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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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

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House of Lords

Tuesday, 28 October 2014.

2.30 pm

Prayers—read by the Lord Bishop of Lichfield.

Introduction: Baroness Evans of Bowes Park

2.38 pm

Natalie Jessica Evans, having been created Baroness Evans of Bowes Park, of Bowes Park in the London Borough of Haringey, was introduced and took the oath, supported by Lord Cavendish of Furness and Baroness Neville-Rolfe, and signed an undertaking to abide by the Code of Conduct.

Introduction: Lord Cashman

2.45 pm

Michael Maurice Cashman, Esquire, CBE, having been created Baron Cashman, of Limehouse in the London Borough of Tower Hamlets, was introduced and made the solemn affirmation, supported by Baroness Turner of Camden and Baroness Kinnock of Holyhead, and signed an undertaking to abide by the Code of Conduct.

Railways: East Coast Rail Franchise
Question

2.50 pm

Asked by ***Baroness Quin***

To ask Her Majesty's Government what discussions they have had with the rail unions regarding the future of the east coast rail franchise.

The Minister of State, Department for Transport (Baroness Kramer) (LD): My Lords, levels of engagement with the rail unions have increased since the launch of the rail franchising programme in March 2013. On the intercity east coast franchise competition, this engagement has included a number of face-to-face meetings at official and ministerial level and correspondence covering most aspects of the competition.

Baroness Quin (Lab): My Lords, while I am glad that such meetings have taken place, does the Minister appreciate that many of us who use the east coast rail service regularly are dismayed that the Government have refused to allow the current publicly owned operator—which has greatly improved the service, to the benefit of both passengers and UK taxpayers alike—even to bid for the franchise and to be able to continue to run a good service? Does it not seem odd that the Government allow foreign state-owned enterprises to run our rail services in part, yet refuse to allow a successful home-grown public enterprise to do so?

Baroness Kramer: My Lords, noble Lords will be aware that Directly Operated Railways that took over the running of the east coast service after the failure of the previous franchise was always anticipated to be temporary; I am sure that the noble Lord, Lord Adonis, will confirm that. It has done an excellent job; I would not wish to understate that. It is important that the Government have the capacity to step in when something happens within a franchise that makes that necessary. Now, however, we need very significant new investment; there needs to be a long-term partner taking this franchise forward, so it is right to go into the franchising process. I would be glad to address questions on whether we should have our own franchising entity, but I do not want to take too long on a single answer.

Lord Bradshaw (LD): My Lords, will the Minister think about the fact that this franchise has failed twice and that the present competition is very uncertain because of the threat of open access operation to whomever the franchise is let? If any of the franchise bidders bid less than what the taxpayer gets from Directly Operated Railways, will the Government allow the latter organisation to continue to run the railway?

Baroness Kramer: My Lords, the franchise process is in train. The award will come in February, so I obviously cannot comment on the competitors' offers at this time. That would be entirely improper. It is certainly true that DOR returned profits to the Government—not to the department. It is also important to understand that it has not had the demands that are placed on many franchises in the level of investment required. We will have new equipment coming on to the line and new rolling stock, too. That will mean significant new burdens and we have many greater requirements now in terms of customer service so there is a need for significant investment. That is why a new player needs to come in at this time. It is obviously open to any Government to own companies and use them in various ways. This country used to have an airports industry and ran steel mills and car companies. However, we have found that the franchising system has offered us excellence. Train-operating companies have delivered very good service at very good prices. We have seen the response to that from passengers who have doubled in number in the past 20 years.

Lord Hughes of Woodside (Lab): Can the Minister say why the company currently running the franchise is not being given the opportunity to bid or to test itself against the conditions that the Governments are considering?

Baroness Kramer: As I said, the company currently operating this is a government entity. It was designed as a company that could step in when something went wrong. That remains important within the arsenal of our tools. There is a very different set of skills when one is looking at significant new investment and growth. This is the point that we have reached with this franchise, so it is very important that the opportunity is, as I say, open for the train operating companies to bid on this and offer a high-quality service. We will be looking for a very effective winning bidder.

Lord Cormack (Con): Does my noble friend acknowledge that there are deficiencies in the present service? Does she know, for instance, that while it is possible to have a day in London from Lincoln using direct trains, one cannot do the reverse? As we have one of the most important years in Lincoln's history coming up next year—2015, the anniversary of Magna Carta—can she will follow up on the conversations I have had with the Secretary of State and try to ensure that next year we have a direct service between London and Lincoln?

Baroness Kramer: My Lords, I cannot comment directly on an issue that will obviously be under consideration but I will take back my noble friend's comments with pleasure.

Lord Davies of Oldham (Lab): My Lords, the Minister may have sought to reassure the House that she had some form of consultation with the trade unions but did she have any consultation with the half a million additional passengers that are being carried on the line under the successful operation of DOR? Surely she will accept that only a Government who are addicted to dogma would dispense with a company—an organisation that has run the line so successfully—and put it out to bidders, of which the successful one may well be the state-owned company of another country's railway.

Baroness Kramer: My Lords, it is certainly true that other countries have chosen to invest and own companies across a wide range of industries. This is a particularly difficult industry in which to do that. Its fixed costs are extremely high. It costs something like £7 million to £10 million to put in a bid, with no assurance of winning. It is certainly a high-risk industry and the margins, as the noble Lord will know, even for an effective and profitable company, are quite fine. It is an entirely valid decision not to enter into actually running companies when there are private options that have delivered very successfully up and down the country.

Lord Forsyth of Drumlean (Con): Surely my noble friend would recognise that the whole point of competitive tendering is to get the best value and the best deal for the taxpayer. If she is right that the state-owned company would not be able to compete, why is that a reason to exclude it from the process?

Baroness Kramer: Again we can see the complexities of a state-owned company being involved in this. Would we give it preferential financing or would it go out on the market? Let me make this point: do we want to set up a company and pay its senior management very high fees for the possibility that, with bids ranging from £7 million to £10 million apiece, it might eventually achieve a franchise? We have a long history and I have to suggest that the history of companies run over the long term by the UK Government has not been one of outstanding success. We know that we have very successful franchises across the country, so let us take advantage of them to make sure that we get the best opportunities for the many passengers using these services.

Health: Mental Health

Question

2.59 pm

Asked by ***Lord Dubs***

To ask Her Majesty's Government what steps they are taking to reduce delays in the provision of mental health treatment.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): Access and waiting times for people with mental health problems are a priority for this Government. We are committed to ensuring that access to services and waiting times are on a par with physical health. That is why we have put in place the first national waiting times standards in mental health.

Lord Dubs (Lab): My Lords, will the Minister confirm that according to the widely respected *Health Service Journal* in April this year there were some 3,640 fewer nurses and some 213 fewer doctors working in mental health than two years ago? Surely it is unrealistic—not to say verging on the dishonest—to talk about the Government putting in place controls on access and waiting times when there is no prospect of achieving them.

Earl Howe: If the noble Lord looks across the piece at the workforce statistics he will perhaps be more reassured than he is at the moment. The £400 million that we are putting into talking therapies, for example, will result in a workforce of 6,000 practitioners trained to deliver IAPT. Health Education England has increased the number of mental health nursing training places by 1.5%. In delivering a multidisciplinary workforce, the aim is to have skills that are transferable between different care settings. NICE will be publishing its authoritative guideline on safe staffing. We have already mandated NHS organisations to publish ward-level nursing with midwifery care staffing levels so that there is an incentive for them to make sure that they have their staffing levels right.

Baroness Hollins (CB): The Government's five-year plan to improve access to mental health services makes no mention of people with intellectual disabilities who have mental health problems. What steps will the Government take to improve access for this group of patients who have a higher prevalence of mental illness and treatable mental disorders?

Earl Howe: I hope that the noble Baroness will agree that the five-year plan is truly ground-breaking in many respects. We have identified £40 million to spend this year to support people in mental health crisis and end the practice of young people being admitted to mental health wards. Another £80 million has been freed up for next year to ensure that waiting time standards become a reality, not just for those with mild mental health conditions but across the

piece. I will write to the noble Baroness if I can glean any further information about those with a specific disability.

Baroness Brinton (LD): My Lords, one of the worrying consequences of the shortage of mental health beds is the number of patients who leave mental health wards and subsequently commit suicide within a short space of time. If a patient commits suicide within a short period of leaving in-patient care, it should be regarded as a never event. That would provide real parity of esteem alongside parity of funding and ensure that patient safety is at the heart of every patient's release.

Earl Howe: My noble friend makes an extremely important point. NHS England is currently reviewing the never events framework. My honourable friend the Minister of State for Care and Support will shortly be meeting NHS England officials to discuss the possibility of including suicide following in-patient care as a never event and how the new never events framework will support parity of esteem.

Lord Bradley (Lab): My Lords, NHS England made it clear last week that mental illness costs the economy an estimated £100 billion annually, which is roughly the cost of the entire NHS budget. How do the Government justify only 5.5% of the UK's health research budget being allocated to mental health and, according to MIND today, a paltry 1.4% of Public Health England's budget being spent on mental health? Is this what the Government mean by parity of esteem?

Earl Howe: My Lords, investment in mental health research by the National Institute for Health Research has nearly doubled over the past four years from £40 million in 2009-10 to £72 million in 2013-14. I hope that the noble Lord will take from that that we put a priority on this. Of course, it is very important that local authorities do not downplay the significance of mental health. We have made it very clear that disinvestment is not an option for them. We are discussing with local authorities this very issue.

The Earl of Listowel (CB): My Lords, will the Minister seek to encourage the very good practice of a few areas in providing a seamless service for young people leaving public care from the age of 16 to 25 or 14 to 25 so they get the mental health support to allow them to be successful in adulthood? Does he recognise that effective mental health services for children will much diminish the demand in adulthood?

Earl Howe: I agree with the noble Earl. On 20 August the Minister of State for Care and Support announced a new children's task force to look at all aspects of child and adolescent mental health services and how best to improve outcomes for children with mental health problems. Its remit includes an investigation of how access across the whole of children and young people's mental health services could be improved. The task force will report in the spring of next year.

Baroness Pitkeathley (Lab): My Lords, following on from the noble Earl's question, does the Minister agree that in the context of child mental health—and many of us are increasingly concerned about the younger and younger age at which people are being diagnosed with mental illness—prevention is as important as treatment, particularly in view of today's news that less is being spent on prevention?

Earl Howe: I agree with the noble Baroness. This is a crucially important area. She may like to note that in the current year we are investing an additional £7 million to end the practice of young people being admitted to mental health beds far away from where they live, or being inappropriately admitted to adult wards.

Unemployment: Young People

Question

3.06 pm

Asked by ***Lord Holmes of Richmond***

To ask Her Majesty's Government what assessment they have made of the recent figures on youth unemployment.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud) (Con): My Lords, youth unemployment has fallen by a record-breaking 253,000 in the last year. This brings total youth unemployment down to 733,000, one-third of whom are full-time students looking for work. Excluding these students, 6.4% of all young people are unemployed —this is a lower figure than that immediately before the recession.

Lord Holmes of Richmond (Con): My Lords, these figures are indeed good news. However, as we all appreciate, any case of youth unemployment is a tragic waste of talent, both for the individual and for society. Will my noble friend consider working with ministerial colleagues to insert a condition into all public procurement requiring bidding businesses to offer high-quality apprenticeships? That is a small step but could be significant.

Lord Freud: I accept my noble friend's point that every case of a youngster being out of work is a tragedy, and that is why we have put so much energy into getting youngsters back into work. We support the appropriate use of apprenticeships in procurement and that can be important for local skills and growth, but we do not support the blanket inclusion of apprenticeships in all contracts. It is up to individual departments. For instance, for longer-term contracts, my department the DWP requires suppliers to take reasonable steps to ensure that 5% of their workforce are on apprenticeships, but there are other contracts where that is not appropriate—for instance, contracts with healthcare professionals.

Lord McAvoy (Lab): My Lords, youth unemployment is still extremely high, as mentioned by the noble Lord who put the Question. Can the Minister say what

[LORD MCAVOY]
further things the Government are going to do to reduce youth unemployment? Will the Government, for instance, commit themselves to matching Labour's commitment to guarantee a paid job for every young person who has been claiming jobseeker's allowance for a year or more—a job they will have to take?

Lord Freud: My Lords, when the noble Lord says that youth unemployment is very high, it may be higher than we would like, but if you look at the record, it is now at very low levels. If you look at the real figures, which I have used in this House for the last four years, for all workless youngsters who are not in full-time education—that captures the unemployed and the inactive—that figure is now at 14.9%, or just over 1 million. That figure has only been lower in one year since records began—in 2001. You can see that all the measures we have been taking to get youngsters into the workforce are really beginning to achieve results.

The Lord Bishop of St Albans: My Lords, I congratulate Her Majesty's Government on these figures, which are very encouraging, not least in London where the number of unemployed young people has declined by 57,000, which is significant. However, the figures also reveal that in the north-east of the country, the figures have declined by only 8,000. There, the levels of unemployment among young people remain stubbornly high. Can the Minister tell us what Her Majesty's Government are doing to help in these areas, where the problem is much worse?

Lord Freud: My Lords, we have a number of programmes aimed at getting youngsters into the workforce all around the country. There is a mixture of the Work Programme, the flexible support scheme, the sector-based work academies and work experience. We are using a whole range of programmes to help youngsters into the workforce. They are working not just in London but right around the country. Clearly, we just have to stay on the issue and make sure that we get everyone in every part of the country into the workforce.

Lord Roberts of Llandudno (LD): My Lords, do these new figures, which have a bit of sunlight about them, depend upon our continued membership of the European Union? Is there not something we could do to encourage young people to cross borders to other countries so that they get work experience in different places and build bridges of understanding for the future?

Lord Freud: The fundamental driver of these much sunnier figures is clearly our economy, which is now the fastest growing of the major economies. It is vital that we keep that process going. It is also vital that we have a benefits system that encourages and enables people to go into the workforce rather than being blocked from going into it.

Lord Kennedy of Southwark (Lab): My Lords, any reduction in unemployment is to be welcomed, particularly youth unemployment. Can the noble Lord tell the House how many of those new jobs are part of the 5.2 million people on low pay in this country? Low pay is now a huge problem for us to deal with.

Lord Freud: The Governor of the Bank of England has said that the only way that we are going to get growth in real wages is by recovering productivity in the economy. One way is clearly to reduce dependency and to get 1.7 million extra people into work. The second way is to get the skills base up, and there are now some really good signs that we are moving that up by serious percentage points. The third way is progression in work, so that people earn more. That is what universal credit is all about.

Earl Attlee (Con): My Lords, is it not the case that we have never had as many people in work as we have now?

Lord Freud: We now have 30.7 million people in work. It is not just about the number; we are now at a 73% rate of employment, which is little short of the all-time high.

Parliament Square: Occupy Protests
Question

3.13 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what is the daily cost and level of police resources used to police the current Occupy protest in Parliament Square.

The Parliamentary Under-Secretary of State, Home Office (Lord Bates) (Con): My Lords, London's police forces receive specific funding in recognition of the additional responsibilities that policing the nation's capital represents. This includes protests directed at the seat of government, such as the recent Occupy protest.

Lord Berkeley (Lab): I am grateful to the Minister. I am sorry that he cannot count the number of policemen guarding a fence, but perhaps I can help him. Last week, on several occasions, I counted at least 25 police officers standing around the fence which, on a 24/7 basis, would be 100 officers taken off other jobs. Is this really a good use of police manpower, protecting a nice piece of grass in central London?

Lord Bates: My Lords, the police are doing this not of their own volition but because we asked them to do so. We passed the Police Reform and Social Responsibility Act, which said that that space should be available for peaceful protest and not for Occupy movements. That was something that we asked the police to do, and they did an excellent job in dealing with a very difficult situation.

Baroness Jones of Moulsecoomb (GP): Does the Minister agree that this is a terrible waste of time, energy and resources for the police force? Part of the problem is that you are asking them to police and enforce laws that are extremely repressive. It was a Labour Government who introduced the police reform Act, and you are now enforcing it. Is it time to ask your ministerial colleagues, perhaps, if they would repeal the worst aspects of that Act?

Lord Bates: The noble Baroness is a member of your Lordships' House; she is free as a parliamentarian to propose any laws that she wishes; but the reality is that in 2011 your Lordships decided by an overwhelming majority that they wanted this law and they wanted this space for public peaceful protest.

Baroness Hamwee (LD): My Lords, I am sure that the Minister will tell us that the number of police is an operational matter for the police, but I am also sure that Home Office Ministers are not entirely uninvolved in the policy. Does he agree that the lightest practicable touch is as much as we would want to see applied?

Lord Bates: I understand the point my noble friend is making, but what is a light touch when you are faced with a protest that begins at 50, grows to 100, and then grows overnight to 150? The potential for that to get out of hand, and the risk to the public, is something which the police clearly take seriously, and they are right to do so.

Lord Harris of Haringey (Lab): What communications were there between Ministers in the Home Office and the Metropolitan Police on the nature of the policing of this protest?

Lord Bates: The noble Lord will be aware that as a result of passing the Police Reform and Social Responsibility Act 2011, which this House did, the Home Office published specific guidance, which I have here and which I will place a copy of in the Library, stipulating exactly what was permitted, what was not permitted, what approval needed to be sought and even stating on page nine the enforcement actions which we would ask the police to do. Having done that, and having published it in this place, the police deserve our support.

Lord Tebbit (Con): Will my noble friend take to the police my feelings, at least, of congratulation to them on doing a difficult job rather well? The easiest way to reduce the manpower required be for these objectionable people to cease their objectionable claim to occupy part of what is public land.

Lord Bates: I am very happy to convey the sentiments of my noble friend to the police on the role that they do, which is incredibly difficult. The point has to be reiterated that one of the reasons that the police are taking the actions that they are, and why we passed the legislation that we did, was to ensure that Parliament Square is available for those who want to come to make a peaceful protest as part of a democratic society in which we want to live.

Lord Paddick (LD): My Lords, does my noble friend agree that the police should be there as much to facilitate peaceful protest as to prevent it?

Lord Bates: That is absolutely right. In fact, the guidance actually states that the first responsibility is with the Greater London Authority in conjunction with Westminster City Council, and it is the local authority representatives who made the first contact in the first instance; and the police are there only in support of the local authority.

Lord Berkeley (Lab): My Lords, can the Minister then say when the fence is going to be taken down?

Lord Bates: The decision to erect the fence and the decision to heighten it were gradual decisions taken, in view of assessing the seriousness of the protest, by the Greater London Authority. Therefore, it will judge the situation in the round to see when it is secure to take those fences down. We all hope that it is as soon as possible.

Baroness Tonge (Ind LD): My Lords, has it occurred to Ministers to invite these people in to find out exactly what their problem is? Has it also occurred to Ministers that they occupy this square at night because they are homeless and have nowhere to sleep?

Lord Bates: I am sure, of course, that the noble Baroness would be perfectly free as a parliamentarian to invite them into the House, but perhaps ensure that they do not stay too long.

Lord West of Spithead (Lab): My Lords, does the Minister not think that the situation had become unbearable before this was done? For example, when I was being driven past in my car in my full uniform, they came and stood in front of the car and I managed to stop an incident because my Royal Marine driver said, "Shall I re-educate them, sir?" and I said, "Not today".

Lord Bates: The noble Lord is absolutely right—I fully agree with him.

Draft Protection of Charities Bill

Motion to Agree

3.20 pm

Moved by ***Baroness Stowell of Beeston***

That it is expedient that a joint committee of Lords and Commons be appointed to consider and report on the draft Protection of Charities Bill presented to both Houses on 22 October (Cm 8954) and that the committee should report on the draft Bill by 28 February 2015.

Motion agreed.

Infrastructure Bill [HL]

Order of Consideration Motion

3.20 pm

Moved by **Baroness Kramer**

That the amendments for the Report stage be marshalled and considered in the following order:

Clause 1, Schedule 1, Clauses 2 and 3, Schedule 2, Clauses 4 to 10, Schedule 3, Clauses 11 to 23, Schedule 4, Clauses 24 to 27, Schedule 5, Clauses 28 to 31, Schedule 6, Clauses 32 to 42.

Motion agreed.

Serious Crime Bill [HL]

Report (2nd Day)

3.20 pm

Amendment 43

Moved by **Baroness Walmsley**

43: After Clause 65, insert the following new Clause—

"Mandatory reporting of abuse in relation to regulated activities

(1) Subject to subsection (7), providers of regulated activities involving children or vulnerable adults, and persons whose services are used by such providers being persons who stand in a position of personal trust toward such children or vulnerable adults, who while such children or vulnerable adults are in their care have reasonable grounds for knowing or suspecting the commission of abuse on such children or vulnerable adults while the same are in their care whether such commission of abuse shall have taken place or be alleged to have or be suspected of having taken place in the setting of the regulated activity or elsewhere, have a duty as soon as is practicable after it shall have come to their knowledge or attention to inform the Local Authority Designated Officer (LADO) or children's services or such other single point of contact with the Local Authority as such Authority may designate for the purpose of reporting to it any such matter, allegation or reasonable suspicion.

(2) Failure to fulfil the duty set out in subsection (1) before the expiry of the period of 10 days of the matter or allegation or suspicion first coming to the knowledge or attention of the provider or of any person whose services are used by the provider as defined in subsection (1) is an offence.

(3) For the purposes of subsection (1), the operators of a setting in which the regulated activity takes place, and staff employed at any such setting in a managerial or general welfare role, are deemed to stand in a position of personal trust and are deemed to have direct personal contact with such children or vulnerable adults as are in their care whether or not such children or vulnerable adults are or have been personally attended by them.

(4) For the purposes of subsection (1), all other employed or contracted staff or voluntary staff and assistants are deemed to stand in a position of personal trust only if, and only for the period of time during which, they have had direct personal contact with and have personally attended such children or vulnerable adults.

(5) For the purposes of subsection (1), children or vulnerable adults are or are deemed to be in the care of the providers of regulated activities—

(a) in the case of the operators of any setting in which the regulated activity takes place and of staff employed by the operators at any such setting in a managerial or general welfare role for the period of time during which the operators are bound contractually or otherwise to accommodate or to care for such children or vulnerable adults whether resident or in daily attendance wherever the regulated activity is provided, and

(b) in the case of all other employed or contracted staff or voluntary staff and assistants for the period of time only in which they are personally attending such children or vulnerable adults in the capacity for which they were employed or their services were contracted for.

(6) It shall be a defence to show that the LADO or that Children's Services or that such other single point of contact with the Local Authority as such Authority may designate for the purpose of reporting was or were duly informed by any other party during the 10 days referred to at subsection (2) or had been so informed prior thereto.

(7) A Secretary of State having responsibility for the welfare safety and protection of children and of vulnerable adults may in exceptional cases by a letter or other instrument under his hand (hereinafter referred to as a "Suspension Document") rescind or temporarily suspend the duty referred to at subsection (1) in the case of any specified child or children or of any specified vulnerable adult or adults concerning whom it appears to him that the welfare safety or the protection of such child or children or of such vulnerable adult or adults would be prejudiced or compromised by the fulfilment of the duty referred to at subsection (1) and may where it appears to him that the welfare safety and protection of children is furthered thereby exempt any specified entity or organisation and the members thereof that works with children generally in furtherance of their welfare and safety and protection or any specified medical officer from compliance with the duty referred to at subsection (1) provided always that no allegation is made against such entity or organisation or member thereof or against such medical officer.

(8) It shall be a defence for any person to show that a Secretary of State acting pursuant to subsection (7) has issued a Suspension Document and it shall be a defence for any person employed by or operating as an entity or organisation that works with children or for any medical officer to show that a Secretary of State has by such Suspension Document whether temporarily or permanently exempted it and its members or any medical officer from compliance with the duty referred to at subsection (1).

(9) Subject to sub-paragraphs (i) and (ii) below, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or to a fine, or both;

but so that—

(10) In this section—

"regulated activity" relating to children and relating to vulnerable adults has the same meaning as in Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

"providers of regulated activities" has the same meaning as in section 6 of the Safeguarding Vulnerable Groups Act 2006;

"vulnerable adults" has the same meaning as in section 59 of the Safeguarding Vulnerable Groups Act 2006; and

"children" means persons who have not attained the age of 18 years.

Baroness Walmsley (LD): My Lords, we discussed this matter in Committee in July. Amendment 43 provides for a legal duty on those with a duty of care for children or vulnerable adults who are working in a regulated activity to report to the local authority known or suspected abuse of those in their care. The answer that I received from the Minister was that we should wait for the inquiry panel on historical child abuse to consider the matter. Three months has passed since then and the inquiry has still not got under way. As long grass goes, this is a veritable prairie.

At first, we lost the chair—the noble and learned Baroness, Lady Butler-Sloss. I cannot for the life of me understand why anyone would believe that a judge of her standing and reputation would ever be biased in favour of anyone, however well known to her. However, it is important that there is confidence in this inquiry, so I understand her decision to step down. Further time passed before we were given the name of another person to take the chair. There is currently controversy about that appointment, too. Even further time passed before we had the names of the rest of the panel—a very good bunch of people, by the way—and the terms of reference were published. I looked carefully at them and was dismayed to find that there is no reference in it for the panel to consider whether a legal duty to report would help to protect children in the UK. Sadly, it seems that the Home Secretary is against specifying that the panel must look at this, one of many tools that could help to protect children, despite the Home Secretary's reply to a Question in another place that the panel can indeed consider this matter. I hope that it does. But what if the panel feels that it has quite enough to consider and decides not to do so?

I also have concerns about the powers of the so-called Woolf panel, and I have questions for my noble friend the Minister about this. There have been concerns that the inquiry is not a statutory public inquiry under the public inquiries Act, and would therefore not be able to subpoena witnesses or evidence. The Home Secretary has confirmed that, should the chairman of the inquiry feel that it needs statutory powers, these would be granted by the Government. Can my noble friend the Minister confirm that that is still the case? Can he also say whether it would entail the appointment of a different chair, one who is a judge, or could the person currently appointed to chair it operate those statutory powers?

All that aside, it has become obvious to me that, whatever the Woolf inquiry does, it does not have the confidence of survivors of abuse. Many have said that they will not engage with it. I therefore concluded that we need another way in which to give victims a voice and a transparent way in which to hear arguments in favour and those against the introduction of mandatory duties on those with care for children and vulnerable adults.

I do not believe that such a duty should be introduced without very careful thought, or without provision to ensure that the unintended consequences that some groups fear would not materialise. My colleagues and I have therefore had extensive discussions with the Government, and I believe that the Minister will confirm today our agreement that there will be an open and transparent public consultation on whether such a duty should be implemented in the UK, to protect children.

I thank my noble friend the Minister and his officials for these discussions, and I especially thank my right honourable friend the Deputy Prime Minister, Nick Clegg, and Norman Baker, the Home Office Minister for Crime Prevention, for their good offices in ensuring that we will now have open public consideration of the benefits of this measure. Nobody, whether establishment or not, will be able to get in the way of people saying their piece. It is important for the questions to be open ones, and the process to be accessible and transparent. I would be very keen to be involved in that. I am also keen to ensure that, alongside the opportunity to contribute in writing, survivors can take part in seminars, since many would not feel able to write or send an e-mail. All that is still to be decided.

This process is to be welcomed. Nobody can have any excuse for not engaging with it. It is not led by any member of the establishment, and the responses will be published, with appropriate redactions if any sensitive information, or information that might prejudice the bringing to justice of a perpetrator, is revealed. Then we will be able to hold to account whichever Government are in place next May as to how they respond to the evidence.

My intention in pressing this matter for so long has always been prevention, not criminalisation. I remain convinced that a legal duty would prevent perpetrators taking the risk of acting, if they knew that their colleagues were trained to identify abuse and would act if they became aware of it. Of course, professionals need training to recognise the early signs of abuse. This would protect children. The legal duty would also protect whistleblowers, who have been reluctant to speak out until now because they feared for their jobs. It would also bring more perpetrators to justice.

I accept that resources would be needed to deal with all the hidden child abuse that would come to light. But you cannot fail to turn over a stone because you are afraid of the slime that you might find underneath—and of course, the long-term benefits of a step change in the protection of children are obvious. Despite the Government's extra £400 million, announced by the noble Earl, Lord Howe, at Question Time today, only this morning the mental health organisation Mind has published figures showing the lamentable state of mental health services for children in this country, and the small amount of money spent by local authorities on prevention and treatment, while at the same time millions are spent on programmes to prevent loneliness, obesity and so on.

Money spent on training for a legal duty to report, and on dealing properly with the cases that would be revealed by it, would save money in the long run and prevent a great deal of human misery. I heard recently that a majority of people accessing talking therapies were abused in some way as children. So it is clear that prevention must be our first objective, followed by early detection.

My aim in introducing the amendment has always been to give victims a voice, and to ensure that specific attention is drawn to, and evidence heard about, the potential benefits of a legal duty to report. We must ensure that all those well-meaning people out there who work with children turn what they see and hear into action, and feel comfortable to do so. I hope that when the Minister responds he will confirm that I have succeeded in that aim. I beg to move.

3.30 pm

The Lord Bishop of Durham: My Lords, I once again support the amendment of the noble Baroness, Lady Walmsley. Indeed, since I last spoke in this place on this matter, the need for an obligation to be placed

[THE LORD BISHOP OF DURHAM]
on certain individuals to report knowledge or reasonable suspicions of abuse involving the most vulnerable has become more pressing.

It was with increasing dismay that I read about the events in Rotherham. The independent inquiry report into child exploitation there makes sobering reading. At least 1,400 children were subject to sexual exploitation between 1997 and 2013, with collective failings from both the council and South Yorkshire Police. The report noted:

"Over the first twelve years covered by this Inquiry, the collective failures of political and officer leadership were blatant. From the beginning, there was growing evidence that child sexual exploitation was a serious problem in Rotherham ... Within social care, the scale and seriousness of the problem was underplayed by senior managers. At an operational level, the Police gave no priority to",

child sexual exploitation.

There has also been the recent case of Thorpe Hall School in Essex. For more than 14 years a senior teacher had secretly photographed young boys undressing in changing rooms. The child protection unit CEOP, now taken over by the NCA, had been aware, via a report from Canadian police, that this teacher was a purchaser of paedophile videos, but more than a year passed from that report before Essex police were notified. Similarly, in the case of Dr Myles Bradbury, the paediatric haematologist at Addenbrooke's Hospital, Cambridge, who pleaded guilty on 15 September this year to numerous sexual offences against children, CEOP had, again, been aware since July 2012 that he had been buying paedophile videos online but passed this information to Suffolk police only in November 2013. The National Crime Agency stated that CEOP's delay in disseminating the information was "unacceptable".

Sadly, the list continues to grow. In Birmingham, on 18 October this year, the city's safeguarding children board noted that,

"the perpetrators of these horrific crimes remain at liberty and continue to target other children".

These numerous scandals have shocked, and continue to shock, the nation and serve to emphasise the importance of imposing an obligation that is subject to criminal sanction if there is a failure to report.

Power and secrecy, which are so often present when abuse occurs, are magnified in an institutional setting, where there is often a considerable power imbalance between the most vulnerable and the perpetrators of abuse. It should not be forgotten that the vulnerable, particularly in institutions, are at risk not only from individuals who may commit abuse but from all adults who fail to report suspicions and knowledge of abuse. Indeed, the vulnerable may be placed in institutions in order to safeguard them from abuse but, ironically, it is in these very institutions that their exposure can become more acute.

This issue will not go away. Time and time again, individuals in institutions have failed the most vulnerable in their care by failing to report. The fact remains that, although child abuse is a crime, reporting it is only discretionary, which is why I welcome this amendment, the provisions of which, as can be seen, have been strengthened and clarified since our last debate. Regulated activity providers and those who are in a "position of personal trust" must be held accountable if they fail to report.

Public opinion is in favour of such legislation, as a recent YouGov poll indicated. The former Director of Public Prosecutions, Keir Starmer QC, has stated that the introduction of a mandatory reporting provision would close a gap in the law which has been there for a long time. The Child Protection All-Party Parliamentary Group has called on the Government to consider certain institutional duties which,

"require people in leadership positions in institutions ... to report allegations of criminal abuse committed against children by people working on behalf of the institution".

The former Secretary of State for Education, after hearing the words of a survivor of abuse, also suggested that the Government should re-examine their position, after previously blocking such an idea.

On 22 July this year, the Government co-hosted, with UNICEF, the first Girl Summit aimed at strengthening domestic and international efforts to end female genital mutilation and forced marriage within a generation. As part of this, the Prime Minister announced that mandatory reporting would be introduced for health, educational and social work professionals in known FGM cases. If mandatory reporting is to be introduced in relation to this specific area of abuse, surely it would make sense to extend this to cover other types of abuse. Now is the time. We need to act.

As I stated previously, I agree that imposing such an obligation may increase the number of reports, and this will need to be resourced properly. However, this increase is no bad thing. Knowledge or reasonable suspicions of abuse must be reported. The omission of an obligation has allowed those such as Savile and Bradbury to continue to abuse. I do not agree that the introduction of mandatory reporting will lead to authorities being swamped by erroneous or fallacious reports. In fact, mandatory reporting can highlight cases that otherwise may never come to the attention of the relevant authorities. I hope for an announcement from the Minister that there will be a serious look at the evidence.

We need a culture in our institutions and across our society that prioritises the protection of the most vulnerable over and above all other considerations. As the Home Secretary stated in the other place:

"We know that child sexual exploitation happens in all communities. There is no excuse for it in any of them and there is never any excuse for failing to bring the perpetrators to justice".—[*Official Report*, Commons, 2/9/14; col. 168.]

This is why I wholly support the amendment of the noble Baroness, Lady Walmsley. A change in the law could lead to a change in culture, helping to raise awareness, where certain individuals realise that if they fail to report their knowledge or reasonable suspicions of abuse they may be subject to prosecution.

Baroness Brinton (LD): My Lords, when I was chair of education in Cambridgeshire some 20 years ago, it was brought home to me very starkly how the lack of mandatory reporting had allowed a caretaker to abuse children in a school over a 16-year period. It was not taken seriously at any point over that time when

parents, or even some of the children, reported concerns. Had that system been in place—even the first report—the head would have been under a requirement to force a proper inquiry. As a result, this man's actions would have been curtailed and a large number of children would not have been subsequently abused.

Even though that happened some time ago, the problem still continues. We have heard from the right reverend Prelate the Bishop of Durham about some of the larger cases at the moment. I should have declared an interest: I am a trustee of UNICEF. I echo the point of the right reverend Prelate that if we are talking about mandatory reporting for female genital mutilation, which is a form of child abuse, we should also be considering it for wider child abuse as well.

Another point that has been raised outside the Chamber refers to concerns felt mainly by professional psychotherapists about an exemption in their treatment of perpetrators of child abuse, or would-be perpetrators, under the normal terms of confidentiality if there is a requirement to report. The exemption is in proposed paragraph (8) of the amendment. It quite specifically says that it is possible for a person to have that exemption. We need to reassure professionals that important work like that should be one of the few exemptions allowed to continue without further report to the law.

I want to raise a more topical concern. Much has been said about the Jay report and what has been happening in Rotherham and subsequently in Sheffield and other places. I am very concerned that yesterday UKIP published a photograph showing a young girl who might be deemed to be a victim of abuse while the headline said something like, "1400 reasons why you should not vote Labour in the PCC election" .

Frankly, UKIP's hypocrisy is breathtaking. Its record on tackling serious child abuse is disgraceful. The only record of the noble Lord, Lord Pearson of Rannoch, asking Questions about child abuse is on 13 October this year, after the by-election was called, and he has been in this House since 1990. Even that Question was focused entirely on the UKIP obsession with Muslims, ignoring the fact that child abuse happens in all areas of the country and is not exclusive to any culture, community, race or religion.

However, it is not just UKIP in the Lords. In the European Parliament, its Members abstained in a vote to strengthen legislation about sexual abuse and the sexual exploitation of children and child pornography. Further, UKIP's candidate in the Croydon North election in 2012, Winston McKenzie, said that gay adoption was child abuse. Gordon Gillick, a UKIP Cambridgeshire councillor, told a meeting of some children in care that they were takers from the system and wanted to know what they would give back to society. As we have heard, many children in care are the most vulnerable to grooming and abuse.

We need to have an honest and open debate about child abuse but it is completely inappropriate for a party that has not taken it seriously, even within its own actions when it threw out a paedophile and allowed that person to come back to receptions, particularly those with young UKIP members. We need to make sure that UKIP—it offers a policy of making sure that children are safe—can deliver that by having safe policies itself. I do not believe that the evidence is there.

Finally, I am also grateful for our discussions with the Minister on this. I hope that he will be able to offer reassurance to those of us who want a public debate and public consultation about the mandatory reporting of child abuse. I look forward to his response.

Baroness Finlay of Llandaff (CB): My Lords, I have put my name to the amendment and support it strongly. Current child protection systems, which rely upon voluntary reporting, simply are not seen to be working effectively. There is ongoing underreporting of suspicions of abuse or neglect by professionals working with children. Why might this be? It is worth looking at previous studies, which have suggested that barriers to reporting include the professionals' own values and attitudes—for example, over the acceptability of physical punishment—and confusion over the thresholds for reporting. Professionals may be worried about issues of confidentiality and the potential impact on their relationship with the child and the family.

The current position for someone reporting is that they may, in effect, feel that they are being a whistleblower on a situation that they feel uncomfortable about. Professionals may fear the consequences and the potential impact on their reputation, leading to further hesitation. Reporting a suspicion that turns out to be unsubstantiated should not be a disciplinary matter for professionals, however distressing for those involved. There is a balance of harms here, and the need to protect vulnerable children should be paramount.

I should like noble Lords to think for a moment of the situation for a GP who is seeing people on 10-minute appointments, who may know a family, see a child, have some concerns but be unable to put a finger on it. At the moment, the hesitation to report remains there. Other pressures of work come in. I must declare an interest here. When I was a GP, I looked after children in a children's home and became convinced that something was not right. I went to the authority in whose area I was working but we did not get anything specific to happen. I would go out to the children's home whenever there was a request for an appointment so that I would see the children on their own territory. I tried to see the children on their own when they were referred for a sore throat, sore ear or whatever. I had this nagging suspicion that something was wrong but I could not pin it down anywhere. All that I can say is that the Christmas after my suspicions began to become aroused the children themselves burnt the home down, which confirmed to me that my index of suspicion was right. However, I had no clear evidence on which to report that abuse was going on, although I was suspicious. I would have welcomed having to report that suspicion because it would have allowed me the freedom to state, "I have a really uncomfortable feeling here", without feeling that I had to accrue the evidence.

That is my personal experience and where I have come from with it. That is why I stand separately from my professional body, the BMA, which has reservations about this amendment. It is concerned that a degree of professional discretion is required to ensure that doctors

[BARONESS FINLAY OF LLANDAFF]

can take account of an individual's circumstances and always act to ensure the protection of a patient. My experience suggests that that is incredibly difficult.

3.45 pm

In countries such as the USA, Canada and Australia and in several European states where mandatory reporting has been introduced, it has been made clear to professionals that they must report and that reporting a concern is no longer a matter for individual discretion. The people who have to report and the timeframe for reporting are defined, and penalties for failure to report are clear. Designated professionals include social workers, teachers, healthcare professionals, law-enforcement officers, childcare workers, and in some areas members of the clergy, domestic-violence workers, animal-control officers, school bus drivers and, in certain places, photograph processors. The law provides protection for those reporting, by ensuring confidentiality for example. There is a range of penalties for those who fail to report. It has been interesting to note that in areas where the penalties are low the amount of reporting seems to be lower than in areas where the penalty is high.

Has there been any impact as a result of reporting in such countries? In Canada, recent reports showed that suspicions reported by hospital healthcare professionals were substantiated in two-thirds of cases. So more child abuse is being detected as a result of mandatory reporting than was previously the case. The same is being borne out in Australia. When the state of Victoria was compared with the demographically similar Republic of Ireland, which does not have mandatory reporting, researchers found that almost five times as many sexually abused children were identified there than in Ireland. Associate Professor Ben Mathews at the Queensland University Faculty of Law said that introducing mandatory reporting enhanced the detection of childhood sexual abuse.

Were the investigations an economic burden? They were not. It is reported that the costs of mandatory reporting accounted for less than 10% of total child-protection system costs in the USA and Australia. This seems a small price to pay if it means that processes that are better at protecting children are in place. Furthermore, research indicates that mandatory reporting numbers did not continue to rise over time, but remained stable over several years.

Childhood abuse and neglect have been hidden for far too long. It is time to act to deliver earlier detection and better protection for these vulnerable people in our society. Children who disclose abuse and neglect need to know that they will be listened to and protected from further harm. They need to know that professionals have a public duty to report their concerns and need support to be able to do so. Introducing mandatory reporting would send a clear message that you can no longer turn a blind eye to abuse and neglect. The basic human instinct is not to want to believe that it is happening, so we are more inclined to look at it with Nelson's eye than explore it. For these reasons, I, along with my noble friend Lady Hollins, who sends her apologies to the House for being unable to be here, have put our names to this amendment.

Baroness Benjamin (LD): My Lords, I congratulate my noble friend Lady Walmsley on highlighting and pursuing this issue. I also welcome the Government's common-sense approach as we move forward, as my noble friend said. It will make a difference to children's futures, and their future mental and physical well-being.

I know that it will make a difference because just last week I gave one of my many talks to more than 200 school-children. I spoke to them about people who may be causing them to suffer physical, mental, emotional or sexual abuse. I told them that it was not their fault, and rather that bad people were taking advantage of their innocence and vulnerability. They must feel worthy and should tell someone, even though they may be threatened by the abuser if they do so. Children need to hear the message and to be empowered in this way.

As so often happens, at the end of that session the organiser of the event, who was aged around 40, came and sat next to me and said that he was that little boy I had spoken about when I talked to the children. He said that he had lived in a children's home and had been abused, and that he is still living with those experiences. That is because when he did tell someone, he was told to shut up and keep quiet, and that he was ungrateful. His abuser was considered to be a good and kind person in society. The organiser was made to feel that he was the victim on all counts.

This is how abusers operate: they put on a good face for the community, but to their victims they are monsters. Everywhere you go in society and every corner you turn, there will be an adult who is reliving the horrors of child abuse. As I have said time and again in this House, childhood lasts a lifetime, so we have to put measures in place to ensure that for abusers there will be no place to hide. Some people might be wrongly accused and costs may be incurred, but I believe that that is a small price to pay to protect our children from being damaged for life. I therefore support the amendment and I look forward to the Minister's response, which I hope will be a good one.

Baroness Howarth of Breckland (CB): My Lords, I fear that I may be a lone voice in that I take a slightly different view from my colleagues—all of whom I deeply respect. I understand their position. I should also say that I look forward to a full debate on this, and I hope that the Minister will meet with those of us who take a different view as well as with those who are pressing for mandatory reporting. That is because there is another argument, part of which I will cover today. However, meeting some of those in the various fields where this proposal would make their work difficult would be worthwhile.

Of course, when a professional or indeed an ordinary person hears about a child or an adult of any kind—I will not use the word "vulnerable" because it means all sorts of things—who is being abused, they have a responsibility to ensure that they go to some authority. I would say to my noble friend, with deep respect, that, as a doctor, my view is that if she had a suspicion, it should have been forcefully conveyed to the authorities. I think that the problem is that some time ago, the atmosphere around child abuse, and particularly child sexual abuse, was very different from the one we know

now. I shall come to Rotherham in a moment because it is a different issue. We are in a different era in relation to child abuse and people are now very highly motivated to get it right.

As I said in the last debate, it is important that systems are in place to ensure that there is a clear pathway for reporting. Most organisations are working towards that, if they have not already got it. Most local authorities and statutory authorities have it; here I declare an interest because I am working with the church at the moment to try to ensure that it has that clear pathway to take people through to the reporting place. I do not think that they would knowingly fail to carry out that duty because the consequences are huge. I do not know how many noble Lords watched the programme last night about Baby P, and saw the total destruction of people's careers and indeed lives based on extraordinarily flimsy evidence, which some of us knew about previously. We have to be absolutely sure that, when reporting takes place, it takes place in a structure that can pick things up quickly and get the information right from the beginning.

I will speak about the issue of exemptions. I do not agree that psychotherapists should be exempted. If someone knows that abuse is taking place, they have a duty to report it, whoever they are and wherever they are. The difficulty comes when we are not quite sure. This is where the psychotherapists are anxious, and this is where I am anxious about a whole range of professionals who are working in the field of perpetrators —and I declare an interest as vice-chair of the Lucy Faithfull Foundation, which works directly in this field—including of course ChildLine and the NSPCC. They have children ringing up about issues that they are not quite prepared to talk about.

If there are going to be exemptions, they have to be absolutely clear. The procedure has got to be right. It is not about whether you are a particular kind of professional. It is about the situation, the circumstance and where you are in terms of the abuse. That is why I value the debate, because ChildLine, the Lucy Faithfull Foundation and all similar organisations have very clear guidelines on when confidentiality must be broken in the interests of the child.

I know things can go seriously wrong. I was as appalled, shocked and amazed at what happened in Rotherham as anyone who has been involved in safeguarding for far less time than me—and I have probably been involved in it for more years than anybody in this House. I think, though, that we have to look at the circumstances of those kind of situations and what is happening in that particular institution and how we put it right, because what really counts are not structures and procedures but culture. It is about whether the people in the particular organisation understand the values that they must have in relation to those for whom they are responsible and whether there is a culture right through that organisation that takes them forward.

The noble Baroness, Lady Walmsley, asked a detailed question about the statutory inquiry into child abuse. The last issue concerns me particularly. At the moment the National Crime Agency is telling us that it cannot deal with some 50,000 referrals that it has at the moment. The Lucy Faithfull Foundation cannot take all the telephone calls, despite the government help that we are getting—and we are working on behalf of the Government to try to take more calls from people who are anxious about their thoughts and behaviour.

As soon as we open the Pandora's box on historical abuse for the inquiry, the Government will have an avalanche of people coming forward. The example given by the noble Baroness, Lady Benjamin, is one I could repeat time and time again. I have been year after year in situations where people come to me and say, "This happened to me when I was 10, when I was 11". The historical abuse issue, because we did not have procedures in place then, is going to hit the Government and the inquiry like nothing we have seen.

The reason I am so concerned is that we have put all that into a position of trust. It is about getting people to divulge things that they may not have talked about for 40 years. Do we have the resources in place to meet their needs once they have divulged this? At the moment children's services are totally overwhelmed, CAMHS cannot meet the mental health needs of children in the communities and victim support groups have only just enough money to last until next year. That is the environment in which we are thinking about mandatory reporting. I will be interested in the Government's looking at evidence from other countries because my evidence from Australia is that the authorities were overwhelmed at the beginning. They were totally overwhelmed by mandatory reporting.

It ensures that you cannot prioritise work. You have to do something about things that as a professional you might decide are probably not the highest on the agenda. Doctors have to make those difficult decisions, social workers have to make them and the police have to make them. Sometimes they will get them wrong, even if they have mandatory reporting, but at least we should give the services a chance to be able to meet the demand that we have at the moment. If we are going to increase that demand, the Government have to think beforehand about the resources that are going to be needed to meet that promise and the trust that is placed in those resources by the victims who have suffered so much.

As a former director of ChildLine, as a director of the Lucy Faithfull Foundation and as someone who has worked in this field for a long time, I certainly value the noble Baroness bringing this debate forward. I just come to a different conclusion.

4 pm

Lord Rosser (Lab): My Lords, I gather from what has already been said by the noble Baroness, Lady Walmsley, that an understanding has been reached with the Minister on this amendment, which I hope we will be able to welcome when we hear from the Minister exactly what it is.

We are extremely concerned about the way that children and vulnerable adults have been badly let down, not least in recent high-profile cases. Although we support mandatory reporting in principle, we have concerns about the amendment, and in particular its potential unintended consequences, which may have the opposite effect to that desired.

[LORD ROSSER]

The amendment states that all providers of regulated activities involving children or vulnerable adults will be required to report any suspicion of abuse to the appropriate local authority. That would potentially cover millions of people being required to report. But the amendment is not specific or clear about exactly who would and would not be covered; nor does it define abuse. The signs of actual or likely abuse can be obvious but potential indicators of abuse, such as becoming more withdrawn, may not be quite so obviously a consequence of abuse; therefore, it would not be obvious that it would be an offence not to report them.

Among regulated activity providers there will be big differences in the level of pastoral support expected. For schools and hospitals, most referrals will be about abuse conducted not at the school or hospital but at home. However, it is not clear that a swimming club, for example, would have the same level of pastoral responsibility in respect of potential abuse. In some cases, conduct should be reported to the police where it is a straightforward criminality issue: for example, if a swimming club or football club suspected one of its coaches of taking inappropriate photographs. In other cases, such as a school, where it is likely to be safeguarding issue, the reporting would be to the local authority. I do not think that the amendment addresses or reflects those kinds of realities.

There is some evidence from outside the United Kingdom that suggests that a mandatory reporting requirement as broad in scope as that provided for in the amendment can lead to the child protection system being overwhelmed. With social services budgets here facing unprecedented cuts, that must be an issue of real concern. Some evidence from outside the UK indicates that people may play safe over reporting in order to protect themselves from a criminal liability for failing to report, with the consequence that resources are redirected to the investigation and assessment of the increased numbers of reports and away from detection and protection and meeting the needs of children at risk and of vulnerable adults.

That is not to suggest that the current system works as it should: for example, through ensuring that incidents or suspicions of child abuse or abuse of vulnerable adults in institutions such as care homes and boarding schools concerned to protect their reputation are reported and properly addressed. It is also clear that, as in some recent high-profile cases of child abuse, the issue has been one not of failure to report but of failure to act on those reports.

We will await the Government's response, but while we favour and want to see the introduction of mandatory reporting, we do not believe that the way in which the amendment proposes to do it is the right approach, for the reasons I have mentioned. These include possible unintended consequences that could have an adverse effect on the protection of children at risk and vulnerable adults. I hope that the Government will take on board the principle of mandatory reporting and work with all interested parties to bring forward a detailed proposal that will have the confidence and support of the whole House.

Lord Bates: My Lords, I thank my noble friend Lady Walmsley for again bringing this important matter to the House and for her persistence and perseverance in working with us to find a way forward on this issue. As many of your Lordships have said, we are united in our abhorrence for these crimes. We are resolved to lift the stone—in the analogy of my noble friend—and to face and tackle what lies beneath.

This coalition Government are absolutely committed to improving the safeguarding of children and vulnerable adults and to doing all they can to protect them from all forms of abuse. In recent years, we have been confronted all too frequently with the most appalling cases of organised and persistent sexual abuse of children. The public have been justifiably horrified by the historical cases of child sexual abuse that came to light in the wake of investigations into Jimmy Savile, and those raised by the more recent cases of organised child sexual exploitation in Oxford, Rochdale and Rotherham, to name but a few. Some of these cases have exposed a failure by public bodies to take their duty of care seriously and some have shown that the organisations responsible for protecting children from abuse—including the police, social services and schools—have failed to work together properly. The recent report by Professor Jay into the horrific cases of child sexual exploitation in Rotherham also highlighted the failure of many of those involved to recognise the seriousness of the problem, and—perhaps most shockingly—their failure to see the children concerned as victims, rather than the makers of their own misfortune.

Each one of these various reviews and reports makes for deeply distressing reading, and this coalition Government are determined to learn their lessons. As noble Lords will be aware, the Home Secretary announced in July the creation of a new independent inquiry which will consider whether, and the extent to which, public bodies and other non-state institutions have taken seriously their duty of care to protect children from sexual abuse. The inquiry will consider all the information available from the various published reviews and will identify any issues or allegations requiring new or further investigation. It will advise on any further action, which could include any legislative changes, needed to address any of the gaps or failings within our current child protection systems on the basis of the findings and learning from the reviews. The inquiry will take full account of what happened in Rotherham and elsewhere, and it will make recommendations on that basis.

My noble friend asked about the status of the inquiry. As things stand, the inquiry will, like the inquiries into Hillsborough, be a non-statutory panel inquiry, which means that it will not be able to compel witnesses to give evidence. However, the Home Secretary has been very clear that, if the chair of the inquiry deems it necessary, the Government are prepared to convert this into a full public inquiry under the Inquiries Act 2005. This means that, if the panel is converted into a public inquiry, Fiona Woolf will have powers to compel witnesses and subpoena evidence. This power would come to her under provisions in the Inquiries Act, which means that the inquiry does not need to be chaired by a judge.

My noble friend's amendment would place a duty on providers of regulated activity, and anyone whose services are used by providers of regulated activity, to report known or suspected abuse against children and vulnerable adults to the appropriate local authority within 10 days. Breach of this duty would be a criminal offence punishable by up to three years in prison. That would essentially mean that anyone who works or volunteers in any capacity with children or vulnerable adults would commit a criminal offence if they did not report suspected abuse of any kind.

Since the debate on this issue in Committee, we have given this matter further careful consideration. It has been discussed on several occasions by the national group, and has been raised by the Home Secretary's ministerial task force on Rotherham. However, we have not yet come to a firm decision on the matter. This is not surprising given the complexity of the issue. Research is inconclusive in determining whether mandatory reporting regimes help, hinder or simply make no difference to child safeguarding outcomes. In the USA, Canada and Australia, mandatory reporting legislation has been accompanied by significant increases in the number of referrals of suspected child abuse and neglect made to the authorities, a large percentage of which have not been substantiated. That was the point made by the noble Baroness, Lady Howarth of Breckland.

There is a real risk that, in introducing a duty, we would divert child protection services from the task of increasing the safety of our most vulnerable children to evidence gathering and investigation of cases that are eventually unsubstantiated and which often lead to significant disruption of family life. Additionally, there is evidence to suggest that existing mandatory reporting regimes can lead to unintended consequences, such as creating a culture of reporting rather than acting—a point made by the noble Lord, Lord Rosser—and dissuading children from disclosing incidents for fear of being forced into hostile legal proceedings. That point was touched upon by my noble friend Lady Benjamin, who talked about the need to give people the courage to come forward and recognise that they are the victims of this and should certainly have no shame in coming forward.

I recognise that there are contrary views on the utility of introducing a statutory duty of the kind set out in my noble friend's amendment, and some of those views have been raised this afternoon. I firmly believe that, given the conflicting evidence of the impact of such a duty and the concerns expressed by groups such as the NSPCC in its advice on this and the General Medical Council—though taking into account the practitioner's perspective that the noble Baroness, Lady Finlay, brought to this debate—it would be perhaps a leap in the dark to legislate on this issue right now in this Bill. It is right that, before coming to a final decision on this issue, we listen to the views of the many stakeholders and experts, including victims' groups, who quite rightly hold strong opinions on this.

I can therefore advise the House that we will now hold a full public consultation on the issue of mandatory reporting. We will consult broadly on the advisability, risk, nature and scope of any reporting duty, including questions on which forms of abuse it should apply to, and to whom it should attach. I should emphasise that the Government will look at all the responses they receive with an open mind. It will be a thorough, open and transparent consultation with a rigorous evaluation of the responses. Although hitherto the Government, like the Opposition, have taken the view that we have concerns about the specific wording of this amendment, we are entering into this consultation in good faith, in our desire to evaluate the evidence that comes forward.

The views of noble Lords will of course be very welcome indeed. There is a tremendous amount of personal knowledge and expertise in this House, and I accept the comments made by the right reverend Prelate the Bishop of Durham in that regard. I would further encourage other Members to make their opinions heard. We intend to launch the consultation as soon as possible. Given the significance of the issue, it will run for the full 12 weeks. We will undertake to report back to Parliament on the results. I hope that this commitment and the spirit in which is it offered to my noble friend will leave her reassured about the Government's resolve to probe this serious issue by this commitment to consult.

4.15 pm

The Government recognise concerns about the current safeguarding system. We are not complacent about that. We understand the public's anxiety, which has been raised by many Members, about the potential underreporting of abuse and the scale of it. Reference was made to the 50,000 figure that was used by Keith Bristow of the National Crime Agency. We are deeply shocked by the scale of what we are uncovering, both in terms of services and in the online environment.

It is right that we should take further time to listen to the views of all those with an interest—those who will be directly affected by such a measure of mandatory reporting. I hope that my noble friend will be reassured that the Government absolutely share her objective of enhancing the protection of children and vulnerable adults, but that we have to be absolutely certain that we get it right. The consequences of not doing so are potentially very serious. On that basis, I ask my noble friend to consider withdrawing her amendment.

Baroness Walmsley: My Lords, I am grateful to my noble friend the Minister for what he has just said. I know that it is the convention to thank the Minister for what he has just said, but in this case it is particularly sincere because there have been genuine discussions and I think that what he has suggested will bring the sanitising effect of fresh air to this discussion. I am most grateful to all those who have supported my amendment. It may not be perfect, but it has resulted in the statement that we have just heard from the Government, which is a major step forward.

I am grateful to the right reverend Prelate, to the noble Baroness, Lady Finlay, and to the noble Baroness, Lady Hollins, who was unable to speak today, for adding their names to the amendment. I am also grateful to the noble Lord, Lord Rosser, and to the noble Baroness, Lady Howarth, for their comments, although I would point out that some of the definitions that the noble Lord, Lord Rosser, was looking for are right at the end of the amendment. However, the point

[Baroness Walmsley]
that they made makes the case for what the Government are suggesting now. None of us wants unintended consequences. We want children to be protected.

I hope that all those who have an opinion about this matter will be able to put their views to the public consultation, and that those views will be taken into account. While still being convinced that some sort of restricted mandatory reporting for regulated activities would benefit children, I very much accept that we need to hear all opinions and it needs to be implemented in a very careful way that is appropriate to the United Kingdom, although there is good evidence from abroad.

I shall pick up one point, if I may, before I withdraw the amendment. It has often been said, and my noble friend the Minister said it again, that there are large numbers of malicious reports. It has been found by analysis that, yes, there are malicious reports, but it is not a large percentage; it is quite small—under 20%. In Australia, the percentage was exactly the same after the duty was introduced as it was before. Although the raw numbers went up, the actual proportion of those reports which were not able to be substantiated was exactly the same. So it is not correct to say that an awful lot of reports are malicious or unsubstantiated. Let us please be correct about that. That is just one small point that I felt needed correcting.

I am delighted that there will be a public consultation and I would challenge all those organisations that have said that they will not engage with the Woolf inquiry to engage with this one, because there will be no barrier to hearing their voices. I hope that they will make their voices heard. I beg leave to withdraw the amendment.

Amendment 43 withdrawn.

Amendment 43A had been withdrawn from the Marshalled List.

Amendment 44

Moved by ***Baroness Smith of Basildon***

44: After Clause 65, insert the following new Clause—

"Anonymity of victims where female genital mutilation is alleged

In section 2 of the Sexual Offences (Amendment) Act 1992 (offences to which this Act applies), after subsection (1)(da) insert—

"(daa) any offences under sections 1 to 4 of the Female Genital Mutilation Act 2003;"."

Baroness Smith of Basildon (Lab): My Lords, in moving Amendment 44, I shall also speak to Amendment 44A. I thank those who have co-sponsored the amendments: my noble friend Lord Rosser, the right reverend Prelate the Bishop of Rochester, the noble Baroness, Lady Meacher, and the noble Lords, Lord McColl of Dulwich and Lord Pannick.

There are a number of amendments in the group and I welcome that the Minister has tabled amendments that mirror ours. This is a real opportunity not only to ensure meaningful changes to the law but also to ensure that the law is enforced.

The term FGM is becoming more widely known. Many people have a vague understanding that it means that a female, usually a young girl, is cut and her genitals mutilated, but I am not convinced that the absolute horror and brutality of what is involved is as well understood as it should be. Let us be very clear about what we are talking about. The term "female genital mutilation" refers to all procedures involving the partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. The World Health Organization has classified it into three different types, including clitoridectomy—I never thought that I would have to say that in your Lordships' House—excision or infibulation. What does that mean? Clitoridectomy is the partial or total removal of the clitoris. Excision is the partial or total removal of the clitoris and the inner labia, sometimes with the excision of the outer labia as well. Infibulation, which then follows, is the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and "repositioning" the inner or outer labia. There are other harmful procedures too, but this is essentially what these amendments refer to.

You do not have to be medically trained to appreciate not just the abusive brutality of what we are talking about but the serious health risks for the girls and women who are mutilated in this way, both at the time of mutilation and in later life. The risks include severe pain, injury to the surrounding organs, haemorrhage, infections that can cause death, chronic long-term pain and the obvious complications that occur during childbirth. That does not even begin to cover the psychological trauma that the girls carry for the rest of their lives. Reliable estimates are that, around the world, 130 million girls and women have undergone female genital mutilation. In Africa, 101 million girls aged 10 and over have been subject to FGM, and every year a further 3 million girls are at risk of FGM in Africa alone.

If noble Lords think that this is something that happens in other places and cannot happen here, let me share some horrifying and ugly statistics. A recent report in the UK based on 2011 census data and ONS birth statistics concluded that there are 170,000 women aged 15 and over in England and Wales who are living with the consequences of FGM. It is even more shocking that today in the UK 63,000 girls under the age of 13 are at risk of FGM. It is a serious problem here and it is a serious problem now.

In trying to tackle this we have tended to focus mainly on prosecution but we have not seen as many prosecutions as we would like given the high incidence of this crime. Our Amendment 44, on female genital mutilation orders, is aimed at trying to address the issue through prevention. This proposal is a direct result of the experience of those trying to protect young girls. It would establish female genital mutilation protection orders, which would be civil orders modelled on the forced marriage protection orders that enable a court to make an order to protect a girl or woman. This was originally a recommendation of the Bar Human Rights Committee of England and Wales. We are very grateful to the committee for its advice and for the briefings it has provided. They have been invaluable in our examination of these issues.

These orders would allow the court to intervene to prevent potential victims being subjected to FGM and would therefore act as a strong deterrent against the practice. The orders provide a range of injunctive remedies to the courts and, crucially, they focus on the victim. The powers include the ability for a number of people—including the potential victim but also a friend or a local authority—to apply to the court, where it is suspected on clear and compelling evidence that a child is at risk of mutilation, for an order prohibiting any interference with the bodily integrity of the child. It would also allow the court to intervene on its own account. The order could contain such prohibitions, restrictions or other requirements that the court considers appropriate for the purposes of protecting a girl or woman. We, like the Government, have largely mirrored the forced marriage protection orders because they have been used successfully hundreds of times now and they share common features with the FGM protection orders.

Girls and young women at risk are often reluctant to provide evidence that would criminalise their families. They are, by definition, young; they are vulnerable and effectively socially silenced. A difference between our proposals and the Government's is that our amendment amends the Family Law Act 1996 and not the 2003 Act. There are a number of benefits to such orders being applied within family law jurisdiction. For cases involving children, civil protection would complement the existing measures for child protection and judges would be able to consider the full range of options available to the family courts provided for in the Children Act 1989. Civil protection would be more flexible but it would still be backed by criminal sanctions for breach.

All that matters is that legislation works. I appreciate that the government amendment is seeking the same aim by amending the 2003 Act, rather than the Family Law Act. There is an opportunity to better protect the child by amending the Family Law Act, both in terms of the remedies available and the enforcement of the legislation. We have seen already with the existing 2003 legislation that that is quite difficult. I appreciate that the Government have a consequential amendment, Amendment 50A, that in effect links these provisions to the family law, but I hope that the Minister can help on this. I am curious as to why the Government have chosen that route. It is not the route that was used in other cases. I am convinced that we are seeking the same outcome but we want to be convinced that the Government's approach will still ensure that the joined-up approach to child protection, which is so vital in these cases, will be there. We do not disagree with the Government at all on the intention and the principle. We just want to ensure that we have the right route. We prefer—and our evidence backs this—the route through family law as a better approach than amending the 2003 legislation.

I turn to government Amendment 46G on female genital mutilation protection orders. We were very pleased to see that the Government also want this provision to be part of the Bill, but I ask the Minister to consider our concerns around this. Again, it is a matter of definition. The government amendment uses the definition of FGM that is in the 2003 legislation. That was ground-breaking legislation at the time, but since its introduction it has become evident that not everyone interprets the law in the way that we intended. Specifically, the issue to be addressed is whether reinfibulation is covered. Infibulation is the removal of all the external genitalia and the fusion of the wound, in effect almost sealing the vagina. At childbirth women need to be deinfibulated to have any possibility of a vaginal birth. Noble Lords who were in the Chamber when we last debated this would have heard the noble Baroness, Lady Finlay, who unfortunately is not here at present. Her experience of helping a woman who needed to be reinfibulated in order to give birth, and the difficulties the woman faced in being unable to have a vaginal birth, is a description that will stay with me for a long time. Reinfibulation involves restitching to reclose and reseal the FGM. That is further mutilation following childbirth. Again we have taken advice, and we are very grateful to the Bar Human Rights Committee and Doughty Street Chambers' lawyers—who, through their experience of dealing with such cases, have drawn the conclusion that the definition of reinfibulation in the 2003 Act is inadequate and confusing.

A recent report from the Home Affairs Select Committee reinforced that conclusion. It referred to the Director of Public Prosecution's letter to Ministers which also asked for clarification of the law in respect of reinfibulation. It said that,

"infibulation, also referred to as Type 3 FGM, involves the narrowing of the vaginal orifice, it needs to be opened up during childbirth. The Intercollegiate Group told us there have been cases where women who were de-infibulated during delivery had returned in subsequent pregnancies having undergone re-stitching, i.e. reinfibulation … The Crown Prosecution Service, the Metropolitan Police, ACPO, the Intercollegiate Group and others all told us this meant there was a lack of clarity as to whether reinfibulation was covered by legislation".

I have raised this matter directly with the Minister and I am grateful to him for discussing it this time. I fully understand that the Government's opinion is that this is covered by the 2003 definition. Certainly that is what was intended when it was brought in. However, what matters is what happens in practice. Legal and medical practitioners are telling us something completely different from what the Government believe and what was the intent at the time. A note from Dexter Dias QC, who has acted in FGM cases, informs us of research undertaken by Professor Lisa Avalos—I can supply the Minister and the noble Baroness with this information—and they emphasise that the law's silence about reinfibulation is causing confusion among practitioners for a number of reasons.

4.30 pm

Part of the problem is legal technicalities. Reinfibulation does not necessarily mean the cutting of healthy genital tissue; instead, it involves recreating that seal over the vagina. The CPS has interpreted the FGM Act as prohibiting reinfibulation, but health professionals have come to different conclusions about the position in law. The Royal College of Obstetricians and Gynaecologists, along with the Royal College of Midwives, the Royal College of Nursing and others, have interpreted the law's silence to mean that the procedure is not covered by law because it does not involve cutting away additional tissue.

[BARONESS SMITH OF BASILDON]

That confusion highlights the lack of clarity. My attention was drawn to a quote from the Royal College of Midwives' report *Tackling FGM in the UK: Intercollegiate Recommendations for Identifying, Recording and Reporting*. It states:

"For the purposes of the FGM Act, re-infibulation is not covered".

That is why our amendment uses instead the World Health Organization definition. This would ensure that the law is consistent with recognised international understanding, including the World Health Organization and UN standards, and clarify the confusion around issues such as reinfibulation.

I appreciate the Government's view that the issue is covered, and I am sure that the noble Baroness has a note saying that it is. However, an academic political debate across the Dispatch Box will only be about what we believe the law should cover and is intended to cover. The evidence, whatever the Government believe, and whatever was intended when that law was introduced, is that the law has not been interpreted in that way by everybody. As a result women are suffering, including some of those who work most closely with women who are pregnant and giving birth. They want to protect women from FGM but believe that the law is inadequate and does not protect women. If there is any doubt at all and women are being reinfibulated in practice, surely we have a duty and a responsibility to ensure that there can be no doubt and there is absolutely clarity in the law.

I cannot press the Minister strongly enough on this. I am sure that there is a note saying, "Resist: it is covered in the law". I ask Minister please to take this back and reconsider. I readily concede that our definition from the World Health Organization may not be perfect, and I am content to discuss that further. I believe that the Government want to get this right, and we want to work with them to make sure that it is.

It is also important that there is statutory guidance underpinning these provisions. That is reinforced by advice which we have had from lawyers that existing multiagency guidance is inadequate. I know that the Government are consulting on making the guidance statutory, but I would like assurances from the Minister that serious consideration is given both to the content and to it being statutory.

Our Amendment 44 provides anonymity for FGM victims. We welcome that the Government have also tabled an amendment on this. I have already mentioned the difficulties in getting victims to come forward and provide evidence. This amendment and the Government's approach will make it just a little easier for them to do so. The Director of Public Prosecutions has called for this, as has the Home Affairs Select Committee. Where an FGM case goes to court, victims should be entitled to the same support and special measures that other victims are entitled to.

Finally, it has become clear that all the legislation in the world, with all its good intentions, only matters if enforcement is effective. Noble Lords will be aware of proposals from the Bar Human Rights Committee of England and Wales in its report to the parliamentary inquiry into FGM. One proposal was that an FGM unit, similar to the Forced Marriage Unit, should be established. The Forced Marriage Unit drew together expertise from around the Government and Civil Service into one unit and has been highly effective. This is not a legislative point; it is basically an internal structural issue about how we make legislation work in practice. I do not know what consideration the Government have given to implementation and enforcement at this stage, but if the noble Baroness could say something about how we can make these new provisions as effective as possible and give some consideration to an FGM unit, that would be welcome.

These are important amendments, and I welcome the fact that the Government have also come forward with proposals. We are all trying to sink the same issues and end up in the same place. This is a real opportunity to make significant progress. I ask the noble Baroness to take on board the points that we have made, particularly around definitions—we would be very grateful. I beg to move.

Lord Lester of Herne Hill (LD): My Lords, I rise only because of my experience in piloting through the Forced Marriage (Civil Protection) Act 2007. I just want to say how glad I am—because we are dealing with a whole group of amendments—that the Government are not only toughening criminal law, but also mimicking, or copying, that Act in relation to female genital mutilation. That is dealt with as a new schedule in government Amendment 46G. I would like briefly to explain why that is very wise.

The problem about using criminal law in this area is that it depends upon all the safeguards of a fair criminal trial. It depends upon there being a prosecution before a criminal court to a high standard of proof, the burden being on the prosecution, and all the panoply of a criminal trial, which may terrify anybody, but certainly will in this sensitive area. It is therefore extremely difficult for a prosecution to succeed in a case of this kind. It is said, and it is the position of the Government, that it is very important to send a signal. I am not, on the whole, in favour of using law simply to send signals.

Although I understand why the Government are strengthening the criminal law, if we are serious about dealing with this odious and significant social evil, the civil law is much more likely to be effective, including the use of the family courts. This is because, as with the Forced Marriage (Civil Protection) Act, first of all you do not need the victim to apply. A third party can do so. In fact, you do not need anyone to apply; the court can do so on its own initiative. Secondly, the application will be heard in private. Thirdly, the outcome will not involve dishonouring the family. It is extremely important in an area of this kind that the victim is not put in a position where if she gives evidence she will be permanently alienated from her family.

I am delighted that the noble and learned Baroness, Lady Butler-Sloss, is in her place, because she has far more experience of this than I have. Certainly experience of the 2003 Act has been very good in that forced marriage civil protection orders have been made in their hundreds and been complied with. It has worked because it uses the civil route of family law and family courts with all the expertise of those courts, in a way

that will not deter victims from coming forward and which will not mean permanent divisions within the family.

As I read what the Government are proposing, that is well understood. That is why the new schedule which is to be inserted on female genital mutilation protection orders largely mimics what we were able to achieve in that Bill. I will explain who I mean by "we". That Bill had the support of women, including Asian women, bodies such the Southall Black Sisters and the refuges. They really took ownership of it and made sure that it was something that would work. That ownership is vital. What is contemplated here should do that.

Baroness Smith of Basildon: I would like to ask the noble Lord's advice on this, because he referred, as I did, to the forced marriage protection orders. I understand that that was done by an amendment to family law. The point on which I was asking the Minister to come back on was whether, by not amending the family law in the government amendment, although we seek to do that in our amendment, we will make it more difficult to bring the law together and deal with it in a family court. Does the noble Lord have a view on that, having dealt with this previously?

Lord Lester of Herne Hill: That is a very good question, but I cannot really answer it. My reading of government Amendment 46G indicates that there is a copying in of what had happened with forced marriage. Furthermore, paragraph (7) of the proposed new schedule in the amendment amends the Family Law Act and gives jurisdiction to the family court. I may be talking complete rubbish and I may be corrected, either by the noble Baroness or by the Minister. I am simply trying to get across why the civil route is so important and the use of family courts is so important.

Baroness Butler-Sloss (CB): I shall pick up that point. It is perfectly obvious to me as a former president of the Family Division that it does not matter which piece of legislation it is as long as the work done in relation to female genital mutilation is allocated to the single family court and heard either by High Court judges or circuit judges who are ticketed to try family cases. This is really not for the ordinary civil judges in what was the county court.

I am interested by this talk about the High Court or the county court. We should actually be talking about—I say this respectfully to the Government—the single family court. It does not matter whether it goes into the Family Law Act as is suggested in the excellent opposition amendments, which I largely support. What matters is who actually tries it. Just as with forced marriages and every other child protection issue, we have here issues of crime, but we know perfectly well that there has not yet been a single conviction of anyone who has done this. It is a question of culture, too. One has to train people in this country that this is not an acceptable practice. The Government are to be enormously congratulated for working on that—as were the previous Government when introducing the 2003 Act—but nothing has gone far enough.

I totally agree with the noble Lord, Lord Lester. I would like to see what is good in each set of amendments put together. Therefore, I hope that the Opposition and the Government will get together after Report and thrash out what would be the best of everything and get that into one list that could go into Third Reading. I do not think that the Government go quite far enough. A great deal of what the Opposition are saying is exactly what we need, but it all needs to be put together. Certainly, the most important thing is that it should go to the single family court and be tried by High Court or circuit judges who have specialist family experience.

Baroness Hughes of Stretford (Lab): My Lords, I very much agree with the noble and learned Baroness. In doing so, I ask the Minister to give thought to taking away the government amendment to come back at Third Reading with a composite amendment that deals with the two issues that my noble friend related in moving the amendment. The issue of definition is as important as the issue of where this matter is located in law. There is concern out there that the definition that we have may not comply with the World Health Organization definition; even if it does, the way in which it was formulated in the 2003 Act, because of where we were then, is not clear enough to the whole range of professionals. As my noble friend identified, a number of health bodies, even in their own guidance, are telling their practitioners that reinfibulation does not come within the definition of female genital mutilation in the current Act. That has to be dealt with. I welcome the Government's approach to looking further at what we need to do in the Bill. We have an opportunity here to ensure that we get things right, and the definition is one important issue.

4.45 pm

The second issue is, of course, the one that the noble Lord, Lord Lester, and the noble and learned Baroness, Lady Butler-Sloss, have just raised. As the noble and learned Baroness rightly said, this is not simply a question of which piece of law it is best to put the provision in. There is consensus that it ought to be within the range of civil law, so as to protect children better, and to give the single court the widest range of options regarding interventions for children, along with the principles of the Children Act.

I am not sure whether I agree with the noble Lord, Lord Lester, that, taken together, the two government amendments—Amendments 46G and 50A—mimic the formulation that was used to bring protection orders for forced marriages into the civil arena. I cannot judge whether the two amendments together produce the same effect. In any case, having two separate amendments that tinker around with two different Acts is a rather tortuous way of doing things, and will probably be very unclear to people who are applying the legislation. The formulation could be much simpler, and therefore much clearer, if the Government made the effect clear in a single amendment, along the lines of the opposition amendment—although perhaps that could be improved as well; I am certainly open to thinking about that. I would be grateful if the Minister would indicate whether she is prepared, even at this

[Baroness Hughes of Stretford]
stage—by which I mean at Third Reading—to make further improvements in the definition, and in relation to the uncertainty about the effect of her formulation regarding the legal route.

The Lord Bishop of Rochester: My Lords, I hesitate slightly, as a male religious leader, to speak in your Lordships' debate on this matter, but it may be important that I do so. I also hesitate to plunge into the legal niceties that have been raised so clearly by those with more knowledge of such matters. I added my name to Amendment 44A largely because of a phrase in subsection (5) of proposed new Section 63T of the Family Law Act. It states that,

"it is immaterial whether she",

that is, the girl or woman concerned,

"or any other person believes that the operation is required as a matter of custom or ritual".

The context for that subsection is the possibility that an operation might be justified on the grounds of the physical or mental health of the person concerned and that wording makes it clear that custom and ritual cannot be used as support for such an argument.

We are rightly proud of our national values, whereby we respect and indeed treasure the richness of many and varied cultural and religious traditions, beliefs and practices within the life of our national society. But that proper respect for a wide range of such beliefs and practices does not mean that they are all either good or commendable. It is my view that in female genital mutilation we have a practice that we simply cannot condone, even when it is done out of respect for a particular cultural or religious tradition. FGM is at heart, as has already been graphically described, an act of violence and abuse. It is one that is often associated with control—sadly, male control over women. For somebody from my tradition, it is actually an interference with our human createdness in a way that carries no benefits for health or anything else. It is, indeed, the physical removal of the potential for sensual pleasure which is part of our human and sexual createdness. The Church of England's marriage service, or at least its current version, speaks of the "joy" of bodily union. FGM removes that possibility. For that reason and others, I support this amendment and its intent. Whatever emerges from this debate, I hope that the reference to custom or ritual will remain within whatever emerges as an Act.

Baroness Hamwee (LD): My Lords, I do not need to reiterate the feelings of abhorrence at the practice of FGM and the enormous number of girls and women who are affected by it. The right reverend Prelate has a very important role in this debate. He should not have hesitated to intervene.

I wish to address a couple of points before I speak to my amendments, which are minnows and just seek clarification. I agree very much with what the noble and learned Baroness said. As one who has been in the lower orders of the legal profession, I am impressed by the way in which members of the judiciary have specialised and gained expertise in a number of areas over the years. I hesitate to make my next remark, and should tug my forelock in doing so, but it is hugely important to ensure that certain members of the judiciary have considerable knowledge and experience of the areas in which they pass judgment. Practice and practical arrangements are also enormously important.

I do not want to argue that this amendment is better than that amendment. However, if there is to be further discussion, which I would never discourage—we talked about consultation on the previous amendment—let us not forget that it need not happen by Third Reading. If there is to be further consideration, it needs to be done well and carefully. The Bill has further stages to go through in the Commons. We are all accustomed to Members of the Commons saying on the record in *Hansard*, "Let's send it to the Lords and let them sort it out". On this occasion, there is time for sorting out to be done, if that needs to happen, before the Bill completes its passage through Parliament. As I say, it need not be done by Third Reading, which is not very far away. However, it is important to have something in the Bill on which any further consideration can build. Therefore, I suggest to the House that we should support the government amendments so that we have them as a basis.

As I said, my amendments are minnows. Nevertheless, I will speak to them. The first is Amendment 46C, which seeks to amend government Amendment 46B on anonymity. I seek to understand the import of "substantially" at line 23 of government Amendment 46B. My amendment suggests replacing "substantially" with "significantly". It is obviously for the court to decide whether a defence would be prejudiced and to what extent it would be prejudiced. Are there any comparable provisions containing this sort of balance elsewhere in the criminal justice system, given the presumption of someone's innocence until they are proved guilty? I also ask for confirmation that the restriction here applies on an appeal to a higher court.

My second amendment, Amendment 46D, is to the same amendment, dealing with the second condition in the court's consideration, where it is provided that the effect would be to,

"impose a substantial and unreasonable restriction on the reporting of the proceedings".

What might a substantial restriction be that is not an unreasonable restriction and why is the extent of the restriction relevant?

My third amendment is an amendment to Amendment 46E, which is the offence of failing to protect. Again, in order to probe, I am seeking to leave out from proposed new Section 3A(1) the words "under the age of 16" as describing a girl. Indeed, should it be "a girl" or "a girl or woman"? Does girl include a woman? I have not got the words quite right, but that is the import of the provision in the 2003 Act. Why 16? It may in practice be very rarely necessary to seek an order in respect of girls aged 16 and over, but it seems it is not completely irrelevant. The 2003 Act does not have that age limit on a girl and indeed provides for women to be covered as well.

In proposed new Section 3A(4) we are told that a person is responsible in one case where that person has parental responsibility and has frequent contact with the girl. Is frequent contact necessary and, indeed, is it

appropriate? How frequent is frequent? I would guess that we expect case law to grow up around this, but I would be grateful for any comments that my noble friend might have. Does parental responsibility extend to care as under Section 3(5) of the Children Act? How does that definition of parental responsibility fit with proposed new Section 3A(5) where there has to be an assumption of responsibility for caring for a girl in the manner of a parent.

I hope that none of this is thought to be too pedantic and too picky. Like others, I am very keen to see these provisions work. If I have by chance lit on anything which needs more explanation than I have been able to apply to it in my own head, then it would be useful to have it on the record.

5 pm

Baroness Williams of Trafford (Con): My Lords, I am grateful to noble Lords who have spoken in this debate—in particular to the noble Baroness, Lady Smith, for setting out just what we mean by female genital mutilation and asking, as a supplementary, whether the current definition of FGM includes wider elements such as reinfibulation. I will deal with that point first. I confirm that the Government's view is that reinfibulation is an offence under the 2003 Act. That is on the basis that if it is an offence to infibulate in the first place, it must equally be an offence to reinfibulate. The multiagency practice guidelines on FGM have long made clear that resuturing or reinfibulation is illegal in the UK. Current guidance issued by both the BMA and the Royal College of Nursing supports that view.

As we heard in Committee, the whole House shares an abhorrence of the practice of FGM and we can all agree that more needs to be done to stop such violence against women and girls. There are nuances on how best to tackle such abuse, but we all agree on the principle: FGM must end, and this Government are committed to ending it.

I will comment on the right reverend Prelate's point about the cultural aspect, which adds strength to the argument. I totally share his view. At the Girl Summit in July this year, the Prime Minister and Home Secretary announced an unprecedented package of measures to tackle FGM in this country. This included a number of commitments to strengthen the law. To that end, this group of amendments includes a number of government amendments designed to ensure that our legislative response is as strong as possible. In particular, they will provide for lifelong anonymity for the victims of FGM, introduce a new civil order to help protect those at risk of mutilation, and create a new offence of failure to prevent FGM. I propose to say a little more about each of these new provisions.

On the subject of victim anonymity, the noble Lord, Lord Rosser, moved an amendment in Committee to extend to victims of female genital mutilation the same anonymity that already applies to victims of many sexual offences. This followed a recommendation by the Director of Public Prosecutions, and I was then able to indicate in response to that debate that the Government were giving sympathetic consideration to the proposal. As many in this House will have seen at the Girl Summit on 22 July, the Home Secretary announced that the Government would bring forward legislation to this end. Amendments 46A and 46B deliver on that commitment. These amendments will give victims of female genital mutilation the benefit of anonymity, as already applies to the alleged victims of many sexual offences under the provisions of the Sexual Offences (Amendment) Act 1992. Any publication of material that could lead members of the public to identify a person as the alleged victim of an offence will be prohibited. Anonymity should not end where the online world begins; publication would include traditional print media, broadcasting and social media.

Female genital mutilation is an offence of a particularly personal and sensitive nature. Without the prospect of anonymity, victims may be discouraged from reporting such an intimate offence to the police. Granting lifelong anonymity, therefore, will reassure victims that their identity will be protected and will go far to encourage the reporting of this offence. This protection needs to be automatic rather than discretionary; it must apply from the outset, when an allegation is first made, rather than from the point of charge; and it must last for the duration of that person's lifetime. That is exactly what these amendments will bring about.

My noble friend Lady Hamwee has a couple of amendments to government Amendment 46B. They are far from being the minnows that she described. Amendment 46C seeks to amend paragraph 1(5) of new Schedule 1, which sets out the first condition that must be met in order to lift the restriction on anonymity. This allows a court to remove the anonymity that attaches to an alleged victim of an FGM offence where the anonymity results in the defendant's case being "substantially prejudiced". This wording is directly comparable to the provisions in the Sexual Offences (Amendment) Act 1992. We do not think that making a distinction between the two provisions would be helpful when both seek to achieve the same outcome.

Amendment 46D would lower the test for disapplying the reporting restrictions. We do not believe that this change provides sufficient protection for the alleged victim's anonymity. Again, we have applied the two-pronged test that applies under the 1992 Act. By changing the test in this instance, the courts could well be more ready to lift the reporting restrictions as they apply to an FGM victim, thereby undermining the protection we are seeking to afford such victims.

Government Amendment 46G provides for FGM protection orders. It has been tabled in response to concerns that currently there is no specific civil remedy for the purpose of protecting potential or actual victims of FGM. The noble Lord, Lord Lester of Herne Hill, made that point. The majority of responses to a recent consultation on a proposal to introduce a civil protection order for FGM supported the proposal for such an order, so as to protect potential victims and victims of FGM. The Government strongly believe that there should be a specific civil remedy to strengthen protection for potential victims of FGM and to help to prevent FGM from occurring in the first place. Amendment 46G aims to achieve this.

The provisions on FGM protection orders follow closely the model of forced marriage protection orders provided for in Part 4A of the Family Law Act 1996,

[Baroness Williams of Trafford]
with some modification to reflect the different nature of FGM offences. The new Schedule 2 to the 2003 Act contains a number of detailed provisions. I do not intend to go through each one but will focus on the key features.

As with forced marriage protection orders, an FGM protection order may contain such prohibitions, restrictions or other requirements as the court considers appropriate for the purposes of that order: that is, for the purposes of protecting a girl against commission of an FGM offence or a girl against whom any such offence has been committed. This could include, for example, provisions to surrender a person's passport or any other travel document and not to enter into any arrangements, in the UK or abroad, for FGM to be performed on the person to be protected.

Application for an FGM protection order may be made by the person to be protected, the victim or a relevant third party, without leave of the court or any person with the leave of the court. This would clearly allow a wide category of persons to apply for an FGM protection order, which I believe is desirable. In particular, allowing a third party to apply for a protection order on behalf of a victim may be helpful in situations where the victim is unable to do so, for example because she is too young—it is clear that most victims of FGM are girls typically between the ages of five and eight—or because she is too scared to take such an action herself. It will also be open to a criminal court to make an FGM protection order on its own initiative, for example when sentencing a person for an offence under the 2003 Act.

Breach of an order would be a criminal offence with a maximum penalty of five years' imprisonment, but with provision, as an alternative, for a breach to be dealt with in the civil court as contempt punishable by up to two years' imprisonment.

The noble Baroness, Lady Smith, questioned whether putting FGM protection order provisions in the FGM Act 2003 undermines the court's powers, compared to putting them in the Family Law Act 1996. We do not think that that is so. The proceedings would be in the family court, with the full range of powers of the court, and expressly without prejudice to any other protective powers that the court may have. The location of the provisions does not affect this. Indeed, it would be helpful to practitioners to have all FGM-related provisions in one statute. The noble and learned Baroness, Lady Butler-Sloss, made that point. She also stressed the point about the proceedings going to the family court. I point noble Lords to paragraph 17(1) of new Schedule 2, which makes it clear that the proceedings are in the family court.

The noble Baroness, Lady Smith, also asked whether there would be a bespoke FGM unit, akin to the Forced Marriage Unit. I can confirm that the Government will set up a specialist FGM unit to drive a step change in this very important outreach service, with partners.

The right reverend Prelate the Bishop of Rochester made a point about the provision in the Opposition's proposed new Section 63T that it is immaterial whether any person believes that the operation is required as a matter of custom or ritual. The provision in question is already set out in Section 1(5) of the Female Genital Mutilation Act 2003 and is applied by paragraph 17(1) of new Schedule 2 in the government amendment.

These government amendments, which provide for victim anonymity and FGM protection orders, have substantially the same effect as Amendments 44 and 44A put forward by the noble Baroness, Lady Smith. I trust, therefore, that she will be ready to support them in lieu of her own.

Amendment 46E provides for the last of the three new government measures. It will create a new offence of failing to protect a girl from the risk of genital mutilation. Again, this new offence gives effect to a recommendation by the Director of Public Prosecutions for the law to place a positive duty on parents or carers to prevent their children being mutilated. English criminal law does not generally criminalise a failure to prevent an offence. This new offence is unusual but, I think, entirely necessary.

In the context of FGM this approach is justified given the difficulties that have been experienced in bringing prosecutions under the existing law. Even if those who allow their daughters to undergo FGM believe that it is in the girl's best interests to conform to the prevailing custom of their community, there can be no excuse for such a gross violation of their human rights. It is wholly unacceptable to allow a practice that can have such devastating consequences for the health of a young girl. The physical and psychological effects can last throughout her life.

The amendment provides that if an FGM offence—that is, one of the offences set out in Sections 1 to 3 of the 2003 Act—is committed against a girl under the age of 16, each person who is responsible for the girl at the relevant time will be guilty of an offence. My noble friend Lady Hamwee queried why this offence applies only to girls under the age of 16 whereas the existing FGM offences apply to girls and women of any age. We recognise that parental responsibility can be exercised in relation to a girl under the age of 18. However, in the context of FGM where, as I have said, victims are typically aged between five and eight, and given the diminishing control that a parent would have over a 16 or 17 year-old, let alone an older woman, we believe that the offence should apply where FGM has been committed on a girl under the age of 16.

The maximum penalty for the new offence will be seven years' imprisonment or a fine or both. We believe that this is proportionate when it is considered against the maximum penalties for offences of violence, and bearing in mind that this is an offence of failure to protect rather than of directly perpetrating violence. My noble friend Lady Hamwee also raised a couple of points on the new offence. The offence has been carefully drawn to avoid criminalising people unnecessarily or unjustifiably, so the requirement for frequent contact is intended to ensure that a person who in law has parental responsibility for a girl but who in practice has little or no contact with her would not be caught under this provision. The courts have held that what constitutes frequent contact is a simple question of fact which does not require further elucidation or definition.

On the question of how the new offence applies to children in care, the Children Act 1989 refers to people who have care of the child. This seems to us to be too

broad a category to make liable for the new offence. Instead, new Section 3A(4) makes liable, in addition to those who have parental responsibility and frequent contact, the more specific category of those "aged 18 or over", who have current responsibility for,

"caring for the girl in the manner of a parent".

The new offence is not a panacea for the long-standing difficulties in prosecuting FGM, but it will help to overcome some of the barriers to prosecution, in particular by reducing if not avoiding the need for a girl to give evidence or to identify who actually performed FGM on her. In so doing, it will enable the Crown Prosecution Service to bring prosecutions in cases where they could not have been brought before. At the request of the Northern Ireland Minister of Justice, David Ford, this new offence, and indeed the other two new provisions, will extend to Northern Ireland as well as to England and Wales. The other government amendments in this group are consequential on the three substantive new provisions.

5.15 pm

Lord Lester of Herne Hill: Everything that the Minister has said is music to my ears, and I congratulate her and the Government. However, she has just mentioned Northern Ireland and that provokes in my mind the question about what happens beyond England, Wales and Northern Ireland. What will be the position if someone goes to Scotland or to another country? The same problem arises with forced marriage. Will the Government take steps to try to persuade other jurisdictions to collaborate, if necessary by amending their laws, so that when people move from this country to carry out this vile procedure, it can apply not only to England, Wales and Northern Ireland?

Baroness Williams of Trafford: I thank my noble friend for bringing up that point. In actual fact, Scotland has very strong provisions in this area, and in a certain sense we are catching up, so I hope that answers his questions.

Lord Lester of Herne Hill: Sorry, I said not only Scotland but any other country. Scotland sounds as though it is fine. But what happens with any other part of Europe or the Commonwealth?

Baroness Williams of Trafford: I apologise to my noble friend. I am sure that if other countries or jurisdictions want to take on our legislation, that would not be a problem. I will confirm that with the noble Lord in a letter and also put a copy of that letter in the Library, but I assume that to be the case.

I have been on my feet for some time, but I hope that I have set out in a little detail the effect of the government amendments. I am grateful to the House for bearing with me and commend the government amendments to the House.

Baroness Smith of Basildon: My Lords, I am grateful to the noble Baroness. She need not apologise for having been on her feet for a long time, as she did as much as she could to address the many issues which were raised in the debate.

On the issue of FGM protection orders, I think there is not a cigarette paper between us on what we are trying to achieve. However, I still do not fully understand—I am not a lawyer, but even the noble Lord, Lord Lester, could not help me out on this one—why the Government have chosen this approach and not the family law approach. That is the other point. I will look again in *Hansard* to see what she said, but given the comments that have been made around the House, I thought there was a willingness from the noble Baroness and from others for the Government to talk to us and say, "Have we got it right? Can we look at this?".

Baroness Williams of Trafford: I thank the noble Baroness, and I think there is a further conversation to be had, perhaps outside the Chamber. I am very willing to engage with her and other noble Lords who may wish to meet with me before Third Reading.

Baroness Smith of Basildon: I am grateful to the noble Baroness for that, because we just want to get it right. On the basis that she is prepared to discuss it and bring something back at Third Reading, we will be happy to withdraw our amendment. I am grateful and I appreciate that.

However, I must express my disappointment with her comment around the legal definition. I was unusually —and somewhat, I would say, embarrassingly—graphic about what reinfibulation actually means. I know that the Government believe that it is covered in law, and I said that in my comments. We believed that we covered reinfibulation when we brought in the law in 2003, but the evidence is that it is not. If the Royal College of Midwives and the Royal College of Obstetricians and Gynaecologists say that it is not covered, we have to accept that there is a lack of clarity and there is some doubt. With the best will in the world, the noble Baroness saying to me that the Government believe that it is covered is not good enough. I ask her whether, on the same basis, she would be prepared to look at this and discuss this with us.

Baroness Williams of Trafford: Certainly.

Baroness Smith of Basildon: I am extremely grateful. On both those issues, therefore, we would be happy not to press our amendments on the basis of further discussion before Third Reading.

Amendment 44 withdrawn.

Amendment 44A not moved.

Amendment 45 had been retabled as Amendment 45A.

Amendment 45A

Moved by ***Baroness Meacher***

45A: After Clause 66, insert the following new Clause—

"Offence of encouraging or assisting with the promotion of the practice of female genital mutilation

(1) The Female Genital Mutilation Act 2003 is amended as follows.

(2) After section 2 (offence of assisting a girl to mutilate her own genitalia) insert—

"2A Offence of encouraging or assisting the promotion of the practice of female genital mutilation

A person is guilty of an offence of encouragement or promotion of female genital mutilation if he encouraged or assisted another or others to commit an offence knowing or believing that the other or others would commit that offence."

(3) In section 5 (penalties for offences) insert—

(a) after "under" insert "sections 2 and 3 of",

(b) at end insert—

"(2) A person guilty of an offence under section 2A is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.""

Baroness Meacher (CB): Following legal advice, I amended Amendment 45, and it has now become Amendment 45A. The aim of this amendment is to tackle FGM at its heart. I applaud Ministers, the noble Baroness, Lady Smith, and others for tabling amendments which seek to protect young girls from the threat of this terrible torture and to protect their identity. All these are important, although we know that to achieve a prosecution of families committing FGM is not straightforward, and even with all the improvements in the new amendments, I still believe that it will be difficult. I understand that FGM is increasingly happening to tiny children who cannot yet speak, which will make prosecution even more difficult until very much later on because of course the families are trying to avoid detection. Prevention will be very difficult to achieve through protection orders, for example, if this is happening very early on in a child's life.

Amendment 45A creates an offence of encouragement or promotion of FGM if a person,

"encouraged or assisted another or others"—

that is very important—

"to commit an offence knowing or believing that the other or others would commit that offence".

The amendment seeks to ensure that if a community or religious leader encourages the practice of FGM, whether to a congregation, a small group of parents or indeed an individual parent, they would be committing an offence and could be charged. We are seeking something very different from the amendments so far, which have focused very much on an individual child and their family, but that is not where the focus should be when the core of the problem is actually in the culture of certain communities. If we want to stamp out the practice, we have to change the culture and the religious preaching.

The Minister explained to me just before this debate that the Bill team believes that the amendment does not achieve what we believe that it will. However, I sought legal opinion from Keir Starmer and his colleague Catherine Meredith, and they came back to me over the weekend and assured me that the amendment is fine and will achieve what we want it to. Of course, this was very late on; although I approached them some time ago, they are busy people and did not come back to us until very late. We therefore have not had an opportunity for the Bill team and government lawyers to sort this out. Not surprisingly, we therefore have a slight disagreement, but I am satisfied on the basis of my legal advice that the amendment will achieve what we want it to achieve and I will therefore speak to it on that basis.

The amendment would make a distinction between religious leaders who preach from the Koran and are therefore authentic—and, indeed, religious leaders who preach from authentic Hadith—who would not be committing an offence and would not be prosecuted if the amendment became law, and religious leaders who preach on the basis of the inauthentic versions of the Hadith, who would be committing an offence; they would be very clearly differentiated from the others. That is very important.

My concern about the parent-focused offences in the absence of Amendment 45A is that if parents believe that their religion requires them to practise FGM, when parents are arrested for this practice and are subjected to a protection order, they will regard the arrest or the protection order as some terrible action of the infidels. They will not be convinced at all and their thinking will not change. In addition, parents who are not directly affected by an arrest will not be convinced. They will think that these are the actions of infidels and therefore they will try to find a way of carrying on with their FGM practice. That is the importance for me of Amendment 45A.

Baroness Tonge (Ind LD): I have gone into this in great detail since 2003, when the all-party group that I chair held hearings on the subject. We learnt from various groups that gave evidence, and I have learnt since, that it is usually the grandmothers in a family who are most insistent on this practice, and that it is not confined to a particular religious group. I would hate for people to get the idea from what the noble Baroness is saying that this is a practice of the Muslim religion or any other religion. It is confined to small cultural groups. It is often opposed by the religious leaders and men in the community but the grannies insist that it is done.

Baroness Meacher: I am grateful to the noble Baroness for her intervention. I completely agree: this is not exclusively a Muslim problem. Indeed, there are Christians, apparently, who promote FGM. However, we know that there are religious leaders who preach from the unauthentic Hadith and are certainly promoting FGM; they are rather effective at doing that. They ally, of course, with the grandmothers, and the grandmothers can look to them for support.

Another question is whether this practice is sufficiently prevalent to justify this new offence. Yes, it is. The noble Baroness, Lady Smith, referred to international figures. I simply want to refer to a few from the British Arab Federation. It estimates that more than 100,000 women have undergone FGM in this country and that some 25,000 girls are at risk of having their lives destroyed in this way. The Local Government Association provides a figure of 144,000 girls born in England and

Wales to mothers from FGM-practising countries between 1996 and 2010. We do not know how many of these mothers will have changed their minds about this practice, but the figures from the British Arab Federation are certainly alarming and we need to take them seriously.

We must applaud the British Arab Federation for making it its highest priority to work with all organisations to bring an end to this crime. The federation is clear that there is no evidence, as far as Islamic sources are concerned, requiring, justifying or condoning the practice of FGM. This, again, reiterates the point. This is not a problem of the whole of Islam—far from it—or, indeed, only Islam. It affects certain groups and certain leaders.

The descriptions of the way FGM is performed are utterly appalling. Just reading them was a painful experience for me. The noble Baroness, Lady Smith, went into this in great detail and I certainly do not want to repeat what she said. As I have already said, there is no mention in the Koran of FGM and no mention in the authentic Hadith of FGM, so there are perfectly proper Islamic texts that do not in any way encourage this activity. Indeed, Islamic law prohibits partial or complete removal of any bodily organ without proven medical need. Thus FGM is unlawful, as I understand it, according to Islamic law. It is important that, in proposing this amendment, we make this absolutely clear. In no way is this amendment an attack on Islam: quite the opposite. It is an attempt to secure the proper practice of Islam. There is a lot of work going on in communities to encourage them to abandon FGM, but this work is being hindered by these leaders who stick to unauthentic texts.

Currently, under Sections 44 to 46 of the Serious Crime Act 2007, anyone inciting or carrying out FGM in a particular case can be prosecuted for incitement. The LGA argues, quite rightly, that it is not possible under current law to prosecute someone who in general terms says that there are religious, health or other grounds for carrying out FGM. That is the whole point of this amendment and the whole point of referring to the plural: if somebody preaches to "another or others" that FGM is important to their religion, they are committing an offence. This amendment should make it much easier to bring cases against those who promote this practice. Inhibiting the preaching or promotion of this practice is much better than action ex post. That is what we are all working for: to try to prevent this thing ever happening in the first place. A lot of the focus has been on prosecuting people after they have practised FGM and that is just not good enough.

I know that the Government have concerns about whether this amendment really would achieve what we hope it would achieve, but I hope that we can have further discussions. I take the point that there will also be debates in the other place. Therefore, we do not even have to resolve these issues, and the issues around the previous amendments, before Third Reading, although I will certainly seek to do that with my legal advisers. I beg to move.

5.30 pm

Baroness Butler-Sloss: My Lords, I intended to put my name to this amendment, which I support. It seems to me that it is more important as a deterrent than probably for prosecutions. Among the various groups that exist—one hopes that they are a really small minority—as the noble Baroness just said, it is very important that the English law is made absolutely clear, as well as the law of Islam. Of course, as the noble Baroness, Lady Tonge, just said, this occurs across other religions. That deterrent has, in other areas, quite a useful effect on culture, and that seems to me the most important part of this. I suspect that there will be very few prosecutions, but what is said in English law may permeate through a number of groups where those who disapprove of this already would then be able to point to the fact that it was also contrary to English law, and those who might want to get involved in this would be deterred from actually supporting it. I, too, support this amendment.

Baroness Hamwee: My Lords, towards the end of her speech, the noble Baroness, Lady Meacher, referred to what was troubling me, which is whether we are talking about general encouragement—if I can put it that way—or encouragement to commit a specific offence. Like, I suspect, those in the conversations she had just before coming into the Chamber, I am puzzled by the presentation of the amendment as meaning general encouragement, because I do not read it that way either. With the wording, "to commit an offence"—a specific offence—I thought that the noble Baroness was getting to grips with what is meant by "promotion", which was the bit that I found difficult to get my head around in terms of its application in the predecessor amendment. However, the noble Baroness told us that it is the reference to "the other or others"—in the plural—which changes that. Bluntly, I do not follow that. I hope that, when she winds up, the noble Baroness will be able to convince me. The offence of FGM might surely and not unusually be committed by more than one person in the case of a single girl. That was certainly how I read this. It is not about committing offences; I read the provision as being about a particular, specific victim.

Of course, I do not take issue with the noble Baroness about the cultural problems and so on. However, I hope that my noble friend will convince the House that this is covered by the Serious Crime Act 2007, with its Part 2 on encouraging or assisting crime. There are extensive provisions in that part. If that applies, then I would not be particularly keen on having a specific offence when it should be covered by the general provisions. It is better that the general should apply to all criminal offences and not have something separate which actually does not amount to anything different. It is the difference that I am looking for.

Lord Dobbs (Con): My Lords, I am filled with some trepidation and hope the House will indulge me. I have not involved myself in talking on this Bill before. I will do so now very briefly, with the leave of the House, because I think the issue is so important.

I congratulate the noble Baroness on the objective behind this amendment, but we already have a great deal of law in this area and we are to get a whole lot more once this legislation is passed. However, the law

[LORD DOBBS]

itself is not the answer to what I think the noble Baroness seeks to achieve, particularly with an amendment that, I fear, is all too vague. It refers to,

"encouraging or assisting with the promotion of the practice".

Does that, for instance, include a tribal elder discussing cultural traditions or a parent discussing the family's heritage and ethnic customs with a daughter? The noble Baroness talked about authentic and unauthentic version of religious tracts. These are very tricky, difficult areas. What precisely do those words mean? I fear that they do not precisely mean anything.

Baroness Hamwee: My Lords, I do not mean for a moment to embarrass the noble Lord, but I wonder whether he is speaking to the original Amendment 45 rather than Amendment 45A.

Lord Dobbs: The new clause in Amendment 45A is headed:

"Offence of encouraging or assisting with the promotion of the practice of female genital mutilation".

That wording is still there.

Baroness Hamwee: My Lords, I had gone straight to the text of it. Those words were in the text of the previous amendment and they have been changed. I am sorry if I have perhaps diverted the House in the wrong direction.

Lord Dobbs: I think the original wording is still there and therefore has some relevance.

On the previous group of amendments, the noble Baroness, Lady Smith of Basildon, called very sensibly for clarity. The challenge in this matter is not just the law but the practice itself. The figures that the noble Baroness, Lady Meacher, quoted are appalling: 100,000 victims in the UK; and 25,000 under the age of 15 at risk every year, perhaps even more. These figures are horrendous, but they are meaningless without prosecutions—that is, police and prosecuting authorities taking action. That is what is lacking. We have listened to them and they hope for prosecutions, but there has not been a single prosecution for female genital mutilation.

I looked at the figures for West Midlands Police. This is one of the areas where you would expect them to take a great deal of interest, but in 2011 they investigated eight cases. In 2012, that went up to 25, and in 2013 it was 41. They are getting better but very slowly. That speaks to the fact that this is a very difficult area for prosecution authorities. The noble Lord, Lord Lester of Herne Hill, spoke to that.

Given the current law and without a single perpetrator having been brought to justice, my fear is that this amendment with its vagueness would be counterproductive and make life more difficult for the prosecution authorities. My fear is that more law, no matter how well intentioned, that is too loose to be effective in practice—the practice is important—will create only more problems in enforcement rather than bring justice to those many innocent children. I applaud the intention of this amendment, but I caution about its outcome.

Baroness Benjamin: My Lords, the NSPCC asked me to speak to this amendment because it believes that it will be beneficial to many young girls. I am pleased that this is being discussed. As this House recognises continually, FGM is child abuse and we should do all we can to tackle this cruel and painful practice. It is important that legislation is clear on this, but we have to be realistic on FGM that the law can only do so much, as has been said time and time again today. Until the social norms in which FGM operates are challenged, it will be difficult for members of communities to come forward to share their concerns about children who are vulnerable to FGM.

The NSPCC has stated that the amendment proposed is to be welcomed, given that it would create a specific offence and make it easier to bring cases against those who support FGM, even indirectly, whether they reside in or are just visiting the UK. This would help to support the excellent work being done to tackle the practice in communities—work that can be hampered when community leaders, family members and others continue to promote and encourage the practice of FGM.

I am aware that, as we heard on the previous amendment, there are existing FGM laws in place, but I believe that this amendment is probing what further can be done to stop this barbaric practice. We must always have children's well-being at the top of our priorities. Young girls suffering the horrors of FGM need to know that not just laws but members of society will protect them from the suffering that many young girls are going through today.

Baroness Smith of Basildon: My Lords, first I congratulate the noble Baroness, Lady Meacher, on bringing this forward. We debated this in Committee and have looked at it before. I have had discussions with the noble Baroness, and indeed with the same lawyers to whom she has been speaking. We have to try to find a way forward on this issue.

I agree very much with the noble Lord, Lord Dobbs, on the issue of clarity and on the need for prosecutions. In the previous debate on FGM protection orders, we heard that the right for victims to be anonymous will help to bring some of those cases forward. However, a telling point was made by both the noble Baroness, Lady Meacher, and the noble and learned Baroness, Lady Butler-Sloss, when they said that the purpose of the amendment is as a deterrent. It seems to me that in some of the laws we bring forward we fail when we have to prosecute. The very purpose of the law is that we should not have to prosecute because the law is what stops an offence taking place.

This is a difficult area. We had these discussions in Committee, but I can see exactly what the noble Baroness, Lady Meacher, is trying to do in protecting girls and women from female genital mutilation. It is about those who would persuade, not just by suggesting that it is a good idea but by encouragement and advocacy, while knowing that they have to avoid a charge of incitement. They would not instruct someone to commit an offence but encourage and lead them to believe that it is the right thing to do. I am sympathetic to and

supportive of the need to address the problem. The NSPCC has made the point and the Local Government Association has brought forward its concerns as well.

It strikes me—indeed, I am convinced—that, if we are to wipe out FGM within the UK, we have to address the specific issue of encouragement, promotion and advocacy. We know that some of the best persuasion is subtle. There are those families who believe in the practice not through somebody within that family or the community saying, "You must have your daughter cut", or have FGM, but through comments, persuasion, advocacy and encouragement that can lead families to be fearful if they do not proceed with the process.

Obviously, we do not want to go down the road of criminalising people for the comments they make. I wonder whether the noble Lord, Lord Dobbs, has read the clause in its entirety. He talked about tribal customs or something, but the proposed clause refers specifically to female genital mutilation and that is the only offence in this context.

I acknowledge that this amendment has been tabled only recently and we have not had a full opportunity to distil the detail, and I understand that the Minister will say that the Bill team does not believe that this will address the problem. However, I hope that that is because the noble Baroness realises that there is a serious problem. Young girls in this country are undergoing this barbaric process and procedure because somebody in their community thinks it is the right thing to do. It is shocking that mothers and grandmothers, as mentioned by the noble Baroness, Lady Tonge, having gone through the process themselves, inflict it on their children and grandchildren. Unless we break that cycle and persuade mothers and grandmothers that it is wrong, we will not be able to stop children in this country going through it. That is the point the amendment is trying to make.

We need to break that link—that cycle—of people saying, "This is the right thing to do. You must do this. Your child must be clean". We have to break the cycle so that we do not have the encouragement, advocacy and pressure that children should undergo FGM. That is the only way we can wipe it out in this country.

5.45 pm

Baroness Tonge: I thank the noble Baroness so much for making that point. The encouragement frequently comes from within the family, as it does for male circumcision. It becomes the law of the family; that is what has to be done. It is not just the grandmothers who perpetrate it. The children themselves are led to believe that it is being done for their good, just as male circumcision is sold to older boys. Therefore, they somehow comply and they certainly do not want to take action against their own parents because it is happening within an otherwise loving family. It is a very difficult and delicate process. The noble Lord, Lord Dobbs, is so right to say that what we need is not more legislation—although I welcome it tremendously and thank the Government for it—but some prosecutions.

Lord Bates: Just to clarify, the *Companion* states that further interventions should be for clarification purposes only rather than further conclusions.

Baroness Smith of Basildon: It could be argued that that was a considerable clarification. I am grateful to the noble Baroness.

If the Minister's Bill team does not believe that this addresses the problem, and we in your Lordships' House all understand what the problem is, can we look at it again? The Minister has been very good and I greatly appreciate her co-operation. We can have discussions before Third Reading and full debates in the other place as well. This is the only opportunity, as we will not have another Bill on this in the short term. We have an opportunity here to get it right. We would welcome discussions with the noble Baroness, Lady Meacher, and the noble and learned Baroness, Lady Butler-Sloss, as well as the lawyers who have tried to find a way through on this without encroaching on the kinds of issues that the noble Lord, Lord Dobbs, rightly addressed, or on issues of free speech. We can find a way through and this is the only chance we have. If we are to wipe this out in the UK, we have to address it.

Baroness Williams of Trafford: Again, this has been a further excellent debate on the role of the criminal law in helping to put a stop to the practice of FGM in this country. I am grateful for the constructive approach that the noble Baroness, Lady Meacher, and others have adopted in both debates and in the discussions we have had outside and inside the Chamber.

As many noble Lords have said, we are aiming to get to the same end. It is slightly unfortunate that the amendment was tabled quite late and that there is a difference of opinion in terms of what the amendment seeks to achieve. My noble friend Lady Hamwee rightly pointed out, on the point about "other or others", that the amendment does not seek to achieve what was sought in the original amendment, if that makes sense.

I also thank my noble friend Lady Tonge and the noble Baroness, Lady Meacher, for pointing out quite strongly that this is not a religious matter. There is nothing in any religious text that points to FGM being something that should be carried out on young girls. It is a specific cultural practice that exists in certain communities in the world and has found its way to this country. Legislation alone cannot eradicate a practice that is so deeply ingrained in the culture and traditions of those who practise it and have been doing so for centuries, but I agree that the law is a very important part of our response to the abhorrent practice of female genital mutilation, and it is right that we should change it where necessary.

We believe that the new offence that we have just debated of failing to protect a girl from risk of genital mutilation gets to the heart of the issue. The Government's new offence focuses on those who allow this dreadful abuse to be perpetrated on their daughters rather than on those who may only encourage them to do so. That is not to suggest that encouraging female genital mutilation, or indeed any crime, is in any way acceptable.

I take the point made by the noble Baroness, Lady Hamwee, that such behaviour also constitutes an offence under the provisions of Part 2 of the Serious Crime Act 2007, which contains inchoate offences of: intentionally encouraging or assisting an offence; encouraging or assisting an offence believing it will be

[BARONESS WILLIAMS OF TRAFFORD]
committed; and encouraging or assisting offences believing one or more will be committed. As the noble Baroness observed, the revised wording of the proposed new offence follows closely the wording of the existing inchoate offences. That is both its strength and, dare I say, its weakness. As a result, it would not cover behaviour that is not already covered by the existing 2007 Act offences.

We are not persuaded that creating a specific offence of encouraging FGM is necessary or appropriate. The provisions in Part 2 of the Serious Crime Act 2007 apply to all criminal offences precisely so that it is not necessary to create specific encouraging or assisting offences for every crime. We agree that the behaviours now referred to in the noble Baroness's revised amendment should be criminalised, but that is already the case. This amendment would not advance the criminal law in this area—I suspect this is where we are going to have a further conversation.

We believe that changing the culture and attitudes that allow female genital mutilation to persist will be better achieved through the awareness raising and community engagement that the Government have already embarked upon, rather than through the creation of another, arguably unnecessary, inchoate offence.

I wholeheartedly commend the aims of the noble Baroness, Lady Meacher, and others in tabling her amendment. As I have said, this House is united in its desire to eradicate FGM, even though we may differ on how best to achieve that end. I hope the noble Baroness will agree that the government amendments that we have just debated represent a substantial package of measures to strengthen the civil and criminal law to tackle FGM. I firmly believe that they offer a better way forward, and on that basis I ask the noble Baroness not to press her amendment.

Baroness Meacher: I thank the Minister for her constructive response and all noble Lords who have spoken very constructively in this debate. I particularly thank my noble and learned friend Lady Butler-Sloss for her very important point that this amendment, unlike any other, would achieve deterrence, and that is what we want to do. We want to deter this dreadful act. We do not want just to prosecute after the event, although it is difficult ever to achieve a prosecution. If we can deter, we have really got to the goal that is now clearly shared across all sides of the House, which is to change the culture on FGM. We therefore need to change the way the leaders operate and the way they encourage people to indulge in this terrible act.

I also thank the noble Baroness, Lady Smith, for her very helpful support. We must try to find a form of words that the government lawyers, our lawyers and all other lawyers agree will achieve this incredibly important objective. On that basis, I beg leave to withdraw the amendment.

Amendment 45A withdrawn.

Amendment 46

Moved by ***Lord Harris of Haringey***

46: After Clause 66, insert the following new Clause—

"Protection of children from sexual communications

(1) A person ("A") commits an offence where A intentionally communicates with another person ("B") in the following circumstances—

(a) A is aged 18 or over,

(b) either—

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13,

(c) the content of the communication is sexual or intended to elicit a response that is sexual, and

(d) subject to subsection (3) below, A's purpose in sending the communication or seeking a response is sexual.

(2) The communication may be in any form including verbal, written or pictorial (which may include still or moving images) and may be conveyed by any means whatever.

(3) A does not commit the offence in subsection (1) above where the purpose of the communication is for the protection of the child to which the communication is sent.

(4) For the purposes of subsection (3), a person acts for the protection of a child if he acts for the purpose of—

(a) protecting the child from sexually transmitted infection,

(b) protecting the physical safety of the child,

(c) preventing the child from becoming pregnant, or

(d) promoting the child's emotional well-being by the giving of advice, and not for a sexual purpose."

Lord Harris of Haringey (Lab): My Lords, the purpose of this amendment is to create an offence where an adult engages in a sexual communication with a child or—this is very important—seeks to elicit from that child a sexual communication in response.

The amendment covers verbal, written or pictorial communication. It includes video communication and it covers all forms of communication whether by telephone, the internet, instant messaging and even gaming systems, such as the Xbox. This brings the law in this part of the United Kingdom into line with the law in Scotland, so this is not new territory. I am grateful to the NSPCC for the discussions and briefings I have had, and I know it has had discussions with a number of other noble Lords on this matter. I note that on Friday it launched an online petition on precisely this issue and that by last night it had already achieved 20,000 signatures, so there is a degree of interest and of belief that this is necessary. Indeed, if you speak to many parents, you come across the argument time and time again about why this is important and their concerns for their teenage and younger children.

The reality is that the current law that purports to cover these issues is fragmented and confused. It makes it hard for the police to bring suitable cases against perpetrators and what legislation there is by and large pre-dates the widespread use of the internet and social networking sites. In practice, the current law fails to recognise the nature of grooming. In grooming the perpetrator is not trying to be offensive to the child, to frighten the child or to intimidate the child. The abuser is trying to flatter the child and to persuade the child that they are the person who matters and the only person who cares for them and, as part of that, to persuade the child to respond to them sexually and send them sexual or indecent communications.

This is a widespread problem. Last year, ChildLine reported an increase of 168% in contacts of this nature. ChildLine is receiving reports daily of large

numbers of these cases. For example, a 15 year-old girl was groomed by someone who she thought was 17. In fact, he was 44. She met him through a social networking site, and they chatted online most nights. In his guise as a 17 year-old boy, he said that he was in love with her. He started talking about more sexual things. At first she was not too worried as her friends told her that this was just what boys did. She then sent him a picture of herself naked. He had elicited that picture. At this point, he admitted that in fact he was 44 but said that age did not matter and that he really loved her. When the girl said that she was going to stop the contact, he threatened to share her images on the internet and tell all her friends what she had done. That is a real case from ChildLine of the sort of thing that happens. It would have been quite difficult to take the man concerned to court, as I understand it, on the existing basis.

By contrast, there is a case study from Scotland. It concerns a Mr James Sinclair who was 25. He gave a 14 year-old girl a mobile phone and sent her a series of sexual text messages. The girl's family found the messages and contacted the police to report the matter. The family had reportedly tried for some time to stop the victim having any contact with the accused, but those efforts proved unsuccessful. Police officers examined her mobile phone and traced and detained the offender. Sinclair was put on the sexual offenders register. Under the current law in England, Wales and Northern Ireland, he could not have been prosecuted because he could have mounted a defence that he did not intend to cause distress or anxiety as the child seemed willingly to engage in the sexualised conversation. That is the context in which we are talking here. The current law is inadequate.

6 pm

I do not know what is in the Minister's brief but my experience of Home Office briefings on these matters is that they almost always say, "Ah no, there is an existing offence that covers that". I am not sure I agree. Existing legislation simply is not clear enough and in many cases the defence could argue that the threshold required for the communication to be covered by the offence had not been met. For example, the Sexual Offences Act 2003 covers only situations where it can be proved that the adult intends to meet the child. Increasingly, abusers online have no intention of meeting the child and abusing them physically. This is all about online grooming. They want to extract the sexualised pictures or whatever else it might be. The Sexual Offences Act does not cover that. Perhaps the Minister is going to talk about the Malicious Communications Act 1988. Under that legislation there must be an,

"intent to cause distress or anxiety".

However, as I have already said, abusers operate in the exact opposite way. They flatter the child. They make the child feel special in order to build up the child's trust. Importantly, anyone, even if convicted of this offence, would not be subject to sexual offender registration and notification requirements.

It may also be that the Minister will be relying on the Communications Act 2003. The defence there could argue that the threshold of,

"a message … that is grossly offensive or of an indecent, obscene or menacing character"

has not been met. Again, importantly, anyone so convicted would not be subject to sex offender registration and notification requirements but there the focus is on the message sent by the perpetrator to the child and it needing to be grossly offensive or indecent, obscene or menacing. In most of these instances the message sent to the child is flattering; it is persuasive. It is encouraging the child. It is not grossly offensive; it does not need to be as it is trying to persuade the child to send an image of themselves. It does not have to be obscene or menacing because this is about flattery and persuasion.

I believe that the current law is inadequate in protecting children from online abuse and that the standalone offence in this amendment is needed to ensure that the law is clear. It makes it clear that intentionally sending a sexual communication to a child is illegal and there are definitions in the amendment as to what constitutes an adult and what constitutes a child. Moreover, it would make it illegal to seek to elicit a sexual response from a child by means of a communication. I believe that this will help prevent abuse from escalating and protect children from sexual material in this way. I beg to move.

Baroness Howe of Idlicote (CB): My Lords, I support Amendment 46, which relates to the protection of children from sexual communication. As the noble Lord, Lord Harris, said, his amendment is supported by the NSPCC. It proposes a new offence so that it is always illegal for an adult intentionally to send a sexual message to a child.

In recent years children's internet usage has grown exponentially. As your Lordships know, children between the ages of eight and 15 now spend far more time online than they do watching television. They are also keen users of social networks, with many engaging in risky online behaviour, including being in contact with people via social networks who are not directly known to them, sharing personal information, which makes them vulnerable to abuse, and sharing indecent pictures. We have heard about that from the noble Lord, Lord Harris.

Indeed some people behave in very different ways online to offline, apparently. Police interviews with sex offenders show that the majority differentiate the real world from cyberspace believing that their behaviour is acceptable because what is happening is not real or tangible. One offender said that masturbating on a webcam in front of a teenager seemed like "Fun at the time". He stated that he would not behave that way offline. Consequently, young people are experiencing all sorts of abuse on a scale that we have never seen before. Last year, Childline, as the noble Lord, Lord Harris, said, had an amazing 168% increase in contacts from children relating to online sexual abuse.

The law needs to be changed better to protect children from adults who send these sorts of sexual messages to them. The noble Lord, Lord Harris, suggested that existing laws cover online grooming but the NSPCC and others who support this campaign do not believe that is true. The Sexual Offences Act 2003 was referred to. But, increasingly, abusers online have no intention to meet and abuse the individual child physically.

[Baroness Howe of Idlicote]
Therefore, the Act apparently does not cover online grooming. There is a similar situation with the Malicious Communications Act 1988. Finally, if the Crown attempted to prosecute an offence under the Communications Act 2003, the defence could argue that the threshold of,

"a message … that is grossly offensive or of an indecent, obscene or menacing character"

had not been met. The Act also does not cover the use of private networks to communicate.

Current laws mean that police can be powerless to act until a child has been coerced into sharing an indecent image, lured to a meeting offline or, in the worst cases, sexually abused. The confusing nature of the law in this area means far more needs to be done to enable the police to take early action to prevent abuse escalating, reducing the risk to children and young people and helping them to keep safe online.

The amendment of the noble Lord, Lord Harris, seeks to close this gap in the law better to protect children online and would enable action to be taken against offenders at an earlier stage of the grooming process before an arrangement to meet had been made. It would help protect children from unwanted sexualised content online, potentially have a deterrent effect on offenders and put more responsibility on adults to ensure that who they are talking to online is indeed another adult. More than 75% of people believe it is already illegal for some aged over 18 to send a sexual message to a child under 16, while more than 80% of people have expressed support for such a change in the law. I very much hope that the Government will support the amendment of the noble Lord, Lord Harris.

Baroness Hamwee: My Lords, it always seems churlish to take up points in the text of an amendment when one supports the thrust of it but I am afraid I am going to. The action of grooming is hugely serious. On the noble Lord's example, I wonder whether at least a part of that will be covered by the revenge porn amendment to the Criminal Justice and Courts Bill about the use of images, moved on Report. My noble friend Lady Grender, who put her name to it, arrived just after I had managed to find the text of that amendment. However, that is not my only point on this amendment.

The grooming which the noble Lord described often includes a lack of knowledge in either direction of the people taking part in e-mail exchanges. Therefore, I wonder whether it is appropriate to use the words, which I think have come from the 2003 Act, of A not reasonably believing that B is 16 or over, particularly as I suspect—I do not have detailed knowledge of this—that B, the child, may often claim to be older than she or he is. That is probably my major concern. There is also a reference to subsection (3) which sets out the circumstances in which no offence has been committed—but that only applies to paragraph (1)(d) where it must also apply to (1)(c), and it does not actually need stating in either case.

Perhaps I had better not go down the road of whether communications are written or oral—perhaps verbal is the word one should use there. More serious is the question of whether the list in proposed new subsection (4) is intended to be exhaustive. I would have thought not, but it reads that way. In proposed new subsection (4)(d) I query the reference to promotion of,

"emotional well-being by the giving of advice, and not for a sexual purpose".

I am not sure whether those words correctly describe the difference between the sexual purpose of the perpetrator and the connection between emotional well-being, sexual advice and sexual well-being, which are inseparable.

Finally, might it not be better to go at this by trying to amend the Sexual Offences Act itself? That would lead to consequences, including the sex offenders register, to which the noble Lord quite rightly referred. Again, while I support the thrust of this, I am afraid that I could not support this particular amendment, which would take us in a direction that might be more difficult to untangle.

6.15 pm

Baroness Benjamin: My Lords, as we have already heard, the NSPCC supports the amendment and, as it always hold children's best interests at heart, it is good that we are debating why it does so.

For children and young people, the internet is an exciting extension of their offline world, a source of information and communication and a way to expand their social lives and networks. However, along with the great benefits of the internet there is also a considerable amount of risk—a dark side, from which we need to protect children by putting measures in place.

As the noble Lord, Lord Harris, said, ChildLine last year had a 168% increase in contacts relating to online sexual abuse year. This is a most disturbing trend. Young people have told ChildLine that they are experiencing all sorts of new abuse on a scale never before seen, and many parents say that keeping their children safe online is a key concern for the welfare of their child.

The problem is that there is inadequate protection for children from adults who send obscene or disturbing material to them—in the majority of cases, over the internet. The current law in this area is fragmented and confused, making it hard for police to deal with sexual messaging appropriately. Existing legislation, such as the Sexual Offences Act 2003, predates the widespread use of the internet and the huge growth in the number of offenders targeting children online.

Evidence has shown that, increasingly, offenders have no intention of meeting the child because the internet gives them new ways to control and influence children without ever having to touch them. The end goal may now be to persuade, coerce or groom a child to get them to perform sexual acts via a webcam. This can sometimes leave children feeling mentally abused, with low self-esteem, and is often the start of self-harming.

Under the current law it is hard to tackle grooming behaviour at an early stage, meaning that intervention can often be made only when the abuse gets to a more serious and extreme level, such as when the child sends an image of themselves, or when arrangements are made to meet and abuse the child. There have been

suggestions that there is adequate provision in existing law to cover online grooming. However, the NSPCC and other children's charities do not agree. Under existing legislation, many of these offences would not be captured because the defence would argue that the threshold required for the communication to be covered by the offence had not been met. What is the solution? The NSPCC believes that this amendment would close a gap in the law, to better protect children online.

A YouGov poll found that three out of four adults believe that it is already illegal for someone over 18 to send a sexual message to a child under 16. The fact is that no such specific offence exists. Eight out of 10 people polled by YouGov said that they would support a change in the law. This simple and sensible change would have a number of positive effects in relation to protecting children from online abuse, primarily helping to protect children from unwanted and distressing sexual contact online and enabling action to be taken against offenders at an earlier stage of the grooming process, thereby helping to prevent abuse escalating. I hope that the Government will give full consideration to this amendment, to protect our children. I look forward to the Minister's response.

Baroness Smith of Basildon: My Lords, my noble friend Lord Harris and the noble Baroness, Lady Howe, have undertaken a service to your Lordships' House by tabling this amendment for debate today. There is no doubt that, alongside the advantages that modern technology brings, it also brings new dangers for children. Looking across your Lordships' House, I suspect that when any of us went out to play as kids, our parents would tell us, "Careful how you cross the road, and don't talk to strangers".

If I am honest, my parents were happiest if they thought that I was safe upstairs in my bedroom with my friends, playing my music or pretending to do my homework. Nowadays, parents have those same fears while the child is at home in their bedroom, on their computer or mobile phone. It is very difficult for parents always to understand or put in the controls that need to be there. The danger has moved; it can now be in the home or in the child's bedroom. The law has to keep pace with the changes that have come about. The technology has moved, and the law has to move too.

I am very grateful to the NSPCC for what I thought was a very helpful briefing. I also agree with the point that my noble friend Lord Harris made about the "slow burn" of these types of offences. I recall dealing with a case some time ago where there was a man in his 30s, who had a family, who was corresponding with an 11 year-old girl in another country, who thought that she was in contact with another 11 year-old girl. In that case, he was stopped before it went too far, but it is easy to see how over a period of time somebody can believe that the person they are in contact with is someone just like them. It is their friend, whether it is a boyfriend or someone of the same gender. This is the grooming that is referred to.

I will not go into the detail of the legislation, because my noble friend Lord Harris explained that, but I am sure that the Minister's file covers this area. When he took up his post, he was kind enough to meet me. He thought that I had been a Home Office Minister. I was not; I was a Home Office PPS. Part of my duties as a PPS was to run two paces behind my Minister, clutching the file as he went into Committee. On every page, against an amendment put down by a member of the Opposition was a line which read, "Resist, it is covered by other legislation". I expect that the noble Lord has a very similar file in front of him today.

I will give the Minister the benefit of my experience on this issue. This came up previously when we were debating the anti-social behaviour Bill in your Lordships' House. I was brought a proposal from the Manchester police and crime commissioner about how to shut down more quickly premises that have been used for grooming young girls for sex. I was told "We do not have the powers". I had a letter from Norman Baker, the Home Office Minister which said, "Of course you have the powers; this can be done; you can use the prostitution laws". How could you use the prostitution laws with an 11 or 12 year-old girl? You could not. However, the advice from the Home Office in correspondence after correspondence was that it was already covered by existing law.

We often hear that it is covered by existing law, but our experience when we see offences being committed, but not being prosecuted, is that the existing law is inadequate. On that occasion we tabled an amendment. The noble Baroness, Lady Hamwee, had the same concerns then as she has expressed today about it not being the right kind of legislation and said that it should be in another Bill. Where there is a will, there is a way. If we really want to address some of these problems, we can. The noble Lord, Lord Taylor, was very helpful on that occasion. I withdrew my amendment. The Government came back with their amendment which we were delighted to support and were very grateful to do so.

There is an opportunity here. The wording may not be perfect; I am sure that the Minister has his note saying, "resist"; but there is an issue here that has to be addressed. Failure to address it now will mean that we lose the opportunity until the next Home Office Bill. I know that they are like double-decker buses sometimes, but we have an opportunity here to bring the law up to date. The law exists in Scotland and is used for prosecutions in Scotland when other laws fail. So here is an opportunity. I hope that the Minister can just put his file to one side and not resist, just until Third Reading, to see whether there is a way forward to address what is becoming a pretty serious problem.

Lord Bates: I am tempted by the Baroness's offer to put my file aside, but I will stick with it a little because, as we have seen through this whole process of discussion in Committee, which she has been following right from the beginning, it is not the case that "resist" is there because it is something that someone just does not want to consider. All the way through, we have seen the openness of officials to have meetings with groups and with Back-Bench Peers. The genuine government amendments that have been brought forward, and the responses, not least today and on other matters, show that we are all very much on the same side on all of the issues, whether it is FGM, mandatory reporting, or indeed this one.

[LORD BATES]

However, there are genuine differences between people in some NGOs about the best way of achieving this. Officials are using their knowledge and expertise of the system to ask whether this is actually something which is going to strengthen our hand. A great forecast was made by the noble Lord, Lord Harris, of what was actually in my speech. I can assure him that I shall not disappoint him in referring to those specific Acts. One reason why I shall not disappoint him is that the Ministry of Justice has met with the NSPCC, as you would expect, and talked to it about its concerns in this area. It has shared its thoughts on the amendment.

I will try to be as helpful as I can, but I need to get some remarks on the record. If the House could bear with me in my responses, I will come back to the specific issues raised. I share the noble Lord's objective, which is to ensure that we have a robust body of criminal law to tackle predatory sexual behaviour by adults against vulnerable children. The House remains united in its condemnation of the sexual abuse of children, and it is through the work of noble Lords across all parties and none that we have some of the strongest and most respected criminal laws in the world to deal with this dreadful offending.

I thank the National Society for the Prevention of Cruelty to Children, which has proposed this new offence and brought its concerns to this debate. Its efforts, and those of its supporters, have helped to create a tough range of criminal sanctions and provided support to help to protect children. I also thank the NSPCC for engaging in constructive talks with my officials about this new clause. I also mention ChildLine in this context.

The new clause would create a new criminal offence prohibiting an adult from communicating with someone under 16 who they do not reasonably believe to be over 16, or someone who is in fact under 13 years of age, where that communication is sexual or intended to elicit a response that is sexual. The person's purpose in sending the communication or seeking a response would need to be sexual.

As I said, we have some of the strongest and most robust laws in the world to deal with sexual offences against children. Although we are examining this issue, our preliminary view is that the behaviour targeted by this amendment is already captured under existing law.

I hope that noble Lords will bear with me while I outline some of the existing relevant provisions. If a message is sent by means of a public electronic communications network—that would include the internet—and its content is grossly offensive, indecent, obscene or menacing, it will fall foul of the offence in Section 127 of the Communications Act 2003. Those convicted of this offence who pose a risk of serious sexual harm to the public can be made subject to a sexual offences prevention order. The noble Lord, Lord Harris, mentioned that the situation in Scotland was much better, but in this regard the Communications Act 2003 does not apply to Scotland. It does apply in England and Wales, and there have been 1,314 prosecutions under Section 127 of the Communications Act in 2013 alone. This will cover a range of issues, not the specific ones that he is concerned about, but it is certainly not something that the police feel that they have no opportunity to prosecute under the Communications Act 2003.

I realise that this offence would not apply to non-electronic communication or perhaps private communications networks, but our other laws here are broad enough to capture sexual messages to children in this manner. If the messages, including any sent images, are indecent or grossly offensive, sending them may fall foul of Section 1 of the Malicious Communications Act 1988. I readily acknowledge the point made by my noble friend Lady Benjamin, who talked about 1988 certainly predating the world-wide web in that context, but some of the laws that are in place for offensive materials and activities relating to other media are still relevant to the new media, and we should not just disregard them. They fall foul of the Act provided that they are sent with the purpose of causing distress or anxiety to a person to whom the material is communicated, or intended to be communicated.

6.30 pm

Lord Harris of Haringey: I shall try not to intervene too often, given that we are on Report, but I would be grateful for this clarification. The Minister has referred to Section 127 of the Communications Act, which requires the message from the perpetrator to be,

"grossly offensive or of an indecent, obscene or menacing character".

He also referred to Section 1 of the Malicious Communications Act where the offence is,

"with intent to cause distress or anxiety".

In the sorts of cases that I have been talking about, there is no intent to cause distress or anxiety. There is no need to be,

"grossly offensive … indecent, obscene or menacing",

because this is about coaxing the young person through flattery to send a naked image of themselves. Clearly, if it falls into these categories, there is no question that the Act covers it, but these are communications of a different nature.

Lord Bates: I accept that—and this may not endear me to the noble Lord, but I am only halfway through my speech. I will go through some other laws that could catch that particular matter. If it is not the case, I shall certainly come back and address the specific one that he deals with.

It has been pointed out that the Section 1 offence in the Malicious Communications Act is not suitable because it is a summary one and subject to a six-month time limitation on prosecutions. I assure the House that the Criminal Justice and Courts Bill includes an amendment to the 1988 Act, making that offence triable either way, which would have the effect of removing the six-month time limit. The material, depending on the content, could also be caught under the Obscene Publications Act 1959. There was a recent conviction under the Act which captured a paedophilic sexual discussion being held in a private e-mail conversation between paedophiles. This significant conviction demonstrates that the offence can be made out by a publication to one person.

If the contact or messaging involves the creation of indecent photographs of children under the age of 18, legislation such as the Protection of Children Act 1978 could be used against those circulating such images if, for example, an adult is inciting a child to self-produce indecent images. That was a specific issue that the noble Lord focused on. Section 160 of the Criminal Justice Act 1988 covers the simple possession of these images. There are a range of offences under the Sexual Offences Act 2003, including laws on attempting these offences, which would very likely cover this behaviour, its consequences or intended consequences. I shall spare the House a list of all the offences in the 2003 Act that might be engaged, but let me offer one example. Under Section 10 of the 2003 Act it is an offence for a person over 18 to cause or incite a child to engage in sexual activity. This carries a maximum 14-year sentence. Depending on the individual circumstances, this offence would very likely come into play when sexual communications were exchanged with children, or when they were coaxed, or when non-sexual communications were intended to elicit a sexual response.

There are other offences to deal with exploiting children through involvement in pornography and prostitution. I take the point that the noble Baroness took from the example in Manchester. But this is something that is constantly under review, and has to be, as part of wider efforts to tackle this issue. We have had conversations with the Crown Prosecution Service, which does not feel that there is a gap in the law at present. We have had conversations with the national policing lead, who also does not feel that there is a gap at present. These discussions are ongoing, and I will be very happy to include noble Lords—and specifically the noble Lord, Lord Harris, in the context of this amendment, as well as the noble Baronesses, Lady Howe and Lady Benjamin, in some of the discussions with the CPS and the police to see what needs to be done and whether the provisions are sufficiently robust to deal with the specific examples and case studies that they have given.

Even if the messages are not themselves illegal, if their distribution or sending to a child is carried out as part of a course of conduct that alarms the child or causes distress—something raised by a number of noble Lords—this could amount to a criminal offence under the Protection from Harassment Act 1997. On the face of it, therefore, it would appear to be the case that the current law, if applied properly, already does what the amendment seeks to do. We should be very wary of adding new offences to the statute book if to do so would result in an unnecessary and undesirable duplication of the existing criminal law. However, the Government are always open to suggestions that could strengthen the law in this difficult and sensitive area.

I agree with this amendment to the extent that we want to be absolutely sure that offenders who communicate sexual messages to children or elicit sexual replies are appropriately dealt with by the criminal law. We are therefore investigating with the Crown Prosecution Service and the police to ensure that there are no such gaps that could let those who offend against our young people in this manner escape justice. I am very happy to include noble Lords in that discussion. As part of our ongoing consideration of this issue, I have extended that invitation to discuss. I trust therefore that the noble Lord might accept that, in this regard, it is not a "resist" but that the Government are considering carefully what is being proposed, in the light of the existing legislation and to continue that discussion. In the mean time, I ask him to consider withdrawing his amendment.

Lord Harris of Haringey: My Lords, I am grateful for the support that this amendment has had from the noble Baronesses, Lady Howe and Lady Benjamin, as well as my noble friend Lady Smith. The Minister said clearly that he shared its objectives. I have the advantage of seeing his colleagues behind him and I noticed that not only did quite a number of them seem to share the objectives but they were also not entirely convinced by some of his suggestions that these offences were met by the Bill.

I shall deal quickly with the noble Baroness, Lady Hamwee. She did not disappoint us in that she made her usual series of very precise and small points on the amendment. I am clear that this is not a professionally drafted amendment or one that would meet all the best requirements of those who sit in garrets in the Home Office or the Ministry of Justice producing these things. My hope was that the Minister would say that there were sufficient points here that he would come back to us at Third Reading with a beautifully professionally drafted amendment. However, I am not sure that the points that the noble Baroness, Lady Hamwee, made were terribly helpful. She talked about the recent amendment on revenge porn. The issue there was publishing material that had been shared in a private capacity more widely because the relationship had broken up. This does not apply in this instance; this is about eliciting an image from a child, not necessarily to share—although that might happen—but simply to obtain the image. So I am not sure that that change necessarily helps us on this issue. I am sure that we could all struggle with defining age and knowledge of age and we could no doubt find ways in which this proposal could be improved. I hope that the Government can accept that there are at least some points here that need to be looked at.

The Minister then went through, as predicted, some of the various sections that we talked about. Most of them require an intent to cause distress or anxiety, or that the matter is grossly offensive, or of an indecent, obscene or menacing character. As I have said repeatedly—I do not think that the Minister has addressed this issue—those are not the circumstances in which such messages are sent. They are sent not to cause offence to the child concerned, but to make children feel sufficiently comfortable to be able to share naked pictures of themselves.

The Minister referred to the Sexual Offences Act 2003, and causing or inciting a child to engage in sexual activity. I appreciate that there is a fine line to be drawn here, but I wonder whether it would be sufficient to achieve a conviction under Section 10 of that Act if all that the perpetrator has done is to persuade the child to stand naked in front of a webcam. No sexual activity is taking place there, so there are some issues around that.

[LORD HARRIS OF HARINGEY]

The provision in the Protection from Harassment Act 1997 depends on whether the sender knows or ought to know that what is happening amounts to harassment of another. Harassment includes alarming a person or causing a person distress—but the child concerned may not be alarmed or distressed at the point when the actions take place. The child may only realise many years later what they have done, and what the implications are. Again, I am simply not convinced that this is covered. Scotland has legislation covering this point; there is a gap in England, Wales and Northern Ireland.

I am disappointed in the Minister's reply. I take his offer for further consultation at face value, but I am conscious that Third Reading is only just over a week away, and I hope we can make some progress before then. Without that, I would feel that we need to return to these issues at that stage. However, on the basis of the promised discussions, I beg leave to withdraw the amendment.

Amendment 46 withdrawn.

Clause 67: Offence of female genital mutilation: extra-territorial acts

Amendment 46A

Moved by **Lord Bates**

46A: Clause 67, page 50, line 18, at end insert—

"( ) after section 4 insert—

"4A Anonymity of victims

Schedule 1 provides for the anonymity of persons against whom a female genital mutilation offence (as defined in that Schedule) is alleged to have been committed.";"

Amendment 46A agreed.

Amendment 46B

Moved by **Lord Bates**

46B: Clause 67, page 50, line 21, at end insert—

"(1A) Insert as Schedule 1 to that Act the following Schedule—

Schedule 1

Anonymity of victims

Prohibition on the identification of victims in publications

1 (1) This paragraph applies where an allegation has been made that a female genital mutilation offence has been committed against a person.

(2) No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person's lifetime.

(3) For the purposes of this Schedule, any consent of the person to an act giving rise to the alleged offence is not to be taken as preventing that person from being regarded as a person against whom the alleged offence was committed.

(4) In any criminal proceedings before a court, the court may direct that the restriction imposed by sub-paragraph (2) is not to apply (whether at all in England and Wales and Northern Ireland, or to the extent specified in the direction) if the court is satisfied that either of the following conditions is met.

(5) The first condition is that the conduct of a person's defence at a trial of a female genital mutilation offence would be substantially prejudiced if the direction is not given.

(6) The second condition is that—

(a) the effect of sub-paragraph (2) is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and

(b) it is in the public interest to remove or relax the restriction.

(7) A direction under sub-paragraph (4) does not affect the operation of sub-paragraph (2) at any time before the direction is given.

(8) In this paragraph "the court" means—

(a) in England and Wales, a magistrates' court or the Crown Court;

(b) in Northern Ireland, a magistrates' court, a county court or the Crown Court.

Penalty for breaching prohibition imposed by paragraph 1(2)

2 (1) If anything is included in a publication in contravention of the prohibition imposed by paragraph 1(2), each of the persons responsible for the publication is guilty of an offence.

(2) A person guilty of an offence under this paragraph is liable—

(a) on summary conviction in England and Wales, to a fine;

(b) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale.

(3) The persons responsible for a publication are as follows—

Type of publication	*Persons responsible*
Newspaper or other periodical	Any person who is a proprietor, editor or publisher of the newspaper or periodical.
Relevant programme	Any person who—is a body corporate engaged in providing the programme service in which the programme is included, or has functions in relation to the programme corresponding to those of an editor of a newspaper.
Any other kind of publication	Any person who publishes the publication.

(4) If an offence under this paragraph is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a senior officer of a body corporate, or

(b) a person purporting to act in such a capacity,

the senior officer or person (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) "Senior officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate; and for this purpose "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(6) Proceedings for an offence under this paragraph—

(a) if alleged to have been committed in England and Wales, may not be instituted except by, or with the consent of, the Attorney General;

(b) if alleged to have been committed in Northern Ireland, may not be instituted except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

Offence under paragraph 2: defences

3 (1) This paragraph applies where a person ("the defendant") is charged with an offence under paragraph 2 as a result of the inclusion of any matter in a publication.

(2) It is a defence for the defendant to prove that at the time of the alleged offence, the defendant was not aware, and did not suspect or have reason to suspect, that—

(a) the publication included the matter in question, or

(b) the allegation in question had been made.

(3) It is a defence for the defendant to prove that the publication in which the matter appeared was one in respect of which the victim had given written consent to the appearance of matter of that description.

(4) The defence in sub-paragraph (3) is not available if—

(a) the victim was under the age of 16 at the time when her consent was given, or

(b) a person interfered unreasonably with the peace and comfort of the victim with a view to obtaining her consent.

(5) In this paragraph "the victim" means the person against whom the female genital mutilation offence in question is alleged to have been committed.

Special rules for providers of information society services

4 (1) Paragraph 2 applies to a domestic service provider who, in the course of providing information society services, publishes prohibited matter in an EEA state other than the United Kingdom (as well as to a person, of any description, who publishes prohibited matter in England and Wales or Northern Ireland).

(2) Proceedings for an offence under paragraph 2, as it applies to a domestic service provider by virtue of sub-paragraph (1), may be taken at any place in England and Wales or Northern Ireland.

(3) The offence may for all incidental purposes be treated as having been committed at any place in England and Wales or Northern Ireland.

(4) Nothing in this paragraph affects the operation of any of paragraphs 6 to 8.

5 (1) Proceedings for an offence under paragraph 2 may not be taken against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.

(2) The derogation condition is that taking proceedings—

(a) is necessary for the purposes of the public interest objective,

(b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and

(c) is proportionate to that objective.

(3) "The public interest objective" means the pursuit of public policy.

6 (1) A service provider does not commit an offence under paragraph 2 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—

(a) initiate the transmission,

(b) select the recipient of the transmission, or

(c) select or modify the information contained in the transmission.

(2) For the purposes of sub-paragraph (1)—

(a) providing access to a communication network, and

(b) transmitting information in a communication network,

include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

(3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

7 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.

(2) The first condition is that the storage of the information—

(a) is automatic, intermediate and temporary, and

(b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.

(3) The second condition is that the service provider—

(a) does not modify the information,

(b) complies with any conditions attached to having access to the information, and

(c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.

(4) This sub-paragraph applies if the service provider obtains actual knowledge that—

(a) the information at the initial source of the transmission has been removed from the network,

(b) access to it has been disabled, or

(c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

8 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service if—

(a) the service provider had no actual knowledge when the information was provided that it was, or contained, a prohibited publication, or

(b) on obtaining actual knowledge that the information was, or contained, a prohibited publication, the service provider promptly removed the information or disabled access to it.

(2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

Interpretation

9 (1) In this Schedule—

"domestic service provider" means a service provider established in England and Wales or Northern Ireland;

"the E-Commerce Directive" means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

"female genital mutilation offence" means—

(a) an offence under section 1, 2, 3 or 3A;

(b) an offence of attempt or conspiracy to commit any such offence;

(c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to any such offence;

"information society services"—

(a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and

(b) is summarised in recital 17 of the E-Commerce Directive as covering "any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service";

"non-UK service provider" means a service provider established in an EEA state other than the United Kingdom;

"programme service" has the same meaning as in the Broadcasting Act 1990 (see section 201(1) of that Act);

"prohibited material" means any material the publication of which contravenes paragraph 1(2);

"publication" includes any speech, writing, relevant programme or other communication (in whatever form) which is addressed to, or is accessible by, the public at large or any section of the public;

"recipient", in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

"relevant programme" means a programme included in a programme service;

"service provider" means a person providing an information society service.

(2) For the purposes of the definition of "publication" in sub-paragraph (1)—

(a) an indictment or other document prepared for use in particular legal proceedings is not to be taken as coming within the definition;

(b) every relevant programme is to be taken as addressed to the public at large or to a section of the public.

(3) For the purposes of the definitions of "domestic service provider" and "non-UK service provider" in sub-paragraph (1)—

(a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider—

(i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and

(ii) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union;

(b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;

(c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service.""

Amendments 46C and 46D (to Amendment 46B) not moved.

Amendment 46B agreed.

Amendment 46E

Moved by ***Lord Bates***

46E: After Clause 67, insert the following new Clause—

"Offence of failing to protect girl from risk of genital mutilation

(1) The Female Genital Mutilation Act 2003 is amended as follows.

(2) After section 3 insert—

"3A Offence of failing to protect girl from risk of genital mutilation

(1) If a genital mutilation offence is committed against a girl under the age of 16, each person who is responsible for the girl at the relevant time is guilty of an offence.

(2) This is subject to subsection (5).

(3) For the purposes of this section a person is "responsible" for a girl in the following two cases.

(4) The first case is where the person—

(a) has parental responsibility for the girl, and

(b) has frequent contact with her.

(5) The second case is where the person—

(a) is aged 18 or over, and

(b) has assumed (and not relinquished) responsibility for caring for the girl in the manner of a parent.

(6) It is a defence for the defendant to show that—

(a) at the relevant time, the defendant did not think that there was a significant risk of a genital mutilation offence being committed against the girl, and could not reasonably have been expected to be aware that there was any such risk, or

(b) the defendant took such steps as he or she could reasonably have been expected to take to protect the girl from being the victim of a genital mutilation offence.

(7) A person is taken to have shown the fact mentioned in subsection (5)(a) or (b) if—

(a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and

(b) the contrary is not proved beyond reasonable doubt.

(8) For the purposes of subsection (3)(b), where a person has frequent contact with a girl which is interrupted by her going to stay somewhere temporarily, that contact is treated as continuing during her stay there.

(9) In this section—

"genital mutilation offence" means an offence under section 1, 2 or 3 (and for the purposes of subsection (1) the prosecution does not have to prove which section it is);

"parental responsibility"—

(a) in England Wales, has the same meaning as in the Children Act 1989;

(b) in Northern Ireland, has the same meaning as in the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));

"the relevant time" means the time when the mutilation takes place."

(3) In section 4 (extension of sections 1 to 3 to extra-territorial acts)—

(a) in the heading, for "3" substitute "3A" and after "acts" insert "or omissions";

(b) after subsection (1) insert—

"(1A) An offence under section 3A can be committed wholly or partly outside the United Kingdom by a person who is a United Kingdom national or a United Kingdom resident."

(4) In section 5 (penalties for offences)—

(a) for "A person guilty of an offence under this Act" substitute—

"(1) A person guilty of an offence under section 1, 2 or 3";

(b) at the end insert—

"(2) A person guilty of an offence under section 3A is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both),

(b) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both),

(c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).""

Amendment 46F (to Amendment 46E) not moved.

Amendment 46E agreed.

Amendment 46G

Moved by ***Lord Bates***

46G: After Clause 67, insert the following new Clause—

"Female genital mutilation protection orders

(1) After section 5 of the Female Genital Mutilation Act 2003 insert—

"5A Female genital mutilation protection orders

(1) Schedule 2 provides for the making of female genital mutilation protection orders.

(2) In that Schedule—

(a) Part 1 makes provision about powers of courts in England and Wales to make female genital mutilation protection orders;

(b) Part 2 makes provision about powers of courts in Northern Ireland to make such orders.”

(2) After Schedule 1 to that Act (inserted by section 67(1A)) insert—

Schedule 2

Female genital mutilation protection orders

Part 1

England and Wales

Power to make FGM protection order

1 (1) The court in England and Wales may make an order (an “FGM protection order”) for the purposes of—

(a) protecting a girl against the commission of a genital mutilation offence, or

(b) protecting a girl against whom any such offence has been committed.

(2) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected.

(3) An FGM protection order may contain—

(a) such prohibitions, restrictions or requirements, and

(b) such other terms,

as the court considers appropriate for the purposes of the order.

(4) The terms of an FGM protection order may, in particular, relate to—

(a) conduct outside England and Wales as well as (or instead of) conduct within England and Wales;

(b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;

(c) other persons who are, or may become, involved in other respects as well as respondents of any kind.

(5) For the purposes of sub-paragraph (4) examples of involvement in other respects are—

(a) aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl;

(b) conspiring to commit, or to attempt to commit, such an offence.

(6) An FGM protection order may be made for a specified period or until varied or discharged (see paragraph 6).

Applications and other occasions for making orders

2 (1) The court may make an FGM protection order—

(a) on an application being made to it, or

(b) without an application being made to it but in the circumstances mentioned in sub-paragraph (6).

(2) An application may be made by—

(a) the girl who is to be protected by the order, or

(b) a relevant third party.

(3) An application may be made by any other person with the leave of the court.

(4) In deciding whether to grant leave, the court must have regard to all the circumstances including—

(a) the applicant’s connection with the girl to be protected;

(b) the applicant’s knowledge of the circumstances of the girl.

(5) An application under this paragraph may be made in other family proceedings or without any other family proceedings being instituted.

(6) The circumstances in which the court may make an order without an application being made are where—

(a) any other family proceedings are before the court (“the current proceedings”),

(b) the court considers that an FGM protection order should be made to protect a girl (whether or not a party to the proceedings), and

(c) a person who would be a respondent to any proceedings for an FGM protection order is a party to the current proceedings.

(7) In this paragraph—

“family proceedings” has the same meaning as in Part 4 of the Family Law Act 1996 (see section 63(1) and (2) of that Act), but also includes—

(a) proceedings under the inherent jurisdiction of the High Court in relation to adults,

(b) proceedings in which the court has made an emergency protection order under section 44 of the Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act), and

(c) proceedings in which the court has made an order under section 50 of the Children Act 1989 (recovery of abducted children etc);

“relevant third party” means a person specified, or falling within a description of persons specified, by regulations made by the Lord Chancellor (and such regulations may, in particular, specify the Secretary of State).

(8) Regulations under sub-paragraph (7) are to be made by statutory instrument, and any such instrument is subject to annulment in pursuance of a resolution of either House of Parliament.

Power to make order in criminal proceedings

3 The court before which there are criminal proceedings in England and Wales for a genital mutilation offence may make an FGM protection order (without an application being made to it) if—

(a) the court considers that an FGM protection order should be made to protect a girl (whether or not the victim of the offence in relation to the criminal proceedings), and

(b) a person who would be a respondent to any proceedings for an FGM protection order is a defendant in the criminal proceedings.

Offence of breaching order

4 (1) A person who without reasonable excuse does anything that the person is prohibited from doing by an FGM protection order is guilty of an offence.

(2) In the case of an FGM protection order made by virtue of paragraph 5(1), a person can be guilty of an offence under this paragraph only in respect of conduct engaged in at a time when the person was aware of the existence of the order.

(3) Where a person is convicted of an offence under this paragraph in respect of any conduct, the conduct is not punishable as a contempt of court.

(4) A person cannot be convicted of an offence under this paragraph in respect of any conduct which has been punished as a contempt of court.

(5) A person guilty of an offence under this paragraph is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

(6) A reference in any enactment to proceedings under this Part of this Schedule, or to an order under this Part of this

Schedule, does not include a reference to proceedings for an offence under this paragraph or to an order made in proceedings for such an offence.

(7) "Enactment" includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.

Ex parte orders

5 (1) The court may, in any case where it is just and convenient to do so, make an FGM protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.

(2) In deciding whether to exercise its powers under sub-paragraph (1), the court must have regard to all the circumstances including—

(a) the risk to the girl, or to another person, of becoming a victim of a genital mutilation offence if the order is not made immediately,

(b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately, and

(c) whether there is reason to believe that—

(i) the respondent is aware of the proceedings but is deliberately evading service, and

(ii) the delay involved in effecting substituted service will cause serious prejudice to the girl to be protected or (if different) an applicant.

(3) The court must give the respondent an opportunity to make representations about an order made by virtue of sub-paragraph (1).

(4) The opportunity must be—

(a) as soon as just and convenient, and

(b) at a hearing of which notice has been given to all the parties in accordance with rules of court.

Variation and discharge of orders

6 (1) The court may vary or discharge an FGM protection order on an application by—

(a) any party to the proceedings for the order,

(b) the girl being protected by the order (if not a party to the proceedings for the order), or

(c) any person affected by the order.

(2) In the case of an order made in criminal proceedings under paragraph 3, the reference in sub-paragraph (1)(a) to a party to the proceedings for the order is to be read as a reference to the prosecution and the defendant.

(3) In addition, the court may vary or discharge an FGM protection order made by virtue of paragraph 2(1)(b) or 3 even though no application under sub-paragraph (1) above has been made to the court.

(4) Paragraph 5 applies to a variation of an FGM protection order as it applies to the making of such an order (and references in that paragraph to the making of an FGM protection order are to be read accordingly).

Arrest under warrant

7 (1) An interested party may apply to the relevant judge for the issue of a warrant for the arrest of a person if the interested party considers that the person has failed to comply with an FGM protection order or is otherwise in contempt of court in relation to such an order.

(2) The relevant judge must not issue a warrant on an application under sub-paragraph (1) unless—

(a) the application is substantiated on oath, and

(b) the relevant judge has reasonable grounds for believing that the person to be arrested has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(3) In this paragraph "interested party", in relation to an FGM protection order, means—

(a) the girl being protected by the order,

(b) (if a different person) the person who applied for the order, or

(c) any other person;

but no application may be made under sub-paragraph (1) by a person falling within paragraph (c) without leave of the relevant judge.

Remand: general

8 (1) The court before which an arrested person is brought by virtue of a warrant under paragraph 7 may, if the matter is not then disposed of immediately, remand the person concerned.

(2) Paragraphs 9 to 14 contain further provision about the powers of a court to remand under this paragraph.

(3) Sub-paragraph (4) applies if a person remanded under this paragraph is granted bail under paragraphs 10 to 14.

(4) The person may be required by the relevant judge to comply, before release on bail or later, with such requirements as appear to the judge to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

Remand: medical examination and report

9 (1) Any power to remand a person under paragraph 8(1) may be exercised for the purpose of enabling a medical examination and report to be made if the relevant judge has reason to consider that a medical report will be required.

(2) If such a power is so exercised, the adjournment must not be for more than four weeks at a time unless the relevant judge remands the accused in custody.

(3) If the relevant judge remands the accused in custody, the adjournment must not be for more than three weeks at a time.

(4) Sub-paragraph (5) applies if there is reason to suspect that a person who has been arrested under a warrant issued on an application under paragraph 7(1) is suffering from mental disorder within the meaning of the Mental Health Act 1983.

(5) The relevant judge has the same power to make an order under section 35 of the Mental Health Act 1983 (remand for report on accused's mental condition) as the Crown Court has under section 35 of that Act in the case of an accused person within the meaning of that section.

Remand: further provision

10 (1) Where a court has power to remand a person under paragraph 8, the court may remand the person in custody or on bail.

(2) If remanded in custody, the person is to be committed to custody to be brought before the court—

(a) at the end of the period of remand, or

(b) at such earlier time as the court may require.

(3) The court may remand a person on bail—

(a) by taking from the person a recognizance (with or without sureties) conditioned as provided in paragraph 11, or

(b) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 14 and, in the meantime, committing the person to custody as mentioned in sub-paragraph (2) above.

(4) Where a person is brought before the court after remand the court may further remand the person.

(5) In this paragraph and in paragraphs 11 to 14, references to "the court" includes a reference to a judge of the court or, in the case of proceedings in a magistrates' court, a justice of the peace.

11 (1) Where a person is remanded on bail, the court may direct that the person's recognizance be conditioned for his or her appearance—

(a) before the court at the end of the period of remand, or

(b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

(2) Where a recognizance is conditioned for a person's appearance as mentioned in sub-paragraph (1), the fixing of any time for the person next to appear is to be treated as a remand.

(3) Nothing in this paragraph deprives the court of power at any subsequent hearing to remand a person afresh.

12 (1) The court may not remand a person for a period exceeding 8 clear days unless—

(a) the court adjourns a case under paragraph 9(1), or

(b) the person is remanded on bail and both that person and the other party to the proceedings (or, in the case of criminal proceedings, the prosecution) consent.

(2) If sub-paragraph (1)(a) applies, the person may be remanded for the period of the adjournment.

(3) Where the court has power to remand a person in custody, the person may be committed to the custody of a constable if the remand is for a period not exceeding 3 clear days.

13 (1) If the court is satisfied that a person who has been remanded is unable by reason of illness or accident to appear before the court at the end of the period of remand, the court may further remand the person in his or her absence.

(2) The power in sub-paragraph (1) may, in the case of a person who was remanded on bail, be exercised by enlarging the person's recognizance and those of any sureties to a later time.

(3) Where a person remanded on bail is bound to appear before the court at any time and the court has no power to remand the person under sub-paragraph (1), the court may, in the person's absence, enlarge the person's recognizance and those of any sureties for the person to a later time.

(4) The enlargement of a person's recognizance is to be treated as a further remand.

(5) Paragraph 12(1) (limit of remand) does not apply to the exercise of the powers conferred by this paragraph.

14 (1) This paragraph applies where under paragraph 10(3)(b) the court fixes the amount in which the principal and the sureties (if any) are to be bound.

(2) The recognizance may afterwards be taken by a person prescribed by rules of court (with the same consequences as if it had been entered into before the court).

Contempt proceedings

15 The powers of the court in relation to contempt of court arising out of a person's failure to comply with an FGM protection order, or otherwise in connection with such an order, may be exercised by the relevant judge.

Other protection or assistance against female genital mutilation

16 (1) Nothing in this Part of this Schedule affects any other protection or assistance available to a girl who is or may become the victim of a genital mutilation offence.

(2) In particular, it does not affect—

(a) the inherent jurisdiction of the High Court;

(b) any criminal liability;

(c) any civil remedies under the Protection from Harassment Act 1997;

(d) any right to an occupation order or a non-molestation order under Part 4 of the Family Law Act 1996;

(e) any right to a forced marriage protection order under Part 4A of that Act;

(f) any protection or assistance under the Children Act 1989;

(g) any claim in tort.

Interpretation

17 (1) In this Part of this Schedule—

"the court", except as provided in sub-paragraph (2), means the High Court, or the family court, in England and Wales;

"FGM protection order" means an order under paragraph 1;

"genital mutilation offence" means an offence under section 1, 2 or 3;

"the relevant judge", in relation to an FGM protection order, means—

(a) where the order was made by the High Court, a judge of that court;

(b) where the order was made by the family court, a judge of that court;

(c) where the order was made by a court in criminal proceedings under paragraph 3—

(i) a judge of that court, or

(ii) a judge of the High Court or of the family court.

(2) Where the power to make an FGM protection order is exercisable by a court in criminal proceedings under paragraph 3, references in this Part of this Schedule to "the court" (other than in paragraph 2) are to be read as references to that court.

(3) In paragraph (c)(i) of the definition of "relevant judge" in sub-paragraph (1), the reference to a judge of the court that made the order includes, in the case of criminal proceedings in a magistrates' court, a reference to a justice of the peace.

Part 2

Northern Ireland

Power to make FGM protection order

18 (1) The court in Northern Ireland may make an order (an "FGM protection order") for the purposes of—

(a) protecting a girl against the commission of a genital mutilation offence, or

(b) protecting a girl against whom any such offence has been committed.

(2) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected.

(3) An FGM protection order may contain—

(a) such prohibitions, restrictions or requirements, and

(b) such other terms,

as the court considers appropriate for the purposes of the order.

(4) The terms of an FGM protection order may, in particular, relate to—

(a) conduct outside Northern Ireland as well as (or instead of) conduct within Northern Ireland;

(b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;

(c) other persons who are, or may become, involved in other respects as well as respondents of any kind.

(5) For the purposes of sub-paragraph (4) examples of involvement in other respects are—

(a) aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl;

(b) conspiring to commit, or to attempt to commit, such an offence.

(6) An FGM protection order may be made for a specified period or until varied or discharged (see paragraph 23).

Applications and other occasions for making orders

19 (1) The court may make an FGM protection order—

(a) on an application being made to it, or

(b) without an application being made to it but in the circumstances mentioned in sub-paragraph (6).

(2) An application may be made by—

(a) the girl who is to be protected by the order, or

(b) a relevant third party.

(3) An application may be made by any other person with the leave of the court.

(4) In deciding whether to grant leave, the court must have regard to all the circumstances including—

(a) the applicant's connection with the girl to be protected;

(b) the applicant's knowledge of the circumstances of the girl.

(5) An application under this paragraph may be made in family proceedings or without any family proceedings being instituted.

(6) The circumstances in which the court may make an order without an application being made are where—

(a) any family proceedings are before the court ("the current proceedings"),

(b) the court considers that an FGM protection order should be made to protect a girl (whether or not a party to the proceedings), and

(c) a person who would be a respondent to any proceedings for an FGM protection order is a party to the current proceedings.

(7) In this paragraph—

"family proceedings" has the same meaning as in the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) (see Article 2(2) and (3) of that Order), but also includes—

(a) proceedings under the inherent jurisdiction of the High Court in relation to adults,

(b) proceedings in which the court has made an emergency protection order under Article 63 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) which includes an exclusion requirement (as defined in Article 63A of that Order), and

(c) proceedings in which the court has made an order under Article 69 of the 1995 Order (recovery of abducted children etc);

"relevant third party" means a person specified, or falling within a description of persons specified, by order made by the Department of Finance and Personnel (and any such order may, in particular, specify that Department).

Power to make order in criminal proceedings

20 The court before which there are criminal proceedings in Northern Ireland for a genital mutilation offence may make an FGM protection order (without an application being made to it) if—

(a) the court considers that an FGM protection order should be made to protect a girl (whether or not the victim of the offence in relation to the criminal proceedings), and

(b) a person who would be a respondent to any proceedings for an FGM protection order is a defendant in the criminal proceedings.

Offence of breaching order

21 (1) A person who without reasonable excuse does anything that the person is prohibited from doing by an FGM protection order is guilty of an offence.

(2) A person guilty of an offence under this paragraph is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;

(b) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.

Ex parte orders

22 (1) The court may, in any case where it is just and convenient to do so, make an FGM protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.

(2) In deciding whether to exercise its powers under sub-paragraph (1), the court must have regard to all the circumstances including—

(a) the risk to the girl, or to another person, of becoming a victim of a genital mutilation offence if the order is not made immediately,

(b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately, and

(c) whether there is reason to believe that—

(i) the respondent is aware of the proceedings but is deliberately evading service, and

(ii) the delay involved in effecting substituted service will cause serious prejudice to the girl to be protected or (if different) an applicant.

(3) If the court makes an order by virtue of sub-paragraph (1), it must specify a date for a full hearing.

(4) In sub-paragraph (3), "full hearing" means a hearing of which notice has been given to all the parties in accordance with rules of court.

Variation and discharge of orders

23 (1) The court may vary or discharge an FGM protection order on an application by—

(a) any party to the proceedings for the order,

(b) the girl being protected by the order (if not a party to the proceedings for the order), or

(c) any person affected by the order.

(2) In the case of an order made in criminal proceedings under paragraph 20, the reference in sub-paragraph (1)(a) to a party to the proceedings for the order is to be read as a reference to the prosecution and the defendant.

(3) In addition, the court may vary or discharge an FGM protection order made by virtue of paragraph 19(1)(b) or 20 even though no application under sub-paragraph (1) above has been made to the court.

(4) Paragraph 22 applies to a variation of an FGM protection order as it applies to the making of such an order (and references in that paragraph to the making of an FGM protection order are to be read accordingly).

Jurisdiction of courts

24 (1) For the purposes of this Part of this Schedule, "the court" means the High Court, or a county court, in Northern Ireland.

(2) Sub-paragraph (1) is subject to—

(a) sub-paragraph (3), and

(b) any provision made by virtue of sub-paragraph (4) or (5).

(3) Where the power to make an FGM protection order is exercisable by a court in criminal proceedings under paragraph 20, references in this Part of this Schedule to "the court" (other than in paragraph 19) are to be read as references to that court.

(4) Article 34(3) to (10) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) (allocation of proceedings to courts etc) applies for the purposes of this Part of this Schedule as it applies for the purposes of that Order but as if the following modification were made.

(5) The modification is that Article 34(8) is to be read as if there were substituted for it—

"(8) For the purposes of paragraphs (3), (4) and (5), there are two levels of court—

(a) the High Court; and

(b) a county court."

Power to extend jurisdiction to courts of summary jurisdiction

25 (1) The Department of Justice in Northern Ireland may, after consulting the Lord Chief Justice, by order provide for courts of summary jurisdiction to be included among the courts who may hear proceedings under this Part of this Schedule.

(2) An order under sub-paragraph (1) may, in particular, make any provision in relation to courts of summary jurisdiction which corresponds to provision made in relation to such courts by or under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)).

(3) Any power to make an order under this paragraph (including the power as extended by paragraph 29(1)) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under this Part of this Schedule or any other enactment.

(4) In sub-paragraph (3) "enactment" includes Northern Ireland legislation.

(5) The Lord Chief Justice may nominate any of the following to exercise the Lord Chief Justice's functions under this Part of this Schedule—

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined by section 88 of that Act).

Contempt proceedings

26 The powers of the court in relation to contempt of court arising out of a person's failure to comply with an FGM protection order, or otherwise in connection with such an order, may be exercised by the relevant judge.

Appeals from county courts

27 (1) An appeal lies to the High Court against—

(a) the making by a county court of any order under this Part of this Schedule, or

(b) any refusal by a county court to make such an order,

as if the decision had been made in the exercise of the jurisdiction conferred by Part 3 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)) (original civil jurisdiction) and the appeal were brought under Article 60 of that Order (ordinary appeals in civil cases).

(2) But an appeal does not lie to the High Court under sub-paragraph (1) where the county court is a divorce county court exercising jurisdiction under the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15)) in the same proceedings.

(3) Provision must be made by rules of court for an appeal to lie (upon a point of law, a question of fact or the admission or rejection of any evidence) to the Court of Appeal against—

(a) the making of any order under this Part of this Schedule, or

(b) any refusal to make such an order,

by a county court of the type referred to in sub-paragraph (2).

(4) Sub-paragraph (3) is without prejudice to Article 61 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)) (cases stated).

(5) On an appeal under sub-paragraph (1), the High Court may make such orders as may be necessary to give effect to its determination of the appeal.

(6) Where an order is made under sub-paragraph (5), the High Court may also make such incidental or consequential orders as appear to it to be just.

(7) Any order of the High Court made on an appeal under sub-paragraph (1) (other than one directing that an application be re-heard by the county court) is to be treated, for the purposes of—

(a) the enforcement of the order, and

(b) any power to vary, revive or discharge orders,

as if it were an order of the county court from which the appeal was brought and not an order of the High Court.

(8) This paragraph is subject to paragraph 28.

Appeals: transfers and proposed transfers

28 (1) The Department of Justice in Northern Ireland may, after consulting the Lord Chief Justice, by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of an order made under Article 34(5) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) as applied by paragraph 24(4) and (5) above.

(2) Except so far as provided for in any order made under sub-paragraph (1), no appeal may be made against any decision of a kind mentioned in that sub-paragraph.

(3) The Lord Chief Justice may nominate any of the following to exercise the Lord Chief Justice's functions under this paragraph—

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).

Orders

29 (1) An order made under or by virtue of paragraph 19(7), 24(4) and (5), 25(1) or 28(1)—

(a) may make different provision for different purposes;

(b) may contain incidental, supplemental, consequential, transitional, transitory or saving provision;

(c) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

(2) An order made under or by virtue of paragraph 19(7), 24(4) and (5) or 28(1) is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I))).

(3) An order under paragraph 25(1) may not be made unless a draft of the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

(4) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) applies for the purposes of sub-paragraph (3) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

Other protection or assistance against female genital mutilation

30 (1) Nothing in this Part of this Schedule affects any other protection or assistance available to a girl who is or may become the victim of a genital mutilation offence.

(2) In particular, it does not affect—

(a) the inherent jurisdiction of the High Court;

(b) any criminal liability;

(c) any right to an occupation order or a non-molestation order under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6));

(d) any civil remedies under the Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9));

(e) any protection or assistance under the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));

(f) any right to a forced marriage protection order under Schedule 1 to the Forced Marriage (Civil Protection) Act 2007;

(g) any claim in tort.

Interpretation

31 In this Part of this Schedule—

"the court" is to be read in accordance with paragraph 24;

"FGM protection order" means an order under paragraph 18;

"genital mutilation offence" means an offence under section 1, 2 or 3;

"the relevant judge", in relation to an FGM protection order, means—

(a) where the order was made by the High Court, a judge of that court;

(b) where the order was made by a county court, a judge or district judge of that or any other county court;

(c) where the order was made by a court in criminal proceedings under paragraph 20—

(i) a judge of that court, or

(ii) a judge of the High Court or a judge or district judge of a county court.””

Amendment 46G agreed.

Amendment 47

Moved by ***Lord Harris of Haringey***

47: After Clause 67, insert the following new Clause—

“Protection of children: duty on internet service providers

(1) Internet service providers which provide third parties with any means or mechanisms to store digital content on the internet or other location remote from the third party must consider whether and to what extent the services they provide might be open to abuse by such third parties to store or transmit indecent images of children, contrary to section 1 of the Protection of Children Act 1978 (indecent photographs of children).

(2) Where an internet service provider considers that there is a material risk that their network or other facilities could be misused as set out in subsection (1), they must take such reasonable steps as might mitigate, reduce, eliminate or other disrupt said behaviour or restrict access to such images.

(3) In this section, “internet service provider” has the same meaning as in section 124N of the Communication Act 2003 (interpretation).”

6.45 pm

Lord Harris of Haringey: I am grateful to the Lord Chairman for allowing me to collect my thoughts on this amendment while he was going through those other amendments. The purpose of this amendment, which is rather different from that of the previous one, is to create a requirement for an internet service provider that provides a facility for the storage of digital content to consider—no more than that—whether and to what extent that facility might be open to abuse by the storage of indecent images of children. Where the service provider,

“considers that there is a material risk … they must take such reasonable steps as might mitigate, reduce, eliminate or … disrupt”,

such actions.

The context of the amendment is the fact that there are tools available to internet service providers to find out whether such indecent material is contained on their systems. As I am sure noble Lords are aware, images are reduced to digital content as a series of zeroes and ones, so even a very complex image, whether pornographic or otherwise, is simply reduced to a series of zeroes and ones. Most abuse photographs are circulated and recirculated. Many of them are known to the law enforcement authorities, and it is possible for those authorities to search for identical images, so that they know whether a particular image has appeared before, and in what circumstances.

However, I am told that increasingly, abusers are making tiny changes to images—sometimes no more than one pixel—so that the images are not identical, and are not picked up in the same way by those methods. However, I understand that Microsoft has developed a system called PhotoDNA, which it is making available free to providers. This converts images into greyscale and breaks the greyscale image down into a grid. Then each individual square on the grid is given what is called a histogram of intensity gradients; essentially, that decides how grey each square is. The signature based on those values provides a hash value, as they call it, which is unique to that particular image—I appreciate that these are technical terms, and until I started looking into this I did not know about them either. This technique allows people to identify images that are essentially the same.

Until now, the way to identify which images are essentially the same is that some poor police officer or analyst has had to look at all the images concerned. But it is now possible to do that automatically. Because the technology can operate in a robust fashion, it can identify what images are appearing, and whether they are essentially the same. It is not possible to recreate the image concerned from that PhotoDNA signature; it is only possible to scan systems or databases for signature matches. What is more, because the data for each signature are so small, the technology can scan a large volume of images extremely quickly. Apparently there is a 98% recognition rate.

I have gone through that in some detail simply to illustrate that there are such techniques available. I believe that Google is working on something—which would, of course, have to be bigger and more complex than what has been produced by Microsoft—which will do the same for videos. It will then be possible to identify similar videos in the same fashion.

The benefit of these techniques is that they make it possible for ISPs to trawl their entire database—to trawl what people are storing online and to identify whether some of the previously known indecent images are in the system. They will then be able to see whether there is a package, or a pattern, and whether particular users are storing more than others. That then gives them the opportunity to raise that issue with law enforcement officials or take disruptive action, perhaps by withdrawing service from that user.

The benefits of the specific technology are that humans do not have to scan the individual images. A number of noble Lords have seen the suites used by CEOP or New Scotland Yard whereby a row of police officers sit viewing indecent images of child pornography, which is distressing for those officers and possibly harmful to them in the long term. That does not need to happen in this case. The service providers do not have to store the images that they are matching to carry out this exercise because all they are storing are the DNA hash values of the images concerned, and they are therefore not exposing themselves to potential charges as far as that is concerned. The technology makes this comparatively easy and simple to do and does not involve a great deal of data. It also means that the service providers are not interfering in any way with the privacy of their users other than to check, in this anonymised way where they do not view the images, that no images contained there are of known child pornography.

The purpose of this amendment is to place an obligation on service providers to make use of these technologies as they are developed. Some providers already do this and are willing to do this. I think that Facebook has quite a good record as far as this is

concerned. However, the amendment would place an obligation on all of them to consider whether they should use these techniques. As I say, in this instance Microsoft is making the technology and the system available free to providers.

Before the noble Baroness, Lady Hamwee, goes through whatever drafting faults the amendment may contain, I should point out why I think it is important. In our discussions just three months ago on the DRIPA legislation it was suggested that one of the reasons why the relevant changes were being made was to provide service providers with legal cover against legal challenge in other countries in which people asked why they were allowing law enforcement officials to do these things. The amendment would provide some legal cover for those service providers—in exactly the same way as the DRIPA legislation does—against challenges that this measure somehow infringes the freedom of speech of people who want to store pornographic images of children. The purpose of this amendment is to require service providers to consider whether or not they might be at risk of this misuse and then to take appropriate reasonable steps using the best available techniques to,

"mitigate, reduce, eliminate or … disrupt",

it. I beg to move.

Baroness Howe of Idlicote: My Lords, I rise briefly to speak in support of Amendment 47 of the noble Lord, Lord Harris. Some may take the view that internet service providers cannot be held responsible for information that people use them to hold. Although, in my view, ISPs certainly do not have responsibility for generating content, they do, however, play a very important role in facilitating it: first, in the sense that storage protects the material in question and thereby helps to guarantee its continued existence; and, secondly, in the sense of providing a basis from which the said material may be transmitted. In so doing, they have a responsibility actively to take all reasonable steps to ensure, on an ongoing basis, that they are not facilitating the storage and/or transmission of material of the kind set out in subsection (1) of the clause proposed in the amendment.

For myself, I would also like ISPs to have to demonstrate that these active steps have indeed been taken, and are being taken, on an ongoing basis. We must foster a legislative framework that exhibits zero tolerance of all aspects of child sex abuse images, including ISPs facilitating the storage and/or transmission of such images. I very much look forward to listening to what the Minister has to say in his response to this important amendment.

Baroness Hamwee: My Lords, I hate to disappoint the noble Lord, Lord Harris, but I fear that I am going to, as I simply have a question for him. I speak from a basis of almost no technological knowledge, but I would have thought that, presumably, all the services are open to abuse. Can I just ask what consultation there has been on this? The noble Lord talked about the responsible, innovative and exciting—if you are that way inclined—work being done by some of the ISPs. Like him, I have found the big players to be very responsible and wanting to be seen to be responsible. However, the proposed provision would obviously put an obligation on them. I would be interested to know how they have responded to it, if the noble Lord has had the opportunity to ascertain that.

Baroness Smith of Basildon: My Lords, I rise to speak briefly on this issue. During the Recess we had a meeting with Microsoft to discuss how it approached this matter. I was grateful for that because I probably share only one thing with the noble Baroness, Lady Hamwee, and that is that I have no technical knowledge or expertise and felt quite at a loss when looking at these issues. Microsoft officials gave us an understanding of the comments made by the noble Lord, Lord Harris, about the codes used to identify photographs and the hash code it used and they discussed whether it was an offence to store the coded photograph itself. Microsoft has developed its PhotoDNA technology that enables it to identify minor changes that abusers make in trying to slide past any checks and balances in the system, so it is carrying out impressive work to try to address this issue.

In listening to the presentation, I was particularly shocked by the sheer number of photographs and images, and the numbers of people involved, worldwide. At the beginning of his comments, the right relevant Prelate the Bishop of Derby, I think, referred to a recent case in Southend. That is close to where I live, so noble Lords can imagine that my local papers had a tremendous amount of coverage of that and I had commented on it. The case involved the head teacher of a local private school, who was interviewed by the police following the fact that his name came to light in an investigation carried out originally in Toronto. His name was passed to the UK, but it took far too long—well over a year—for him to be interviewed, following delays at CEOP and the police. When he was finally interviewed, he was found dead the following day. The amount of information that was found on his computer was staggering. Time will tell us the outcome of this as the investigations progress, but presumably that head teacher must have had links with people in other parts of the country and elsewhere in the world, and photographs may have been exchanged; certainly, he obtained photographs from others.

The scale of that activity is phenomenal and it is a tall order to expect the police to visit every single person involved in it. Having said that, I am critical of the fact that so few people, who we know have committed these abuse offences and have inappropriate images of children, have been visited by the police. I think that we could do far better in that regard and the delays are a cause for concern. However, we are talking about a massive number of people, so if technology is available that can block these photographs or allow the police to identify people more quickly, we should take every available opportunity to use it.

As I say, I was very impressed by the efforts being taken both by Microsoft, which briefed us, and by others to ensure that they can identify photographs, code them and pass on information. As I think the noble Baroness, Lady Hamwee, said, the amendment of the noble Lord, Lord Harris, does not place an obligation on internet service providers but allows

[Baroness Smith of Basildon]
them to take action. It basically says that they should consider the issue and, if there is a material risk, they should look at what they can do and take reasonable steps that might,

"mitigate, reduce, eliminate or other disrupt said behaviour".

There are no sanctions or penalties for failing to do so, but it allows the internet service providers to take some action—action that we would want them to take and, I think, they would want to take.

The noble Lord, Lord Harris, has already said that he does not feel that he has a monopoly on being the world's greatest drafter and is prepared to accept that there occasionally may be things that could be improved. He has, however, hit on something here. It is an issue to be addressed. I hope that the Government are having urgent meetings with the ISPs to see how they can work together on this. This amendment provides an opportunity to do so, and I would be interested to know what discussions the Government are having with internet service providers. It is an issue that we need to address. If we can deal with it at source and identify those who are responsible early on, it seems to me that would be a huge step forward in protecting children from this kind of abuse.

7 pm

Lord Bates: My Lords, the noble Baroness is absolutely right again, in the sense that technology is the problem and therefore technology needs to offer the solution. Simply put, the numbers and the scale—of course, she has had those briefings and I have had them, too—are both distressing and mind-blowing in terms of their reach. As the technology is not limited to, and does not respect, geographies or jurisdictions, the matter is a global one. Therefore, we need to work very closely with the industry to ensure that this can be done.

I want to cover some of the issues that are being addressed at present which noble Lords may not be aware of. We recognise the concerns that the noble Lord has raised about the use of the internet to store and circulate indecent images of children. We fully accept that more needs to be done to address this issue, but I hope to be able to persuade the noble Lord that legislation is not required at this point, although we continue to keep that option under review.

We believe that the internet industry operating in the UK has taken significant steps, on a self-regulatory basis, to tackle the availability of indecent images online. The internet industry in the UK has worked closely for many years with the Internet Watch Foundation and the Child Exploitation and Online Protection command of the National Crime Agency to tackle illegal images. We recognise the support that responsible internet service providers have given to the Internet Watch Foundation, both financially and through taking action on the Internet Watch Foundation's list of web pages identified as containing illegal images by either taking down such sites, if they are hosted in the UK, or blocking access to them if they are overseas.

The public and businesses can report images to the Internet Watch Foundation, which assesses them and determines whether they are illegal. Indeed, the Internet Watch Foundation took more than 51,000 reports from all sources last year. If the site containing the image is hosted in the UK, the details will be passed to law enforcement agencies, and the ISP will be asked to take down the web page using the "notice and take down" process. In 2013, the Internet Watch Foundation found that 47% of UK child abuse web pages were removed within 60 minutes. Thanks to the work of the Internet Watch Foundation, and the internet industry, less than 1% of the global total of indecent images of children is hosted in the UK.

However, we are not complacent, and we recognise the need to adapt to changing uses of technology by paedophiles. As the Prime Minister made clear in his speech to the NSPCC in July last year, we need to do more to eradicate these images from the internet and, in particular, ensure that the internet industry plays its full part in doing so. We have been working closely with the industry, and with its support we believe that significant steps have been taken towards removing these images. We have asked internet search engine providers such as Google—which was referred to by the noble Baroness and also by the noble Lord—and Microsoft to make changes to their search mechanisms, and these measures have been effective in preventing access to child abuse images.

We are also creating a new child abuse image database, using much of the same technology that the noble Lord, Lord Harris, referred to in setting out and introducing his amendment. This will enable the police to identify known images more quickly on suspects' computers and will improve their ability to identify and safeguard victims from the images. A key part of this is not just about lining up prosecutions by identifying these images or getting the images taken down; it is about realising that the children behind them are vulnerable victims and need to be protected and get the help and support that they need.

Not only do we want the industry to remove such images, we want it to use its technical skills and capability to help develop the technical solutions to prevent the dissemination of these images online. The Home Office and the US Department of Justice have created a taskforce that provides a platform for industry to develop technical solutions to online child sexual exploitation. This work is ongoing under the chairmanship of my noble friend Lady Shields.

The UK will host a summit in December on online child exploitation. We have invited representatives of key partner governments and organisations, including the internet industry, to participate in the summit, which will focus on protecting the victims of online child abuse and examine how we can work internationally to prevent children being exploited online.

The Government are very clear that those who provide services online, particularly those where images can be stored—a point that the noble Baroness, Lady Howe, made—have a responsibility to take action to prevent those services being used for the purposes of storing and sharing indecent images of children. In that regard, as she rightly said, we should have zero tolerance. We believe that internet service providers operating in the UK have a good record in this respect, both through their support for the Internet Watch Foundation and through the actions that they are taking to support the Prime Minister's call for action.

Against this background of good co-operation and progress at present, we believe that the current system of self-regulation has been effective, and we are not persuaded at this time that more would be achieved by placing a legal requirement on these companies. In that regard I hope that, having heard the progress that has been made and our undertaking to keep this under review, the noble Lord will feel sufficiently reassured to consider withdrawing his amendment.

Lord Harris of Haringey: My Lords, I am grateful to the noble Baroness, Lady Howe, and my noble friend Lady Smith for the support that they have given to this amendment. To the noble Baroness, Lady Hamwee, I say that, as I am not doing this on behalf of the Government or anyone else, I am not engaged in a lengthy process of consultation with internet service providers, but I would make the point that this is a very soft change. It is simply asking them to consider and, where they think there is a material risk, to take reasonable steps. It is difficult to imagine any internet service provider, unless it wants to provide a service for expressly illicit purposes, finding this difficult.

I am of course encouraged by what the Minister has described. Most of it does not in fact apply to the issues that I have raised, because this is about images stored for private purposes rather than public purposes. The web page stuff and the work of the Internet Watch Foundation, with which I am very familiar—I think I am an ambassador or a champion; I cannot quite recall what the certificate says—are clearly about public-facing material which people may access. All that work is extremely good. I accept that many internet service providers are extremely responsible and are operating as one would hope in a self-regulatory way. I think this would have helped encourage those that are not being quite so public spirited or sensitive to these issues to be more so in the future.

However, in the light of the Minister's undertakings that this is something that will continue to be looked at, I beg leave to withdraw the amendment.

Amendment 47 withdrawn.

Amendment 48

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

48: Before Clause 68, insert the following new Clause—

"Knives and offensive weapons in prisons

After section 40C of the Prison Act 1952 insert—

"40CA Unauthorised possession in prison of knife or offensive weapon

(1) A person who, without authorisation, is in possession of an article specified in subsection (2) inside a prison is guilty of an offence.

(2) The articles referred to in subsection (1) are—

(a) any article that has a blade or is sharply pointed;

(b) any other offensive weapon (as defined in section 1(9) of the Police and Criminal Evidence Act 1984).

(3) In proceedings for an offence under this section it is a defence for the accused to show that—

(a) he reasonably believed that he had authorisation to be in possession of the article in question, or

(b) in all the circumstances there was an overriding public interest which justified his being in possession of the article.

(4) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding four years or to a fine (or both);

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(5) In this section "authorisation" means authorisation given for the purposes of this section; and subsections (1) to (3) of section 40E apply in relation to authorisations so given as they apply to authorisations given for the purposes of section 40D.""

Baroness Williams of Trafford: My Lords, the violent use of knives and offensive weapons in prison poses a real threat to the safety of prison staff and prisoners. Only earlier this month we saw reports that an officer at Swaleside prison in Kent was attacked with a blade. I am sure that the whole House would agree that the possession of weapons in prison is unacceptable—and yet, unlike in public places and schools, possession of such weapons in prison is not currently a criminal offence. This new clause will put that right.

Amendment 48 would insert new Section 40CA into the Prison Act 1952 to create a new offence for persons in prison to possess any article that has a blade or is sharply pointed, or any other offensive weapon, without authorisation. This will include weapons manufactured by prisoners from everyday items, which are the types most commonly used.

While possession of such items is a criminal offence in a public place and in schools, it is not currently a criminal offence in prison. This has led to a disparity between the penalties available to tackle this sort of crime in the community and those available within prison establishments. This disparity must be addressed. Assaults and violence are a long-standing problem within prisons. If left unchecked, they can quickly destabilise a prison and threaten the safety of both staff and prisoners. While assaults without weapons are more common, assaults with weapons are not infrequent and can inflict life-changing injuries.

The new offence will add to the existing criminal offences in the Prison Act that make it an offence for a person to convey certain items—including firearms, explosives and other offensive weapons—in or out of prison without authorisation, or to be in possession of a camera, sound recording device, mobile phone or other similar device in prison. Possession of weapons by prisoners is currently dealt with through the prison adjudication system. The maximum penalty for a disciplinary offence under the internal adjudication system is 42 added days served in prison compared with the four years' custodial maximum for the equivalent offence committed in the community.

Criminalisation will ensure that the more serious weapon possession offences can be punished through the criminal justice system rather than the prison adjudication system, as appropriate. The maximum penalty for the new offence will mirror the maximum penalty for the offence in the community: a four-year maximum sentence on conviction on indictment or a fine, or both; or, on summary conviction, a maximum six-month sentence or a fine or both.

There are of course legitimate circumstances in which persons in prison, including prisoners, may need to have sharp items or other articles in their possession. For example, a prisoner may need to use a bladed tool in a carpentry session, or may use kitchen

[Baroness Williams of Trafford]
knives when preparing meals. The authorisations framework in the Prison Act recognises this reality. Subsection (5) of the new clause therefore applies the existing authorisations framework to the new offence. Authorisations may be given administratively by the Secretary of State or by the Prison Rules in relation to all prisons or prisons of a specified description. Authorisations may also be given administratively by the Secretary of State, the governor or director of the prison, or by a person authorised by the governor or director in relation to particular prisons.

Amendments 58 and 65 are consequential on the lead amendment. All three amendments will ensure that the current maximum sentence for the offence of possession of a knife in the community is also available in prisons. This will act as a more effective deterrent and ensure that tougher punishments are available to tackle the problem of weapons and violence in prisons. The message to prisoners who want to possess offensive weapons is clear: we do not tolerate it in the community and we will not tolerate it in prisons. I beg to move.

Amendment 48 agreed.

Amendment 49

Moved by ***Lord Wigley***

49: After Clause 69, insert the following new Clause—

"Domestic violence as a serious crime

For the purposes of this Act, domestic violence is deemed to be a serious crime."

Lord Wigley (PC): My Lords, I have tabled the amendment in order to enable this House to have a debate concerning bringing domestic violence within the scope of the Bill. I also welcome Amendment 49C, which is grouped with mine and goes further in a direction with which I concur, although I none the less feel it would be useful to have the words of my amendment in the Bill.

The amendment was tabled partly in anticipation of the fact that Members of the other place are likely to table amendments on domestic violence during the Bill's later stages and it was thought that, as a result, this place too should have an opportunity to debate this serious offence. The amendment is therefore an enabling amendment and seeks to argue that changes to the law on domestic violence should be within the scope of the Bill.

Last February, my colleague, Elfyn Llwyd MP, introduced a ten-minute rule Bill in another place to criminalise all aspects of domestic violence, including coercive control in a domestic abusive situation. That Bill had all-party support, including MPs from five parties, such as Cheryl Gillan, Robert Buckland, Sandra Osborne, John McDonnell, Bob Russell, Caroline Lucas and Hywel Williams. The objectives of that ten-minute rule Bill have been supported by more than 100 MPs in Early Day Motions that called for coercive control to be an offence in its own right.

7.15 pm

Domestic violence is without doubt a serious crime. A principal aim of the amendment would be to encourage more victims of domestic violence to come forward and report the crime, as well as to secure more thorough investigations by the police, and therefore more successful prosecutions. The purpose of Elfyn Llwyd's Bill was to place a statutory framework around domestic violence since, at present, there is no specific law covering this offence. Indeed, the fact that coercive control is not an offence is a contributory factor to the low rates of reporting, of arrests, charging and of convictions. According to Women's Aid, less than 7% of domestic violence incidents reported to the police lead to a conviction. Currently, 25% of domestic violence cases passed on to the Crown Prosecution Service result in no action being taken.

Elfyn Llwyd's Bill followed on from the highly successful campaign during 2011-12 for the introduction of stalking laws in England and Wales, which was spearheaded by Elfyn Llwyd, and advised by Laura Richards, a leading criminal behaviour psychologist, and Harry Fletcher, then of Napo. Under the terms of that Bill, a person convicted of coercive control could face up to 14 years' imprisonment. The Bill placed statutory responsibilities on the police to develop and implement domestic violence policies, to provide written policies that encourage the arrest and charge of a perpetrator, and to make investigation of complaints a priority. The Bill also created domestic violence orders, which would prevent further contact that could in itself amount to domestic violence, prohibit the perpetrator from engaging in certain activities, including contact with the victim or children of the victim, and exclude the perpetrator from the victim's home.

In addition, the Bill would have prevented a victim from having to disclose details of their address or whereabouts in open court, thereby preventing the perpetrator from having this information. Members of this House will be concerned to learn that, this time last year, a victim of abuse who was in a place of safety was required by a judge in the north of England to disclose where she was living, despite the fact that her abuser was present in court. That cannot be allowed to continue. The Bill also gives the court the power to undertake a risk assessment on the impact of domestic violence on the victim and, importantly, on their children.

Probation staff have been concerned for years about the extent of domestic abuse, low reporting rates and how few convictions result from reported incidents. The Probation Service provides victim liaison, women's safety officers and perpetrator programmes. All of these services are under threat from privatisation and cuts. Plaid Cymru's leader, Leanne Wood AM, previously served as a probation officer. I would like to draw to the House's attention a highly relevant comment she made recently on this issue. She said:

"In my many years' experience as a probation officer and a women's aid support worker, I worked with countless women and their children who had been severely damaged by domestic abuse. Even though there is wider awareness today and a range of support services, instances of domestic abuse do not appear to be diminishing. In my work, I often came across professional people in various organisations who made assumptions about emotional abuse not being as serious as other forms of abuse, especially violence. It's difficult to compare years of put-downs and public humiliations or being told you have a mental illness when you don't, to individual physical assault. All forms of abuse can have long-lasting and deep consequences and recognition of that is vital if we are to make sure that victims and survivors get the justice and the services they need to recover".

Similarly, Harry Fletcher, who was involved in drafting Elfyn Llwyd's Bill, and who is now director of the Digital Trust, a new organisation committed to fighting online abuse, which is frequently seen in cases involving coercive control, has said:

"It is outrageous that so few women have confidence to report domestic violence to the police and that the number of convictions as a percentage of all violence is so low".

He has also commented that the original Bill was based on the successful experience of naming domestic violence as a crime in the United States. Emulating this experience from the United States would go a long way towards protecting vulnerable women.

In the UK there are scores of domestic violence-related homicides or incidents of serious harm every year. Last year 7% of women, according to the Home Office, reported having experience of domestic abuse, which is equivalent to 1.2 million women a year. Two out of three incidents were experienced by repeat victims. The Home Office also reports that two women are killed by a partner, ex-partner or lover every week.

By contrast, the situation in the United States, where specific laws exist, is quite startling. Since laws were introduced at various times over the past 20 years, reporting has increased by nearly 50% and incidents of violence have decreased by over one-third. Plaid Cymru MPs are currently conducting research into how the laws covering domestic violence operate across the United States and I am sure that there is much that we could learn from their experience.

It is essential that domestic violence is perceived as a serious crime. If the Government are presented with an opportunity to strengthen the law, they must surely seize that opportunity. I hope that Members of this House will signal their support for such a change in the law. I beg to move.

Baroness Howe of Idlicote: My Lords, I am pleased to support the amendment of the noble Lord, Lord Wigley. In my remarks, I shall focus on the experience of a specific victim of domestic violence—Laura, as she is called—to illustrate why, because of the shocking treatment that she has received not just from her abuser but from the authorities, all the changes that are being proposed are so important.

Laura's case highlights why the law must change, to take account of all forms of domestic violence, emotional as well as physical, as the noble Lord, Lord Wigley, said. Her case also serves to show why police and prosecutors should look at the patterns of behaviour in these crimes.

I will quote Laura's own words. She said:

"I was made to feel worthless—made to feel that the way I was treated was normal. I was punched, kicked, slapped, strangled, thrown around, spat at and emotionally mocked ... I was locked in and outside my house if I went out or did something without his permission. I was watched by him on a daily basis by cameras that were put up in our home by him".

The abuse to which the victim was subjected continued over a three-year period. In that period there were numerous witnesses to the abuse, including local builders, members of the public and even a bank teller, who recorded him physically assaulting the victim. Laura has also spoken of the factors that inhibited her from leaving her home. It is important that these are also put on the record, since in many instances people who have not been subject to domestic violence cannot understand why the victim would not leave the perpetrator. It is this precise ignorance among some police and prosecutors that leads to victims not being taken seriously when they finally reach the end of their tether and report the crime.

Laura has spoken about how her abuser threatened to cut himself out of the lives of their children or indeed to harm her, leaving her children without a mother. It is also telling that she said:

"I left on a number of occasions, but he kept stalking and harassing me. In the end I just thought … I may as well return to a controlled situation where I knew what to expect. Also, his side of the family pressured me and made me believe that, every time, he had changed and how unfair I was being on my daughter by taking her dad away".

Laura eventually went to the police, but she said:

"I was very afraid, so at times I didn't want to give statements as I knew it was his word against mine. The police were always called by other people, but he was always let off, even when there was strong evidence. The final time I left and never went back I moved to an address I kept secret. I was harassed constantly via the phone, sent death threats, stalked, chased in my car. When he did find out where I was living he tried to break into my house and then when he finally saw me he threatened to burn my house down with me and my daughter in it. Again there were witnesses. People told him to leave and in the end he left … I reported this all to the police. This was the final straw. I did make a statement about the offences he had committed where there were witnesses ... but it turned out that there were no laws in place to protect me at all ... he was let off".

Laura has spoken about how disappointed she felt at the treatment that she had received from the police. She has spoken about how the police did not always give due credence to how distressing coercive and controlling behaviour can be. For instance, she says that to this day, 14 months after she reported the crime, she is still waiting for the police to take her phone and download abusive messages that the perpetrator left for her.

That is why the training of police and prosecutors must be improved, to take account of all methods of domestic abusive behaviour and to have regard of the impact that this debilitating crime can have on its victims. To make matters worse, this victim was also told that because the perpetrator had left the country for six months, the time limit on his crimes had elapsed and he could not be prosecuted. That is why many campaigners believe that domestic violence cases should not be subject to time limits. I certainly agree on that point.

It is clear that the current law is not working for victims. Laura's message to those in power is:

"Please recognise the need for change. We need to ensure new laws are brought in ... We need harsher punishment for perpetrators. We need to ensure that we are doing all we can to support victims and to charge the offenders ... The whole background of the relationship needs to be taken into consideration and indeed … the perpetrator's whole background in general. Information on past relationships where similar incidents were reported, even if no charge was brought forward, must not be ignored. This is an issue that needs to be dealt with".

I commend Amendment 49 to the House and to the Government.

7.30 pm

Lord Rosser: My Lords, the purpose of our amendment, apart from giving an opportunity to debate the law relating to domestic abuse, is to provide for the Secretary of State to consult on ways of strengthening the law in relation to domestic abuse, which is perpetrated overwhelmingly against women, with that consultation taking place within six months of this Act coming into force. Our amendment also sets out some of the issues that the consultation would consider, without it being an exhaustive list.

Those issues are: should a specific offence or offences criminalising coercive and controlling behaviour, or a pattern or acts of behaviour within an intimate relationship, be created? Should the violent and sexual offenders register include serial stalkers and domestic violence perpetrators and be managed through the multiagency public protection arrangements? Should a new civil order be created to place positive obligations on serial stalkers and domestic violence perpetrators? Should the breach of domestic violence protection notices and orders be a criminal offence? Should domestic violence protection notices and orders extend across European boundaries?

One of the problems, as the noble Lord, Lord Wigley, said, is that the Government's definition of domestic abuse, adopted from the general definition of the Association of Chief Police Officers, is not reflected in the law. The Government's definition is:

"Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members, regardless of gender or sexuality".

The abuse,

"can encompass, but is not limited to … psychological, physical, sexual, financial … emotional".

However, the current law does not capture the Government's non-statutory definition of domestic abuse as there is no statutory framework around it. Currently, offenders can be prosecuted only for acts of physical violence, when such violence is often the culmination of psychological and minor physical abuse which constitutes domestic abuse, which is outside the reach of the existing criminal law and does not get reported until it has actually escalated into physical violence—which, to put it mildly, is a bit late in the day.

The figures have already been quoted, but I shall repeat them. According to the Home Office, last year 7% of all women reported having experienced domestic abuse, which is equivalent to 1.2 million women a year. Two out of three incidents involved repeat offenders. The reality is that on average women do not report abuse until there have been at least 30 incidents. Since the age of 16, according to statistics published by Women's Aid and the Home Office, almost one-third of women have experienced domestic abuse. Interestingly —although perhaps that is not the appropriate word—one in three women who attend an A&E department does so because she has been domestically abused.

As the noble Lord, Lord Wigley, said, according to Women's Aid, only 6.5% of domestic violence incidents reported to the police lead to conviction and 25% of domestic violence cases that are passed on to the Crown Prosecution Service result in no action being taken. There is an issue around the successful prosecution of cases. In some cases, of course, the victim withdraws their statement to the police of domestic abuse or violence, does not come to court, or comes to court and gives evidence that is contrary to their original statement. However, bearing in mind that on average women do not report abuse until there have been at least 30 incidents, the strong likelihood is that any reluctance to go through the legal and court process is not because the domestic violence and abuse did not actually occur, but for other reasons.

An important reason for consultation, including on the specific points referred to in our amendment, is that following the introduction of specific domestic abuse laws in the United States, there was apparently a 50% rise in women reporting the behaviour, and with it a large increase in the number of perpetrators being brought to justice, along with a decrease of over one-third in incidents of abuse. One key area is the need to consult, as the Government have done, on criminalising abuse that involves coercive control in a domestic setting as well as making domestic abuse itself a separate criminal offence.

A further issue for consideration is whether the prosecution of domestic abuse and domestic violence cases should be subject to statutory time limits. Domestic abuse and violence has often gone on for some time before an incident is reported by the victim. Under the current arrangements, many earlier incidents that have occurred and which make up the totality of the abusive behaviour, cannot also be the subject of a prosecution along with the incident that finally led the victim to decide to report what had been happening.

Our amendment also calls for consultation to consider a new civil order which would be intended to prevent further contact that amounts to domestic violence, would prohibit the perpetrator from engaging in certain activities, perhaps including contact with the victim and the children of the victim, and would exclude the perpetrator from the victim's home. Such a consultation could also consider whether a breach of this civil order should be a criminal offence and whether such notices and orders should extend across European boundaries, with offending histories and restrictions being shared.

The issues to which I have referred and those set out in the amendment providing for consultation are ones that outside organisations and experts in this field have advocated. The government consultation on coercive control has recently concluded. It would be helpful to know, first, what steps the Government intend to take following that consultation and, secondly, whether the issues referred to in my Amendment 49C and others to which I and other noble Lords have referred, are also either being considered by the Government or were part of the consultation that has just concluded. I hope that the Minister will be able to indicate in his response what issues or courses of action the Government are now considering following their consultation on strengthening the law on domestic abuse.

Baroness Hamwee: My Lords, I am in no doubt that there needs to be more effort, more prosecutions, more resources, better practice and better training in the

area of domestic abuse. I find it difficult to comment on the amendment moved by the noble Lord, Lord Wigley, because it is essentially a trailer for provisions that we do not have before us, but the first steps must be about implementing the existing legislation in a consistent and robust fashion: prosecuting for physical and non-physical forms of abuse, both of which are possible. However, successful prosecutions are rare. I have mentioned training; there is a need for specialist training throughout the criminal justice system. The issue is hugely important to ensure, among other things, that the basics of violence in a domestic situation are properly understood.

The series of actions that constitute abuse are crimes now. Interestingly, the domestic violence charity with which I have the closest links, Refuge—I do not know whether I need to declare an interest in that I chaired it a while ago—commented in its response to the Government consultation that it is concerned that creating a separate domestic violence offence could in fact lead to it being treated less seriously and being downgraded. We know that the phrase, "It's just a domestic", is still hanging around. The charity points out that there is a risk that even physical offences may be downgraded, so I think that there is a debate to be had on that. It does not necessarily follow that badging what is a domestic crime would lead to it being regarded in a different way.

Lord Wigley: I have listened carefully to the noble Baroness. Does she accept that the potential crime of coercive control is not an offence at present? It was listed in the Government's consultation, and that is one area in which progress could be made.

Baroness Hamwee: Indeed, and no doubt that is why the Government have consulted on it. I, too, am looking forward to hearing the results of the consultation, and I hope that if the responses indicate the need for legislation, there will be legislation. I am not saying that there should not be legislation to fill in any gaps, but that I am not convinced that a completely new approach is what is needed here.

Finally, because I am conscious of the time, I am aware that there is opposition in some quarters to relying on sentencing; in other words, regarding an offence as being domestic as an aggravating factor. If what is being considered in this debate is more serious sentences, we have to look at what sentences are available for the offences as they stand, so I would like to see a general debate about whether there is a sentencing element in this or whether it is about the offences in themselves.

Baroness Stedman-Scott (Con): My Lords, I, like my noble friend Lord Dobbs, have not been involved in the conversations during this Bill, but I speak because of the importance of the issue and our debating it in full. I am very glad to be discussing whether domestic abuse, including psychological abuse, coercive control and a pattern of abuse should be seen in the eyes of the law as a serious crime. The impact of domestic violence on women and their children can be devastating and long lasting, yet its essence of power and control is not criminalised.

My noble friend will be aware of surveys which show the strength of support for change. The Victims' Voice survey found that 98% of victims feel that reform of the law is needed. A survey of front-line domestic violence professionals found that 97% agree that coercive control should be recognised in law, with 96% agreeing that patterns of behaviour and psychological abuse should be recognised in law.

I welcome the Government's consultation and appreciate that it will take time for my noble friend and colleagues to consider the 700 or so responses before deciding whether legislation would provide better protection to victims, but, like other noble Lords, I look forward to hearing the outcome of the consultation. Changing the definition of domestic abuse in March last year was obviously a very important step, but there is a clear need to create a culture where victims report much earlier, are believed when they do and the dynamics and patterns of abuse are recognised and understood. Will my noble friend also look at other countries which have successfully criminalised psychological abuse, coercive control and clear patterns of behaviour, because this could be the catalyst which will not just save money but save lives?

Lord Bates: My Lords, first, I will make a brief response to my noble friend Lady Stedman-Scott. One of the things which struck me very much when I was preparing for this debate was the final page of the HMIC report into domestic abuse, which contains some of the statistics. It lists that in the 12-month period to 31 August 2013, the period which was reviewed, 1.01 million calls for assistance were as a result of domestic abuse. There were 269,700 crimes of domestic abuse. This figure goes to the heart of what my noble friend was saying: there were 57,900 individuals at high risk of serious harm or murder. On average, every 30 seconds, someone contacts the police for assistance with domestic abuse.

I think that those statistics show the importance of the issue which the noble Lord, Lord Wigley, has brought before the House this evening. I am sure that we are all very grateful to him for doing so, and also to the noble Lord, Lord Rosser, and the noble Baroness, Lady Smith. I am glad to have this opportunity. I entirely agree with the sentiment behind Amendment 49. Domestic violence and abuse are unquestionably serious crimes and must be treated as such. It is an appalling violation of the trust that those in intimate relationships place in each other. Last year, an estimated 1.9 million people were abused at the hands of those with whom they were closest.

The Government recognise that domestic abuse has not always been treated as the serious crime that it undoubtedly is. That is why, in September last year, the Home Secretary commissioned Her Majesty's Inspectorate of Constabulary to conduct an all-force review of domestic abuse. HMIC published its findings in March and highlighted serious failings in the police response to these issues, which my noble friend Lady Hamwee touched on under the heading of "It's a domestic" in terms of giving the seriousness to calls for help in this way that they would in any other circumstance in any other public place when somebody is under threat.

[LORD BATES]

Moreover, the Home Secretary has initiated a number of other measures to improve the police responses to domestic abuse. This includes the establishment of a new National Oversight Group, which she chairs. While further legislation may have its place, new laws cannot be a substitute for the vital work of driving improvements in the response from the criminal justice agencies themselves.

In addition to the important operational improvements, the Government want to ensure that front-line agencies have the tools they need to provide the best possible protection for victims. In March, we announced a national rollout of the domestic violence protection orders, to which, again, a number of noble Lords have referred, that can prevent the perpetrator from having contact with the victim for up to 28 days, and the domestic violence disclosure scheme, which enables the police to disclose to the public information about previous violent offending by a new or existing partner. This, I felt, went to the heart of the issue raised by the noble Baroness, Lady Howe, when she raised that harrowing case study of Laura and the inability to take action. Clearly, this was something where the domestic violence protection orders may not be the solution but they are certainly an indication of a recognition of the problem.

7.45 pm

In March last year we changed the non-statutory definition of domestic abuse to capture non-violent controlling behaviour because we recognise that abuse is not always physical, as a number of noble Lords have mentioned. Between 20 August and 15 October we ran a public consultation to gather views on whether the law needs to be strengthened to provide the best possible protection to victims and to keep pace with these developments. Violent behaviour was deliberately left out of the scope of the consultation. Violence perpetrated by one person against another clearly already falls within the range of existing criminal offences and is successfully prosecuted under the existing criminal law. Non-violent behaviour which is coercive or controlling in nature can be harder to recognise, but it can be equally damaging to its victims.

We have listened carefully to the front-line professionals, women's groups and others, who tell us that stalking and harassment legislation, which could afford protection for victims through the criminal and civil courts, is applied inconsistently in cases involving intimate relationships. We are keen to explore whether more needs to be done to protect victims of abuse. However, legislation on this difficult and sensitive topic needs to be approached judiciously, as a number of noble Lords recognised. We have carried out a public consultation because the views of victims should be at the heart of any development of the criminal law on this important issue, as my noble friend Lady Stedman-Scott said. We want to see more perpetrators brought to justice. We do not want victims to be deterred from reporting by a legal framework or a criminal justice system that does not work for them.

I can assure the noble Lord, Lord Wigley, and the whole House that we are considering the more than 700 responses to the recent consultation as a matter of urgency. This will necessarily take time and, of course, it would be wrong for us to pre-judge the outcome of the consultation at this stage. That being the case, I think it unrealistic to expect an announcement on the outcome of the consultation before the Bill leaves this House. However, I have no doubt that this issue will be picked up again in the other place, not least because Elfyn Llwyd, the colleague of the noble Lord, Lord Wigley, will be meeting the Home Secretary later this week. I pay tribute to the noble Lord and his colleague for the work that they have done on highlighting this important issue. Of course, should an amendment on this issue be made in the House of Commons, it would need to come back to this House for consideration.

Amendment 49C, standing in the names of the noble Baroness, Lady Smith, and the noble Lord, Lord Rosser, would place an obligation on the Government to hold a consultation on various other domestic violence provisions. As I have outlined to the House, the Government are pursuing a range of measures to improve protection for victims of domestic abuse, stalking and all forms of violence against women and girls. This includes improving the police response to managing perpetrators of these serious crimes. I am sure noble Lords will agree that we must be careful not to legislate unnecessarily. Often the goal of managing the perpetrators of stalking and domestic abuse effectively can be met through operational improvements. The Home Secretary's work to drive delivery against the inspectorate's recommendations is critical. The national oversight group which she chairs is focused on delivering immediate and tangible improvements in the response received by victims who are brave enough to come forward. The work of the group includes a review by the College of Policing of what works in tackling domestic abuse perpetrators and helping them to break the cycle. In itself, this work will result in significant improvements in the handling of offenders without the need for fresh consultations or legislation.

Regarding the specific proposals put forward by the noble Lord, Lord Rosser, it is important to note that convicted stalkers and domestic abusers will already be captured by the police national computer. We are focused on improving data held on domestic abuse and making better use of existing databases rather than risking fragmenting systems by creating new databases or registers for each and every offence.

On the question of positive obligations, I also remain unconvinced that further legislation is required at this stage. The House will be aware that criminal behaviour orders, introduced by the Anti-social Behaviour, Crime and Policing Act 2014, can be issued by any criminal court against an offender who is likely to cause harassment, alarm or distress to another person. These orders can include positive requirements to get the offender to address the underlying causes of their behaviour. The orders can be applied to perpetrators of any criminal offence, including domestic abuse, stalking and harassment. Given those flexible provisions, we do not see the need to create another civil order.

Finally, domestic violence protection orders are a new and highly effective tool for the police to provide immediate protection to victims of domestic abuse. I welcome the support for them from the noble Baroness

and other noble Lords who have spoken in this debate. The national rollout of these orders began only in March this year. The Home Office will be carrying out a full review of implementation in coming months, which will inform any future action. We will continue to work with our partners to keep these and a range of other options for protecting victims and managing perpetrators under review. Legislation requiring us to consult is unnecessary. The Government do not need to be compelled to consider improvements in tackling violence against women and girls. It is one of our top priorities.

I thank the noble Lord, Lord Wigley, for initiating this timely debate and ask him to withdraw his amendment in the knowledge that we will announce the outcome of the consultation on strengthening the law on domestic abuse as soon as possible, so that it can inform further debates on the Bill as it passes through the House of Commons.

Lord Wigley: My Lords, I am very grateful to those who have participated in this debate—the noble Baronesses, Lady Howe, Lady Hamwee and Lady Stedman-Scott, and the noble Lord, Lord Rosser—and to the Minister for his response. Needless to say, this was a probing amendment. It was a hook on which to hang an argument here and, had it been included in the Bill, in another place. I was encouraged to hear from the Minister that, as a result of the consultation that is currently going on, the Government most certainly have not closed their mind to the possibility of bringing forward further legislative proposals in the House of Commons when the Bill goes there and that there will be an opportunity for us to return to this matter if such amendments are built into the Bill and it comes back here.

I very much hope that the Government will look particularly at the issue of coercive control, although no doubt a number of other issues will come out of this consultation, and we will be in a better position to comment further when all that information and the Government's response to it are available to us. On the basis of that and of the cross-party interest that has been shown in this matter and the commitment and the strength of feeling that there is on it, I beg leave to withdraw the amendment.

Amendment 49 withdrawn.

Amendment 49A had been withdrawn from the Marshalled List.

Amendment 49B

Moved by ***Lord Strasburger***

49B: After Clause 69, insert the following new Clause—

"Investigatory powers and crime: legal privilege and journalistic source material

(1) In section 22 of the Regulation of Investigatory Powers Act 2000 (obtaining and disclosing communications data), after subsection (9) insert—

"(10) Subject to subsection (11), nothing in this section shall authorise the obtaining and disclosing of—

(a) items subject to legal privilege, or

(b) journalistic source material,

for the purpose of preventing or detecting serious crime.

(11) The obtaining and disclosing of the items and material referred to in subsection (10) may be authorised by a judge in accordance with the procedure set out in section 22A.

(12) In this section—

"items subject to legal privilege" has the same meaning as in section 10 of the Police and Criminal Evidence Act 1984;

"journalistic source material" means material which may identify a confidential journalistic source."

(2) After section 22 of that Act insert—

"22A Authorisation by a judge to obtain communications data: legal privilege and journalistic source material

(1) This section applies to an application for a warrant or authorisation under section 22(11).

(2) A person designated for the purpose of this Chapter may apply to a judge for an authorisation.

(3) The application must be made in writing and must set out the grounds on which the application is made.

(4) An application for an authorisation under section 22(11) must be made on notice to any person to whom the authorisation or notice which is the subject of the application relates save that notice of an application is not required if the service of such notice may seriously prejudice the investigation to which the application relates.

(5) Where notice of an application for an authorisation has been served on a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except with the leave of a judge until—

(a) the application is dismissed or abandoned; or

(b) he has complied with an authorisation given on the application.

(6) An authorisation shall only be issued or granted if the judge is satisfied that—

(a) it is necessary for the purpose of preventing or detecting serious crime, and

(b) the conduct authorised is proportionate to what is sought to be achieved by that conduct, having particular regard to the importance of the protection of legally privileged communications and journalistic sources.

(7) In this section "judge" means a Circuit Judge.

(8) In this section and in section 22(10) "serious crime" means the committing or suspected committing of one or more of the offences in England and Wales specified in Part 1 of Schedule 1 to the Serious Crime Act 2007.""

Lord Strasburger (LD): My Lords, Amendment 49B seeks to repair a serious flaw in the Regulation of Investigatory Powers Act 2000, a defect that has emerged only recently. Your Lordships will recall that many people inside and outside this House have been warning for years that RIPA as a whole is not fit for purpose because, among other things, its scope is far too broad; it has large built-in loopholes; its oversight provisions have proved to be hopelessly ineffective; and it has been left behind by several generations of new technology.

Perversely, the Government have been claiming for years that RIPA is the best thing since sliced bread so far as the regulation of intrusive powers is concerned. But in July this year, the Government finally bowed to the inevitable and accepted that all is not well with RIPA. They set up a review of the Act under David Anderson QC, the independent reviewer of terrorism legislation. His report is due before next year's election, with a view to legislation in the next Parliament, but the particular problem that has just appeared will not wait two years to be dealt with; it needs to be addressed

[Lord Strasburger]
immediately. It concerns the misuse of RIPA by the police in two ways: to uncover journalists' sources and to access legally privileged information.

The problem with journalists' sources was brought to light by the Met's report on Operation Alice, which was its investigation into the "plebgate" affair. It revealed, presumably by accident, that Met officers had secretly used RIPA to get their hands on the phone logs of the *Sun*'s news desk and its political editor, Tom Newton Dunn. They then proceeded to trawl through a year's worth of phone calls to find the source of the paper's stories about "plebgate". By the way, not a single prosecution has ensued from Operation Alice.

It then emerged that this was not an isolated case. We learnt that Kent Police had used RIPA to obtain the phone records of journalists working for the *Mail on Sunday*, and that the Suffolk Constabulary had used it against a journalist at the *Ipswich Star*. It would seem that there are many more cases but the police are very reluctant to reveal details. The Met commissioner steadfastly refuses to let on how many times his force has used RIPA in this way, or when or why, despite many demands that he come clean about this in his regular so-called transparency sessions, the most recent of which was in September.

Why does this matter? There is a well established tradition throughout the world that journalists do not reveal their sources, and many journalists have ended up in jail or worse—much worse—defending this principle. If potential whistleblowers in this country conclude that journalists can no longer guarantee their anonymity because the police can secretly identify them, a lot fewer whistles are going to be blown. They and we know what would happen to them if their cover was blown. They could be arrested; they would be intimidated; they would be ostracised; and they would lose their job and their pension. If insiders who know about wrongdoing stop coming forward because they can no longer be guaranteed anonymity, important information that deserves to be in the public domain will never see the light of day.

I will give the House a few recent examples. In uncovering the phone hacking scandal, the *Guardian* was helped by sources in the police, who provided important information on the condition that they remained unidentified. They did this in the public interest, knowing that senior ranks were promoting a false version of events to the press, the public and Parliament. If those sources had been identified, they would have faced the loss of their careers and their pensions.

In another example, two anonymous whistleblowers from inside BAE revealed wholesale corrupt payments by the arms company and that BAE had set up secret subsidiaries in the British Virgin Islands, which it was using to channel corrupt payments to Swiss bank accounts. Even more to the point, it was a third anonymous whistleblower, in an official position, who revealed to journalists that Prince Bandar of the Saudi royal family had been paid a total of £1 billion, plus a gift of a personal Airbus, in order to promote arms sales.

If it were not for whistleblowers, patients at NHS trusts such as Mid-Staffs would still be dying unnecessarily and police such as those at Hillsborough would still be covering up their failings, as would corrupt politicians, dishonest businessmen and child-abusing celebrities.

Prying into journalists' sources is not what RIPA was intended for, as has been confirmed by David Blunkett, the Home Secretary who took it through Parliament. Two weeks ago, when talking about RIPA, he said that no one at the time imagined that,

"legislation secured through parliamentary debate would be used to fetter the right of a free press in a democratic nation to do a responsible job".

RIPA was supposed to be a weapon against terrorism and other serious crime, not for investigating internal police disciplinary matters and the like.

8 pm

Until recently, attempts by the police to access a journalist's records have been dealt with under the Police and Criminal Evidence Act 1984. Under PACE, the police are obliged to apply to a judge for permission to access the phone records of a journalist. The judge needs to be convinced that a serious offence is involved and that the disclosure is in the public interest. The journalist is notified and may be represented at the hearing to contest the application. The PACE safeguards have worked well.

On the other hand, RIPA has no external real-time safeguards at all. Police applications for phone data are subject to no judicial oversight and are simply self-authorised by a so-called "designated person" who is usually a superintendent in the same force. There is no special treatment for journalists' records; the journalist is not informed that the demand for the records is being made to his phone company, and the company is legally obliged to hand everything over without the journalist's knowledge.

Kevin Hurley, who is the police and crime commissioner for Surrey and was once a chief superintendent in the Met, referring to the "plebgate" case, said that RIPA was used there,

"to compromise a journalist's sources by the back door and without external scrutiny for no reason other than to defend the reputation of the Metropolitan Police Service. Seizing journalistic materials is a serious decision indeed, and one with consequences for our country as a whole. Such a move must be subject to debate and challenge in court if it is to have legitimacy".

Responsible investigative journalism is a bulwark of our democracy. Unless we take action, this misuse of RIPA to evade the safeguards in PACE—or this "weasel wangle", as Peter Preston has called it—will have a chilling effect on free speech. It will interfere with our freedom of information and with the public's right to be informed, as defined Article10 of the European Convention on Human Rights.

The purpose of this amendment is to graft on to RIPA similar protections to those already applying under PACE: judicial oversight of applications involving journalists' records and legally privileged information, and to require an open hearing with both sides represented. The judge will need to be satisfied that disclosure is necessary for the detecting or preventing of serious crime, and that the request for data is proportionate to what is being sought to be achieved with it. The judge will have to have particular regard to the protection of legally privileged information and journalistic sources.

The Home Secretary has spoken of amending the code of practice relating to RIPA as an alternative solution to this problem, but that would not offer the cast-iron protection that journalists and their sources need. Only primary legislation will achieve that.

The omission of these safeguards from RIPA is just one of the many flaws in this legislation. It can be argued, with justification, that the Regulation of Investigatory Powers Act is less about regulating the investigatory powers of government and more about conferring those powers without much regulation at all. Noble Lords should not forget that we only became aware of the particular abuse we are discussing today—the misuse of RIPA to access journalists' sources—because it was inadvertently mentioned in the Met's report on Operation Alice. If that had not happened, this practice would not have come to light. The terrible truth is that this House, this Parliament and this country have no idea about what RIPA is being used for by the police and by the many other public bodies that are authorised to use or abuse it.

RIPA gives highly intrusive powers to the police, the intelligence services and hundreds of other public authorities. Its drafting was so broad that there are no real constraints on how those powers can be used, or misused; and it all happens in secret and without any effective oversight by Parliament. It is no wonder, then, that RIPA has become a charter for snooping where there should be no snooping; and no wonder that it started to suffer from mission creep from day one, being used in ways that were not intended by its authors.

Edward Snowden's revelations demonstrate that RIPA has been used to legitimise the interception and storage of the private communications of millions of British citizens on a truly massive scale by exploiting antiquated statutory definitions and changes to communications technology. No matter what view is taken on the ethics of Snowden's actions, nobody has disputed his accuracy. With that in mind, I ask the House to reflect on what he had to say about how innocent British citizens' private data are being hoovered up without any limits:

> "GCHQ has probably the most invasive network intercept programme in the world. It's called Tempora and it's the world's first Full Take, they call it, and that means content in addition to metadata, on everything".

RIPA has allowed this to happen without Parliament or the people knowing a thing about it or being asked to consent to it. We were not asked; it just happened. It is to be hoped that David Anderson's review will come up with a blueprint for an up-to-date, clearly defined and proportionate regime for authorising these highly intrusive techniques where they are needed and preventing their use where they are not justified. The next Parliament will then have to legislate. In the mean time, we have an urgent job to do. We need to stop the police from evading PACE's protections for journalists' sources and for legally privileged information. This amendment adds the missing provisions to RIPA to achieve that.

Before I sit down, I should mention that although this amendment was tabled late, I did all I could to circulate it and I am grateful for the widespread support it has attracted from the media, NGOs and several noble Lords who are unable to be in the House today. The campaigning group Justice has been in touch to remind me that it made clear its support for more protection under RIPA for legal professional privilege in its earlier report, *Freedom from Suspicion*.

I will close with the words of Chris Frost, chair of the National Union of Journalists' ethics council:

> "In my experience virtually every serious investigation is launched on the back of a … whistleblower who needs to remain anonymous for their protection".

Since this is the first opportunity that the House has had to debate this matter I do not intend to divide the House at this stage. However, I will be disappointed if the Government reject this amendment outright, especially when all that is offered in its place is a review and no action before the general election or a review of the code of practice. I beg to move.

Lord Black of Brentwood (Con): My Lords, I declare an interest in this subject as executive director of the Telegraph Media Group and draw attention to my other media interests listed in the register.

I very much welcome this amendment. Although I have some concerns about aspects of the drafting, the noble Lord, Lord Strasburger, is to be congratulated on shining a spotlight on an incredibly serious and troubling issue arising from a piece of legislation that is now looking increasingly arcane. I fundamentally agree with him that we cannot wait for a permanent solution to this.

It is an issue that should concern every reporter in the UK and every citizen because of the impact on press freedom and the quality of our democracy. It is also an issue that has a resonance beyond our shores, which should be a real worry to us, because what we are doing in the United Kingdom is sending an authoritarian message to the rest of the world that it is all right for police forces or other public authorities to track down the confidential sources of journalists.

I do not need to dwell on the importance of confidential sources of information. It was put best in the case of Goodwin v United Kingdom in the European Court of Human Rights back in 1996:

> "Without ... protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected".

That is absolutely right. As we heard, the use of confidential sources is vital for whistleblowing and investigative journalism, but it is also crucial for day-to-day reporting on matters of public interest. In a democratic society, people need to be able to talk to the media about current debates without fear of reprisal or retribution. The alternative is sterile political and public debate, with a profound impact on the substance of our character and democracy. That is what will happen unless the chilling impact of this out-of-date legislation is not reversed.

It is a matter of regret to me to have to ask why we should have been surprised by such recent revelations. The Newspaper Society, representing Britain's regional press, and the Society of Editors made clear during the passage of RIPA back in 2000 that its terms would inevitably lead to an erosion of the confidentiality of

[LORD BLACK OF BRENTWOOD]

sources because they could so often be easily identified by information obtained under the new powers by a wide range of specified organisations. The newspaper industry at the time suggested that the number of organisations able to exercise RIPA powers should be limited, that the ground for the use of those powers should also be strictly limited to the most senior personnel and that all applications for use of such power should be subjected to prior judicial scrutiny, especially to protect confidential sources. The Act as it arrived on the statute book and various codes since then clearly did not provide adequate safeguards in any way.

Over the years since then, I have heard anecdotal evidence of the problems, often from local newspaper editors voicing their concerns, often about attempts to trace the source of leaks of council information by local authorities using RIPA powers of surveillance and access to telephone records. Occasionally, a case of this arose in the public domain. Back in 2010, the *Derby Telegraph* reported on how the local authority there dispatched two officers to a local Starbucks to spy on a reporter who had been seen talking to current and former council employees. That council used RIPA powers to do that because they give local authorities the right to watch and record people covertly. Just think about the disastrous impact on local press reporting of local authorities if such sources of information dried up. More importantly, we need to think about the impact on local people and democracy. Incompetence, waste and corruption in local government would remain uncovered and unpunished. It is the ordinary people who pay the bills for that who would really suffer.

As the noble Lord said, we are only now beginning to see the full extent of this problem, partly as the result of the work of the *Mail on Sunday*, which helped uncover this abuse through a sheer stroke of luck followed up by a brilliant piece of investigative journalism. My real concern is that we may be seeing only the tip of the iceberg. As the noble Lord, Lord Strasburger, said, we just have no idea about the extent of the abuse. Other examples that I have heard are extremely troubling. I draw noble Lords' attention to the disturbing case of Sally Murrer, recently highlighted in *Press Gazette*. Thames Valley Police applied to a court to bug the conversations of this lady but did not tell the court that she was a journalist when it did so. Recently, that force had to admit that it used RIPA powers to bug the car of her alleged police source back in 2006. If either the law or a statutory code had forced police to make that clear, it would—as Gavin Millar, her QC, said—have ensured that the authorising authority had the chance to use the,

"correct, and very strict, legal test for overriding journalistic source protection".

He also made the point that the use of the Act in this way, which he described as widespread, is almost certainly completely illegal under European law.

Mention of Europe leads me to a very brief point. I said earlier that I am anxious about the impact of this issue beyond our shores. It does not take a great deal of imagination to see how a Government in a Commonwealth country might look at how the law is utilised here and deploy something similar in a turbo-charged manner in their own country. That is already causing considerable concerns among world press freedom organisations. Ronald Koven, the acting director of the World Press Freedom Committee, wrote to me and put it this way:

"Police the world over have repeatedly shown they cannot be trusted to exercise needed self-restraint and their zeal must be contained by independent judicial supervision. That has unhappily proven to be the case in Britain as well ... It is the view of the World Press Freedom Committee that the law should be amended to impose appropriate and effective judicial oversight".

We need to be mindful of the way that this issue feeds into debates in Europe, too. There, the European Newspaper Publishers Association—on whose board I sit—made representations on protection of journalistic sources in respect of very similar EU legislation on access to communications content, communications data and surveillance. In the context of the issue that this amendment highlights, those concerns also need to be treated with the utmost seriousness if we are not to end up in exactly the same position in a few years' time.

I am aware that the noble Lord produced this as a probing amendment and of course he is absolutely right to do so. I support the principles behind it—particularly that of prior judicial authorisation—but, as I said, I have some concerns about the detail, because I do not believe that it would actually deliver the extremely high threshold that should be needed for police or other authorities to be able to access journalists' sources. I also do not think that judicial authorisation would necessarily apply in all the cases where RIPA powers can be deployed. It is a very good start, but further thought needs to be given in those areas. Of course, there are now a number of inquiries into this issue and the abuse of RIPA. I believe the impact on press freedom and on the quality of our democracy should be guiding features of those inquiries. I hope that my noble friend will listen to the strength of feeling and that—either in this House or another place—the Government will come back with their own amendment to deal with the issue that the noble Lord's amendment highlighted so importantly today and which, in a free society, we should treat with the utmost seriousness.

Baroness Cohen of Pimlico (Lab): My Lords, I also rise to support the amendment. The noble Lord, Lord Strasburger, spoke about the need to align PACE and RIPA and thereby to protect journalism. I agree that journalistic material needs to be protected from police officers using RIPA provisions, which were designed originally to get at something completely different. It is equally important, though very much less a subject of public debate, to protect items subject to legal prejudice, which this amendment, if it became law, would do.

I am a solicitor—it is probably my only declarable interest—and, like all solicitors, a solicitor of the Supreme Court, which I would like everybody to remember as a statement. I have been consulted by people anxious about fraud, bribery and commercial organisations who are naturally seeking a safe and effective way of making their concerns known. They are whistleblowers. Any solicitor would make a file

note, and it is not a happy thought that a police officer, solely on his own authority, could seek access to that note and thus to the relationship of confidentiality with our clients that we lawyers have been brought up to believe is a vital foundation.

It may also fall to any practising solicitor to be consulted by someone seeking, as for example in the Jimmy Savile saga, to allege that serving police officers were complicit in abuse, and then to be approached by a police officer, perhaps seeking to head off trouble at the pass, being able to access information via RIPA without ever having to explain to a judge what evil it was he was specifically seeking to expose. I accept—of course, I do—that client confidentiality can and must be breached in extremis and with the issue of a warrant or authorisation by a judge, but it should not be possible for police officers to avoid the PACE rules or to go round them and get at the principle of client confidentiality by using legislation that was never intended to do that.

We solicitors are all members of the Supreme Court. We are bound to assist it, but we are bound to assist judges. We are not meant to be a branch of the Executive and, as such, we ought to be subject—and all legally applicable documents ought to be subject—to the power of the courts and not to the power of the police, or indeed, if push came to shove, to the Secretary of State. I commend the amendment.

Lord Thomas of Gresford (LD): My Lords, it is a pleasure to follow the noble Baroness, Lady Cohen of Pimlico, and to make the same point from the point of view of the Bar. I do not think that legal professional privilege is fully understood. Certainly in the criminal field, there may be a perception that defence barristers get together with their client and cook up some story, and if only the police could have access to the instructions of the barrister or the solicitor, all would be revealed. The contrary is the truth.

If I can bowdlerise a little bit, when I see a client for the first time, I say to him, "Will you please not tell me any bull? I want to know the truth. Unless you tell me the truth, I am not able to help you. I am not able to give you proper advice, just as though you went to the doctor saying that you had a pain in your toe when in fact the pain was in your head. Tell me the truth". It very often happens that the client will then come out with a story which you can then check against the other evidence in the prosecution case, and go back to him and say, "You did tell me a lot of bull. I really need to know the truth if I am to represent you properly". He will change his story in some instances and will tell the truth. With that truth, you can win cases or you can mitigate the just punishment that will ultimately be imposed on him and advise him to plead guilty if that is the right thing to do.

It is an extremely delicate relationship between the client and the barrister or solicitor—I have been in the solicitor position as well—that many people do not understand. A judge understands it. If a judge, on a proper application being made to him, decides that it is in the public interest that this relationship should be investigated, and if there is something about the way in which the case is being conducted that gives rise to suspicion so that prying into the papers of the defence is an appropriate thing to do, the judge from all his experience—all judges will have been through the mill themselves and will know precisely how these things should be approached—will give the ultimate permission for the file or the papers to be looked at. Generally speaking, though, he will not do so, and it is quite wrong if the police use RIPA powers—legislation that was intended for a completely different purpose—to break into that very delicate relationship and break it up.

That is the importance of the amendment moved by the noble Lord, Lord Strasburger, and I support it entirely.

Baroness Smith of Basildon: My Lords, I can be fairly brief in this debate because I think the Minister will have heard the very real and deep concerns across the House on this. It is not the first time that concerns have been raised about the use or misuse of RIPA. In this instance we are talking about the rights of journalists obtaining information from confidential sources to retain that confidentiality without which some information may never come to light. Previously, there had been anecdotal reports of local authorities using the legislation, which the noble Lord, Lord Black, mentioned, including identifying whether parents were living in a school catchment area. These issues raise serious concerns and have serious implications for individuals and for issues of collective privacy.

I will say something about the wider and serious implications of misuse of the legislation, but I want to address the specific role of journalists' sources. In effect, we are discussing how new technology has brought with it new challenges for a free press and for personal privacy. Thirty years ago, if the police wanted access to journalists' sources, they would have to go to a court to obtain their notes. There were no mobile phone records they could access at that time. Similarly, we would not have seen journalists illegally hacking into private phone calls, as shamefully came to light more recently.

Over the weekend, like other noble Lords, I read some of the obituaries of Ben Bradlee, and this amendment came to mind as I was reading about his editorship of the *Washington Post.* I also watched "All the President's Men", which is one of my favourite films. The main people portrayed in that film—Bob Woodward, Carl Bernstein and Ben Bradlee—uncovered the most serious corruption at the highest level of government. I might tag this amendment as "the Watergate amendment" because, although the jurisdictions are entirely different, the principle is the same. Would that story, with all the implications for democracy and secrecy, ever have been told if the Nixon Administration had been able to identify the Deep Throat source or access the records of the journalists he was speaking to? If Nixon had been able to obtain mobile phone records in secret, would we ever have found out what was going on? There will be parallels in the UK, although perhaps they will not be so dramatic. That underlines the value and importance of serious investigative journalism. I am not talking about sensationalist stories about people that most of us have never heard of, but about the best kind of journalism, which I hugely admire, acting in the public interest, not just on what is of public interest.

[BARONESS SMITH OF BASILDON]

Noble Lords will recall that, when the Government brought in new powers into the DRIP Act by fast-track legislation to deal with serious and organised crime, including terrorism, we were highly critical of the way in which they acted and of the need to use the fast-track process. Part of our demands in supporting that legislation was that there should be a complete, thorough and independent view of RIPA. We have said for some time that it is becoming increasingly clear and obvious that RIPA is out of date and does not have the right kind of framework or the safeguards we need. Recent reports that RIPA has been used to access journalists' sources reinforce that. It is right that the Interception Commissioner is looking at it, but in addition it is essential that we get a clear guarantee from the Minister today that this issue will be included as part of the comprehensive review of RIPA led by David Anderson, the independent reviewer of terrorism legislation, that was agreed by the Government during the debates on DRIPA.

For many, the world seems less safe today. We must be vigilant against organised and serious crime and terrorism. I believe that the public understand and support the need for measures that the Government must put in place to deal with these threats to our safety. In order to have and maintain that public support, it is vital that such powers are only ever used for the purpose for which they were intended. If those powers are abused, whether by government, police or local authorities, it undermines public confidence in the very measures needed for the most serious issues, and that puts us all at risk.

Of course, journalists are not above the law. Like anyone else, they need to be investigated if they have committed a serious crime, and I do not think anybody is arguing otherwise. As noble Lords have pointed out, there is already an independent judicial process with prior jurisdiction needed by which the police can apply for access to journalists' information, but we have a long tradition of additional safeguards in law to recognise the role of a free press in a democracy and to protect whistleblowers, and this should not be compromised.

That is why we need the RIPA legislation to be examined in its entirety, including in context and in application, to ensure that the legal framework enables the police to access the data they need to solve serious crimes and to ensure that it does not have a chilling effect on free speech and the free press on which our democracy depends. The Government must ensure that David Anderson's review is ambitious enough in scope to resolve these problems and to respond positively to the issue before us now. We seek an assurance from the Minister that this matter will be considered in the review. In addition, the Government must make it clear by whatever means are appropriate that such legislation must only ever be used for the purpose for which it was intended.

Baroness Williams of Trafford: My Lords, I am grateful to my noble friend for explaining the purpose of this amendment. I do not believe there is any difference between my noble friend and me, or indeed any of your Lordships who have contributed to this debate, on the key issue at stake here. We all agree that a free and fearless press is fundamental to a democratic society. A key element of journalism is the protection of sources, and I can assure your Lordships that the Government do not wish to do anything which would undermine the operation of the vibrant and independent press that operates in this country.

The amendment which my noble friend has moved seeks to require public authorities who acquire communications data under the Regulation of Investigatory Powers Act 2000 to seek the authorisation of a judge when the material requested is subject to legal privilege or relates to journalistic sources. However, this is unnecessary, given the strict regulation RIPA already contains and the additional safeguards we are already putting in place.

Communications data—the who, when and where but not the content of a communication—would reveal the telephone number a journalist or lawyer calls, but would not reveal any of what was said or written in a communication. Last month, the independent Interception of Communications Commissioner issued a statement in which he said that communications data,

"do not contain any details of what was said or written by the sender or the recipient of the communication. As such, the communications data retained by CSPs"—

communications service providers—

"do not contain any material that may be said to be of professional or legal privilege—the fact that a communication took place does not provide what was discussed or considered or advised".

None the less, I recognise that this is a sensitive issue. It is personal information and RIPA already applies rigorous controls on its acquisition.

Communications data can only be obtained when their acquisition is necessary for a specified purpose, such as preventing and detecting crime, and then only when it is proportionate to do so. Anyone can complain to the Investigatory Powers Tribunal if they think the powers have been used unlawfully against them. The whole system is presided over, and reported on, by the Interception of Communications Commissioner, a senior judicial figure.

These controls apply to all requests for communications data, and I believe we have one of the most stringent systems to be found anywhere, with both strict internal controls and independent oversight. If any of your Lordships have doubts on this point, I would recommend reading the annual report of the Interception of Communications Commissioner. Sir Anthony May's report, published in April of this year, includes a detailed account of how the system works and a full statistical breakdown of communications data requests.

However, we recognise the special considerations that apply to journalists, lawyers and a number of other professions which may involve access to sensitive information. We have announced plans to update the Acquisition and Disclosure of Communications Data Code of Practice. These changes will make clear that specific consideration must be given by the senior authorising officer to the level of possible intrusion in cases likely to involve the communications data of those engaged in certain professions who may have obligations of professional secrecy. These professions include journalism, as well as those of lawyers, doctors

and Members of Parliament, and will also include those known to be close contacts of members of these professions. Any application for communications data that are known to be the data of members of these professions or their close contacts will have to state this clearly in the application. It will also require that relevant information is available to the authorising office when considering necessity and proportionality. This change will make clear in the statutory code what is already existing best practice.

We will publish the updated draft code of practice for public consultation as soon as possible, noting the acting Interception of Communications Commissioner's request to expedite publication of the code. It is also worth pointing out that on 6 October the acting Interception of Communications Commissioner, Sir Paul Kennedy, announced that he had,

"launched an inquiry into the use of RIPA powers to determine whether the acquisition of communications data has been undertaken to identify journalistic sources".

It would certainly be premature to take any legislative action in advance of knowing his findings.

The noble Baroness, Lady Smith of Basildon, asked whether David Anderson's review of RIPA would cover this area. I am sure that David Anderson will wish to look at all aspects of RIPA interception and communications data, including this issue.

In the light of the protections already available, the very clear commitment to strengthen these through the code of practice and the ongoing inquiry by Sir Paul Kennedy, I invite my noble friend to withdraw his amendment.

Lord Strasburger: My Lords, it has been an interesting debate. The House seems to have one view and the Minister seems to have another. I thank noble Lords who have partaken in the debate: my noble friends Lord Black and Lord Thomas, and the noble Baronesses, Lady Cohen and Lady Smith.

I do not think that the Minister was listening to what I said. Everyone outside the Home Office and the Foreign Office knows that the safeguards in RIPA have been proved ineffective time and again. I rather anticipated that the Government would try to fob us off with some tweak of the code of practice. Tweaking the code of practice is not going to offer the certainty that journalists need; it is not going to offer the transparency. All of this is still going to carry on in secret. We will not know what on earth is going on, and it will not give the press, the journalists or the media the opportunity to challenge the police's intention to seek their phone records and others from the phone companies. So it will not take us any further forward at all.

I have to say that, as you might have detected, I am more than somewhat disappointed with the Government's response. They have not listened to the debate. I hope they will reflect on the debate and come back with something more substantive. If not, I am quite sure that I and others, including those in another place, will return to this issue with a vengeance. However, for the sake of good order, I will withdraw my amendment.

Amendment 49B withdrawn.

Amendment 49C not moved.

Schedule 4: Minor and consequential amendments

Amendments 49D to 54

Moved by ***Lord Bates***

49D: Schedule 4, page 76, line 25, at end insert—

"Visiting Forces Act 1952 (c. 67)

In the Schedule to the Visiting Forces Act 1952 (offences referred to in section 3), in paragraph 1(b)(xi), before "the Female Genital Mutilation Act 2003" insert "sections 1 to 3 of""

49E: Schedule 4, page 76, line 33, at end insert—

"Senior Courts Act 1981 (c. 54)

In paragraph 3 of Schedule 1 to the Senior Courts Act 1981 (distribution of business to the family division of the High Court), after paragraph (h) insert—

"(ha) all proceedings under Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003;"."

49F: Schedule 4, page 77, line 26, at end insert—

"Courts and Legal Services Act 1990 (c. 41)

In section 58A of the Courts and Legal Services Act 1990 (conditional fee agreements: supplementary), in subsection (2), after paragraph (f) insert—

"(fza) Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003;"."

50: Schedule 4, page 77, line 38, at end insert—

"11A In section 222 of that Act (transfer of fine orders), in subsection (8), for "section 31 of the Powers of Criminal Courts Act 1973" substitute "section 139 of the Powers of Criminal Courts (Sentencing) Act 2000"."

50A: Schedule 4, page 77, line 38, at end insert—

"Family Law Act 1996 (c. 27)

In section 63 of the Family Law Act 1996 (interpretation of Part 4), in subsection (2), after paragraph (i) insert—

"(ia) Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003, other than paragraph 3 of that Schedule;"."

51: Schedule 4, page 79, line 6, at end insert—

"(1) Section 22 of that Act (order made: reconsideration of available amount) is amended as follows.

(2) In subsection (5), after paragraph (c) insert—

"(d) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge)."

(3) In subsection (6), after "(5)(c)" insert "or (d).""

52: Schedule 4, page 81, line 21, at end insert—

"( ) Section 107 of that Act (order made: reconsideration of available amount) is amended as follows.

"( ) In subsection (4), after paragraph (c) insert—

"(d) any restitution order which has been made against the accused in respect of the offence (or any of the offences) concerned;

(e) any order under section 253F(2) of the Procedure Act requiring the accused to pay a victim surcharge in respect of the offence (or any of the offences) concerned."

"( ) In subsection (5)—

( ) for "the court must not" substitute "the court—

(a) must not";

( ) at the end insert—

"(b) must not have regard to an order falling within subsection (4)(d) or (e) if a court has made a direction under section 97A(2) or (4).""

53: Schedule 4, page 81, line 23, at end insert—

"( ) Section 121 of that Act (application, recall and variation) is amended as follows.

"( ) In subsection (5), for "(9)" substitute "(10)".

"( ) For subsection (9) substitute—

"(9) In the case of a restraint order, if the condition in section 119 which was satisfied was that an investigation was instituted—

(a) the court must discharge the order if within a reasonable time proceedings for the offence are not instituted;

(b) otherwise, the court must recall the order on the conclusion of the proceedings.

(10) In the case of a restraint order, if the condition in section 119 which was satisfied was that an application was to be made—

(a) the court must discharge the order if within a reasonable time the application is not made;

(b) otherwise, the court must recall the order on the conclusion of the application.""

54: Schedule 4, page 81, line 43, at end insert—

"( ) in subsection (3), after "Criminal Justice" insert "(Children)"."

Amendments 49D to 54 agreed.

Clause 71: Transitional and saving provisions

Amendments 55 and 56

Moved by ***Lord Bates***

55: Clause 71, page 52, line 9, at end insert—

"( ) An order under section 97B(2) of the Proceeds of Crime Act 2002 (inserted by section (Orders for securing compliance with confiscation order)) may be made in respect of any confiscation order (within the meaning of Part 3 of that Act) that is made on or after the day on which section (Orders for securing compliance with confiscation order) comes into force."

56: Clause 71, page 52, line 44, at end insert—

"( ) section 65;"

Amendments 55 and 56 agreed.

Amendment 57 had been withdrawn from the Marshalled List..

Amendments 57A and 57B

Moved by ***Lord Bates***

57A: Clause 71, page 53, line 1, leave out subsection (10) and insert—

"( ) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, a reference to 12 months in the following provisions is to be read as a reference to 6 months—

(a) section 66(3)(a);

(b) in the Prison Act 1952, subsection (4)(b) of the section 40CA inserted by section (Knives and offensive weapons in prisons) above;

(c) in the Female Genital Mutilation Act 2003, paragraph (b) of the subsection (2) inserted in section 5 by section (Offence of failing to protect girl from risk of genital mutilation)(4)(b) above;

(d) paragraph 4(5)(b) of the Schedule inserted in that Act by section (Female genital mutilation protection orders)(2) above."

57B: Clause 71, page 53, line 4, at end insert—

"( ) The reference to an offence under section 1, 2 or 3 of the Female Genital Mutilation Act 2003 in section 3A(8) of that Act does not include such an offence committed before the coming into force of section (Offence of failing to protect girl from risk of genital mutilation) above (which inserts section 3A in that Act).

"( ) In proceedings under section 3A of that Act, a defence under subsection (5)(b) of that section may not be negated by reference to steps that the defendant could have taken (but did not) before the coming into force of section (Offence of failing to protect girl from risk of genital mutilation) above."

Amendments 57A and 57B agreed.

Clause 72: Extent

Amendments 58 to 59B

Moved by ***Lord Bates***

58: Clause 72, page 53, line 10, at end insert—

"( ) section (Knives and offensive weapons in prisons)."

59: Clause 72, page 53, line 15, after "66" insert "and Schedule 3"

59A: Clause 72, page 53, line 16, at end insert "and (1A)"

59B: Clause 72, page 53, line 16, at end insert—

"( ) sections (Offence of failing to protect girl from risk of genital mutilation) and (Female genital mutilation protection orders)."

Amendments 58 to 59B agreed.

Clause 73: Commencement

Amendments 60 to 64A

Moved by ***Lord Bates***

60: Clause 73, page 53, line 34, at end insert—

"( ) paragraphs 11A and 26 to 33 of Schedule 4 (and section 70(1) so far as relating to those paragraphs)."

61: Clause 73, page 53, line 35, leave out "Chapter 3 of Part 1 comes" and insert "The following provisions come"

62: Clause 73, page 53, line 37, at end insert—

"( ) Chapter 3 of Part 1;

"( ) paragraphs 2, 34 to 38 and 47(3) of Schedule 4 (and section 70(1) so far as relating to those paragraphs)."

62A: Clause 73, page 53, line 40, leave out "section 67" and insert "sections 67 and (Offence of failing to protect girl from risk of genital mutilation)"

63: Clause 73, page 54, line 9, leave out "sections 19 to 23" and insert "section 21"

63A: Clause 73, page 54, line 12, leave out paragraph (d) and insert—

"( ) section 45 and Schedule 1;

"( ) sections 46 to 49."

63B: Clause 73, page 54, line 19, leave out "45" and insert "46"

64: Clause 73, page 54, line 20, after "66" insert "and Schedule 3"

64A: Clause 73, page 54, line 20, at end insert—

"( ) section (Female genital mutilation protection orders)."

Amendments 60 to 64A agreed.

In the Title

Amendment 65

Moved by ***Lord Bates***

65: In the Title, line 7, after "children;" insert "to make it an offence to possess a knife or offensive weapon inside a prison;"

Amendment 65 agreed.

Music Education

Question for Short Debate

8.37 pm

Asked by ***Lord Aberdare***

To ask Her Majesty's Government what steps they are taking to ensure the long-term financial sustainability of music education hubs and the National Plan for Music Education.

Lord Bourne of Aberystwyth (Con): My Lords, as the noble Lord's Question for Short Debate is now being taken as last business, the time limit for the debate becomes 90 minutes rather than 60 minutes. Speeches should therefore be limited to 7 minutes, except for the speeches of the noble Lord, Lord Aberdare, and the Minister which remain limited to 10 and 12 minutes respectively.

Lord Aberdare: My Lords, I am delighted to introduce this short debate on the national plan for music education, even if it is somewhat later than might have been anticipated. I put down my Question last June, before the Government's announcement of extra funding for the plan, but I believe there are still issues about its funding and delivery that are worthy of debate. I am very grateful to all noble Lords who have put down their names to speak and look forward to hearing what they have to say from their often much more knowledgeable standpoints than I can claim as a mere music consumer, albeit a passionate one, and now also a singer in the Parliament choir.

The second paragraph of the national plan, published by the Departments for Education and for Culture, Media and Sport in November 2011, says:

"Our vision is to enable children from all backgrounds and every part of England to have the opportunity to learn a musical instrument; to make music with others; to learn to sing; and to have the opportunity to progress to the next level of excellence".

That is indeed a visionary commitment, and one in which the Government should take pride. The challenge now is to ensure that those ambitious aims are delivered.

The plan's central element is the creation of a network of local or regional music educational hubs across England. The devolved regions are, of course, not covered. These hubs, 123 of them, are responsible for co-ordinating the delivery of music education in their areas, working in partnership with schools, local authorities, music teachers and others. Their central government funding comes from the DfE but is administered by Arts Council England, which oversees them. In addition to the four core roles spelt out in the vision, the hubs were given three extension roles—to provide training and CPD for schools staff, develop instrument loan schemes and offer access to large-scale or high-quality music experiences for students.

I do not plan to rehash the case for the value of music in schools, which is rightly taken pretty much as a given in the plan, but one message coming through strongly to your Lordships' Digital Skills Committee, on which I sit, is the central importance of creativity to the UK's future skills base and competitiveness. There is nothing like music for learning creativity, as well as other key skills such as team work, communication and discipline. The main question for us today is whether the plan is on track to achieve its aims and what government and others can do to increase its success.

I shall raise some issues relating to the hubs and their performance to date. Perhaps inevitably, these start with finance. Up to July, central government funding for local music education services, going back before the plan was launched, had been declining year by year, from a total of over £82 million in 2010-11 to £58 million in 2014-15, and no announcement had yet been made on funding beyond that. Furthermore, DfE published a consultation document suggesting that local authorities should not use any of the education support grant that they received from the department to support music education activities in schools. So the announcement later that month that funding for the year to March 2016 would be increased by £18 million, with £17 million of that going to hubs, was excellent news, especially as the ESG proposal was dropped at the same time. The Government deserve warm congratulations on this, at least as far as it goes.

However, there remain some important questions. How and when will the £75 million for 2015-16 be allocated to individual hubs? Will the extra money be dedicated wholly to fulfilling their existing roles? What will happen after March 2016? For hubs to be able to plan ahead properly, they need assurance that they will continue to be funded, preferably at the 2015-16 level, up to the end of the plan period in March 2020. A commitment of that kind was given by the Prime Minister for youth sport in February, so why not for music?

Central government funding represents only one-third of total funding for hubs across the board, although it ranges from 13% to 100% for individual hubs. Schools provide another 31%, with the remainder coming from parents at 17%, local authorities at 8% and other sources at 10%. With local authority funding declining from £25 million in 2010-11 to £14 million in 2012-13, and likely to continue to do so, and with parents seen as unable to contribute much more than they already do, confidence in the level and continuation of the central government funding commitment becomes all the more crucial.

There are other concerns. The performance of hubs is patchy, with some doing much better than others in building partnerships, raising funds and engaging schools, students and parents in stimulating worthwhile and effective activities within the four core roles. I am not aware of much evidence of initiatives to share good practice and encourage weaker hubs to learn from and emulate those that do better, so I was encouraged to receive a briefing from the Mayor of London's office that outlined the excellent work that hubs in London are doing, with support from the mayor and his music fund, and which expressed the willingness of the GLA to work with DfE, the Arts Council and local authorities to develop a high-quality training programme for music hub leaders. The mayor and his music education task force will launch a London music pledge next month, which includes CPD and new resources for teachers. Another exemplar is the greater Manchester music hub, working effectively with nine music services

[LORD ABERDARE]
in partnership with three local orchestras and the Royal Northern College of Music. London and Manchester may be special cases, but that seems to be just the sort of good practice sharing that is needed. What will the Government do to promote it?

There is worrying evidence, too, that students from poorer socio-economic groups and areas, and children with special educational needs, are not benefiting as much from the music education services on offer. Disadvantaged children are under-represented in ensembles and choirs. The noble Lord, Lord Lipsey, led a debate in July focusing on the fact that young people with disabilities are considerably less likely to be involved in musical activities than other students.

Access to instruments is another problem. Some of your Lordships may have seen the recent Channel 4 programme, "Don't Stop the Music", in which the pianist James Rhodes encouraged people with spare or unused instruments to loan or donate them to schools. Few hubs offer instrument loans at present, but perhaps they could be encouraged to link in to schemes like this.

Another concern is a growing shortage of music teachers. The Henley review recommended the creation of a primary teaching module, but since this has no funding attached to it, few potential teachers are taking it. Finally, the absence of music from Ofsted's inspection framework means inevitably that schools give less priority to their music education activities than they might otherwise do, particularly as current league tables do not measure arts subjects.

Although it is outside the ambit of this debate, I am especially sorry to learn that the land of my fathers, albeit a few generations back, Wales, the so-called land of song, has no central funding for music services at all and that children there are 10% less likely to learn an instrument than those in England. What a disastrous failure to capitalise on what should be such an asset for Wales.

The national plan for music education is a visionary plan, with enormous potential educational, musical, cultural, creative and economic benefits. Of course I do not expect the Government, let alone the Minister today, to fix all the issues I have highlighted at a stroke. But should they not be blowing their trumpet rather more fortissimo to promote the success of the plan and to find ways of fixing these concerns? It would be interesting to hear something about the views of the plan's monitoring board on the progress being made. This has now been transformed into a cultural education board. I hope that the Minister will confirm that this is not a step towards converting music education hubs into cultural education hubs.

The national plan for music education should be actively driven forward as a developing success story, which will help to cement and enhance the UK's leading world position in music and creativity. I urge the Government, Arts Council England and the Minister today to be even more positive and energetic in supporting and advancing it. It would be sad indeed if the plan were allowed to fall short of its vision because of a lack of energy or commitment, when its success is so important to us all.

8.47 pm

Lord Black of Brentwood (Con): My Lords, I congratulate the noble Lord, Lord Aberdare, on securing this debate. We are all extremely grateful to him for doing so. I declare my interest as a member of the council of the Royal College of Music.

I was lucky enough to have an amazing music education at school, starting with learning the trumpet at the age of nine, and then taking on three other instruments—some of them, it has to be said, to avoid sports lessons, but that is another story—playing in orchestras and ensembles, singing in the choir, and learning the theory and history of music. I could not have wanted for more, and it has become my lifelong passion as a result. But what I—and, I suspect, all noble Lords—want is for every child to have the opportunity to have their life enriched by music in this way. The establishment of the hub programme, on the back of the national plan for music education, goes a long way to achieving that, and the Government are to be congratulated on their support for it.

The Royal College of Music is part of the Tri-borough Music Hub, which covers Kensington and Chelsea, Hammersmith and Fulham and Westminster. Those are three boroughs with wide socio-economic disparities. In maintained schools in those areas, more than half the pupils speak English as an additional language, compared with 15% nationally, and more than 35% of children qualify for free school meals—more than double the national average. That is just the sort of area where the provision of music education for the disadvantaged is most needed. The college, working with the Royal Albert Hall and Aurora Orchestra, along with 30 delivery organisations, provides a hub which was formed in August 2012 and now serves 154 schools and is responsible for the music education of all children aged five to 19 across the three boroughs. It works strategically with all the schools and music teachers to ensure that music in the curriculum is delivered to the highest quality, providing instrumental tuition, Saturday music centres, orchestras, flagship choirs and massed performances.

This hub has been highly successful in delivering the laudable aims set out in the National Plan for Music Education, about which the noble Lord spoke, with a very high proportion of the schools in the area actively engaging with it. However, like all other hubs, it faces challenges. The biggest—I suspect this is likely to be a recurring theme this evening—is certainty of funding, which is much needed. However, that is also impacting across the whole music education sector for the post-2016 period. When looking at future budgets, one thing we need to take much greater account of are the very high costs involved in hiring suitable venues for large-scale rehearsals and concerts, yet these events, which allow children to take part in very big orchestral or choral events, are crucial to a balanced music education.

We also need to ensure that the work that is done is reaching children from disadvantaged backgrounds. There is something of a postcode lottery about the provision of music education—the noble Lord, Lord Aberdare, rightly described it as patchy—and the playing field is still uneven across the UK. Music is a subject

where independent school facilities still far outstrip those of state schools. That is a shame, because we should never forget the key that role music education can play in helping shape and improve the lives of those who have not had the best start in life. It is they who need music the most. At the front of the national plan is a quote from Aristotle:

"Music has a power of forming the character and should therefore be introduced into the education of the young".

It is that spirit which enthused the authors of the report, and it is one that we should be mindful of.

Finally, we have to recognise that the hubs are the start of a journey throughout life for talented young musicians. Some will go on to further study or will make music their careers. They will need continuing support, based on that most expensive educational premise: one-to-one tuition. Here, as your Lordships have discussed before—I am sure this issue arose in the debate initiated by the noble Lord, Lord Lipsey—the role of the conservatoires is absolutely essential. I would be grateful if the Minister, in her closing remarks, would restate the Government's strong commitment in this area—a commitment which is essential to the delivery of a first-class music education for all our children.

8.53 pm

Lord Lipsey (Lab): Perhaps some noble Lords think that music education is a bit of an airy-fairy subject—a "nice-to-have" but not a "must-have". If there is one canard which the debate initiated by the noble Lord, Lord Aberdare, enables us to quash, it is this. Music is not just a "nice-to-have", it is central to good education, as central as maths and English.

Research evidence is conclusive that music improves educational performance. Perhaps I might be permitted to cite one supporting fact. Trinity Laban Conservatoire of Music and Dance, which I have the privilege of chairing, is the second-ranked higher education institution in the country for employment—eat your hearts out Oxford and Cambridge—and 98.9% of our students are in work or further education six months after graduating. Of course, many of them are employed in music.

However, it turns out that a music education is also very attractive to employers because musicians have been taught to work hard, concentrate and set themselves goals, which are just the kind of qualities that makes somebody a good employee. That is as true in schools as it is in conservatoires and universities. Music education is not just a cultural asset, although it is that. It is an economic asset too.

The Motion and speech of the noble Lord, Lord Aberdare, draw attention to the long-term funding of the new music hubs, set up following the excellent report by Darren Henley in 2011. Of course, all our hearts leapt at the £18 million that the Government found in July for music education. First—sorry to look a gift horse in the mouth—that is only for a single year. We have no idea what will happen beyond that year. It has to be put in the context of the slashing of the budgets that went on before—from £82.5 million to £58 million next year, according to the campaign group Protect Music Education. It is not surprising that local authorities are cutting, because they are being cut themselves. We are not spending nearly enough.

It is interesting that both speakers so far have used the word that I was about to use about the performance of the hubs: "patchy". Patchy is it. Some are performing miracles. Others are not. It is certain that the Government's pledge:

"Music education hubs will ensure that every child aged 5-18 has the opportunity to sing and learn a musical instrument, as well as perform as part of an ensemble or choir",

is not being met.

Besides money, two other things would be helpful. The first is investment in leadership development for those people running the hubs. The second—this is particularly important, as the James Rhodes programmes show; I will come back to this—is that you need to educate head teachers and teachers in the value of music. They are under tremendous pressure from Ofsted, the Government and the Michael Goves of this world to show their results in maths and English. That can take their attention away from music, but that music is as central to education as those things. Head teachers need to be taught that.

You cannot get away from it. The heart of the failure is the shortage of funds. I am not sure how many noble Lords saw the Rhodes programme—a wonderful programme introduced by James Rhodes, the concert pianist, whose music, he said, led him away from drug addiction at an early age. He traced many of the problems that are being faced to the lack of instruments. Kids are improvising with toilet rolls and tin cans—Mickey Mouse music. James launched a campaign to get families to root out the instruments from their lofts and cellars. To see on that programme the kids' faces when they received these instruments was a very great joy to behold.

There are so many good people and so many good organisations working in this field. Just to take some that have walked through my door recently in my role as chair of the All-Party Classical Music Group: Future Talent, helping children from particularly deprived backgrounds; Voces Cantabiles Music—excuse my Latin—from the Gresham Centre, working with 20,000 students a year in the UK and internationally; the One-Handed Musical Instrument Trust on which the noble Lord, Lord Aberdare, was kind enough to point out that we had a debate earlier this year. These are people devoted night and day to music. The passionate devotion of many of the hub leaders—not all, but many—is great, but the mountain that has to be climbed remains very steep. At the end of the day, only the Government can resource the base camps which make the ascent possible. That is why we look forward to the forthcoming ministerial response this evening.

8.58 pm

Baroness Walmsley (LD): My Lords, I fear that I am going to agree with all the noble Lords who have spoken—I hope it is not boring, but at least it will be short. I speak as one who cannot remember how to do quadratic equations but whose whole life has been enriched by music and the other arts. My love of these things took root when I was a child and is thanks both

[Baroness Walmsley]
to my parents and to the inspiring teachers at my schools who gave me the opportunity and skills to enable me to sing and act. What I did not realise at the time was that taking part in these things was actually benefiting my academic achievement in other areas. Music is worth studying in its own right and for its wider educational value. It teaches young people how to memorise patterns and musical and verbal phrases, how to work as a team and how practising hard enables them to become really skilled at something. Music also builds up self-confidence and self-control. These skills are hugely beneficial for learning other subjects and in the workplace.

In the second review from Darren Henley—the one on cultural education in England, in 2012—he talked abut the idea that the study of cultural education subjects in schools in itself creates a culture. This is clearly true. The very best schools, with really strong grades in English, maths and science, offer brilliant music, drama and dance, and stunning displays of art and design. I am sure that there is no coincidence in that. However, we need information for head teachers and chairs of governors to ensure that they recognise the value of musical and cultural activities in their schools. The decisions on budgets and funding are usually made at a school level, so those who do not value music are less likely to ensure that it is a vibrant part of school life. The amount of money available to spend on music in primary and secondary school budgets is far, far larger than the money given to music education hubs, so this local spend really matters. I am one of those who, right from the start, has very much regretted that there is no cultural subjects pillar in the English baccalaureate; there really should be. Perhaps it is good that it is falling into disrepute and disuse.

The first Henley report resulted in the music education hubs, as we have heard, and I think that, on the whole, they have been very successful. They have certainly demonstrated success that can be spread around. However, in order for them to continue they need skilled leadership. We need some of the additional money that has been announced to be invested in leadership for the people running those hubs. It is important that we grow a generation of skilled leaders to run the hubs to their full capability. Can my noble friend the Minister confirm that this will be done?

I also join others in making the point about equality of opportunity. There are concerns about progression in music for talented youngsters from financially disadvantaged backgrounds. New research from ABRSM, the exam board of the royal schools of music, shows that children from poorer backgrounds are far less likely to progress through the instrument exam grades than those from better-off homes. This means that we are failing to unlock the talent and potential of these young people, which is a real tragedy. Again, can the Minister tell us whether the Government plan to do anything about this?

Finally, as a resident of Wales, I join the noble Lord, Lord Aberdare, in regretting that the Welsh Government are not providing money for instrument tuition for children. I use the words of Dylan Thomas:

> "Praise the Lord! We are a musical nation".

My husband and I very much enjoy watching the youth Eisteddfodau on the television. The joy on the faces of Welsh children when they sing is quite palpable. Clearly, Welsh children love to sing. What a pity it is that that innate musicality is not supported to develop their talents in instrumental working as well as singing. Unfortunately—well, no; I do not mean "unfortunately" —what I mean is that education in Wales is of course a devolved matter, and so all we can do in your Lordships' House is call on the Welsh Government to do something about what has just been identified.

9.04 pm

Lord Berkeley of Knighton (CB): My Lords, when I made my maiden speech in your Lordships' House I mentioned that one of the most moving experiences I had had recently was to receive a letter from an inmate of Wormwood Scrubs. I had been working with the Koestler Trust to put instruments into prisons. This man wrote to say that he was incredibly grateful to have been able to use a guitar and that had he had this instrument 15 years earlier he probably would not be serving life for murder. In other words, the means of expression that this instrument gave this prisoner was a release of those turbulent feelings that he had. As we have already heard from many noble Lords, research has discovered that even with children who are quite damaged music can often get through where nothing else can.

I too would like to praise the Government for having had the wisdom to find more funds recently and for recognising that the creative industries are a very important part of the economic and social make-up of this country. It is also important to realise for the future that children who are going to be the top players, if you like the top earners, of tomorrow need to start early. They need to get their fingers and muscles adjusted to the strings, for example, of a violin. They need to be playing instruments at the age of five to have any chance of reaching the top echelons. But it is not just the tops echelons in which we are interested, as we have heard. It is the social cohesion that music brings that is so important.

Before I talk a bit more about what has been achieved and what could be achieved, I would like to mention other areas of music. I am sure that the right reverend Prelate who follows me will endorse my plea to help cathedral choirs retain their music. This is such an important part of this country's tradition, whether it be Byrd or Tallis or Blow. These are the great masterworks which are part of our heritage. Hopefully it will continue, with my colleagues creating music for churches in the future.

When the Government produced the Department for Education document about more music for the Arts Council to distribute, as my noble friend Lord Aberdare said, it said something important. I am going to repeat it because it is so important as a mantra. If the Government can keep to this, we will be on the right footing:

> "We expect every child to have the opportunity to sing, play instruments, solo and in groups and to be able to take these skills further if",

through talent or inspiration they so wish.

That is a wonderful starting point, but against it we must look at the conclusions of *Making Music*, by the Associated Board of the Royal Schools of Music. This paid tribute to what has been achieved but also said:

"Although the trajectory over the last 15 years is generally positive, there are"—

your Lordships have heard this before—

"areas of concern: many children and young people have not had access to instrumental lessons, while others have no engagement with formal music tuition after primary school".

What it goes on to say is so important. It says that children from lower socioeconomic groups, just those ones who might turn to violence,

"continue to be significantly disadvantaged compared with their peers from more affluent backgrounds. Sustained, progressive music education tends to be the preserve of children born to wealthier parents".

As we heard from the noble Lord, Lord Black:

"This report shows that adults who had private lessons as children and sat a music exam were much more likely to still play an instrument—and the higher the grade achieved, the more likely they were to continue learning.

The cost of learning to play and of taking lessons is a major barrier and children without access to tuition are significantly less likely to carry on playing. Regional provision is variable and the diverse ways in which learners progress are not necessarily well supported by the sector".

There is good news and bad news. How about looking at one idea that would cost nothing? This would be to say not only to schools but also to Ofsted that we want you to up the importance of music.

9.10 pm

The Lord Bishop of Lichfield: My Lords, I congratulate the noble Lord, Lord Aberdare, on introducing this important and timely short debate. I welcome the national plan for music education, which emphasises the importance of music and the creation of music education hubs in this country, I also welcome the fact that the report has taken note of the recommendations made in the Henley review, perhaps the most comprehensive and thorough review of the state of music education in England for many years. I thank the noble Lord, Lord Berkeley of Knighton, for his support of church music as well.

There are many benefits in the national music plan, some of which we have already heard about. In particular, it gives an overview of funding aimed at providing a more efficient and equitable system than the one which has traditionally been used. Funding is now weighted for deprivation and allocated on a per-pupil basis rather than the traditional postcode lottery operated through local education authorities. These hubs provide an innovative and interesting method of co-ordinating music education and development between pupils, schools and communities. It fosters the kind of networks that are necessary to develop a thriving local music scene, and there are clear targets which everyone can understand. These are all good things; in theory they are extremely encouraging, and indeed I am encouraged. I welcome them wholeheartedly.

However, I agree with noble Lords who have used the word "patchy". In my own diocese of Lichfield, the issue about the hubs is that they are often spread too thinly over very large areas, making it difficult for them to be effective. The Lichfield hub reaches right across Staffordshire and teams up with surrounding hubs in Shropshire and the Black Country. While the hubs themselves are a good thing, and the targets they are to be held accountable to are clear, they do not cope well with the sheer number of children they have to deal with on a regular basis. Although the national music plan ring-fences spending on music education, all noble Lords who spoke before me in the debate cited figures that reveal a recent massive decrease, which somewhat undermines any attempt at planning for the future. More reliable help is needed in this department.

We have heard that numerous studies have been conducted over recent years which show the benefits of singing, playing and listening to music not only to general health and well-being, but also to an individual's mental health. Given the Government's interest in improving the well-being of the public, perhaps I may suggest that increasing access to music and encouraging participation in performance would be one of the simplest and most effective ways of improving the physical and mental health and well-being of the whole population.

Programmes run by the cathedral, such as the choristers' arts programme and the MusicShare concerts, along with the curriculum singing days over the year, make improvements in behaviour, cognitive ability and language plain to see. I offer a big thanks to people such as my director of music at the cathedral, Cathy Lamb, who is for so many people the Gareth Malone of the area, opening up possibilities that they hardly dreamt of.

Music is not just a cultural tradition. Having the opportunity to participate in regular music events enables children to grow in self-confidence. That is the trouble with cutting funds. Over the past year it has been noticeable in Staffordshire that the reduction in availability of the Sing Up campaign has generated a marked deterioration in the general ability of children and young people to engage with and understand music. As cuts are made, the success of instrumental learning and one-to-one music lessons is diminished, which significantly affects the opportunities for students to progress. Recognition of the importance of music in education and for general well-being is essential if it is not to return to being seen as elitist, where only those with surplus money can afford lessons.

The benefits of a high-quality music education for children are numerous and significant, and of particular use for those from disadvantaged backgrounds. If we intend to make any alterations to the national music plan, they should be in the form of an increase in the number of hubs as well as an increase in the regular means of funding for them. This would help to resolve the problems experienced by our local hub in Lichfield. The national plan for music education in schools is not just viable and financially sustainable in the long term, it is, as other noble Lords have said, absolutely necessary for healthy and happy education. It should be extended and improved to help build a happy and prosperous society, where children of all backgrounds can appreciate the benefits of a high-quality music education.

Given the interest in the long-term viability of the national music plan which this debate demonstrates, perhaps I might suggest that there be a review of the

[THE LORD BISHOP OF LICHFIELD]
effectiveness of the national music plan so that its practical implementation can be better understood and improved. Without music, particularly without music in worship, we are only half human. Our children deserve their schools to open the treasure chest for them afresh in each generation.

9.15 pm

Baroness Eaton (Con): My Lords, I thank the noble Lord, Lord Aberdare, for initiating this very interesting debate. I have thoroughly enjoyed the contributions from other noble Lords. I am not a musician, but I can truly say that some of the most enjoyable and fulfilling occasions in my life have involved music: the absolute joy of singing in the Christmas Oratorio, the delight of singing madrigals in an English garden on a summer's day, the pleasure and discipline of playing a violin with an orchestra.

Without my musical education in school, which started at a very early age, I doubt that I would have enjoyed such pleasures. I did not go to an expensive school; I was state educated. At the age of four, we had a percussion band and learnt French time names, and that I found very useful in all the aspects of music in which I have been involved. We learnt the violin in a group session. We were singing in a choir which was selected and trained to sing well for Speech Day. We were given free tickets by the local authority for the Hallé Orchestra concerts. In those days, the director of music of the local authority was very happy to give up his Saturday mornings to take a group of young musicians and train them into an orchestra.

We must not regard the activities that I have just described as being part of life in a bygone era. I share the desire expressed by all noble Lords here today that we wish to see all children enjoying a good music education, because we have heard the benefits that this brings. Learning an instrument, singing in a choir, learning to enjoy listening all have a very important role in children's academic, creative and social development. Others have expressed that very well already in this debate.

It is a grave disservice to our children if music is badly taught and poor-quality performance is accepted. I was at an event recently where a junior-school choir sang to a poor-quality CD of backing music, with no attempt at clear diction or anything tuneful. The fact that the children appeared to enjoy themselves and, as the audience said, looked very sweet, seemed to be regarded as a good result. If we wish to see children enjoying singing and doing it to a high standard, we need go no further than our cathedral choirs, which we have already heard a lot about today. There, the children enjoy it, they have the discipline and the quality and standard are excellent. There is no reason why other children in school should not also achieve excellence.

Many children benefit from excellent music teaching from excellent teachers, but, sadly, this is not the case everywhere. Developing more competent music teachers is essential if our desire to see improved quality and experiences for our children is to happen.

The national plan for music education in England was an ambitious statement of intent and I congratulate the Government on it. I, too, am pleased to hear of the extra resources that have been put into music education. As we have heard, music education hubs were set up to augment music teaching in schools and colleges. Will my noble friend tell the House what monitoring of the performance and progress of the hubs takes place? If there is any underachievement, what actions are taken to improve those hubs? What progress is being made towards the aim of having a qualified music teacher in each school?

9.20 pm

Baroness Uddin (Non-Afl): My Lords, I thank the noble Lord, Lord Aberdare, for allowing me to take part in this interesting debate. It was a rare pleasure to encounter ancient philosophy in the preface to the audacious national plan for music education. The Government's strategy from 2011 cites Plato's words:

> "Music is a moral law. It gives soul to the universe, wings to the mind, and life to everything".

I believe those words. Dare I hope that music was a calming influence on even Michael Gove's period of office in the Department for Education?

Unsurprisingly, there have been numerous studies about how the study of music and instruments benefits the brain. In 2003, Harvard neurologist Gottfried Schlaug identified notable differences in the brains of adult musicians versus non-musicians. More recently, studies at Northwestern University's neuroscience labs in Illinois and Emory University in Atlanta have also pointed to the beneficial effect of childhood exposure to musical instruments, and suggest that playing music as a child can help compensate for cognitive declines in later life.

However, despite the weight of academic evidence about the benefits of music and the former Education Secretary's pronouncement about Plato's view that "Without music, life would be an error", the Government are now countenancing consigning some children to such "erroneous" lives without music. Only three years ago, the Secretary of State for Education gave the assurance that the national plan for music education would achieve the Henley review's guiding principle that:

> "Children from all backgrounds and every part of England should have the opportunity to learn a musical instrument",

and,

> "to learn to sing".

It is reported that provision remains patchy, as the noble Lord, Lord Aberdare, said, and access for all has not been achieved. Ofsted concluded that in the first year of operation, music provision remains weak and poorly led, and it found few examples of good practice in music hubs—brought into existence to improve the quality and consistency of music education—notwithstanding what the mayor has said about what is happening in London, and of course what is happening in Manchester.

Given all the work that remains to be done to realise the promised achievements of the national plan for music education, how can the Department for Education consult on removing the onus from local authorities to support music services? I hope that the Minister will pick up this point. The department's consultation document points to music hubs to pick

up the slack but with downwards budgetary pressure and patchiness of provision, surely this would jeopardise the principle of access for all children and undermine the Government's strategy. Do the Government continue to support the principle that every child should have the chance to learn an instrument?

My work with people with an autism spectrum disorder, and my own family experience, have shown time and again how music can bring joy and peace and improve the quality of life of people for whom speech or social interaction are cumbersome. Autism takes many different forms but is a lifelong condition, believed to affect more than one in 100 people. It often affects verbal communication and social interaction. Some academic studies and a wealth of anecdotal evidence suggest that children with autism often respond very well to music.

As well as benefiting the brain, the study of instruments can calm people and help them to focus. I agree with the noble Baroness, Lady Eaton, that the principle of learning an instrument can improve performance in other areas. Even simply listening can be edifying. Last month, I visited the Tower Project, a day centre for young autistic men and women in Tower Hamlets, where I met a young lady who could not speak but could sing. Music brought her the most happiness during her days at the centre. In these circumstances, music is not a luxury but is essential education.

Only yesterday, the Mayor of Newham told Members of Parliament how he has provided free instruments and tuition in music for all Newham children who wished to access this. I suggest that we should go further at looking at the potential of music education, particularly for people with autism and other developmental conditions. Local authorities, working in tandem with music hubs, are essential agents, given their links to schools and day centres. The onus on them to promote music education must be retained.

The national plan for music education identified that, unlike in art and drama, children with special educational needs are under-represented in music GCSE. What progress has been made in addressing this since the plan was published? How do the Government propose to increase the participation of children with autism and special educational needs in music classes?

I have never belonged to any of the elite music institutions that have thus far been mentioned, but music has been embedded in, and has enlightened, my life. I recall the role that music played in many freedom struggles across the globe, from the protest ballads of Bob Dylan and Joan Baez during the Vietnam War—inspiring a generation of young peace-seekers in the sixties—to the role of Shadhin Bangla Betar Radio belting out to the freedom-seeking citizens, "Amar sonar Bangla ami tomay bhalobasi", the national anthem of Bangladesh, during the Bangladesh liberation war. It was secretly played by my mother, who took a great risk with her otherwise hidden radio, and inspired my generation. I can say with conviction that music can and does have a profound and lasting effect on a national psyche.

To deprive any child of a musical education is, in the spirit of a former Secretary of State for Education and the words of Plato before him, an error. I agree with the noble Lord, Lord Aberdare, and the right reverend Prelate that music education must not become the preserve of those children whose families can afford to pay for music tuition. Indeed, we should do more to harness its potential to improve the quality of life for the many disadvantaged in society. I hope the Minister will give some consideration and attention to this issue, particularly as to how we can safeguard music teaching and ensure that appropriately trained teachers are available to meet the needs of people with disabilities during these times of funding constraints.

9.28 pm

The Earl of Clancarty (CB): My Lords, the key question to ask about music education in schools is this: is the total number of school children from lower income groups leaving primary school who achieve a certain proficiency in the playing of recognised instruments increasing or decreasing? That is the fundamental measure which should tell us whether greater opportunities are being given to children in music education.

It is heart-warming to see all children playing in the school orchestra, but as James Rhodes has noted,

"banging an African drum for 30 minutes once a week for 10 weeks is not a music education".

I would be wary, then, of arguments or statistics that revolve purely around participation.

A parent whose children are accomplished performers suggested to me that there are valid comparisons to be made between playing a musical instrument and participating in sport. Both require students to put in much time and effort in order to be at all good: there are basic skills to be learnt in playing the violin or piano, as in football or netball. These skills need to be taught by teachers who know what they are doing. Children need to be given the opportunity to begin in the early years to have a chance to develop their interest.

In this era of hubs and partnerships, I nevertheless believe that the emphasis still needs to be on the schools themselves and what the Government are doing for schools. That is where policy should be directed. I have, then, concerns about expert charities coming into schools in deprived areas. That is great in the short term for the schools concerned and may indeed help to change a culture, but there are questions. What about the schools that do not have the luxury of being serviced by such a charity? What happens if a charity disappears from the scene? The problem of music hubs being the major policy initiative is that it is too piecemeal and indirect a strategy to deal across the whole country with the underlying problem, which is, quite simply, lack of resources—hence Ofsted's report last year that said there has been "little discernible difference" made to music in more than two-thirds of the schools investigated despite the current large spend on music hubs.

Ultimately, a culture of music education and music making must emanate from the schools themselves. But for this to happen, the Government must provide in all schools money dedicated to instrument buying, money for the specialist staff required—crucially in primary schools—and time for proper tuition, both in performing and listening to music. A school with an inherent culture of music-making and music

[THE EARL OF CLANCARTY]
education—or one encouraged to develop such a culture through the provision of resources—is likely to draw in every child with a potential interest in music. If the schools infrastructure is not addressed then the danger is, as for all arts education, that music will become the preserve of the middle classes, since it is expense—the same thing as lack of resources—that will exclude children from poorer backgrounds.

9.32 pm

Baroness Jones of Whitchurch (Lab): My Lords, first, I very much thank the noble Lord, Lord Aberdare, for tabling this debate this evening. I thank all noble Lords for their excellent contributions. It is clear that across the House we have an understanding of the transformative power of music as well as an impressive unanimity on the challenges to this sector, which I am sure the noble Baroness will address.

Like many noble Lords, we welcomed the Henley report and the subsequent national plan for music. It led many to think that the Government finally understood the real significance of music in our schools and in our culture. Sadly, despite the excellent examples of good practice around the country which we have heard this evening, the overall reality is that the delivery of the national plan remains a source of frustration and disappointment to many. Why is this? We contend that the heart of the problem is inconsistency at government level. At the same time as Michael Gove was signing off the music national plan, he was devising a curriculum review which excluded music from the EBacc at GCSE level. Despite subsequent concessions in 2013, music now has to fight for space in the curriculum in a way it did not in the past. The result is that the numbers taking GCSE music have been dropping, down 9% since the last election.

As we have heard, this inconsistency is further illustrated by the rather precarious nature of the funding of music hubs. Again as we heard, in the three-year period from 2011 to 2014, national funding dropped from £82 million to £58 million. This was compounded by the DfE advising local authorities that they should no longer contribute to music education. While the announcement in July of an extra £18 million for music hubs was welcome, it does not balance the shortfall. As we have heard, this is creating a long-term funding crisis where the hubs feel unable to invest, employ staff or really develop the plans that they are expected to deliver.

Another consequence of this funding dilemma is the increasing evidence that music education is being casualised, with fewer full-time time music teachers working in schools and more working for hubs on zero-hour contracts, trying to supplement their incomes with private tuition and maybe even other less relevant work. The result of this is that the profession is being deskilled, with a lack of investment in music teachers and their continuing professional development as well as a lack of promotion possibilities for music teachers, which cannot be good for the quality of teaching going forward.

Finally, as the reports from Ofsted and the Arts Council have confirmed, the postcode lottery remains. Some music hubs are doing excellent work and others are struggling to make their mark. Some seem to have defined their role as data collectors and others seem to be paying themselves inflated salaries at the expense of improving local provision. At the same time, children from disadvantaged families continue to have less access to quality music education, so we are failing on the central mission of the national plan to extend a good musical education to all children.

We have to ask whether we are confident that the Arts Council has sufficient levers to raise the game of the mediocre music hubs and schools to that of the best. Where will the real drive and authority to meet the original aspirations come from? Will the new cultural education board bring sufficient additional clout to really make a difference? Surely what we need is a guarantee that every child will have a good musical grounding as well as access to watching the best live performers. Surely Ofsted could play a greater part by insisting that no school will be rated outstanding unless it delivers a broad and balanced curriculum, including a central role for the arts and more specifically, music.

I know that we have rehearsed these arguments and that there is a great deal of unanimity this evening. I hope that we have given the Minister sufficient challenges on which to come back and address those many issues. I look forward to her response.

9.37 pm

Baroness Jolly (LD): My Lords, this has been a really delightful debate and I have a huge personal interest in this. The best lesson that I learnt at school was to read music and sing, and it has given me a portable instrument which I have been able to take all around the world with small choirs. I feel that all children should have the same opportunity.

All noble Lords asked about disadvantaged children and music. It is a core role of music education hubs to ensure that every child, regardless of their background, has the opportunity to learn a musical instrument through whole class ensemble teaching, and to help ensure that children from lower income backgrounds have access to instruments and tuition, hubs of discounted instrument hire and lessons for children who are in receipt of free school meals.

I join other noble Lords in thanking the noble Lord, Lord Aberdare, for enabling us to discuss with such expertise—and, it must be said, passion—the national plan for music education and the long-term financial sustainability of the hubs. As I know other noble Lords are aware, there is already much excellent work that we can celebrate following the publication of the plan in November 2011. The 123 hubs which were set up in August 2012, managed by Arts Council England, are working hard to improve the quality and consistency of music education throughout the country. Data from their first academic year of operation showed that, in that first year, hubs gave nearly 500,000 children the opportunity to learn an instrument for the first time as well as working with almost 15,000 school choirs, orchestras or bands.

In order to monitor progress against the plan we have set up a cultural education board chaired by Nick Gibb, Minister of State for School Reform, Ed Vaizey,

Minister of State at the Department for Culture, Media and Sport and Darren Henley, the managing director of Classic FM whose report led to the national plan for music education being adopted.

My noble friend Lady Walmsley and the noble Lords, Lord Aberdare and Lord Lipsey, spoke about music hubs giving a patchy service and asked whether DfE will support hub leadership to improve. Arts Council England is putting in place a system of peer-to-peer support for hub leaders, and DfE is currently considering spending allocations to hubs for 2015-16 and will consider whether some of the money should support training for hub managers. Arts Council England is working with all hubs and directly challenging underperformance as well as supporting hubs to improve.

Noble Lords are aware that the plan provides a vision which extends to 2020 and confirmed three years' funding. Long-term government funding cannot be decided ahead of next year's general election, but we were very pleased to announce in July—several noble Lords referred to this—an extra £18 million for music education in 2015, which takes the total investment to at least £75 million for the next year. In total, £246 million has been provided for the first three and a half years. I have no access to the Prime Minister but, on his pledge to support sport until 2020, I am quite happy to pass the view of the House to the Deputy Prime Minister.

The national plan recognised that central government funding would provide a contribution to the work of music education hubs, rather than being expected to meet the full costs. A key feature of the hubs' role is an increased emphasis on partnership working, and they are expected to attract additional investment from other sources. The pattern is very different across hubs. In one hub, government funding accounted for only 13% of the total. In others, government funding was the sole source. This needs to improve. Arts Council England is supporting hubs to improve their business and brokerage skills so that they can widen their income sources and expand their core services to schools and young people.

Arts Council England is looking at encouraging the spreading of good practice. In response to the comments made by the noble Lords, Lord Lipsey and Lord Aberdare, who both used the word "patchy", hubs are expected to draw in funding from a wide range of sources, such as local authorities, schools, parents and third-sector grants. There are many examples from across the country of hubs securing funding. Noble Lords asked for an example of children in deprived areas. In Hull, the hub has received £10,000 from one council ward to provide bursary funding for local pupils who cannot afford instrumental lessons. East Riding hub is receiving donations of up to £10,000 per year through its engagement with the parent-led Friends of the East Riding Youth Orchestras. In Kirklees, the hub has secured £10,000 from the John Paul Getty foundation to support its orchestral week initiatives.

The noble Lord, Lord Black, talked about the Tri-borough Music Hub north of the Thames. Perhaps it might like to work in partnership with the South London Riverside Partnership, which consists of the hubs of Greenwich, Lambeth, Lewisham and Southwark working together. Those hubs south of the river united their resources and applied for a £99,000 grants for the arts award for a strategic project in partnership with the London Philharmonic Orchestra education team. The BrightSparks education concerts are designed to extend the work of music hubs by providing opportunities for more than 32,000 school children to engage with a symphony orchestra of world-class musicians. The sharing of knowledge, skills and resources between the music hubs and the orchestra has been key to the success of the project so far, helping to raise the profile of the hubs and enabling them to extend and sustain their offer to schools.

It is easy to focus on music education hubs and forget the other elements included in the national plan for music. It is important to be aware that we are continuing to fund the vibrant In Harmony programme, based on the famous El Sistema programme in Venezuela. I listened to the noble Baroness, Lady Eaton. Nothing is new. She was talking about learning the violin in groups, and I can remember my brother doing exactly the same 50 years ago. In Harmony aims to transform the lives of children in six deprived areas: Liverpool, Lambeth, Telford and Wrekin, Newcastle, Nottingham and Leeds.

We are continuing to fund Music for Youth, which provides opportunities for young musicians to perform in some of the UK's most prestigious venues and gives thousands of young people the opportunity to experience a range of high-quality live music. Thousands of London school children had the opportunity to attend the Primary Proms in the Royal Albert Hall earlier this year, and thousands more children from across the UK will have the opportunity to perform in, or to attend, the School Proms which take place next month, again in the Royal Albert Hall.

My noble friend Lord Black asked me, on behalf of the Government, to reaffirm the commitment to conservatoires. The music and dance scheme receives £28 million a year from the DfE and shares the commitment to allowing all pupils the opportunity to fulfil their talents, regardless of income. The noble Lord, Lord Berkeley of Knighton, might be interested to know that one of the recipients of that money is Wells Cathedral School. That sort of tradition is being carried on.

We are continuing to support national youth music organisations such as the National Youth Orchestra of Great Britain. These provide opportunities for talented pupils to perform at the highest level, whatever their family income. As well as funding specific opportunities for pupils, the national plan was designed to improve the infrastructure and there has been progress here too. For example, the level 4 Certificate for Music Educators qualification has been developed by the music education sector to professionalise and acknowledge their role in and out of school. Students can train for the qualification with the Associated Board of the Royal Schools of Music or with Trinity College London. New resources aimed at supporting primary teachers to teach music have been developed and published.

The noble Lord, Lord Aberdare, asked what the Government are doing to support the sharing of good practice; I think that I have covered that reasonably well. My noble friend Lady Walmsley asked about the

[Baroness Jolly]
EBacc; it is one of those chestnuts that keep coming around. Music GCSE continues to be the headline measure of school performance—the five As to Cs including English and maths measure. Reformed accountability measures from 2016 will include eight subjects, including music.

I still have many questions to answer, so I intend to respond by letter to noble Lords whose questions I have not had time to answer. However, we have heard the noble Lord, Lord Berkeley of Knighton, talk about music therapy. This was echoed by the noble Baroness, Lady Uddin, who spoke about autism; of course, she is an expert in that area. There is a need to start early, to train the muscles and get the muscle memory going. There is the mantra of singing with instruments, solos and in groups. We must work at it. There are large events that children gain so much from going to see and take part in; we have spoken about the proms.

The Government cannot act alone. We are working with schools, hubs, local authorities, the music education sector, music charities, commercial organisations and others to support the vision of a high-quality music education for all young people across England. By drawing the organisations together, we are now witnessing the start of a new era of partnership working in the music sector for the long term. I hope that noble Lords will be reassured by the debate—and, I hope, my letter—that the national plan for music education is alive and well and that music hubs will continue to play an increasingly pivotal role in promoting and delivering its aspirations for many years to come.

House adjourned at 9.49 pm.

Grand Committee

Tuesday, 28 October 2014.

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Lord Haskel) (Lab): My Lords, if there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes. I also remind noble Lords that the Committee of the whole House has already considered Clauses 1 to 12 and Schedules 1 to 3. Accordingly, the Grand Committee will start at Clause 13.

Deregulation Bill

Committee (2nd Day)

3.30 pm

Relevant documents: 4th Report from the Constitution Committee, 14th Report (Session 2013–14) from the Joint Committee on Human Rights and 5th Report from the Delegated Powers Committee

Clause 13: Space activity: limit on indemnity required

Amendment 7

Moved by ***Lord Stevenson of Balmacara***

7: Clause 13, page 9, line 38, leave out subsection (1)

Lord Stevenson of Balmacara (Lab): My Lords, this amendment probes the changes to Section 10 of the Outer Space Act 1986, which requires people carrying out certain space activities to indemnify the UK Government against claims arising from their activities. The clause makes provision for limiting the amount of the liability, which until now has been unlimited. We accept that for British companies considering projects in outer space, unlimited liability is very difficult to manage in terms of financing. Given the global nature of space work—no pun intended—this could result in work being lost to other countries. Indeed, one could say other universes but perhaps one should not.

We support the intention of Clause 13, which is to cap the liability at €60 million for the majority of space missions and to give the Secretary of State powers to vary this limit by secondary legislation. However, I have three questions for the Minister. Where precisely in the government accounts will the uncapped portion of the liability, which I assume is a contingent liability, be recorded? Under government accounting rules, does this not score against the deficit? If so, how much will that be in a typical year and will the individual amounts be recorded in the notes?

Secondly, the Explanatory Notes state that a minority of space missions will retain an uncapped liability. What criteria will be used to determine whether to cap or not? When the Minister responds, could he give me some more detail on that? If necessary, he may write to me if he does not have the detail to hand.

Thirdly, I note that the regulation of space activity is currently a reserved item, so it is not a matter for the devolved Administrations in Scotland, Wales and Northern Ireland. Therefore, has this issue been offered to the Smith commission as a possible devolution item? I am sure there would be wide support for Scottish space missions being covered by the new financial powers now available to Scotland or those that are likely to be available in the near future. As a rather more technical question, are there any Barnett consequentials? I beg to move.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley) (Con): My Lords, I thank the noble Lord for his amendment and his questions. The United Kingdom's space sector contributes more than £11 billion a year to our economy, with an average annual growth rate of more than 7%. The sector directly employs more than 34,000 people. The Government are committed to the goal of raising the UK share of the projected £400 billion global space market to 10% by 2030, from approximately 6% currently. The proposed amendment to the Outer Space Act 1986 contained in the Bill is one of the measures designed to help us achieve this ambitious target.

The Outer Space Act 1986 is the legal basis for the regulation of activities in outer space carried out by organisations or individuals established in the United Kingdom, its Crown dependencies and certain Overseas Territories. The aim of the Outer Space Act and its licensing regime is to ensure compliance with the United Kingdom's obligations under international treaties covering the use of outer space. One of these is the liability convention, under which the UK Government are ultimately liable for third-party costs for accidental damage arising from UK space activities. Section 10 of the Outer Space Act 1986 requires licensees to indemnify the Government against liabilities resulting from their space activities. This is an unlimited liability on licensees.

Since it is not possible to insure against unlimited liability, there is a requirement on licensees to obtain third-party liability insurance, usually to a minimum of €60 million for the duration of the licensed activity, with the UK Government a named beneficiary. If a claim were to exceed that amount, the Government could seek to recover the remainder under Section 10 of the Act.

As the noble Lord said, UK space operators have long argued that the unlimited liability placed on them is very difficult to manage in terms of financing. Furthermore, they say that licence conditions relating to insurance place them at a significant disadvantage. Given the global nature of the space industry, this could result in work being lost to countries outside the UK, in particular to countries where operators may not be subject to unlimited liability, such as the USA or France.

The UK Space Agency has reviewed the Act and identified areas where there is room for improvement. In particular, the treatment of contingent liabilities

[Lord De Mauley]
under the Act is now out of date compared with other space-faring nations and other United Kingdom sectors that have comparable contingent liabilities. A public consultation was undertaken and the majority of respondents were positive about the benefits of capping the unlimited liability requirement to €60 million for the majority of missions. The Government therefore decided to undertake a two-part approach to address the industry's concerns. In the first part, we reduced the insurance requirement from £100 million to €60 million. This was well received by the industry. Clause 13, which we are discussing today, is the second part. It amends the Outer Space Act to cap the unlimited liability. This will be managed through the Outer Space Act licensing regime, as the amendments to the Act provide for the Secretary of State to specify the maximum amount of a licensee's liability under the indemnity in each licence.

Our initial intention is to set the cap at €60 million for the majority of missions. Clause 13 gives the Secretary of State the power to set or vary this liability limit on a licence-by-licence basis. This will provide the flexibility to ensure that UK space operators remain competitive internationally without the need to undertake further legislative reform. For example, companies are now developing ever-smaller satellites, such as CubeSats. These offer lower-cost, and possibly lower-risk, access to space, and potential growth opportunities for the UK. For non-standard, high-risk missions we would retain the flexibility to increase the liability cap.

The UK Space Agency is currently reviewing its approach to this emerging class of satellite and this amendment will allow the Government to react quickly if a lower liability cap is appropriate for a particular mission, thereby ensuring the UK industry remains competitive. An impact assessment has been completed and the benefit to business is estimated to be in the region of £13.5 million over 15 years. Clause 13 is designed to balance the risks to the Government arising from UK space activity against the need to enable UK industry to exploit the opportunities available to them.

The noble Lord asked how these liabilities would be represented in the national accounts. I think I shall have to write to him about that. The noble Lord also asked what criteria would be used to determine which missions will be within the cap. As I suggested in my answer, there will be a risk-based approach; we feel it is appropriate to retain the flexibility to set the amounts under the amendment on a case-by-case basis.

The noble Lord asked about the devolution position. We are not planning any change in that area. He kindly said that it was a probing amendment. I hope that that will satisfy him and I ask him to withdraw the amendment.

Lord Stevenson of Balmacara: I thank the Minister for a very full response and for answering two of the questions. The third one about devolution might bear further examination at some other stage, but I am sure that it is way above our respective pay grades, if there are any. On the other hand, I will look with interest at the letter that deals with the way in which these contingent liabilities—which I think the Minister confirmed they were—are going to be recorded in the accounts and whether they have any impact on the deficit. In the mean time, I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Clause 13 agreed.

Clause 14 agreed.

Schedule 4 agreed.

Clause 15: Shippers etc of gas

Amendment 8

Moved by ***Baroness Thornton***

8: Clause 15, page 10, line 25, leave out subsection (1)

Baroness Thornton (Lab): My Lords, I rise to speak to this amendment in place of my noble friend Lady Worthington. It concerns shippers of gas.

The existing regulations for gas importation and storage came into force in 2009 and applied to activities within the offshore area comprising both the UK territorial sea and the area extending beyond the territorial sea designated as a gas importation and storage zone—a GISZ. This clause alters the regulations that currently prohibit the use of an offshore installation for the unloading of gas without a licence.

Under the proposals, a third party wishing to unload their gas at an installation owned by and licensed to another party would not themselves need to be covered by a licence as long as the owners of the facility had the correct licensing documentation. The question that I should like to pose to the Minister concerns the related health and safety legislation and whether that would still apply. Can he tell us what enforcement regime is being considered, if one is necessary? What laws and processes has he put in place to ensure safety in this potentially dangerous area, and how will that enforcement appear on the ground? I beg to move.

Lord De Mauley: My Lords, the purpose of this clause is to correct an oversight in the Energy Act 2008. Sections 2 to 16 of that Act provide for a licensing regime governing the offshore unloading of natural gas from liquefied natural gas tankers to installations sited offshore so that it can then be transported to the UK by subsea pipelines. The intention behind the 2008 Act was to create a streamlined consenting regime for the construction and operation of such an installation, and the key purpose of the licence is to apply appropriate regulation to the construction and operation of the installation. The Secretary of State is responsible for granting licences for this purpose.

Clause 15 will amend an oversight which has led to a duplication of licensing requirements. As things stand, it is not only the company which owns and operates an installation that needs to hold a licence but a company that owns liquefied natural gas and is having it imported into the UK via the unloading installation. This is an unnecessary burden on the gas

trader. Clause 15 will make an amendment to the Energy Act so that a person—the gas trader—who, by agreement, uses an unloading installation does not also require a licence provided that the installation is already operated by another person who has a licence for that purpose.

In answer to the noble Baroness's specific question, all existing legislation in relation to the protection of the environment and health and safety considerations remains unchanged by this change to the Energy Act. I hope that that satisfies her and that she will therefore be prepared to withdraw her amendment.

Baroness Thornton: I thank the Minister for his answer, which has indeed satisfied me. I beg leave to withdraw my amendment.

Amendment 8 withdrawn.

Clause 15 agreed.

3.45 pm

Clause 16: Suppliers of fuel and fireplaces

Amendment 9

Moved by **Lord Grantchester**

9: Clause 16, page 10, line 38, leave out subsection (1)

Lord Grantchester (Lab): My Lords, the relevant clause before us amends Part 3 of the Clean Air Act 1993; these provisions relate to smoke control areas. The Act requires the Secretary of State to publish lists of authorised fuels and exempted fireplaces that can be used in smoke control areas. Currently, this is done through regulations that are updated every six months. Clause 16 removes the need to issue regulations, replacing them with online lists to be published by the Secretary of State, which will be revised,

"as soon as is reasonably practicable after any change is made".

The Secretary of State must keep an up-to-date and easily accessible authorised list on the gov.uk website.

This is a probing amendment. Will the Minister confirm that the criteria for selecting which fuels are considered safe and clean enough to be used will not change? If the clause is designed purely to speed up this process, it is one that we would thereby support. It should not be meant to change the terms or processes for the selection of fuels. It is important that it is made absolutely clear to people that this provision is about speeding things up, as opposed to making any back-door changes to which fuels could be used. I beg to move.

Lord De Mauley: My Lords, the Clean Air Act, which was first introduced to combat the smogs of the 1950s, designates smoke control areas within which it is an offence to emit smoke unless using authorised fuels and/or exempted appliances. Clause 16 amends the procedure by which the Secretary of State specifies authorised fuels and exempted fireplaces. They are currently specified by way of six-monthly statutory instruments, as the noble Lord explained. The clause will enable the Secretary of State to specify the products by publication of a list on the Defra smoke control web pages instead. The list will be published on a monthly basis and therefore reduce the delay that businesses and consumers currently face when new products are brought on to the market. The Act provides local authorities with powers to designate smoke control areas, within which it is an offence if smoke is emitted from a building's chimney unless an authorised fuel or exempt appliance is being used. It is also an offence under the Act to acquire or sell an unauthorised fuel for use in a smoke control area.

The Secretary of State currently has the power under the Clean Air Act 1993 to exempt fireplaces by order and to authorise fuels by regulations, if she is satisfied that such products can be used without producing any smoke or a substantial quantity of smoke. Following assessment by technical experts to ensure compliance with eligibility criteria, the authorised fuels and exempt appliances are specified in statutory instruments which are made every six months. Under the current system, manufacturers face a delay of up to eight months between that assessment and bringing new fuels and fireplaces on to the market because they have to wait for that legislation to be made.

In answer to the noble Lord's question, I confirm that the amendment made by this clause will not change the technical standards that products have to meet to be specified. Applicants will still be required to prove via testing that their products are capable of being used without producing any—or any substantial—quantity of smoke, thus keeping the inherent safeguards for air quality. The technical experts who currently provide advice with regard to the statutory instruments will continue to assess test results and provide recommendations to government with regard to the suitability of products for use in smoke control areas.

The details of specified products in the legislation are highly technical. The authorised fuel schedules are defined in technical terms covering matters such as the composition of the fuels, the manufacturing process, the shape of the fuels and their weight and sulphur content. Similarly, the exempted fireplaces schedules contain highly technical conditions of exemption relating to how individual fireplaces should be used and what fuels should be used in them to qualify for exemption.

It is worth noting that my department is not aware of the smoke control statutory instruments, which have been issued since 1957 and biannually since 1970, having been debated in Parliament on any occasion. The lists published on the internet will be subject to defined and robust audit procedures to ensure the accuracy of the data entered. These will include checks being undertaken and the lists being signed off by senior, responsible Defra staff. The process will enable specified product lists to be updated on a monthly basis.

In addition to including the same level of detail as the statutory instruments, the lists of specified products on the internet will also indicate the dates of new product specifications and of any variations or withdrawals. This is an improvement on the current system where it would be necessary to compare lengthy SIs for consumers and local authorities to identify any changes. Therefore, there is an element of safeguarding

[LORD DE MAULEY]
for consumers as it will ensure that there is legal certainty with respect to which products may or may not be used at any given time. Members of the public without access to the internet will be able to request paper copies of the lists from my department.

The Delegated Powers and Regulatory Reform Committee initially expressed concern over the move from a legislative to an administrative process. However, I understand that it now finds the explanation provided by the Government with regard to the procedures for specifying products and the levels of control that will be in place sufficiently compelling in favour of the amendment—that is, the amendment made by the clause rather than the noble Lord's amendment. It has, however, requested assurance that adequate steps will be taken to ensure that persons who have been lawfully using specified products do not end up inadvertently committing offences as a result of specifications being withdrawn.

The Government would not want to create a situation in which people could inadvertently end up being in breach of the law. A decision to withdraw an approval may take place only if evidence demonstrating that a product is not eligible for use in a smoke control area came to light. Defra has advised that it is not aware of any specified products ever having been removed from the lists previously. Based on this information, while it is possible that a specified product may need to be withdrawn, it would be highly unusual. Given what I have said, I hope that the noble Lord will agree to withdraw his amendment.

Lord Skelmersdale (Con): My Lords, before the noble Lord, Lord Grantchester, does that, and of course he will, perhaps I may say that for more than 10 years in your Lordships' House I was a member of the Joint Committee on Statutory Instruments, although I am not now. With the volume of statutory instruments that goes through that committee, any diminution of those orders is obviously a good thing. Even though, until now, no complaints have been made about individual smokeless fuels or individual smokeless fuel burners, that does not mean that there never will be. In a parliamentary setting—in other words, if the order is to continue—that gives the opportunity for any Member of either House to speak to the order, whether it is an affirmative or a negative. My noble friend did not say which it was and, for the purposes of my argument, it does not particularly matter. When we have this list system, how can anyone, whether a member of the public or a Member of either House, question, for example, a new smokeless fuel?

Lord De Mauley: My Lords, the answer to that is that the inclusion in the published list will be information that the public need. They certainly can contact my department. Ultimately, it would remain subject to judicial review if it ever needed to come to that. The information will be public. All that will happen is that we will streamline the process so as not to clog up my noble friend's committee.

Lord Grantchester: My Lords, I am grateful to the Minister for giving me those assurances and for his comprehensive assessment of the clauses in the Bill. I am very pleased that, from his assurances, the technical standards will continue to be monitored. On this occasion, I am happy to comply with the pleadings of the noble Lord, Lord Skelmersdale, and beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Clause 16 agreed.

Clause 17: Sellers of knitting yarn

Amendment 10

Moved by ***Baroness Thornton***

10: Clause 17, page 11, line 41, leave out subsection (1)

Baroness Thornton: My Lords, I know that this is the amendment that everyone has been waiting for. This is in the Bill because, previously, there was a provision in European law to sell knitting yarn in specified quantities. That has been revoked, so the clause will remove the UK law that specified quantities in UK law and knitting shops will be able to sell yarn by whichever weight or length they choose. I hope that the Benches opposite will join us in celebrating the fact that this is a deregulation of European law, and that they will agree that this is a very good thing. I hope it is not just as a sop to UKIP that the Government are revoking this regulatory law. There is a celebration to be had here of European deregulation, which I hope everyone will agree is a good thing.

Who did the Government consult about this? I know that there is no cost involved in the implementation of this deregulation, but will it benefit business and has there been an assessment of how it will benefit those very important people who run knitwear shops?

Lord De Mauley: My Lords, I entirely share the noble Baroness's celebration of the deregulatory activity of our friends in Brussels. If she did not point this out, I will: this is by no means an isolated example. We have worked, and will continue to, with our European colleagues to reform the law to make it more appropriate for business in the modern age.

Clause 17 on the sellers of knitting yarn is a good example of straightforward deregulation. It scraps the Weights and Measures (Knitting Yarns) Order 1988 and its requirement that non-prepackaged knitting yarn be sold only in prescribed quantities. It will give greater freedom to manufacturers and retailers to decide what quantities of yarn to sell, and will give consumers more choice. Consumer protection will be maintained. The Weights and Measures (Packaged Goods) Regulations 2006 will still require both prepackaged knitting yarn and yarn sold with an enclosing band to be labelled with net weight. This will ensure that consumers can continue to compare prices and quantities when choosing which one to buy.

Clause 17 also makes a consequential technical amendment to the Weights and Measures (Specified Quantities) (Pre-packed Products) Regulations 2009. This measure is entirely deregulatory and, as I think

the noble Baroness said, the costs arising will be zero. Manufacturers and retailers will not be required to change their existing practices or introduce new sizes as a result of this new clause; it will be their choice whether to introduce any new sizes. She asked about consultation. This is part of the Red Tape Challenge and so was subject to consultation through that process. On that basis, I hope that she will agree to withdraw her amendment.

Baroness Thornton: I thank the Minister. If the Red Tape Challenge ran the consultation on this, and if it was anything like some of the other consultations that it has run, it probably involved three people. The clause is probably emblematic of the Act as a whole, which contains lots of minor changes that one hopes might lead to significant growth. On the basis of the Minister's answer, of course I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Clause 17 agreed.

4 pm

Amendment 11

Moved by ***Lord Borwick***

11: After Clause 17, insert the following new Clause—

"Further exemption to Sunday trading hours: garden centres

In Schedule 1 to the Sunday Trading Act 1994 (restrictions on Sunday opening of large shops), in sub-paragraph 3(1), at end insert—

"(l) any garden centre.""

Lord Borwick (Con): My Lords, we know that the Sunday Trading Act 1994 means that any shop with more than 3,000 square feet can be opened for only a restricted number of hours on a Sunday. Smaller shops do not have restricted hours. This was a liberalisation although it was actually a tightening of the rules for garden centres, which now suffer because their products are necessarily spread over larger areas. What makes a garden centre unique is its inability to pile it high, unlike other retailers. Whereas a shop with a small floor space can ensure that it sells as much product as possible on Sunday by bulk stacking, that is not true of a garden centre. The products themselves need space to have light, to grow and to look attractive to potential customers. Stacking bay trees up like baked beans, carnations like cornflakes and tulips like tinned tuna would not be an appealing way to display them.

Most garden centres are family-owned businesses, many of which have been owned by several generations of the same family. There are also relatively few big chains of garden centres, with the biggest being only 140 out of the total of 2,400 or so outlets in the UK. The second biggest has 34 stores. They really are small businesses, which existing Sunday trading laws are trying to protect, so we should be ensuring that garden centres, with unnatural demands on their floor space and a tendency to remain small, family-run businesses, are allowed the same opportunities to trade on Sundays as a small retailer in another sector.

I would argue that this is also about getting people out of their houses and away from their computer screens on a Sunday. We are told that we should keep Sunday special and I agree. But we should not keep Sunday special by restricting freedom on a Sunday. Visits to garden centres should be encouraged alongside visits to church as wonderful things to do on a Sunday—lots of time outdoors with children. who are too often obsessed with their iPads. becoming interested in nature.

I know that there are concerns, not least from the shop workers' union, USDAW, that an amendment seeking to exempt garden centres from Sunday trading laws would create a loophole. Its contention is that the lines would become blurred between what is and what is not a garden centre. What one may have traditionally thought was a garden centre may now sell a wider range of products, so large DIY companies may use a garden centre exemption as a way to open for longer on Sundays. But I am not concerned. According to a survey of its members by the Horticultural Trades Association, around 95% of garden centres have more than 20% of their trading area made up of either outdoor or covered outdoor areas.

Another consistent feature of garden centres is that the roofs of their retail buildings are transparent or translucent—usually glass. That, of course, is to allow for the effective care of live plants, which require light. It would be a huge imposition for other businesses to try to replicate those features to open for a little longer on a Sunday. Indeed, the HTA offered its own definition of what should qualify. It recommends:

"Any retailer which has at least 20% of its total retail footprint made up of outdoor or covered outdoor space, excluding car parking bays, delivery bays or buildings used solely for commercial plant production, or any retailer whose roof's surface area is made up of at least 20% glass or similarly translucent material to enable the effective care and display of live plants".

That seems an eminently reasonable definition. I am sure that the Minister could do even better. Again, the cost, time and burden of converting a DIY shop to fit these requirements, all for a few hours' more trading on a Sunday, would probably not be worth it.

All this goes to show the absurdity of the Sunday trading laws more generally. Nowadays, many workers can go ahead and ply their trade on a Sunday to meet the demand of the customers whom they serve. If cab drivers, barmen and call centre workers want to make some extra cash on a Sunday, there are very few barriers in their way. Why should those people who work in shops above a certain square footage lose out?

Consumers overwhelmingly back change. A ComRes poll in March 2014 found that two-thirds of respondents backed a permanent extension of Sunday trading hours. At present, big supermarket chains create smaller-format stores simply to circumvent the law. The result is higher prices for the consumer, as a study by campaign group Open Sundays shows. The survey measured the difference in price between a basket of goods sold in a store of more than 3,000 square feet and one sold in a convenience store, which is many people's only option on a Sunday afternoon. Prices were anywhere between 7% and 11% higher than in the larger stores. Is that why the Association of Convenience Stores argues against this amendment?

[Lord Borwick]

Throughout the world, the consumer is moving from high street shops to the internet. This is happening at the same time as a move from small shops to large megastores outside town. Charity shops and empty stores now dominate our high streets. If I was a shop worker, I would want my union to combat this trend, because otherwise I would eventually become redundant while our high streets die. Yet USDAW continues to campaign against Sunday trading. Indeed, its campaign could be designed to encourage buyers to use Amazon rather than a shop. The Royal Mail has announced that it is starting to deliver parcels on a Sunday, but why should a buyer not be able to get the same goods personally on a Sunday? Perhaps USDAW should take a leaf out of the postmen's book.

We have to recognise that people have a right to choose where they shop and when, and bring the law up to date with the digital age. I beg to move.

Lord Christopher (Lab): My Lords, my only interest in garden centres is as a customer; I have no other concern. I oppose the amendment. To start to erode the Sunday Trading Act in this way would be a mistake. Perhaps I may quote the right honourable Vince Cable from the time when we were embarking on the Olympics. He said:

"Any move towards the abolition of the UK's Sunday trading laws would require new legislation, a full consultation and extensive parliamentary scrutiny".—[*Official Report*, Commons, 30/4/2012; col. 1293.]

I concede that it is not on all fours, but it is perfectly clear what the right honourable Member meant. The mover of the amendment suggested that there is perhaps much that is wrong with the Sunday trading laws. Okay, let us address that, but we should not make a one-off attempt on this issue.

My second concern—I shall be rather briefer than the noble Lord—is that in moving his amendment, the noble Lord gave definitions, but there is no definition in the new clause that he is proposing. He concentrated substantially on the very small garden centres—which, God willing, will continue—but I know of very few garden centres today, privately owned or company owned, that do not sell a vast range of other commodities, everything from boots and shoes to clothing. Indeed, I have been in some places where they sell stoves and furniture. It would be a great mistake if your Lordships included this amendment in the Bill. It should be returned to, if the noble Lord wishes, as part of a much broader concern, and, in particular, there should be public consultation. The members of USDAW have as much right to say what they would wish as other people who are not intimately involved.

Viscount Trenchard (Con): My Lords, I have not participated in any of the stages of the Bill until now. Nevertheless, with your Lordships' leave, I want to support the amendment proposed by my noble friend Lord Borwick.

I agree with him that Sunday trading restrictions no longer protect small shops to any material extent. Even if large stores were open for longer hours, it would not have a material effect on the prosperity of many small shops. There will always be people who prefer the ease, the intimacy, the convenience and the speed of shopping at the corner shop, even if the prices are a touch higher.

I respect the opinion of those who think differently, such as the noble Lord, Lord Christopher, but this amendment does not seek to remove or alter the current Sunday trading restrictions other than in respect of garden centres. As my noble friend points out, garden centres are completely different. Of course, a proper definition of a garden centre needs to be formulated. However, my experience of shopping at or, rather, visiting a garden centre is that it is good for mind and body. One often walks a considerable distance from the car park to the centre, providing a good opportunity for much needed exercise. A visit to a garden centre can be rewarding and educational. Furthermore, having purchased equipment or plants in the centre, many people hasten home to work in their garden, which, again, is a very healthy and beneficial activity to engage in on a Sunday. I cannot think of any good reason why garden centres, properly defined, should not be exempt from the Sunday trading restrictions. I strongly support the amendment in the name of my noble friend.

Lord Rooker (Lab): My Lords, I have no axe to grind on this but I am not clear about why six hours is not sufficient for garden centres to open. How many extra opening hours are needed? That is the implication of this amendment. I have not quite got my head around it. Should it be eight hours, 10 hours or a free for all and 24 hours? Garden centres have changed. I do not say this very often but I would very much counsel against your Lordships' House sticking this in when the other House has not. I was a Member of the other place when the Sunday trading legislation was going through. I remember that it was the only time a government Bill was defeated at Second Reading. In the middle of Second Reading, the Home Secretary, Douglas Hurd, now the noble Lord, Lord Hurd, was asked: do you promise to put a guillotine on the proceedings of this Bill? He said no. With that, everyone realised that we would be there 24 hours a day, seven days a week, because this one was not going to pass easily. The easy way to get around that was to get rid of the Bill at Second Reading. Later, there was a more sensible Bill. I remember the look on the noble Lord's face when he said that because I was in the Chamber.

I am not sure that I agree with the noble Lord, Lord Borwick, about the Association of Convenience Stores. I do not think that the big stores have opened their smaller shops to get around Sunday trading laws. They have opened the small shops to put the small person out of business. Tesco is a classic example, with its One Stop shops. I did a survey a year ago. I live in Ludlow. I shopped for 25 identical items in Tesco, One Stop and the Co-op. One Stop was 10% more expensive than Tesco. However, you have to look really hard in the Tesco annual report to find that it owns One Stop. Tesco also owns Dobbies, a garden chain, but what is there to prevent Tesco converting Dobbies? Most garden centres have land around them that can be purchased, so they could be extended. I am not clear about the real consequences of this proposal.

Finally, I declare an interest. I live in the middle of Ludlow and I have a garden centre on the other side of my back garden. It is the finest privately owned do-it-yourself chain. It sells white goods and has a kitchen shop. It also sells decorating and cleaning materials, furniture, tools and small electrical items. I have not worked it out but the garden centre part of the shop is probably 50%. To give it a plug, it's called Homecare and is used by everyone.

I have not been lobbied as a Member of your Lordships' House and, as far as I remember, there was no lobbying during the pre-legislative scrutiny of the Bill as it relates to the relaxation of Sunday trading legislation. I therefore counsel the Committee against going down this route, because it is so controversial. If there is to be a relaxation—and I make no case one way or the other—it is highly controversial in respect of the other place. There must be a proper prior consultation with everybody, including customers and the employees concerned.

4.15 pm

The Lord Bishop of St Albans: My Lords, I, too, have concerns about this amendment. I thought that the speech of the noble Lord, Lord Borwick, conceded that this really is about changing Sunday trading laws. It seems to me that the noble Lord was quite explicit about that. This would be one stage in that process. I also noted that he talked about people's right to choose. Part of this issue is precisely about rights: the rights of those who feel they have not been able to choose whether to work or not. That is the issue we are dealing with. I was not involved in the legislation, other than lobbying from outside Parliament more than 20 years ago. However, I remember the complexity of finding a compromise to enable us to move forward: it took a long time.

Noble Lords will not be surprised that I am concerned because I fundamentally believe in the whole structure of creation as a seven-day cycle of work and rest. I believe profoundly that the way that we are undermining that is fundamentally affecting spiritual and mental health and well-being. It is not incidental that, across the world, people work on this seven-day cycle. When I go around my own diocese, talking to people who work in some of the retail industry in Luton and Stevenage, I see the stresses and strains and I find myself talking to people who, unlike us—perhaps with the exception of one person here who works on a Sunday—feel they have very little choice.

There is a mass of evidence that there is something deep within the Judeo-Christian tradition about that rhythm. It has, of course, never been absolute; we have always had nurses working in hospitals. I concede that absolutely. The question is whether we want to change this consensus on the basis of this amendment. We do not live in a country where everybody wants to go to church on a Sunday; we never have done. However, if you just follow the television schedules you must acknowledge that there is a different rhythm in our national life, which reflects something that is bedded in a religious viewpoint but is much deeper than that.

Those who find themselves being pressurised to work very often say that in their interviews it is one of the questions that comes up very quickly: "Are you prepared to work on a Sunday?", Some say that they reply that they would prefer not to and suddenly find that they do not get jobs very easily. Those who do get work find themselves pressurised. This concern to find a way forward, even through this modest amendment, needs more scrutiny.

Of course, it has a certain appeal—I thought the noble Lord, Lord Borwick, played it very well in presenting all the benefits. Should not a family be able to take their children and grandparents on a summer trip to the garden centre? It looks wonderful, does it not? There they are, having their cup of tea and refreshments and so on. The trouble is, as has been pointed out by other speakers, that we do not know what this definition is. It would certainly need a much better defined background if it is to work. I was going to talk more about the question of definition but others have already done so. However, it seems to me that this would give the go-ahead for quite a number of DIY stores with a modest area of plants to be able to open.

I am not at all against garden centres—I am a passionate gardener—but this is not a good way of changing our Sunday trading laws. It would open up a wide range of exemptions and a whole new line of work for all my lawyer friends. If we wish to open up the question of Sunday trading and disrupt the consensus that has held for 20 years, we need to do it in a much more measured way than by an amendment to this Bill.

Baroness Trumpington (Con): My Lords, I do not know whether any of the Committee realise that they are looking at the face of history. All those years ago, I took the Shops Act entirely through the House, the long and the short of it. I have to say that I have listened with extreme interest to the speeches that I have heard today. This issue has come up again at what I would have thought was rather an inappropriate time. I agree with the previous two speakers: this goes against my party's past. I do not know how their minds work now but I agree with what they say. The Shops Act has been of great benefit to a lot of workers and owners, and has provided a lot of pleasure to a lot of people. It is a pity to start mucking about with something that has worked so well for so long; it is unnecessary, and if there were a vote I would vote against it.

Lord Skelmersdale: My Lords, I was in the happy position, as a humble Back-Bencher, of listening to my noble friend on the Front Bench taking that Act through, and I think she would agree that many of the arguments that we heard then have been repeated today by the noble Lords, Lord Christopher and Lord Rooker, and the right reverend Prelate, and she managed to satisfy them then. It is quite clear to me that what goes around comes around, and that today history—to an extent, anyway—is repeating itself.

As I said, 20-odd years ago I supported many of the things in this Bill, but I also supported an amendment similar to that of my noble friend Lord Borwick. I had

[Lord Skelmersdale]
better make the same declaration of non-interest as I did then: although a horticulturalist by training and the director of a mail-order firm in the industry, I have never had anything to do with garden centres other than as a student when I spent three weeks weeding plant pots. We do not even sell to garden centres, so to that extent I have no interest.

The reason why I supported an amendment then, and now, is that I am told by the Horticultural Traders Association that, in the past 20 years, by not allowing garden centres to be totally deregulated, my industry, which employs 28,400 people and contributes £9 billion to the UK economy, has missed out on a vast earning capacity that today amounts to £75 million, which, by virtue of the VAT element of such sales, means a loss of £15 million annually to the Exchequer. At a time when necessary cuts are made every day to public services, I have no doubt that another £15 million would come in very handy.

Tempting though it is, I will not repeat the facts that my noble friend stated in moving his amendment, but I will briefly outline what happened some 20 years ago. The amendment that I supported, and which was passed by your Lordships' House, was to totally deregulate both garden centres and DIY shops. The Members of another place produced a very short reason for disagreeing with your Lordships: they did not consider it,

"desirable to exempt shops of the kind described in the amendment from restrictions on Sunday opening".

It is clear from rereading Commons *Hansard* that MPs of those days believed that the amendment went too far by including shops that sold,

"materials and tools suitable for use in the construction, maintenance, repair or decoration of buildings".—[*Official Report*, 30/6/94; col. 926.]

So Lord Hacking, who moved the original amendment, tabled another applying only to,

"trees, shrubs, plants, bulbs or seeds",

or, "garden supplies or equipment".

In the debate, the House again divided and the amendment was defeated, I believe for the following reasons: first, that on that day your Lordships had lost the opportunity for ping-pong; and secondly, that shops selling those products also—as the noble Lord, Lord Rooker, just pointed out just—sell a whole range of other products, such as books, furniture and paint, to name but a few. It would have been an enormous job for local authority inspectors to ascertain whether the shop in question was "wholly or mainly", to use the words in the Act, selling the products in question.

As I said, all that was 20 years ago. Membership of your Lordships' House has changed drastically in that time and, after several general elections, so has the composition of another place. It is certainly time to ask the Commons once again. I hope that my noble friend will pursue this through to Report. He may well be successful in this House, but I would caution him quite seriously, as noble Lords opposite have done, not to use such a broad term as garden centres. To my mind, the term needs to be refined.

While I am on my feet, I have are two things that I should like to pick up. First, I do not think that the noble Lord, Lord Christopher, appreciated that the words "wholly or mainly" are actually in the Act, so will cover such exemptions. I would say to the noble Lord, Lord Rooker, that, under the Act, shops are allowed to open for only six hours between the hours of 10 am and 6 pm. If I were a gardener, it is quite likely that I would like to go and buy my bulbs, seeds or whatever at 8.30 am or 9 am on a Sunday. That is one of the reasons why deregulation should at the very least be considered in this area.

Lord Judd (Lab): My Lords, this has been an interesting debate. One of the things that strikes me forcefully is that the existing legislation was introduced in the context of a lot of controversy, argument and differing points of view. It has prevailed, to good effect, for a good number of years now, and those who crafted the Bill, introduced it and took it through the House should be commended. It represents the fruitful outcome of consensus-building in an open democracy at its best. We should be very wary of beginning to unpick that consensus and agreement, which involved a lot of hard work, by seemingly innocent little steps in this direction or that. The fact is that the proposed amendment is a breach in the existing law and the principles and understanding that lie behind it.

My second point refers back to my noble friend Lord Christopher. In his significant office and responsibilities, Vincent Cable used very specific words. At the very least, I would expect from the Government in their reply to this debate, in words of one syllable, a statement about whether they are now repudiating the work and undertaking of Vincent Cable and whether coalition policy applies in this sphere. It is quite simple: a Secretary of State has given a solemn and firm undertaking and this Bill runs against that undertaking. From that standpoint, we need a very specific and clear response from the Government in their reply.

For all sorts of reasons, I find myself in line with the thoughts of the right reverend Prelate. But you do not have to come from his position, or indeed mine, to see the social significance of the prevailing legislation. We live in a society that is becoming increasingly boring in the sense that everything is the same all the time and there is a feeling of playing to the lowest common denominator all the time. In the richness of life, the principle of contrast between the six days and the seventh day is very important, whether you are religious or not. It introduces a rhythm into life, which is terribly important for the fulfilment of people psychologically as well as physically.

4.30 pm

In talking about the physical fulfilment of people, I am rather concerned about the standards set for our physical development if we now get our exercise by walking from the car to the garden centre. If that really is what our weekly exercise is about, we are in a pretty desperate situation. Having said that, my wife, in particular, gets quite a lot of exercise from walking about in garden centres, but the point that I am making speaks for itself.

I think we need to be a bit more in touch with the front-line social realities. We are talking about the convenience of consumers. There is a lot of evidence

that a significant number of shop workers who currently work in shops that open on Sundays would much prefer not to be in that position. However, they are under all sorts of pressures to be available for work on a Sunday, and those pressures are increasing all the time. What are the social implications? Very often in families of limited means, Sunday is the only day of the week when the family can get together and the parents can have a bit of time with the children and with each other. It is also a day when it is more difficult to ensure adequate and proper care for your children while you are at work, and that applies particularly to single parents. Such care is not available then.

There is a lot more to be thought through in terms of the tangible, real social implications of legislation of this sort. It is not just a question of convenience for the shopper; there are all sorts of profound implications for people, not least those working within the industry. When we come to the stage in the proceedings when we vote in the House, I will certainly vote against this, as I think it is unwise. It would be very reassuring to hear in the Government's response a firm statement that the consensus, which was so carefully built and crafted and which has served the nation so well, will be preserved and that we are not going to start changing things by the back door. In particular, I want to know—and I am sure that that goes for most people in the Committee—whether the words of the Secretary of State are being honoured or repudiated.

Lord Stevenson of Balmacara: My Lords, this has been a very good and interesting debate. It proves that we were wrong to bank on knitting yarn deregulation to be the star of today's show, although I suspect that we might get a little more of a buzz when we get to byways and highways, and the green and black ones and all the varieties we are going to come to in later amendments. It is probably good that we are dealing with a range of issues today, and of course no debate could possibly be topped if it was addressed by the noble Baroness, Lady Trumpington, whose recollections and memories are all so important to us. We should bear them in mind as we think through this issue.

The amendment would change the Sunday Trading Act to allow an exemption for garden centres undefined. We oppose the amendment because we are concerned that there is significant scope for confusion in defining garden centres. A number of businesses could be included because they sell garden products. However, we also oppose it because we think that such a change would amount to an erosion of the law that has stood the test of time since 1994. That could cause confusion and undermine the legislation as a whole. As the right reverend Prelate the Bishop of St Albans said, the main thesis underlying the speech of the proposer of the amendment was the need to revisit and, if possible, deregulate the whole Sunday Trading Act. Repealing that without going through the process of discussion and debate which, as we have heard, was so much a part of the process of building the consensus around the 1994 Act is obviously something that we would have to think about very hard. This issue is about rights. It is about the rights of some people to keep Sunday special and of those who want to do more with their Sundays. We have, in the words of the noble Lord, Lord Rooker, to be careful about this and take our time to make sure that we get the balance right.

It is important that we get the definitions right. A garden centre can be anything from a very small operation selling plants raised locally to a large store within a much bigger department store. Most garden centres are now large operations that include, as we have heard, indoor and outdoor trading spaces, a wide variety of products, outdoor and indoor furniture, kitchenware, giftware, toys and games. It is hard to distinguish between these multifunctional garden centres and do-it-yourself stores that have large gardening departments, or even supermarkets that sell a wide range of plants and garden products in spring—or all year—sometimes in the car park surrounding the store. Without a definition, we do not know what we are talking about. An exemption for garden centres would therefore inevitably open up loopholes in the Sunday Trading Act and, as we have heard, large stores might seek to have themselves defined as garden centres, as some have already done.

As we have heard, the Sunday trading legislation is a compromise, but it is valued by retailers, employees and consumers. It gives people the opportunity to trade, work and shop on a Sunday but at the same time preserves a sense of Sunday being different from other days of the week. The Government have consulted on this issue three times in this Parliament and have found, as many other surveys have, that the laws have the support of the majority of the public—the latest report that I saw found that 77% supported the current laws—and the majority of the grocery retail community, which is a powerful alliance.

The amendment is premised on the view that if shops were to open for longer, it would be a good thing in terms of the so-called growth agenda, but longer opening hours do not mean that consumers have either the funds or the inclination to buy more goods. That was rather proved in the Olympic period when the Sunday trading hours extension, which was agreed by Parliament, coincided with a 0.4% decline in retail sales in that period. Sunday trading laws also currently provide an important advantage to small stores in a market that is heavily weighted in favour of big supermarkets. Indeed, the removal of Sunday trading legislation temporarily during the Olympics resulted, as we have heard, in a displacement of sales from small stores to large stores.

If the current laws were ever to change, they would need far more scrutiny and due process than is possible with this amendment. The existing Sunday trading laws were put in place after extensive consultation and several years of negotiation with interested parties to build the sort of consensus that has remained in place to date. Any wider change would need the same due process. It is clear that scrapping Sunday trading legislation is not pro-growth and will not deliver higher consumer spending. I hope that the Government will give this short shrift.

Lord De Mauley: My Lords, my noble friend's amendment would relax restrictions on garden centres by adding them to the list of retailers exempted from the Sunday trading regulations. At present, they can

already open for six continuous hours between 10 am and 6 pm. When my wife told me that she wanted a wheelbarrow on Sunday, despite the burdens of office, I was able to acquire one at my local garden centre within that six-hour window and attend church on Sunday morning. This measure would mean that garden centres could open at any time on a Sunday and open on Easter Sunday, from which they are currently prohibited.

Having thought about this carefully, the Government believe, in line with the noble Lord, Lord Rooker, the right reverend Prelate and my noble friend Lady Trumpington, among others—although I could not have put it as eloquently as they did— that the current Sunday trading laws represent a reasonable balance between those who wish to see more opportunity to shop in and sell from large shops on a Sunday, and those who would like to see further restrictions.

Those advancing the case for further liberalisation of the Sunday trading laws claim that there will be worthwhile economic benefits, including an increase in revenue for garden centres. However, as a matter of interest, the evidence to date is not entirely compelling. The ONS's assessment of the liberalisation during the Olympics found no significant growth associated with the longer opening hours during the event. Instead, sales tended to be spread out further over the additional opening hours. Likewise, with this proposed liberalisation, customers may not end up spending more but merely spreading their spending over a longer period.

As my noble friend Lord Skelmersdale mentioned, the industry has talked of a potential £75 million increase in revenue but no details on the increased costs of extended opening have so far been forthcoming. As I have just mentioned, we do, however, have the useful example of the measures taken during the London Olympics. The Government suspended the Sunday trading laws during the Olympics in 2012 so that retailers could take advantage of the unique opportunity that the Games presented. The suspension of the law applied only to the specified period, from 22 July to 9 September 2012. There was an increase in footfall in London but this may merely have reflected increased visitor numbers to the country. An evaluation of the suspension of hours during the Olympics found that the overall sales increases seem to have been modest for large retailers, but that there was in fact a loss of business for the smaller retailers.

Lord Skelmersdale: Perhaps I may be allowed to interrupt my noble friend briefly. During the Olympics, there were of course many people up and down the country watching them on television and many people in the Olympic park who were watching the events live. Does my noble friend not think that that could be a reason for there being no real, material difference in sales during the relaxation which he was talking about?

Lord De Mauley: I am sure that my noble friend has a point and that there were complex factors in several directions. I merely state what happened because it is a recent example of a relaxation of the Sunday trading laws and it may be interesting for noble Lords to hear it.

My noble friend Lord Trenchard asked about the impact on smaller shops at that time. He may be interested to know that the Association of Convenience Stores reported a reduction of as much as 20% in sales over the eight-week Olympic period, and a 30% reduction in footfall. However, I acknowledge what my noble friend has said. During the peak month of August 2012, non-seasonally adjusted national data show that the amount being bought decreased by 2.4%, compared with that July. Over the same period, large stores saw a fall of 3.1% and small stores one of 0.6%. This more than outweighed the benefits to larger London-based competitors, which were the prime beneficiaries. I hope the Committee will understand that such results are at odds with the Government's Small Business Strategy.

It is sometimes argued that the relaxation of constraints on large shops will provide benefits to their smaller brethren by bringing people into the town or shopping centre but most garden centres—or most that I have been to, anyway—are located away from other retail centres. They are out of the centres of towns, so that argument does not apply to them. It is not clear what makes garden centres a special case in the same way as those currently included on the exemption list. Despite what my noble friend Lord Trenchard said, it is not as though people will have a sudden medical need to visit a garden centre, as they might have with, for example, a pharmacy.

Moreover, garden centres have increasingly diversified their products, as the noble Lord, Lord Christopher, said. Many will now sell furniture, pets, food, books, toys and stationery. As such, garden centres are in direct competition with other large stores, which are still constrained by the Sunday trading rules and it would be difficult to justify giving them preferential treatment, particularly so at a time when we are looking at ways to regenerate local high streets. Additionally, there is no obvious mood for change among the public. In a recent study, 77% were found to be happy with the existing rules while, of those who were in favour of change, 56% wanted further restrictions rather than liberalisation.

This exemption would also enable garden centres to open on Easter Sunday. This would be contentious for those who see Easter Day as a highly important religious day, when families should be free to be together. Garden centres say that this is the middle of their busiest period. However, they are already able to open as they wish on three of the four days over that bank holiday weekend. Some smaller family-run garden centres welcome the opportunity to close and to give staff the day off on Easter Day in the knowledge that none of their competitors will be open. Removing that constraint might distort the playing field in favour of bigger national garden centre networks. Consumer spending is such that longer opening hours are unlikely to achieve additional sales.

I am aware of the various campaigns on Sunday trading and I will continue to monitor the response of the public and the market, but we see no significant change in the situation that might suggest the need to reconsider Sunday trading in relation to garden centres or more broadly. I hope that is clear enough to the noble Lord, Lord Judd. On that basis I hope my noble friend will withdraw his amendment.

4.45 pm

Lord Borwick: My Lords, I thank all noble Lords for their contribution. I wonder whether technology is stressing the consensus of 1994, which was formed before the growth of the internet age. In the mean time, however, I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Clause 18: Authorisation of insolvency practitioners

Amendment 12

Moved by ***Baroness Hayter of Kentish Town***

12: Clause 18, page 12, leave out line 18

Baroness Hayter of Kentish Town (Lab): My Lords, I move Amendment 12 but also give notice that I will oppose the Question that Clause 18 stand part of the Bill. I hope that the Government will accept, as a minimum, Amendment 12, even if they cannot accept the bigger—and in my view better—alternative, which is to drop the clause altogether.

The Government have come up with the rather strange idea of partial authorisation for insolvency practitioners. This would split in two the regulation of what is quite a tiny profession—fewer than 2,000 people. You would then have a profession for company insolvencies and a different one for individual insolvencies. On the basis of no evidence whatever, the Government have decided, in effect, to dumb down the specialist profession of insolvency practitioners. By doing so, they risk helping the larger insolvency firms at the expense of smaller companies, over 80% of which do not believe that they would get much benefit from lower training costs. Indeed, 90% said that they would not train a partial licence holder. The Government admitted to R3, which is the professional organisation involved, that the clause was not being introduced to fix a problem and they have cited no evidence of any undercapacity in the market or any evidence of complaints about the current system. The Joint Committee on the draft Bill, which was ably chaired by the noble Lord, Lord Rooker, was worried about the lack of stakeholder consultation on the issue. Subsequent discussions with the industry have not alleviated any of its concerns.

Clause 18 would allow insolvency practitioners to undertake corporate bankruptcies, which will almost always affect the financial status of individuals involved, with absolutely no training or qualifications relevant to the needs of such individuals when they also face insolvency. Indeed, insolvency practitioners very often do not know at the outset of a case, particularly with micro-businesses, whether they are dealing with a corporate bankruptcy or with a personal insolvency, given the involvement of personal guarantees and the nature of the creditors. The clause would harm small firms, two-thirds of which do both corporate and personal insolvency, just when the Government's small business strategy is meant to be helping small firms. They do not like this one. Furthermore, it would add enormous expense to the profession, as it would require the development, the delivery and the oversight of new and additional systems of exam qualification. This would be on the basis of the Government's own estimate that there will be about only 100 such partial licences.

It is hard to imagine how the Government dreamt up this clause. There is no significant demand—we could not find any—for any change. The only suggestion ever to have been around has been for a personal insolvency-only regime, but never for a corporate-only insolvency regime. There is no evidence of there being a group of people who would just love to be IPs and who are dying to enter the market. Indeed, a number of firms are reducing their workforce and there is no evidence for the argument that we need more.

The Insolvency Lawyers' Association has questioned the logic of operating this proposed two-tier, mixed system. Indeed, in a way, it would be a three-tier system because some insolvency practitioners would be licensed to do individual insolvency only, some would opt to do corporate insolvency only and some would qualify to do both. R3, the professional body, which knows rather a lot about insolvency, has serious concerns about this change. It considers that partial licences would have a negative impact on business and individuals seeking financial advice, as well as on the quality and competitiveness of the UK's insolvency regime, which, as I am sure the Minister knows, is assessed by the World Bank as being one of the world's best.

If we look across all the professions, be they doctors, lawyers or accountants, we see that they always start by getting their initial qualification through a broad training that crosses the whole area of their discipline and they then go on to specialise. The Government seem to want to carve insolvency practitioners out of this, making them jump directly to a specialism. Even worse, it could lower standards. Jenny Willott MP, speaking as a Minister in the other House, said that partial licences will reduce a little,

"the high bar on entry to the profession".

That sounds to me like a dumbing-down.

We are talking about people's futures—whether jobs are to be saved or a company liquidated, whether it can be sold off so that some of those jobs can be retained, whether individuals will be made bankrupt, whether creditors will get back money that they have already sent to the insolvent company, whether someone with unsupportable debts can be helped to find a way through or whether a company can be sold to someone else who can keep at least some of it running as an ongoing concern. These are big issues that affect people's futures.

The clause is misguided; it is unnecessary; and it has been criticised by the profession and other stakeholders. The Government would do well just to withdraw it gracefully rather than be forced to do so. My guess is that the clause would never be commenced and that wiser heads would finally prevail. The provision may be in law but I doubt that it would ever be put into practice, so better perhaps to lift the threat now. I beg to move.

The Advocate-General for Scotland (Lord Wallace of Tankerness) (LD): My Lords, I thank the noble Baroness, Lady Hayter, for moving her amendment

[LORD WALLACE OF TANKERNESS]
and speaking to Clause 18. When I came into the Grand Committee—I think that it was during the debate on Amendment 10—I saw the Benches absolutely crowded and I thought, "I didn't realise insolvency practitioners commanded such interest, not even on a Sunday".

The noble Baroness made some important points, which I will certainly seek to address, although I think that I will disappoint her, because neither do I feel able to indicate that the Government will accept the amendment nor do they have an intention to withdraw the clause. As she pointed out, Clause 18 will amend the law by introducing a new regime for the partial authorisation of insolvency practitioners. In future, those wishing to become insolvency practitioners will be able to qualify in relation to personal insolvency cases only, in relation to corporate insolvency cases only or in relation to both, as is currently the case.

The effect of the noble Baroness's amendment would be to allow insolvency practitioners to be partially authorised but only in relation to individual insolvency. As I will come on to when I discuss the clause itself, partial authorisation will remove barriers to entry for those who wish to specialise in just the one discipline. However, I make it very clear that it is not the Government's intention to restrict this opportunity only to those who wish to deal with individual insolvency. We believe that there should be an opportunity to specialise in individual insolvency, in company insolvency or, and as things stand at the moment, in both. There is no compulsion here; it would be the choice of those wishing to pursue a career as an insolvency practitioner.

The insolvency body R3, to which the noble Baroness referred and which, I acknowledge, is opposed to partial authorisation, has told the Government that 27% of insolvency practitioners work in firms that specialise in corporate insolvency. This compares with 5% who work in firms that deal only with individual insolvency.

The noble Baroness said that take-up of the measure will be small and she asked why we should proceed with it. Existing insolvency practitioners who have gained authorisation for both personal and corporate matters want to continue to cover both areas, but that will not necessarily be the case for new entrants. The Government believe that partial authorisation will be attractive to a minority within the profession who, by focusing on a specific sector or on specific clients, will find that partial authorisation allows them to take appointments in the types of insolvencies that they deal with.

We believe that the changes proposed in Clause 18 will result in lower entry costs into the profession for those who seek partial authorisation and that they will, over time, increase competition and lower fees. That, in turn, can lead to improved returns to creditors in insolvencies. That was certainly my experience when I was a Member of Parliament dealing with companies and small businesses that were often at the receiving end when larger companies went into administration. Very often, it is small businesses that suffer the most when there is an insolvency. If we can improve returns to creditors, including many small businesses, that must surely be a good thing.

It is important to have highly skilled professionals. While we are talking about partial authorisation, company insolvency practitioners and those engaged in personal insolvency matters require a full authorisation. I cannot accept what the noble Baroness says about this being a dumbing-down. Those who pursue that one part of the profession will have a full qualification and therefore I cannot accept that this is about lowering standards. It is important to have highly skilled professionals. We must not forget that imposing unnecessary regulatory burdens on entry into a profession itself has a detrimental impact, particularly on the public, who pay for the services of such professionals.

The noble Baroness mentioned exams and seemed to think that there would be an increased cost. I suspect that if someone is aspiring to become an insolvency practitioner and there are fewer exams to take, there will be a lesser cost for that individual. With regard to exams, I make it clear that the Insolvency Act 1986 provides that the recognised professional bodies that authorise and regulate insolvency practitioners must have in place rules to ensure that insolvency practitioners meet acceptable requirements in relation to education, practical training and experience. A memorandum of understanding between the Secretary of State and the regulators that underpins the Insolvency Act requirements provides that applicants for authorisation must hold a pass in the Joint Insolvency Examination Board exams. I assure the Committee that officials will work with the profession to modify the current exam structure to ensure that partially authorised insolvency practitioners can demonstrate a broad knowledge of both disciplines. The exam structure will obviously have to change, but I cannot see that it is going to lead to the greatly increased costs that the noble Baroness indicated.

As I said, Clause 18 is not about lowering standards; it is about setting appropriate standards. We are asking: why should someone who deals with only personal bankruptcy and individual voluntary arrangements have to know about the finer details of corporate administrations, unless of course they choose to do so? If they do, then of course that choice will still be there. For those insolvency practitioners who at present choose to practise only in corporate or only in personal insolvency, the time and money spent studying an area in which they do not practise will add little or no value to the service that they offer their clients.

5 pm

Many individuals in debt do not need advice at the same time on corporate insolvency. In 2013, there were a total of 101,049 personal insolvencies in England and Wales. In contrast, there were 18,841 corporate insolvencies. Despite those two very different figures, the insolvency practitioners who dealt with those 100,000 personal insolvencies, many of which involved no business affairs or any matters requiring specialist corporate insolvency knowledge, had to study corporate matters before they could gain their qualification. That means that many of those who set out to qualify take longer to do so, some ultimately giving up on the way. For those who work in firms that specialise in one area of insolvency, the lack of practical experience in the other area can make it difficult to pass professional

examinations if they are studying at the same time as pursuing their training in a particular company. That, too, is clear barrier to entry.

I think that the noble Baroness said that the figure was somewhat under 2,000. My understanding is that the figure for those who take appointments is quite a bit lower, at 1,350. This number has not changed much in recent years. We recognise that many will still want to be authorised for both corporate and personal, but we think that it is useful for those who wish to specialise to be allowed to do so. The noble Baroness also said that it would do nothing to help small firms and that only large firms would be able to take advantage. I have already indicated the advantages and the benefits that might feed through to small firms that are creditors in insolvency cases. The changes will reduce the cost of training for applicants who wish to specialise. Savings on training and examination fees are likely to be of proportionally greater benefit to smaller firms of insolvency practitioners. Larger firms tend to charge higher fees for their services and typically are set up to deal with higher-value insolvencies. Businesses looking for lower-cost advice will benefit from greater competition in the middle market and among smaller firms.

Ultimately, this clause gives aspiring insolvency practitioners a choice. As I have said, many will continue to choose full authorisation for personal and corporate insolvency work and, for those who do, the status quo will remain. Those who choose to specialise will benefit from lower-cost entry into the profession. In each case, they will be required to reach high standards in personal insolvency, if that is the area that they choose, or corporate insolvency if they choose that route.

We acknowledge the excellent work done by insolvency practitioners. I think that the noble Baroness mentioned the high ranking accorded to insolvency practitioners in the United Kingdom. They do valuable work to facilitate business rescue and they ensure that businesses with viable futures are allowed to go forward and grow despite short-term financial difficulties. Insolvency practitioners go about their work with huge skill and care and they make a significant contribution to the economy. Nothing in this clause detracts from that. The clause opens up greater choice, which I believe will bring greater benefit. I therefore ask the noble Baroness to withdraw her amendment and not press her opposition to Clause 18 standing part of the Bill.

Lord Rooker: My Lords, having listened to the Minister, I should like to raise a couple of minor issues. Before Report, it would be extremely helpful for the House to have a list of insolvency practitioners who support this proposal. Paragraph 214 of the Joint Committee on the Draft Deregulation Bill's report states that it was told,

"that there was 'broad support' for the clause from a range of stakeholders, including some practitioners themselves".

We did not receive evidence to reflect that view. In a way, part of our problem was that we had only one side of the story. I am not out to cause trouble by saying that it is clear that this clause started life under the previous Labour Government. No one ever says that, but it is true. In March 2010, before the general election, the Insolvency Service sent a consultation letter to all key stakeholders inviting views on the specialist authorisation proposals. Indeed, there was a consultation meeting in April 2010. We did not explore this in the committee and it is a big issue. We had information from the Law Society and I think that we had information from Scotland as well, but the fact is that we did not delve too deeply into where this came from. The minute I see red tape challenged these days I dismiss it because I think it is a farce. However, given that this started life under the previous Labour Government, it might have had some merit. While the papers are not available to the present Administration, it would be useful to ask the then Ministers—I do not know who they were—why they started on this journey before 2010. There must have been a reason to trigger this thing so long ago. It has not just turned up in the Bill after trawling around Whitehall; it started life before the general election. We failed to ask why in the Joint Committee but I am asking that question now.

Lord Sharkey (LD): My Lords, to take up some of the points made by the noble Lord, Lord Rooker, the Joint Committee noted that there appeared to be some confusion about the extent of consultation on this clause. We recommended that there be further consultation on what was then Clause 9. In their response to the Joint Committee's report in January this year, the Government took the opportunity to repeat the arguments in favour of the clause in some detail. They also stated in paragraph 116 that,

"following the Committee's recommendation, the Government is inviting any further views on this Clause during the passage of the Bill".

How did the Government go about soliciting these further views? Who did they invite to give those views and what was the general burden of any of those responses that were made after the Government's response?

As things stood when the Joint Committee reported, we did not feel that there had been sufficient consultation, as the noble Lord, Lord Rooker, was saying, to enable us to express a firm view on the merits of the clause. I note what the Government have said, but I also note the case put forward by R3. In particular, I note R3's view that partial licences are not being introduced to fix a problem. It claims that there is insufficient evidence of undercapacity in the market and no evidence that the current regime causes concerns about the quality of the advice given. Essentially, it asserts that the system is not broken and asks why the Government are trying to fix it.

The Government, in their turn, advance two reasons for reform. The first is that the partial licences will benefit insolvency practices of all sizes and the personal insolvency market as a whole. R3 has advanced survey data that it says refutes these claims. Secondly, the Government say that partial licences will increase competition, decrease training costs, lower fees and deregulate access to the IP profession. R3 maintains that there is no evidence of the need for more IPs; in fact, it claims that the market is oversupplied. It also challenges the Government's other assertions.

All this illustrates the position that the Joint Committee found itself in during December. There are competing claims, somewhat unevidenced, and a narrow consultation base, while the Government have

not provided an impact assessment on this clause. It would be easier to make a judgment on the merits of the clause if we knew more and had more evidence. There is a strong case for the Government to agree to further substantive consultation on this issue before we reach a conclusion.

Lord Wallace of Tankerness: My Lords, I say first to the noble Lord, Lord Rooker, that I did not mention that the provision had started life under the previous Labour Government because I did not know that until he informed me of it. Of course, not everything that the previous Labour Government did was wrong, as I recall from going through the Lobbies at times in your Lordships' House. I will take the point that the noble Lord makes and find out just who was behind that, if I might make that inquiry.

There were some specific questions asked and I will certainly respond in writing to those who have contributed to this debate. However, it is also important to make the point that existing insolvency practitioners are, by the very nature of their business and profession at the moment, people who are qualified in corporate and personal insolvency. I understand that my noble friend Lord De Mauley has in the past been an insolvency practitioner and he has indicated that these are two different specialisations. Clearly, however, the practitioners are duly qualified and may well question why everyone coming behind them should not go through the same route that they followed.

It may well be, as we believe, that aspiring insolvency practitioners have shown a desire for some partial authorisation. A survey of members of the Insolvency Practitioners Association showed that non-IP members were in favour of this. It would be wrong to go so far as to say that there is an element of protectionism here. However, one of my arguments is that we are looking at people who want to come into the profession—by their nature they are not already there, giving their views—and there are many benefits to allowing that specialisation.

Since I stood up, I have received a further response to the noble Lord, Lord Rooker. I understand that this clause is a development of a policy started under the previous Government. An earlier version of it was proposed for inclusion in a legislative reform order, although the measure was withdrawn and, in the event, the order did not proceed. I will not to try to decipher this note further in case I get it wrong—I will write to the noble Lord.

With regard to the question from my noble friend Lord Sharkey, on 23 January the Government, on the recommendation of the Joint Committee, launched further consultation on whether any changes were required to what is now Clause 18. Responses were considered and included representations from insolvency practitioners, creditor representatives and others. I am not sure whether the responses have been published or whether there is any intention to do so, but perhaps I could write further to my noble friend and give him a flavour of the responses before Report.

My point is that we are dealing with people who are looking to the future and may aspire to a career as an insolvency practitioner but who do not particularly want to take on the whole gamut of it, preferring to specialise in one form or the other.

Baroness Hayter of Kentish Town: My Lords, perhaps I should mention—though it is not an interest, being from so long ago—that I was a member of the Insolvency Practices Council, which oversaw insolvency practitioners. I was there as a consumer, not as a trade union member, of the noble collection of insolvency practitioners.

One of the strange things is that this is a deregulation Bill, but it is going to create a new system of exams, oversight and monitoring. That is somewhat odd in a deregulation Bill, but that is beside the point. The assertion is made that it will attract new entrants, without any evidence. The assertion is made that IP fees will be reduced, without any evidence. The assertion is made that training costs will be reduced. Actually, the main training provider, BPP, has to apply its overheads across the exams, so the cost per exam will go up even if you do two exams rather than three. These are assertions, not evidence.

When I was involved in this area—this may answer the question posed by the noble Lord, Lord Rooker, though not to me—there had been suggestions about a personal insolvency-only regime, never a corporate insolvency-only regime. The idea was that people working in debt management companies in particular might want a personal insolvency-only regime. However, despite the fact that I spoke on this at Second Reading and have had lots of lobbying and approaches from everyone else, none of the debt counselling people has approached me to support the idea of a single licence. There has been silence on that. However, it explains why the amendment would be to allow a personal-only insolvency regime. None the less, I remain worried about the idea of a corporate-only insolvency regime, whereby people dealing with corporates would have no training in personal insolvency. It is an issue that we may want the Government to reconsider, but for the moment I beg leave to withdraw.

Amendment 12 withdrawn.

Clause 18 agreed.

Clause 19 agreed.

Schedule 5 agreed.

Clause 20 agreed.

Schedule 6 agreed.

5.15 pm

Amendment 13

Moved by ***Lord Grantchester***

13: Before Clause 21, insert the following new Clause—

"Rights of way: annual report

The Secretary of State must prepare and publish an annual report on—

(a) the implementation of the changes introduced by sections 21 to 27; and

(b) the effectiveness of the changes introduced by sections 21 to 27,

and must lay a copy of the report before both Houses of Parliament."

Lord Grantchester: My Lords, public right-of-way legislation is complex, often archaic and certainly plentiful. Looking around the Committee today, I notice that there may well be previous Ministers of Agriculture in the Room who put some of this legislation through. It all builds into an important picture that needs some clarity, and I am very pleased that certain aspects of this are in this Deregulation Bill. They cover important aspects of the Wildlife and Countryside Act 1981, the Highways Act 1980 and the Countryside and Rights of Way Act 2000, building on the National Parks and Access to the Countryside Act 1949.

I declare my interest from the register as an owner of farmland in Cheshire over which there are a number of footpaths. These are not controversial; they are intermittently walked and do not cause disruption to farming operations. However, across the country the situation is considerably less clear. Under the 1949 Act, local authorities are required to produce a definitive map and statement of public rights of way. This is taking some time and continues, such that in the Countryside and Rights of Way Act 2000 a cut-off date of 2026 was introduced, after which routes pre-existing 1949 cannot be added to the definitive map.

Not only is the process of registration slow and complex, certain elements of the legislation have yet to be implemented and are considered to be flawed. In 2008 a stakeholder working group was set up by Natural England with membership drawn up from public access user groups and land management and business interests, including farming, and the local authorities. In 2010 it produced the *Stepping Forward* report, which proposed the changes that we are discussing today around the procedures introduced in the various legislation.

The stakeholder working group is to be commended on finding and building consensus around the main interested parties to recommend these changes as a package, to streamline the process and to make quicker progress, even though there may appear to be plenty of time until 2026. Some of the recommendations will no doubt help farmers to manage access safely, others will help to bring clarity to user groups and a large number will aid local authorities in bringing forward proposals to reduce confrontation and red tape. The approach from these Benches is to retain this consensus and build on it. The stakeholder working group is still continuing and, with these proposals agreed and implemented through the Bill, it can press forward in addressing further problems and bring these forward as quickly as possible.

Meanwhile, there is the task of following up on these proposals. The amendment before the Committee today is to do just this and annually publish a report on how effective this process has now become, how much quicker applications have become to deal with and any unforeseen issues that have arisen. The whole of Schedule 7 defines the new speedier and more streamlined process, but will it find snags? For example, paragraphs 4 to 6 of the schedule change the procedure for initiating action in the magistrate's court. That procedure has charges applied to it, and these charges for initiating court action have increased substantially. Will this become a deterrent to the effective working of this provision?

Clause 26 opens the way for full cost recovery from a landowner seeking an order. The effect will need to be carefully monitored. Clause 24 revisits the CROW Act 2000 to correct those perceived flaws. It is important that the impact of this so-called right to apply for orders, both on local authority workloads and on the network itself, is properly monitored. The amendment would enable this and other measures to be monitored and their operations made transparent to ensure that the stakeholder working group is working on the right track.

One effect of the amendment would be to continue to build the esteem of the stakeholder working group and encourage it to continue trying to seek consensus on the most controversial aspects of our rights of way. It should be an important aid to the Minister in communicating the effectiveness of the process to draw up a definitive map and statement of public rights of way, and he should welcome it. I beg to move.

Lord De Mauley: My Lords, before I start, like the noble Lord, Lord Grantchester, I should declare an interest in that I am the owner of land over which pass public rights of way.

Perhaps I may also say by way of preamble that the rights of way reforms package, of which Clauses 21 to 27 will form the basis, is founded on the recommendations of the independently chaired stakeholder working group on unrecorded rights of way. The group consists of 15 members—five from each of the key sectors: local authorities, landowners and rights of way users. It contains members of the Ramblers, the British Horse Society, the National Farmers' Union, the Country Land and Business Association, the National Association of Local Councils and the Local Government Association. I may say a bit more about that in a debate on a later group of amendments.

Amendment 13, in the name of the noble Lord, Lord Grantchester, seeks to ensure that the Government monitor the success or otherwise of the rights of way reform package after implementation. That is a worthy objective and one with which I have no disagreement. That is why the Government have already given a commitment that they will arrange for the stakeholder working group to carry out a review. We said in the other place during the Committee stage that,

"the stakeholder working group's advice will be sought on the constitution of the review panel, as was set out in another of the group's proposals. The panel will be able to advise on how well the reforms are working and whether any further measures need to be taken before the cut-off date".—[*Official Report*, Commons, Deregulation Bill Committee, 6/3/14; col. 238.]

While it is important to monitor the implementation and effectiveness of the rights of way clauses, it seems ironic to use a deregulatory Bill to impose on government and, in turn, on local authorities the statutory burden of making a formal report to Parliament. The additional

[Lord De Mauley]
bureaucracy that such a formal reporting mechanism would create runs contrary to the aims of this Bill. Indeed, the proposal runs contrary to the recommendations of the stakeholder working group itself. In its proposal 21, the group said:

"A stakeholder review panel should be constituted after implementation of the Group's proposals to review progress with recording or protecting useful or potentially useful pre-1949 rights of way before the cut-off".

Since the stakeholder working group has shown itself to be so effective in working together to develop solutions, I suggest that it would be wrong not to entrust the group with advising on the most appropriate mechanism for carrying out a review of the reforms. It is in the interests of each of the stakeholders on the group that they do so. On that basis, I hope that I can persuade the noble Lord to withdraw his amendment.

Lord Grantchester: I thank the Minister for certain of those clarifications but I should like to press him on the further work of the stakeholder working group. While the amendment limits the annual assessment to a report on the measures in the Bill, it would be helpful if the Minister could clarify any further aspects of this group and how he sees further progress being made. Having confirmed that it will continue, does he believe that its membership is sufficiently widely drawn to tackle more controversial aspects, and will the group be encouraged to come forward with proposals in a timely manner? Even though this is a long way ahead, we are aware of the urgency to make progress, as we will see in debates on further amendments that will be coming up shortly. It would be extremely interesting to hear how the working group may approach the more controversial aspects. The noble Lord should be mindful that we may well return to this at a later date, having considered further debate on the amendments. We reserve judgment about how appropriate it is that the Deregulation Bill should include a proposal to monitor its work going forward.

Lord De Mauley: I think that I have explained that the stakeholder working group is quite broadly constituted in its membership. It has tackled some pretty contentious issues successfully, and I hope the noble Lord will accept that. In terms of how it will work as this goes forward, once all the rights of way reforms have been put in place in both primary and secondary legislation, that group can start preparing a review. Of course, any review by that group will be published by Defra and put on its website. I hope that that helps the noble Lord.

Lord Grantchester: I thank the Minister for his further clarifications. While it is a complex and controversial area that we may revisit at a later stage, in the mean time, I beg leave to withdraw the amendment.

Amendment 13 withdrawn.

Clauses 20 to 23 agreed.

Amendment 14

Moved by ***Lord Skelmersdale***

14: After Clause 23, insert the following new Clause—

"Presumed extinguishment of intrusive byways open to all traffic in limited circumstances

In section 116 of the Highways Act 1980 (power of magistrates' court to authorise stopping up or diversion of highway), after subsection (1) insert—

"(1A) Where a byway open to all traffic passes through the curtilage of a residential dwelling including the gardens and driveways of the premises it is presumed that diversion of the highway so that it does not so pass will make the path more commodious and that the highway is unnecessary unless the court is satisfied that—

(a) the privacy, safety or security of the premises are not adversely affected by the existence or use of the path; or

(b) the path or way provides access to a vital local service or amenity not otherwise reasonably accessible.

(1B) In exercising the powers under this section, the authority and the court shall have particular regard to the presumption that a byway open to all traffic should not pass through the curtilage of residential premises including the gardens and driveways of the premises.

(1C) A "byway open to all traffic" means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used mainly for the purposes for which footpaths and bridleways are so used.""

Lord Skelmersdale: My Lords, in moving this amendment, I will also speak to my other amendments and most of those of my noble friend Lady Byford, which encapsulate mine with major additions. I apologise, therefore, for my long-windedness in seeking to add three new clauses to the Bill. The trouble is that three sections of the Highways Act 1980 are involved.

England has around 18,000 miles of rights of way, which these days are used mostly for recreational purposes. A minority of these pass through gardens. Last weekend, I was walking in Dorset and just before the Recess I was walking on the Quantock Hills in Somerset. Both these walks, as it happens, were through farms and on common land. In a later amendment, I will have something to say about common land.

The Somerset walk took me past a farm in which it would be quite easy to look into the windows had I so wanted. Most people are uncomfortable walking through someone's garden or alongside a house in the country. However, there is, alas, a minority of walkers who are not so respectful of other people's property and it means that anyone with a right of way through their property has no right to privacy, security or safety. Young children cannot be allowed to play in their own garden unaccompanied; nor can family pets be allowed to roam freely. There is not even a legal right to have a gate, which is something that I hope we can deal with in a later amendment to the Bill.

In essence, the family home cannot be used as a family home as the Committee would understand it. This means that, as we continue to develop as a country, the situation gets worse for those afflicted. They have no legal defence against theft or vandalism. Criminals can legally wander around to assess a property for burglary and come back to isolated properties when they are unattended. There are numerous examples

of walkers peering through the window at those sitting down for a family lunch, and of unleashed dogs running around a domestic garden and chasing resident dogs, killing chickens, ducks, or cats, defecating and so forth. Sunbathing in the garden, having lunch on the patio or a child's birthday party take on totally different dimensions in these circumstances. Currently, the homeowner has no legal right to apply for a diversion or extinguishment and lives in a permanent trap. The stress and the financial hardship involved in employing specialist lawyers, only to learn that one has virtually no legal rights, have led to illness, mental breakdowns and at least two suicides. The financial resources required to get expert legal help runs beyond most ordinary people's means and makes justice unaffordable.

5.30 pm

The Minister in another place, Defra and the Law Commission all acknowledge that there is a problem that needs dealing with, but say, "Let's see what happens with the proposal in the Bill for new guidance on giving the right to apply to and ultimately, in specific circumstances, to appeal to the Secretary of State". The problem is that it will take some years before we discover whether the new draft guidance on the right to apply for diversion or extinguishment of rights of way that pass through gardens, farmyards and commercial premises works. The guidance is not even statutory, and I can see the Secretary of State being overwhelmed by appeals.

Why is this? In the current government-proposed solution, the public interest is in legislation and the family home interest—privacy, security and safety, as I have mentioned—is in guidance. They do not have equal weighting. In the proposed solution, the full local authority cost is to be passed to the applicant—in other words, the ordinary family home owner. There is no cap. The potential cost could be beyond many ordinary people. The proposed solution therefore will not work.

What is needed to solve this dilemma is a legal presumption in favour of extinguishment or diversion, not the "wait and see" attitude from the Government and advocated not only in the brief from the Open Spaces Society but also by the specialist working group that my noble friend referred to just now. I beg to move.

Baroness Byford (Con): My Lords, I welcome the opportunity to speak to my amendments, which are linked with that proposed by my noble friend Lord Skelmersdale. I support his amendment, but it focuses on a narrower base than mine. I must first record my family farming interests and my membership of the CLA, and the fact that we have paths across our farm. The CLA still has concerns about the Bill.

I was sorry not to be available for Second Reading, although I read *Hansard* with great interest. I will not make a Second Reading speech, but wish to record my support for the aims of the Bill, which brings forward sensible and proportionate measures for improving the regulatory regime in the UK.

My Amendment 17 would require councils in England to have regard to any guidance given by the Secretary of State as to the exercise of their powers. Amendment 18 would replace existing Clause 25 and define the purposes in greater detail; namely, "preventing or reducing crime", to which my noble friend referred, and,

"ensuring the safety of any persons … preventing damage to property … preventing the ingress or egress of animals; or … protecting the natural environment".

The stakeholder working group on unrecorded public rights of way established by Natural England consisted of 15 people, representing path users, landowners, occupiers and, importantly, local authorities. Much consensus was achieved. The group's work has been immensely important in the bringing forward of the proposals in the Bill, but one or two items on which there was agreement were not included.

As a result of this work, the Government produced guidance, which has been placed in the Library. However, the particular detail encompassed by my two amendments has not been included in the Bill. Why was this? I understand that the proposals were agreed by the stakeholder working group, which accepted that the guidance should be statutory so that authorities would have to take it into account in their decision-making process. However, I am not clear on that.

The view of the stakeholder working group was that rights of way are so complex that it is important to make them easier for everyone to understand. The complexity leads to different applications of the rules and different interpretations by local authorities. Guidance should be applied fairly, consistently and impartially, with the aim of making regulation less burdensome. Some might argue that my amendments increase burdens but I humbly suggest that a clearer direction should reduce costs and burdens. There would be less doubt because interpretation would be clearly stated in the Bill. I am also aware that some authorities are overwhelmed by the large number of outstanding claims with which they have to deal. We need to make it easier for their decision-making. I support my noble friend's amendment.

Lord Rooker: My Lords, we did not spend a lot of time in the Joint Committee on this because we were not adding things to the Bill. We made recommendations relating to further clauses, which I will not go into. I have been a regular walker in the Lake District for the past 30 years. One of my greatest regrets is that I did not discover the Lake District until I was 45. However, I would never claim that enjoyment of the countryside and the open air, and walking in the Fells, entitles me to go through someone's garden alongside their private home. There can be no justification for a walker, a person enjoying the country, making that claim. Because of the route that a path may take—sometimes they go through a private garden—you sometimes see a sign that asks walkers not to use a child's swing and says that if they do, they do so at their own peril. There cannot be an argument to do that.

I was involved in a case about a path being moved. The cost of moving a path a small number of yards—or metres if we are in Europe—is enormous. I cannot see that that cost can justifiably be put on the owner. It is a public good to move a path. In some ways, I am sympathetic to the principle behind the amendment, although putting it in the Bill is asking for trouble. Perhaps we need another stakeholder working group.

[LORD ROOKER]

The one relating to this Bill was admirably chaired by Ray Anderson, who seems to have done an incredibly good job getting a consensus.

By and large, there is a case for change. The Government's view should not be, "Oh well, this is on the landowner". It is not quite like that, particularly when you are in the Fells, which is the only area I know in some detail but it may be different elsewhere. However, it does not alter the fact that things change as regards rights of way. A path can be diverted, and the joy of the countryside and the open air can be maintained. My view is that you cannot make a claim about the right to go through a person's garden. I am not making that claim as a walker. My claim is to access to the countryside. Therefore, there should be movement on this issue but it would be best for it not to be in this Bill.

Baroness Parminter (LD): My Lords, I apologise for not being able to attend Second Reading. I had to go to a school event with my children. This package of measures has been agreed, as referred to by the noble Lord, Lord Grantchester, and others. However, we need to reflect on the fact that it has been carefully agreed by a wide group of people over two years. If we start to unpick various elements, other issues might fall out as well. We need to bear that in mind very carefully. This has been a carefully agreed package and what might seem a small change, if introduced in one area, might undo the broad compromise and consensus secured on the wider agenda.

My second point is that, looking carefully at the amendment tabled by my noble friend Lord Skelmersdale, it seems that in this new legislation there will be a significant improvement—he alluded to this—in the process for owners and occupiers with their ability to apply to make orders to divert or extinguish public paths. I think that the authorities will have to consider such applications within four months. Combined with the draft guidance which I think has been agreed to by the stakeholder working group, and which spells out how order-making authorities must consider this issue as it moves forward, those two changes together—the draft guidance and the new rights that private landowners are being given in this legislation—should be tried and tested before we start making further amendments. For those two reasons, that it is a carefully considered package with broad consensus among a hugely divergent group of people and that there are already some new proposals in the legislation to address some of the issues that my noble friend Lord Skelmersdale has rightly raised, I do not feel able to support his amendment.

Lord Cameron of Dillington (CB): My Lords, I support these amendments but first I must declare an interest as a farmer and landowner, as an ex-chairman of the Countryside Agency and as an ex-president of the CLA. I really rose to support Amendments 17 and 18, in the name of the noble Baroness, Lady Byford. Both amendments seem to bring forward consistency and clarity; certainly, Amendment 17 does that while Amendment 18 creates greater flexibility and less red tape. I endorse the question that the noble Baroness put to the Minister as both these amendments were agreed by the stakeholder working group. The reason, as enunciated by the noble Baroness, Lady Parminter, is that we have fairly limited reform of the rights of way legislation in Clauses 21 to 27 because those were the only agreed reforms put forward by the stakeholder working group. However, these two amendments were also agreed. Why has Amendment 17 been rejected altogether, when it seems to be very consistent with a deregulatory Bill to bring consistency across the country?

Frankly, Amendment 18 has been gralloched—a good expression meaning to remove the guts of something, in this case the amendment put forward by the stakeholder working group. It has been limited to applying only to byways open to all traffic. The other reasons for erecting gates, which are well enunciated in proposed new subsection (2) of the amendment, seem perfectly reasonable and appropriate. As I say, they have been agreed by the stakeholder working group.

On the amendments put forward by the noble Lord, Lord Skelmersdale, I am on the side here of the noble Lord, Lord Rooker: I agree with their principles but they are a step too far. They ought to be thrown back to the new, reformed stakeholder working group for it to look at carefully and see where it can agree amendments about diversions or closures—preferably not closures but certainly diversions—so that they would be easier to make around domestic premises. That would be a very good idea.

Earl Cathcart (Con): My Lords, I support these amendments, particularly the ones in the name of my noble friend Lady Byford. I do so because they go a little further than those of my noble friend Lord Skelmersdale, which would include only gardens and driveways. My noble friend Lady Byford's amendments also reflect the recommendations of the stakeholder working party on this subject, as mentioned by the noble Lord, Lord Cameron.

Although the Government have issued guidance they have put nothing in the Bill, which I find odd. My honourable friend Tom Brake, speaking for the Government at Third Reading in the other place on 23 June, said:

> "It is clear, however, that there has to be a change in the way in which both legislation and policy operate if people are to get a satisfactory hearing, and that is what the Government are doing in the Bill".

He goes on to say that it,

> "will be supplemented by guidance that will effectively act as a presumption to divert or extinguish public rights of way that pass through the gardens of family homes, working farmyards or commercial premises where privacy, safety or security are a problem".—[*Official Report*, Commons, 23/6/14; cols. 77-78.]

Unfortunately, that is not what the Government are doing in the Bill because they have not put anything in it on this subject.

We have the guidance but we do not have the legislation, which is what my honourable friend said was needed. Guidance is only guidance; it is not obligatory. We need legislation in this Bill. I am sure that this omission by the Government may be an oversight so I hope that the Minister will accept my noble friend Lady Byford's amendments, which reflect

the working party's recommendations. If the Minister cannot accept them today, I hope that he will agree to take them away and consider them further.

5.45 pm

Lord Plumb (Con): My Lords, I am a countryman, a farmer and someone who has much experience in the centre of England of the problems before us at the moment, which concern allowing people to move freely in various areas for enjoyment. The noble Lord, Lord Rooker, speaks of the area that is a natural walking area and he spoke as one who would never dream of passing through anyone's garden and so on. I am sorry—I will not say he is alone but a lot of people would not see it that way. In fact, they might do the reverse. Speaking as one who comes from the Midlands—I farm between 10 miles from Coventry and 10 miles from Birmingham—there is a mass of people there and they do walk. However, things have changed and, while I agree in principle with both amendments that have been tabled and with the thrust of the proposal that has been made, we must realise that we are deregulating and not creating yet more legislation. Therefore, I hope we are simplifying this so that not only the people who live in the countryside can understand it but also the people who wish to come to the countryside.

The key is education. As many farmers do, I handed down a large portion of our property to my son many years ago and things began to change, as they do when things are moved from father to son. Not long ago, I met an old boy who lived not very far from the farm. I had not seen him for years. He said, "You know, guv'nor, what they say about you up here?". I said I had no idea. He said, "They say when Henry farmed this farm, anybody who set foot on it got shot. His son brings them in by the busload". In the past year, he has had 90 visits from schools. He has two people carriers to take the children around the farm, and that is real education. I have been with him on one or two of the trips around the holding and it is very encouraging to see the change in those children, the change in how they look at green grass and, certainly, the changed way they look at animals.

There is a lot to be done here. I only plead that we get it right and we do not make it so complicated that it is almost impossible for people to understand. It must be understood by the property owners and by country people, who are happy to receive people who come to the country as long as the rules are in place and are understood by both parties in the interests of facing a very important area for the future. It is no good doing what was suggested by that old man. I have never shot anybody and I would never stop anybody if I saw that they were reasonable. However, I believe that my son now has less damage done to his property than was the case in my day because he has freed up the footpaths and provided an opportunity for people to visit and walk more freely through the area.

Lord Greaves (LD): My Lords, this is the first time that I have spoken in Grand Committee and I need to declare my interests in relation to this issue and to other aspects of this Grand Committee. I am a member and vice-president of the Open Spaces Society; I am a member and patron of, and am active in, the British Mountaineering Council; I am a member and the deputy leader of Pendle Borough Council; and I am a vice-president of the Local Government Association. There are probably others that I have forgotten but those will do for the moment.

I hope that the mover of this amendment will have listened very carefully to the last speaker, the noble Lord, Lord Plumb, who talked a lot of common sense. When you are dealing with footpath diversions and those footpaths go through or are adjacent to housing in the countryside, common sense is the most important thing that is required in solving the problem. I shall come back to that.

The noble Lord, Lord Skelmersdale, said that at the moment people have no right to make a claim. I do not understand that and perhaps he will explain what he means by it. I am a member of a local authority committee which deals with quite a few of the requests for footpath diversions and extinguishments in my area, which is the Colne area of Pendle. We do so on behalf of Lancashire County Council, which is the highways authority and it has devolved that to us at the moment. We deal with quite a lot of these requests.

Perhaps I may explain the context. We are talking about an area of the Pennines with a very intense network of public footpaths, which were originally used by people to go from one farm to another. That was their original use, although nowadays of course people get in their vehicles and take a much longer route. There is a very dense network of public footpaths across the fields and, because they originally went from one farm to the next—this is an area where the farms are scattered over the landscape—they inevitably went through farms and into the farmyards, because people went from door to door. In the modern age, the farms may still be working farms in some cases but, even if they are, the barns or the former farm workers' cottages will be occupied by people who are not working farmers; they live there and commute into the towns. In such areas, there is no reason at all why the footpaths need to go along the front of people's cottages, past their windows and to their front doors. The sensible thing is for them to be diverted around a little settlement of two or three houses that exist in the middle of the fields.

As I said, we get a lot of applications for footpath diversions and footpath extinguishments, although mainly diversions. They are all very sensible and we look at them from a common-sense point of view. This is where I come back to having problems with the amendments of the noble Lord, Lord Skelmersdale. If they were put on the face of the Bill and became legislation, they would make it very difficult to apply the kind of common-sense decisions that we make at the moment.

As I understand it, the legislation says that a footpath diversion should be convenient for people wanting to use the footpath. I think that "convenient" is the word that is used but, anyway, that is what it means. So, if you have a footpath going through a farmyard, or a courtyard that used to be a farmyard, and there is a proposed diversion, you look to see whether that

[Lord Greaves]

diversion is sensible from the point of view of the people walking on the footpath and that the diversion is not too far or too difficult or perhaps goes through difficult terrain, as well as looking at the effect that the footpath has on the people whose houses it goes past. I remember one example where a footpath went through a group of three houses, which now would be quite expensive, and it literally went along the pavement in front of the windows of someone's house. Quite reasonably, they said that this was an intrusion and was unreasonable. We went on a site visit to look at it and we walked that route and the proposed alternative, but the proposed alternative, which went around the back, gave us a very good view, through some huge glass windows, into the bedrooms and bathrooms of their neighbours. Under those circumstances we said, "No, we're not diverting this because we are moving one problem and creating another for the neighbours who in fact had objected".

You have to look for solutions. Our footpaths officer, who we employ, went out to talk to them all and tried to find an alternative diversion that solved it for everyone. That kind of common-sense practical work on the ground has to be done. In most cases it can be done perfectly acceptably and reasonably, and, where councils can do that, it works. In many cases, though, it does not work, and I will explain why in a minute.

I turn to the noble Lord's amendment. He wants to suggest that there should be a presumption for a diversion or a stopping-up so long as the council and the Secretary of State are satisfied that privacy, safety or security are not adversely affected by the existence or the use of the path. Where I live, which I suppose is an urban street in a rural area, I could argue that we are adversely affected by the existence and use of our front street because people can go along it, our front garden is not very big and they can see in. It is a question of degree and looking at what is reasonable. Is someone unreasonably affected by the existence or use of the path in context? If you simply say "adversely affected", full stop, that is a pretty draconian test. The wording talks about it being "possible" to divert a path, but at the moment the test is whether the diversion is reasonable for people wanting to use the path. It does not say that it cannot be any longer than the existing route but is it unreasonably much further, or is it reasonable that people should have to walk another 20 or 50 yards to remove the problem caused by the path? So all the checks and balances—and it is all a matter of balance—would be taken away by the wording of this amendment, which would put the balance far too much on one side, not the other. Maybe the present system is not perfect but I think that these amendments go far too far the other way.

I will not repeat the points that my noble friend Lady Parminter made, with which I completely agree, about the stakeholder working group and the fact that it has come up with an agreed package.

My final point is that at the moment there is a major problem with all these things, but in my view it is not about the legislation or the rules; it is about resources. In the present situation in local government, where most local authorities, certainly in the north of England, are in dire financial circumstances, desperately trying to keep resources going for old people's care and that kind of thing, highway authorities simply do not regard this as being of a sufficiently high priority. There is indeed a great waiting list in many areas and it takes a long time. That is the real problem. If they are going to have to deal with these in four months in future, they will not be very pleased because they will have to put resources into what they regard as not being a top priority. For those of us who care about our footpaths, let us see whether that does the trick.

6 pm

The Earl of Lytton (CB): My Lords, like other noble Lords, I have interests to declare as a landowner with rights of way over my land, as a veteran of the Countryside and Rights of Way Act open access provisions and as a chartered surveyor who occasionally has to deal with people who are affected by rights of way problems—both public and private rights of way. I am also the chairman of the Rights of Way Review Committee, which is the parallel body that brings together a large number of different interests of landowners and users. The Minister's own department is represented on it. I pay tribute to the professionalism that goes into that, which I know is also a hallmark of the stakeholder working group. For one more day I am also president of the National Association of Local Councils, a CLA member and a vice-president of the LGA. That completes my declarations of interest.

A huge amount of consensus has been teased out between the parties, but it serves to underline some sharp philosophical differences on either side and one must try to recognise that. The consensus, such as it is, depends hugely on the Government continuing to commit to a 2026 cut-off date on the one hand and to the resourcing of the investigation of unrecorded ways on the other. There is no consensus if the Government do not commit or they falter between now and that end date. The entire thing could easily fall apart. A lot of personal commitment and reputational capital is tied up in this.

The noble Lord, Lord Greaves, referred to resources. Yes, indeed. In local government terms, this is one of those services that is regularly being bled dry because it is not a priority commitment in the context of unparalleled spending cuts. Would that the cost and uncertainty and sheer bother that is occasioned to owners of land on the one hand and the resources and activity that is put in by rights of way groups on the other—and the demands made on the public purse to try to broker these things—were actually put into the improvement of the fundamental rights of way system rather than going all round the houses trying to decide who was right and who was wrong.

The noble Lord, Lord Skelmersdale, introduced me some time ago to two people who had particular problems with the way in which public rights of way can impact so appallingly on individual property rights. They are not the only ones. I have met with others and tried to help professionally a third category. I know very well of an example of a couple who live on the Sussex Downs. A footpath runs immediately in front of their front door. Their garden lawn is in the front because the slope rises up behind them and there is

effectively no private garden behind. They provided me with incontrovertible evidence, some of which I saw myself, of groups of walkers simply deciding that they would sit down on the green area that was the front lawn. I was also shown incontrovertible evidence of people peering in through the front window of this property. That is as unacceptable in my terms as someone who barricades land that is subject to lawful rights. They are both at the extremes, and those extremes must be excised from our deliberations. The more we can build that consensus in the middle, the less likely it is that those extremes will consider themselves at liberty to perpetrate some quite anti-social acts which are to the detriment of everybody—users and landowners alike.

At Second Reading I encouraged the Minister not to overlook the ongoing needs of the public rights of way system, and I am glad that the Bill contains many valuable measures. The Bill represents a snapshot in time—it had to be compiled at a particular date in order to get the material in there—yet dialogue within the stakeholder working group and the Rights of Way Review Committee is ongoing. The Country Land and Business Association told me—and the noble Lord, Lord Cameron, has repeated it—that several things agreed within the stakeholder working group are not reflected in the Bill. The implication I am getting from others is that these were not actually agreed and should not go in. I do not know the answer. The Minister and his valiant departmental staff—and they are valiant—must somehow decide who is right and who is wrong. I am not in a position to say.

I conclude by saying that if the stakeholder working group came out with measures that could reasonably be included in the Bill as a matter of agreement, there would be no reason not to accept them. I do not say that with regard to the specifics of the amendments of either the noble Lord, Lord Skelmersdale, or the noble Baroness, Lady Byford. It is just a general comment. If the next legislative opportunity is six, seven or eight years down the road, we will be well on the way to 2026, and I would be pretty worried about whether this was actually going to get done. Therefore, the entire premise of this whole set of provisions is jeopardised.

The Government have a pivotal role in this situation—that of an honest broker, assuming that they act as such and do not decide that this is in the "too hot to handle" box and do nothing, and assuming that resources are made available. There has to be a lasting settlement so that the parties on either side of the rights of way argument cease to be hostages to legal, administrative, legislative, political and financial fortune and we can look to a public rights of way system that is ultimately fit for the 21st century, rather than something that enriches consultants and lawyers.

Therefore, if the Minister's department has, of necessity, been selective about what it has taken into the Bill from the stakeholder working group, the Minister might give us an explanation of that—or, if not, he might confirm that the Bill represents the composite nature of what needs to be in there. In that case, my view would be that no change is better than change that would put us on a slippery slope that would unseat and unsettle the consensus that we have already arrived at—a consensus which I firmly believe we can build on—and that we can progress matters to our mutual benefit across the piece.

Lord Judd: My Lords, I draw the Committee's attention to the fact that I am a patron of Friends of the Lake District and vice-president of the Campaign for National Parks, but what I want to say now is very personal. If I have come to any conclusion working in those areas, it is that the management of the countryside and the enjoyment of it by the maximum possible number of people, which entails access, is best handled by what both the noble Lords, Lord Plumb and Lord Greaves, were emphasising: reasonableness and common sense. There has to be give and take, and compromise. What matters is that everyone sees clearly that it is about reaching sensible arrangements between people with their own needs for privacy, as I have. The coast-to-coast cycle track goes down a lane beside my house right by the window of one of my rooms—it is not a bathroom; it is a study—so I understand that there are issues in this area, but it is handled sensibly. It is a long-established lane going way back into history before most of the cottages and hamlets were built. Reaching consensus is therefore terribly important.

We have had a special working group working in this area and, as the noble Baroness, Lady Parminter, rightly said, we do not want to start unpicking it because we just do not know what that might lead to. The amendments that have been put forward have a lot in them to be taken very seriously. It is not at all a matter of dismissing them out of hand; rather, it is about listening to those arguments and seeing how we can meet them in that context of reasonableness and common sense. I say to those who have tabled these amendments in good faith—and I have a lot of respect for some of them—that, in the Scottish phrase in law, the case is not proven. However, it is a case that cannot just be dismissed; it should be taken seriously and, if it were ever to be pursued, it would be good if it had more hard statistical evidence at its disposal. It is not just about principles; it is about what, in quantitative terms, the effect of all this is and how big a problem it really is.

Lord Grantchester: I very much endorse the remarks made by the noble Baroness, Lady Parminter, that this group of clauses should be viewed as a package. As all noble Lords have expressed, all these amendments are indeed paved with good intentions. However, they are not completely uncontroversial. The existing provisions are carefully balanced, but presumptions would destroy that balance. Existing legislation already allows for many of the changes. Existing legislation already provides for the diversion of paths out of gardens and farmyards. These changes can and do happen all the time. I am told that, of 1,257 diversion orders that have reached a conclusion in the past three years, 94% did not attract objections. There is a lot of sense in the right to reply being allowed to bed in in the provisions put forward by the stakeholder working group and being properly monitored before there is any amendment to the standard procedures for closing and diverging footpaths.

[LORD GRANTCHESTER]

Amendments 17 and 18 are also interesting in that they bring forward further provisions and further work on the stakeholder working group. I understand that the provisions in Amendment 17 are already agreed in draft by the stakeholder working group and Defra.

Amendment 18 includes elements agreed at the stakeholder working group but go a long way further where the stakeholder group is not agreed. For that reason alone, we would hesitate to endorse that amendment. Specifically, I understand that it is possible to apply to erect gates on restricted byways in line with existing provisions for their erection on footpaths and bridleways, and this is the element that was agreed by the working group. These amendments go somewhat further than the working group proposed by introducing a whole lot of new purposes for which gates and styles may be erected on public rights of way of all kinds. For those reasons we would hesitate to endorse the amendments, although we well recognise the basis on which they have been tabled.

6.15 pm

Lord De Mauley: My Lords, this has been a full and interesting debate and I am grateful to my noble friends who have moved amendments and to all noble Lords who have spoken to them. I will begin with Amendments 14 to 16, in the name of my noble friend Lord Skelmersdale. The rights of way reforms package, of which Clauses 21 to 27 will form the basis, is founded on the recommendations of the independently chaired stakeholder working group on unrecorded rights of way. That group, as I explained earlier, consists of 15 members: five from each of local authorities, landowners and rights of way users. The group was founded in 2008 with a remit to develop a package of reforms to facilitate completion of the definitive map and statement—the local authority's legal record of public rights of way. This is a daunting task on a topic where views are highly polarised, but it is a task in which they succeeded.

Of key significance is the fact that the group has unanimously agreed the key proposal that the 2026 cut-off date—after which it will no longer be possible to record pre-1949 rights of way—should be implemented. However, this is subject to the caveat of what my noble friend Lady Parminter described as a finely balanced package of reforms being implemented as it stands and not being tampered with or cherry-picked.

My noble friend's amendment seeks to address the issue of intrusive public rights of way. This is an issue to which the Government have been giving careful consideration in discussion with the rights of way stakeholder working group and members of the Intrusive Footpaths campaign. The Government acknowledge my noble friend's point that for householders and farmers an intrusive footpath can have a substantial impact on their quality of life or on their ability to run a business, and several noble Lords have spoken about that. It can cause severe difficulties and there are a significant number of cases where people have been through years of considerable inconvenience and stress. We recognise that there is a need to find an acceptable solution. That is why the Government have worked with the stakeholder working group to include measures in the rights of way reforms package that will make a significant difference to the way that requests for diversions and extinguishments of rights of way will be dealt with by local authorities. I am confident that they will help to alleviate the difficulties experienced by those affected.

The Bill proposes to implement the right-to-apply provisions introduced by the Countryside and Rights of Way Act 2000. These provisions give landowners the right to apply for diversion or extinguishment of a right of way. Through clauses in the Bill we are amending them in such a way as to enable people with rights of way through their gardens to make applications. These provisions will come into force, along with the rest of the reforms package, when all the elements of the package are in place. We are working towards implementation by April 2016. With the right-to-apply provisions in place, local authorities will no longer be able to ignore requests for rights of way to be moved or extinguished, or to dismiss them out of hand. They will be obliged either to make an order or to be prepared to justify their reasons for not doing so. There is also—

Lord Skelmersdale: My Lords, before my noble friend leaves that point, can he explain why the right to apply automatically implies the right for the local authorities to consider? I just cannot see it.

Lord De Mauley: My Lords, I was some way from leaving that point. I will get there in a moment. There is also the question of whether any orders made would be confirmed. The right to apply provisions will be supplemented by guidance that will effectively act as a presumption to divert or extinguish public rights of way that pass through the curtilage of family homes where privacy, safety or security are a problem.

Under the right to apply provisions, any appeal made by an applicant, whether it is because the local authority has refused an application or because it has failed to confirm a diversion order it has made, will be submitted to the Secretary of State for a decision. The Government will therefore be in a prime position to promote implementation of the revised policy set out in the guidance by setting a clear precedent in those decisions. A draft of the guidance has been deposited in the Library of your Lordships' House. We recognise that it needs further refinement, which is why it remains open for comment.

The rights of way reforms will also give local authorities more scope to deal with objections to orders themselves rather than having to submit every single opposed order to the Secretary of State as at present. The combined effect of these provisions will offer the prospect of real improvement for those people experiencing problems with a public right of way across their property. We want to evaluate how the measures work out in practice before seeking to add to the legislative burden.

The issue of intrusive public rights of way is very emotive. I understand why it arouses strong feelings and why those affected want something done. While

putting a presumption on the face of the Act might seem desirable, the new clauses would create regulation where it is likely to prove unnecessary and create more problems than it resolves. The clauses proposed by my noble friend would impose a duty on each local authority to divert or extinguish every right of way that passes through the curtilage of a residential dwelling unless they are satisfied that the privacy, safety or security of the premises are not adversely affected by the right of way and extinguishing it would not remove access to a vital local service or amenity not otherwise reasonably accessible.

Carrying out a survey to identify rights of way that fulfil these criteria would place a significant new burden on local authorities. The proposed clauses would also have the effect of removing the tests in current legislation that ensure that the public interest in the right of way is safeguarded where that right of way passes through the curtilage of a residential dwelling. My concern is that the proposed new clauses do not strike the right balance between public and private interests, which is critical to the agreement reached over the guidance by the stakeholder working group. I invite your Lordships to agree that legislative solutions imposed without a consensus or consultation could result in more disputes and legal challenges.

As the draft guidance on diversions and extinguishments has been developed by the stakeholder working group, it is founded on a strong stakeholder consensus, which means that it is likely to be complied with. We firmly believe that solutions based on agreement and mutual interest result in less conflict, as several noble Lords have said, and less need for enforcement in the long run. The stakeholder working group consensus is the result of many years of hard work and difficult discussions between stakeholders who have commendably agreed to put their differences to one side and work towards solutions that are for the common good. We should not risk putting all that progress in jeopardy by adopting measures that are not founded on that agreement. These proposed new clauses would impose a significant new burden on local authorities and all but remove the current public interest tests.

My noble friend Lord Skelmersdale questioned the right to apply and whether the guidance would have the intended effect. There is pretty clear agreement among stakeholders that the major difficulty for landowners is in getting local authorities to make a diversion or extinguishment order in the first place. Our plans to implement and extend the scope of the right to apply provisions for such orders will overcome this, because landowners will be able formally to apply and appeal if the authority refuses to make an order or fails to respond.

The other hurdle is getting orders confirmed. However, according to Ramblers, which keeps accurate records of these matters, of the slightly in excess of 1,200 diversion orders which have reached a conclusion in the last three years, 94% did not attract any objections. Of the remaining 6%, less than 1% were not confirmed following submission to the Secretary of State. I am not saying that 100% of proposed diversions should necessarily go through. Clearly, that would depend on the proposal's merits. However, given those statistics we believe that the combination of the right-to-apply provisions and the guidance will have the desired effect and that we should not rush to legislate before seeing how these measures work out in practice.

My noble friend Lord Skelmersdale asked why a landowner should have to meet the entire cost of a diversion and I understand his concerns. Where the diversion or removal of an existing right of way is for the benefit of the property owner rather than for the public, I think it is not unreasonable that the property owner should meet the cost. Authorities will not be able to recover more than the actual costs and would have to make clear exactly what was covered by those costs. In addition, as part of the rights of way reforms package, we will be introducing a framework within which local authorities will be required to make it clear to landowners what each stage of the process will cost and what they will be getting for that money.

We expect the costs of making alterations to public rights of way to reduce as a result of the reforms package as a whole, specifically through the following measures: significantly reducing the cost of publicising orders; giving local authorities more discretion to disregard spurious or irrelevant objections; making the exchange of written representations the default for dealing with opposed orders, rather than a public inquiry; and encouraging local authorities to enable landowners to make their own arrangements for undertaking some of the work normally undertaken by the local authority.

My noble friend also asked about the likely average costs to a landowner of diverting or extinguishing a right of way. Those costs will of course vary considerably across the country. They will depend on whether the relevant order is objected to and whether the matter goes to a public inquiry. Information we have gathered through our work gives us an estimated average cost, over a range of circumstances, for making and implementing a legal order to divert or extinguish a public right of way. The least cost is where an order is unopposed or written representations are used to deal with any objections; these average less than £2,500. Costs increase to an average of more than £8,000 where a public inquiry is held and experts and barristers are appointed.

I turn to my noble friend Lady Byford's Amendment 17. This proposed new clause would give the Secretary of State the powers to issue statutory guidance on the making and confirming of a range of orders to divert or extinguish public rights of way. I recognise that the objective here is to give a statutory basis to the draft guidance on the diversions and extinguishment of rights of way that has been agreed by the stakeholder working group and placed in the House's Library. We developed this draft guidance in collaboration with the stakeholder working group. The guidance sets out the proposed government policy on the diversion or extinguishment of rights of way that pass through gardens, farmyards and commercial premises. It effectively acts as a presumption to divert or extinguish public rights of way that pass through such properties where privacy, safety or security is a problem and exhorts confirming authorities to act on that presumption, wherever possible.

[Lord De Mauley]

We have great sympathy for those people who experience problems with public rights of way that pass through the garden of their family home. We are on track to implement the right-to-apply provisions introduced by the Countryside and Rights of Way Act 2000, which give landowners the right to apply for diversion or extinguishment of a right of way. Through clauses in the Bill, we are amending the provisions in such a way as to enable people with rights of way through their gardens to make applications under those provisions. With the right-to-apply provisions in place, local authorities will no longer be able to ignore requests for rights of way to be moved or extinguished, or dismiss them out of hand. They will be obliged to make an order or justify their reasons for not doing so, on appeal to the Secretary of State.

There is of course also the question of whether any orders made would be confirmed. Under the right-to-apply provisions, the Secretary of State will be the confirming authority for all disputed orders. Government will, as I have said, therefore be in a prime position to promote implementation of the revised policy set out in the guidance, by setting a clear precedent.

As I have said, getting broad agreement on this guidance is a fairly significant development. Because it has been developed by the stakeholder working group, there is a strong consensus on it. I am sure that the Committee will agree that new measures such as this are more likely to prove successful in practice because they have been introduced through agreement among stakeholders, regardless of whether they have statutory backing.

6.30 pm

We should not lose sight of the fact that this is a Deregulation Bill, the purpose of which is to minimise the statutory burden rather than increase it. I believe that the combined effect of the right to reply and the new guidance will offer the prospect of real improvement of the position of those people experiencing problems with a public right of way across their property. We should evaluate how the measures work out in practice before seeking to add to the legislative burden by making the guidance statutory.

I turn to my noble friend Lady Byford's Amendment 18. We recognise that an amendment to extend the powers to authorise gates and similar structures could be helpful to landowners, householders and farmers who have rights of way going through their premises or garden, and for reasons of security or safety wish to install a gate to help to protect their family or business. We have considerable sympathy with those people who experience problems with a public right of way in those circumstances. This issue was put to the stakeholder working group, which discussed it at some length. While there was agreement about the proposal in principle, the group has not yet arrived at a formulation on which it could agree. At the same time, concerns have been expressed by users of rights of way about the possible proliferation of gates and other structures across those rights of way if the current restraints were to be removed. Particular concern has been expressed by equestrian groups, who already have concerns about the extension of powers to authorise gates on byways in Clause 25 of the Bill. They are particularly concerned about riders with disabilities, who may not be able to dismount or who have difficulties in opening and closing gates.

In the light of those concerns, we have concluded that we cannot rely on stakeholder agreement around such a proposal, and that pressing ahead with it would put stakeholder consensus at risk. We believe that the combined effect of the right to apply and the new guidance will offer the prospect of a real improvement in the position of those people experiencing problems with a public right of way across their property, and that we should evaluate how the measures work out in practice before seeking to legislate further—for example, through this amendment. On the basis of what I have said, I hope that I have persuaded my noble friend to withdraw his amendment.

Baroness Byford: Before my noble friend responds to the Minister, I wonder if I might raise two issues with him. I thank him for his full response to my two amendments. Do I understand the Minister to say now that the stakeholder working group has not agreed with the two amendments that I tabled? My understanding was that they had been agreed to, and it is important that we have on the record whether or not they were. I do not wish to embarrass him, but from the inference of that he then went on to say that further discussions would take place because this had not been totally agreed. I am a little lost.

Perhaps while the Minister is thinking about that, because I will not get another chance later in the Bill, I thank everyone who has contributed. In an ideal world we would all want the best, and that should be done by agreement and by making things possible, but clearly at times they are not possible and some of the examples we have been given clearly reflect that. However, I would hate to think that we were not tackling an issue that had actually been agreed. If there has been some misunderstanding, perhaps the Minister would come back at a later stage and clarify that for us. In my opinion, it is slightly concerning that at the end of the day we are not clear exactly what has happened.

Lord De Mauley: My Lords, I am sorry if I was not clear. With great respect to my noble friend, I ask her, once she has read what I said in *Hansard*, might we have a discussion after today? Perhaps that would be helpful.

Lord Greaves: I wonder if the gist of that discussion could be circulated to the rest of us. I am not wholly opposed to the amendment from the noble Baroness, Lady Byford; there is lot of common sense in it. However, local agreement ought to be possible, and it would be very helpful for all of us to know what the facts are.

Lord De Mauley: If it is helpful to your Lordships, the point that I was trying to make was that the stakeholder working group agreed in principle but that there are also points of detail which we have not yet resolved.

Lord Skelmersdale: My Lords, I am extremely grateful to all noble Lords who have taken part in this debate and of course to my noble friend the Minister for his very full explanation of the Government's—I believe—slightly misguided interpretation of what has been put in the Bill. Were we in the Chamber, I would withdraw my amendment in favour of my noble friend Lady Byford's Amendment 17, which gives me exactly what I and those who have briefed me would like.

I am not sure whether my noble friend Lady Parminter wrote the government line or is following it. She said that the group package should be tried and tested. They both said the same thing, so they are clearly in concert.

Baroness Parminter: I am sure that my noble friend the Minister can speak for himself, but it is not often that he and I are said to say exactly the same things.

Lord Skelmersdale: Does my noble friend want to comment? No? Anyway, they have spoken with one voice, whether accidentally or intentionally. My noble friend Lady Parminter says that it is nice to know.

Both the noble Lord, Lord Cameron, and my noble friend Lord Cathcart said that Amendments 17 and 18 were agreed by the specialist working group and asked why they were therefore not in the Bill. We have heard a lot on that from my noble friend the Minister. My noble friend Lord Plumb agreed that there are occasions when walkers—was his word "misbehave" or have I interpreted what he said?

Lord Plumb: I put it more kindly than that.

Lord Skelmersdale: Okay. My noble friend Lord Greaves questioned my comment that there was no right to make a claim. He said that in his local authority area there most certainly was. Would that all local authorities behaved in such an exemplary fashion.

Lord Greaves: My Lords, would that all local authorities always followed the excellent example of Pendle Borough Council.

Lord Skelmersdale: I do not think that I have to answer that, thank goodness. For once, I am not the Minister.

The noble Lord, Lord Grantchester, echoed my noble friend Lady Parminter and my noble friend the Minister in sticking to what I call the government line, but I am confused. What exactly is the government line? I have in my hand a copy of the Bill that was presented to the House of Commons which was signed by my right honourable friend Oliver Letwin with support from various other members of the Cabinet. My right honourable friend wrote to Nadhim Zahawi MP about this subject on 23 April, because the said MP had forwarded to him a letter from a Mr and Mrs Colin Ray of Wilmcote for his comments. He replied that he was "very" sympathetic towards the problems experienced by some people with public rights of way across their land and that he was pleased to hear that Mr and Mrs Ray thought that the Defra guidance on diverting and extinguishing rights of way was a positive development. I could not agree more—it is a positive development—but it is not positive enough. He went on to point out that it was the guidance that was supported by the stakeholder working group rather than the amendments to the Deregulation Bill, as proposed by the Intrusive Footpaths campaign—which, incidentally, has been briefing me. He continued that the stakeholder working group has agreed that the Bill should be amended to make the guidance statutory; that that amendment is now in hand; and that he envisages that it will be tabled shortly. However, in the Bill in front of us, it just ain't there.

Going back to something that the noble Lord, Lord Judd, said earlier, I regard that as the Secretary of State giving a clear and specific undertaking. I do not like to quote the noble Lord's words back at him but that is the fact. Having said that, unless the Minister wants to answer me now, or would like to do so privately or on another occasion, I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Amendments 15 and 16 not moved.

Clause 24: Applications by owners etc for public path orders

Amendment 17 not moved.

Clause 24 agreed.

Clause 25: Extension of powers to authorise erection of gates at owner's request

Amendment 18 not moved.

Clause 25 agreed.

Clauses 26 and 27 agreed.

Schedule 7: Ascertainment of rights of way

Amendment 19

Moved by ***Baroness Byford***

19: Schedule 7, page 104, line 4, at end insert—

"(c) after subsection (5A) insert—

"(5B) The modifications which may be made by an order under subsection (2) must be made within a period of one year from the date an owner deposits a map and statement under section 31(6) of the Highways Act 1980.

(5C) An application made by a person under subsection (5) must be made within a period of one year from the date on which the owner deposited a map and statement under section 31(6) of the Highways Act 1980.""

Baroness Byford: My Lords, I want to make clear that this is where the stakeholder working group and my amendments do not necessarily agree. My understanding on the other one was that there was

[BARONESS BYFORD]
consensus but we will return to that next time. These probing amendments look at two issues; namely, time limits and resources. Amendment 19 proposes that there should be a time limit of one year from the date on which the owner deposits a map and a statement under Section 31(6) of the Highways Act 1980. The amendment would set out time limits for claims and would reflect the position that is taken with regard to village greens, for which claims must be made within a year of the use being stopped or challenged. This also applies to Amendment 21, which would be inserted into the Highways Act 1980.

As regards the time limit to bring user claims under Amendment 21, the Highways Act requires that a claim should be made based on the use which has taken place immediately before the use was challenged. It was not anticipated that the wording might permit claims to be brought based on periods of use which were alleged to have occurred decades previously.

Amendment 20 deals with costs and fees, which were spoken about as regards earlier amendments today. Where a claim of a right of way is made, even if vexatious or spurious, the landowner, if he wishes to defend the claim, will incur significant costs. It is not unusual for a landowner to have costs of several thousands of pounds, making a defence of a claim impossible for those with smallholdings or those who fear that they will not be successful. However, the claimant's costs are borne not by the claimant but by the public purse.

Amendment 22 looks at user evidence and tries to deal with spurious claims. It requires a witness to complete their own statement and then sign a statement of truth. I think that all Members of this House would assume a statement carries that commitment of truth. The stakeholder working group recognises the importance of ensuring high-quality evidence in claims for rights of way to reduce burdens on individuals and authorities. Should this amendment be accepted, I believe that overall it would reduce costs and burdens for individuals and for society.

I know that many authorities have outstanding claims and it would be helpful if the Minister had an idea of the total number of such claims which local authorities are having to cope with. I believe that in Warwickshire there are more than 100. As the amendment does not apply to the modification already lodged with local authorities for investigation and registration, I invite the Minister to reflect on this question as I may well want to expand on it when we come to later stages of the Bill. It is a case of trying to make sure that we move the proposals forward in the Bill, and I again put on the record that I am pleased to welcome it. A lot of good work has taken place but the questions of costs and of a time limit are still undefined. I beg to move.

6.45 pm

Lord Cameron of Dillington: My Lords, I support Amendment 19 concerning the time limit. We live in a very crowded island and I believe that England is the fifth most densely populated country in the world. There is huge competition for land use across a wide spectrum of activities, and the planning system is a very obvious example of where the use of land is democratically decided upon. It seems to me that the simplest way to avoid disputes is to have certainty and a clear decision-making process that adjudicates clearly and fairly with clear time limits so that everyone knows where they stand as soon as possible.

The whole point about a Section 31 deposit of a map and statement by a farmer is to create certainty so that the householder, the farmer or the landowner and the public know what is permissible and what is not. With a Section 31 deposit there is usually a conversation between the farmer and the highway authority. The local highway authority agrees the deposit of the maps, so the farmer and the highway authority are in agreement in saying, "This is the situation regarding rights of way on this land". That clarity is really important to all concerned, including the general public.

A Section 31 deposit is also really important to landowners, among whom I include myself and the son of the noble Lord, Lord Plumb. I welcome most people on to my land. There are people who walk all over it, and kids cycle across the fields and go into the woods. In fact, I get into trouble because they tend to cycle around badger setts, which brings somebody in authority down on my head for allowing that to happen. I am very happy to allow local people to use the land. Sometimes I have to interfere and say, "Thou shall not do this or that", but on the whole I am very relaxed about it. I am happy to do that provided they are not creating a statutory right—that is, getting rights that are going to infringe any future use of that land because they are establishing rights of way. That is a really important factor. If people can come along and contest a Section 31 deposit of a map and statement several years afterwards, that is completely wrong, and I think that the general public and the walking public will suffer as a result. It may be that a one-year time limit before anyone can object is too short. I would probably have gone for two or maybe even three years. However, it is important that we have some time limit in this whole area.

The other amendment in this group to which I want to refer is Amendment 22. I had slight sympathy for Amendment 20, concerning costs being made against spurious claims, but it is almost impossible for an applicant to know in advance whether their claim is spurious. Therefore, the way to deal with it is to ensure that the proposed statements are true. That is a very good idea. I do not believe that the minor cost involved is a good reason to bypass this reasonable check on a process. The statement needs to be treated as though it has been made in a court of law, even if in reality it has been garnered around a kitchen table in a very relaxed atmosphere with, quite likely, the witness being led in a very unbarrister-like manner by whichever side happens to be taking the statement. It could be being taken on behalf of the Ramblers or on behalf of the landowner, but having to sign a statement of truth is sufficient to ensure that it is the whole truth and nothing but the truth. That would be a very good thing.

Lord Grantchester: My Lords, the proposals in the Bill will make great progress on many aspects and procedures covering rights of way legislation. We welcome this further debate on many aspects that the stakeholder working group raised. While we have addressed and

debated some of them, there is as yet no agreement and it may be a long way off. However, we have welcomed the debate and look forward to further progress after these provisions have been enacted.

Lord De Mauley: My Lords, my noble friend's Amendments 19 to 22 seek to introduce measures that reflect the valid concerns of landowners and farmers about the impact that claims for rights of way can have on their businesses, and about the costs of dealing with such claims during due legal process.

I am aware that there are concerns about the potential effect on some landowners of applications to record a right of way, particularly about multiple applications in an area or even on a single property. An application fee has been suggested as a solution to this issue. However, the introduction of such a fee or charge would be highly contentious. Ministers specifically asked the rights of way stakeholder working group to look at the impact of applications to record a public right of way, particularly at multiple applications, and what measures, including a fee or charge for an application, might be introduced to mitigate this perceived problem. The group agreed to report back to Ministers in the following terms:

"The problem of multiple applications could be an acute one in some cases but it is not widespread and there is little prospect of coming up with a solution, particularly on application charges, on which the full range of stakeholders could agree".

However, the group's view was that measures already agreed as part of the reforms package will in any case alleviate most of the problems. The first measure is to raise the threshold for applications. A local authority would be able to reject applications that did not meet a basic evidential test, effectively eliminating spurious or speculative applications. We are proposing to apply this retrospectively, as agreed by the stakeholder working group, by means of the transitional regulations provided for in Clause 27(7), so it would apply to any existing applications that have not yet resulted in an order.

The second enables newly discovered rights of way to be diverted and/or reduced in width before being recorded. This would be by agreement between the local authority and the landowner, with no scope for the agreement to be thwarted by objections. It is possible that this could also be applied retrospectively through the transitional regulations, thus reducing the overall administrative and cost burden of the procedures for recording rights of way.

Taking each of the proposals in my noble friend's amendment in turn, the proposition to introduce a time limit on applications for an order to modify the definitive map is not as straightforward as it may appear. While it is possible to envisage such a measure for applications that are based solely on evidence of recent use, most rights of way applications are concerned with recording a right of way for which there will be both user evidence and historical documentary evidence, which may not come to light until many years after a landowner makes a statutory declaration under Section 31(6) of the Highways Act 1980.

Lord Deben (Con): Could my noble friend explain why it is reasonable for documentary evidence, unaccompanied by usage evidence, to come into discussion many years after an application has been made? This is a matter of history and should remain so. It is surely not an acceptable argument against my noble friend's amendment.

Lord De Mauley: My Lords, I said that there will be both user evidence and historical documentary evidence. Let me continue and try to go some way towards satisfying my noble friend. The time limit on the claiming of town and village greens introduced by the Growth and Infrastructure Act 2013 is often cited as a precedent. However, this fails to recognise that the legislative framework relating to public rights of way is different from that of town and village greens. Most notably, a green is not created until it has been registered as such whereas public rights of way already exist in law, regardless of whether they are recorded on the definitive map. The recording process is simply ascertaining something that already exists. Rights of way can come into being though a variety of mechanisms, not just a qualifying period of use. In addition, rights of way can be diverted or extinguished to accommodate development whereas town and village greens cannot.

The stakeholder working group discussed the question of a time limit on applications but has not yet been able to reach consensus on it, despite a willingness to try. However, the group suggested that developments on Section 31(6) deposits should be monitored, following recent amendment to the provisions by the Growth and Infrastructure Act 2013, to evaluate the scale of the problem over time. We intend to continue to do this in collaboration with the group.

The proposed amendment to Section 31 of the Highways Act 1980 appears to be linked to the proposal to introduce a time limit for applications. However, the amendment appears to provide that the presumed or deemed dedication of a public right of way on the basis of 20 years' use cannot have taken place unless someone has made a valid application to add the right of way to the definitive map.

I am not entirely clear if that consequence is intended but, if it is, it would prevent the local authority from recording the right of way on the basis of evidence that it has discovered itself. It would also no longer be possible to establish the public right of way through a court declaration. If this were to be the case, there is an argument that it would create an incentive for users of rights of way to make more applications to ensure that in these cases the presumed dedication had taken place.

Introducing a fee for an application for an order to modify the definitive map would be at odds with the whole basis of the legislative framework that has been in place since the National Parks and Access to the Countryside Act 1949, under which local authorities are charged with recording all the public rights of way within their areas and asserting and protecting the public's right to use them. The fundamental problem with this proposal is therefore that, in the main, applications are made not for the benefit of the individual applicant but in the public interest. In addition, it is worth affirming that local authorities are already funded for this statutory duty through the revenue support grant. Even if there were no formal application process,

[Lord De Mauley]
if someone provided a local authority with evidence of the existence of a public right of way, the authority would still be statutorily obliged to consider whether to make an order.

The amendment seems to recognise this fundamental flaw in the proposals and seeks to remedy it by seeking to charge a fee even where evidence is submitted without a formal application. This seems unworkable, though, as I do not see how a fee can be charged when the person submitting the evidence is not making a formal application and receives nothing tangible as a result of their actions.

The final proposal seeks to amend the existing form of application for an order to modify the definitive map, which is set out in regulations, by requiring the submission with the application of a statement of truth. There is a case for strengthening the quality of user evidence to accompany applications for an order to modify the definitive map, but we do not believe that further regulation is needed to achieve this. We intend to bring about improvements in the quality of user evidence but through non-statutory means, as part of the review of existing guidance that will be required to implement the reforms package. In addition, we will be looking at extending the new preliminary assessment of applications to cover the quality of user evidence as well as documentary evidence. Moreover, it is already possible for rights of way inspectors to require evidence to be given under oath at inquiries.

Not only do the amendments proposed here go considerably beyond the finely balanced package of reforms agreed by the group but the proposed amendments on charges for applications to modify the definitive map, and on time limits for such applications, are highly contentious. They risk jeopardising the hard-won stakeholder consensus behind the proposed package of rights of way reforms.

My noble friend Lady Byford asked for specific information about costs. I am afraid that they are not collated centrally. I hope that she will understand that.

My noble friend Lord Deben asked why claims should be made many years later. Highway law is predicated on the fundamental principle, "Once a highway, always a highway". However, the 2026 cut-off date that we are working towards, and which is a key element of the stakeholder working group package, will eventually close off the possibility of recording a right of way on the basis of historical evidence. On the basis of everything that I have said, I hope that I have persuaded my noble friend to withdraw her amendment.

7 pm

Baroness Byford: My Lords, I thank my noble friends for their contributions to this debate, the noble Lord, Lord Cameron, for his very practical look at the amendments that I tabled, and my noble friend Lord Deben for challenging the Minister on the issue of it surely not being right that it might take years. I shall read very carefully what the Minister has said because I value his experience and his responses, but I am not really a happy bunny, if I may put it that way. I should like to clarify again that these were considered by the working group. They were not agreed by the working group and I have not suggested that they were, but the issue has been raised and the discussions are ongoing. Even those within the working group who did not feel inclined to support them understood that there was an issue that needed to be debated.

I am just hopeful that between now and Report we may be able to get further enlightenment on some of the issues that I have raised. Certainly the whole question of cost, not only to the individual farmer but to the local authorities, is something that we need to keep at the back of our minds because local authorities are clearly stretched with trying to carry out their statutory regulations and responsibilities on so many different issues.

While I accept much of what the Minister has said, I need to read it very carefully. I am happy to withdraw my amendments but I think I shall be returning to it. At this stage, though, I beg leave to withdraw the amendment.

Amendment 19 withdrawn.

Amendments 20 to 22 not moved.

Schedule 7 agreed.

Clause 28: Erection of public statues (London): removal of consent requirement

Amendment 23

Moved by ***The Earl of Clancarty***

23: Clause 28, leave out Clause 28 and insert the following new Clause—

"Erection of public statues (London)

In section 5 of the Public Statues (Metropolis) Act 1854, for "commissioners" substitute "Mayor of London"."

The Earl of Clancarty (CB): My Lords, I have tabled this amendment because the responsibility that the Government have had for 160 years in giving consent for the erection of public statues in London should not pass away unremarked. Also, perhaps more importantly, there has to be a concern about where the responsibility for all public sculpture in London, not just public statues, should ultimately live. The area of London in question is Greater London but excludes the City of London and Inner and Middle Temples, as the very helpful notes to the Bill indicate.

There is a case for handing over ultimate responsibility for all public sculpture, not just statues and not just new sculpture, to the GLA. The timing of this amendment is interesting in the light of the think tank Centre for London's call for greater devolution for the GLA, including, I understand, the ownership of public land. There is also a case for treating all public sculpture equally, at least administratively, which, with the change that the Government are making here, we are part-way towards doing.

I say this because I believe it is the specific environment, the place itself, that should be the starting point and of paramount concern. If the environment demands that there should be a sculpture sited in that place, the question should be asked: what kind of sculpture should it be? Should it be a memorialising sculpture or

something else? However, we tend instinctively to do things the other way round. There is a national clamour to memorialise such and such a person, and then sometimes an unholy compromise arises in terms of the use of public space.

My first question to the Minister is why the Government are retaining the 1854 Act at all if they are removing the key responsibility for consent for public statues. Yes, I believe that these decisions should be taken with the locality permanently in mind, but I am not at all convinced that the ultimate responsibility for decision-making for new public sculpture in London should reside with the local authorities. Public sculpture generally should be under the stewardship—I stress, the stewardship—of London. New public sculpture in London is foremost a city-wide issue, of primary concern to London and Londoners.

With regard to my amendment, which is really a first stage in my train of thought on the subject, I do not for one moment believe that any current mayor should be making personal decisions about these things. I would have strongly disagreed with any suggestion that Generals Havelock and Napier ought to be removed from Trafalgar Square. Public sculpture should be removed or relocated only under exceptional planning considerations because to do otherwise, for aesthetic reasons or reasons of political correctness, is to excise history and that is wrong.

However, considering the future, I would be very happy—I think that others would agree—if there was a 20-year moratorium put on all new sculptures memorialising the military, the royals and politicians. Our culture is considerably wider than that. Last week, a fellow Peer suggested to me that there should be an independent decision-making body of experts. There is merit in that; in Berlin, for example, I understand that there is a citywide system of open competition for all new sculpture under the auspices of Berlin's association of visual artists. Comparisons can be made here with the manner in which the very successful fourth plinth project is administered, whereby decision-making is down to an independent group of judges yet the project itself is under the stewardship of the mayor.

My second question is: might the Minister promise to find out whether, over the years, there has not developed a substantial archive reflecting the Government's involvement with public statues in London? Westminster City Council, for example, confirms in its guidance on public statues and monuments that it currently submits detailed plans and drawings to the Government. Has an archive built up and is it publicly accessible? If so, as it would be of great interest to the public and historians, what do they plan to do with it?

We often take public sculpture in London for granted but when people from this country or from abroad visit London for the first time, the very first things they want to see include Nelson's column or the Shaftesbury memorial fountain at Piccadilly Circus. Public sculpture is part of the face of London and says important things about our history and cultural identity. It is perhaps too important to be left only to local planning departments and it is fitting that the GLA should take more of a role in this area. I beg to move.

Lord Stevenson of Balmacara: My Lords, I am grateful to the noble Earl, Lord Clancarty, for raising this issue. He makes a good case for this matter to be given more consideration. We are in debt to previous generations—he ended on this—for the substantial collection of public statues that there is in London. According to Westminster City Council's guide to its process for obtaining permission for statues, they date from the Charles I statue of 1633. I had a look at that the other day and it is in very good nick. We are still seeing modern examples of material being put up and, as the noble Earl says, there are huge impacts on the way in which we view our city, on tourism and in other aspects, so it is important.

Behind the individual questions that the noble Earl has posed for the Government I think there is a real worry about their attempts to deregulate here. While the Government are clearly achieving something by taking responsibility away from the Secretary of State—although that is a deregulatory measure on a Minister and not on business—I am not sure whether they are taking the right step. As the noble Earl mentioned, there is a gap regarding who has responsibilities in this area. Given her previous experience, our Deputy Chairman, the noble Baroness, Lady Andrews, might be in a better position to answer some of the questions about whether English Heritage has a role to play in this. I am sure that she will be too discreet to mention anything at this stage, and certainly not from the chair. However, I am sure that she will have some ideas about that. I am also sure that the Arts Council, in its wisdom and knowledge of these matters, will have things that might be brought to bear.

Whatever those ideas are, it is wrong for any individual politician to take responsibility for this area. That point was well made. I am not entirely clear whether substituting the GLA for the City of Westminster would solve that problem, because we are still talking about political control, but it raises the question: "Why just Westminster?". Why would we not have wider consideration about where statues might be placed in London as a whole? My feeling is that statues are too important to be deregulated simply by the measure proposed by the Bill. I am not sure what the right solution is but I wonder whether the Minister might think about having a little more discussion about this.

The reflection I have, which I think is shared by the noble Earl whose amendment this is, is that there will be a bit of a gap here. It is not just a planning issue. The issues around putting up any memorialising form, whether it is a physical representation of somebody or an object whose presence is intangible, require aesthetic and other considerations rather than simply being about planning. I am not sure whether the planning system is quite the right place for this to be left. If there is therefore a gap, how would we find a way around it? It may be by having a statutory committee

[LORD STEVENSON OF BALMACARA]
of some kind or simply by inviting some other body to take on a responsibility, which might be advisory. Whatever it is, I share the noble Earl's concern about this issue.

Lord De Mauley: My Lords, the purpose of Clause 28 is to remove the current requirement on persons seeking to erect statues in public places in Greater London, excluding the City of London and the Inner and Middle Temples, to obtain consent from the Secretary of State before doing do. Controls to prevent the unsightly proliferation of statues in Greater London are already provided for by the Town and Country Planning Act 1990. This requires that planning permission be obtained from the relevant local planning authority prior to the erection of a statue in a public place in Greater London or the remainder of the country. I am not sure that I entirely agree with the noble Lord, Lord Stevenson, but I am sure we can have a useful discussion about it. Given that the aim of this change in Clause 28 is to streamline the current double-handling of applications to erect statues, I cannot really see a benefit in removing the requirement to seek the consent of the Secretary of State only to replace it with a requirement to seek the consent of the Mayor of London.

The mayor plays a key role in the planning for London's continued success. His London Plan provides the economic, environmental, transport and social framework for development in the region to 2031. He ensures that local plans fit with the London Plan, works with boroughs to develop planning frameworks for major areas of brownfield land and considers planning proposals of strategic importance. In this way, he already has input to the preparation of policies relating to public statues, such as those produced by the City of Westminster. The noble Earl asked why keep the 1854 Act at all? It is worth saying that it provides a power for the Secretary of State to repair and restore, for example, any public statue. I might be so bold as to suggest we would all find that an important power to retain. He also asked whether there are archives. I do not believe there are such archives—I am happy to have a rootle around but I am pretty sure there are no centrally held archives. I have little more to add. I hope I have said enough to persuade him to withdraw his amendment.

The Earl of Clancarty: I thank the Minister very much for that reply. I think it is useful to open discussion on this issue. I am slightly surprised that after 160 years there would not be some kind of substantial file. As I said, Westminster had to submit quite detailed plans and drawings and that has been going on for a long time. Could the Minister promise to look very carefully to see if there is anything there that would be useful? Meanwhile, I beg leave to withdraw the amendment.

Amendment 23 withdrawn.

Clause 28 agreed.

Amendment 24

Moved by ***Lord Bradshaw***

24: After Clause 28, insert the following new Clause—

"Mechanically propelled vehicles on unsealed roads: removal of burdens

(1) Within one year of the passing of this Act, the Secretary of State shall lay before both Houses of Parliament a report containing an assessment of the burdens and costs caused by the use of mechanically propelled vehicles on unsealed rights of way to—

(a) the users of such rights of way,

(b) landowners and tenants, and

(c) other interested parties, including highway authorities, Natural England, National Park Authorities, local authorities, parish councils and other community organisations.

(2) A report under subsection (1) shall include—

(a) proposals to alleviate such burdens and costs, and

(b) an assessment as to whether legislation should continue to permit mechanically propelled vehicles to use unsealed rights of way.

(3) The Secretary of State may through regulations implement any proposals contained in the report under subsection (1).

(4) Regulations made under subsection (3) shall be made by statutory instrument.

(5) A statutory instrument under subsection (4) shall not be made unless a draft has been laid before and approved by both Houses of Parliament.

(6) The Secretary of State shall not issue a report under subsection (1) until he has consulted with such interested parties as he thinks fit."

Lord Bradshaw (LD): My Lords, I declare my interest as the president of the Friends of the Ridgeway and as a member of GLEAM, the group which protects green lanes, or tries to. In proposing this amendment, I submit that the opportunity should be seized to resolve the problem of motor vehicle use of unsurfaced highways, with a clear focus and timeframe for the way forward, and to give a clear signal that the Government intend to take action. The Government's current plan is to set up another stakeholder working group in the hope that it will achieve consensus on motor vehicle use of unsealed highways. I submit that it will not reach consensus because the parties involved have diametrically opposed views. There is no prospect of compromise between those who ride noisy motorbikes and drive specially equipped four-wheel drive motor vehicles and those who value on the other hand the peace and quiet of the countryside, such as walkers, horse riders, cyclists and birdwatchers. There is also a real safety issue involved.

7.15 pm

I believe that the Government's intention is to set up a new stakeholder working group, but I am afraid that it is out of the remit of the present stakeholder group. It was deliberately excluded from the remit because nobody could see any prospect of agreement and they did not want to stop the group agreeing other things. When it touched on the issue in relation to simplifying the processes involved in getting rights of way on the definitive map, the current stakeholder group consciously set the problem aside. It did so

because it was clear that there was not a consensus. It is for this reason that the current group is not a credible model for the way forward.

The remit for the current stakeholder working group was to,

"work together with the aim of reaching consensus on a balanced package of strategic reforms in law and procedure that in the Group's view would bring real benefit to the various interests potentially affected by the claimed existence of",

historic public rights of way.

At its meeting in February 2009, the question arose of tackling rights on unsealed highways on the list of streets, referred to in the following extract from the working group's minutes as "other routes with public access". The minutes record that:

"A suggestion was made that a process be instigated to review",

these routes,

"with a view to identifying those that are clearly not vehicular and for these to be considered for inclusion on the definitive map [of rights of way]. Another suggestion made was for a default status to be afforded to",

the bridleways,

"subject to higher rights being confirmed. This suggestion was criticised on the grounds that it would be reinventing",

roads used as public paths which were classified by the CROW Act as restricted byways.

In September 2009, it is recorded that,

"several Group members felt strongly that to allow negotiation over status would be against the public interest".

These reservations were, we believe, those of the members of the stakeholder working group representing the interests of motor vehicle owners. In the light of conflicting views and no likelihood of agreement, no further work was done on this problem. No work was done, or could have been done, on the question of byways open to all traffic—the other class of unsealed highway used by motor vehicles—as these were well outside the terms of reference of the group. The current stakeholder working group was deliberately setting aside the highly contentious issue of use of motor vehicles on unsealed roads. This amendment seeks to bring this about.

It took the current stakeholder working group five years to come forward with proposals on much less contentious issues than motor vehicles using green lanes. We need action, not years more of delay. All the stakeholders with an interest in the use of unsealed ways by motor vehicles clearly must be consulted and the Government are already committed anyway to full public consultation. But leaving the initiative for developing proposals for consultation in the hands of a stakeholder group that will not be able to agree, we suspect, even on terms of reference will delay rather than assist moving forward towards meaningful consultation and a solution.

It is essential that the Government set the agenda, lead on the issue and are seen to be leading, as they did when they secured protection from motor vehicle use on footpaths and bridleways under the NERC Act 2006. The Deregulation Bill seeks to reduce burdens resulting from legislation for business or other organisations, or for individuals. The amendment identifies an area of legislation not currently covered by the Bill but where there are heavy burdens on individuals, communities, local government and other public agencies. Missing is legislation that permits and seeks to regulate the use of unsealed highways by motor vehicles.

The amendment that we are proposing would place a requirement on the Secretary State to examine the costs and burdens that flow from the current legislation, to propose remedies and to lay a report and recommendations before Parliament within one year of the passing of the Bill. There is nothing in the amendment that would oppose the Government or interfere with any of the clauses already in the Bill, including those that result from the work by the present stakeholder working group, or those on the rights that Defra seeks to protect. The only thing the amendment would do is require the Government to consider the regulatory burdens of the existing legislation in this area, and to bring forward proposals on a definite timescale.

The amendment has all-party support, as the Committee will no doubt hear. The burdens and costs that the amendment seeks the Secretary of State to identify and review flow from Section 67 of the Natural Environment and Rural Communities Act 2006, Parts 1 and 2 of the Road Traffic Regulation Act 1984, the Wildlife and Countryside Act 1981 and Section 41 of the Highways Act 1980. The legislation needs review, not just because of the heavy burdens that it places on individuals and the various agencies involved in administering it, but because it permits the use and destruction of unsealed highways by 4x4 motor vehicles and motorbikes.

These unsealed highways are the country's green lanes. There are burdens and costs for individuals and communities affected by the use of unsealed highways and byways by motor vehicles. We are seeking to use the current highway and rights of way legislation as a means of redress. The public organisations bearing the burden of the legislation on motor vehicle use of unsealed highways are the highways authorities, the national parks, Natural England, which is responsible for the areas of outstanding natural beauty and national trails, the Planning Inspectorate and the courts.

The highways authorities are obliged by law to repair all unsealed highways damaged by motor vehicles. They cannot avoid this cost, as it is a statutory duty under Section 54 of the Highways Act 1980. The cost of repairing a badly damaged green lane can be up to £75,000 per mile. If the lane is repaired without a permanent traffic regulation order being applied to it, it is again vulnerable to repeated challenge. The highways authorities have a process to determine all applications claiming unsealed highways as byways open to all traffic. This is a legal duty under the Wildlife and Countryside Act 1981. There are objections to over 40% of these applications, which lead to public inquiries and burdens for the Planning Inspectorate, the highways authorities, individuals and community organisations.

Where the decisions of the highway authorities or the Planning Inspectorate on applications are challenged, these are burdens for the courts, reaching as high as the Supreme Court. The highway authorities bear the costs and burdens involved in trying to use traffic regulation orders to restrict or exclude motor vehicles from using unsealed highways. The costs and procedures

[Lord Bradshaw]
involved in making these orders are significant. Where they are used to restrict motor vehicle use on unsurfaced highways, the orders are invariably challenged in the courts by motor vehicle organisations. If a legal challenge succeeds, the cost to the highway authority can be up to £50,000 or more. Highway authorities are naturally very reluctant to take that risk. That is why we see few traffic regulation orders being made to control motor vehicle use of any part of the unsealed highway network.

There is also no legal redress other than judicial review against a highway authority which refuses to consider implementing a traffic regulation order. This is unfair on the individual users to whom I have referred and the small communities bearing the brunt of motor vehicle use on unsealed highways. The national parks are also bearing heavy burdens. The current legislation is handicapping all the national parks authorities in their effort to protect their unsealed highways. It is also impeding them in carrying out their statutory duty to protect the environment of the national parks.

In the Peak District National Park alone, there are 225 green lanes open to use by motor vehicles. The Peak District National Park Authority spent £100,000 on managing motor vehicle use on its green lanes in the two years from 2012 to 2014. During that period, it was able to secure traffic regulation orders on just two unsealed highways out of a list of nearly 40, giving serious cause for concern.

The only reason public authorities and individuals are carrying all these burdens is that the law continues to permit many thousands of miles of unsealed highways to be used by motor vehicles. The amendment requires the Secretary of State to report on whether legislation should continue to permit such use. The Government have recognised the need for a review and consultation, but their proposals for taking the matter forward do not go far or fast enough. There is currently no timescale for action and no clear focus for a review. The Government are also unrealistic in hoping that a stakeholder working group made up of the parties involved—the mechanism for action which has been suggested—will reach agreement. This is not remotely possible, and setting up such a group at this point will therefore serve only to waste further time. That is why the amendment sets a timetable and a clear focus for action.

At this stage, I should point out that I am not concerned with traditional motor vehicle trials in the countryside. They are not a problem; it is the unsealed roads that are a problem. There is also a tendency to paint those who are campaigning on this issue as the rich. I want to refute that, as many walkers who are in the group we are seeking to protect most are relatively poor compared with those who often drive very expensive four-wheel drive vehicles. It has been suggested that barriers may be an effective way of closing off some lanes, but experience has shown that these barriers are often winched out by the 4x4 vehicles, many of which are equipped with winches. I am told that there is no problem in Scotland, where off-roading is not allowed, but Wales has similar problems to those in England.

I know that I am not allowed to show photographs but I draw noble Lords' attention to the fact I have many photographs from a very wide area, including the Lake District, the Peak District National Park and the North York Moors National Park. The damage is so significant that I believe we must take action. I beg to move.

7.30 pm

Lord Jopling (Con): My Lords, I declare four different interests as regards this matter. First, I have farming and landowning interests, although, whereas there are public rights of way over my land, I do not think that the matters to which the noble Lord refers affect my interests in any way. Secondly, for a great deal of my life I have been an active motorcyclist. Looking back, apart from riding a motor cycle over my own land, I do not think that I have ever gone a yard off the main highway. Certainly, I am not involved in any of these activities. Thirdly, in this aspect, for 14 years, I was president of the Auto-Cycle Union, which is the governing body of motorcycle sport. The ACU issues licences for events and competitors. Official events cannot take place without its licences. It has a very strict form of discipline for those organisers or competitors who break the rules. Finally as an interest, I was a Member of Parliament for 33 years for the southern part of the Lake District, which covered parts of the Lake District National Park and the Yorkshire Dales National Park.

I have always been very concerned about the way in which these unsealed roads and byways get absolutely wrecked by totally irresponsible people who use them as race tracks. For many years, I have taken a view that we should try to do something to stop these people who chew up the byway and behave in a totally irresponsible manner. Therefore, I have a great deal of sympathy for what goes behind this proposed new clause. We need to keep it in perspective because, as I understand it, there are 6,000 miles of unsealed roads in the country compared with 115,000 footpaths, bridleways and restricted byways. We are not talking about byways which are the dominant part of those ones where the public should have every opportunity to enjoy the tranquillity of the countryside.

In trying to come to a formula to deal with this, as the noble Lord said, is fiendishly difficult. We have to ensure that some of the vital interests continue to be able to go about their business. The day has gone when the shepherd plodded the moors with his dogs. Nowadays, they use 4x4s, which means that they must continue where it is essential to be able to use these unsealed roads. Shooting interests also often use them, as they should. In particular, I was rather apprehensive when I heard the noble Lord propose this new clause that he was trying to get at properly organised sporting events.

With my former ACU hat on, I was delighted to hear that he is not proposing to get at those organised events, which are done under very strict rules. I remember that years ago when I was in the Commons there was a great problem with unauthorised car rallies that raced through villages in the middle of the night—cars with open exhausts making a perfect nuisance of themselves. Things were changed so that only car rallies organised by the official motor sport organisations were supposed

to take place. Nowadays one never hears of this problem. I hope, therefore, that we can get something done. How do we do that? I dislike this new clause for one particular reason: that it is done by statutory instrument. That means that Parliament would have no chance to amend it, and because this is such a contentious issue Parliament should have a way of amending proposals to do with it. This is the aspect of the new clause I am most critical about—it ought to be done by primary legislation, not in this way.

As I understand it, Mr Rogerson proposed—in another place—to set up a group. I do not see terribly much difference, with great respect to the noble Lord who proposed it, between a group being set up and the Minister himself having to lay proposals, which is what the new clause proposes. We know that it is going to be difficult but let us have a group and let them have a go at trying to find agreement about these things. It is essential that we deter the abuses that currently take place and the best way forward would be to follow Mr Rogerson's proposals. I hope the Minister, in his reply, will stick to that.

I end, perhaps in a rather cynical way, by saying that the last thing this proposal is, is deregulation. It is not deregulation at all. I wonder if it is in order in regard to the Long Title of the Bill. However, I am not going to make an issue of that. I welcome efforts to try to do something about this menace but this is the wrong way to go about it. A year is too short a time. I hope the Minister will proceed in the way that Mr Rogerson suggested.

Lord Gardiner of Kimble (Con): My Lords, I am conscious that this is a very interesting debate, but I am also conscious that by agreement the Moses Room tends to finish soon after 7.30 pm, with a little leeway to go on longer. It would be very helpful, since we wish to finish this clause, if contributions were as brief as is seemly.

Lord Walker of Gestingthorpe (CB): My Lords, I speak briefly in support of this amendment. Like many noble Lords, I must declare an interest: I am a shareholder in a family company that owns and farms arable land in north-west Essex. I am, and have been for 60 years, a user of footpaths, bridleways and, from time to time, byways open to all traffic, on other people's land in Essex and in many other parts of England. This is a point on which there is no real difference of interest between reasonable landowners and walkers and riders. All of us can coexist; what none of us can easily coexist with are those who are use byways open to all traffic for four-wheeled vehicles, sometimes caravans of them, with their main object, it seems, being to make as much noise and mess as possible.

I have received many letters on this subject—they all seem genuine letters, written by the person who signed them and not copying something out—all in favour of this amendment. I had one yesterday, as it happens, from my brother-in-law, who is over 80 now. He wrote to me that, from his earliest years, he was a regular user of the Long Causeway that starts in Sheffield and goes to the heart of the Peak District National Park and described how that beautiful old path has been repeatedly and seriously damaged by four-wheel drive vehicles. He cited the fact—and I have no reason to doubt it—that the Peak District National Park Authority recently incurred expense of no less than £250,000 in trying to repair the Long Causeway. I therefore support the amendment.

Lord Judd: My Lords, I thank most warmly the noble Lord, Lord Bradshaw, for having introduced this amendment. If one looks at the photographs to which he referred and others—the evidence of our own eyes—one sees that this could be described in other circumstances as wilful and irresponsible vandalism. It is the destruction of one of our greatest assets and the people doing it should be treated firmly. Of course, it is going to be a complex area and it will be difficult, but the point is that the noble Lord, Lord Bradshaw, is having a go. If his proposals are not right, let us get proposals that are effective but let us stop dilly-dallying on this issue.

Some of the points made by the noble Lord, Lord Jopling, are very valid, not surprisingly, and I am sure that as we take this matter forward they can be considered. If the amendment is brought back on Report, as I hope it will be, perhaps they can be considered by then, which would be very sensible.

Sometimes in this context, there is emotional talk about the right of the handicapped to access the countryside. To those of us who work in the sphere of national parks and the rest, all the evidence suggests that the responsible representative bodies of the handicapped and the others are saying that what is happening is a menace, because it makes walking—for the blind, which is a very obvious example—much more hazardous and difficult. For the deaf—and I understand that problem, being deaf myself—it can be a terrifying experience when this noise suddenly occurs, with no sort of warning.

The point that we need to remember, and it is about social responsibility, is that what a few are doing is placing significant financial penalties on people who are trying to care for these rich and special national assets. This means that the cost of that care very often gets passed on to the taxpayer, to the subscriber and the donor. Is the indulgence of those few in irresponsible behaviour to be subsidised by society as a whole? That is just ridiculous. The financial and Treasury disciplines that apply to most of our lives should mean that we make it a priority to get this situation put right. I therefore again thank the noble Lord, Lord Bradshaw, most warmly and say that the sooner that we can do something about it, the better.

Baroness Parminter: Can the Minister, in his closing remarks, answer a question that I think will be of interest to all noble Lords? This amendment deals with a very important issue and I think we are very grateful for it having been raised today. The question is how we deal with it. I agree with my noble friend Lord Jopling that a stakeholder group is the best way forward. However, there have been questions raised about how much confidence we can have in that as a route to deliver. Can the Minister say what progress

[Baroness Parminter]
has been achieved in setting up a working group on this issue? Has a timetable been set for that working group and if it does not complete by that point, what actions do the Government intend to take? Perhaps the Minister can say in words of one syllable whether he, like his colleague down the other end, has confidence that a stakeholder working group can address this very real problem. The strength of feeling in this Grand Committee today shows it is something that this House wishes to be addressed quickly.

7.45 pm

Lord Cameron of Dillington: My Lords, I actually put my name down to support this amendment but, unfortunately, too late to get onto the Marshalled List. My main point directly contradicts what the noble Lord, Lord Jopling, said. I think this is a deregulatory amendment and, as such, fits in very well with this Bill. If passed it would involve much less work for local highway authorities, organisations and individuals; it would also simplify the law for others. It makes it unnecessary for the local highway authority to classify or define the status of each and every one of these UUCRs—unsealed, unclassified county roads.

We have heard this evening about the lack of resources available to highway authorities and they would inevitably not have the duty mentioned by the noble Lord, Lord Bradshaw, to repair some of these roads. There is less work also for planning authorities and, possibly, the courts. It obviates unnecessary work, research and legal proceedings by the public sector, private individuals and bodies on the vast majority of the 3,000 miles of green lanes. Incidentally, it would prevent most of them being churned up into wet, muddy brown lanes, as has been said, by motorised traffic where drivers have wrongly assumed that they have automatic rights to use them. They do not. Just because the roads have not yet been classified by the highway authority, which has not the time or the resources to it, it does not mean that drivers have the right to use them. It puts the onus on those wishing to use these UUCRs for motorised traffic to prove their case and it gives them a full three years to do so, which seems a reasonable window. The local highway authority will not have to investigate all the green lanes and by the end of the three-year window, clarification and certainty for all will prevail. That is the key—uncomplicated clarity and certainty.

Under the current circumstances, it is extremely likely that these UUCRs will be left until after 2026 because the local highway authorities are not getting round to dealing with them. They will be left and remain uncertain. Drivers will continue to use them because they will not be properly classified by 2026. Not surprisingly, no progress has been made on that front at all. This amendment is deregulatory for both public bodies and private individuals and I recommend that the Government look very favourably on accepting it. I believe that it would be very popular with walkers, bicyclists and riders, who are a very large constituency.

Viscount Bridgeman (Con): My Lords, I will be very brief. I support my noble friend Lord Bradshaw's very comprehensive outline of the purpose of this amendment and I, too, express my regrets to the Committee that I was not able to be present at Second Reading. There is, of course, an element of farce, were this not a really serious matter, in that the precedent is claimed by the off-roaders that these green lanes in the past were open to horse-drawn vehicles. I find it very regrettable that some of the national park authorities, which of all bodies should be the basic guardians of this beautiful and threatened environment for which they are responsible, have not been universally helpful. There has been a wide disparity of co-operation across the local authorities. My noble friend indicated the difficulties that they face. There has certainly been a multiplicity of police and local authorities. It is interesting that one of the success stories is the Ridgeway where there is only one police authority, Thames Valley. In the past, there has been a knight in shining armour on that police authority—my noble friend himself.

The Minister has gone as far as he can in flashing exhibits to this Committee, but I know that he has received pictures of the appalling damage that is done on these green lanes. He made the point about traffic regulation orders, and a lot of authorities are very wary of instituting those for the reasons that he gave: the huge potential cost of defending against challenges.

I am very glad that the noble Lord, Lord Judd, raised the question of disabled access. There have been unfortunate cases where confrontations between groups of learning disabled people and motorcycles or 4x4s have turned violent. We have to remember that the 4x4 and motorcycle groups are very powerful and persuasive, and they do not always have the restraining and responsible influence of the Auto-Cycle Union, to which my noble friend Lord Jopling has referred. I support the working group. The Government's apparent policy of reconvening these stakeholder groups, which have hitherto failed to reach agreement, is not helpful.

This is an opportunity that will not occur again. I have a feeling that this has been kicked into the long grass—possibly an unfortunate reference in this context, as the green lanes could probably do with a little more of that. However, this opportunity will not occur again for many years to come. It is a simple amendment to rectify unintended gaps in past legislation and I strongly hope that the Minister will give it some consideration.

Lord Grantchester: My Lords, the problems arising from recreational motor vehicles—4x4s and motorbikes—using green lanes, unsealed tracks and other classified county roads have become very serious. For today's Committee I have received a large postbag of submissions highlighting the disruption to quiet enjoyment of the countryside, and indeed the destruction of the pathway that precludes any other use. The Green Lanes Protection Group, made up of some 20 organisations ranging all the way from the Lake District in Yorkshire through North Wales and the Brecon Beacons to Somerset and the South Downs, has provided evidential photographs of the damage, and this is supported by many green lane alliances and concerned individuals.

This is becoming a serious, pressing matter to sort out. We recognise this and, in expressing sympathy, urge the Government to commit to a way forward.

However, I hesitate to prescribe how the Minister should approach this, as the amendment does when it says, for example, that within one year of the Bill's enactment the Secretary of State must lay before Parliament the report that the amendment calls for.

Perhaps the Minister could say which body, and which process, might be the best way to respond. Would it be once again a stakeholder working group or a sub-committee of wider interest groups that could make recommendations? Legal changes introduced by the NERC Act 2006 have improved the situation by limiting claims for the recognition of additional BOATs and by giving traffic regulation order powers to national park authorities. In places, though, particularly in some national parks, the problems remain extensive and further legislation is most likely to be necessary, along with better enforcement. Any debates on this issue that arise in the context of the Deregulation Bill will be important in paving the way for future legislation.

Lord De Mauley: My Lords, in what is an understandably contentious and partly ideological debate about the recreational use of motor vehicles on unsurfaced routes in the countryside, particularly inside national parks, my noble friend's proposal seeks to place a duty on the Government to assess the burdens and costs caused by the use of mechanically propelled vehicles on unsealed rights of way. Presupposing that the review would conclude that motor vehicle use gives rise to a burden and cost, the clause would give powers to alleviate these but would not seek any assessment of any possible benefits, or seek to weight burdens and cost against such potential benefits.

I have to say that I have considerable sympathy with the genuine concerns of my noble friend and others about the problems that can arise from the recreational use of motor vehicles on unsealed roads. Like the noble Lord, Lord Judd, and others, I think that my noble friend is right to raise it today. Furthermore, I agree that this issue needs to be tackled and some means of resolution to it found. The Government's published response to the Joint Committee's report of pre-legislative scrutiny on the Bill said as much, but recognised that this Bill was not the right mechanism for doing it.

The issue of recreational off-road motor vehicle use is a complex, emotive and contentious one where one person's pleasurable pastime is anathema to another. Research conducted on byways open to all traffic—admittedly, some years ago in 2005, although I am not aware of there being a significant change—found that although there are some acute cases of damage by recreational motor vehicle use in hot-spot areas, some of which my noble friend and I discussed earlier today, there was no evidence of widespread damage to the byway network from motor vehicles. The research found that 85% of byways open to all traffic in England carried either light traffic, at an average of 0.6 motor vehicles per day, or moderate traffic, at an average of 5.0 motor vehicles per day. Not all damage to unsealed roads and tracks is caused by the recreational use of motor vehicles. The research found that 62% of byway traffic is due to land management and dwelling access and just 38% is due to recreation. In addition, it found that 70% of byways were without any drainage. Much of the damage is due to a combination of farm vehicles, water erosion and poor maintenance.

I must also say that there is good evidence that the use of unsealed roads during organised motoring events, such as hill climbs, puts significant amounts of money into rural economies. There are about 150 hill climb events around the country every year, with over 12,000 participants. The motorcycle club trials in the south-west alone are estimated to bring about £120,000 to the local economy. Some groups of motor vehicle users engage in volunteer activities to repair and maintain unsealed tracks, which I think is something that we would all want to encourage.

It is our contention that the most appropriate way to review policy on the recreational off-road use of motor vehicles is for it to be based on the stakeholder working group model and, in answer to my noble friend Lady Parminter, such a group will be established as soon as possible after the passing of the Bill. Despite my noble friend Lord Bradshaw's scepticism, I point out that the stakeholder working group approach has proved to be successful, as demonstrated by the consensus in the face of diametrically opposing positions over the rights of way reforms package, of which the clauses in the Bill form the major part. This has resulted in agreement being arrived at through discussion and negotiation.

Lord Judd: I am grateful to the Minister for giving way. If he is advocating the working group approach, in learning from the last experience, does he envisage that that group might be given a time limit by which it is expected to report?

Lord De Mauley: I was just coming to the noble Lord's earlier question on timing in a moment.

My noble friend asked what would happen if there was no consensus between the pro-vehicle and anti-vehicle groups. Clearly, consensus would be the preferred outcome but of course we recognise that ultimately this may not prove possible. Even without consensus, at least all the viable policy options will have been properly explored and evaluated by stakeholders, enabling Ministers to make better informed decisions on which proposals to take forward.

On the point raised by the noble Lord, Lord Judd, the original stakeholder working group took 18 months to reach its conclusions and there is no reason why we should not set a similar timeframe for another. I am grateful to have my noble friend Lord Jopling's support for this route. Within such a group, recognised experts can explore all the viable possibilities and their likely consequences. Solutions arrived at in this way, based on agreement and mutual interest, are likely to result in less conflict and reduce the need for enforcement.

My noble friend's proposed new clause would create new regulation, which may not prove necessary after the issue has been properly analysed and discussed by the stakeholder working group and other stakeholders. Furthermore, subsection (3) of his proposed new clause contains a power to adopt some sort of measure to remove public rights of way by regulations. We believe that this would be an inappropriate use of delegated

legislation and does not recognise that the best solutions to problems are often those that do not resort to legislation.

I am happy to have further discussions with my noble friend between now and Report but, on the basis of what I have said today, I hope that he will agree to withdraw his amendment.

Lord Bradshaw: I thank my noble friend very much. The Minister's offer of further discussion is very pertinent because many people in your Lordships' House feel very strongly about this issue. I was not convinced by the statement that there were only a few places; this is happening all over, and is growing. Urgent steps must be taken to deal with it. I may not be the expert on what those steps are but I am happy to engage in further conversations. With that, I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Committee adjourned at 8.01 pm.

Written Statements

Tuesday 28 October 2014

Convention on the Protection of Human Rights and Fundamental Freedoms

Statement

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My right honourable friend the Minister of State for Justice and Civil Liberties (Simon Hughes) has made the following Written Ministerial Statement.

"In accordance with the Constitutional Reform and Governance Act 2010 and as part of the United Kingdom of Great Britain and Northern Ireland's ratification process, the Government is laying before Parliament the text of Protocol 15 to the Convention for the Protection of Human Rights and Fundamental Freedoms, commonly known as the European Convention on Human Rights, under Command Paper No. 8951 with an explanatory memorandum which explains the effects of the Protocol, ministerial responsibility for its implementation, and financial implications resulting from ratification.

The key objective of the United Kingdom's Chairmanship of the Committee of Ministers of the Council of Europe was to secure agreement to further reforms to the European Court of Human Rights. That objective was achieved. The resulting Brighton Declaration on the Future of the Court, agreed on 20 April 2012, was a comprehensive package of reforms to tackle the excessive backlog of cases pending before the Court, and made clear that the primary responsibility for guaranteeing human rights rests with national governments, parliaments and courts. Together, these reforms help to ensure that the Court focuses on allegations of serious violations or major points of interpretation of the Convention. Refocusing the role of the Court should reduce its backlog and thus deliver swifter justice for the fewer cases before it.

The Brighton Declaration was the result of a hard won – and ongoing – negotiation on the future role of the European Court of Human Rights. It therefore represented a significant step towards realising the goals set out by the Prime Minister, David Cameron, in Strasbourg in January 2012, to ensure that the Court does not function as a "court of fourth instance". It was not however the end of the reform process: as mandated by the Brighton Declaration, work continues at the Council of Europe to consider further reforms in the context of the longer-term future of the Court and the Convention system.

As part of the package of reforms, the Brighton Declaration included agreement in principle to amend the Convention in five respects. Protocol 15, the text of which will be laid here today, makes these amendments. Since it was opened for signature on 24 June 2013, Protocol 15 has been ratified by 10 States and signed by 29 others. It will come into force once ratified by all High Contracting Parties to the Convention, and will represent an important part of the implementation of the Brighton Declaration.

The Brighton Declaration also included agreement in principle to the drafting of Protocol 16 to the Convention. This creates an optional system by which the highest national courts can choose to seek advisory opinions on the interpretation of the Convention from the European Court of Human Rights. It will come into force once it has been ratified by 10 High Contracting Parties to the Convention, and will apply only to those countries that have ratified it.

Although the Government was pleased that it could help secure agreement on advisory opinions in the Brighton Declaration, it has long made clear that it is unconvinced of their value, particularly for addressing the fundamental problems facing the Court and the Convention system. The Government will therefore neither sign nor ratify Protocol 16 at this time. It will instead observe how the system operates in practice, having regard particularly to the effect on the workload of the Court, and to how the Court approaches the giving of opinions."

Finance: Financial Markets

Statement

The Commercial Secretary to the Treasury (Lord Deighton) (Con): My right honourable friend the Chancellor of the Exchequer has today made the following Written Ministerial Statement.

On 12 June 2014, the Government announced a joint Review by HM Treasury, the Bank of England, and the Financial Conduct Authority (FCA) into the way wholesale financial markets operate.

Wholesale fixed income, currency and commodity (FICC) markets underpin major financial transactions in the global economy. These markets also play a vital role in determining the costs of borrowing for households, business and government, exchange rates, and commodity prices that affect the real economy in Britain. In recent years we have seen abuse and misconduct in FICC markets, and allegations continue to circulate. The Government is determined to take action to help restore trust and integrity and to ensure that the highest standards are expected of those who operate in these markets FICC markets. It is important that this is done in a way that preserves the UK's position as the global financial centre for many of these markets, with all the jobs and investment that brings.

Action has already been taken both domestically and in the EU to respond to recent market abuses by regulators, legislators and market participants. In the EU, key changes to the regulatory structure have been agreed under MiFID 2 and the Market Abuse Regulation. Domestically, as well as enforcement action taken by the Financial Conduct Authority (FCA), the Government has taken steps to ensure that robust measures can be taken to tackle abuse and raise standards. This includes legislation to introduce a new criminal offence imposed on people who manipulate the LIBOR benchmark, and legislating to implement recommendations from the Parliamentary Commission on Banking Standards. The Government has also launched a consultation on extending the new legislation put in place to regulate LIBOR to cover further benchmarks in these markets, including benchmarks in the markets for gold, silver, crude oil and foreign exchange.

These are important steps, but the Government is committed to go further in ensuring that markets are fair and effective for the British economy. The Government welcomes the progress that has already been made by the Fair and Effective Markets Review. The consultation document '*How fair and effective are the fixed income, foreign exchange and commodities markets?*' published on 27 October is comprehensive, balanced and rigorous and asks the right questions on what needs to change to address recent misconduct and reinforce fairness and effectiveness in these markets. The consultation document is available on the Gov.uk website https://www.gov.uk/government/news/fair-and-effective-markets-review-announced-by-chancellor-of-the-exchequer

The Government looks forward to the Review's final recommendations in June 2015.

Firefighters: Pensions

Statement

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Lord Ahmad of Wimbledon) (Con): My hon Friend the Parliamentary Under Secretary of State for Communities and Local Government (Penny Mordaunt) has made the following Written Ministerial Statement.

People are now living longer, with the average 60 year old living ten years longer now than they did in the 1970s. As a result, the cost of public service pensions has increased in real terms by around a third over the last ten years and is now £32 billion a year. The average firefighter retiring at age 50 today is expected to live and draw a pension for 37 years in retirement after a career of 30 years. Lord Hutton, in his independent report, found that the Firefighters' Pension Scheme 1992 is the most expensive public service scheme and it is forecast to have a cash flow deficit of nearly £600 million by 2018-19. Taxpayers cannot be expected to meet all of these costs.

From December 2011, a number of proposals for reform were discussed between the Department, employers and the firefighter representative bodies. Over a year after the Government published its preferred scheme design in May 2012, the Fire Brigades Union balloted its members for strike action. Since that period there have been further talks to try to resolve the dispute, and three consultations covering the pension regulations. We have listened to the responses made to these consultations and refined the scheme design to address points made by firefighters.

Today, the Government has laid regulations setting out the terms of the reformed firefighters' pension scheme before Parliament and these will incorporate the changes that we have agreed to the scheme design. Laying the regulations now gives fire and rescue authorities time to implement the changes before they come into effect in April 2015.

We are also consulting on an amendment to the Fire and Rescue National Framework for England to ensure that no firefighter aged 55 or over will face a risk of being left without a job or a good pension. Our proposals underpin the fitness and capability processes that exist within individual fire and rescue authorities and complement the work being undertaken by a fitness group chaired by the Chief Fire and Rescue Adviser, Peter Holland. This group will provide an important opportunity for employers, employees and Government to consider the issues around fitness in more depth, and suggest practical action to address them. These steps will benefit all firefighters, not least women firefighters, and those who will work beyond 55 if they so wish. As the impact of working beyond 55 years of age will only take start to take effect in 2022, there is time to ensure appropriate procedures are in place to reassure and support both the younger and older worker. This process, linked with generous ill-health arrangements and the opportunity for redeployment, should ensure that firefighters can continue to receive one of the best pension packages of any worker.

A third of all firefighters are already members of the New Firefighters' Pension Scheme 2006, which has a Normal Pension Age of 60. The 2015 scheme maintains a Normal Pension Age of 60 as recommended by Lord Hutton and incorporated into the Public Service Pensions Act 2013. Firefighters are the only workforce that will not see an increase in their open scheme's Normal Pension Age as part of the reforms.

As a result of our consultation and representations received, we have made a number of changes to the scheme originally proposed. We have extended the enhanced early retirement arrangements so that they now apply from age 55, meaning that, as a member of the 2015 scheme, a firefighter retiring from age 55 will keep a significantly higher proportion of their pension than if they were in the 2006 scheme.

Members of the Firefighters' Pension Scheme 2015 will also earn more pension for each year that they are a member of the 2015 scheme than if they were in the 2006 scheme. The reformed 2015 scheme further improves on the existing firefighters' pension schemes by removing the cap on the amount of pension that can be earned, providing pension enhancements when taken after Normal Pension Age, and giving members greater flexibility by allowing partial retirement. The 2015 scheme also introduces a career average pension arrangement, which is a fairer pension scheme for lower paid members who tend to have flatter career progression.

We have also put in place very generous protections, which see a greater proportion of firefighters protected from the reforms than any other large public service pension scheme. A member of the Firefighters' Pension Scheme 1992 who, on 1 April 2012 was aged 45 or over, will see no change in their benefits or retirement age. Firefighters aged 41 or over at that date will receive tapered protection, meaning that they will continue in their existing scheme for a longer period of time. As a result, less than a quarter of firefighters will see a change to their Normal Pension Age in April 2015, and no firefighter will have to work beyond their current Normal Pension Age until 2022.

Where firefighters are transferring to the 2015 scheme, they can be reassured that the pension they have built up in their existing schemes will be fully protected, and

they can still choose to retire at the age they currently expect (which could be from age 50). Pension earned in the 1992 scheme will be enhanced further to recognise loss of access to double accrual, and all benefits earned in existing schemes will be calculated on the member's final salary on retirement. 1992 scheme members will also see a reduction in their employee contributions of two percentage points in 2015-16. After tax, this puts £460 back in their pockets in that financial year.

Members will continue to benefit from ill-health and survivor benefits, providing important cover for the member and their family should the worst happen. The department has also agreed to reduce the cost for authorities that choose to retire a firefighter over the age of 55 with an unreduced pension, providing them with greater flexibility to manage their workforces.

Importantly the reforms are fairer for taxpayers. They put the schemes onto a sustainable footing by removing the final salary risks associated with the old schemes, and by introducing a cost cap to limit future taxpayers' exposure on the costs of the scheme.

The Government recognises the importance of reassuring firefighters about changes to their pension in the future. We have given a 25 year guarantee that no changes to scheme design, benefits or contribution rates will be necessary, other than within the reform framework. On 10 October 2014, we issued a consultation on setting up a national Scheme Advisory Board and local pension boards, following Lord Hutton's recommendations on better scheme governance. We have proposed that local pension boards will include serving firefighters who will, for the first time, have a direct involvement in looking after their pensions.

Alongside the pension regulations, the Department is also responding to the 'Normal Pension Age for Firefighters' review prepared by Dr Williams who made three recommendations to deal with the design of the pension scheme and a further seven recommendations on supporting firefighters remain operationally fit until age 60. We have accepted two of the three recommendations on the pension scheme design, and the 2015 scheme reflects this. However, the Department could not accept the recommendation to reduce the pension of firefighters who are permanently unable to undertake the role of a firefighter.

The remaining recommendations concern fitness standards, assessments, training and data collection, all of which will be considered by the fitness group to be chaired by the Chief Fire and Rescue Advisor. Finally, the Department is content to commission subsequent reviews to further consider the impact of a Normal Pension Age of 60 on firefighters.

We have arrived at this final scheme after extensive consultation and consideration. It is a sustainable and fair pension package, which takes into account the unique role of firefighters. Copies of the associated documents will be placed in the Library of the House and they are also available on my Department's website.

New Fair Deal: Pension Liabilities

Statement

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever) (Con): My hon. Friend the Minister for Defence Equipment, Support and Technology (Mr Philip Dunne) has made the following Written Ministerial Statement.

I am pleased to inform the House that I am today laying a Departmental Minute to advise that the Ministry of Defence has received approval from Her Majesty's Treasury (HMT) to recognise a new class of contingent liability associated with the provision of pensions to staff compulsorily transferred from the public sector under New Fair Deal arrangements.

As part of the Naval Base Operating Centre Transformation Programme, and after a competitive procurement process, approval was given to outsource provision of Reception Centre Services at Her Majesty's Naval Base Devonport to Babcock International Group. The contract was awarded on 1 September 2014 and will lead to the transfer of 20 assigned civilian posts under the Transfer of Undertakings Protection of Employment legislation on 1 December 2014.

This Transfer of Undertaking will be implemented under New Fair Deal arrangements, which will generate future contingent liabilities for pension costs. HMT approval was granted on 8 August 2014 and I am advising Parliament of the approval of contingent liability for pension costs associated with such transfers under New Fair Deal arrangements.

Public Sector: Exit Payments

Statement

The Commercial Secretary to the Treasury (Lord Deighton) (Con): My right honourable friend the Chief Secretary to the Treasury (Danny Alexander) has today made the following Written Ministerial Statement.

We are today publishing the government response to the consultation about provisions in the Small Business, Enterprise and Employment Bill which will enable the recovery of exit payments when high earners return to the same part of the public sector within twelve months of leaving.

These provisions will ensure that the taxpayer is not paying out large sums in redundancies only to incur the cost of re-employing the same person in a similar role elsewhere. This will underpin consistency and fairness across the whole of the public sector.

This measure follows a number of recent high profile cases where individuals have received large exit payments and quickly returned to public sector roles. The Health Select Committee found among 19,000 NHS redundancies, 17% had been rehired and most within a year. An Audit Commission report in 2010 found that of 37 chief executives who left by mutual agreement over a two year period from January 2007, six had been employed in another council within 12 months. In such circumstances, the justification of financial support to bridge the gap to new employment is undermined and this represents poor value for money.

The consultation ran from 25 June to 17 September 2014 and received responses from 27 organisations ranging from health care bodies, local government bodies, trade unions and professional bodies. Engagements with departments continued throughout this period, and representations were received from their arm's-length bodies.

Respondents broadly agree that exit payments are primarily for a loss of employment, agreeing that it was reasonable to consider a recovery provision but advised caution over complexity. We have carefully considered all responses in deciding how to move forward with the legislation, recognising the diverse range of views which reflects different workforce arrangements across the public sector. As a result of this, the Government has decided to continue with the main elements of this policy:

Require high earning public sector employees or office holders to repay a broad definition of exit payments should they return to the public sector within 12 months on a pro rata basis.

Apply these measures to employees moving between the same part (or 'sub sector') of the public sector, with the exact definition of these sub-sectors to be determined and consulted upon at a later stage.

Define higher earners as any individual earning above £100,000.

Make changes that represent a baseline legal requirement. Where employers' existing or proposed policies go further these measures will support rather than replace them.

Following the responses we received, the government has made the following changes to our original proposal:

Payments in lieu of notice will not be recovered, as these are not payments for a loss of employment.

Those payments that have a potential, if not actual, monetary value will not be recovered because the difficulty of attributing a value would add an administration complexity and the likely cost of doing so could not be justified.

A decision has also been taken not to include a lower earnings threshold for a taper because of cost and complexity.

Special severance payments will be subject to the recovery provisions because they include elements that are paid in respect of loss of employment such as payments made for efficiency reasons, as well as elements that could be attributable to employer fault. Waivers from repayment could be used where these agreements relate to elements of employer fault, such as out of court settlement of an employee's claims against an employer.

The Bank of England and public broadcasters will be excluded from the scope of this policy, recognising their unique independent status. These organisations are to operate their own proposals which adhere to the spirit of the policy, and the BBC and Channel 4 have already put in place more stringent proposals.

In relation to the Office for National Statistics and some regulators, they will operate as independent individual sub-sectors responsible for their own waiver regimes. This is consistent with independence in the production and release of official statistics, and for some regulators a statutory basis for independence from central government.

As far as the waiver regime is concerned, there will be no option to waive recovery of payments made to Ministers and their Special Advisers, and Parliamentary post holders.

Further details of the changes to the policy are in the government's response to the consultation which has been published on the GOV.UK site.

The government has decided to proceed with legislating for framework powers enabling the recovery of public sector exit payments, and will draft regulations giving effect to the policy taking account of these changes.

Roads: Reform

Statement

The Minister of State, Department for Transport (Baroness Kramer) (LD): My Right Honourable Friend, the Minister of State for Transport (John Hayes), has made the following Ministerial Statement:

In June 2014, following the introduction of the Infrastructure Bill, which contains legislative proposals on transforming the Highways Agency into a government-owned strategic highways company, the Government published a suite of documents that set out further details of the key elements that together will form a cohesive and robust governance framework for the new company.

These documents explained how the governance regime for the new company would allow it the autonomy and flexibility to operate, manage and enhance the network on a day-to-day basis and deliver more efficiently, while ensuring it acts transparently, remains accountable to government, road users and taxpayers, and continues to run the network in the public interest.

Today, I am publishing a new document, *"Transparency for Roads",* setting out the respective roles of the new Monitor and Watchdog, who will monitor and improve the performance and efficiency of the company and represent the interests of road users. As a result of this, the management of the strategic road network will be more transparent and accountable than it has ever been before.

These roles will be performed by the Office of Rail Regulation and Passenger Focus respectively, the latter of which expects to change its name to Transport Focus to better reflect its intended wider remit. To ensure that its continued role in rail, as well as its proposed expanded role in roads is understood by passengers and road users, Transport Focus will work under two sub-brands "Transport Focus – Passengers" and "Transport Focus – Road Users".

Following further refinement, I am also publishing updated versions of:

"*Transforming our strategic roads – a summary*", an introduction to Roads Reform that summarises the reasons for change, what this involves, how the new regime will work and the benefits the change will deliver for road users and the nation as a whole –

with additional information about roles and responsibilities in the system of governance for the new company, and how this system will ensure the company fulfils important obligations on issues such as safety, the environment and cooperation with others; and

"Strategic Highways Company: draft Licence", which indicates the manner in which the Secretary of State proposes to issue binding statutory Directions and Guidance to the new company, setting objectives and conditions around how the company must act – updated to reflect further development work carried out over the summer, particularly with regard to safety and the environment, as well as cooperation, asset management and research, and the processes for setting and varying a Road Investment Strategy.

These take into account proposed Government amendments tabled to the Infrastructure Bill to ensure that, in setting or varying the RIS, the Secretary of State has regard to road user safety and the environment, and that appropriate consultation takes place, and also to strengthen role of the Monitor, giving it the ability to carry out independent enforcement activity if the company fails to deliver.

Taken together with the measures in Part 1 of the Infrastructure Bill, the proposed governance regime will provide a strong, certain framework for managing our roads. It will strengthen accountability, drive efficiency, increase transparency and create far more certain conditions for investment, enabling the supply chain to gear up for the Government's ambitious plans for the future. This will support the economy, promote jobs and skills and ultimately transform the quality of our national infrastructure and the quality of service for road users. We look to move to the new model with minimal disruption.

As the Bill remains subject to Parliamentary approval, these documents remain subject to change.

A copy of each of these documents will be placed in the Libraries of both Houses and will be made available at:

https://www.gov.uk/government/collections/roads-reform

Further information on the infrastructure Bill is available at:

https://www.gov.uk/government/news/infrastructure-bill

Written Answers

Tuesday 28 October 2014

Armed Forces: Meat

Questions

Asked by ***Lord Blencathra***

To ask Her Majesty's Government how much meat from animals killed by the halal method was purchased for the United Kingdom military whilst serving in the United Kingdom in each of the last five years. [HL2119]

To ask Her Majesty's Government whether United Kingdom military ration packs contain meat from animals killed by the halal method. [HL2120]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever) (Con): Ministry of Defence (MOD) personnel in the UK and permanent bases overseas are served through a number of catering, retail, leisure and other multi-activity contracts. Halal meat is purchased under these arrangements but information on the volume procured is not held by the MOD.

Armed Forces personnel serving on operations, exercises and HM ships and submarines, are catered for under a single food supply contract with Purple Foodservice Solutions Ltd (PFS). The PFS contract includes the provision of Operational Ration Packs (ORPs). Individual 24 hour ORPs are available in 60 different menus, of which 10 are halal.

All food procured for MOD personnel must comply with MOD food quality standards. These standards comply with all UK and EU production standards, Farm Assurance or equivalent. This includes the Animal Welfare Act 2006 which covers Halal slaughter.

Asylum: Finance

Questions

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government whether they have assessed the effectiveness of the combination of the Azure payment card and support under section 4 of the Immigration and Asylum Act 1999 in enabling refused asylum seekers to meet their basic needs. [HL2277]

To ask Her Majesty's Government what plans they have to abolish the Azure payment card and amend legislation to enable the provision of cash support for all refused asylum seekers until they are either given status in the United Kingdom or return to their country of origin. [HL2278]

To ask Her Majesty's Government how much they have spent on administering the Azure card system since its inception. [HL2279]

To ask Her Majesty's Government what is their forecast annual cost for administering the Azure card payment scheme in the coming year. [HL2280]

To ask Her Majesty's Government what is their response to the conclusion of the House of Commons Home Affairs Committee that "section 4 is not the solution for people who have been refused but cannot be returned" as stated in their report Asylum (7th Report of session 2013–14, HC 71). [HL2281]

The Parliamentary Under-Secretary of State, Home Office (Lord Bates) (Con): The Azure card is issued to destitute failed asylum seekers accommodated under section 4 of the Immigration and Asylum Act 1999 because they are temporarily unable to leave the United Kingdom. The card can be used at most of the main supermarket chains to purchase food and other essential items. The performance of the card is kept under regular review but the Government is satisfied that it is an effective way of ensuring that recipients are able to meet their essential living needs and are not left destitute.

The Government therefore has no plans to abolish the card or change legislation to allow people supported under section 4 to receive cash instead.

The total administrative costs of the card scheme since it was introduced in 2009 are approximately £1,515,000. Estimated administrative costs for the current financial year are £200,000.

The Government published its response to the House of Commons Home Affairs Committee report about asylum procedures in December 2013 (cm 8769). A response to the Committee's views on section 4 support was set out on page 18-19.

Bahrain

Questions

Asked by ***Lord Avebury***

To ask Her Majesty's Government whether they will call on the government of Bahrain to drop charges against Nabeel Rajab and Zainab al Khawaja for the expression of political views. [HL2189]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): Our Ambassador to Bahrain has raised both cases with the Government of Bahrain and emphasised the importance of ensuring that due legal process is respected and international norms of justice adhered to. We will continue to monitor both cases closely.

Asked by ***Lord Avebury***

To ask Her Majesty's Government whether they will place in the Library of the House a copy of their reply to the letter to the Foreign Secretary from Index on Censorship and other human rights non-governmental organisations on the latest detentions of human rights activists in Bahrain. [HL2192]

Baroness Anelay of St Johns: To date, the Foreign and Commonwealth Office has not received a letter from Index on Censorship on this subject.

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what plans they have to fund an investigation into children held in prison in Bahrain, similar to the report funded by the Foreign and Commonwealth Office concerning the treatment of Palestinian children under Israeli military law. [HL2211]

Baroness Anelay of St Johns: Our Embassy in Bahrain has raised the rates of imprisonment of young people on several occasions with the Ministry of the Interior and senior members of the Government of Bahrain. We support the recommendation to address the management and rehabilitation of juveniles in the justice system, in the Prisoners' and Detainees' Rights Commission and the Ministry of Interior's Ombudsman's office reports earlier this year. We encourage the Government of Bahrain to implement these recommendations promptly and plan to provide UK support in the field of juvenile justice.

Asked by ***Lord Avebury***

To ask Her Majesty's Government what representations they are making to the government of Bahrain in respect of the charges against Nabeel Rajab and Zainab al Khawaja. [HL2236]

Baroness Anelay of St Johns: Our Ambassador to the Kingdom of Bahrain has raised both cases with the Government of Bahrain and emphasised the importance of ensuring that due legal process is respected and international norms of justice adhered to. We will continue to monitor both cases closely.

Charity Commission

Question

Asked by ***Baroness Hayter of Kentish Town***

To ask Her Majesty's Government what is the annual budget for the Charity Commission; and whether it has been increased as a result of the Government's Big Society policy. [HL1989]

Lord Wallace of Saltaire (LD): The Charity Commission is a regulator of the charitable sector. The Commission's annual budget has been reduced over the last five years, as it has increasingly focused on its core regulatory functions. Its annual budget was £21.4m in 2014/15.

On 22 October the Prime Minister announced additional funding of £8m over three years to boost its ability to tackle abuse.

Civil Servants

Question

Asked by ***Lord Blencathra***

To ask Her Majesty's Government whether they plan to institute checks on United Kingdom civil servants to determine whether any of them support the creation of an Islamic State in the United Kingdom. [HL2121]

Lord Wallace of Saltaire (LD): All Civil Servants are subject to recruitment checks (including of unspent criminal records) and the provisions of the Civil Service Code. Line managers are expected to report concerns about staff, including for example, expressions of support for extremist views, actions or incidents.

Civil Servants in sensitive roles are subject to national security vetting. The information supplied as part of the vetting process is checked against records held by the Security Service and the police.

East Coast Railway Line

Questions

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what is the annual average cost of each seat on the East Coast rail service in (1) standard class, and (2) first class. [HL2187]

The Minister of State, Department for Transport (Baroness Kramer) (LD): The average cost of each seat on the East Coast rail service, calculated by adding direct rolling stock costs (staff including drivers and guards, materials, leasing, operating and maintaining, fuel, retail costs net revenue, logistics) and dividing by total number of seats are as follows:

1) Standard Class: £9,750 per annum
2) First Class: £16,339 per annum

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government what impact they consider that the long-term access rights for Grand Central on the East Coast Main Line will have on the premium payments generated by the Intercity East Coast franchise. [HL2254]

Baroness Kramer: The Department for Transport has forecast premiums for the purposes of the competition for the InterCity East Coast franchise. These forecasts take into account Grand Central's access rights at their current levels. The Invitation to Tender for the InterCity East Coast franchise competition includes a Risk Assumption relating to the impact of an expansion of Open Access operations.

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government whether the long-term access rights for Grand Central on the East Coast Main Line require them to pay the same access charge as Intercity East Coast; and, if not, why not. [HL2255]

Baroness Kramer: Grand Central will not pay the same access charges as Intercity East Coast as Open Access Operators do not pay Fixed Track Access Charges (FTAC). However, both Franchised and Open Access Operators pay Variable Track Access Charges (VTAC) since these are set to reflect the direct 'wear and tear' costs that train services impose on the network when they are run.

For Control Period 5 (CP5) the Office of Rail Regulation (ORR) has held Open Access (both passenger and freight) VTAC at CP4 levels, whilst Franchised Operators pay the new, higher CP5 rates.

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government whether East Coast Rail has carried out any study or projections of what would be the effect of converting one carriage on the East Coast intercity from first class to second class. [HL2274]

Baroness Kramer: East Coast has conducted some limited analysis on the effect of converting first to standard class carriages on the franchise. Their analysis shows that standard class is not currently capacity constrained. As such, they consider that there is no immediate demand for more standard class carriages and, especially considering the upcoming introduction of the new InterCity Express trains, such a conversion is not likely to provide the best outcome for East Coast passengers or taxpayers.

Egypt

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government what representations they have made to the government of Egypt about recent arrests of students, and the placing of private security companies, on university campuses there. [HL2222]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): The Prime Minister, my right hon. Friend the Member for Witney (Mr Cameron), asked that the Egyptian government address the large number of people being held in detention during his meeting with President Al-Sisi at the UN General Assembly in New York on 23 September. John Casson, our Ambassador in Cairo, discussed the recent university protests with Ahmed el-Tayyeb, Grand Imam of Al-Azhar, on 14 October. The UK believes that freedom of expression, including the right to protest peacefully, is important in any democracy.

European Rail Traffic Management System

Question

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government what assessment they have made as to progress in other countries of the European Union of the successful installation of the European Rail Traffic Management System on any busy mixed traffic railway. [HL2252]

The Minister of State, Department for Transport (Baroness Kramer) (LD): Network Rail, which leads the industry deployment of the European Rail Traffic Management System (ERTMS), is fully engaged within European groups involved in ERTMS rollout. In particular Network Rail is looking closely at the Danish deployment, which will deliver ERTMS onto mixed traffic corridors. The assessments of Network Rail are fed into national planning activities for ERTMS implementation.

Free Movement of People: Republic of Ireland

Question

Asked by ***Lord Mawhinney***

To ask Her Majesty's Government what role the free movement of people between the United Kingdom and Ireland, however defined, plays in the Anglo-Irish agreement and in the documents which underpin it. [HL2282]

The Parliamentary Under-Secretary of State, Home Office (Lord Bates) (Con): Free movement of people between the United Kingdom and Ireland within the Common Travel Area has existed since 1923 and therefore predates both the Anglo-Irish Agreement and the subsequent British-Irish Agreement. The free movement of people between the two jurisdictions is not provided for by either Agreement.

Illegal Immigrants: France

Question

Asked by ***Lord Condon***

To ask Her Majesty's Government what is their assessment of the current situation in Calais with regard to the number of people, from a number of countries, illegally seeking to enter the United Kingdom by secreting themselves in vehicles travelling to ports in Kent; and whether the situation has improved, or deteriorated, in recent months. [HL2198]

The Parliamentary Under-Secretary of State, Home Office (Lord Bates) (Con): There has been a sharp rise in numbers of illegal immigrants in Calais and the surrounding area, since 2013. This stems from the fact that France, unlike the UK, is part of the border free Schengen Area. We are clear that it is for the French to maintain law and order on their soil, but it is in the UK's interest to work with France to secure the border at Calais and other key ports.

On 20 September 2014, the Home Secretary and French Interior Minister, Bernard Cazeneuve, signed a joint declaration outlining a number of joint initiatives to tackle increasing migratory flows in Europe. That includes a range of improvements to security and infrastructure in Calais, to strengthen the port and provide greater protection to hauliers and tourists.

Her Majesty's Government has long been alive to the challenges posed in Calais. Millions of pounds have already been invested in improving security and upgrading technology in Calais. The Government has increased staffing levels in the port and extended security patrols. In addition to physical searches, Border Force officers use detection dogs, heartbeat detectors and carbon dioxide probes to find those hiding clandestinely in vehicles and freight.

Iraq

Questions

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what is their assessment of Amnesty International's report Absolute Impunity: Militia Rule in Iraq and its account of retaliatory attacks against IS by Shi'a militias in Baghdad, Samarra and Kirkuk. [HL2180]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): We have received reports from Amnesty International and others that Shia Militias have committed human rights abuses against Sunni Muslims in Iraq. The UK strongly condemns the persecution of communities on the basis of their religion, belief or ethnicity. We welcome the commitments made by Prime Minister al-Abadi to reorganising the Iraqi Security Forces, integrating volunteer civilian fighters and dissolving militia groups. He has stressed the importance of bringing arms under State supervision in order to prevent abuses by armed civilians. The UK fully supports the Iraqi government in this as well as its efforts to uphold the rule of law and bring those responsible for all violations and abuses of human rights to justice.

Asked by ***The Lord Bishop of Coventry***

To ask Her Majesty's Government what representations they have made to the government of Iraq about Iraq either acceding to the Rome Statute of the International Criminal Court or accepting the exercise of the International Criminal Court's jurisdiction with respect to the current situation facing that country. [HL2202]

Baroness Anelay of St Johns: The UK is a strong supporter of the International Criminal Court (ICC) and the principle of universality. We have consistently raised Iraq's responsibility to observe international laws and obligations in our contact with the Government of Iraq. The UK has not, to date, made representations to the current Government of Iraq regarding to accession to the Rome Statute or accepting ICC jurisdiction in relation to the current situation in the country. Any decision to involve the ICC must be made on the basis of whether the court would prove an effective means of bringing the perpetrators of atrocities to justice. We will continue to look at every available option for ensuring accountability.

Asked by ***The Lord Bishop of Coventry***

To ask Her Majesty's Government what conversations they have had with the government of Iraq about the implementation of proposals announced by that government in January 2014 to create three new provinces, including one in the largely Christian Nineveh Plains. [HL2203]

Baroness Anelay of St Johns: These proposals have not yet been implemented, but we support the new Government of Iraq's commitment to decentralised governance and greater sharing of power with the provinces. This will form an important part of efforts to increase political inclusivity, which is necessary if the Islamic State of Iraq and the Levant (ISIL) are to be driven out of Iraq for the long term.

Mechanical Engineering

Question

Asked by ***Lord Browne of Belmont***

To ask Her Majesty's Government how many people graduated with a degree in mechanical engineering from United Kingdom universities in each of the last three years; and how many of those graduates are now employed within that sector in the United Kingdom. [HL2087]

Baroness Williams of Trafford (Con): The information requested is not available.

Mental Health Services

Questions

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what action they will take to ensure that NHS England ensures parity of esteem as required by the Health and Social Care Act 2012, the NHS Mandate for 2013 to 2015 and the Refreshed Mandate for 2014 to 2015. [HL2068]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): The Government holds the National Health Service to account for achieving parity of esteem as required by the Health and Social Care Act 2012, through setting objectives in the NHS England Mandate for 2013-15 and the refreshed Mandate for 2014-15. In addition to measuring progress on specific objectives in the Mandate, outcomes for mental health patients are monitored through the NHS Outcomes Framework, which forms an essential part of the way in which the Secretary of State holds NHS England to account.

Our recently published five-year plan, *Achieving Better Access to Mental Health Services by 2020,* sets out action the Government is taking to provide better access to mental health services within the next year, including the first ever national waiting time standards for mental health services. It also sets out our vision for further progress by 2020.

£40 million in additional funding has been identified to enable change in the current financial year, and a further £80 million will be freed up for 2015-16 to support implementation of waiting times in mental health services.

Asked by ***Baroness Royall of Blaisdon***

To ask Her Majesty's Government what percentage of patients who attempt to access talking therapies are offered the full choice of National Institute for Health and Care Excellence approved treatments. [HL2136]

Earl Howe: National data is not available on the percentage of patients accessing talking therapies who are offered a choice of National Institute for Health and Care Excellence (NICE) approved psychological therapies.

NICE has recommended a range of psychological therapeutic interventions in its clinical guidelines, including Cognitive Behavioural Therapy, Interpersonal therapy, brief dynamic interpersonal therapy, couple therapy for depression and counselling for depression.

Not all psychological therapeutic interventions therapies are appropriate for all patients. The decision on the most appropriate therapy for each patient should be made between a patient and their clinician.

In 2012, the Department agreed significant additional investment of £22 million in Improving Access to Psychological Therapies (IAPT) over three years up to 2015. The additional funding will be used to extend the range and availability of evidence-based therapies and is in addition to the investment made in 2010 of £400 million in the IAPT programme up to 2015.

Middle East

Questions

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what representations they have made to the government of Israel concerning the deaths outside Al Amari refugee camp, of Mohammed al Qatari on 8 August, and his cousin Issa al Qatari on 10 September. [HL2209]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): While we have not raised these specific cases with the Israel authorities, we do have regular discussions with them to encourage them to use a minimal level of force. Officials from our Embassy in Tel Aviv have also spoken on various occasions to the Israeli police and the Israel Defence Forces to urge them to avoid the use of live fire and to exercise restraint in both Gaza and the West Bank, as well as about the process for investigating such incidents.

Asked by ***Lord Hylton***

To ask Her Majesty's Government what is their assessment of the peace-building and reconciliation work of Parents Circle/Bereaved Families Forum in Palestine and Israel; and whether they provide any financial help to it or to its United Kingdom charitable partner Friends of the Bereaved Families Forum. [HL2239]

Baroness Anelay of St Johns: The work of this organisation, and its emphasis on the importance of reconciliation to achieve peace, appears laudable.

While Foreign and Commonwealth Office officials have met with their partner organisation (the Friends of Bereaved Families Forum), we do not provide financial support to either of the groups.

Ministers: Conduct

Question

Asked by ***Lord Tebbit***

To ask Her Majesty's Government, further to the Written Answer by Baroness Northover on 18 August (HL1666), which section of the Ministerial Code deals with the expression of personal views which are not Government policy whilst answering questions at the despatch box. [HL2084]

Lord Wallace of Saltaire (LD): I refer the noble peer to the answer I gave on 26 September, *Official Report*, Column WA514.

Motor Vehicles: Excise Duties

Question

Asked by ***Lord Trefgarne***

To ask Her Majesty's Government whether, following the introduction of paperless processing of vehicle excise duty, the Driver and Vehicle Licensing Agency will continue to issue written notices to vehicle owners when their licences are due to expire. [HL2073]

The Minister of State, Department for Transport (Baroness Kramer) (LD): The Driver and Vehicle Licensing Agency (DVLA) will continue to issue printed renewal reminders which will be sent to vehicle keepers before the vehicle excise duty is due to expire.

Pakistan

Question

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

To ask Her Majesty's Government what discussions they have had with the government of Pakistan concerning the relationship between blasphemy laws there and that country's human rights commitments, particularly in the light of the Lahore High Court's decision to uphold the death penalty passed against Asia Bibi. [HL2276]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): We regularly raise at the highest levels Pakistan's human rights commitments including the misuse of blasphemy laws both against Muslims and against religious minorities. We are concerned to hear about the case of Asia Bibi and reports that a court has upheld the imposition of the death penalty. We have consistently pressed the Government of Pakistan on the issue of the death penalty and expressed our principled opposition to it in all cases and we will ensure that we continue to do so.

Palestinians

Questions

Asked by ***The Marquess of Lothian***

To ask Her Majesty's Government what proposals they have to ask Israel to contribute to the international funds being raised for the reconstruction of Gaza. [HL2149]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): The UK has no plans to request Israeli funding for the reconstruction of Gaza. The UK welcomes the generosity shown by the international community in response to the humanitarian crisis in Gaza. At the Gaza reconstruction conference on 12 October the UK pledged an additional £20million to help kick start the recovery and get the Gazan people back on their feet. Our current focus is on engaging Israel and other parties to ensure the unimpeded delivery of aid, including through the UN mechanism on construction materials which both parties have approved. The UK is pressing them to now make swift progress towards a durable ceasefire agreement.

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what reports they have received from the government of Israel concerning the implementation of recommendations in the Foreign and Commonwealth Office-funded report on the treatment of Palestinian children under Israeli military law. [HL2212]

Baroness Anelay of St Johns: The UK has made repeated representations to Israel on their treatment of Palestinian prisoners, including child detainees. Since the publication of the Foreign and Commonwealth Office-funded independent report on Children in Military Custody in June 2012, there has been some limited progress. This includes a pilot to use summons instead of night-time arrests, and steps to reduce the amount of time a child can be detained before seeing a judge. We have welcomed the steps taken to date, but we have called for further measures, including the mandatory use of audio-visual recording of interrogations, investigation into continued reports of single hand ties being used, and an end to solitary confinement for children. The Government has been working with the delegation who compiled the Children in Military Custody report to make a return visit to Israel and the Occupied Palestinian Territories in the near future.

Prisoners: Foreign Nationals

Question

Asked by ***Lord Browne of Belmont***

To ask Her Majesty's Government what has been the total annual cost of imprisoning foreign national offenders in United Kingdom prisons in each of the last four calendar years. [HL2092]

The Minister of State, Ministry of Justice (Lord Faulks) (Con): The National Offender Management Service (NOMS) does not calculate separately the annual cost of imprisoning foreign nationals in England and Wales. NOMS does not analyse cost by prisoner nationality, as costs recorded on the NOMS central accounting system do not allow identification of costs attributable to holding individual prisoners.

All prison costs for Scotland and Northern Ireland are a devolved matter and the responsibility of the relevant Minister.

RFA Argus

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government what is the state of readiness of RFA Argus; how many patients she can carry; and whether there are plans to deploy her to the Mediterranean for humanitarian tasks or for rescuing endangered boat-people. [HL1978]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever) (Con): We do not release information on the readiness levels of our units, on grounds of safeguarding national security. As an integral component of the Government's response to the Ebola crisis in West Africa, RFA Argus was recently deployed to Sierra Leone as an aviation support ship with three Merlin helicopters embarked. RFA Argus also has the capacity for a 100 bed medical facility.

Rolling Stock

Question

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government whether they have subsidised, or are considering subsidising, the costs of rail operators in converting first class carriages to standard class. [HL2188]

The Minister of State, Department for Transport (Baroness Kramer) (LD): Government specifies capacity requirements at a high level and seeks input from the industry as to cost effective and timely ways in which this can be delivered. The industry is free to consider initiatives which meet the overall requirements of the Department for Transport's specification. This may include providing additional seating capacity in standard class carriages through conversion of first class carriages. In the case of the recent Virgin West Coast and First Great Western Direct Awards, the Government has contracted with the operators to provide additional capacity in this way.

Saudi Arabia

Question

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what representations they have made to the government of Saudi Arabia concerning the seven executions by beheading there in March 2013. [HL2210]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): We raised our concerns with the Saudi Arabian authorities when the sentences were due to be carried out, reiterating our opposition to the death penalty and requesting that leniency be shown. Government Ministers, our Ambassador to Saudi Arabia and officials from our Embassy raise the issue of the death penalty with the Saudi authorities, bilaterally and through the EU. While we are fully committed to global abolition we recognise that the total abolition of the death penalty is unlikely in Saudi Arabia in the near future. For now, our focus is on the introduction of EU minimum standards for the death penalty as an important first step, and supporting access to justice and rule of law.

Streatham Station

Question

Asked by ***Baroness Jones of Moulsecoomb***

To ask Her Majesty's Government what plans they have to make funding available under the Access for All programme to make Streatham overground station accessible; whether matched funding has been promised; and if so, by whom. [HL2395]

The Minister of State, Department for Transport (Baroness Kramer) (LD): Access for All funding will be made available to provide Streatham station with an accessible route to each platform by April 2018. There is £50,000 in match funding available from Lambeth Borough Council.

Syria

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether Syrian refugees are being refused entry to Jordan; whether they have any information about the situation of any such people; and whether they will make the necessary representations to enhance their well-being. [HL2221]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): The Government has raised the reports of Syrian refugees stranded at their border with the Jordanian authorities. While we respect the rights of the Jordanians to control their border and protect entry against extremists and terrorists, we have stressed the humanitarian imperative that vulnerable people are protected and given refuge.

Unmanned Air Vehicles

Question

Asked by ***Lord Judd***

To ask Her Majesty's Government what steps they are taking to support the formulation of United Nations guidance on the application of human rights law to drone use. [HL2240]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): The Government believes that international law on the use of military force is absolutely clear. There must be a lawful basis for such force to be used and activities must be conducted in accordance with the law of war or international humanitarian law. This is as true when considering the possible use of remotely piloted aircraft systems as it is with any other military asset or weapon. Remotely Piloted Aircraft Systems are a relatively new military asset, and their use, whether armed or unarmed, will continue to evolve. However, the existing international legal framework is clear and robust; and, as with any other weapons system, it is fully capable of governing their use. We do not need to rewrite the laws of war in order to be confident that, when used in such lawful circumstances, remotely piloted aircraft systems operate in the same legal environment as other military means. We have set this position out previously including at the UN Human Rights Council in response to the report of the Special Rapporteur.

Viral Haemorrhagic Diseases

Question

Asked by ***Lord MacKenzie of Culkein***

To ask Her Majesty's Government whether the agreement in the former Nurses and Midwives Whitley Council on increased pay for nurses caring for persons with viral haemorrhagic diseases such as Marburg fever and ebola is still in force. [HL2095]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): The Whitley Council allowance for "*nursing patients with infectious communicable diseases*" ended when Agenda for Change (AfC) started in December 2004.

This is because AfC pay bands are related to the National Health Service job evaluation scheme. AfC was designed to ensure equal pay for staff carrying out work rated as 'equivalent' or 'of equal value'. Factors which determined the need for Whitley allowances are measured in AfC by job evaluation. This determines the pay band which feeds through to pay.

Decisions relating to the banding of NHS staff, including nurses and midwives, are matters for the NHS organisation concerned as the employer. They are best placed to determine the content of individual jobs.

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