencers have as we see a young woman with a child in the dock.

What do we do, in practical terms? The most important amendment that the right reverend Prelate has advanced is Amendment 218 on data collection in relation to primary carers. I am not an altogether—how shall I say it?—besotted fan of this Government, but there is one Minister in this House who deals with this subject in whom I have absolute trust: my noble friend Lord Wolfson of Tredegar, who is on the Front Bench today. I asked him an Oral Question some little while

[Lord Garnier]
ago, shortly after he became a Minister and came into this House. He agreed with me that there was insufficient data collection in relation to the matters referred to in Amendment 218.

Because this Minister is on this Front Bench, I have absolutely no doubt that the Government know precisely what we are concerned about and I truly believe that the Minister shares our concerns. We need to encourage him to go back to his Secretary of State and officials in the department to say that this data needs collecting, because without it we cannot make proper or humane policy. Without it, we cannot inform our sentencers, either through the Sentencing Council guidelines, as the noble Lord, Lord Carlile, said, or in any other way, on how best to deal with women in particular and carers of children generally when they are before the courts.

As I said, when we sentenced these people, we all had these things in mind. We all anxiously studied the probation reports. We all worried that, in sentencing a mother or father with a child—a single parent—to custody, we were creating a form of orphanage, placing this child in public care. We know that the state is not as good a parent as the natural parent. If I may say so to the right reverend Prelate, I do not think we need legislation on this, but we need information and we need that to be available to judges, sentencers and, more importantly, Ministers, who can direct their officials to produce the humane solution that all of us require. I have absolutely no doubt that my noble friend the Minister is the person to do that for us.

Baroness Jolly (LD): My Lords, for two minutes, I want to throw a pebble into what seems like calm water. I totally support everything that the right reverend Prelate the Bishop of Gloucester has said. However, we need to ask ourselves: what is a child? If somebody talks to me socially and says, "Do you have any children?", I say, "Yes, I have two." They are grown-up men who flew the nest a long time ago.

However, adults with a learning disability are sometimes cared for by their parents, if they have chosen that the child should not go into care. Their family unit is mum and dad, who are in their 70s or 80s, and somebody with a learning difficulty who might be in their 50s. That is not what we think of as a nuclear family, but we still have to care for the child of those elderly parents, and when one parent dies there are all sorts of problems. Mencap has done a lot of work on this and I have worked with it on it. We really need to be careful about how we legislate for adults who have the mental capacity of a child.

Lord Marks of Henley-on-Thames (LD): My Lords, I am extremely grateful to the right reverend Prelate for not just these amendments but the care and time she gives to compassionate consideration of the criminal justice system generally. I am also grateful to the other authors of this group of amendments. We on these Benches fully support them.

In this House, we have repeatedly stressed the special needs of women in prison and the effect of custody on women and their children. I entirely take the point made by my noble friend Lady Jolly and the noble Viscount, Lord Hailsham, that there are others who are cared for who need our concern. In terms of legislation, we have achieved no more than lip service. These amendments would put that right by imposing real duties on courts and judges to gather the necessary information and consider the effect of custody on children in making bail and sentencing decisions for their primary carers.

Duties would be imposed on the Government to collect the data necessary to enable informed decision-making about the effect of imprisoning primary carers on the lives and futures of their children. I agree with the noble and learned Lord, Lord Garnier, that Amendment 218 on data collection could—and should—have gone further than requiring data on the number of prisoners as primary carers and the number and ages of the children affected. For example, it would be helpful to include data as to the arrangements made for looking after those children following the imprisonment of their primary carers. For instance, we should know how many children have to be taken into care, a point made by the noble Lord, Lord Bradley. We can and should consider that further on Report.

Noble Lords have had the benefit of the excellent briefing from the charity Women in Prison. The statistics it has collated tell a grim story. More than 53,000 children each year are affected by their primary carers being sent to prison and 95% of children whose mother is imprisoned are forced to leave home. One sentence encapsulated it all for me: "We've been sentenced," says a mother, "but they've been sentenced with us."

This point was at the heart of the opening speech of the right reverend Prelate the Bishop of Gloucester. Parental imprisonment is for children a well-recognised predictor of mental ill-health, poor educational attainment and employment prospects, and future criminality for the children concerned. It is often said that criminality runs in families. The noble and learned Lord, Lord Thomas, said that in answer to the noble Viscount, Lord Hailsham. The extent to which we fail the children of carers in the criminal justice system tends to make that a self-fulfilling prophecy.

The problem is made worse by the preponderance of short sentences among those passed on women offenders. Some 62% of sentences passed on women are for terms of six months or less, despite all the evidence that such sentences do far more harm than good, that offenders who receive short sentences are generally far more successfully rehabilitated with community sentences than with prison sentences, and that the damage to children of imprisoning their primary carer stems principally from the initial, sudden separation—the loss of home, the loss of parental care, the dramatic changes for children, that follow immediately on parental custody, often without any preparation or warning.

In the Joint Committee on Human Rights 2019 report on children whose mothers are in prison, the committee quoted the 2007 report of the noble Baroness, Lady Corston:

> "[t]he effects on the … children every year whose mothers are sent to prison are … nothing short of catastrophic."

The committee cited the evidence of a girl called Georgia of 15, who I think is the girl whose evidence was mentioned by the noble Baroness, Lady Massey of Darwen. She said:

"On the day of her trial, I was at home in the living room, dancing to MTV, and I got a phone call from my brother. He said, 'Mum's gone'. I thought he was joking. I had to ask him about five times. From being the young girl who was dancing in the living room, I automatically took on my mum's role. I did not even have time to adjust to the custodial sentence. It just leaped."

The amendments in this group rightly cover bail—that is Amendment 110—as well as sentencing decisions. The effect upon children of a remand in custody of their primary carer may be even worse than that of a prison sentence. It usually comes at the very beginning of the criminal process, often without any warning at all, and its effect is immediate, devastating, and of uncertain duration. Against that background, it is highly significant, and frankly shaming, that a very high proportion of women remanded in custody—66% of magistrates' remands, a higher figure than that given by the noble Lord, Lord Bradley, and 39% of Crown Court remands—do not ultimately lead to a custodial sentence, largely invalidating the original remand decision. Amendment 110 would make bail more likely for primary carers, which would be a real benefit.

For sentencing courts, the duties proposed in Amendments 215 to 217 would lead to an immediate improvement in sentencing practice, as judges complied with these duties imposed by law in the interests of the children, as the noble and learned Lord, Lord Thomas of Cwmgiedd, stressed, where until now they have been subject only to non-binding sentencing guidelines, a point made by the noble and learned Lord, Lord Falconer of Thoroton. For that reason, I disagree with the point expressed by the noble Lord, Lord Carlile of Berriew, who questioned whether these amendments were necessary at all. I completely agree with the view expressed by the noble and learned Lord, Lord Garnier, that judges and recorders are hugely concerned not to send women who are primary carers for children to prison. But the fact remains that far too many primary carers do get sentenced to prison. I believe that over time, these amendments—because judges and recorders follow the law—would also lead to a general change of culture among the judiciary, and possibly in government as well, preventing courts sending primary carers of children to prison.

Before closing, I will add a word or two about sentencing pregnant women to prison. It is particularly welcome that Amendments 216 and 217 cover the special position of the unborn children of pregnant women facing custody. We have all been appalled by the report last month of Sue McAllister, the Prisons and Probations Ombudsman, into the death of Baby A in September 2019 at HM Prison Bronzefield, and the care of Baby A's mother in the time leading up to and around her baby's birth, when she was left alone in her cell—an account also mentioned by the right reverend Prelate. But it should be remembered that Baby A's mother was described in that report as

"a vulnerable young woman with a complex history who found it difficult to trust people in authority."

That description can be applied to the majority of pregnant women who find themselves in prison and, indeed, to the majority of young women prisoners. We should take care not to forget that, particularly given that three out of five women in prison have minor children. I urge the Government to respond positively to these amendments.

5.45 pm

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, perhaps I should first begin by apologising to the noble Lord, Lord Marks of Henley-on-Thames, for standing up at the same time as him. I am not sure whether I stood up too quickly or the noble Lord stood up too slowly, but we got there at the same time.

This group of new clauses relates to primary carers in the criminal justice system, and first I thank the right reverend Prelate and noble Lords for tabling these amendments. I know they were proposed in a recent legislative scrutiny report on the Bill by the Joint Committee on Human Rights, and this topic has been an area of interest to the Joint Committee during this and previous Parliaments. As set out during debates on the Bill in the other place, the Government support the principle behind these amendments. I hope, therefore, I will be able to provide to the House the reassurance that the noble Lord, Lord Carlile of Berriew, asked for. I can assure the noble and learned Lord, Lord Falconer of Thoroton, that we do take these points very seriously. More generally, I can assure the noble Baroness, Lady Massey, that when it comes to our sentencing reforms, we do consider the impact on children. However, the reason the Government do not propose to accept these amendments is that they do not consider them to be necessary, for reasons I will seek to explain.

When sentencing or considering the grant of bail to a defendant who is a primary carer of a child or who is pregnant, courts will consider principles established in relevant case law. There is a wealth of case law on this point. We have heard the contribution from the noble and learned Lord, Lord Thomas of Cwmgiedd, and I am reluctant to get into the details of criminal law in his presence. But it can perhaps be conveniently found in a case called R v Petherick in 2012—let me give the reference for *Hansard*: "EWCA Crim 2214".

In that case, a single mother with a boy of 16 months was convicted—she pleaded guilty—of causing death by dangerous driving and driving with excess alcohol. The court set out nine points of specific and clear guidance—nine principles—which had to be taken into account with regard to sentencing. If I may summarise those in a sentence or two with no disrespect to the court, they make clear that the aims of custody have to be balanced against the effect that a sentence can have on others. That is the case both with regard to sentencing and with regard to pretrial detention. When I say, "on others," this point is not limited to children, as a number of contributions to this debate have highlighted—particularly those from my noble friend Lord Hailsham, the noble Baroness, Lady Jolly, and, again, the noble and learned Lord, Lord Thomas. It does have broader application, and the court will obviously want to consider the effect of custody or pretrial detention on others who are dependent on the person who might go to prison. This is a point, therefore, with more general application.

[Lord Wolfson of Tredegar]

I have talked about sentencing and remand in custody. When it comes to sentencing, the principles I have just set out, in broad terms, are reflected in detailed sentencing guidelines issued by the independent Sentencing Council. Courts are required by law to follow those guidelines, and the guidelines specify that being a "Sole or primary carer for dependent relatives" is a mitigating factor when sentencing an offender. The effect, therefore, is that the fact that the primary carer is such can tip the scales. What would otherwise have been a proportionate sentence if it was a sentence to custody can, if the person is a primary carer, become disproportionate. It can tip the scales.

As we heard from my noble and learned friend Lord Garnier, to whom I am grateful for his kind words, recorders and judges give—to use his word—anxious consideration as to whether a custodial sentence is required. Again, the position in law can be summarised like this: a custodial sentence can be imposed only where the court is satisfied that an offence, or combination of offences, is so serious that neither a fine alone nor a community sentence can be justified. Even where a court is of the opinion that the seriousness of an offence would ordinarily warrant a custodial sentence, it still has discretion to impose a community sentence after taking into account wider considerations. Community sentences are part of the important background to this debate. I think we will come to them later on in the Bill and I look forward to the thorough endorsement of the noble Lord, Lord Marks, of our proposals on community sentences, given what he said in this debate. That is the position with regard to sentencing.

On defendants awaiting trial, there is a general right to bail unless it is necessary for the protection of the public or the delivery of justice that the defendant be remanded in custody. A defendant accused of an imprisonable offence can be refused bail only where there is specific justification for that refusal, as specified in legislation. A number of noble Lords talked about the information which is available to the court about the personal circumstances of the defendant. The bail information report includes information about the direct effects on an individual and any dependants, should they be remanded in custody.

With regard to pre-sentence reports, which were also mentioned, guidance was introduced in 2019 for probation practitioners, in addition to the legislation already in place, which sets out that a request to the court for an adjournment in order to prepare a pre-sentence report is considered mandatory in cases involving primary carers with responsibilities for children or other dependants, and for those at risk of custody. An aide-memoire highlighting key areas for practitioners to consider when assessing the diverse needs of women in the context of offending was also issued in 2019 to assist probation practitioners to prepare those pre-sentence reports on women. We are currently running a pilot in 15 magistrates' courts that specifically targets female offenders, as well as two other cohorts which have specific needs, for fuller written pre-sentence reports.

The noble and learned Lord, Lord Falconer, spoke about the importance of the courts giving reasons why they were refusing bail, for example, or sentencing somebody to custody. That duty is, with respect, unnecessary to impose on courts because they are already required by law to state in open court their reasons for deciding on a sentence. Moreover, where there are dependent children, sentencing guidelines, as I have said, require the courts to consider the impact on them at various points in the sentencing process. That is the effect of Section 52(1) and (2) of the Sentencing Code.

I turn to data, about which the noble Baroness, Lady Massey, my noble and learned friend Lord Garnier and the noble Lord, Lord Bradley, made points. I underline the point again from the Dispatch Box that data is critical. My noble and learned friend was very kind, but the fact is that I am quite keen on data. I am not the only person in the Government who is, but I certainly am.

I assure the noble Baroness, Lady Massey, that we have already committed to improving our work on data collection concerning primary carers in prison. That work is already under way. We already collect information on parental responsibilities but the current questions do not identify dependent children of primary carers using the correct definitions. We are therefore making changes to the questions to enable us to identify prisoners with primary carer responsibilities on their entry to prison, and to enable access to that information centrally—a point made, I think, by the right reverend Prelate.

We are already looking at how we can deliver our commitment to improve national data collection through changes to what is called the basic custody screening tool. That is completed shortly after somebody goes into prison and we want to capture more robust and reliable data on parental responsibilities. Responding to earlier reports from the Joint Committee, the Government have committed to collecting more data centrally and using that to inform policy and improve our services for prisoners with primary caring responsibilities.

Lord Falconer of Thoroton (Lab): The first report of the Joint Committee on Human Rights in 2021 details in section 2 the concern expressed by the committee in 2019 that there was no data about carers who were in prison. The Government gave an assurance that they would do something about it in 2019. The committee produced another report in 2020, saying "You're still not collecting that material", and a Minister gave another assurance. In 2021, the committee wrote a third report—this report, containing these suggestions—saying that none of the previous assurances has been complied with. Why should we accept the assurances the Minister is now giving in relation to the 2021 report, when all previous assurances given to that committee have not been complied with, as detailed by the committee in its report, and as the Ministry of Justice has not denied?

Lord Wolfson of Tredegar (Con): Work still has to be done, of course, but I hope that the noble and learned Lord will accept that we are doing more than we have done before. As I have tried to explain, we have put in place a process to identify what we need to collect and how we are going to do it. One must also take into account—the noble Lord who made this

point will forgive me for not remembering who did so—that it can be difficult to get this information from people in prison. Some people do not want to provide information about dependent children and others who rely on them. I am not using that as an excuse, but one has to be alive to that point as part of the data collection service. All I can say to the noble and learned Lord is that I have this firmly in my sights. In this part of the criminal justice system, as, I would say, in others, data is really important and I am certainly focused on it.

I was going to make one other point on data, which I hope the noble and learned Lord will be pleased to hear. We will also consider not just the collection of data but what data can be published. It might be that not all data we collect can be published because of confidentiality issues, but we will certainly ensure that we publish what we can.

Lord Falconer of Thoroton (Lab): This is a separate point. Amendment 215 would require the court to

"make inquiries to establish whether the offender is a primary carer for a child"

and, if it discovers that the defendant is, to then order a pre-sentence report about the circumstances of that child and the impact. Is the Minister asserting that that provision is currently in the sentencing guidelines?

Lord Wolfson of Tredegar (Con): I hope I made that clear earlier; let me go back to my notes. I do not want to mislead the noble and learned Lord. As I understand it, the position is this: guidance was introduced in 2019 for probation practitioners, in addition to the legislation in place, which sets out that a request to the court for an adjournment in order to prepare a pre-sentence report is considered mandatory in cases involving primary carers with responsibility for children or dependants. The noble and learned Lord shakes his head—

Lord Falconer of Thoroton (Lab): I am not disputing what the Minister says, but I read him as saying that that position is not reflected in guidance. He is saying something different: that if somebody asks for an adjournment to make inquiries, one has to be granted. That is obviously different from the amendment.

Lord Wolfson of Tredegar (Con): I was going to come to the detail of pre-sentence reports a little later. Let me come to that and if the question is still alive, I will give way again.

I think I had completed what I was going to say about data, apart from one point. The right reverend Prelate asked about pregnancy data. In the time I have had available, I have been able to get the following response, but I am obviously happy to continue the conversation. In July this year, we published a national figure—for the first time, as I understand it—for self-declared pregnancies in the women's estate and the total number of births that took place during the period in three categories: prisons, transit and hospital. That is found in the *HMPPS Annual Digest*. I do not know whether that has fully answered the question from the right reverend Prelate on specific data. If it has not, I am very happy to continue the discussion.

6 pm

The noble Lord, Lord Carlile of Berriew, made a point which takes me to pre-sentence reports. He said that the critical thing is the information which the judge has when sentencing. The legislation as it currently stands asks the court to obtain a pre-sentence report in all cases unless the court deems it unnecessary. The Sentencing Act 2020 states that

"the court must obtain and consider a pre-sentence report before forming the opinion unless, in the circumstances of the case, it considers that it is unnecessary to obtain a pre-sentence report."

Therefore, anybody can identify the need for a pre-sentence report, whether it is the court duty officer, defence solicitor, legal adviser, the judge, or the Bench, but obviously, only the judge or the Bench can order one.

However, it may not always be required to get a pre-sentence report. For example, the guidance on pre-sentence reports recommends that where one has been completed within the last six months, that might be presented again with an oral update, to provide information on any change in circumstances and offence analysis. Where a pre-sentence report has been completed within a year, more detailed consideration would be required, given the time that has elapsed. We have committed to pursuing a target of 75% of all disposals receiving a pre-sentence report in the target operating model for the new model of probation. We are very alive to the fact that pre-sentence reports may be all the more important when talking about primary carers or other vulnerable groups.

I should not sit down without underlining a point that was made by the noble Lord, Lord Carlile, that judges at the sharp end should be given credit for understanding the position. It is fair to say—let me choose my words carefully; I do not wish to disrespect former judges—that there has been a revolution, a real sea change, in the judiciary. They really "get it" when it comes to female offenders and primary carers. This is one of the reasons why we have a low percentage of women in prison now which continues to fall. I suggest that it is not unconnected with a more diverse and better-trained judiciary. The judiciary should get a large measure of thanks for its work in this regard.

I conclude by returning to two points made by the right reverend Prelate. First, inconsistency in sentencing was put as a complaint. There must be a balance between sentencing appropriately in each case and sentencing within clear guidelines. There will be a range of sentences, and some inconsistency is not necessarily a bad thing. We do not want to get into a straitjacket of sentencing.

The right reverend Prelate also referred to an event which she hosted recently in the River Room, at which Chloe, a recent offender, spoke. I was at that event. Chloe's speech was incredibly powerful. The right reverend Prelate used the word "Shalom"—meaning peace, because you make whole. It has another meaning which may be relevant in this context: it also means to pay, because when you pay, you complete a transaction. At the heart of this debate is balancing those two things: making the offender whole—rehabilitation—while recognising that there will be some cases where the offender must pay a debt to society that in some cases requires custody.

[Lord Wolfson of Tredegar]

For those reasons, I hope that the right reverend Prelate will be persuaded to withdraw the amendment.

The Lord Bishop of Gloucester: I am very grateful to all noble Lords who have spoken in this debate this afternoon; it is now getting on for this evening. I am very aware of time and where we are in this group of amendments. There have been some thoughtful contributions and plenty to think about.

We have talked a lot about what is, and about the numbers of women in prison, but we must look at the reality. There might be things which are theoretically there, but we still have so many primary carers in prison, and while the amendment is about primary carers, it is also about the rights of the child. We were in danger in our debate of not keeping the child at the centre. I have heard what people have said about other dependants. I take that on board, but it does not take away from us focusing on children and the long-term intergenerational impact. We could have a good theological discussion later, but I used "Shalom" because we cannot have any of this discussion without looking at the whole picture.

I have respect for all that has been said about judges and I give them credit for what I have heard in the very powerful speeches today. One problem is that there is not always enough information about what else is available. We will be talking about community sentencing another time, but I have had judges and magistrates say to me, "We don't know exactly what is available in this area that could be offered to this person." We must keep this all in the round.

Data has come up again and again, and that is crucial. I am grateful to all those who have talked about its importance. We have been talking about the number of women in prison and what happens at sentencing, but, with due respect, it is not happening. If it were, we would not have the number of women in prison that we have and the number of children who are being adversely impacted by this. We must be careful about the theory, what is happening and why it is happening. Therefore, data is really important.

We talked a lot about pre-sentencing reports. They are crucial, but it is not just about a pre-sentencing report—it is the information it contains. Again, we know that lots of primary carers, particularly mothers, do not always want to say that they are mothers. We must look at why that is. Again, it is that bigger picture—it is not just the PSR but the information it contains.

I do not want to replay all the arguments that we have heard, and I thank noble Lords. There is something I still want to hold on to about the rights of the child, and about inconsistency. I have heard what the Minister has said, yet that issue of inconsistency is really important because of the reality of what we have in our prisons at the moment and the number of children being impacted.

While I am willing to withdraw the amendment at this stage, I hope that there will be further discussion about the rights of children and all that we must do to continue achieving the aims of the *Female Offender Strategy*, which is not where we are in reality. I pay tribute to the noble and learned Lord, Lord Falconer, the noble Lord, Lord Dubs, and the noble Baroness, Lady Massey, for their support. We want further discussion going forward but for now, I beg leave to withdraw the amendment.

Amendment 110 withdrawn.

Schedule 4: Pre-charge bail

Amendment 110ZA

Moved by ***Lord Paddick***

110ZA: Schedule 4, page 205, line 42, at end insert—

"(1C) The constable must record the reasons for each determination including the assessment of each of the matters the subject of subsection (1B)."

Member's explanatory statement

This amendment, along with Lord Paddick's amendment to page 206 line 18, requires a custody officer to record case-specific reasons why it is necessary and/or proportionate to release a person on bail, including the reason for any conditions attached.

Lord Paddick (LD): My Lords, in moving Amendment 110ZA in my name I will speak to my Amendments 110ZB, 110ZC and 110B and to Amendment 110A in the name of my noble friend Lady Harris of Richmond in this group.

We now come to pre-charge bail, also known as police bail, where the police need more time to investigate than the time limits for keeping someone in custody without charge allow. In 2017, in response to concerns that people were being kept on pre-charge bail for too long, particularly journalists under investigation as a result of the phone hacking scandal, the Government used 18 clauses of the Policing and Crime Act to severely curtail the time someone could be held on pre-charge bail.

At the time, briefed by police practitioners, we told the Government that their changes to police bail were unworkable and that they had gone too far the other way. Some 18 clauses of the Policing and Crime Act 2017 are now all but reversed, relegated to Schedule 4 to this Bill. There clearly needs to be a balance between the need for a thorough police investigation, diligently carried out within resource constraints—which, because of the significant cuts in police officer and police support staff numbers since 2010, have been considerable—and the adage that "justice delayed is justice denied". The irony of telling the police to speed up their investigations while at the same time curtailing their ability to do so will not be lost on the Committee.

It must be necessary and proportionate for the police to release a person on bail, including the imposition of any conditions of that bail. I know from my own professional experience that custody officers tend to record something along the lines of "I am releasing this person on bail because it is necessary and proportionate to do so" or "because it is necessary to ensure that the person surrenders to custody" or whatever Section 30A of the Police and Criminal Evidence Act 1984 says may be a reason for releasing a person on bail. This is simply copied and pasted into the custody record. I was sitting here earlier reading that and realising that perhaps, as a police inspector reviewing detention, I might have been guilty of a similar act of simply copying generic paragraphs out of the Police and Criminal Evidence Act 1984.

This is not sufficient and Amendments 110ZA and 110ZB are designed to address this. The police officer should record the case-specific reasons why it is necessary and proportionate to bail the person and the case-specific reasons for imposing the conditions, if any, attached to the bail—not "to ensure the person surrenders to custody" but why the officer thinks this person is unlikely to surrender to custody; for example, because he has absconded in the past, perhaps. If the factors to be taken into account in paragraph 17 of Part 2 of Schedule 4 are included in the Police and Criminal Evidence Act 1984 in a new Section 30A(1B), so should be the requirement to say what it is about this person that makes release on bail necessary. Later in the Bill, in Clause 132(7), courts remanding children in custody will be required to set out their reasons for doing so in writing. This amendment requires the police to do the same when it comes to police bail decisions.

On Amendment 110ZC, following representations made by the Law Society—from my professional experience I see the merit in some and not others—I agree with it that the if the matter is straightforward, what is called in the legislation a "standard case", a senior police officer should be able to extend bail only to a maximum of six months before the case is referred to a magistrates' court for independent adjudication, rather than the nine months suggested in paragraph 29 of Schedule 4 to the Bill.

6.15 pm

It is essential that these changes and their impact should be carefully monitored and adjusted if necessary. Amendment 110B would require each police force to publish annually the number of people released on pre-charge bail and those released without bail but "'under investigation". This would also enable HMICFRS to quickly and easily assess whether any force was out of alignment with others and where remedial action may be necessary.

My noble friend Lady Harris of Richmond has Amendment 110A in this group. The Police Superintendents' Association quite rightly points out that if someone fails to surrender to police bail or fails to comply with the conditions imposed by the police, there is no sanction against the individual. I support this amendment in principle, although I believe there needs to be something in any amendment about the bail and any conditions imposed having to be necessary, proportionate and reasonable before an offence could be proved. I beg to move.

Baroness Harris of Richmond (LD) [V]: My Lords, my Amendment 110A is grouped with my noble friend's amendments, as we have just heard, and is about bail principles. I bring it forward at the suggestion of the Police Superintendents' Association and thank it for its help in doing so. In particular, I thank its president Paul Griffiths, with whom I have worked over a number of years, including on this issue in a previous police Bill; sadly, nothing has changed.

At the heart of every investigation is the requirement on police to collate, review and examine the evidence that is gathered. This should be without prejudice and the police are expected to pursue lines of inquiry that gather the facts, whether the facts support the victim's account or that given by any suspect. For those investigations that require CPS authority, the information presented must allow the full-code test to be applied so that a decision can be made by the CPS as to whether or not the case progresses through the criminal justice system.

To ensure that the investigation is effective and efficient, it should be free from interference from factors that would seek to pervert the course of justice or cause a victim, witness or suspect to provide false evidence to the police, whether under duress or otherwise. The imposition of proportionate, appropriate, legal and necessary pre-charge police bail allows for the protection of the victim, suspect, witnesses and the general public, Correctly applied and checked, police bail is vital in ensuring that the investigation can progress fairly and comprehensively. It should be used only to protect and never to punish. Its imposition should be subject to appropriate review and audit procedures to ensure that the system is fair and maintains public confidence.

Currently, as we have heard, the breach of pre-charge police bail does not constitute a separate offence for the purposes of the PACE custody clock. If a person is arrested for breach of bail, the police will have to use the remaining time on the custody clock which relates to the substantive events for which they were bailed.

The current proposal in the Bill is that the custody clock will pause if a suspect is arrested for breaching police bail. In the majority of cases, the police will not be in a position to make a decision about whether that person on bail is charged for the offence for which they are on bail. The outcome is often release from custody with the same conditions, simply with a reiteration that the bail conditions should not be breached. Currently the police have less time to investigate the offence, and the risks to the investigation remain. The police would ask that any breach be regarded as a separate offence that can be charged on its own merit, if appropriate, using the established rules of evidence for offences.

Imposing pre-charge police bail can be significant in its impact on the human rights and liberty of a suspect and, as such, there must be a process that allows challenge and review. The primary decision-maker should always be the custody sergeant, as they are independent from the investigation. They are also responsible for the welfare and treatment of detainees, and they work on systems that allow for a clear and auditable rationale to be recorded and scrutinised.

The suspect and/or their legal adviser should always have the right to object to conditions, as they do with PACE reviews or extensions, and to have these objections noted on the record with the rationale clearly communicated. They should also have the conditions altered or amended if circumstances change, and that can be done in writing to a custody inspector. The suspect should always have the right to ask the courts to review bail conditions that they feel are inappropriate.

We have previously discussed appropriate authority levels for the time that a suspect remains on police bail. That should reflect the requirements of modern-day investigations such as forensic and e-forensic evidence.

[Baroness Harris of Richmond]

I reiterate that pre-charge police bail should be imposed only where it is necessary and proportionate and protects individuals, the public and the investigation. Police should ensure that it is for the minimum time necessary to complete the investigation, that the rationale is clearly communicated to parties as appropriate and that an appeals process is in place—in addition, with a review process to ensure that the investigation is being carried out diligently.

Lord Ponsonby of Shulbrede (Lab): My Lords, the two noble Lords who have spoken have fully introduced their amendments. Amendment 110ZC, from the noble Lord, Lord Paddick, would provide that a bail period could be extended only for a period of six months at a time, and not nine, so it would reduce the potential extension period before referral to a magistrates' court.

I remind the Committee that I sit as a magistrate, and I occasionally do those hearings where I am asked to extend pre-charge bail. It is an interesting process for a magistrate because you see far more serious cases than you would in the normal course of events; it is the extremely serious cases where the police are looking for an extra period. They are often computer-based cases, in connection with child pornography-type offences. One common scenario that I see as a magistrate is that the police have made no progress in their investigations. That may be through a lack of resources or through them having other priorities, but, either way, there are often requests to extend the pre-charge bail period, sometimes for a matter of years, where the court or the magistrates making this decision are not given a particularly good reason. I would be interested to hear the Minister's response to that amendment because it would inevitably put further pressure on the police to make progress on any individual case before it was brought to the magistrates' court.

The noble Lord's Amendments 110ZA and 110ZB would require custody officers to record case-specific reasons why bail and bail conditions were necessary and proportionate. I recognise the scenario that the noble Lord gave, of a cut-and-paste approach, and I would be interested in the Minister's response to the points that he made. The final amendment in the name of the noble Lord, Lord Paddick, is Amendment 110B, requiring the police to publish annual statistics on the number of people released under pre-charge bail and the number released under investigation.

The noble Baroness, Lady Harris, spoke to her Amendment 110A, which would create an offence of breaking the conditions of pre-charge bail. It would supplement the powers of arrest available where conditions were broken, and the offence would be a summary offence. The noble Baroness went into some detail, which I thought was persuasive. She quoted the Police Superintendents' Association, which said in evidence to the Commons Committee that

"bail conditions are imposed and then suspects continue to breach those bails. Of course, those bail conditions would be there to protect victims or even the wider public. It could be extremely useful to us for that to be an offence in its own right."—[*Official Report*, Commons, Police, Crime, Sentencing and Courts Bill Committee, 18/5/21; col. 31.]

This matter was raised in the House of Commons, where it was spoken to by my honourable friend Sarah Jones in the context of Kay's law, a well-known domestic abuse case where an abusive partner killed Kay while he was on pre-charge bail. I will not rehearse the speech that Sarah Jones made but it was very powerful.

The Minister's response to the request, which we see here in Amendment 110A by the noble Baroness, Lady Harris, was that she wanted to look at a wider review of civil orders that could potentially be put in place as well as greater data collection, rather than specifically making an additional criminal offence. It is interesting to note that the Centre for Women's Justice came out with a specific proposal whereby a breach of a bail condition triggers the presumption that the police will impose a domestic abuse prevention notice and apply to court for a domestic abuse prevention order. Of course the breach of a DAPO would be a criminal offence, so it would effectively create a "two strikes and you're out" process.

The Minister, Victoria Atkins, whom I have always found very helpful when I have spoken to her about these and related matters, spoke about reviewing a greater array of civil orders, such as a stalking protection order or sexual risk order. It would be helpful if the Minister could say how long that review is likely to take and whether we are going to get any proposals at later stages of the Bill. I acknowledge that there are a number of potential ways of closing this loophole and that the amendment put forward by the noble Baroness, Lady Harris, is a particular proposal and there is a wider context. However, there is an urgency to this issue. There is an opportunity in the Bill to address that lacuna, if I can put it like that, and I look forward to the Minister's response.

6.30 pm

Lord Sharpe of Epsom (Con): My Lords, I thank noble Lords for their contributions. These amendments bring us to the issue of the reform of pre-charge bail. The intention of the Government with this set of changes is clear: to create a more effective and proportionate pre-charge bail system through "Kay's law", as referred to by the noble Lord, Lord Ponsonby. Kay's law has been so named after Kay Richardson, who tragically lost her life at the hands of her estranged husband while he was released under investigation rather than on bail. It is clear that we need robust decision-making around the use of pre-charge bail in order to ensure that it is used fairly. This is why we have removed the presumption against bail and introduced the risk factors to be considered by the custody officer.

Let me first address the amendments in the name of the noble Lord, Lord Paddick. Amendments 110ZA and 110ZB relate to record-keeping for bail decisions. I certainly agree that there should be a clear audit trail to evidence how these decisions have been made. I do not, however, consider that it is necessary to legislate for this, given that it is an operational process, but it is our expectation that custody officers are already keeping records of how they came to their decisions as part of best practice within each force. I acknowledge that this may not be done with the consistency we would expect, which is why it would be more appropriate to include provision for this in the national statutory guidance on pre-charge bail, which is to be published by the College of Policing.

Amendment 110ZC is concerned with the timescales for the review of pre-charge bail. Again, I fully recognise that we must provide the correct balance here—the noble Lord, Lord Paddick, referred to balance in his opening remarks—between the rights of those who may have been victims of crime and those who, at this stage, have yet to be charged with an offence. The new timescales provided for in the Bill, which have been subject to public consultation and engagement with law enforcement, charities and victims' services, strike a fair balance and will create a system that works better for all involved. That being the case, the Government are satisfied that nine months rather than six is the appropriate point at which decisions around the extension of pre-charge bail in standard cases should be referred to a magistrates' court. I am grateful to the noble Lord, Lord Ponsonby, for sharing his personal experience on this subject. As he said, it will place further pressure on the police, but on the opposite side, it would potentially clog up the courts if referrals were brought forward. Following our consultation, we believe it is equitable for extensions up to nine months to be made by a senior police officer, and only then should the matter be referred to the courts.

Amendment 110B would require police forces to publish data annually on the number of individuals released on pre-charge bail and those released under investigation. We heard some powerful arguments from my noble friend Lord Wolfson about data in the previous group, and I am about to reiterate some of those, because we agree that accurate data is crucial in order to monitor the impact of these legislative changes and ensure that they are operating as intended. I am pleased to inform the noble Lord that the information he seeks is already collected by forces and published by the Home Office annually through the *Police Powers and Procedures* bulletin. Perhaps to anticipate a subsidiary question, statistics on the number of individuals released on pre-charge bail have been published yearly since 2017-18. The Government have recently amended this collection to include the number of people released under investigation. This information has been collected for 2020-21 and will be published later this year.

One might reasonably ask, since it has been four years since the last round of reforms, why we still do not know how many people are released under investigation. There are 43 forces across England and Wales, as the noble Lord well knows, which use different case management systems and data warehousing. We have been collecting data on the number of individuals on pre-charge bail since 2017, first on a voluntary and now on a mandatory basis, and we have also started collecting more data on pre-charge bail in terms of offence, breach, demographic and so on, and on released under investigation and voluntary attendance. This is voluntary collection at the moment, but we are working with police and systems providers where forces have been unable to provide data to enable reporting with the intention of changing to mandatory collection following the reforms as system updates allow.

Turning to quite a different matter, the noble Baroness, Lady Harris, has tabled Amendment 110A, and I acknowledge her long association with this subject. This would create a new criminal offence of breaching pre-charge bail conditions where a person is arrested elsewhere than at a police station and where there is no reasonable excuse to do so. It is essential that we keep in mind the safety and welfare of victims at this stage of the criminal justice system, as well as balancing this against the risk of criminalisation of individuals who have not been charged with an offence. Noble Lords will be aware that debate around the consequences of breaching these conditions has been ongoing for a number of years. While I understand those concerns, I cannot agree that such a criminal offence would be a proportionate response to this issue. Pre-charge bail is just that: pre-charge. There has been no charge or conviction against the individual as yet. It would therefore be disproportionate to criminalise the individual at this point, particularly where they may face a harsher sentence for the breach than the one carried by the offence for which they were originally arrested. Bail should not be punitive in nature according to the principle of the presumption of innocence.

On top of this, the Government do not currently have an accurate snapshot of the number of individuals who breach their conditions each year—I fear we are back to data again. Without knowing how many people this would affect, such an amendment could well lead to unintended consequences, criminalising a potentially large group of people and tying up the courts system. I stress that there is obviously no desire on the part of the Government to allow suspects to breach their conditions wantonly. Where there has been a breach, police officers will look to consider whether a substantive offence is established, such as intimidation or harassment in the first instance. In certain circumstances, as the noble Lord, Lord Ponsonby, alluded to, there is also the option of a court order, such as a sexual risk order or the new domestic abuse protection order, breach of which is a criminal offence in itself.

The Bill also introduces a three-hour pause on the detention clock where an individual has been arrested for breach of their conditions. This will allow the police further time for progressing the case, either through investigation of the breach or preparing a substantive case for charging. The Government have already made a commitment in the Commons to increase the data collection in this area, which will provide a more detailed understanding of this issue. It is my hope that this may yield a more proportionate, tailored and workable policy solution in the future.

The noble Lord, Lord Ponsonby, referred to Sarah Jones's amendment in the other place and asked about the Minister's consultation. I fear I do not know the answer to that; I will get back to him on when it may be expected to report. She also acknowledged that the collection of data around breaches of conditions to better understand the scale of the problem was part of the problem we have here. I think the Minister's response was welcomed by his colleague Sarah Jones in the other place and she was content to withdraw her amendment. It has been helpful to explore these issues, but in the light of my explanations, I invite the noble Lord to withdraw his amendment.

Lord Paddick (LD): My Lords, I thank my noble friend Lady Harris of Richmond for her support and for so clearly and powerfully explaining her Amendment 110A. Arresting somebody for breaching

[LORD PADDICK]

pre-charge bail where the only thing the police can do if somebody has breached the conditions is simply to re-bail them under the same conditions undermines the whole purpose of police bail—there is no sanction at all. The Minister said, "Well, the person has not been convicted of an offence and they could end up being convicted of breaching the bail but not of the original offence." I may have been dreaming, but I seem to remember being at Highbury Corner Magistrates' Court, albeit the stipendiary magistrate concerned was known colloquially as "Shotgun Maclean", and his saying to an arresting officer that, unfortunately, in a not-guilty offensive weapon trial, the officer had failed to prove beyond reasonable doubt that the defendant was guilty of possessing an offensive weapon, but for breaching court bail—in that when they first appeared in court the person was released on court bail to reappear for the not guilty hearing—he would go to prison for three months.

There is the whole argument about this being disproportionate for somebody who is not convicted of a criminal offence if they were convicted of breaching bail, but it happens already when people who are innocent breach court bail. This seems to completely undermine the noble Lord's argument. The point of Kay's law is to stop dangerous people being released under investigation with no conditions attached. Without a sanction for breaching the conditions that are imposed, the conditions have no weight.

I am very grateful to the noble Lord, Lord Ponsonby of Shulbrede. Regarding the sort of cases he referred to, I would expect—particularly if analysis of computers was involved, for example—that these would not be standard cases and that the Crown Prosecution Service would designate them as such, so the six-month or nine-month limit would not apply. I am not sure that the cases he referred to were relevant to the examples I gave.

I accept that the Government have consulted on this, but I would go back to the Law Society, which is on the other side of the argument—including as it does defence solicitors—and feels that nine months in a standard, straightforward case not involving such things as computer analysis would be a long enough extension for a senior officer. However, we will reflect on what the Minister has said and, in the meantime, I beg leave to withdraw my amendment.

Amendment 110ZA withdrawn.

Amendments 110ZB and 110ZC not moved.

Amendment 110A

Tabled by ***Baroness Harris of Richmond***

110A: Schedule 4, page 213, line 39, at end insert—

"35A After section 46A (power of arrest for failure to answer to police bail) insert—

"**46B Offence of breaking conditions of bail**

(1) If a person who has been released on bail under section 30A(1) breaks any of the conditions of their bail without reasonable excuse they are guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine or to both.

(3) In any proceedings for an offence under subsection (1) a document purporting to be a copy of the notice given to the person under section 30B and to be duly certified to be a true copy of that part of the notice is evidence of the conditions imposed.

(4) For the purposes of subsection (3) the copy of the notice is duly certified if it is certified by the custody officer who took the decision or a constable designated for the purpose by the officer in charge of the police station from which the person to whom the notice relates was released.""

Member's explanatory statement

This amendment would create an offence of breaking conditions of pre-charge bail. It supplements the powers of arrest available where conditions are broken. The offence would be a summary offence.

Baroness Harris of Richmond (LD) [V]: My Lords, I am immensely grateful to my noble friend Lord Paddick, who has absolutely perfectly put my case again, and to the Police Superintendents' Association. I will reflect on what the Minister has said but I am really disappointed because we have been here before. However, the Home Office is going to get more data, which is a very good thing. I will put this to the Police Superintendents' Association to see what it has to say, because it has been banging on about this for a very long time. In the meantime, I am not moving my amendment.

Amendments 110A and 110B not moved.

Schedule 4 agreed.

Clause 44 agreed.

Clause 45: Positions of trust

Amendment 111

Moved by ***Lord Beith***

111: Clause 45, page 37, line 39, after "sport" insert ", dance, drama, music"

Member's explanatory statement

This is a probing amendment to explore whether there is a potential gap in the law related to other teaching or supervisory positions of trust.

Lord Beith (LD): My Lords, in moving Amendment 111 I will speak to the related Amendment 112. Here, we are being asked to amend the Sexual Offences Act 2003 to import some definitions into it. This presents some problems, to my way of thinking. We are dealing with "Positions of trust" and people who abuse those positions, using them to abuse, exploit or manipulate young people to consent to sex. The clauses before us in this Bill refer to someone who

"coaches, teaches, trains, supervises … on a regular basis, in a sport or a religion".

That immediately prompts the question: why are other activities involving coaching or training on a close one-to-one basis not listed in the way that sport and religion are?

6.45 pm

I am probably happy to remain with the definition of positions of trust which is made by the courts and the public at large, rather than one which names

particular instances, because I think we all understand what a position of trust is and what the abuse of it is. I recognise, however, that there is a potential gap in the law—which I will come to again in a moment—in cases involving the age group we are talking about, where it can be argued and perhaps even accepted by the victim that there was consent. When we are considering people in positions of trust which they might abuse to engineer sex with a person in this age group, it seems fairly obvious that sport and religion are not the only areas in which that situation will arise. There is music—the violin, piano or guitar teacher explaining to someone precisely how their fingering should be done and how to hold the instrument. There is ballet and dramas.

I must draw the Committee's attention to a recent case—which, I make clear, was dealt with under existing law—involving a ballet instructor who was a principal dancer at the English National Ballet and who was jailed for nine years

"after leaving four students 'haunted and humiliated' when he used his 'fame and prestige' to sexually assault them."

This is precisely what the Bill is trying to address, but it was dealt with under existing law as assault. The victims concerned were

"aged between 16 and 19 at the time, at the English National Ballet and Young Dancers Academy, in west London, where a dance studio was named after"

the person who carried out these assaults.

Ministers may say that other activities can be added by regulation to this legislation. There are regulatory powers included in the Bill. But it makes me wonder what would trigger such a statutory instrument, what criteria would be used by the Government and what evidence they would require to believe that they had to add these other areas, which they have not thought it necessary to include in the Bill. We are dealing, of course, with sexual activity which may otherwise be legal, in that it involves 16 and 17-year-olds and may have been on the basis of consent.

The Ministry of Justice had a review in 2019 and found strong evidence for extending the law to include those individuals who had influence or authority over 16 and 17-year-olds by virtue of the roles and activities they undertake within a sport or religious setting. But the review dealt only with abuse in sport or religion and took evidence or consulted on the basis of only those activities, even though the same situation can arise in individual music teaching, ballet teaching, or rehearsing and training in drama. All of those engaged in all such activities operate in a position of trust which can be abused. So, where is the difference? Ministers may argue that they can attend to these other areas later, but what happens if we get cases in the meantime where there is not available to the prosecution what would be available to them in cases involving sport or religion? I do not understand the logic of that, but I am sure the Minister will explain it to me. He may still have to do quite a bit to convince me we can separate out sport and religion without looking at these other areas.

Baroness Brinton (LD) [V]: My Lords, my noble friend Lord Beith is right to lay his Amendments 111 and 112 to the Bill, asking whether to restrict Clause 45 and the Sexual Offences Act 2003 to those listed in positions of trust, currently including sport and religious activities. He has explained why his amendments have specifically added dance, drama and music, and I entirely support his argument. I am afraid that, over the years, there have been too many examples of young people aged between 16 and 19 and even, frankly, in their mid-20s, who have been abused or coercively controlled by people with whom they have been working on various activities. My noble friend cited the example of dance; I am afraid the same is true of the music sector, where a lot of teaching is one to one and supervision has to be taken to some extent on trust. That means the structures of safeguarding and support to ensure that that position of trust is not abused need to be rigorous.

Formal sports activity, for one of my children, started as an after-school club. Some children were then selected by the same school coach for the county team. There were then journeys to county practices and preparations, and competitions across England. There are now too many examples of sexual abuse by gymnastics coaches and staff, which is why the Whyte review was commissioned. Its interim report was published earlier this year and I look forward to seeing the entire report because, frankly, this is a problem in sector after sector, within sport and elsewhere, and I am beginning to wonder whether we need a formal review on each one before action is taken.

But this is not just a sporting issue, or even one just for dance, drama and music. Another activity that is currently excluded is chess. An almost identical process to the gymnastics example that I gave earlier was in evidence at the same school of my children, starting at primary and continuing through 11 to 18 secondary school. It started as an after-school activity and progressed to competitions at county or national level. There was one gatekeeper—the coach—and nobody else. To be clear, I am not aware of any cases of abuse in chess in the UK, but that is not true in other countries, notably the US, where there have been some scandalous cases in Philadelphia, California and Florida, which read almost identically to those that we have seen in gymnastics and other sports in the UK.

The root of the problem, as outlined by the organisation Mandate Now, is:

"The sexual and physical abuse of a child, or neglect, is not a reportable offence in either England, Wales or Scotland despite child sexual abuse being a crime in all jurisdictions. Bullying, emotional or verbal abuse, like sexual abuse currently, can only be addressed by 'guidance' which is unenforceable."

That is why protection for those in a position of trust is absolutely essential. As the noble Baroness, Lady Grey-Thompson, discovered in her excellent review of the duty of care in sport in 2017, if there are no structures to ensure that organisations—in this case, schools and the governing bodies of the activity concerned—can hold their people to account, abuse and coercive control can flourish undetected.

I have a question for the Minister. I am struggling to understand why only one or two activities are being added at a time. As I said earlier, will the Minister say whether it will take a formal independent review of each area of activity before it is understood that anyone in a position of trust with these young people needs to be regulated in the same way?

Baroness Jones of Moulsecoomb (GP): My Lords, this is slightly more complex than one might have thought. I thank the noble Lord, Lord Beith, for laying out the nonsensical way in which at the moment we exclude all the other categories. I do recognise the value of what the Government are trying to achieve in Clause 45: it is important that we stop predators from abusing positions of trust to prey on children and vulnerable people.

I also note, as no doubt the Minister will point us to, that this clause includes a Henry VIII power to add to or remove positions of power from the specified list. I normally loathe Henry VIII powers—I think they are extremely dangerous—but obviously I am weakening on this one.

It is also important not to cast the net of this offence too broadly or to define it too narrowly. I find it much more complex than when I first signed the amendment. There must be a level playing field, and a sports instructor should not be held to a higher standard or treated as a greater offender than, say, a dance tutor, because abuse of children is abuse and that is what we are trying to deal with here. I hope the Minister will work with your Lordships' House to put together an amendment with which we are all happy.

Earl Attlee (Con): My Lords, my task in this debate is easy: all I have to do is to support the noble Lord, Lord Beith, and say that I have rarely heard an amendment moved more comprehensively than he just did.

Lord Paddick (LD): My Lords, we strongly support my noble friend Lord Beith. He has clearly explained his amendment: persons other than those mentioned in the Bill are in positions of trust. Although there is no evidence of widespread concern about instructors in dance, drama or music abusing their positions of trust, there are examples and fairly recent high-profile cases. My noble friend explains that either we should leave it to the courts to decide whether someone is in a position of trust or a more comprehensive list is required that is not limited, as my noble friend Lady Brinton said, to the examples in the amendments.

I agree with the noble Baroness, Lady Jones of Moulsecoomb, to some extent, although one could imagine that children are more vulnerable in certain scenarios and one-to-one situations than in others. But we support the amendments in the name of my noble friend Lord Beith.

Lord Ponsonby of Shulbrede (Lab): My Lords, we too support these amendments, and I too found the introduction from the noble Lord, Lord Beith, to be comprehensive. The brief in front of me asks why some youth activities are included and others are not, which is the point the Minister will have to address when he winds up this brief debate. I will not repeat those points about why certain activities might be included and others might not, and I am sure that everyone who has spoken in this debate wants to achieve the same end, but there are different mechanisms to do that.

I agreed with the noble Baroness, Lady Jones of Moulsecoomb, who, as she said, somewhat unusually found herself in agreement with potentially using Henry VIII powers to amend legislation. While listening to this debate, I remembered the biography of a very famous English composer that I read recently, just a few months ago. He would fall foul of these regulations and would very likely go to jail on the basis of that biography.

I hope this problem is not widespread, but it is something that people are far more alert to these days than they were in the past. It is right that the Government should ensure that the appropriate structures are in place in each of the activities for which young people get support, so that, if things go wrong, the coaches or whoever is involved can be held to account in an appropriate way.

7 pm

Lord Wolfson of Tredegar (Con): My Lords, I am grateful to have the opportunity to respond to this short but focused debate. I am particularly grateful to the noble Lord, Lord Beith, for the measured way in which he introduced the amendment, which raises difficult issues, as I think all speakers have recognised.

The Government's aim in this area can be briefly stated. I understand there to be relatively little or perhaps no disagreement across the Committee on this point, certainly in the light of what the noble Lord, Lord Ponsonby of Shulbrede, has just said. The aim is this: we seek to protect children from those who might take advantage of their position to sexually abuse them. The provisions we put in the Bill followed detailed review and consideration. We feel they provide the best protection for young people while still balancing—this is a critical point—where possible their right to fully consensual sexual relationships. I must underline that point at the outset, because it is very easy to overlook it.

The positions of trust offences set out in the Sexual Offences Act 2003 were never intended to apply in all scenarios in which a person might have contact with or a supervisory role in respect of somebody aged under 18. If you do that, in effect you raise the age of consent by silence. If we are going to have a debate about the age of consent, let us have one—but let us not have an inadvertent, sub silentio raising of the age of consent by having too wide a category of positions of trust.

I acknowledge that this is a very complex area. With respect, the noble Baroness, Lady Jones, said that this was a first for her because she quite liked a Henry VIII power. I am not sure whether it is a first for me that I am agreeing with her from the Dispatch Box; I think I have done it once before, but if it is not the first time it certainly does not happen too often. But I do agree with her that this is a very complex area, because we are trying to strike the right balance between protecting young people and respecting the right of those aged 16 or over to engage in consensual sexual activity.

Therefore, although it is very tempting to say, "Well, there's been a case here and a case there, let's widen the definitions", we have to act on the available evidence—not anecdote, supposition or a case here or there, but real evidence. The question therefore is, as I think the noble Lord, Lord Beith, put it, if I can summarise his speech in five words, "Why these and not others?" I heard him say that I am unlikely to

persuade him. I remember when judges said that to me. I rarely did persuade them—but let me have a go anyway.

The answer is this: we have looked across the field. We have spoken to a whole load of stakeholders, which I will not read into the record, but the number is vast. We have concluded that those who teach, train, supervise, instruct or coach in a sport or religion are particularly influential over a child's development. That is why they should be captured in the positions of trust provisions. The reason is that those settings allow for roles that involve very high levels of trust, influence, power and authority. Particularly in the case of those involved in a religion, the figures are often also well-established, trusted and respected in the local community. Both sport and religion provide a child—a young person, I should say, as this goes to 18—with a strong sense of belonging, whether to a team, a squad, a community or a faith group. As noble Lords will understand, deep feelings held by the young in respect of those groups can provide unique and special opportunities for predators to exploit or manipulate them.

Another factor that we have taken into account is that when we come to sport as usually understood—for present purposes I do not want to get into the question of whether chess is a sport; that is perhaps for another government department—the physical nature of that activity means that coaches have legitimate reasons physically to touch in perhaps a more general sense than just touching, in other words putting their hands around, moving, manipulating and repositing the body of the young person they are coaching. A sports coach therefore has far more opportunities for physical contact than other roles. This again can be manipulated by abusers.

The amendment focuses on drama and music as further settings. Again, I hope it is clear from what I have said so far that I absolutely understand the motivation for these amendments but, without strong evidence to support their inclusion, I respectfully suggest to the noble Lord that there is no reason to include drama and music and exclude other settings in which adults work with children. I underline the point that it was never the intention that all settings where adults interact with children would be engaged. I suggest that it is dangerous to say, "Because there's been a case here or a case there, we should include them." We heard from the noble Baroness, Lady Brinton, that there had been a case involving chess in the United States. "Does that mean that we include chess here?" I ask rhetorically. I suggest the answer is no.

I will make one point on ballet—I am not sure whether that is a sport, an art form or perhaps both—of which I am obviously fairly ignorant. On the inclusion of dance, I suggest to the noble Lord that our definition of sport in Clause 45 includes types of "physical recreation" engaged in for the purpose of "competition or display". I consider that this definition of sport would include dance. That might deal with the ballet point specifically, although I accept that the noble Lord's point goes wider than just ballet.

I think the noble Lord, Lord Paddick, accepted that, in a number of these cases, there is no hard evidence—but we do have isolated cases. As I hope I have explained, we are seeking to rely on what appears to us to be the available evidence. To pick up the question, "What evidence would make you include new categories?", the only answer I can give is that we are not limiting the nature of the evidence that will make us happy to consider other categories. I do not want to limit or straitjacket the sort of evidence we might look at in advance. If we find that new evidence emerges that might justify legislating further, we will do so. That is why we have put the Henry VIII power into Clause 45, so that we can add further activities if it appears appropriate—I emphasise "appropriate"—in the light of new evidence.

To come back to my main point, what we seek to do is strike this balance between safeguarding young people and, on the other hand, protecting the rights given to them by Parliament to engage in sexual activity on a consensual basis once they have reached the age of 16. I fear I might not have persuaded the noble Lord, Lord Beith, of the correctness of the Government's position, but I hope I have explained it to him. I none the less invite him to consider withdrawing his amendment.

Baroness Hamwee (LD): My Lords, before my noble friend responds, I feel very uncomfortable at the proposition that we should wait for examples of problems in specific sectors before there are provisions to deal with them. I think I have said enough, actually.

Lord Wolfson of Tredegar (Con): I will reply very briefly to that point. When I say "new evidence", I am not saying that there must be, God forbid, an incident. I am not circumscribing or limiting the nature of new evidence. If there is new evidence without there being an incident, we will look at that as well. I am certainly not saying that we will legislate only when, God forbid, there has been a terrible case. But one has to be careful. If one draws this net too widely, the effect is, sub silentio, to raise the age of consent. That was never the intention behind this provision.

Baroness Hamwee (LD): My Lords, may I pursue that? What evidence are we talking about, then? We are all giving examples of where somebody in a position of trust might be by themselves with the person who trusts them. I do not follow what the evidence might be. I keep thinking of examples that have not yet been mentioned. Art lessons is another. I have been in an art lesson where the tutor has helped me to produce what I have ineptly tried to produce on a piece of paper. One could go on. What is "evidence" in this context?

Lord Wolfson of Tredegar (Con): The art lesson may be a good example. With respect, there is a huge gulf between the relationship of somebody to their art teacher, if they go to an art group, and the sort of intimacy that a physical sports coach has with somebody or the sort of power, control and sense of authority that a religious leader has over a young person.

I shall give one example of evidence, picking a made-up country from private international law. Let us say that, in Ruritania, there is a huge number of cases of a particular category. It might well then be said, "We can see there is a problem with this category. It has happened in Ruritania. The circumstances are the same as in the UK. You should add that." That is just one example. I do not want to limit the evidence

[Lord Wolfson of Tredegar]
that we would rely on but, with respect, we cannot say that, because there has been a case in an art class or a case here and a case there, we will include all these categories. We should not include every circumstance in which adults have close contact with under 18 year-olds. I think the noble Lord, Lord Paddick, wants to come in.

Lord Paddick (LD): I am grateful to the Minister for explaining the Government's position but I do not understand the argument that we are surreptitiously changing the age of consent. If a 16 or 17 year-old wants to have a sexual relationship with their music teacher, they had better find another music teacher; the solution is quite simple. They should not continue in a professional relationship and have a sexual relationship at the same time.

Lord Wolfson of Tredegar (Con): With great respect, the point put to me by the noble Lord, Lord Paddick, shows that if we draw this too widely, we are limiting the ability of a 16 or 17 year-old to have a sexual relationship with that person. This the balance that we want to strike. At the moment, there is nothing to prevent a 17 year-old having a consensual relationship with a person with whom they have a tuition relationship or other kind of relationship. The question is: where do you draw the line? We say the line should be drawn at sport and religion. If you draw it too widely, you impact on that person's ability to have a sexual relationship with other adults.

Lord Beith (LD): My Lords, I start by answering one of the Minister's questions: what would constitute evidence? The answer is: the same kind of evidence that was sufficiently persuasive for the Government to include sport and religion in this definition. I would expect it to be on exactly that level, bearing in mind the context, the professional relationship and how it operated.

I start where I agree with the Minister. We are not seeking to change the age of consent in this legislation; it would be the wrong place to attempt such a thing, even if there were strong arguments for doing so. What should determine the position that the law provides in this area should not be the selection of certain sports because there appears to be more or less numerical evidence of abuse; nor should it be an attempt to import some new age of consent; it should be on the same basis, whichever area of activity we are talking about.

The Minister said something very interesting which will cause us to reflect between now and Report. He said that, in the Government's view, dance—or ballet, at any rate—is included. There is a compelling argument for that, which is one of the reasons I was inspired to put down this amendment in the first place. This is a very physical activity during which people who are themselves very skilled at it have to explain—and sometimes demonstrate or assist those they are teaching—some quite extraordinarily physical things. That is done by hundreds and thousands of ballet teachers, and has been for many years, with total propriety, but it is a context in which abuse can occur. In that respect, as the Minister obviously realised, it resembles the kind of definition he brought to bear for sport.

I agree also that there is a balance between, on the one hand, defining a position of responsibility and placing responsibilities and limitations on someone who has such a position, and, on the other, interfering with the rights of 16 and 17 year-olds who have reached the age of consent. My noble friend Lord Paddick highlighted the difficulties in achieving that balance when he pointed out that we would hardly welcome a situation in which it was generally accepted as okay for someone in that kind of professional relationship to continue a sexual relationship when attention was drawn to it. We would mostly expect the professional person to believe that they had to end the relationship, even if it were entirely consensual.

7.15 pm

We also have to recognise a dynamic in the situations that I have described, in which the kind of authority that the Minister attributed to people with a religious position of responsibility also applies to someone who has a powerful teaching role in a very close and physical activity. There is a dynamic. I make what might sound like a flippant point, but it is not entirely flippant: if the Minister has a look at "Strictly Come Dancing" one Saturday night he might begin to understand something of what I am talking about.

The Minister has failed to convince me, and I suspect some others in the House, that you can solve this problem by simply defining two areas where you think there is a particular problem and ignoring all the others. I do not want to load the arts world or the sporting world with a set of conditions that are not proportionate to the problem—or religion, for that matter, where I am an office-holder and would be subject to some of these provisions. I want sensible provisions that afford protection from the abuse of a professional relationship—something achieved quite readily in many contexts because the person concerned is part of an institution that has its own rules; but, in individual tuition, that may not be so.

The Minister has not persuaded us even that he has worked out a good basis for deciding when to use the Henry VIII power to add new responsibilities. At least, he has not given us a very clear picture; in fact, he has tended to imply that there are almost no circumstances in which that power might be used. This is a pretty unsatisfactory situation but the Minister has very sincerely addressed it and, indeed, widened the definition in the course of the debate. So, I think we have more to work on before Report. I beg leave to withdraw the amendment.

Amendment 111 withdrawn.

Amendment 112 not moved.

Clause 45 agreed.

Clause 46: Criminal damage to memorials: mode of trial

Amendment 113

Moved by ***Lord Paddick***

113: Clause 46, page 38, leave out lines 33 to 39.

Member's explanatory statement

This amendment is intended to probe the proportionality of the inserted subsection in comparison to other offences.

Lord Paddick (LD): My Lords, in moving Amendment 113 in my name I shall speak also to the other amendments in this group. I declare an interest as a Liberal Democrat and someone generally against sentence inflation, but I have specific points to make on this clause.

Clause 46 effectively increases the maximum penalty for "destroying or damaging" anything by fire, or for any offence involving damage to a memorial, which means something "erected or installed", or

"a garden or any other thing planted or grown which has a commemorative purpose",

whether it is the statue of a national hero or a slave trader, a person's grave or a pet cemetery. The clause does this by removing the financial limit on when the case can be tried at, or sent to, the Crown Court for sentence. Magistrates' courts cannot send someone to prison, I believe, for more than a maximum of 12 months, but a Crown Court judge can send someone to prison for criminal damage where there is no threat to life for a maximum of 10 years.

To put this into context, Clause 2 of this Bill, as drafted, increases the maximum penalty for assaulting an emergency worker from one year to two years, while this part of the Bill increases the penalty for damaging a memorial from one year to 10 years. It is clear where the Government's priorities lie; it is more important to protect a statue of Churchill than it is to protect our brave men and women police officers.

It gets worse. New subsection (11B) of Section 22 of the Magistrates' Courts Act 1980, inserted by Clause 46, includes

"any moveable thing (such as a bunch of flowers)"

left in or on a memorial, as part of the memorial—so, a maximum penalty of 10 years in prison for damaging a bunch of flowers. Pick up a bunch of flowers placed at the feet of Churchill's statue and hit a police officer round the face with it, and you can get up to 10 years in prison for damaging the flowers but only two years for assaulting the police officer. Amendment 113 is designed to probe the proportionality of subsection (11B). Amendment 114 is consequential.

In fact, bearing in mind that the limit for a summary-only trial—at least in the original Bill, and I cannot find any amendment to it—is £200-worth of damage, to replace, repair or restore the property damaged, it is unlikely that anything other than minor superficial damage would be below this value. There may well be a case to treat graves as a special case, where it can be deeply distressing if the burial plot is disturbed, but, aside from that, I am yet to be convinced that Clause 46 should stand part of the Bill, at least in its current form.

There is far more merit in protecting the living, as Amendment 115 proposes to do, than in protecting the memorials of the dead. Damaging life-saving equipment is a very serious matter, and there is far more merit in this amendment than in Clause 46.

Baroness Jones of Moulsecoomb (GP): My Lords, I rise to support these amendments. We are now getting into the stuff that I will fight tooth and nail over. As an archaeologist and activist, I feel that I have a little bit of insight into this whole situation and perhaps into the ridiculous law that the Government are trying to introduce here. Instead of debating and discussing it and coming to a sensible resolution, this is part of a battle in a culture war, which is absolutely ludicrous.

History is important, but it is not fixed. People like to think that we all know what it is and it is in all the books, but, actually, as an archaeologist, I know that we reinterpret it all the time and are constantly making new discoveries. Just in the last week or so, we found Roman statues in a totally unexpected place. This is what happens: we change our minds about history and it gets rewritten.

The problem is that we have some very ugly history, which is littered with powerful and wealthy white men who, behind a thin veneer of toffish respectability, did some quite nasty things and were responsible for atrocities such as the enslavement of millions of people, genocides, war crimes and the grabbing of wealth from some of the many nations that we now call "developing nations". Our statues ignore this history and pretend that it was benign and that these were good guys, which is simply not true: they were slavers and pillagers, and we ought to recognise that. Having their so-called heroism set in stone is actually quite offensive. There is no hint in many of these statues that they did some evil deeds.

People—many members of the public—do not like this, and they are showing their dissatisfaction with celebrating people who really should not be celebrated. They raped and pillaged, and the fact that they then spent a lot of money on universities, libraries or parks does not really make it all all right. So the question of what we should do with these monuments is important, but not easy. It should force us to confront the evils within our history and reflect on how they carry through to the social and economic conditions of our present.

Instead of leading on this quite important dialogue, the Government simply storm in with a new criminal offence, which I find so ludicrous that I feel I ought to go and speak directly to the Home Secretary about it. They are trying to put their fingers in their ears, sing "Rule Britannia" and pretend that all of this did not happen and that it was all okay—but it was not. Councils all over the country and the Government have to realise that statues are not something that we cannot change or remove. The fact is that some of these statues celebrate evil deeds, and the Government should recognise that.

I have more to say, if noble Lords wish.

Lord Falconer of Thoroton (Lab): I apologise for not standing up promptly—I was expecting the noble Baroness to say more. I will deal with two issues in relation to this group. First, I will deal with the points made by the noble Lord, Lord Paddick, in relation to what is in effect an increase in the penalty for certain sorts of criminal damage. We on this side completely understand that certain sorts of criminal damage—for example, to the gravestone of a much-revered and loved person—that cause very little financial damage nevertheless absolutely cut to the heart of a community or an individual. Our view is that it should be possible, in certain circumstances, for that to be dealt with somewhere other than a magistrates' court.

[Lord Falconer of Thoroton]

This absolutely over-the-top provision is not necessary to ensure that something like that, which does merit a Crown Court trial, should be dealt with in the Crown Court. I would have thought that a much more targeted amendment could have dealt with that, but this, which deals with absolutely every sort of thing, is unnecessary. You do need a provision to make sure that protection is provided in relation to things that are deeply offensive, such as the desecration of a grave—but, beyond that, the law works, by and large.

I also agree that a lot of thought has gone into this, but there is practically nothing in the Bill—except for one or two increases in sentences for violence—that deals with the protection of women and girls. Instead, there has been this very complicated provision. But, as I say, we accept that it will be appropriate in certain cases to allow for a trial in the Crown Court.

Our Amendment 115, which comes after Clause 46, is designed to deal with a practical issue in relation to criminal damage: the effect of vandalism on safety equipment. This amendment was moved in the other place by Sarah Champion MP, and it reflects a campaign that has been run by Simon and Gaynor Haycock, whose son, Sam Haycock, went swimming in Ulley reservoir in Rotherham in May 2021, on the very day that he finished school, aged 16. He went to help a friend who was in trouble. At the reservoir, a throw line that has a safety belt on it, which you can throw into the water to try to assist someone, is behind a locked cupboard. You can access the throw line only by ringing 999 and getting a PIN number from the police in order to get the line out. The delay in getting the throw line out may well have had tragic consequences on this occasion. The reason that it is behind a locked door with a PIN number is because of the vandalism of safety equipment. I wonder whether the Government could spend their time focusing on something that has a practical effect, rather than engaging in rather divisive culture wars. I very much hope that the Minister will feel able to say something to help Simon and Gaynor Haycock in their campaign.

The amendment proposes that it is made a specific offence to intend

"to destroy or damage any property which is considered life-saving equipment, including life-belts, life jackets, or defibrillators."

Of course, it would already be an offence to do that, but it matters a lot to indicate that this is something that the law regards with particular hostility because it costs lives, including the life of Sam Haycock. I very much hope that the Haycock family will hear good news from the Minister tonight.

7.30 pm

Lord Wolfson of Tredegar (Con): My Lords, this group of amendments focuses on criminal damage and the need for Clause 46 to stand part of the Bill. Clause 46 addresses a sentencing limitation in the existing legislation to ensure that offenders who vandalise, attack or destroy memorials serve appropriate sentences that fit the severity of the crime.

The present position is this: where there has been criminal damage to a memorial and the value of that damage is less than £5,000, the court's sentencing powers are limited in that the offence must be tried summarily and can attract a maximum penalty of only three months' imprisonment or a fine of up to £2,500, which does not reflect in all cases the severity of the crime and the harm caused. We must remember that we are seeking here to provide a maximum sentence, not a mandatory sentence.

Clause 46 therefore removes this restriction by amending Section 22 of the Magistrates' Courts Act 1980 so that where damage or desecration of a memorial occurs and amounts to an offence of criminal damage, the court will no longer be constrained in its sentencing options where the value of the damage involved in monetary terms is assessed to be less than £5,000. These are important changes that will ensure that courts can sentence appropriately, given the facts of the particular case.

I turn to the amendment from the noble Lord, Lord Paddick, to remove new subsection 11B from Clause 46(2) on criminal damage to memorials. New subsection 11B provides that moveable items such as flowers, flags or wreaths that are left in, on or perhaps adjacent to a memorial and—this is important—have

"(or can reasonably be assumed to have) a commemorative purpose"

will also

"be regarded as a memorial."

It is important to recognise that items such as these, when placed at a structure such as a gravestone or—let us pick a topical example—the Cenotaph for the purpose of commemoration, albeit temporarily, should be covered by the clause. If someone goes to the Cenotaph, takes all the wreaths and chucks them around and destroys them, the fact that the value of those wreaths might amount to £4,683 ought not to prevent the court treating that offence with the severity with which I think everybody would regard it.

In the summer of 2020 there were attempts to set fire to the flag on the Cenotaph. The sentencing of those who burn the flag on the Cenotaph should not be limited by the value in monetary terms of the piece of fabric consumed by fire that is part of the memorial—ditto damaging a poppy wreath. The problem is that under the amendment that the noble Lord, Lord Paddick, wishes to make, those acts of vandalism and damage would not be covered as damage to a memorial. That is not right.

There are occasions when moveable objects such as these, when placed on a memorial, gravestone or similar structures, constitute the very essence of a memorial. A rose, when placed on the tomb of the unknown warrior, ceases to be—if I can put it this way, with apologies to Shakespeare—just a rose; it is something else. Those items should get the same protection as the memorial itself.

I therefore strongly disagree, respectfully, with the noble Baroness, Lady Jones of Moulsecoomb, when she says this is just about culture wars. It is not. Let me be absolutely clear: this Government have no problem with discussion, debate or challenge. If you want to say that Nelson was a great man or a terrible man; if you want to focus on Churchill's successes in World War II or his actions in the Bengal famine, that is absolutely fine. What is beyond debate, I am afraid, and puts you into the proper realms of the criminal law, is defacing monuments.

Let us take an example from law. I did a little research, and it turns out that both the Grey of Gray's Inn and the Lincoln of Lincoln's Inn were leading advisers to Edward I, who in 1290 published the edict to expel the Jews from Britain. Does that mean I should go around defacing bits of Gray's Inn or calling on Lincoln's Inn to change its name? No. Because we recognise that these are matters for debate.

We can debate and discuss, but here we are talking about defacing monuments: criminal damage. That is not a debate on history. That is destroying the cultural fabric of this society. I heard the noble and learned Lord, Lord Falconer, say very deftly, if I may say so, that if it is a memorial to—I think I jotted this down correctly—"a much-revered and loved person", that ought to perhaps go to the Crown Court and not the magistrates' court. I respectfully suggest that a much-revered and loved person to one group of people is perhaps entirely the opposite to another; I do not agree that that is a workable basis for the law.

We have to say that the monuments we have are the monuments we have; they deserve protection. If we want to change a monument and have it pulled down, there are ways to do that. We can have a debate in your local council or a vote—it depends who the monument is being put up by—but we cannot have a right to deface monuments knowing that the protection given by the criminal law is too low in certain circumstances and, I suggest, extremely low in these circumstances.

The noble and learned Lord will forgive me if I do not respond in this debate to the point about violence against women and girls; we will debate that on many other occasions.

I now turn to the noble and learned Lord's amendment about damaging or destroying life-saving equipment. I say at the outset that the case he outlined is extremely distressing and appalling. I hope I may be allowed to say that my sympathies and the Government's of course go out to the family. The fact that it had to be locked with a PIN is, as I understand it, the genesis of his argument and what provoked the amendment. We therefore understand and agree on the intention behind the amendment. It is almost incomprehensible that anybody would damage or destroy obvious life-saving equipment.

While I understand the need for an effective deterrent, I respectfully suggest that the amendment will not have the desired effect, for the reason he almost touched on: it is already an offence to intentionally or recklessly damage or destroy property, including life-saving equipment, under the Criminal Damage Act 1971. The maximum penalty is 10 years' imprisonment. Additionally, Section 1(2) of that Act goes further and makes specific provision for an aggravated offence of criminal damage where the defendant intends to endanger life or is reckless to such endangerment. That offence already attracts the possibility of life imprisonment.

If in this case it could be shown that the defendant intended to endanger life or was reckless, we already have a maximum potential sentence of life imprisonment. If that is not already proving an effective deterrent, perhaps the better course of action is for the various government departments responsible for water safety, health and safety and law enforcement to come together, see what is not working and identify working solutions.

Lord Falconer of Thoroton (Lab): It is very helpful of the Minister to tell us what the law is—accurately, I am sure. I do not think it is well known that if you damage life-saving equipment, you might be falling foul of Section 1(2) of the Criminal Damage Act—that is, you might be recklessly endangering life—because generally you will not intend to do that. That is why it is important to have a provision that makes it clear in the Bill, because most people do not have the benefit of the noble Lord, Lord Wolfson, to tell them what the law is.

Earl Attlee (Con): It seems pretty obvious that if you get hauled before the courts for damaging life-saving equipment, you are going to be in deep trouble. What you do not know is what the penalties are.

Lord Wolfson of Tredegar (Con): We seem to be reaching a measure of agreement. I still say, with respect, that because we have that on the statute book at the moment, it is not appropriate to re-legislate in another place. I will take away the points put to me by the noble and learned Lord about more education and sign-posting, and clarifying and explaining to people what the law is. If people do not know what the law is in the Criminal Damage Act 1971, it is unlikely that they are going to be any more familiar with the Police, Crime, Sentencing and Courts Act 2021, as I hope it will be. If we have it in the law, however—and we do—with the reckless addition of a maximum sentence of life imprisonment, I suggest that that ought to be sufficient. On that basis, I invite the noble Lord not to proceed with the amendments. I hope that I have already responded to the amendment of the noble Lord, Lord Paddick.

Earl Attlee (Con): My Lords, as usual, my noble friend has been very helpful, but what he has not convinced me about is why there is an increased deterrence value in having a maximum sentence of not, say, two years but one of seven years. I do not see why going to seven years is going to increase the deterrence value of the new offence.

Lord Wolfson of Tredegar (Con): I am sorry, is my noble friend now back on the memorials point?

Earl Attlee (Con): Yes.

Lord Wolfson of Tredegar (Con): The short answer to that is that I did not make my argument on the basis of deterrence. Sentencing encompasses a number of factors: there is deterrence; there is the actual punishment for the offence; there is marking society's disapproval at what was done. I hope that I made my argument very clearly on the first two. I was not suggesting that people would necessarily be deterred; I hope that they will be, but that is not the main basis of my argument.

Lord Paddick (LD): My Lords, I thank all noble Lords for taking part in this short debate, particularly the noble Baroness, Lady Jones of Moulsecoomb, for her support, albeit coming at the issue from a slightly different angle to the one from which I was coming. I

[LORD PADDICK]
also thank the noble and learned Lord, Lord Falconer, for picking up on what I said, which is that this needs to be more targeted. I specifically said that Clause 46 "as drafted" is not suitable. It needs to be much more accurately targeted; otherwise, it enables people to make the accusation that I did not make, that this is about dramatically increasing the penalty for what could be very minor damage to a statue of a very divisive figure. In fact, I made reference to the fact that doing anything to a grave, for example, could be deeply distressing and it may be that the penalty needs to be increased for that particular purpose. Clause 46, however, goes far too wide and draws those who feel that it is about culture wars into the argument, where that would not be the case if it were more far more tightly drawn; but at this stage, I beg leave to withdraw my amendment.

Amendment 113 withdrawn.

Amendment 114 not moved.

Clause 46 agreed.

Amendment 115 not moved.

Clause 47 agreed.

Schedule 5 agreed.

House resumed. Committee to begin again not before 8.28 pm.

Competition Act 1998 (Coronavirus) (Public Policy Exclusions) (Revocations) Order 2021

Motion to Regret

7.44 pm

Moved by ***Lord Berkeley***

To move that this House regrets that the Competition Act 1998 (Coronavirus) (Public Policy Exclusions) (Revocations) Order 2021 (SI 2021/773), in respect of the Competition Act 1998 (Solent Maritime Crossings) (Coronavirus) (Public Policy Exclusion) Order 2020, (1) removes any COVID-19 related collaboration for lifeline services on the Solent ferry routes, (2) does not provide a greater incentive for operators to compete to the benefit of passengers and freight customers, and (3) does not provide a continuing overview of competition issues by the Competition Commission on these routes.

Relevant document: 9th Report from the Secondary Legislation Scrutiny Committee

Lord Berkeley (Lab): My Lords, I decided to put down this Motion to Regret because it provides an opportunity for us to discuss the role of competition in ferry services. Does it incentivise operators to compete? Can they compete? Is there a role for the competition commission or some other body, because there is also a problem of a lack of transparency? This regulation relates to the competition exclusion for the Isle of Wight ferries during the Covid epidemic. That has now been, quite rightly, removed, but many of us can wonder what the difference is between when the regulation was in force and now, when it is not. I want to address my remarks both to the Isle of Wight services and to the Isles of Scilly services, and I declare an interest, as I live there.

The ferries kept going during the Covid-19 restrictions, thanks to grants from the Government to make up for the lack of passengers. I think they are all very grateful for that. For the ferry routes to these two islands, the total grant was about £10 million, but we do not know which company received it and what it did with it. They were not allowed to compete with each other on the Isle of Wight, while they now are, but I again question what changes have occurred since they were allowed to compete. Does competition, therefore, work in the ferry sector to give customers, passengers and freight a reasonable service at affordable prices? It is quite important for the people who live on these islands. Do they ever really compete, or is something else required to look after the customers' interests?

We do not know whether the companies make excessive profits, but there is quite a lot of evidence that some of them fail in providing lifeline services for those who need urgent transport, particularly for the NHS. It is true to say that successive Governments have recognised the particular difficulties caused to both businesses and social services, as well as to education services, by barriers imposed on these communities. It is not, perhaps, surprising that schools on the Isle of Wight have long been at the bottom of the league table, with Ofsted constantly imploring improvements. There is no reason why it should be that way, but apparently it is.

Councillor Phil Jordan, who is the Cabinet member for transport on the Isle of Wight Council, has said:

> "We have great concerns over the transparency of the operational factors of ferry companies that, in turn, lead to commercial decisions that take little account of the lifeline service the ferry operators provide, or the human cost involved with such commercial decisions."

There is a lot of evidence that patients going to the mainland for NHS treatment, such as cancer intervention, are given absolutely no priority on some ferries. Quite apart from the costs involved, there is evidence that patients returning from NHS treatment—anaesthetics or invasive cancer treatment, I am told—are not given priority to board ferries. Sometimes, they are refused travel or sent to a later ferry. In other words, as they say colloquially, the sick are being bumped from travel.

The local MP, Bob Seely, has voiced support for a public service order, and the Isle of Wight Council has committed in its corporate plan to achieving a public service order on the Solent ferry operators. We do not know much; perhaps the Minister can tell us where that has got to.

It is the same for the Isles of Scilly. It is a very infrequent ferry service. Loading and baggage handling are, frankly, Victorian. There is no passenger shelter and freight charges are double those of the Scottish equivalent, which are already pretty high. It is good

that the council has been awarded £48 million in a levelling-up fund announced by the Chancellor last week for two ferries between Penzance and St Mary's. The trouble is that this is intended to perpetuate the inefficient, bad services, when they could be run with one ro-ro ship costing half that, about £22 million. I have told them that. The taxpayer is wasting about £19 million. When he responds, can the Minister tell me whether the Government required the council to seek competitive quotes for the new ship and services or ownership of these vessels? Is he happy that this £48 million will perpetuate what I think is an inefficient and expensive monopoly, to the detriment of the islanders—forget about the company?

We have two monopolies to the Isle of Wight and one to Scilly, providing what the Government seem to agree are lifeline services. There is not much monitoring going on as to whether these are effective. You have to ask what customers can do when these services are seen to be failing. You can ask the carrier, but it will say that it is not interested. You can ask the Department for Transport—we do not have a Transport Minister responding tonight, so let us say the Government—which will say that these are commercial services that they cannot influence. Customers may then ask what the remedies are if companies are seen to fail. After all, rail services are tightly controlled, as are many bus services, and there is generally competition for air travel in most places. Where is the community bit? What about affordability, service quality and frequency, for the NHS and other emergency services?

I will give the House a couple of examples. In Scotland, something called a road equivalent tariff is generally applied on fares and charges. To Islay, this is 29 pence per mile, while to Scilly it is £1.62 per mile, which is five times higher. For the Isle of Wight, on the Southampton to Cowes route, it is 96 pence per mile, which is three times higher. The train fares in the UK are very similar, between 10 pence and 30 pence per mile. As I said, the freight charges to Scilly are double those to Islay. This is not good for the economy. Unlike rail, the ferry fares are not regulated. There is no transparency about the ferry company costs, what might be a reasonable profit or the use of the Covid-related grant. What can people do? Should they ask the carrier or the department?

It is interesting that, over 10 years ago now in 2009, the OFT undertook a market study into the Isle of Wight services and the lack of transparency of their operations. Three operators wrote to the OFT offering increased transparency. One of them, Red Funnel, offered to publish clear information on performance, price per passenger, costs, capacity utilisation, customer satisfaction, reliability, punctuality and market growth. In spite of these commitments, which you might call solemn and binding, 12 years later, none of this has been done by Red Funnel or any of the other operators.

The same applies for the Isles of Scilly. It is a monopoly and there is no such information. There seems to be no pressure on operators to reduce costs or improve services. Where does the pressure come from? It could come from competition or from a government agency. After all, the Government control rail fares.

I do not think that the competition on the Isle of Wight works properly and, as I said, on the Isles of Scilly, the council has refused to commit to put the operations in the levelling-up fund bid out to competitive tender. Why? This failure of competition and governance is clearly having an adverse effect on the economy. Scotland recognises this, but in England I think the Government hope it is all going to go away.

I would like to hear the Minister's response to the proposal that there needs to be some kind of regulatory oversight to make sure that the companies behave and provide the lifeline services to which they have committed themselves. It is a light touch role but could be done. We have the Office of Rail and Road for the railways and part of the road network; perhaps the remit of that could be expanded to cover ferry services. Maybe it is time for the CMA to be given a remit to examine these issues afresh and, most importantly, keep them under regular surveillance. In conclusion, I believe that some urgent action is required to make competition work for the benefit of consumers. I beg to move.

Baroness Randerson (LD): My Lords, I start by thanking the noble Lord, Lord Berkeley, for tabling this Motion to Regret. I agree with almost everything he said. Of course, there are contrasting models in operation for ferry services around the UK, from market-based models to very much more subsidised models. Those complaining about the Solent services often look to other services for comparison, but the problem is that no two islands are really the same. People are searching for a model which provides the guarantee of service that the isolation of many UK islands requires but also an incentive for efficiency.

To look at a comparison of the islands, let us take Lewis off the west coast of Scotland as an example. Lewis is 130 miles off the mainland. It is about 350 miles from Edinburgh and about 600 miles from London. In contrast, the Isle of Wight is only 14 miles from Portsmouth and there is a ferry service which takes only 45 minutes. There is no regular air service, but there does not need to be one because of the short distances. The Isles of Scilly, whose service I know relatively well, are 35 miles off the coast. There is a sea crossing which is only for those with strong nerves and a strong stomach. It takes nearly three hours on what is a very elderly boat. I was therefore delighted to hear that there is funding to help deal with this situation. In reality, people go backwards and forwards to the Isle of Wight on a daily basis as commuters. You are not a daily commuter on a regular basis on the "Scillonian", but of course people do go back and forth in a day to take up medical appointments. The vast majority of medical services are provided on the mainland.

We need a nuanced approach. Even in good times, islanders in general across the UK complain about their connectivity. There is, and rightly so, an emphasis on the importance of lifeline services. The SI to which this Motion to Regret relates suspended some elements of the Competition Act in relation to the Solent ferry services. There are three companies involved—one hovercraft service and two ferry services—so there is an element of competition. However, of course, during the pandemic they were apparently down to 10% of

[Baroness Randerson]
the normal passenger numbers and obviously it was not commercially viable. Yet it was obvious that essential services had to continue—freight as well as lifeline services—in terms of life-saving services.

8 pm

Can the Minister answer some specific questions about this £10 million? What was it given for, who was it given to, and what guarantees do the Government have that that money was well spent? Local MPs have complained about the cost of services and about their availability for health appointments, for example. Two Conservative MPs have complained about this, saying that because the two ferry services are owned by financial institutions, they are not operating in the interests of local people.

The noble Lord, Lord Berkeley, referred to the 2009 review, which apparently showed that prices were largely competitive in comparison with prices for similar distances and services in Europe. The pricing system that is offered is very similar to that used on the railways. I agree with the noble Lord that it is not regulated, but it is the same structure as we have on the railways. If you are a commuter going at the most popular times, you pay a lot more than if you are going in the middle of the day or late in the evening, for example, when services are not popular. The same structure is used on the airlines as well. Therefore, it is not an unusual structure in transport in our country.

There was a petition in 2018; the Government contrasted the Isle of Wight with Scotland and the Scottish islands, and made the point that there was a very much lower population density in Scotland and that there was no evidence of market failure.

Finally, in answer to recent questions from local MPs and politicians, the Government have sought to suggest that the local authority should shoulder responsibility for ensuring that services are reasonably priced. I will say two things to that. First, local authorities have no power to do that, and secondly, they do not have the money at the moment. The local ferry operators say that they are proud of the special prices they provide for many local people and for people travelling to health appointments. My response to them is that they probably need to do a great deal more if they are to continue in their situation, because there is talk of a new operator to be set up, run by a local consortium.

In the meantime, I understand why the Government are not pursuing this SI in the future—because they believe that the pandemic is over—but, by doing this, they have clearly avoided a solution to an issue which local politicians, and in particular local residents, are very concerned about.

Lord Teverson (LD): My Lords, what a privilege it is to have the noble Lord, Lord Callanan, with us this evening. With COP 26 happening in Glasgow, the Minister for Energy Efficiency, Fuel Poverty and Clean Heat is among us. In fact, maybe I should apologise that we have detained him from saving the planet. I hope that he will be able to give us a brief insight into COP 26 and his role in it in his answer to the very good questions asked by noble Lords and my noble friend Lady Randerson.

What I thought was more of an irony about this order is that it mentions the Competition Act 1998 (Groceries) (Public Policy Exclusion) Order 2020, whose time has, I think, already expired. The irony is that the thing which the groceries order was set up for—Brexit and Covid—was not a problem at the time, but now we actually have a crisis. A number of the supermarket shelves are empty, we do not have HGV drivers and supply chains are failing, so maybe we should look at that. We have now allowed cabotage, and drivers' hours have been extended. It is mentioned here that we have more of an emergency, particularly perhaps as we approach Christmas, than we would do otherwise.

I want to say a couple of things about the Isles of Scilly—not the Scilly Isles, as they are very different places, one fictional and one real. First, I want to thank the Government for the £48 million that has been attributed through the levelling-up fund, as mentioned by the noble Lord, Lord Berkeley, to sorting out the next generation of vessels and the port structures that support them for travel between Penzance, which I visited over the weekend, and the Isles of Scilly—and between those islands as well. That very important commitment allows a change from the current "Scillonian" and freight vessel, which are well out of date and will cause problems into the future. I do not dispute in any way the questioning of the noble Lord, Lord Berkeley. He knows far more about ferry configurations than I would, but we should note specifically and positively the Budget Statement in that area.

I am also a supporter of competition, in principle, because it is important whether you do it through procurement of a contract to run a service—perhaps on a TfL basis—or in the form it takes on the Isle of Wight, which perhaps does not work exactly correctly, where there is competition between operators. That is important, but what we have with Scilly is always the cost and uncertainty of the connection. We always looked at Scotland as having a far better approach to remote communities off our islands, while in England we find, off Cornwall, that the Scillies are discriminated against.

I looked up the cost of flying by helicopter, which is a form of competition. For those who wish to visit—and I hope you do—the price for a single adult to fly to Tresco or St Mary's is £129 one-way. If you are lucky enough to be an infant aged between two and 11, it is only £108. That gives an indication of the cost of that second-rate transit for members of the British Isles community. They are second in a league to our friends north of the border.

I reiterate that I wish the Minister every success at COP 26. I am sure he will be there in his energy roles. This conference is the most important we have had on the planet, and I give all good wishes to the Government, and Alok Sharma, in achieving success at it. I also thank the Government for the recognition of the Scillies issue in the Budget.

Lord Bassam of Brighton (Lab): My Lords, first, I thank my noble friend Lord Berkeley for securing today's debate via his Motion of Regret, which clearly comes from a good place—designed, as it is, to protect consumers from high prices and to keep ferry routes

accessible to all. The debate has generated more heat than I expected, but it is important because in our communities at the periphery, there is a strong sense that they suffer from high prices, are forgotten because they are at the end of the line, and get left out in government considerations. I join my noble friend Lord Berkeley, the noble Lord, Lord Teverson, and the noble Baroness, Lady Randerson, in thanking the Government on behalf of the Isles of Scilly for their £48 million contribution to improving the quality of the sea services to those islands, because what is there at the moment is clearly not fit for purpose and needs to be improved. It is a lifeline service and helps the tourist economy of those islands.

As we heard, in March 2020, the Government announced that ferry services to and from the Isle of Wight were at significant risk of disruption due to the pandemic, so they introduced regulations which allowed the two ferry operators to share information and staff to ensure that ferries continued to run regularly across the Solent. That was for all the reasons and purposes that noble Lords have outlined: for economic, health, education and welfare reasons.

Now, of course, the Government have decided that the Covid pandemic is at an end and seem to think it is the right time to end the suspension of competition law, believing it is no longer needed. I do not know that the pandemic is at an end: the figures tell us otherwise. People are getting Covid at the rate of about 40,000 a day, and about 1,000 people a week are dying from it, so I am not sure that we are at the end of it. People are still very cautious in their travel plans for that very reason. The absence of people travelling means that those services could be under threat in future. I do not buy the line that there is no more threat of severe disruption to the Isle of Wight ferry crossing services.

Can the Minister explain how the Government reached the conclusion that now is the right time to end the Covid provisions? Although I am not a local of the Isle of Wight, it is a place that I have visited on many occasions. I think the first time I went there was in 1970, to a pop festival. Back in those days, Sealink, a nationalised industry, ran the service. It was a very good and very cheap service, actually, by the standards of the time. As a Brightonian, I am familiar with the ferry service: it goes from just down the road in Newhaven, along the coast from the Isle of Wight. It strikes me that ferry prices there are quite expensive. Ironically, my wife recently used the service and complained to me about it. I can understand how local people who have to make multiple journeys for work, health, education and other purposes see their ferry ticket prices adding up and becoming a serious expense and, by default, an inhibition on business on the island. I must acknowledge that there is genuine concern from some that there is insufficient competition.

I think that my noble friend Lord Berkeley said that there were two monopolies, and I think that is probably a fair description of how it works, and that that has undoubtedly resulted in high fares. I suspect that the companies see those two services, in particular, as providing a regular flow of income that they can pretty much rely on. Does the Minister think that fares are too high? Clearly, local people do. That is reflected in the attitude of the local MP and local councillors. Are there too many barriers to entry to new ferry companies, I wonder?

It has been reported that an island-based consortium may well be working up a plan to run a community vehicle ferry service and has asked the local council for its help. Are the Government planning any additional support for such a move? Do they see that it has a role in stimulating some genuine local competition? If they do, I suspect there will be quite a lot of takers for that service, given the high cost of the service as it currently is.

So are the Government planning to ensure that there is real competition? Do they accept that services are expensive? What comfort can be offered to the community of the Isle of Wight in ensuring that ferry services can be provided in future at a reasonable price?

8.15 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, I thank all those who have contributed to the debate. I especially thank the noble Lord, Lord Bassam, who came along to discuss the subject I thought we were coming here to debate: the revocation of the SI.

As I listened to the speeches of the noble Lord, Lord Berkeley, and the noble Baroness, Lady Randerson, I thought there was a sense of déjà vu about them, and of course there was. Perhaps the noble Lord and the noble Baroness will remember that we actually discussed this subject in 2017, when I had the privilege of being a transport Minister: we had a take note debate on remote island communities in England. I hope the noble Lord refreshed his speech before he made it again; I have not looked it up to see whether he has made the same one. So we have been here before and discussed the topic, and I gently suggest to the noble Lord that if he wants to have a debate about ferry services and their role in transport policy, perhaps he might want to go through the channels that would secure that properly rather than trying to shoehorn it into a debate on competition policy and the revocation of a particular SI. I will be very happy to explain to him the subject of his regret Motion—that is, why we revoked the SI. If other noble Lords are not interested in that, at least the noble Lord, Lord Bassam, will be.

I thank the noble Lord, Lord Teverson, for his concern for my welfare and my brief. I can tell the noble Lord that I will be travelling up to COP. In fact, I suppose I should be grateful to the noble Lord, Lord Berkeley, for detaining me in the House today; looking at some of the transport issues that have occurred to people travelling up to COP in the last two days, maybe I was better off staying here after all. I will be going for the buildings day next week.

To respond to the subject of the debate—I will come to some of the points made by the noble Lord, Lord Berkeley, later—last year, in response to the unprecedented challenge posed by the coronavirus pandemic, the Government responded with unprecedented rapidity to support businesses and people, and to

[Lord Callanan]
enable a co-ordinated response to coronavirus. As part of the Government's action, six public policy exclusion orders were made. These orders were intended to disapply elements of UK competition law temporarily in order to help businesses co-ordinate specific activities in certain sectors, and to support lifeline services during a period of disruption related to coronavirus. The Solent maritime crossings order was one such measure.

As the noble Lord is no doubt aware, more than 140,000 people live on the Isle of Wight. Residents rely on essential lifeline services to get access to medical supplies and essential healthcare or to facilitate the journeys of NHS staff, emergency services and other key workers. These services are all supported by ferry operators—I think there are currently three—without which residents would be isolated and with limited resources.

In response to the outbreak, and at the request of the local MP, the Government acted swiftly and suspended competition law temporarily for the Solent ferry operators to ensure that they could co-operate to continue to provide essential transportation despite the effects of lockdown. The order permitted three kinds of agreements between the Solent crossing operators to co-ordinate during the period of disruption: the use of timetables, the routes operated by any Solent operator, and the deployment of labour or facilities.

Of course, such measures are usually prohibited by competition law as in normal times co-ordination of this sort can lead to higher prices, less choice and lower quality of service for consumers. However, given the exceptional circumstances, it was not clear that any of the companies would be able to maintain a service without co-operation, and that therefore, without this order, lifeline services may well have ceased. The measure was therefore an important part of a wider support package to safeguard the vital transport links to the mainland.

In response to the questions from the noble Lord, Lord Berkeley, and the noble Baroness, Lady Randerson, I can tell the House that the Government also made available £22.4 million-worth of funding for the Isle of Wight and the Isles of Scilly between April 2020 and April 2021.

Operating together, the Solent maritime crossings order and the financial support scheme enabled the maintenance of lifeline connections to the Isle of Wight. Key services were retained despite temporarily not being economical to run. The Solent ferry operators were altogether able to transport passengers and passenger vehicles representing nearly 50% and 64% of their pre-pandemic baseline. They also saw an increase of 23% in the transportation of commercial vehicles. Without the temporary suspension of competition law and the funding provided, services would likely have stopped running, thus creating significant issues for islanders during the pandemic.

Under the Competition Act, exclusion orders may be applied only to situations where there are exceptional and compelling reasons of public policy. The Solent maritime crossings order was intended to address the effects of coronavirus on the Isle of Wight's transport system. We were clear when making the order that it would remain in place only until the Secretary of State determined that there was no longer a significant disruption or a threat of significant disruption to the operation of Solent crossings.

I reassure the noble Lord, Lord Bassam, that the Government's decision to revoke the order was made following consultation with the Isle of Wight Council and the ferry operators and with the confidence that the ferry operators were financially secure enough to return to normal services. The response strategy reopened the economy and, with the lifting of restrictions and the vaccine deployment, measures such as the Solent maritime crossings order became unnecessary.

The noble Lord, Lord Berkeley, also asked why the revocations SI does not provide a continuing review of competition issues by the Competition and Markets Authority on these routes. The CMA, as the UK's independent competition authority, continues to be responsible for monitoring markets and enforcing competition law across the economy. Now that the Solent ferry crossings are back under competition law, they are indeed back under the auspices of the CMA. The CMA has significant powers and expertise to investigate markets and anti-competitive behaviour and to take remedial action where necessary. Complaints of anti-competitive behaviour can be made directly to the CMA. As the noble Lord knows, the Government do not determine which cases the CMA decides to act on.

I will add a note about the wider use of competition law exclusion orders. They have proven to be an effective instrument to provide a safety net—and at times more considerable security and support—to industries which need to collaborate in order to address exceptional circumstances. However, it is not a power that should be or can be used without careful consideration. The Government have recently made use of the instrument again. We temporarily exempted companies operating in the oil industry from the Competition Act for the purpose of sharing information and optimising fuel supply in the event of disruption. Earlier this month, the Secretary of State also announced a temporary exemption for parts of the CO_2 industry to help provide further security of CO_2 supplies and businesses. Finally, we have agreed to make an exclusion order for Premier League broadcasting rights to provide stability for the football pyramid, including for grass-roots football, women's football and lower league clubs.

In each case, the use of exclusion orders was a proportionate and limited measure informed by the Government's engagement with industry and intended to give companies a bit of breathing space to resolve the wider issues. However, we should be clear that business practices that undermine or restrict competition in markets are a threat to consumer interests, productivity and the wider economy. Suspending competition law longer than necessary could be harmful to consumers and to the economy and the Government will continue to use such measures only where necessary and appropriate.

The Solent maritime crossings order and all the other public policy exclusion orders revoked in July fulfilled their purpose. That there is no longer a need

for this order is a testament to the success of the road map and the effectiveness of the Government's response to Covid-19.

Lord Berkeley (Lab): My Lords, I am very grateful to all noble Lords who have taken part in this short debate—the noble Baroness, Lady Randerson, the noble Lord, Lord Teverson, and my noble friend Lord Bassam—and of course to the Minister for his response. I do not regret tabling this Motion because, as the Minister said, it is four years since we last debated the order and quite a few things have happened since then, including Covid. I certainly want to put on the record the thanks of people I have spoken to on both islands for the grant the Government gave to keep the services going during Covid—otherwise they would have stopped; they had very little income because there were no passengers.

The noble Lord, Lord Teverson, mentioned that the Covid problems are still here and asked whether it was too soon. I can inform him that twice in the last six months there has been a week's shortage of meat for people to eat on the Isles of Scilly. Whether that is due to Covid, transport or whatever we can debate.

I agree with the Minister that it is time to have this particular order withdrawn, but the concerns of residents and businesses on these islands will not go away. It is something that will need further thought, but it is good to know that the competition is still around, and that we can talk to the CMA if we want to and see where it goes. Again, I am very grateful to all noble Lords who have spoken in this very short debate and beg leave to withdraw my motion.

Motion withdrawn.

8.27 pm

Sitting suspended.

Police, Crime, Sentencing and Courts Bill

Committee (4th Day) (continued)

8.29 pm

Clause 48: Power to photograph certain persons at a police station

Amendment 116

Moved by ***Lord Paddick***

116: Clause 48, page 39, line 21, leave out ", (1F) or (1H)" and insert "or (1F)"

Member's explanatory statement

This amendment is consequential on Lord Paddick's amendment to page 40, line 14.

Lord Paddick (LD): My Lords, I rise to move Amendment 116 and speak to my Amendments 117 to 121 inclusive in this group.

Clause 48 gives the police the power to compel people to have their photograph taken at a police station without their consent. It includes someone arrested for a recordable offence and released without being charged or otherwise being prosecuted for an offence, if they have not previously been photographed, the previous photograph is unavailable or inadequate, or a constable thinks that another photograph might be useful to assist in the prevention or detection of crime.

We have had concerns for some time about those not convicted of a criminal offence having their photographs retained by the police, but forcing a person to attend a police station and taking their photograph without their consent in such circumstances seems draconian. However, the clause goes further. It includes anyone who has been convicted abroad of an offence which would have been an offence if committed in England or Wales, if the police do not already have a useable photograph of the person so convicted or if a police officer thinks that it might be useful to have another one.

Aside from how the police would know about such a conviction, particularly since the UK has lost access to EU databases that record all convictions in EU countries, some countries are notorious for having legal systems that fall far short of what would be considered acceptable in the UK. Surely, at least in relation to overseas convictions, there should be some judicial safeguard to ensure that such a conviction is safe, rather than a constable being able to force someone to be photographed in such circumstances. My probing Amendment 117 removes the conditions associated with an overseas conviction, and the other amendments are consequential. I beg to move.

Lord Coaker (Lab): I thank the noble Lord, Lord Paddick, for his amendment. I have a very brief comment for the Minister. The Explanatory Notes say:

> "Section 64A of PACE confers a power on the police to take photographs from a person who has been detained in a police station and/or arrested. If a person is arrested, charged or convicted without a photograph being taken, there is no power to require them to attend a police station later for this to be done, although there is such a 'recall' power in … PACE relating to taking of fingerprints and DNA samples."

There are so many important things in this Bill, and this is yet another. The noble Lord is quite right to point this out. Therefore, why was it thought not to be necessary to include the taking of photographs in the original legislation but now is thought to be necessary? What is the evidence for the change in legislation to include photographs?

Also, the noble Lord, Lord Paddick, made the very important point about the extension of that power to overseas offences. Does that extension of power include not only photographs but fingerprints and DNA samples?

Lord Sharpe of Epsom (Con): My Lords, I am grateful to the noble Lord, Lord Paddick, for explaining what he described as probing amendments.

Clause 48 amends the Police and Criminal Evidence Act 1984 to allow the police to require certain persons to attend a police station at a stipulated date and time for the purpose of taking their photograph. Comparing facial images, along with DNA and fingerprints, is a key tool for police to quickly identify and eliminate suspects. Under existing legislation, people who are arrested are taken to a custody suite to have their fingerprints, DNA samples and photographs taken

[Lord Sharpe of Epsom]
straight away. If this is not done, there is a recall power to require those who have been arrested, charged or convicted to attend a police station so that their fingerprints and DNA samples can be taken. However, this power does not cover photographs and Clause 48 will address this omission, which I hope goes some way to explaining the question asked by the noble Lord, Lord Coaker—I think it was an omission rather than being deliberate—and bring consistency.

As things stand, opportunities to take photographs are being missed—

Lord Coaker (Lab): I am sorry to interrupt, but is the Minister saying that it was a mistake? It was an omission; was it a mistake?

Lord Sharpe of Epsom (Con): I am saying it was an omission. I am not saying it was a mistake, because I do not know whether it was, but it was an omission. I think there is a difference.

As things stand, opportunities to take photographs are being missed. This means that matches to crimes the person may have committed in the past or may commit in the future are not made. As the noble Lord explained, these amendments specifically intend to probe the necessity and proportionality of the provisions in proposed new subsections (1H) and (1I) of Section 64A of PACE. These provisions cover occasions when the police have been notified of a conviction in another country that has an equivalent offence in England and Wales. Where there is no photograph on file, or it is of poor quality, police will now be able to ask an individual to attend a police station to have one taken for the purposes of preventing or detecting a crime. To ensure appropriate oversight, this will require authorisation at the minimum rank of inspector.

As I said at the start, these provisions simply align the police's ability to take photographs in certain circumstances with provisions that already exist for DNA and fingerprints. In that sense, we are therefore not breaking new ground. We are dealing here with individuals who have been convicted of a criminal offence, albeit in another country. In the interests of protecting people in this country, it is right that the police should be able to take and retain a photograph of a convicted person in these circumstances. I hope that the noble Lord agrees, particularly given the existing precedent in PACE, that this a necessary and proportionate power, and that he will therefore be content to withdraw his amendment.

Lord Paddick (LD): I thank the noble Lord, Lord Coaker, for his support. I have to say to the Minister that I am really none the wiser about the questions I asked. There is a catalogue of cases where people are convicted overseas and where it turns out that the convictions are unsafe and unsatisfactory because of the inadequate legal systems that operate abroad. Yet this is a blanket power for the police to summon and photograph anybody on the basis of an overseas conviction. The noble Lord has not addressed how there could be any safeguard against such an unsafe and unsatisfactory conviction overseas.

The Minister talked about where the police have been notified of an overseas conviction, but I do not understand what the mechanism is by which the police would be notified. So my questions remain unanswered by what the Minister said and I hope that, between now and Report, the Government will be able to answer them, otherwise we will be having another debate on Report. At this stage, I beg leave to withdraw my amendment.

Amendment 116 withdrawn.

Amendments 117 to 121 not moved.

Clause 48 agreed.

Clause 49 agreed.

Amendment 122

Moved by ***Baroness Chakrabarti***

122: After Clause 49, insert the following new Clause—

"Arrest without warrants: safeguarding

In section 24 of the Police and Criminal Evidence Act 1984 (arrest without warrants: constables), after subsection (4) insert—

"(4A) A constable exercising the power conferred by subsection (1), (2) or (3) may not require or ask the person under arrest to enter a vehicle or premises other than a police station unless at least one other constable is present in the vehicle or when entering the premises, as applicable.""

Baroness Chakrabarti (Lab): My Lords, I have the duty of opening this debate on amendments tabled by noble Lords in response to Sarah Everard's abduction, rape and murder by a man who was, at the relevant time, a serving police officer, and further to the public outpouring of revulsion and distrust arising from revelations about how the perpetrator was allowed to thrive in the police service, despite repeated concerns about his character and conduct over so many years. These emerged in particular during sentencing proceedings just over a month ago.

My Amendment 122 attempts to address the fact that as a matter of hard law—as opposed to soft guidance, practice, or anything of that kind—a lone arresting officer is currently permitted to require a person subject to arrest to enter a vehicle or premises other than a police station. This gives rise to obvious dangers of abuse of power and dangers to the majority of officers who, unlike the man in question, undertake hazardous and vital public protection duties in good faith.

I am grateful for the support of the noble Lord, Lord Paddick, and the noble Baroness, Lady Jones of Moulsecoomb. I think the subsequently tabled Amendment 123, in the name of the noble Lord, Lord Carlile of Berriew, attempts to tackle a very similar mischief. He will forgive me, I hope, if in a moment I explain why I prefer my original proposal.

My Amendment 275 requires that the inquiry into matters arising from the Sarah Everard atrocity—for that is what it is—be put on a statutory footing under the Inquiries Act 2005. I am grateful not only for the

signature of my noble friend Lord Rosser but for that of the noble Baroness, Lady Newlove, and my friend the noble and learned Lord, Lord Brown of Eaton-under-Heywood. I am also grateful for the support that the noble Lord, Lord Paddick, and a number of other noble Lords from across your Lordships' House have expressed for this endeavour.

Once more, I hope that my noble friend Lord Rosser —and my noble friend Lord Coaker on his behalf—will forgive me for preferring my precise formulation to his Amendment 281, not least because in this matter the ideal outcome must be for the Home Secretary to hear the legal and public confidence arguments and by her own volition launch a full statutory inquiry under the 2005 Act, long before the Bill before your Lordships' Committee becomes law.

Finally, I will support my noble friend Lord Rosser's Amendments 282 and 283, which seem so important given the obvious needs for better training and vetting in the police service.

Amendment 122 amends Section 24 of the Police and Criminal Evidence Act 1984 governing the powers of police constables who arrest without warrant. It would prevent a police officer in or out of uniform from requiring an arrested person to

"enter a vehicle or premises other than a police station"

unless or until a second officer is in attendance. They would still be able to restrain the arrested person to prevent an escape if so required and, if necessary, to seek bystander assistance in so doing. However, there would be no question of a sole plain-clothed or uniformed officer driving off with an arrested person. This clear and simple change to our law must be better for the safety of all citizens and constables alike.

We now know that the first phase of the hideous abuse of power against Sarah Everard perpetrated by a predatory, murdering rapist was that he went hunting for a young woman under the cloak of dusk and draconian lockdown laws. He persuaded Sarah that he was arresting her under suspicion of breaching those same lockdown laws—something, by the way, that should require those laws being perhaps amended or repealed. While some senior voices in policing had the gall to suggest that she and other women are somehow too naive or compliant, and others have tried to suggest that we ought to perhaps flag down traffic, demand to speak to the control room on an officer's radio or resort to private sector safety apps on our own mobile phones, it seems that no amount of new guidance to either citizens or constables can substitute for a clear and well-publicised change to primary legislation that everyone can understand.

8.45 pm

They will forgive me, I hope, in the spirit of anxious scrutiny and rigorous legislative debate, but Amendment 123, in the name of the noble Lord, Lord Carlile of Berriew, and, once more, the indefatigable noble Baroness, Lady Jones of Moulsecoomb, fails, in my view—or stumbles, at least—at the clear, simple and understood-by-everyone tests. Unlike Amendment 122, Amendment 123 attempts to protect only self-identifying women and apparent child arrestees from single male constables. This, it seems to me, creates various practical problems, not least in the context of so many young people aged between around 15 and 20, who may or may not present as just below or above 18. Let us bear in mind that this is about on-the-street powers, not the more careful evaluations of age and so on that are possible and vital in the police station and further on into the criminal justice process.

Furthermore, young black and gay men, protesters, the elderly, non-English speakers and people with any number of disabilities have their own reasons, perhaps, to fear getting into a car without a second person being present. A single male officer could also, it seems to me, have reasonable concerns about being required to transport a potentially dangerous male arrestee while driving and without support. So, I believe that Amendment 123 potentially risks breaching Articles 5 and 8 of the European Convention on Human Rights when read with the non-discrimination provision of Article 14, and for no obvious practical policy justification. Indeed, the requirement that the second officer must be a woman may at times be impractical and of no particular benefit. The protection from abuse in my simpler proposal comes with the presence of a second officer, not their sex.

A further problem, perhaps, with the overengineering of Amendment 123 is that it is capable of rendering an otherwise perfectly lawful arrest unlawful if there are subsequent arguments over conditions (1)(a), (b) or (c) relating to new proposed on-street rights of the suspect to make phone calls and potentially wait for a friend to arrive for up to 30 minutes or such other reasonable time. This kind of thing seems to me much more appropriate for the police station and would no doubt lead to a great deal of litigation as to whether arrests had been rendered unlawful, and consequent damages for unlawful arrest. I prefer the simpler Amendment 122 as more appropriate for primary legislation. Under my proposal, an arrest can be and remain completely lawful, but no one is to be placed in a vehicle or non-police station premises until a second officer arrives. This will protect citizens and lone officers, regardless of sex, gender or age.

Amendment 275 would require the Secretary of State, within one month of the coming into force of any parts of the legislation currently under scrutiny, to instigate a statutory inquiry under the 2005 Act into the matters arising from the abduction, rape and murder of Sarah Everard. It would identify the lessons to be learned for the professional culture, funding, vetting and organisation of policing, the prevention of violence against women and girls and the investigation and prosecution of misogynistic crimes. This inquiry would be chaired by a senior woman judge or senior woman retired judge and a supporting panel of people of appropriate experience.

Not one but two purely administrative reviews or inquiries have been announced by, first, the Metropolitan Police Commissioner and then the Home Secretary. Forgive me, but no process commissioned by the commissioner from inside the Metropolitan Police can hope to stand equivalent to the statutory independent Stephen Lawrence inquiry, chaired by the late Sir William Macpherson in the late 1990s. The task of once more rebuilding trust in our police service, this

[Baroness Chakrabarti]
time for women in particular, deserves no less. Sarah Everard's murder came after years of the most shameful attrition rates in the investigation and prosecution of crimes against women. Nothing short of a Lawrence moment will do.

Further, it seems to me that we must learn from the difficult experience that the noble Baroness, Lady O'Loan, had in chairing the Home Office review of the Daniel Morgan case and the excoriating statement she published in June. She spoke in terms of being hampered by her non-statutory status and inability to compel the Metropolitan Police in particular to provide witnesses, documents and co-operation. So, a fully statutory judge-led inquiry is vital not just to the public's and in particular women's confidence that these matters are being treated with the seriousness they deserve, but to ensure that the inquiry has the powers to compel co-operation that are sadly but clearly required.

As my noble friend Lord Rosser has signed Amendment 275, in my name and those of the noble Baroness, Lady Newlove, and the noble and learned Lord, Lord Brown of Eaton-under-Heywood, I do not propose to enter into too much detail about why I prefer my amendment to his Amendment 281. On the one hand, his is a little too prescriptive about the terms of reference for an inquiry that should be led by a judge, in close consultation with both the grieving family and so many stakeholders; on the other, it is perhaps not quite sensitive enough to replicate Lawrence in being judge-led or making specific reference to the death of Sarah Everard as its catalyst. I hope that my noble friends will agree that we all want the Government to respond to good sense, practical law and public opinion, which sometimes all march in step, in giving the inquiry already announced by the Home Secretary full statutory force under the 2005 Act.

Finally, I commend my noble friend Lord Rosser, in his absence, on his Amendments 282 and 283, which go to what seems to me to be the obvious need for far better training and vetting for our police service, in the light of a number of recent scandals, from a woman's point of view.

The rule of law is a fragile thing, even in a supposedly mature democracy such as ours. The police represent the thin blue line that, alongside our courts, exists to maintain that essential value. While I have spent a lifetime arguing against knee-jerk legislative responses, even to terrible crimes, when those same crimes expose genuine chasms in law and practice and the most heinous institutional dereliction of public duty, we as legislators would also be derelict not to respond. I beg to move.

Lord Carlile of Berriew (CB): My Lords, it is a genuine privilege to follow that eloquent introduction to this group of amendments by the noble Baroness, Lady Chakrabarti. I make it absolutely clear from the outset that, for me, this is no competition between amendments: we are absolutely on the same page, in the same chapter and in the same book. In my view, it would be inexcusable for any Minister to reject these amendments on the grounds that they are not sufficiently well drafted.

The noble Baroness and I are both Back-Bench Members of your Lordships' House; neither of us is a parliamentary draftsman. Yes, we are perfectly capable of drawing up a basic amendment or new clause and of obtaining advice elsewhere, as I am sure we both have. What we both trying to say, however, is that there needs to be a solution to the fear that now exists among young women about lone male police officers. It is a solution that the Government have to produce and that parliamentary counsel has to draft and put in a form that will be clear both to women and to the police.

Our feelings of sympathy for the family and friends of Sarah Everard are in no way diminished by the passage of time. Indeed, it is vital that we should keep this story running until we reach a satisfactory ending. If I may be forgiven for putting a personal slant on this, we are fortunate enough to have five daughters. One is a young professional woman, single, living with friends in a shared flat in Clapham, just like Sarah. She goes out with her friends or on her own and walks across the common, just like Sarah. She walks home when she feels like it and is obviously responsible in the way that she approaches her journey, just like Sarah. And she was brought up absolutely to trust the police, just like Sarah.

All those assumptions have been smashed on the ground as a result of this case. I am sure that we are not the only family who, for obvious reasons, sit up at night looking on Find My Friends, worried about the whereabouts of our children—although they tell us now that they are worried about our whereabouts and use Find My Friends for that purpose. We are genuinely concerned as they go about their lawful lives day and night. We have taught them the basic conventions of good self-protection and safety but, of course, one of the basic tenets of that domestic advice was that you can always trust a police officer: if something goes wrong and you can see a police man or woman, turn to them; they will see you right. We and they are now shocked to the core by the number of cases of police sexual misconduct that have come to light. This case is the very worst of the very worst, but it does not sit in a category all of its own. More than 70 incidents of police sexual misconduct, almost all by male police officers, have now come to light and been investigated to a greater or lesser extent.

Sarah Everard should, of course, still be alive and free to come and go as she wishes. In her death, she should not have to be remembered for the unspeakable things that happened to her, to which the noble Baroness referred—for the abuse of her person when alive and the desecration of her body in death. She must not be seen to have died in vain. It is our duty, in both Houses of Parliament, to take the appropriate steps to demonstrate to the world at large that Sarah Everard did not die in vain and that other young women—other women—will be protected from such events so far as is possible. That is our responsibility.

9 pm

I fear that I had a fairly naive view of the accountability of the police—particularly, that their accountability was reliable and to be trusted. We know now that

when they prefer to file misconduct in the drawer labelled "under the carpet", they have been able to do just that. They have been culpably slow on the uptake when issues have come to light of the kind illustrated by what we know of Sarah Everard's killer.

In my view, her death has shown that police leaders do not understand fully the demands and necessity of the level of accountability to be taken by highest ranks. What issue can anyone think of, beyond this one, that would lead to the resignation of a chief police officer? Surely this is it. The person involved may not be personally to blame—they may be a very good person—but nevertheless the buck has to stop somewhere, and it has not yet.

I am also concerned about the ethical issues behind this case. In my view, it raises profound ethical issues about behaviour and habits—everything from the tweeting of junior officers to the leadership of senior officers. At one time I chaired something called the London Policing Ethics Panel. I have been waiting in vain for our successors on that panel to take up the issue of the ethical matrix within which Sarah Everard's death is being treated. When I looked on its website yesterday, it was not even mentioned as a live issue. There are police ethics panels all over the country. What is the point of them if they do not immediately pick up independently the baton offered by cases such as this?

The operational response has already been mentioned by the noble Baroness. It is wholly inadequate. As I understand it, the response of the Metropolitan Police is to offer a single call on the telephone of the officer who purports to make the arrest or on a number given by him. It is a proposal that the killer of Sarah Everard, if he had had to follow it, could easily have circumvented without any difficulty whatever. In my view, that response shows that the senior leadership of the Met, however well motivated—this is not intended as personal criticism—is simply not fit to mark its own homework. We need an inspection, as has been described. Above all, we need to create something that is at the core of what police officers think in their continuing training and is fully understood by women.

I think the noble Baroness, Lady Moulescoomb, and I probably tabled these two amendments, which are very different, at about the same time. They appeared on an amendment paper at about the same time, and my view was, "Let's leave the options, because the final wording is the responsibility of them down there— the Government—to resolve, not us". My amendment started its life in the pen of a young, female lawyer—someone I know well—who approached me. We worked on it together to try to produce a codifiable system that would guarantee the protection of women. While I regard my amendment as workable, I would welcome anything better and would be delighted to work with Ministers, as I am sure the noble Baroness would, to produce it.

I and others, including all those who signed these amendments, are determined that there should be a new law that women facing lone male police officers should understand: well advertised, well publicised, ubiquitously known. Above all, it should be a new law that the police would regard as absolutely core learning—something they would be reminded of frequently. When I was chairman of the London Policing Ethics Panel, I used to go on night patrol with the police from Stoke Newington police station. I was present at the going on shift meetings they used to have. It is the sort of law that police officers should be reminded of at those meetings, when some of the junior officers were deployed to tell the more senior officers what they were doing on that shift. It should be second nature to the police. Only if we take measures like that will Sarah Everard's memory truly be respected. Only then will our daughters be able to have confidence in the police, day and night.

Lord Hunt of Kings Heath (Lab): My Lords, I will speak to my Amendments 281 and 282, which concern police culture and police training. I say at once that I agree with my noble friend that the woeful police response, which the noble Lord, Lord Carlile, emphasised, sums up a real issue about culture that I do not see being tackled cohesively.

I understand why my noble friend favours her amendment because she wants an all-embracing Lawrence-type inquiry. I can see the strength of that. The benefit of the amendment that my noble friend Lord Rosser and I have signed is that it focuses on the culture of the police, which is a very important facet.

I was very struck by HM Inspectorate's report, *Police Response to Violence Against Women and Girls*, which showed woeful inconsistency between the way police forces conducted themselves. The inspectorate highlighted that, at the level of individual cases, victims reported hugely different responses depending on which call handler they spoke to. Some were very sympathetic, others made the victim feel that they were not being believed. At force level, there were hugely unexplained variations about how forces used their protective powers and orders at their disposal. At local partnership level, the roles and responsibilities for partners working together in a multiagency safeguarding arrangement varied considerably. At the national level, actions to improve police responses were split over multiple government strategies. This surely has to be addressed if we are to make real inroads into these deep-seated problems about violence against women and girls.

Behind this woeful inconsistency, lack of leadership and lack of priority lies a great cultural impediment in so many of our police forces. I know that the Minister has commented before on the performance of her own police force, Greater Manchester Police, but I was struck by the *Manchester Evening News* investigation into the force last December. She might not want to comment on it and she might think it is not accurate, but it looked into the primary reason why the force missed 80,000 crimes last year. As noble Lords know, this led to action being taken, new management and a new chief constable, but what the *Manchester Evening News* said is that it discovered a tendency for

"obfuscation, denial, secrecy and an instinct to defend the indefensible",

taking

"misleading and inaccurate statements, denial of official criticism and legal stonewalling; police officers fearful to report failure and those attempting external scrutiny being brushed off."

As the article says:

"Understanding and fixing the causes and solutions of what was dubbed a 'rotten' culture four years ago will … be central to that".

[Lord Hunt of Kings Heath]
I do not want to tar every police force with Greater Manchester's brush, but lying behind that are major issues about how the police conduct themselves, which is very relevant to our debate.

I was interested in the interview with the former Justice Secretary, Robert Buckland, in the *New Statesman* on 27 October. Commenting on the Sarah Everard case, he said that instead of being "defensive", senior officers must be "constantly vigilant" about weeding out dangerous officers and supporting those who need to improve. He said:

"Leadership is all about being honest and there will be times when the police have to own up."

Where are the signs that most police forces and most police leaders understand that? I do not think there are many signs at all.

Then there are the comments of Sir Tom Winsor, Chief Inspector of Constabulary, to the Commons Home Affairs Select Committee recently. He warned of a culture of colleague protection. He said that forces needed to be "much more assiduous" in throwing out probationary officers who had a fondness for violence or exercising power, exhibited misogyny, racism or homophobia, or showed a lack of maturity and judgment.

Why on earth did he have to make that comment in the first place? Why on earth do police forces not exercise a considerable degree of vetting over probationary officers at that crucial first stage? He went on to say—and this is controversial—that professional standards units, which countered corruption, were often not staffed with the best people, which meant that substandard officers, whom he referred to as

"cancerous growths within the force",

were not identified or pushed out. He gave the example of a group of male officers in the locker room who did not challenge or report two colleagues who boasted of picking up a female assault victim and taking her home, where she was raped. The pair were ultimately prosecuted but nothing happened to the officers who did not report them.

I rest my case. There are so many examples of a really damaging culture. We can see this being played out in relation to this awful, horrendous number of crimes against women and girls. We can change the law. We can do all sorts of things like that but until we change police culture, I do not think we are not going to have the effect we need.

I like both amendments and clearly, on Report there will be an attempt to composite them—if I may use that word, which my noble friends here will well understand and not love. So far, we have heard weasel words from the chief police officers. There is little indication that they understand that the culture they lead has got to change. I very much hope that this House, through our debates on this Bill, will be able to influence a change of direction.

Baroness Jones of Moulsecoomb (GP): My Lords, this issue of trust in the police is an interesting one. Trust has been eroding for many years now. Two cataclysmic events in the past couple of years have really made a difference. The first—not chronologically—is the murder of Sarah Everard and the way that the police policed the vigil and the ludicrous comments that solo women should hail a bus if they feel in danger and so on. Really, the whole police force needs some serious attention and serious guidance, and perhaps even a new police commissioner. That might be a very good idea.

The other thing was that during the pandemic we had law and we had guidance and then we had what the Ministers were saying at regular press conferences. That got very confusing for the police, to the point where they were trying to move people on for sitting and resting during a walk. That did not help the police and that was not the police's fault. That was the Government's fault for not being clear about instructions.

I support all the amendments in this group and agree that we need a statutory, judge-led inquiry. It cannot be allowed to drift past without real challenge by a judge. You have to remember that this was not somebody pretending to be a police officer: this was a real police officer abusing his position to abduct, rape and kill. The fact that he had a reputation already in the police is extremely damaging. This is a culture that we all know exists, and it should be fixed.

On Amendment 282, I have spoken many times here in your Lordships' House about training for the police on domestic violence, because they have a reputation for assaulting quite a lot of the people they live with. We have to make sure that they get this sort of training. As far as I know, only about half the police forces in England and Wales have so far had domestic violence training. If they do not have that training, it really cannot be argued that they know what to look for and how to treat victims of abuse, so that is extremely valuable and important.

9.15 pm

I will say one last thing on the Sarah Everard vigil. If we could only find out who authorised the way that the police behaved, that would be really good because it was appalling. There was one photograph of a girl flat on her stomach, being held down by four police officers: how could it have looked any worse for the police? A judge-led inquiry is the least we can expect from this horrendous crime.

Baroness Blower (Lab): My Lords, briefly, I speak in support of Amendments 122 and 275 in the name of my noble friend Lady Chakrabarti—who has already made an eloquent and erudite contribution, as the noble Lord, Lord Carlile, said—and other noble Lords. I will also echo elements of the noble Lord's contribution.

Amendment 122 encapsulates and incorporates precisely the advice that I would now want to give to my own two daughters and, in due time, my own grand-daughter, in the light of what we all know happened to Sarah Everard. There has been talk of flagging down buses or otherwise seeking assistance, in the case of a lone arresting officer seeking to require a person subject to arrest to enter a car or, as the amendment says

"premises other than a police station".

I simply do not find such advice or suggestions helpful or sufficient. These suggestions would not, I am afraid, assuage the well-grounded fears of many women in the wake of recent events and revelations about the behaviour of some police officers. The amendment, however, sets reassuring and necessary parameters, and I am in full support of it. We must use this legislation to afford clarity and safety to women.

With regard to Amendment 275, again, I believe that action taken hitherto by Her Majesty's Government is insufficient and that a statutory inquiry, for all the reasons advanced already in this debate, is needed. It is needed to learn lessons but also to give a signal that we will now begin to restore the faith and trust in the police which has been so manifestly and extensively damaged.

Lord Paddick (LD): My Lords, I have to tell the Committee that I find these debates very difficult. I was a police officer for over 30 years and, for part of that time, a senior police officer. Like the overwhelming majority of hard-working, decent and honest police officers in this country, I find it very difficult to hear this sort of debate and to say the sorts of things that I will say now. I do not have the same sympathy for senior police officers who are failing in their leadership. I recall speaking privately to a former Commissioner of the Metropolitan Police and asking that individual, "What on earth is going on at the moment?". He said, "Well, Brian, I think when the police come under pressure, diversity goes out of the window". The police have been under a lot of pressure because their resources have been reduced, because knife crime has become an epidemic and because of the horrific situations we find ourselves in.

As the noble Lord, Lord Carlile, said earlier, it is not just about Sarah Everard. In the last two weeks we have had a Metropolitan Police officer charged with rape and another with indecent images of children. There were a whole series of cases that point to a real issue with the culture in the police service, and in the Metropolitan Police in particular. So I completely understand and support the principles behind the amendments, and I have indicated my support for Amendment 122 by adding my name to it.

I want to bring some real-world practicality to bear on the amendments. Amendment 122, in the name of the noble Baroness, Lady Chakrabarti, suggests that a police officer

"may not require or ask the person under arrest to enter a vehicle or premises other than a police station unless at least one other constable is present in the vehicle or when entering the premises".

Not only does that go to the heart of the Sarah Everard scenario, but it is entirely consistent with best practice for the protection of the person arrested and the arresting officer. I should explain that in the police a person who has been arrested is called a prisoner, and I will do the same.

First, it does not specify that the provision should apply only to a woman or a child, as Amendment 123 does. The noble Baroness pointed out how there might be legal difficulties with that but, as she said, what if the arresting officer is gay or the person arrested is a gay man? Where would the protection be for the arresting officer against allegations of inappropriate behaviour in those circumstances, or the protection for the arrested person, if we restricted it only to a woman or a child? As the noble Baroness said, a black person may also have fears about getting into a vehicle when there was only one officer present. From my own professional experience, I have lost count of the number of reports of black people who have been beaten up on the way to the police station. The issue that we need to address here is male violence perpetrated by police officers, whether directed at a male or a female prisoner, although women may understandably feel more threatened with a lone male arresting officer than a male prisoner would. Amendment 122 would provide protection for the police officer and for the person arrested, whatever sex or sexuality they may be.

Secondly, it is very dangerous for a lone police officer to drive with a prisoner in the car. The prisoner could attack the officer while driving even if handcuffed, as we saw with the tragic death of police Sergeant Matt Ratana, who was shot in Croydon police station by a handcuffed prisoner. Ideally, police officers should patrol and respond in pairs wherever possible, and at least one of those police officers should be female, but that is not always possible. Ensuring that two police officers are present is an important and almost always adequate safeguard.

As the noble Baroness, Lady Chakrabarti, said, and as the Minister said in answer to an Oral Question on Thursday, only about one-third of police officers are female—even fewer, I believe, in the Metropolitan Police—so the practicality of requiring a female officer to be present, as Amendment 123 demands, may not always be possible, and in some cases it would not be appropriate to release the prisoner if a female officer could not attend the scene.

I turn to the other aspects of Amendment 123. Giving the person arrested

"an immediate and reasonable opportunity to contact another person"

could have serious officer-safety implications. I myself have been subject to attempts to rescue a person that I had arrested, albeit that it was in Brixton a few months before the Brixton riots. There is a real danger that the arrested person could summon people to effect her escape from police custody. And, as I think the noble Lord, Lord Carlile of Berriew, alluded to, the problem with the arresting officer providing a telephone number purporting to be the number of a police station or control room, were he to have criminal intent, is that he may have an accomplice on the telephone number given to the prisoner.

Long delays between arrest and arrival at the police station, in my professional experience, expose both the arresting officer and the person arrested to danger. It may not always be possible, for example if the prisoner is violently resisting arrest, either to explain her rights to her or to provide them in writing. Again, in my professional experience, people do not want to be arrested by the police and are unlikely to attend a police station if allowed to go free. I completely understand the sentiments behind both these amendments.

[Lord Paddick]
I have serious reservations about the practicality of Amendment 123, but I have no hesitation in commending Amendment 122 to the Committee.

I also strongly support Amendment 275, which calls for a Macpherson-type inquiry, under the Inquiries Act 2005, into the Sarah Everard atrocity and all the surrounding issues. This is something akin to the issues of public trust and confidence around racism that came out of the tragic death of Stephen Lawrence and that the Macpherson inquiry looked to address. We are facing an equivalent situation here in terms of misogyny and violence against women and girls. It is absolutely appropriate that we have a similar inquiry to the Macpherson inquiry to deal with that. I prefer Amendment 275, for that reason, to Amendment 281.

I also support Amendment 282: mandatory training for all officers, not just recruits, on violence against women and girls. Of course, culture is the most difficult thing to change, but training is an important part of changing that culture. I also support Amendment 283, with the caveat that I believe the vetting procedures used in the recruitment of all police officers need to be urgently reviewed, not just for officers transferring between forces.

The noble Baroness, Lady Jones of Moulsecoomb, talked about the Sarah Everard vigil. I will refer to this at length when we come to the public order parts of the Bill, but I was an advanced, trained senior police officer in public order. I read the Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services report into the Sarah Everard vigil. How HMIC came to the conclusions that the police did everything right, on the basis of what it wrote before it got to that conclusion, I have no idea. The evidence in that report is completely contrary to that conclusion, in my professional judgment. So, there is something seriously wrong here: how can we change the culture if we have that sort of whitewashing by HMIC?

The noble Lord, Lord Carlile of Berriew, raised issues around police leadership and police culture and what I have described before as a culture of cover-up rather than own-up. I have always believed the way to build public trust and confidence is, when there is misconduct, to show you are ruthlessly dealing with it rather than trying to cover it up to protect the reputation of the force. I will say more about that when we come to a later group on the duty of candour. The noble Lord is absolutely right: there is a failure of leadership at the top of the police service. It makes me very uncomfortable to stand here and say that, but it is something I felt when I was in the police service and continue to feel now. I absolutely support these amendments.

9.30 pm

Lord Coaker (Lab): My Lords, it is getting quite late in the evening, but I think everyone here would agree that this has been a fantastically high-quality debate on one of the most crucial issues facing our country today. I hope that many members of the public, let alone our fellow Peers, will read the brilliant contributions of my noble friends Lady Chakrabarti, Lord Hunt and Lady Blower, the noble Lords, Lord Carlile and Lord Paddick, and the noble Baroness, Lady Jones —I think I have mentioned everyone.

This really is an important debate, and at its heart is the trust and confidence the public of this country have in the police. We will not change attitudes and these issues with which we wrestle until we can ensure that the public trust the police. It is really hard, and it must have been difficult for the noble Lord, Lord Paddick, to say some of the things he did, but that is the reality and the police have to accept it. We all agree that the vast majority of police officers are good and do their duty, et cetera, but it does not alter the fact that the statistics tell us that there is a serious problem. This is not about blaming anybody; it is about saying what we are going to do about it.

I completely agree with the noble Lord, Lord Carlile, that this is not—and nobody has suggested it is—a competition of amendments. From his experience, my noble friend Lord Hunt knows that, between all noble Lords, we should be able to devise a set of amendments on which we all agree and which have, at their heart, a desire to improve the policing of this country and restore the confidence and trust of the British people. That is what all these amendments are about.

One or two issues arise from them. There has to be a statutory inquiry. I frankly cannot believe that the Government would resist that. There is just incredulity, because it just makes every sense. As my noble friend Lady Chakrabarti laid out, that is why the Inquiries Act was passed, and successive Governments have used it as the vehicle to deal with serious problems to which you want a response that people can agree with and have confidence in. You can set up other inquiries, which will all be well meant and do a good job, as the noble Baroness, Lady Casey, and others will. This is not to say that they will not do a good job, but I say to the Government that at the heart of this, public confidence is everything. It is the holy grail. It is the only vehicle that people will think of as correct. If you go to the supermarket, down the pub or to the sports club, or if you walk down the road and say it is a public inquiry led by somebody of stature, in whom people can have confidence, it will take you over the first hurdle, because people will believe its conclusions, whatever they are. All of us find it unbelievable that the Government are resisting this. Whichever amendment we choose as the best, surely we can agree on the principle of a statutory inquiry. It is certainly something to which we will have to return on Report, if the Government resist.

Why am I and the Chamber so exercised about this? We have heard very eloquently of the horror of the Sarah Everard case. Every now and again there is some horrible crime that unites us all in its horror. There is always something that ignites passion and fury within the public and the political establishment that demands action and that something more is done, beyond the normal "This is shocking, this is terrible". This has to be a lightning rod that says, "No more, we're going to change". It cannot go on, and the Minister understands and knows this.

I googled it again. Time after time we hear it. This week, a serving Metropolitan Police officer was charged with rape. Channel 4's "Dispatches" reports

that 2,000 police officers have been accused of sexual misconduct over the past four years, which includes over 370 accusations of sexual assault and almost 100 of rape. A mugging victim came forward to the BBC with her experience when she reported her attack. The police officer on duty asked if he could take her out on a date, whether she was single, what she wore to work and whether he could take pictures of her. According to the BBC report, he was so confident that there would be no repercussions for his behaviour that he did it in writing on his official police email account. It is unbelievable and shocking at the same time.

I know Sue Fish because she is the former chief constable in Nottinghamshire, the area which I represented for a number of years. She said:

"This isn't about an individual officer. This is about a prevailing culture within policing."

We ought to be able to find a way around this. Notwithstanding the other amendments tabled by my noble friend Lady Chakrabarti, Amendment 281, tabled by my noble friends Lord Rosser and Lord Hunt, and the noble Baroness, Lady Jones of Moulsecoomb, talks about a statutory inquiry to look at this issue of culture. Obviously, there is a need for some sort of statutory inquiry into what happened to Sarah Everard, but we must get to the root of what is happening with respect to the culture in the police. It is not everyone, but it is a significant number of police officers, which is why in Amendment 281 we have said that there must be a statutory inquiry

"into the culture of policing and the prevalence of violence against women and girls",

to include members with specific

"expertise in the prevention of violence against women and girls"

and various recommendations to be made to it, and so forth and so on.

One thing I find here is that all noble Lords read the amendments, so I will not repeat everything that is in the amendment, but, if we cannot change the culture, we have a real problem. I will tell you what I think. The vast majority of police officers are sick of it and want something done about it, and the vast majority of police staff want something done about it. They are looking to our Government to do something about it, working with senior police officers. We talk about leadership, but we have a leadership role as well. It goes back to the signposting of a statutory inquiry as being so important—because that is the lightning rod that you hold up to the public to say, "We get it, we understand it, we realise why you're so upset about it, we're upset about it and that's why we're going to use a statutory inquiry to do something about it".

I know that I am getting passionate about it, but if we resort to a calm, reasonable, almost closed-shop type of inquiry that has a look at it but does not have that sense of urgency, that sense that this is a moment when we need to grasp this issue, we will fail. We talk in later amendments about vetting and training. All those things are crucial, and something must be done about them.

Let me say this as well. I know that the Minister gets this, because she has already made a commitment to look at recognising violence against women and girls as serious violence, and to look at how it is assessed. That is a really important step forward, but the Government have the power to do more. They must not waste this opportunity, out of the horror of what happened in the Sarah Everard case, and in the horror of all the cases that we read about, all the inquiries recently by Zoë Billingham that talked about the "epidemic", and all the recommendations in that report.

So what are we going to do now which shows that this time it will be different? Will we not have a statutory inquiry, however it is organised and whatever its terms of reference, which does something about what many people in this country are looking to their Government to do something about?

We want trust and confidence in the police. We have to find a vehicle by which the concerns that are raised in this House, the other place and across the country, are recognised, realised and something is done about them. A statutory inquiry surely has to be one way of doing that.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I am most grateful to the noble Baroness, Lady Chakrabarti, and the noble Lords, Lord Coaker and Lord Carlile, for raising the very important issues arising from the terrible abduction, rape and murder of Sarah Everard, which has appalled us all and, as the noble Lord, Lord Carlile, says, time will not fade; every time our daughters leave the house it reminds us. It is imperative that Sarah's family and the public understand how a police officer was able to commit such a terrible crime so that we can stop it from ever happening again and restore to our police forces that trust and confidence that the noble Lord, Lord Coaker, talked about.

As noble Lords will be aware, my right honourable friend the Home Secretary has recently announced her intention to launch a two-part non-statutory inquiry—I will go on to talk about that—into the circumstances surrounding Sarah's murder. The first part of the inquiry will look at Sarah's murderer and his tenure at the Metropolitan Police leading up to his conviction, as well as assessing any missed opportunities to hold him to account for his conduct.

The second part of the inquiry will look at any specific issues raised by the first part, which is likely to include wider issues across policing, including, but not limited to, vetting practices, professional standards, discipline, and workplace behaviour. A lot of noble Lords tonight have talked about the culture of the police, not just in the Met but all over the country. This is the opportunity to look at any systemic flaws in vetting or issues around policing culture that the noble Lord has highlighted in his amendment. We expect that the separate inquiry established by the Metropolitan Police Commissioner, being led by the noble Baroness, Lady Casey, into the culture and standards of the force, will feed into part two of the inquiry established by the Home Office.

I very much recognise the arguments around establishing an inquiry under the Inquiries Act, but I also understand the critical need to provide reassurance to the public at pace. A non-statutory inquiry satisfies the need to move at pace, allowing greater flexibility,

[Baroness Williams of Trafford]
and it can be tailored to the issues. We expect that the police forces for which Sarah's murderer worked will all be witnesses to, and comply with, the inquiry. In February 2020 we amended regulations—this is an important aspect—to ensure that police officers are under a duty to co-operate as witnesses with investigations, inquiries and formal proceedings under the revised standards of professional behaviour. They are guilty of a disciplinary offence if they fail to do so.

The Home Secretary has also been clear that the Government will, following consultation with the chair, convert the inquiry into a statutory inquiry if it is determined that it cannot otherwise fulfil its functions. The Government are aiming to appoint a chair shortly and can then confirm the terms of reference. An update will be provided to the House at that point.

In relation to immediate concerns about the vetting of police transferees, the College of Policing updated its guidance this year having taken into account a recommendation from HMICFRS's 2019 report *Shining a Light on Betrayal: Abuse of Position for a Sexual Purpose*. Forces should now assess details of transferees' performance, sickness record, complaints, business interests, notifiable associations and corruption intelligence. Furthermore, the inspectorate is now undertaking an urgent thematic inspection of force vetting arrangements following a request from the Home Secretary. This will specifically look at whether forces are vetting transferees in accordance with the guidance.

9.45 pm

On the broader issue of violence against women and girls, there is sufficient evidence of the problem, most recently set out in the policing inspectorate's report, and the Government are absolutely committed to tackling these issues. Our approach is set out in the *Tackling Violence against Women and Girls Strategy*, published in July. This will drive change in the response to crimes against women and girls and sets out our ambition for a whole-system approach, focusing on prioritising prevention, supporting survivors and pursuing perpetrators, underpinned by a stronger system. This will be supported by a domestic abuse strategy to be published later this year.

On mandatory violence against women and girls training for all officers, the College of Policing's new police education qualifications framework is a very important step in raising standards in policing, including in relation to tackling violence against women and girls. The curriculum for entry covers several areas addressing violence against women and girls, including vulnerability and risk, victims and witnesses, public protection and evidence-based policing.

Additionally, the College of Policing has developed a range of other training products, including the Domestic Abuse Matters programme, which has been delivered to 29 forces to date. We continue to work closely with the college to see what more can be done to encourage further take-up of this programme. I am pleased to say that the *Tackling Violence against Women and Girls Strategy* contained commitments for the college to publish new advice for police first responders and investigators about so-called honour-based abuse, as well as a new product which will advise police on how to respond to reports of sexual harassment in public places.

Amendments 122 and 123 seek to address the legitimate concerns of women and girls about the prospect of being arrested by a lone male officer—we had a debate about this the other day. The noble Baroness, Lady Chakrabarti, and the noble Lord, Lord Carlile, are absolutely right about the vital importance of ensuring that officers are using their powers of arrest legitimately and recognising that this case has struck a most devastating blow to the confidence the public have in the police.

Powers to arrest and detain individuals are some of the most intrusive powers that the state has, and officers must use them lawfully and with accountability. For an arrest without warrant to be lawful, a person must be committing or about to commit an offence, or an officer must have reasonable grounds for suspecting that either of these has or will occur. The officer must also have reasonable grounds for believing the arrest to be necessary—for example, to prevent an individual from causing harm, or to allow the police to investigate the offence. When it is practicable to tell a person why their arrest is necessary, the officer should outline the facts, information and other circumstances which provide the grounds for believing this is the case. As the noble Lord, Lord Coaker, said, the public need to be very clear, and the Government need to set out that clarity for them. It is also important to recognise, as the noble Lord also said, that the vast majority of police officers carry out their work with integrity to protect the public and keep people safe, but I totally understand the concerns raised by this case.

As it stands, there is no prohibition on officers arresting individuals while patrolling alone, or on male officers arresting female individuals. As I said, I completely understand that horrific events such as this raise questions in the mind of the public. The Government recognise the importance of public confidence and how this has been shaken to the core by the events surrounding Sarah Everard's murder. Police forces including the Met have issued some early guidance and reassurance for members of the public who might be concerned. Sir Stephen House, Deputy Commissioner of the Met, has said that the force will no longer allow plain-clothes officers to operate alone. That is a good start. Just last week, Dame Cressida Dick announced that plain-clothes officers will video call a uniformed colleague to confirm their identity when stopping a woman by herself.

Should individuals be concerned if they are approached by a lone officer, it is entirely reasonable under the circumstances for them to seek reassurance that they are acting legitimately. I would expect any officer receiving such a challenge from a member of the public to understand why it is being made and to take what action they can to assuage the concerns raised.

In conclusion, I welcome the opportunity afforded by these amendments—I know that noble Lords are not in amendment competition—to debate the implications of this horrendous case. We need to rebuild public confidence in the police. We think that the inquiry announced by the Home Secretary will play an important part in that process, including by

making recommendations in relation to police vetting and training. These issues, and the question of how the police exercise their powers of arrest, are being addressed in the meantime and, on that basis, I hope that the noble Baroness will withdraw her amendment.

Lord Paddick (LD): My Lords, I realise the hour is late, but there are two things I would like to mention. First, I am very interested in what the Deputy Commissioner Sir Steve House said. I do not know when he said it, but it does not seem to chime with the fact that, two weeks ago, I was challenged by a lone officer in plain clothes. That seems to be completely contrary to what the Minister said he announced.

Secondly, the Minister says there should not be an inquiry under the Inquiries Act 2005 because we need to move at speed. I can tell noble Lords that the Metropolitan Police never moved quicker on racism than when it was announced that there would be an inquiry under the Inquiries Act. It was not when the inquiry reported that the Metropolitan Police swung into action to deal with racism. It was absolutely ready with an answer as soon as that inquiry reported, because it knew what the problems were and realising that this was all going to become public in an inquiry galvanised it into action.

Baroness Williams of Trafford (Con): I note the noble Lord's points and I do not disagree with him. I ask the Committee to understand the commitment of the Home Secretary. She is deadly serious about ensuring that the inquiry moves at pace and, if necessary, converting it to a statutory inquiry if it is not meeting its commitments.

I will get the date for the noble Lord, Lord Paddick, and the Committee. The announcement from Dame Cressida Dick was on 20 October, some 11 days ago, but I will get the date on which Sir Stephen House made those comments.

Baroness Chakrabarti (Lab): My Lords, I am hugely grateful to all Members of the Committee for the substance and tone of our proceedings. I am particularly grateful to the noble Lord, Lord Carlile, who dealt with our minor points of detailed difference with such grace. If I may say so, what I really took away from his comments was the sense of a loving father speaking of his daughters and the hope that we might one day return to a moment when all our daughters and granddaughters can trust the police. I was also struck by the way he worked with the young woman lawyer in trying to bring matters forward with such urgency. I thank him so much for that.

I agree with my noble friend Lord Hunt of Kings Heath that we have to get to the culture of obfuscation and denial—understandable human instincts when we want to protect our colleagues and the service that we love. I say to the noble Lord, Lord Carlile, that if it had been a scandal of equivalent proportions at the Bar, we would feel as uncomfortable as the noble Lord, Lord Paddick, so we understand these things.

I say to my noble friends that my Amendment 275 also deals with culture, but this is not about precise amendments—this is too important for that—but about trying to persuade the Government on both of these issues, of trust and confidence on the one hand and effective change on the other, with which we are attempting to deal in this whole group of amendments. This is about trying to persuade the Government on the power of arrest on the one hand and the inquiry and the training and vetting on the other.

The noble Baroness, Lady Jones of Moulsecoomb, made such an important point when she talked about that period of lockdown and the way that that has, in a sense, exacerbated every problem in the world but also problems around the fault-lines between hard law, guidance, perceptions of the law and trust in policing and what really is the right thing. It was in that lockdown that this atrocity was perpetrated.

Of course, she was also the Member of the Committee who pointed out that, just hours or days after the perpetrator was charged, someone made the insensitive decision to police that vigil in that way. Whoever did so must have known what we were yet to find out. The noble Baroness, Lady Jones, spoke of the young woman who now features in all of the videos and photographs. We know that, subsequently, she has been stalked by serving police officers on her Tinder account. So we really are in trouble, and we are trying to respond to a really significant problem of culture and trust in policing in this country. We are not fabricating this. No one thinks that; I know that we are all on the same page.

My noble friend Lady Blower was also clear that guidance will not be enough. We have gone too far for that in relation to any of the really serious specific issues that the noble Lord, Lord Carlile, and I and others have been trying to address in these amendments.

I thank the noble Lord, Lord Paddick, for everything that he is doing in this group and on the Bill more generally. I say to him and anyone who is now feeling very concerned about and suspicious of policing in this country that there is another side. I would like to believe that the noble Lord, Lord Paddick, still represents more of what is real and true in our policing service and in our democracy built on the rule of law. I hope that we can all listen to him and heed his practical advice. The word "gallant" is used for the military; there is no equivalent for the retired senior police officers in your Lordships' House, but there are many retired commissioners and others here. But it is the noble Lord, Lord Paddick, who has been engaged with the Bill day after day and has spoken from the heart and from years of practical experience. We have to heed him. I was heartened by hearing him discuss, on Amendment 122, the approach where we do not want lone police officers driving off with arrestees, for the protection of either. That is best practice, but we now need to put that into hard law to reassure everyone and as a matter of good governance.

My noble friend Lord Coaker said passionately—and he is so right—that we have crossed a line in terms of public trust. Once lost, it is really hard to regain. That is why he made the point, again and again, that a full statutory and judge-led inquiry is part—just part—of trying to regain that trust. Can any of us imagine a Lawrence or Macpherson inquiry that was not judge-led and on a statutory footing, with all the iconography and symbolism of justice that comes with that?

10 pm

Important though those points are about iconography and public trust, there is a practical point too. That point was made by the noble Baroness, Lady O'Loan, in June. She said:

"Our work was made more difficult by the fact that the Panel was not established under the Inquiries Act … and therefore did not have the statutory powers available to such an inquiry. … At times our contact with the Metropolitan Police resembled police contact with litigants rather than with a body established by the Home Secretary to enquire into a case."

This was not just any Home Secretary but a Home Secretary who was Prime Minister during the subsequent passage of that review. That is how hard it was without those practical hard-edged powers of compulsion.

Finally, I say to the Minister that I know she feels as we all do about this dangerous moment and the importance of rebuilding trust, and of course I welcome the steps that she and her colleagues have already taken, but we must go further in both these areas. On the police powers on arrest, it has to be so clear now what we say to these young women in particular. I am sorry to Mr House and Commissioner Dick, but their guidance about videophones and so on is not going to cut through—it is not enough. We need a clear-edged change in the law of some kind that makes it clear that sole officers cannot drive off with arrestees. Guidance, words and best endeavours even from senior Met officers will not be enough.

On the speed of the inquiry—which was the basis of the counter-argument made by the Minister against it being a statutory inquiry—the Lawrence inquiry took two years; the Daniel Morgan review took eight, because of the kind of resistance that has been set out; the Leveson inquiry took one year. Inquiries can take various lengths of time but, on this issue, I am sorry to say it but the powers of compulsion will be vital for a speedy and confident review.

I am so grateful for the tone and substance of this debate and I do not believe that the Minister has slammed the door on any of the suggestions that have been made; I will go home taking some heart from that. However, if we cannot make progress, I hope that, with the assistance of others in this Committee and further across your Lordships' House, we will return to both these vital issues on Report; that is definitely our national duty at this time. With that, I beg leave to withdraw my amendment.

Amendment 122 withdrawn.

Amendment 123 not moved.

Amendment 123A

Moved by ***Lord Paddick***

123A: After Clause 49, insert the following new Clause—

"Post-charge detention of children

(1) The Police and Criminal Evidence Act 1984 is amended as follows.

(2) In section 38, for subsection (1)(b) substitute—

"(b) if the arrested person is a child, the grounds inserted into the Legal Aid, Sentencing and Punishment of Offenders Act 2012 by section (Youth remand) of the Police, Crime, Sentencing and Courts Act 2021 apply;"."

Member's explanatory statement

This amendment would bring the PACE criteria for police remand of children into closer alignment with the court remand criteria.

Lord Paddick (LD): My Lords, I rise to move Amendment 123A in my name. I apologise to the Committee. If I had had my wits about me, I would have grouped it with the previous police bail amendments. I am grateful to Transform Justice for bringing this issue to my attention and for its help and support in drafting this amendment.

The Government continue to place tighter restrictions on when courts can remand children in custody. Those are much stronger than the restrictions currently placed on the police when they decide whether to remand a child in custody to court. Court criteria, most of which do not apply to the police, include that: the child must be between 12 and 17 years of age and be legally represented, other than in exceptional circumstances; they must have been charged with a violent or sexual offence or have been charged with an offence where an adult would have received a custodial sentence of 14 or more years; or they have a recent history of absconding while remanded; or they have a history of committing imprisonable offences while on bail; and there is a real prospect of a custodial sentence for the offence in question. In addition, remand in custody must be necessary to protect the public from death or personal injury or to prevent the child from committing further imprisonable offences.

The police remand many more children in custody than the courts. In 2019, the year with the most recent data available, over 4,500 children were remanded in police custody compared with 884 children remanded in custody by the courts. Some 60% of children remanded in custody by the police had been charged with non-violent offences and only 12% of those remanded in custody by the police went on to be remanded in custody by the courts. Two-thirds of children remanded in custody by the police do not receive a custodial sentence.

In Clause 132, the Bill suggests further strengthening the restrictions on courts remanding children in custody, including that the history of breaching bail or offending on bail must be "significant", "relevant" and "recent". If detention is being considered for the child's own safety, this would be possible only if the risk cannot be safely managed in the community. It would have to be "very likely" that the child would receive a custodial sentence rather than a "real prospect". Courts would also be under a statutory duty to record their reasons for imposing custodial remand, including a statement that they have considered the welfare of the child in their decision and that they have considered alternatives.

The Bill as drafted does nothing to tighten the restrictions on the police remanding children in custody, or even to bring them into line with existing court restrictions. Amendment 123A intends to bring the Police and Criminal Evidence Act criteria for police remand of children into closer alignment with the court remand criteria. I beg to move.

Lord Ponsonby of Shulbrede (Lab): My Lords, I am very grateful to the noble Lord, Lord Paddick, for moving his amendment. As the Committee might be aware, I sit as a youth magistrate, usually at Highbury

magistrates' court. I have to say that I was not aware of the difference in the remand criteria; I should have known but I did not. I also thank Transform Justice for bringing this to my attention. The noble Lord has very thoroughly explored the differences in the number of youths remanded by the police versus those remanded by the courts. I would be interested to hear what the Minister has to say in response.

Baroness Williams of Trafford (Con): I thank the noble Lord, Lord Paddick, for raising this important issue of children remanded in custody. I quite agree that police custody is not a suitable environment for children and that they should not be detained there unless it is absolutely necessary.

The provisions introduced by this Bill will amend the "tests" set out by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, also known as LASPO, which must be satisfied before the court remands a child to custody. These are intended to ensure that custodial remand is used only as a last resort, where there are no other options and it is necessary to protect the public.

Before the courts get involved, if a child is charged with an offence, Section 38 of the Police and Criminal Evidence Act 1984 provides that the police must release them either on bail or without bail pending their appearance at court, unless one or more specified conditions apply. These conditions are that the child's name or address are not known or are not believed to be genuine; there are reasonable grounds to believe the child will not appear in court to answer bail; the detention is believed to be necessary to prevent the child committing an offence, causing physical injury, loss or damage to property, or interfering with the investigation of offences; or the detention after charge is believed to be necessary for the child's own protection or in their own interests.

I would like to reassure the Committee that there is already a degree of alignment between police bail and court bail, and the police custody officer must have regard to the same considerations as those that apply when a court is considering whether to grant bail under the Bail Act 1976.

I acknowledge the concern that many more children are remanded post charge by the police than are remanded by the courts while awaiting trial, as the noble Lord, Lord Paddick, outlined, and that this may give rise to consideration of risk-averse decision-making by the police. I do not necessarily believe this to be the case. It is important to remember that post-charge detention by the police serves a different purpose from youth remand in the courts, so it is unrealistic to expect an exact alignment of the conditions required to make decisions.

With this in mind, it is perfectly possible for the police to make a decision to remand a child post charge and for the courts to make a decision not to remand the same child to custody, and for both these decisions to be reasonable based on the evidence and circumstances before each party. In the overwhelming majority of cases, a child remanded by the police will be held for no more than 24 hours.

I also acknowledge the concern that police remand is a driver of custodial remand—that is, for example, that a court is more likely to view a child remanded by the police as dangerous. I am not aware of any data showing a causal link between police remand and custodial remand. A comprehensive evidence base comparing the circumstances whereby police bail after charge decisions are made under Section 38 of PACE would be needed, giving consideration to the threshold for grounds to refuse bail and whether custody officers have access to and apply all relevant information when making a bail decision.

Before I conclude, I take this opportunity to put on record my thanks and the Home Office's gratitude to Brian Roberts, who was the department's expert on the Police and Criminal Evidence Act. Sadly, he died last month after 50 years of public service as a police officer and then an official in the department. He is greatly missed by his colleagues.

On the basis of my remarks, I hope the noble Lord will be happy to withdraw his amendment.

Lord Paddick (LD): My Lords, I thank the noble Lord, Lord Ponsonby of Shulbrede, for his support.

I am afraid that there is a bit of a pattern developing here in the Government's responses. On the one hand, the Minister said there is "a degree of alignment" between police remand in custody of children and court remand in custody. Some 4,500 children being remanded by the police and only 884 by the courts does not sound to me like alignment.

The Minister also said a child would never be remanded in police custody for more than 24 hours. Do courts sit on a Sunday? What happens to a child arrested on a Saturday afternoon? They are going to be in custody a lot longer than 24 hours.

Unfortunately, as I say, it is becoming a bit of a theme that the Government's responses to amendments do not appear to be factually accurate. We need to review that. I am afraid I do not find the Minister's response satisfactory, and no doubt we will return to this on Report. In the meantime, I beg leave to withdraw the amendment.

Amendment 123A withdrawn.

Clauses 50 and 51 agreed.

Schedule 6 agreed.

Clauses 52 to 54 agreed.

House resumed.

House adjourned at 10.15 pm.

Grand Committee

Monday 1 November 2021

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness Fookes) (Con): My Lords, Members are encouraged to leave some distance between themselves and others and to wear a face covering when not speaking. If there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division bells are rung and resume after 10 minutes.

National Security and Investment Act 2021 (Monetary Penalties) (Turnover of a Business) Regulations 2021

Considered in Grand Committee

3.45 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the National Security and Investment Act 2021 (Monetary Penalties) (Turnover of a Business) Regulations 2021.

Relevant document: 13th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, in moving that the draft National Security and Investment Act 2021 (Monetary Penalties) (Turnover of a Business) Regulations 2021 be approved, I will speak also to the draft National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021, which were laid before the House on 6 September this year. The commencement date for both SIs is 4 January, which is the same date as the full commencement of the National Security and Investment Act 2021.

Before I turn to the detail of the SIs, I will say a few words to remind the Committee of the purpose of the National Security and Investment Act and why it is vital for the UK's security. The UK economy thrives as a result of foreign direct investment. Over the past 10 years, more than 665,000 new jobs have been created as a result of more than 18,000 foreign direct investment projects. However, as I am sure your Lordships will agree—and indeed as the House demonstrated through its agreement to the Act—an open approach to investment must include appropriate safeguards to protect our national security and the safety of our citizens.

The NSI Act therefore provides the Government with updated powers to scrutinise and intervene in acquisitions to protect national security, as well as to provide businesses and investors with the certainty and transparency they need to do business in the United Kingdom. The Act establishes a call-in power for the Secretary of State to scrutinise qualifying acquisitions, a voluntary notification option for firms which wish to gain clarity on whether the Secretary of State will call in their acquisition, and—the subject of these regulations—creates mandatory notification requirements in 17 sensitive sectors of the economy where it is considered that national security risks are more likely to arise.

Starting with the draft maximum monetary penalties regulations, this SI sets out how the Secretary of State will calculate a business's turnover when calculating monetary penalties resulting from non-compliance. We generally expect compliance with the Act to be high and the need for the Secretary of State to issue penalties to therefore be rare, but it is important that the Act comes with sufficient deterrents to non-compliance.

This SI is laid under the delegated powers pursuant to Section 41 of the Act. Sections 32 and 33 create offences of completing a notifiable acquisition without approval and failing to comply with an interim or final order. Both these offences can result in the imposition of a monetary penalty.

The maximum fixed penalty that can be imposed on a business for an offence under Section 32 or 33 is the higher of 5% of the total value of the turnover of the business and £10 million. The maximum amount per day for a daily rate penalty that can be imposed on a business for an offence under Section 33 is the higher of 0.1% of the total turnover of the business and £200,000.

With these regulations, we have ensured that global turnover is taken into account when calculating the total turnover, so that no efforts to get round the penalties—for example, through changing accounting approaches—will be successful. These are important and well-balanced regulations, necessary for the effective functioning of the NSI Act.

Turning to the notifiable acquisition SI, which was of some interest to your Lordships during the passage of the Act, the SI has also been noted by the Secondary Legislation Scrutiny Committee as an "instrument of interest". These regulations specify descriptions and activities of qualifying entities, the acquisition of which must be notified to the Secretary of State—a notifiable acquisition. Acquisitions in scope of mandatory notification that complete without the approval of the Secretary of State will be void and therefore have no effect in law. These are important changes to the UK's investment screening system and sectoral expertise has been vital to ensure that mandatory notification is proportionate and targeted. The Government have therefore taken great care and time to get these regulations right.

Alongside the introduction of the NSI Bill in November 2020, the Government ran an eight-week public consultation on the proposed descriptions of the 17 areas of the economy referred to in the draft regulations, after which the Government published revised definitions in March. The Government then undertook further targeted engagement with stakeholders in these key sectors—such as communications, data infrastructure and synthetic biology—to refine and narrow the proposed descriptions to provide businesses and investors with further clarity.

As the Minister for Small Business, Consumers and Labour Markets did in the other place, I place on record the Government's appreciation of the extensive

[Lord Callanan]
input we have had from across sector organisations in helping to develop these regulations. They strike a careful and appropriate balance between ensuring that our national security is safeguarded and keeping the number of businesses caught by the mandatory notification requirements to a necessary and proportionate level. In addition, these regulations allow parties themselves to identify objectively whether they are in scope of mandatory notification or not.

In addition, to monitor the impacts on businesses and investors, particularly small and medium-sized enterprises, the Government have chosen to include a shorter three-year post-implementation review within the SI, instead of the more standard five-year period. The Government engage on a daily basis with a wide range of businesses to help them understand the requirements of the Act, and we will of course continue to do so. Furthermore, extensive guidance across all 17 areas of the economy specified in these regulations will shortly be published to further assist parties in understanding the effect of the requirements on their planned activities.

In conclusion, these are detailed and technical statutory instruments which give effect to the purposes of the NSI Act. They have been carefully developed and tested to ensure that they give maximum clarity to businesses, while allowing us to protect the UK's national security. I commend the draft regulations to the House.

Baroness Bowles of Berkhamsted (LD): My Lords, I thank the Minister for introducing these statutory instruments. As has been said, they follow on from the National Security and Investment Act 2021 that we concluded earlier this year. Indeed, most of the things that could be said were said during those proceedings. The basics of what is covered by these instruments, such as the level of fines, was set out in the Act, but how turnover is calculated for the purposes of the fines is now laid out in more detail. As has already been explained, the maximum fixed penalties for offences are the higher of 5% of the total value of the turnover and £10 million, or a daily amount that is the higher of 0.1% of the total turnover and a cap of £200,000.

Clearly, it is important to define how turnover will be calculated for the purposes of fines, and I am glad to see that it is globally based—indeed, I think we were told that that was the intention. Whether the formulations actually laid out are right remains to be seen. I hope that, if they do not work, they will be adjusted, and that the Secretary of State will be prepared to intervene and overrule—as he can—on the companies' turnover calculations, should they be unrealistic or if there have been manoeuvres to minimise exposures, which can be different from just accounting measures and moving things around globally if it covers the creation of special companies, subsidiaries and a whole gamut of things that will probably be beyond everything that we could list now.

I also have a reservation, which I think I expressed during the Bill proceedings, concerning whether the maximum fines have been set too low. As they are presently fixed, the percentages will bear down in totality more heavily on SMEs, which will tend to fall under the percentage calculations, than on large, international businesses, which will hit the maximum and be able to enjoy—if that is the way to phrase it—a cap. I am sure all noble Lords hope that the penalties do not need to be used all that often and that, as the Minister said, it is rare. Nevertheless, there must be a strong deterrent; it cannot be seen as a risk worth taking. The fact is that I can think of some deals where £10 million is not a lot in the scale of things and given the charges that are levied by advisers. In my view, the cap, if there is one, should be proportionate. I hope that the Government will hold on to that thought, and perhaps the Minister can say what thinking there has been in the Government and the department around that.

Obviously, it is unrealistic to expect the Government to revise figures that have only just been passed in the Act, but under Section 41, it is possible to vary them. Could the Minister explain how such adjustment possibility is viewed, looking forward? Will it be used simply to adapt to inflation or, as I have suggested, will it be used if the deterrent is, as it turns out, not quite strong enough for the largest multinationals?

I turn to the second SI and the specification of qualifying entities. The definitions contained in the schedules have been refined in response to stakeholder feedback following the consultations which took place as the Bill was proceeding and subsequently—all of them have been refined, which is good to see. The outcome seems to have been broadly welcomed, with more focus and narrowing but also some occasional broadening. However, I gather there are still some industries with concerns about them being too broad. Perhaps it is a case of saying that not every possibility is covered. The challenge there is the make the reserve call-in power both functional and reasonable, without making it look like it has become protectionist.

It is in fact difficult to understand the legislative detail, how and why the various changes have been selected, and who has been listened to, as the contributions are not available for scrutiny; we cannot really scrutinise that aspect of the job. It is almost certain that large companies and their advisers will have been the most active. I am not criticising that involvement in any way; they have both the resources and the expertise to keep on top of the job and their input is valuable. However, can the Minister inform me how suggested changes are then back-tested, in particular for small businesses, and whether what fits the larger businesses and comes as advice from lawyers and other advisers fits across the piece?

Overall, the situation is that we must accept the assurances that efforts have and are being made to get things right and that the Government and the department will do their best to issue advice and assist companies. It is of some comfort that the review period has been shortened, as the Minister said, to three years, rather than the usual five.

In the debate in the Commons, the Minister said that the investment security unit in the department will be able to offer advice and give forewarning, and the Minister here has said similar things. I would like to know a little more about how that works, especially for SMEs. Is there helpline advice, separate from guidance, and can it be relied upon, or is it the case that there

will inevitably end up being a larger number of precautionary notifications than are really needed, because that is the point at which you can get some definitive feedback? Will the Government be able to publish what has been positively cleared and other advice given once it is no longer time sensitive to a prospective deal? I recognise that it cannot be done in real time, but will something of that nature happen retrospectively?

Finally, as I have already referenced, the Secretary of State is given powers to call in other transactions not covered by the 17 sectors. I am conscious, as I said, that it is necessary to demonstrate that the UK is an open economy, but on the other hand, recent experience with Covid, Brexit and other geopolitical issues has drawn more attention to security of supply. Will there be a capacity and appetite to monitor transactions generally and take action where needed? What other measures are being taken around issues of greater security of supply?

4 pm

These are important SIs, and the Liberal Democrat Benches support them as necessary instruments and in the hope and expectation that greater levels of transparency will become available as the regime settles.

Lord Lennie (Lab): My Lords, I thank the Minister for outlining the regulations. I say at the outset that the Labour Party also supports these necessary instruments. Taken together, they provide for the operation and running of the NSI Act and the provision of a safeguard for the UK. The SIs identify, as we have heard, 17 sectors in which national security could be at risk—the so-called sensitive sectors—and establish how the Secretary of State would establish the worth of each business when calculating the value of monetary returns it would be required to make. The offences cover both completing an acquisition without approval and failing to comply with a final order when required to do so, with resultant penalties, as we have heard, of £10 million or 5% of turnover, whichever is the greater, or a daily rate of 0.1% or £200,000.

However, there appears to be no effective early warning system or method to forewarn businesses considering acquiring a business that they may be in breach of these regulations. Have the Government considered putting such a system in place to alert businesses that they may risk putting themselves in breach by continuing with an acquisition?

The current thinking about the destination of the funds raised by this instrument is that they will go to the consolidation fund. Surely more creative thinking is possible, such as using them for the specific purpose of funding start-ups and innovators to help build up UK resilience. Is this set in stone, or could the Government reconsider the destination of the funds and ally them to the problem that the instruments are designed to prevent?

As the noble Baroness, Lady Bowles, said, there is also some concern about the breadth of what is captured by this legislation; in particular, the biodiversity sector believes that the definition is cast too wide and covers industries not associated with security matters. Could the Minister look at the concerns raised by the biodiversity sector to be sure that the reach of the regulations is only as broad as is necessary and not more widespread than it needs to be?

Some concerns have been raised about how the Government engaged to build these better regulations. For instance, when considering issuing guidance to particular sectors, which the Minister said would happen shortly, he should be aware that SMEs do not have access to large legal firms to advise them on these matters and therefore require straight, clear guidance rather than obscure, legalistic wording. Can he explain this process to the Government when they are issuing such guidance?

Finally, do the Government believe that food security forms part of national security? I ask because they have shown little interest in the recent takeover of Morrisons, which will in turn undoubtedly act as an encouragement to others to consider similar purchases in this country.

While we support the regulations, they require a more muscular approach in some areas while in others a lighter touch is required. Getting this balance right is tricky but important to the UK's inward investment programme and opportunities.

Lord Callanan (Con): My Lords, I am grateful to both noble Lords for their valuable contributions to this debate. I will endeavour to respond to the points that were made; first, to those made by the noble Baroness, Lady Bowles of Berkhamsted, and then to those made by the noble Lord, Lord Lennie.

In response to the points made by the noble Baroness, Lady Bowles, about the maximum monetary penalties, some businesses may argue for the lowest possible turnover, for obvious reasons, and it is important that the Secretary of State retains the flexibility to set what would be a reasonable and effective fine. Of course, in all decisions the Secretary of State must act reasonably under public law duties, so it does not exactly give him a free pass. However, I am very happy to provide the noble Baroness with reassurance that, if there is any disagreement between the Secretary of State and the business that would be subject to the penalty, it will be for the Secretary of State to determine the relevant turnover in question.

In regard to the noble Baroness's point about whether penalties are set too low—I do not often get to hear that criticism—the largest penalties are up to £10 million or 5% of turnover, whichever of those is the higher amount. I am sure the noble Baroness will appreciate that, to any business, £10 million is a substantial amount of money. However, as a civil financial penalty, it is only one of the possible forms of punishment. The noble Baroness will be aware that criminal sanctions are also available, and those criminal penalties may well include a prison sentence of up to five years, so we are satisfied that the appropriate disincentives exist to flouting the regulations.

The noble Baroness referred also to some of the sector definitions. I am happy to reassure her that we have engaged extensively on them in a number of different ways. We have changed the descriptions and amended them in communications with regard to qualifying entities carrying on activities in the UK.

[Lord Callanan]

For critical suppliers to government, two of the five limbs of the definition set out in the government response were amended, and we made some changes in data infrastructure. We clarified some of the infrastructure activities with regard to energy, and, on suppliers to the emergency services, some of the limbs of that definition were amended and narrowed to provide an objective list of activities, as well as in the field of synthetic biology.

On points raised by the noble Lord, Lord Lennie, with regard to the funds, as was discussed—these points were also raised in the other place on 20 October—any funds received will go to the consolidated fund, as is standard practice. However, the noble Lord will be aware that we have a wide range of support schemes for businesses in other areas, particularly for establishing new technology.

On publishing the details of clear cases, we are of course required under the Act to publish an annual report setting out the numbers and sectors of cases that are notified and cleared. To ensure that mandatory notification works proportionately and that the Act is future-proof, the Secretary of State will of course keep this under constant review and will seek to amend the list of acquisitions that would be in scope in the future through additional secondary legislation to reflect evolving national security risks and technological changes. The noble Lord will be aware that, following the practice of previous Governments, we have never defined what national security is, and he will also be aware that of course I cannot comment on the additional case that he mentioned.

Both these SIs are essential for the effective operation and running of the NSI Act and for the provision of a safeguard for the United Kingdom. The Government have ensured that the proposed descriptions within the notifiable acquisition regulations will enable potential acquirers to self-identify for the purposes of the mandatory notification requirement.

The noble Baroness, Lady Bowles, also raised the point about communication and the possibility of a helpline. We do not think that that is necessary; officials remain available in the investment screening unit within BEIS for consultations, if necessary, on a confidential basis with businesses both large and small, if anybody is unclear about a particular acquisition. Advice is being provided at the moment and will be provided in future to any business that wants to call or email the team responsible for leading this. Sectoral expertise has been a vital part of the development of these regulations, and we have taken great care and time to get it right.

In response to the comments that the noble Lord, Lord Lennie, and the noble Baroness, Lady Bowles, made about available support for SMEs, as I said, we continue to engage directly with businesses around the NSI Act. I have done a number of consultation meetings, and I know that officials have done a lot as well. The first tranche of detailed guidance has already been published to assist businesses, investors and advisers in understanding the Act to comply with its requirements. We have established an expert panel, which I have met with on a couple of occasions, as well as officials, which includes business representative organisations, higher education bodies, investment associations and law societies, all of which will have an interest in having these provisions correctly interpreted. They are giving us constant and detailed feedback on the draft guidance and ensuring that the guidance is fit for purpose.

Our second tranche of guidance will be published ahead of regime commencement—as I mentioned, the regime will commence on 4 January—to continue to aid the interaction of parties with the new investment security unit and to ensure compliance, including on how to submit a notification form and guidance around notifiable acquisitions. We are also holding a communications campaign, which will focus on delivering teach-ins and guidance to a wide cross-section of businesses and organisations to build understanding of the Act in the United Kingdom and internationally. The Government have conducted targeted and extensive engagement with organisations which are most likely to be affected by the Act, including companies that invest or acquire entities in the 17 mandatory sectors.

Tailored explanatory materials have been sent to around 100 industry bodies and mandated areas of the economy, 70 major law and financial services firms, 36 international investors and 550,000 businesses via Companies House. We have taken great care to reach small and medium enterprises through associations such as the Federation of Small Businesses, British Chambers of Commerce and the CBI, which, taken together, have networks of something like 580,000 businesses.

I hope that I have been able to provide sufficient clarification and assurance to both noble Lords who spoke on this, and I commend the draft regulations to the Committee.

Motion agreed.

National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021

Considered in Grand Committee

4.12 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021.

Relevant document: 13th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Republic of Belarus (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2021

Considered in Grand Committee

4.14 pm

Moved by ***The Earl of Courtown***

That the Grand Committee do consider the Republic of Belarus (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2021.

The Earl of Courtown (Con): My Lords, the instrument before us was laid on 14 October, under the powers provided by the Sanctions and Anti-Money Laundering Act 2018, also known as the sanctions Act. It amends the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 to introduce new measures to the financial, trade and aviation sectors.

The regulations we are debating today revoke and replace the Belarus sanctions regulations laid in August 2021. These contained an error that had the effect of deleting a prohibition on the transfer of restricted technology to Belarus; this means military and interception or monitoring technology, and technology used for internal repression. The regulations we are debating today correct this error. I can assure noble Lords that there was no continuity gap between the effects of the two regulations.

The Government, along with international partners, decided to increase targeted sanctions because the situation in Belarus continued to deteriorate. On numerous occasions, Lukashenko and his regime have violated democratic principles and the rule of law, and violently oppressed civil society, democratic opposition leaders and independent media. This includes the forced diversion of Ryanair flight FR4978 on 23 May in order to arrest a journalist, Roman Protasevich, and his partner Sofia Sapega. Lukashenko sent a MiG fighter jet to force the Ryanair plane to land, endangering not only Protasevich and Sapega but everyone on board. This also showed a flagrant disregard for international aviation law. The couple remain in the custody of the Belarusian authorities. The UK Government reiterate our call on the Belarusian regime to release them, and to release all those held on political grounds.

The regime has enforced the arbitrary detention of more than 35,000 people and imprisoned more than 800 people on political charges. The United Nations and the Organization for Security and Co-operation in Europe have recorded many credible reports of physical mistreatment, including torture, by the penal and security forces in Belarus. Opposition figures have been harassed and forcefully expelled, and, this year, Belarus introduced new legislation to further suppress media freedoms and peaceful assembly.

The United Kingdom supports all those working for a more democratic future for Belarus. As such, we were delighted to welcome Sviatlana Tsikhanouskaya, leader of the Belarusian democratic opposition, to the UK on 3 August. During her visit, Ms Tsikhanouskaya met the Prime Minister, Foreign Secretary and Minister for Europe, who reiterated our support. Ms Tsikhanouskaya emphasised the need for further sanctions on the Belarusian regime and commended the UK for taking action.

The instrument we are debating today enshrines in law our increased sanctions measures on the Belarusian regime, showing that we stand with the people of Belarus. Our sanctions are carefully targeted to build pressure on Lukashenko, state institutions and those around him while minimising any unintended consequences for the ordinary people of Belarus, who are suffering under authoritarian rule.

The measures introduced by this instrument are as follows. They prevent any UK business from trading goods and services with Belarus in sectors that are key sources of revenue for the Lukashenko regime. They also limit the regime's access to items that could enable the internal repression of the Belarusian population. The measures cover potash, petroleum products, interception and monitoring goods and technology. They also cover goods used in cigarette manufacturing and dual-use goods and technology for military use. We have also imposed a prohibition on the provision of technical assistance to aircraft where this would benefit persons designated for that purpose. This ensures that UK companies cannot provide services in relation to President Lukashenko's fleet of luxury aircraft.

Financial measures prohibit dealing with transferable securities and money market instruments issued by the Belarusian state and public bodies, as well as those issued by state-owned banks, and the provision of loans. This measure puts additional pressure on the Belarusian regime, including by preventing future Belarusian government bonds being listed on the London Stock Exchange.

This comprehensive response also includes prohibitions on the provision of insurance and reinsurance to Belarusian state bodies, and it removes a licensing ground under the arms embargo that permitted the export of biathlon rifles.

The aviation measures prohibit Belarusian air carriers from overflying or landing in the UK. This continues the temporary measures that we put in place after the events of 23 May.

Finally, the measures also give us the power to designate persons for providing support for, or obtaining an economic benefit from, the Government of Belarus. Since this came into force in August, we have made a further designation under the Belarus sanctions regime under this criterion.

UK sanctions actions, together with our allies, aims to encourage the Belarusian regime to respect democratic principles and institutions, the separation of powers and the rule of law in Belarus. The sanctions aim to discourage the regime from actions, policies or activities that repress civil society in Belarus, and encourage it to comply with international human rights law.

I should note that we regularly review sanctions and would consider lifting them if we saw significant progress. However, in the case of Belarus, we have seen no progress; in fact, the situation continues to deteriorate.

Sanctions are most effective when implemented in co-ordination with international partners. Our measures were co-ordinated in June with the EU, the US and Canada, and we will continue to work closely with them on Belarus. Similarly, sanctions work best when combined with other diplomatic and economic measures. The UK has assisted independent media and civil society in Belarus, which continue to face unparalleled levels of pressure from the regime. By the end of this financial year, our programme of support to Belarus will have almost tripled since 2019.

The UK unequivocally condemns the appalling campaign of repression waged by the Belarusian regime against the rights and freedoms of the Belarusian people. The regime has oppressed civil society, rejected democratic principles and violated the rule of law. These regulations expand our sanctions in response to the situation on the ground. They demonstrate that we

[The Earl of Courtown]
will not accept such egregious violations of human rights. They enable us to stand with our international partners and, most importantly, with the people of Belarus, in working towards a peaceful, prosperous and democratic future. I welcome this opportunity to hear the views of noble Lords on these regulations, and I commend them to the Committee.

Lord Russell of Liverpool (CB): My Lords, I welcome these sanctions. In part, I welcome them because I speak both as a Member of this House and as a member of the Parliamentary Assembly of the Council of Europe. In that capacity, I had the great privilege, in November 2019, of going to Belarus as part of a team monitoring the parliamentary elections—although to describe them as either "parliamentary" or "elections" is stretching the definitions rather a long way. At the end of a rather interesting day, we were, on the one hand, watching ballot box stuffing, but, on the other hand, being kept as far away as possible from where the counting was going on—so we could not actually see anything.

In the last polling station that I and my Armenian colleague went to, at the end of a very long day, I witnessed five candidates on the ballot paper. They had a photograph of each candidate and a brief description. There were four males of indeterminate age, all looking rather similar, and a much younger, very attractive woman. Who came top of the ballot for that constituency? Surprise, surprise—the young woman. The young lady in question turned out to be the—at that time—22 year-old Maria Vasilevich, an ex-Miss Belarus, which was one of her qualifications for being elected. The second qualification—and perhaps the clincher—is that she was the current mistress of the then 64 year-old President Lukashenko. Our Prime Minister has a way of putting his friends into this House; President Lukashenko has his own way of putting his friends into their Parliament.

I should say in addition that the UK delegation to the parliamentary assembly is very concerned about the situation in Belarus and is committed to trying to help. Quite a few of us have adopted prisoners in Belarus who are currently suffering; we write letters and hope that they get through to them and their families. Just this morning, the leader of the UK delegation to the parliamentary assembly, John Howell, Conservative MP for Henley, sent me a WhatsApp message saying that he has just adopted a lady called Iryna Zlobina, who is in prison because she was guilty of collecting money to go towards paying the legal expenses of those who had been arrested for taking part in what the Government regard as illegal demonstrations. She is now serving time in prison.

On these sanctions, I welcome the fact that this has resulted from working closely with the EU. Her Majesty's Government, for various reasons we will not go into, seem to have a slightly tortured, love-hate relationship with the European Union at the moment—clearly, something fishy is going on. It is incredibly important that we work in lockstep with the EU; President Lukashenko is hoping above all that the unity among those appalled by what he is doing will fracture over time because we have not got our act together and are not acting as one. Please remember that.

There is an opportunity to take further action against the families of some individuals who have vast sums of money, some of which is domiciled in the UK, usually through offshore companies. The son of a gentleman called Mikhail Gutseriyev—a Russian oligarch who is very involved in Belarus—who is a UK citizen and, even worse, I am ashamed to say, an old Harrovian, for some strange reason happens to own a £40 million office block in London. It is not immediately obvious why, but I suppose that is the sort of thing one happens to have if one has a very rich father and access, through the Panama papers, to all sorts of offshore trusts. We could and should do more to demonstrate that that sort of egregious behaviour by extended families of clearly corrupt people will not be tolerated by this country.

I also ask that we continue to support the UN High Commissioner for Human Rights as much as possible to make sure that she has the support and funding to carry out her important work in Belarus and that human rights observer groups are supported. Every time we hear of arrests, intimidation and egregious events such as that, we must not stay silent but must say something. It will get noticed.

Finally, the impossible-to-pronounce leader of Free Belarus—I have written it out phonetically; I might let the noble Earl borrow it next time—Sviatlana Tsikhanouskaya, is the wife of the opposition leader who was going to run in the election, as noble Lords will know, until President Lukashenko decided the easiest way to win was to put his main opposition rival in prison, which is quite a neat way of doing it. It is very important that we formally recognise her as the effective leader of Free Belarus and assist her, invite her over here, and engage with and listen to her as much as possible. That is all I have to say.

Lord Purvis of Tweed (LD): My Lords, it is a pleasure to follow the noble Lord, with his direct experience of his visits to Belarus; it was fascinating to hear about that. I have not been to Belarus but am active in the All-Party Group on the Abolition of the Death Penalty; we have sought to engage with those brave individuals, including former parliamentarians, who have sought to work with us for the abolition of the death penalty there. Belarus is the only country in wider Europe which retains it. I understand that four people were executed in 2018.

That is one element of a whole range that the noble Earl indicated in justification of these measures, which I and my party support. The justification is not only in the high-profile events we have seen in recent months but, as the noble Lord alluded to, in a pattern of practice which is diminishing democracy, reducing people's ability to have properly elected representatives and opening up the concern that there will be internal repression of its own people.

4.30 pm

That is why, therefore—this is where there is a slight tone of regret—we are debating a measure that is correcting a previous measure. This is not the first time that we have engaged when the Minister has come to correct measures. However, he does it very well. I do not mean that sarcastically; he is very willing

to engage and speak with Members when areas have been highlighted. Of course, mistakes happen—that is without question—but, given that the omission was on the military, internal repression, interception and monitoring technologies that were deleted by the measure in error, that highlights an issue with regard to checking these measures before they come into force but also before they are laid before Parliament.

The Minister pre-empted one of my questions—on whether there had been a gap in any of the continuity. He said that there had not. I was confused by the fact that, when looking at the timeline of the previous order, SI 2021/922, which this corrects, I saw that it stopped being law on 19 October, while this measure came into force on 14 October. I simply did not know why there were five days when there were two competing orders, but maybe it is not an issue. It may be that the more recent one trumps the previous one, but I am certainly not sure when it comes to that approach as to those periods. But that is academic, if there were no concerns.

Of course, these measures are not for the policing of those people who wish to operate fully with transparency and integrity. These measures are to protect people who seek to circumvent human rights and proper governance, so it is worth asking the question.

For the many people who sometimes belittle the role of parliamentary scrutiny, I commend the Joint Committee on its review of these instruments and on highlighting the error and reporting it to the House for action. I am glad that the department acknowledged that—I believe it was immediately—in its memorandum, and brought forward the other measures for this consideration. So I am pleased.

I have two technical questions to ask the Minister. On one, he very kindly spoke to me beforehand and, on the other, he may not have the answer to hand, so I would be perfectly happy if he wanted to write to me. When I was looking at the Government's information for businesses, on the operation of these sanctions, I saw the section on immigration and Immigration Rules, and how it affects individuals who may have leave to enter or remain in the UK. It will not apply to UK citizens, of course, but it will apply to those who seek to carry out business activities in the UK. The measures impose a travel ban on certain designated people from the Secretary of State for the purpose of the immigrations sanctions under the sanctions Act. Is that in force for many nationals of Belarus? I hope that there is no loophole in the operation of these sanctions for trade or on the Home Office Immigration Rules. Can the Minister reassure me that there is integrated working between the FCDO and Home Office with regards to those for the travel ban or those who are refused leave to enter or remain in the UK?

My second question relates to an issue that I raised with the noble Lord, Lord Grimstone, when we debated the regulations around dual-use exports and the licences for many of the technologies that are banned under these sanctions. Part of the UK—Northern Ireland—operates the EU licencing scheme, and I asked the noble Lord, Lord Grimstone, for reassurance that we were not inadvertently operating loopholes where there were two different systems: either the UK or the European Union dual-use licensing systems for exports. The Minister reassured me at the time—and I suspect that there will be reassurance now—that there is no loophole because we are working in concert with the European Union, as the Minister said, which is reassuring. However, I believe it is worth asking, because—notwithstanding the protocol—we are now in the realm of always having to ask whether the sanctions regime and the licensing systems for one part of the UK are in concert with the other parts of the UK. If the Minister can reassure me on those two aspects, I shall be grateful.

Lord Collins of Highbury (Lab): My Lords, as the Minister said, the regulations before the Committee maintain the current sanctions on Belarus but extend the measures and amend a series of errors in the previous regulations. I reiterate that these measures, and certainly this SI, have the full support of the Opposition.

As I told the House during a debate in July, the Government's policy towards Belarus should be to stand with the incredible defiance shown by activists and opposition leaders. I not only hope that these instruments are a signal of that but echo the point made by the noble Lord, Lord Russell, that it is important that our voices in this Parliament are heard by those people in Belarus. It certainly has an impact, and we need to make sure that that is the case.

As the Minister highlighted, the situation in Belarus has deteriorated. It took a sinister turn in May when a Ryanair flight was forcibly diverted to Minsk so that pro-democracy activists could be arrested. Obviously, as is pointed out in the explanatory note to the instrument, human rights in general have deteriorated even further in the country. I was therefore pleased that last week the United Kingdom's representatives at the United Nations signed a joint statement calling on the Lukashenko regime to end its repressive practices. However, such statements have to be paired with co-ordinated action.

On some specific points in the regulations before the Committee today, as the Minister noted earlier, the purpose of this order is to correct previous errors while adopting additional measures in response to the deteriorating behaviour of Lukashenko and his regime. The financial sanctions under Part 3 are particularly welcome given, as the noble Lord, Lord Russell, reminded us, the extensive reports of dirty money from Belarus in London. What is the Government's assessment of that, and in particular of the Belarusian Government's use of the London Stock Exchange for financing purposes?

On Part 5 of the regulations, which relate to Belarusian aircraft, as the Minister highlighted, can he confirm or advise the Committee what support the Government have offered to the Civil Aviation Authority, both to advise and to exercise these new responsibilities? Needless to say, as the noble Lord reminded us, these measures are effective only if implemented jointly and as widely as possible. In those circumstances, can the Minister tell us about what our response is to the ongoing disagreements between some members of the EU on this in particular? What steps are the Government taking to encourage counterparts to apply the sanctions to Belarus in full?

[Lord Collins of Highbury]

Given the analysis that many international sanctions on potash, Belarus's main export, affect only a small proportion of potash products, can the Minister advise the Committee whether that assessment is correct and whether these regulations go far enough?

Global sanctions can be one of the most effective tools at our disposal to bring pressure on the regime, and I am glad that many measures are also being implemented by other national Governments but, if the UK is to stand for the people of Belarus, the Government's policy must extend beyond these measures. We need to ensure that there is ongoing, co-ordinated international pressure at the UN and other multilateral institutions, particularly working with the European Union, to ensure that pressure is put on the Lukashenko regime and we stand by the side of the brave activists and opposition leaders.

The Earl of Courtown (Con): My Lords, I am grateful to all noble Lords who have contributed to today's insightful and timely discussion, and I should like to address the important questions they have raised. The noble Lords, Lord Collins, Lord Purvis and Lord Russell, all mentioned in their own way how this is affecting the individuals in Belarus—whether in the Opposition or the media—and the whole of civil society, and how important it is that we give whatever help we can. As I said earlier, we have increased our funding in that area to try to improve the situation as much as we can, but as all noble Lords all said, it is a pretty dire situation that we find ourselves in.

I also thank the noble Lord, Lord Russell, for his tales from the ballot box, which were very interesting, and enlightened us, as he gave the Committee his first-hand experience of what happened in the elections. He and the noble Lord, Lord Collins, also mentioned how important it is to have regular discussions with our partners. I can confirm to all noble Lords—the noble Lord, Lord Collins, mentioned the European Union in particular—that we have continuous discussions with the European Union, the United Nations, and our partners in the sanctions, including the US and Canada, and the sanctions are continually kept under review.

The noble Lord, Lord Purvis, started his speech by talking about the death penalty, and he knows quite well the position of this country—this Government and all parties in this country—that we abhor the use of the death penalty in any circumstance. He also mentioned two particular issues relating to immigration and travel bans. The travel ban operates through the Sanctions and Anti-Money Laundering Act and regulations made under it, which allow us to make people excluded persons for the purposes of the Immigration Act. I hope that clarifies the point for him. He also considered the timeline of the orders. They did not overlap as such; one order revoked the other.

The noble Lord, Lord Purvis, also mentioned dual-use goods and Northern Ireland. I have some lines on that, but if there is anything more that can be contributed, I will write to him. The regulations apply across the whole of the United Kingdom, including Northern Ireland—but I will check that there is nothing more we need to add to that.

The noble Lord, Lord Collins, asked about the London Stock Exchange. The new regulations prohibit dealing with bonds issued by the Republic of Belarus after the sanctions came into force where they have a maturity exceeding 90 days. This includes a prohibition on assisting in issuing such a bond.

The noble Lord, Lord Collins of Highbury, mentioned potash imports from Belarus. He asked why the UK has only partially banned potash imports and why all potash tariff codes are not included. These measures are carefully targeted to build pressure on Lukashenko, state institutions and those around him, while minimising—this is the important thing—any unintended consequences on the wider population in Belarus and the UK economy. He also mentioned support for the CAA. The Department for Transport work closely with the CAA on sanctions implications—so there are ongoing discussions with the CAA when sanctions are imposed. If I have not answered all the questions, I will of course read *Hansard* and reply to any I have missed.

As I set out in my opening speech, the regulations give us the power to impose sectoral sanctions with real impact, which is magnified in co-ordination with our international partners. They ensure that we can target the sectors of the Belarusian economy and the key figures in the Belarusian regime that generate funds for the regime. This includes those who provide support for, or obtain an economic benefit from, the Government of Belarus who have not been designated previously. They demonstrate that the UK will not stand by in the face of the regime's unacceptable behaviour; that we are ready and willing to act as part of a network of liberty and will stand with those who believe in democracy. I beg to move that the Committee has considered the regulations.

Motion agreed.

Committee adjourned at 4.47 pm.