Vol. 740
No. 70

Wednesday
21 November 2012

PARLIAMENTARY DEBATES
(HANSARD)

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House of Lords

Wednesday, 21 November 2012.

3 pm

Prayers—read by the Lord Bishop of Bath and Wells.

Rwanda
Question

3.06 pm

Asked By ***Lord Chidgey***

To ask Her Majesty's Government what assessment they have made of the Amnesty International report *Rwanda: shrouded in secrecy*.

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): My Lords, the UK shares the concerns raised in this Amnesty International report. Our high commissioner in Kigali has raised illegal detentions and key concerns in the report with the Rwandan Government on a number of occasions. He has also regularly requested access to detention centres and, in September, was granted access to the Gikondo transit centre, a facility that has been mentioned in other international human rights reports on illegal detentions.

Lord Chidgey: I thank my noble friend for that response. She will be aware that the Amnesty report documents illegal detention and torture over more than two years while, over the past two days, the Rwandan military has been backing the M23 in its incursions. They have overrun the city of Goma in the Congo. Surely both of these events are serious breaches of a memorandum of understanding that Rwanda signed with the UK just this September, committing it to:

"The principles of good governance … respect for human rights",

and,

"The promotion of peace and stability in the Great Lakes region".

In the absence of any signs of compliance with the memorandum of understanding, can my noble friend tell us whether, during our Minister for Africa's visit to the region—he is there now—we will curb Rwanda's aid programme forthwith?

Baroness Warsi: My noble friend raised a number of issues, some of which relate to reports that were clearly leaked. It would be inappropriate for me to comment specifically on a leaked report but I can confirm that this Government take those concerns extremely seriously. That is why, among other reasons, the Minister for Africa is in the region. My noble friend will be aware of the United Nations Security Council presidential statement, which was issued only yesterday and deals with specific concerns about the M23 in Goma. I am sure he will also accept that our aid programme in Rwanda is, specifically, to deal with poverty in a country where almost 45% of Rwandans remain in extreme poverty. Real progress has been made since the genocide of 1994 in building Rwanda's economy. I am sure he will accept that our support to the poorest in that economy is part of that.

Lord Alton of Liverpool: Does the noble Baroness not recall that in September, in reply to a Written Question that I tabled, her noble friend Lady Northover confirmed that some £344 million is being provided in bilateral aid to Rwanda between 2011 and 2015? In that same reply, she said that Rwanda,

"must adhere to strict partnership principles",—[*Official Report*, 24/9/12; col. *WA284*.]

and that the Secretary of State was still considering whether those expectations were being met. Given what the noble Lord, Lord Chidgey, just said about the fall of Goma—there are now 80,000 displaced people and refugees in that area—and what Ban Ki-Moon has said about using aid for leverage, will the Minister say whether we are reconsidering our decision to restore aid in that vast degree to Rwanda and who is arming and paying for the arms of the M23 rebels?

Baroness Warsi: I cannot comment on the last question that the noble Lord raised but, in relation to aid, in 2012-13 we have committed £75 million, of which £29 million is general budget support. The noble Lord will be aware that in July of this year, because of certain concerns that were raised, a £16 million tranche of general budget funding was not given over until September and, at that point, £8 million was given over as general budget support but £8 million was redirected to education and food. The next tranche is due in December and my right honourable friend the Secretary of State for International Development is looking at all these matters.

Baroness Kinnock of Holyhead: My Lords, does the Minister have a view on how the Security Council could accept yesterday that M23 is getting external support but then perversely claim that it lacks evidence? Does she agree that it need look no further than the new, well documented evidence provided by Human Rights Watch on Rwanda's provision of, for instance, logistical support and sophisticated weaponry to M23?

Baroness Warsi: We were heavily involved in that presidential statement at the United Nations Security Council yesterday. It was important that we raised our concerns, and we raised them. As the noble Baroness will note from that report, the support given to M23 is not entirely clear. Reference was made to it by the United Nations group of experts' report via a leaked report. It would be inappropriate for me to comment on that leak, but these are matters that we continuously discuss with Rwanda.

The Lord Bishop of Bath and Wells: My Lords, *Rwanda: Shrouded in Secrecy* paints a bleak picture of arbitrary arrest and torture inside Rwanda. What steps are the Government taking to urge the Rwandan Government to investigate all cases of unlawful detention, enforced disappearance, torture and other ill treatment by the military and to ensure that those responsible are brought to justice?

Baroness Warsi: I can assure the right reverend Prelate that human rights are an important component of the development work we do in Rwanda. The UK recognises that there are serious concerns about human rights in Rwanda, particularly about political rights and freedom of expression, as well as the concerns detailed in the Amnesty International report. We raise these concerns consistently in our discussions with the Rwandan Government at the highest level, and we will continue to do so.

Lord McConnell of Glenscorrodale: My Lords, do the Government acknowledge that in addition to the aid provided to Rwanda, this country is also one of the largest aid contributors to Uganda and is increasing its aid year after year to the Democratic Republic of Congo? That puts the United Kingdom in a unique position with our role in the Security Council and in the European Union to insist that the talks happening today in Kampala produce a long-term regional solution that involves all the countries of the region accepting their responsibility for the situation, not just at the moment in Goma, but the continuing violence over recent years. A regional solution that delivers peace not just for people in North Kivu, but for the rest of the region as well, is essential.

Baroness Warsi: The noble Lord raises important points. He will be aware that the Minister for Africa is visiting Uganda, Rwanda and the DRC. We have strong relationships in the region, not just through our aid programmes, and it is important that we use them to further stability in the region. The noble Lord may not be aware that aid to the Ugandan Government has been temporarily suspended as a result of evidence emerging from an ongoing forensic audit of the Prime Minister's office.

Lord Avebury: Considering that with 20,000 armed men and a budget of $1.4 million MONUSCO has been unable to protect the civilians of Goma from the aggression of M23, does the Minister think that it is time to consider more than just reviewing the mandate of MONUSCO? Has she seen the French proposals to give MONUSCO an aggressive capability? Will she discuss that with it to see whether we could support it in the Security Council accordingly?

Baroness Warsi: The MONUSCO mandate, as the noble Lord is aware, is specifically to protect civilians. They do not have, as he says, a more aggressive mandate at this stage but I will take what he has said on board and feed it back.

Health: Mental Health

Question

3.15 pm

Asked By ***Baroness Sherlock***

To ask Her Majesty's Government, further to the remarks by Earl Howe on 8 February (HL Deb, col. 273), what action they have taken to ensure mental health is treated on a par with other National Health Service services.

Baroness Sherlock: My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as a director and former chair of Chapel Street community health.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): My Lords, the Health and Social Care Act 2012 creates equal status for mental and physical health; the new mandate to the NHS Commissioning Board tasks it with delivering this goal. One of the eight objectives of the mandate is,

"putting mental health on an equal footing with physical health–this means everyone who needs mental health services having timely access to the best available treatment".

The NHS will be expected to demonstrate progress by March 2015.

Baroness Sherlock: I thank the Minister for that Answer. The NHS constitution gives a patient the right to drugs and treatment recommended by NICE for use in the NHS where clinically appropriate. "Recommended" means that they have passed NICE's technological appraisal. For mental health, the problem with talking therapies is that they are not appraised because they are not technological. Will the Minister reassure the House that "parity of esteem" will mean that the NHS constitution will give someone the right to any therapy or treatment recommended by NICE for use in the NHS, even if it has not passed the technology appraisal, provided that there is good evidence for its efficacy—for example, CBT for schizophrenia?

Earl Howe: My Lords, as the noble Baroness made clear, the NHS constitution sets out that patients have the right to drugs and treatments that have been recommended by NICE for use in the NHS if their doctor says that they are clinically appropriate for them; that includes talking therapies for certain problems. The mandate to the NHS Commissioning Board is clear about everyone who needs mental health services having timely access to the best available treatment. The NHS will be expected to demonstrate progress in achieving that by 2015, as I mentioned. For many patients, there are few better therapies than talking therapies. Given that the board must deliver those outcomes, the rest follows.

Lord Alderdice: My Lords, I will press the Minister further on this. In his response to my debate on mental health on 8 October, he undertook to write on a number of issues. True to his word, as we have come to expect, he wrote a long, substantial, constructive and positive letter in which he discussed psychological therapies being available for disturbed people. I want to pick up on what the noble Baroness has said about schizophrenic disorders. There is a tendency for people with the schizophrenias simply to be given medication and social management. There are psychological treatments—family therapy and others—that are appropriate. Can my noble friend ensure that those who suffer from the schizophrenias will also receive appropriate psychological therapies and not simply be abandoned to medication and social management?

Earl Howe: My Lords, my noble friend makes an important point, and I can reassure him on that. I know that he is concerned that IAPT services may be displacing other psychological therapies. In fact, having looked into this, I can tell him that data from the NHS finance mapping exercise shows that IAPT services are not displacing other therapies; I have figures here to prove that. Spending on non-IAPT psychological therapies has reduced very slightly, by just over 5%, but the overall picture is one of a dramatic expansion in the availability and range of psychological therapies.

Lord Patel: My Lords, as the mover of the amendment that put equality of mental and psychical health in legislation, I am pleased that the Government did not contest it again—albeit that it was won by a Division. I am also pleased that mental health is to be treated equally in the mandate.

A noble Lord: Question!

Lord Patel: I am coming to the question which is important. Having put it in the mandate, would it not now be right for the department to ask the Commissioning Board to produce a framework outcome for mental health so it can assess progress in treatment equality for mental health?

Earl Howe: My Lords, we expect the equal priority for mental and physical health to be reflected in all relevant aspects of the NHS's work. There can be no single measure of parity. As I said earlier, we expect the board to be able to demonstrate measureable progress towards parity by 2015. However, there are some specific areas where we expect progress; for example, relevant measures from the NHS outcomes framework, including reducing excess mortality of people with severe mental illness; delivering the IAPT programme in full and extending it further; addressing unacceptable delays, and significantly improving access and waiting times; and working with others to support vulnerable and troubled families. Those are very detailed objectives for the board, all of which bear upon the key question of parity between mental and physical health.

Lord Patel of Bradford: Given the real terms drop in mental health funding last year, which was even greater for older people's mental health services—an area which has many challenges ahead for us; will the Minister tell us how the Government will ensure consistency and parity in local commissioning strategies, as clinical commissioning groups can obviously choose to prioritise or exclude what they want to have in those strategies? How will the Government deliver the Prime Minister's dementia target?

Earl Howe: My Lords, the way in which mental health services are commissioned locally is of paramount importance. One of the features of the reforms is to bring together local authorities and the health service to plan services in a much more integrated way. Clinical commissioning groups will ignore the imperative of mental health at their peril, because they will be charged—under the commissioning outcomes framework, which the board will set—to deliver meaningful progress on all the indicators, including mental health indicators. It is an absolute necessity that good commissioning takes place at a local level.

Baroness Meacher: My Lords, the Minister is well aware that only a third of people whose lives are being ravaged by depression and anxiety are receiving treatment. He rightly pointed out that the commissioning board has a responsibility here, but I understand that it does not regard this as one of its priorities. Will the Minister give a very clear signal to the commissioning board that Ministers regard the equal treatment of mental and physical illnesses as important, and that parity must be achieved?

Earl Howe: My Lords, that objective is explicitly spelt out in the mandate. I have already spoken about some of the ways in which we expect the board to demonstrate that they have delivered that objective, and I can give the noble Baroness the reassurance that she seeks.

Young People: Staying Put Scheme

Question

3.22 pm

Asked by ***The Earl of Listowel***

To ask Her Majesty's Government what plans they have to roll out the Staying Put scheme across England and Wales.

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): My Lords, the Government are encouraging all local authorities to expand staying-put arrangements so that more young people can stay with their former foster carers until age 21, particularly when these young people are in further or higher education. My honourable friend Edward Timpson, the Children's Minister, has recently written to all directors of children's services, urging them to ensure that care leavers always live in safe, suitable accommodation, including staying-put arrangements.

The Earl of Listowel: I thank the Minister for his reply. Does he share my concern that these young people, in particular, need enduring and reliable relationships in their lives because of their poor start? Does he also share my concern at the recent findings from the deputy Children's Commissioner about the sexual exploitation of young people leaving care? Does that not highlight the urgency with which the Government should pursue their current activity in encouraging local authorities to spread this practice as far, and as soon, as possible?

Lord Hill of Oareford: I agree with the noble Earl on both points. Any help that he and others can give in raising the salience of the issue with local authorities would be very welcome. As I said, my honourable friend has written to all of them, and he will be monitoring the situation. I am glad that in the past year the number of young people in staying-put arrangements has increased—admittedly from a low base—by more than a third, so there has been some progress. However, we all need to keep the spotlight on it.

Baroness Brinton: Is the Minister aware of the bizarre anomaly that care leavers who are not in education, employment and training are eligible for a personal adviser only until they are 21 years old, while those who are in education, employment and training are eligible for support from a personal adviser until the age of 25? In light of this, will the Government consider extending the offer of personal advisers for NEET care leavers until they are 25?

Lord Hill of Oareford: My Lords, I think that I am right in saying that the extension to the age of 25 for those who are in education was a fairly recent extension from the age of 21. I will take up the noble Baroness's second point with my honourable friend Mr Timpson.

Baroness Hughes of Stretford: My Lords, I am sure that none of us as parents would want to be forced to turn our son or daughter out of the house on the day of their 18th birthday but that is happening to thousands of young people in care. The Minister has effectively said, as the Government constantly say, that it is up to local authorities. However, this is a very special case because these young people are in the care of the state; the Government have ultimate responsibility for their well-being and cannot pass the buck to local authorities. Will the Government give young people in care the entitlement to stay in their placement after the age of 18, if it is in their interests to do so, and ensure that local authorities provide the support for that to happen? Will they further ensure that any planned changes to housing benefit and welfare reform being considered by the Government do not further disadvantage young people in care?

Lord Hill of Oareford: My Lords, it is not a question of the Government seeking to pass the buck to local authorities. As the noble Baroness will know much better than me, that is where the statutory responsibility lies and where we think that it should be. Given those statutory duties, I am sure she will have seen the recent Section 251 returns around the funding that local authorities are putting into looked-after children—it has shown a small increase over the past year, which reflects the priority that is being attached to it—and the statutory framework that is in place.

On the noble Baroness's second point about whatever changes may be made to the benefits system and seeking to make sure that the interests particularly of this most disadvantaged group of care leavers are taken into account, she is right that we need to make sure that those concerns are properly considered. I know that my colleagues will be doing that as policy is developed.

Lord Roberts of Llandudno: My Lords, I am delighted to see that Wales is included in this, as so many things are devolved to Wales. Will the Minister explain exactly how this scheme operates in Wales? Is it through the Assembly Government or directly from Whitehall?

Lord Hill of Oareford: The Welsh Government are responsible for their own arrangements but, in parallel, they are carrying out a consultation looking into precisely the same issues and whether it is appropriate to introduce their version of staying-put arrangements into Wales. That consultation is going on at the moment.

Lord Harris of Haringey: The noble Earl, Lord Listowel, has referred to the Children's Commissioner's report which came out today, in particular the dreadful findings about how many children in care have been sexually abused. Will the Minister tell the House the Government's stance about that report, given that, apparently, people speaking on behalf of the Government to both the BBC Radio 4 "Today" programme and the *Sun* said that the report was overemotional and were trying to undermine its conclusions?

Lord Hill of Oareford: The Government's stance is that the report from the deputy Children's Commissioner is helpful for the Government to have. We will reflect on the findings that it makes in terms of its recommendations and its estimates about the extent of the problem. I think I am right in saying that the report recognises that making any precise estimate is by nature very difficult, but the more information we have the better. Even before this report, the Government have been seeking to improve the systems for getting accurate reporting from various local agencies and authorities to make sure that we have as accurate a picture as possible to make sure that we do not underestimate or overestimate the problem. Everyone is very aware of the salience of this issue and the important issues that that report gives rise to.

Bahrain

Question

3.29 pm

Asked By ***Lord Avebury***

To ask Her Majesty's Government what representations they will make to the Government of Bahrain regarding the deprivation of citizenship imposed on 31 persons on 7 November 2012.

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): My Lords, we have told the Bahraini Government that revoking citizenship, which leaves individuals stateless, is a negative step and, ultimately, a barrier towards reconciliation. I understand that those affected have the right of appeal, but we regularly express our concerns about human rights abuses in Bahrain.

Lord Avebury: My Lords, I noticed that my right honourable friend the Foreign Secretary had been cosying up to one of the hereditary oligarchs of a regime that regularly kills, tortures and arbitrarily imprisons any of its opponents, and has now taken to depriving them of their citizenship. Would my noble friend agree to meet me with brothers, Jalal and Jawad Fairooz, former MPs of the al-Wefaq Party, who were deprived of their citizenship and are now stranded in London without visible means of support, without any citizenship, and separated permanently—as far as I can see—from their families in Bahrain? Will she also bear in mind that, if you are going to have a

dialogue that will solve the constitutional problems of Bahrain, it can be done only if you free the political prisoners who are the leaders of the opposition and who are at present incarcerated for very long periods in prison?

Baroness Warsi: My Lords, I understand that officials from the Foreign and Commonwealth Office are in touch with, and have had some contact with, the two specific cases to which my noble friend refers. I know that he has strong views in relation to this matter, but I would take exception to the description given to my right honourable friend the Foreign Secretary. Indeed, earlier this week I myself met with Shaikh Khalid bin Ahmed al-Khalifa, who is the Foreign Minister, and indeed the individual to which my noble friend refers. It was a robust and frank exchange, and a conversation in which human rights were openly and frankly discussed.

Lord Soley: We are all aware of the influence of Iran in this area, but how much have we discussed with the Bahraini authorities the difficulties that they face as a result of the two branches of Islam—Shia and Sunni—and involving that in the constitutional discussions that are taking place? It is very important, and there are ways of addressing it. Have they discussed it? I should declare an interest as the chairman of the Good Governance Foundation, which operates in the region.

Baroness Warsi: Certainly, we have these specific discussions regularly around freedom of religion. I spoke with the Foreign Minister when he was here this week specifically about that issue, and we had a lengthy conversation about the Shia-Sunni dynamic in Bahrain. We also spoke about historic coexistence between these two theologies within Islam. Indeed, we had a lengthy conversation about my own history when I explained to him that I was half-Sunni and half-Shia.

Lord Luce: While acknowledging the importance of the Question asked by the noble Lord, Lord Avebury, would the Minister give some credit to the Government of Bahrain for setting up last year a very distinguished international commission on human rights, which at the end of the year made over 170 recommendations, of which the Government have so far decided to implement 140? Should we not give some credit to the Government of Bahrain for that?

Baroness Warsi: The noble Lord makes an important point. Indeed, today is the anniversary of the publication of those first ambitions set out in the Bahrain Independent Commission of Inquiry. He is right when he says that 143 of the 176 recommendations were accepted—and, indeed, a further 13 were partially accepted. Bahrain is trying to make progress on these matters, and we are supporting it in doing that.

Baroness Uddin: My Lords, given her recent discussion with the Foreign Minister, would the Minister tell the House what progress has been made, in her assessment, between the Bahrain Government and opposition parties? In asking this question I declare my interest as a member of the UK-Bahrain All-Party Parliamentary Group. Alongside the discussion that the noble Lord, Lord Avebury, is asking her to host, would she also engage with the all-party group?

Baroness Warsi: An amount of progress has been made, both politically and in relation to governance. Some underlying concerns, of course, need to be addressed before progress can be made politically. Much of that has been set out in the Bahrain Independent Commission of Inquiry. I know that progress has been made on a special investigations unit, for example, which looks into the particular disturbances that led to the current concerns. Some progress has also been made in relation to constitutional amendments that will form the basis of reconciliation.

Baroness Falkner of Margravine: My Lords, does my noble friend accept that while some of the recommendations of the Bassiouni commission have indeed been accepted and enforced, the principal recommendation—which was about reconciliation and talks to resolve the differences between the two sides—rested on there being an opposition with whom to have talks about reconciliation? When so many members of that opposition might have been freed but then deprived of their citizenship and are, in other words, stateless, it is impossible to have discussions with them. What are the Government doing to speak directly to the Prime Minister, rather than the Foreign Minister, of Bahrain to ask that the revocation of these peoples' citizenship be readdressed?

Baroness Warsi: We have discussions at all levels in relation to this matter, including with the Prime Minister. The specific issue regarding the revocation of citizenship has been raised and our concerns have been registered. There is a right of appeal. We are pressing the Bahraini Government to consider these matters seriously during that right of appeal.

Lord Triesman: My Lords, I share the concerns expressed in the central proposition of the previous question. There has been progress but, on the most fundamental issues, the progress is woeful. It is against a background of a grim record and, if anything, Bahrain's record is getting worse, rather than better. We have called for a dialogue but, for reasons that I understand, that dialogue has been limited. I noted that, at the end of October, the United States Navy Fifth Fleet was anchored off Bahrain, not because I think it intended to intervene but as a show of support. Can the Minister tell us whether a co-operating force of the United Kingdom and the United States—a diplomatic force, not a military one—might, if it took a sufficiently firm and determined view, have more impact than all of us trying to do it separately?

Baroness Warsi: That is something that I will take back. However, I can assure the noble Lord on our bilateral relationship. Earlier this week we set up a joint working group and political and diplomatic reform and assistance with human rights are central to it. We hope that we can use that working group as the basis for some of these more serious discussions.

Partnerships (Prosecution) (Scotland) Bill [HL]

Motion to Refer to Second Reading Committee

3.37 pm

Moved By ***Lord Wallace of Tankerness***

That the Bill be referred to a Second Reading Committee.

Motion agreed.

Justice and Security Bill [HL]

Report (2nd Day)

3.38 pm

Amendment 31

Moved by ***Lord Hodgson of Astley Abbotts***

31: Before Clause 6, insert the following new Clause—

"Application for public interest immunity

(1) In any relevant civil proceedings in which the Secretary of State considers that—

(a) a party to the proceedings, whether or not the Secretary of State, would be required to disclose material in the course of the proceedings;

(b) such disclosure would be damaging to the interests of national security; and

(c) the interests of national security outweigh the public interest in the fair and open administration of justice,

the Secretary of State must make an application for public interest immunity under this section.

(2) An application for public interest immunity under this section must be made by the Secretary of State issuing a certificate relating to the individual documents in question and giving reasons why, in the Secretary of State's view, disclosure of each relevant document would be damaging to the interests of national security.

(3) The court must, when deciding whether the material attracts public interest immunity on application under subsection (1), weigh the degree of harm to the interests of national security if the relevant material is disclosed against the public interests in the fair and open administration of justice.

(4) The court shall, in conducting the balancing exercise required under subsection (3), consider whether any of the following procedures may mitigate any harm claimed to the interests of national security so as to enable disclosure or partial disclosure of material subject to an application under this section—

(a) redaction;

(b) orders for anonymity;

(c) disclosure subject to confidentiality undertakings;

(d) hearings in camera;

(e) restrictions on reporting;

(f) restrictions on access;

(g) restrictions on the use of the material.

(5) If, after conducting the process set out in subsections (3) and (4), the court concludes that the balance of the public interest lies in excluding any material, the court must uphold the application for public interest immunity made by the Secretary of State in relation to that material.

(6) Where any claim by the Secretary of State for public interest immunity is upheld the court must appoint a special advocate pursuant to section 8."

Lord Hodgson of Astley Abbotts: My Lords, I shall speak also to Amendments 32 and 44. I am grateful to the noble Lord, Lord Dubs, for putting his name to these amendments.

We come now to Part 2 of the Bill, which is concerned with closed material procedures. They are a new development in UK civil courts and the proposal has not proved to be uncontroversial. We discussed the challenges of CMPs extensively in Committee in July. I am aware that noble Lords have tabled a number of amendments in this group, which will enable a wider discussion of this important issue, so I will cut to the chase. If in cutting to the chase as a non-lawyer I trespass on some legal niceties, I apologise in advance.

My concerns about closed material procedures can be grouped under two main, broad headings. The first is the issue of fairness. Can a trial in which the accused does not have an untrammelled ability to test fully the evidence against him, interacting as appropriate with the best legal advice, ever be fair? The issue of fairness is one that I shall return to and consider in more detail when we examine the role and duties of the special advocate and consider the rules of court.

My second general concern is what might be described as the danger of mission creep. It is on this that Amendments 31, 32 and 44 focus. Having heard from my noble and learned friend on the Front Bench, and having listened carefully to the powerful and informed speeches of the noble Baroness, Lady Manningham-Buller, I accept that there may be cases where a closed material procedure is required. However, on all the evidence that I have read, it would be a rare event indeed. I have no doubt that my noble and learned friend on the Front Bench and the Government believe that the procedure would be used only very occasionally. However, times change, Ministers change, Governments change and, above all, circumstances change, and with those changes may come—not necessarily will come—new approaches. My concern is the risk that what begins as a rare event will over time morph into the default option.

I would like to see enshrined in the Bill a set of steps—hurdles, if you like—that the Government of the day will have to clear before they can resort to a CMP. The first is a requirement to go through the public interest immunity procedure, from which the judge can reach a balanced conclusion on whether the interests of national security require a closed court. Amendment 31 would insert a new clause at the beginning of Part 2 requiring a PII application to be made in any case where a CMP is envisaged. It would set up a series of requirements for making such an application. Amendment 32 lays down a further series of tests to be met in associated court proceedings. Amendment 44 would prohibit the use of CMPs where a claimant's loss of liberty may result.

I will briefly outline one or two of the key provisions in the amendments. Subsection (1) in Amendment 31 would require the Secretary of State to make a PII application in any case where he considered that evidence would be disclosed that would damage national security, and where that concern outweighed the key public interest in open and natural justice being done. Subsection (2) would ensure that the Minister had to certify why disclosure of each document was withheld; it states that each certification will have to be considered individually by the court. This would enable the judge

to balance the competing interests of national security and open justice—what I am told is called the Wiley balance.

Subsection (3) would give the judge a crucial judgmental role and is in contrast to what some have called the judicial straitjacket in Clause 6. As highlighted in our debate in July, the PII system does not enable a judge to rely on material that is seen by one party and not another. As a general rule, it does not take place in secret. In this way, national security can be protected while ensuring fairness, transparency and equality of arms. It is worth remembering also that, unlike CMPs, PII is not an all-or-nothing process. A wide range of tools is available to judges, including the use of redactions and in camera hearings, to ensure that justice can be done while national security-sensitive information, such as the names of agents or their operating techniques, is excluded. My noble and learned friend on the Front Bench said that a first-stage PII process would be costly and illogical. However, we have been reassured by the special advocates that this is not right and that it is CMPs that are likely to prove costly and time-consuming—in addition to their other, controversial qualities.

3.45 pm

Finally on Amendment 31, subsection (6) proposes the appointment of a special advocate as soon as the court has determined the PII procedures. It is linked to Amendment 32, which would enable either party to apply for a CMP. For this right to have any meaningful effect, a claimant must surely be advised by an advocate acting for him whether or not it is in his interests to apply for a CMP. If this is not permitted and no one from his side has seen the excluded material, he would indeed be in a blind spot when deciding whether to exercise his right or not.

Amendment 32 makes additional provisions regarding court proceedings and covers much of the same ground in another form. In essence, it seeks to increase judicial discretion, ensure as far as possible the right of challenge and achieve a proper balance of competing interests of open justice and national security. However, it opens up the possibility of any party applying for a CMP. At present, only the Secretary of State can apply. Why should that be so? If I were to believe that my case would be strengthened by disclosure of material that could be heard only in a closed court, why should I not be able to apply for a CMP to enable it to be heard?

In summary, the amendment seeks to address the issues revealed in the following exchanges. David Anderson, the head of the special advocates, was asked by the Joint Committee on Human Rights:

"Does Part 2 of the Bill contain the sorts of conditions that you had in mind to ensure that a CMP is resorted to only in cases of strict necessity?"

He replied:

"No, it does not".

Martin Chamberlain of the special advocates said:

"The one respect in which I think the Bill is problematic, even if, contrary to the view that we have expressed, you think it is a good idea to have Closed Material Procedures in civil litigation, is that the safeguards that it had been reported were present in this Bill are, on close analysis, in fact not present".

I am not a lawyer and my career has been in finance and the City. In the City, when considering how to proceed in a particular transaction, many of us—sadly, evidentially, not enough of us—place a good deal of reliance on what I call the smell test. Behind the technical requirements, the fine words and the policy pronouncements, does what is proposed smell right? For me, in its present form, the Bill fails that smell test. I am far from alone in that view. On Monday, the *Times* leader stated:

"If this Bill were to become an Act in its current form, those feeling that they had suffered a grave injustice at the hands of the Government would feel they had suffered another at the hands of the courts. That is an even more serious proposition. They would be told that their case had been rejected but not why, that allegations had been made against them but not what, that a case had been made on their behalf but not how. This is simply not acceptable. If the Government feels that there really is no other way of winning compensation cases than this proposal then it is better that it loses the cases, even to those who do not deserve to win them. There is no point in being naive. Rejecting closed courts could sacrifice money to very bad people unjustly. But it is better that than to sacrifice the founding principles of liberty".

I beg to move.

Lord Pannick: My Lords, Amendments 36 to 38, 40 and 47 to 49 are in my name and the names of the noble Lords, Lord Lester of Herne Hill and Lord Beecham, and the noble Baroness, Lady Berridge. Amendment 50 has the same signatories save that the noble Baroness, Lady Kennedy of The Shaws, is a substitute for the noble Lord, Lord Beecham, for reasons that I should explain. The amendments, like all the amendments to Part 2 in my name, seek to implement the report published last week by the Joint Committee on Human Rights, a committee on which the noble Lord, Lord Lester, and the noble Baroness, Lady Berridge, serve as members. The amendments also seek to implement similar conclusions of your Lordships' Constitution Committee, of which I am a member.

Noble Lords will know very well that strong views are held on all sides of the House about whether closed material procedures should be introduced. This is a difficult and sensitive issue. The amendments in my name do not—I repeat, do not—seek to resolve the dispute as to whether noble Lords should approve the introduction of closed material procedures. We will address that issue when we come to Amendment 45, in the name of the noble Lord, Lord Dubs, and other noble Lords. The amendments in my name—particularly the amendments in this group—seek to ensure that if CMPs are to become part of our law, careful controls are needed to limit their application to ensure balance and fairness. In particular, they seek to ensure that a judge in an individual case should have a discretion, not a duty, to order a CMP. The judge should ask himself or herself whether or not a CMP is needed in a particular case as a last resort if there is no other effective means of ensuring both justice and security.

There are three reasons why your Lordships' House should adopt the approach that this should be a last resort with judicial control and discretion. First, CMPs are a radical departure from common law principles, which we all respect and approve, that a party to a case has a right to see the evidence against him and has a chance to answer it. This is a departure—it may be a

[LORD PANNICK]

necessary departure—from the principle of transparent justice. The Joint Committee addressed this issue at paragraph 16 of its report. It said:

"All of the evidence that we have received, apart from that of the Government, regards the proposals in the Bill which extend closed material procedures into civil proceedings generally as a radical departure from the United Kingdom's constitutional tradition of open justice and fairness. We agree".

The second reason why we should be very careful and impose controls on CMPs is that a CMP is inherently damaging to the integrity of the judicial process. Judicial decisions are respected precisely because all the evidence is heard in open court and can be reported, subject to exceptions, and judges give a reasoned judgment that explains their decision.

The third reason why a fair balance involving judicial discretion is so important is that the Government's own rationale for introducing CMPs is not the protection of national security. It is very important to be clear about this. The law already has effective means of ensuring that any information the disclosure of which would damage national security does not have to be revealed in open court. Those are the rules of public interest immunity. The Government say that CMPs are needed not to protect national security but to ensure fairness to them as defendants and to ensure that as much evidence as possible can be heard by the judge. There may or may not be strength in that argument—these amendments do not address that issue—but if the Government's own case for CMPs is promoting the fairness and efficiency of civil proceedings, then this House should ensure that the CMP provisions are fair and balanced.

To turn to the specific amendments, Amendment 37 provides that the judge should order a CMP only if satisfied that fairness cannot be achieved by any other means. If there is another solution, such as supplying the gist of the evidence to the claimant, using anonymity orders, or security witnesses giving evidence from behind screens, all of which happens now, and if those methods enable the evidence, or as much of it as possible, to be disclosed to the claimant, it is surely wrong in principle for the law to require the judge to move into a secret hearing. This was the view expressed to the Joint Committee by Mr David Anderson QC, who is the independent reviewer of terrorism legislation. The Joint Committee quoted his views in paragraphs 66 and 67 of its report. Perhaps I may remind the House of what Mr Anderson said:

"I said that I thought that a CMP could be tolerable in these sorts of cases—but only if certain conditions were satisfied. One was that a CMP should be a last resort to avoid cases being untriable".

At paragraph 67 the Joint Committee adds:

"The Independent Reviewer in his more recent evidence indicated that he would be supportive of building into clause 6 of the Bill a requirement that a CMP only be permitted as a last resort: as he put it, a CMP should be available only if 'there is no other fair way of determining the case'".

That was the recommendation of the Joint Committee.

Amendments 38 and 40 have a similar objective. They would allow the judge, when he or she considers whether to impose a CMP, to have regard to the possibility that another solution is available through public interest immunity. Public interest immunity is the doctrine of law that keeps out of open court material the disclosure of which would be damaging to national security. But public interest immunity is not an all-or-nothing matter. As I have said, it may enable some of the material to be disclosed—the gist or essence of the case—and documents can be redacted to preserve what is genuinely confidential. I suggest that the existence of PII needs to be taken into account by the judge in deciding whether to move into secret session. I know that the noble Lord, Lord Marks, is concerned about Amendment 38, but it is important to remove Clause 6(3)(a) so that the judge can consider other means of addressing the problem. Amendments 38 and 40 were recommended by the Joint Committee at paragraph 62 of the report. I will not spend time on it, but again this was a recommendation from the independent reviewer, Mr Anderson. All these amendments are necessary if CMPs are not to be imposed unnecessarily and disproportionately.

Amendments 48, 49 and 50 would ensure that the litigant excluded from the open hearing by the CMP was always given at the very least a summary and the gist of the closed material sufficient to enable him to give instructions to his legal representatives and the special advocates. Again, that was recommended by the Joint Committee, which referred to the supporting evidence on that issue from the former reviewer of terrorism legislation, the noble Lord, Lord Carlile of Berriew, and to the views of the current reviewer, Mr Anderson.

Amendments 36 and 47 seek to ensure that, before ordering a CMP, the judge should ask whether the degree of harm to the interests of national security if the material is disclosed outweighs the public interest in the fair and open administration of justice. The Joint Committee stated in its report, at paragraphs 69 to 72, that the Bill as currently drafted wrongly precludes any balancing at all, however limited the national security interest may be, however substantial the damage to fairness if a CMP is ordered and, indeed, however peripheral the national security evidence may be to the issues in the case. That cannot be right; we need some degree of balancing here. I emphasise that the effect of these amendments, if approved, would not be that any evidence touching on national security would have to be disclosed—PII would prevent that—but simply that the judge could not order a closed hearing unless this balance is satisfied and the Government would therefore be unable to rely on the evidence.

I know that the noble Lord, Lord Beecham, is not persuaded yet by Amendment 50 and that the noble Lord, Lord Marks, is also concerned about it. It might be better if, in due course, I do not move Amendment 50 today but consider with others, in the light of the amendments, if any, that are approved by the House today, whether it is appropriate on Third Reading next week to look again at what is now Amendment 50 for the purposes of tidying up the legislation. I hope that that approach—on Amendment 50—commends itself to the House.

Each of the amendments in this group in my name will help to ensure that, if we are to have CMPs, there are proper limits, proper controls, a proper balance and

judicial discretion, and that CMPs are a last resort in what I suspect will be the very small category of cases where there is no other fair solution that maintains national security. At the appropriate time, and unless the Government are prepared, as I hope they will be, to make concessions even at this late stage on these matters, I intend to test the opinion of the House on the amendments in my name.

4 pm

Lord Beecham: My Lords, I thought it might help the House to take the unusual step of speaking early in the debate on behalf of the Opposition in order to make our position clear in relation to the amendments in this group, in particular those that emanate from the report of the Joint Committee on Human Rights. I note, incidentally, that yesterday the Deputy Prime Minister endorsed many of its recommendations. In answer to a question from my right honourable friend Sadiq Khan, he said:

"I am very sympathetic to a lot of what the Committee says, and the Government are considering its amendments with an open and, in many respects, sympathetic mind. I hope that we will be able to amend the Bill to allay those concerns in line with many of the recommendations made by the Joint Committee on Human Rights".—[*Official Report*, Commons, 20/11/12; col. 428.]

I do not know whether the noble and learned Lord would be able, later in the debate, to indicate whether and when those expectations that the Deputy Prime Minister encouragingly aroused yesterday will be fulfilled. We already have some amendments that would not quite meet the Deputy Prime Minister's intentions as expressed yesterday.

During Second Reading, I referred to the difficulty that we and Parliament as a whole face in calibrating the balance between the two principles embodied in the Bill's title of "Justice" and "Security". It has become increasingly clear that completely reconciling those competing desiderata is effectively impossible. We of course accept that the Government have genuine concerns about national security, even though, perhaps understandably, the Bill does not define the term, as was pointed out by a number of Members of your Lordships' House, including the noble Lords, Lord Hodgson and Lord Deben, and the noble Earl, Lord Errol, during Second Reading. The noble Marquess, Lord Lothian, took the view then about national security that, "You know it when you see it". That might be thought to be uncomfortably close to implying that security is in the eye of the beholder; in this case, a government beholder. It is impossible to provide a comprehensive statutory definition of what constitutes national security, but some guidance during parliamentary debates, of which later judicial notice might be taken, would be helpful in at least indicating areas that would fall outside the definition.

The Government's other main concern, of course, is the difficulties that they face in presenting their case without the protection of closed proceedings, coupled with the cost—both reputational and financial—of having to settle cases in order to avoid disclosure. However, as we have heard repeatedly during the passage of this Bill through the House, the proposals constitute a radical departure from the cornerstone of our legal system: the right of a party to know, and to challenge, his opponent's case. This right has been emphasised in the clearest terms in a number of judgments to which reference was made earlier in these proceedings, such as those of Lord Kerr and Lord Neuberger. Moreover, although the Government do not accept the point, they also appear to clash with the provisions of Article 6 of the European Convention on Human Rights, as powerfully argued by John Howell QC in his opinion for the Equality and Human Rights Commission. I understand that the Government are not prepared to disclose the legal advice that they have obtained on this point, effectively invoking their own closed material procedure on the issue.

The Government's proposals in themselves constitute a significant reputational risk to our system of justice. In passing, it is interesting that, just as we are debating this Bill, the Government are announcing serious changes to the system of judicial review that are designed to make it much more difficult for their decisions in a whole variety of areas to be challenged. Your Lordships might think that a disturbing pattern seems to be emerging.

We are told, in relation to CMPs, that a number of claims are now pending. However, interestingly, the special advocates were denied access by the Home Secretary to any of the files, despite the independent reviewer of terrorism legislation, Mr David Anderson QC, upon whom the Government seem selectively to rely, supporting that request. We have recently seen in the *Daily Mail* an attempt to imply that the Government were facing the prospect of paying out millions to settle cases involving suspected terrorists, although even the *Daily Mail*, editorially, seems to be opposed to the Government's proposals. But of course the procedures need not involve claimants of that description. They could apply to all civil claims where a national security justification might be advanced. So claims by a member of the Armed Forces or security services, or an innocent victim of what is euphemistically called "collateral damage" arising from military action, would also be caught by this procedure.

There is also the paradox that the procedures would not apply to inquests, so that justice will be seen to be done only where there has, sadly, been a fatality. Yet as my right honourable friend Sadiq Khan pointed out in his letter to Mr Clarke, the 7/7 inquests were conducted along lines very similar to those advocated by the Joint Committee and reflected in the amendments that we are now debating, without any damage ensuing.

The interests of national security can be protected by means other than simply relying upon closed material procedures. The Opposition support most of the suite of amendments effectively emanating from the Joint Committee report, seven of which we have subscribed to. The thrust of these amendments is to vest greater discretion in the judges, who are not quick to reject the Government's case, and to facilitate a balancing of the public interest in justice and the interests of national security in a way that, despite the Government's rather airy protestations, the Bill as drafted does not.

Amendment 33 extends the possibility of an application for CMP to either party and on the court's own motion. Amendment 40 refers to the possibility of utilising the public interest immunity procedure under

[LORD BEECHAM]
which, as we have heard from the noble Lords, Lord Hodgson and Lord Pannick, a variety of workable steps can be taken—gisting, redaction, confidentiality rings, closed hearings—to protect material that should not be made public, before recourse is had to closed material procedures as a last resort. Incidentally, Mr Clarke's statement on Monday's "Today" programme that the judge should not have the discretion to have, in public, evidence that puts at risk the lives of agents or intelligence services, was grossly misleading in implying that this would be a consequence of accepting amendments of this kind. The measures I have just mentioned would prevent that happening.

Amendments 35 to 38, 40 and 47 enshrine both the judicial discretion which many have criticised in the course of debates and the balancing principle which is at the heart of the Joint Committee's proposals. Taken together, these amendments place the judge firmly in control of the process, with the means to balance the interests of justice and security, protecting from disclosure what is essential not to be made public. Despite the protestations of Ministers, the Bill in its current form does not meet these critical objectives.

We have some difficulties, as the noble Lord, Lord Pannick, has referred to, with Amendments 48 to 50, particularly the insertion of the phrase, in Amendment 50,

"so far as it is possible to do so",

in the proposed requirement to ensure that a summary of material, disclosure of which the court does not authorise, does not itself contain material damaging to national security. I for one am not sure what the words import or how far they would extend. We would wish to explore this issue further, perhaps at Third Reading, as the noble Lord indicated, or even later when the Bill is considered in the House of Commons.

In his letter of 13 November, the noble and learned Lord, Lord Wallace, who has a deservedly high reputation for legal expertise and fair-mindedness, made some minor concessions and one major one. The latter restricts the order-making powers to extend closed material procedures, and another requires notice to be given to the other party of an intention to apply for a CMP. Those concessions are welcome and I am grateful to the noble and learned Lord, and indeed the Government, for them. Interestingly, the noble and learned Lord's letter also touches on the court's inherent right to strike out a claim if highly relevant sensitive information could not be considered—itself a powerful tool with which to protect national security without the need for this Bill.

Outside the Government, there appears precious little support for the sweeping changes the Government propose. Civil liberties organisations—as one might expect, perhaps—the Law Society, the Bar Council, even Monday's editorial in the *Times*, which has been quoted, and some leading Conservative Members of Parliament such as David Davis and Andrew Tyrie, unite in expressing profound concern at the changes that this Bill would bring about in our system of justice.

Like many other Members of this House, I travel to and from it by the Underground, where passengers are regularly enjoined to "mind the closing doors". I hope we bear that injunction in mind today. We must ensure that the doors of justice are not closed in the way this Bill seeks to do, however genuine may be the reasons that prompt it.

We learnt a few days ago the identity of the next Archbishop of Canterbury, the right reverend Prelate the Bishop of Durham, whom all Members of your Lordships' House, of all faiths and none, will join in congratulating and wishing well. The announcement put me in mind of another archbishop, Thomas à Becket, whose life and death were the subject of TS Eliot's *Murder in the Cathedral*, in which the following lines occur:

"The last temptation is the greatest treason:
To do the right deed for the wrong reason".

I urge the House to support the amendments backed by the Opposition, moved by the noble Lord, Lord Pannick, and in so doing not to succumb to the alternative temptation of doing the wrong deed for the right reason.

Lord Lester of Herne Hill: My Lords, I speak as a member of the Joint Committee on Human Rights. I intend to make only one speech, if I can get away with that, and to make it as brief as I can.

The issues raised in this debate are of profound importance to the rule of law in a parliamentary democracy. Part 2 of the Bill has aroused huge and justifiable controversy. It was condemned root and branch by my party at its annual conference. Many Liberal Democrats would ditch Part 2 in its entirety as illiberal, with or without procedural safeguards. In her letter to the *Times* last week, the noble Baroness, Lady Manningham-Buller, explained that she remains of the view that inviting the court to look at all the relevant secret material and letting it decide what, if any, weight to put on it is an advance over where we are today. I agree with her.

The purpose of these amendments, recommended unanimously by the Joint Committee on Human Rights, is to achieve that result and to make Part 2 comply with the fundamental principles of justice and fairness protected by the common law. We hope that the Minister and the House will agree that our report was thorough, fair and balanced, and that our recommendations are put forward to improve, not to wreck, Part 2.

I shall not delay and weary the House by reading the relevant parts of the JCHR report into the record. The noble Lord, Lord Pannick, has already referred to the relevant parts. The report speaks for itself, and I would suppose that anyone who takes part in this debate will have read the report in its entirety.

4.15 pm

Our constitutional system depends upon the wise exercise of the powers of both Houses of Parliament to ensure that the laws that it enacts do not undermine the basic civil rights and liberties of the individual and the cherished principles of justice protected by the common law. The chairman of the Bar Council, Michael Todd QC, and the president of the Law Society of England and Wales have written to the Government describing secret trials and withholding evidence as reminiscent of,

"repressive regimes and undemocratic societies".

Their letter states:

"While HM government rightly takes a strong stance in respect of the importance of the rule of law globally … this bill will adversely affect the UK's international reputation for fair justice".

The letter continues:

"We believe that the plans for secret courts erode core principles of our civil justice system and will fatally undermine the courtroom as an independent and objective forum in which allegations of wrongdoing can be fairly tested and where the government and others can be transparently held to account".

I agree with those strong views, unless we are able to write really effective safeguards into Part 2 as recommended by the JCHR.

Many human rights bodies have urged us to vote to ditch Part 2 of the Bill, and that view is supported by the JCHR's reference to the absence of sufficient evidence to justify the measure. Some of them advocated the introduction of CMPs in the 1990s. The JCHR has recommended that the wiser course is to hedge rather than to ditch; that is, to amend the Bill to make it compatible with the principles of natural justice and fairness and the rule of law.

That is our common purpose in moving these amendments today, with support from all sides of the House. If we failed to achieve those changes, the case for ditching Part 2 would become very much stronger, but we hope that it will not be necessary to wield that blunt instrument of removal of Clauses 6 and 7. If the JCHR amendments are accepted by the House, I will be unable to support the amendment of the noble Lord, Lord Dubs, because it would nullify the amendments that we would have made to Clauses 6 and 7.

Closed material procedure is of course less than perfect justice. It came into our law as a result of the Strasbourg court judgments and the arguments presented to the court. In Chahal, the court explained in its judgment that it attached significance to the fact that, as the interveners pointed out, in Canada,

"a more effective form of judicial control has been developed in cases of this type. This example illustrates that there are techniques which can be deployed which both accommodate legitimate security concerns about the nature and sources of intelligence information and yet accord the individual a substantial measure of procedural justice".

The interveners in Chahal included Liberty and Justice, the AIRE Centre and Amnesty International. They were in that case advocating a Canadian-style closed material procedure, because judicial review did not constitute an effective remedy in cases involving national security.

In Tinnelly and McElduff, in which I represented the applicants, the Strasbourg court noted that in other contexts it had been found possible to modify judicial procedures in such a way as to safeguard national security concerns about the nature and sources of intelligence information and yet accord the individual a substantial measure of procedural justice.

This is what led to the SIAC Act of 1997, which I supported in this House and which my noble friend Lord Thomas of Gresford opposed, as he does today. CMP involves less-than-perfect justice, but it is vastly better than the previous situation where judicial review was unable to provide effective judicial control in national security cases, and it is a procedure supported at the time by civil society organisations.

As the noble Lord, Lord Reid of Cardowan, the noble and learned Lords, Lord Mackay and Lord Woolf, the noble Lord, Lord Carlile of Berriew, the noble Baroness, Lady Neville-Jones, and the noble Lords, Lord West of Spithead and Lord Faulks, observe in their letter to the *Times* today, CMPs are not ideal, but they are a better option where the alternative is no justice at all. I agree. However, it is unacceptable to extend that procedure to civil claims against the state without adequate safeguards of fairness and civil justice administered by the courts.

It is well known that the driving force behind that part of the Bill emanates from the United States Government and the Central Intelligence Agency, who misunderstand the fine record of our courts in protecting national security within the rule of law. As someone who learnt the value of the American Constitution and Bill of Rights half a century ago at Harvard Law School, I hope and believe that our debate today on Part 2 will not harm our special relationship or the vital co-operation between our intelligence and security services. I should like the Minister to confirm that in his reply.

Reference has already been made to the right honourable Kenneth Clarke's interview on the "Today" programme on Monday, when he described our amendments as legalistic. That is an odd criticism for the former Justice Secretary and Lord Chancellor to have made. The amendments are designed to keep faith with the fundamental principles of justice and fairness in our common law system, within the rule of law, and national security protected by the independent judiciary. Ken Clarke also emphasised the importance of saving taxpayers' money from being spent on settling claims against the state that could be saved if the claims were determined by the CMP procedure. Quite apart from the unfair advantage that the scheme as it stands would give to the Executive and their agents, the central question is not whether CMP is objectionable, but how it can be made to operate fairly, entrusting full discretion to the judge in charge of the case.

We are faced with a choice of evils. The JCHR approach is an attempt to achieve a fair balance. I hope that there will be support for our amendments across the House.

Lord Dubs: My Lords, briefly, I support the amendments. I make one specific comment. Having listened to the speeches of my noble friend Lord Beecham and the noble Lord, Lord Pannick, I say simply that there is a very thin line between their arguments in support of the amendments and Amendment 45 and the other group, which seek the removal of CMPs. The line is so thin that I believe that I could use the case of the noble Lord, Lord Pannick, in particular, which he put so eloquently, to come to a different conclusion: to support our amendments. That is an argument for later. In the mean time, I hope that the House will support the key amendments when we come to votes.

Baroness Berridge: My Lords, I speak as a member of the Joint Committee on Human Rights and as the fourth name on this group of amendments. Normally, I take very seriously the advice given by our Government

[Baroness Berridge]
—so much so that I took the advice of the Government's Chief Medical Officer early last week not to seek antibiotics for a cough and cold, so I apologise. I am living to regret following that advice and I apologise for any resultant disturbance to your Lordships' proceedings this afternoon.

It is the judge's court, not the Government's, so it should be the judge's decision or discretion as to the fairest way to proceed with the case before him or her—whether that is by using public interest immunity with all its flexibility, as outlined by the noble Lord, Lord Pannick, or by using a closed material procedure.

It is so important that this House stands firm on that principle, not only to protect the credibility of the judicial process but to safeguard the interests of the other party to that litigation. The Government, who are one party to the litigation that we are considering, usually have control over the other place, so it is only this Chamber that can protect the other party to the litigation and keep the important procedural powers in the hands of the judge by your Lordships accepting this group of amendments.

These amendments, particularly Amendment 37, reflect the view of David Anderson, the independent reviewer of terrorism legislation when he stated to the joint committee that this ensures that cases are not tried in closed material procedure that could otherwise be done under public interest immunity, nor will cases be struck out that can be tried in a closed material procedure. The judge must retain a wide procedural discretion, which, if these amendments are accepted, I accept may mean that our judiciary will begin a new balancing act: balancing the unfairness of the exclusionary nature of PII against the unfairness of the closed material procedure, which leads to the claimant and his or her lawyer being absent. I believe it is very important to retain this judicial discretion and to leave these matters in the hands of our judiciary, who have shown that they can be entrusted with such fine balancing acts. My name is therefore on these amendments.

Lord Morgan: My Lords—

Lord Lloyd of Berwick: My Lords—

Lord Morgan: Thank you. I am very anxious to hear the noble and learned Lord, Lord Lloyd, too. I will not speak for very long. I am not a lawyer and I sit on the Back Benches, as I always have, where one is required to vote but not necessarily to think. Yet occasional flickers of thought agitate our minds. This clause is deeply unfair and the amendments are profoundly right. It seems characteristic of what has happened to liberty in this country over many years with, I am sorry to say, the endorsement of all three major parties: the tilting of the balance away from the free individual—the citizen—towards the state, reinforcing raison d'état contrary to the common law. The element of secrecy adds something new that we have not had since the time of the Tudors. It was specifically condemned in the Petition of Right in 1628, which is quite a long time ago.

This clause has caused outrage among lawyers, as we have heard, and civil liberties groups. It has been strongly criticised by the Joint Committee on Human Rights. Why? Because it is totally one-sided. It is a closed court, with the litigants, lawyers and the press excluded. Only the lawyers representing the Crown can communicate in private with the judge. The litigants are not aware of the content, tone or substance of those conversations. They are protected inadequately by special advocates, because their powers are limited, and the interests of litigants in civil cases are not properly defended as, if I may say, people accused of criminal activity under the criminal legal system are protected. Public interest is cited: a term defined so broadly almost as to lose all meaning. It shows that the normal judicial process is a fair, balanced and adversarial system when both sides can present their case. These aspects are being marginalised and sidelined. As previous speakers have said, this is a process that has now been launched and is very likely to increase and multiply.

These amendments should go further—I would like to see the whole clause disappear—but will undoubtedly improve these otherwise dismal procedures. This reflects a welcome tilt towards libertarianism, including from my own party, which has not been notable in that sphere in recent years. I am very glad to welcome that under its present leadership. The Secretary of State would be compelled to present a case for a public immunity initiative; the court would be able to consider it dispassionately and calmly without being steam-rollered by the Government, as would otherwise happen; the litigants could have proper legal discussions with their advocates.

At the moment, there would be no real authority accorded to judges, whose hands would be tied by the terms of the Bill. They would have little choice other than to accept the submissions of the Government, so these amendments are deeply valuable—not simply to those involved with the law but to any citizen of this country. This would enable the courts to consider and to estimate the comparative balance between the rights of a free individual as against the damage to national security, which might have to be more carefully defined. To that extent, these amendments make an odious Bill somewhat less repulsive. The Minister is a very fair-minded man who has the respect of all Members of the House. He has listened to strong arguments against this clause from all sections of the House, and I am sure he will consider them fairly and courteously.

4.30 pm

Lord Lloyd of Berwick: I fear that I may disappoint the noble Lord, Lord Morgan—but I hope not. I have no difficulty at all with Amendments 37 and 40, which were tabled by the noble Lord, Lord Pannick, but I have some difficulties with Amendments 34 and 35, which we are going to come to in a later group. Those are the amendments that would substitute the word "may" for "must". They are the basic amendments that would give the judge a discretion rather than imposing on him a duty in certain circumstances.

Amendment 36, which has been spoken to by the noble Lord, Lord Pannick, spells out how that discretion is to be exercised. It states that the judge must balance,

"the degree of harm to the interests of national security",

on the one hand, against,

"the public interest in the fair and open administration of justice".

It is now many years since I heard a PII application. It was never an easy balancing operation, but at least with a PII application one was balancing a particular piece of evidence and how much harm it would do to the national interest, on the one side, and how much good it would do to the case of one party or the other, on the other side. It was difficult but it was a fairly specific balancing operation. I find much greater difficulty with the judge being required to take account of,

"the public interest in the fair and open administration of justice".

I cannot see how he can possibly evaluate that in the abstract. In one sense, it might be said to overwhelm everything else, of course; but on the other hand, how much weight can be given to that? Amendment 36 is very different from the operation that one used to, and still does, carry out in an ordinary PII application. I am not happy with Amendment 36 and that sort of discretion being given to a judge.

Baroness Neville-Jones: My Lords, the focus of the Bill is to enable this country to find a means of dispensing justice while protecting national security. National security has not had much of a hearing so far this afternoon. I shall explain why I do not think that public interest immunity is any longer an adequate safeguard in respect of national security. Indeed, I would go so far as to say that, at the moment, the PII regime prevents justice being dispensed consistent with security. Pace the noble Lord, Lord Beecham, I do not think that this is an impossible goal.

When national security-sensitive evidence which may be important to the claimant's case—we all agree about that—is excluded from the courtroom by a PII certificate and the judge may not take it into account in coming to a judgment, there are two consequences: the claimant is unable to prove his case and the Government cannot defend themselves properly. To protect national security evidence from disclosure in open court the Government are being forced to agree substantial settlements, with unjustified reputational damage ensuing. The inability of our legal system to provide adequate recourse to parties in civil dispute brings no credit to it and we need to do something to mend it.

Amendment 40 would insert PII as a first stage in the legal process. This would undoubtedly greatly increase the length of proceedings and costs without necessarily guaranteeing that evidence would be heard. I cannot help feeling that this is pointless. Moreover—and this is a real problem—PII impinges adversely on the claimant's rights and, contrary to the assertion of the noble Lord, Lord Pannick, since the case concerning Binyam Mohamed, PII has also proved to be a less than total protection for national security sensitive information. We do not now have a safeguard in PII to protect national security. It has really changed the ground. In that case, the court ordering disclosure of American material despite the Government's PII certificate has damaged our intelligence relationship with the allies, especially, although not only, with the United States. We have this judgment from the independent reviewer of terrorism, David Anderson QC, who I know has been quoted by other noble Lords. However, I know that, on this point, he is right. It is a very serious matter if our allies can no longer trust our ability to keep secret intelligence passed to us secret.

The fact that we have not had a major terrorist incident in this country since 7/7 is not the result of the conversion of the enemy but of the successful diligence of our intelligence and security services in protecting us. They depend on vital—and I mean vital—sharing of intelligence with allies. The effect of recent cases in civil courts, and the numbers of these are growing, has now spread into the core security interests of the UK. Some noble Lords talked about the core security interests of this country in justice, and I entirely agree. However, we also have another interest to protect which is important to us. We are now damaging the core security interests of the UK. If we do not find a way, as part of a responsible national security policy, of restoring credibility to our promise to protect information given to us, we will find our intelligence relationships further eroded over time and our national security eroded with them.

It is not just the control principle that is at issue, it is UK national security. This cannot be subjected to balancing tests of the kind set out in Amendment 47 —and Amendment 46, for that matter—as if it were somehow exchangeable with other goods. Lives are not at stake in civil proceedings but they are—they can be—in national security.

Closed material proceedings are of course second-best to completely open court proceedings. There is nothing that divides anybody in this House on that point; we all agree. The problem, however, is that we are not in an ideal world. Only the court can decide to allow closed material proceedings under the Bill, and presumably the judge would not permit that if they did not think that there was a substantial national security interest to be protected and they had not been convinced by the submission of the Secretary of State. In that case, this issue would not arise. However, if it does arise and the court agrees that there should be CMP, it will permit a full testing of the claimant's case. The Government will be able to defend themselves in a manner that protects sensitive national security information.

The Bill also provides for gisting to the claimant. This is much better than the absence of justice and the potential prejudice to national security at the same time. Amendments 48, 49 and 50 would destroy the balance that the Bill would bring about.

Much has been made already of the Government's proposals being "a radical departure" from our traditional norms. However, the closed material procedure is drawn from the procedure created by the previous Labour Government for the special immigration appeals courts which, I might say, Liberty was very influential in setting up, and which have been tested and accepted as compatible with the European Convention on Human Rights. The reality of justice there is demonstrated by the fact that the Government lose cases. Amendment 44 would bring some SIAC procedures into question, as well as rendering this Bill null and void.

I hope that this House will accept that this Bill is a balanced response to a difficult issue. I take seriously, along with other Lords, the need for safeguards, but I believe that many of the proposals on the Marshalled List go too far. I hope that this House will reject amendments which, far from improving the Bill, either remove or render ineffectual the purpose of closed

[Baroness Neville-Jones]
material proceedings. To use the words of the noble Lord, Lord Hodgson, I believe that this Bill passes the smell test.

Lord Wigley: I want to speak very briefly to Amendment 48, which has been grouped with these amendments. I do not accept that this tips the balance, as the noble Baroness suggested just a moment ago.

One of the most unsettling provisions of this Bill is contained in Clause 7, which provides that if a Closed Material Procedure is triggered, a court is not required to give the excluded party a summary of the closed material. Rather, the legislation, as drafted, requires only that the court should consider requiring such a summary to be given. In any case, Clause 7(1)(e) provides that the court must ensure that, where a summary is given, it does not contain material, the disclosure of which would be against the interests of national security.

If this clause goes through unamended, there will be no requirement to give excluded parties sufficient information about the case against them so that they can give instructions to their special advocate. Surely this is wrong, otherwise people could lose cases without being told any of the reasons why, which is an unacceptable situation in circumstances where the national security is not at stake.

Lord Marks of Henley-on-Thames: My Lords, I start by paying tribute to the Joint Committee on Human Rights for the very important work it puts into producing the thorough and excellent report that gave rise to the amendments in the name of the noble Lord, Lord Pannick, and others.

The first question to be addressed in considering the introduction of CMPs to ordinary civil proceedings is whether the Government have in any way made out a case for their necessity. That is a matter upon which, as the noble Lord, Lord Pannick, pointed out, the Joint Committee found itself unpersuaded. However, if there are 20 such cases now, as figures recently released by my noble and learned friend the Advocate General for Scotland state, as well as the obvious prospect of an increasing number in the future, as the fact that the Government is a soft target for such cases becomes well-known, that is a significant number, if a small one. In such cases, because the evidence has to be withheld altogether for the protection of national security—and it is worth reminding ourselves that that is what PII does—there can at present be no determination at all, and therefore no justice. That lack of justice has to be weighed against the damage that would be done to our civil justice system by the extension of CMPs to certain civil claims. CMPs are, as has been said, inherently unfair. They represent a serious departure from open justice, because the evidence cannot be tested by cross-examination in the ordinary way: by advocates acting on the instructions of their clients, who themselves have a full opportunity to know and meet the case against them. CMPs, therefore, represent a justice that is flawed. For my part, I think that to choose to have no determination at all in these cases, and to prefer no justice to flawed justice, would be the better choice, unless the safeguards for CMPs proposed by the Joint Committee are in place.

4.45 pm

The first essential safeguard is that there must be full judicial control and discretion. It must be for a judge to conduct the vital exercise of balancing the interests of national security against the public interest in open justice. While I have heard what the noble and learned Lord, Lord Lloyd, said about the difficulty facing judges in conducting that delicate exercise, I suggest that they are the best placed in this country to conduct that exercise. It should not be an exercise for government.

It cannot be right for the Secretary of State to form a view as to where the public interest lies, then to make an application, and for the statute to preclude the judge from saying that the Secretary of State is wrong in any case where it is established that there is some security-sensitive material, no matter how little or how central or peripheral to the case that material may be. In answer to the noble Baroness, Lady Neville-Jones, neither I nor my noble friend Lord Lester know of any case where a United Kingdom judge has prejudiced the interests of national security by ordering disclosure of material that should not have been disclosed.

It has been claimed by some members of the Government that the Bill allows the judge a reasonable discretion in Clause 7. I suggest that that is not the case. Without taking your Lordships through a detailed analysis, such an analysis shows that all that the judge can do is tinker with the detail once a Clause 6 declaration is made. That discretion is far too little and it comes far too late in the process. It does not give the judge any control over the decision of principle as to whether a CMP is warranted in a particular case.

The second safeguard, as Amendment 33 proposes, is that there must be equality of arms so that claimants may also benefit from CMPs, where taking into account security-sensitive material would help their cases. It is easy to envisage cases where the state might, genuinely in the national interest, wish to withhold from a claimant security material which might help prove his case; for example, because it would disclose details of activity by agents of the security services which are consistent with the claimant's account of what had happened to him. In such cases, the special advocate should be able to advise the claimant, without jeopardising national security, that on the basis of material that the special advocate has seen, the claimant should apply for the material to be heard in a CMP. That is equality of arms.

Thirdly, it must be absolutely clear that the use of CMPs is available only as a last resort—as my noble friend Lady Berridge said, when all alternative procedures have been considered and rejected—where no determination of the case would otherwise be possible. Fourthly, summaries of the closed material should be sufficient to enable the excluded party to know as much as possible and to be able to give instructions to the special advocate to enable that special advocate to represent his interest as effectively as possible.

Fifthly, in every case the court, not the Secretary of State, should be bound to consider whether a claim to PII could have been made successfully to exclude the security-sensitive material. The noble Lords, Lord Hodgson and Lord Dubs, as the noble Lord,

Lord Hodgson, has explained, favour a rule that PII always has to be granted before any CMP application can be made. It may be that in the generality of the cases, that is the proper order. In that, I differ from the noble Baroness, Lady Neville-Jones. But the JCHR preferred to avoid this straitjacket approach, which might in some cases be impractical: the Al Rawi Guantanamo Bay case was said by the Government in the Supreme Court to be one such case because of the sheer weight and complexity of the documents involved. I accept the JCHR's position on that point.

Finally, to ensure that the public has as much information as practical, the media must be told what they can be told about the working of the system and the issues and material in relevant cases as soon as the secrecy surrounding them has gone. All these safeguards are provided by the JCHR amendments, and I shall be voting for them today—and I hope that other noble Lords on these Benches will do the same. I take comfort from what my right honourable friend the Deputy Prime Minister said in the House of Commons yesterday, as the noble Lord, Lord Beecham, pointed out, to the effect that the Government will approach these amendments sympathetically.

I have just two caveats, to which the noble Lord, Lord Pannick, referred. The first concerns Amendment 38, which on its face appears to remove an important qualification in deciding whether material is disclosable for the purpose of Section 6(2). If, as the amendment suggests, you omit Clause 6(3)(a), the judge does not ignore the fact that the material that he is considering under Clause 6(2)(a) would not be disclosable if it were subject to PII. I am sorry that this is a technical point, but the effect is that he cannot then decide whether that material is within Clause 6(2)(a) if it would be subject to PII. If that analysis is right, that is the opposite of what I take the JCHR to have intended. In his reply to me, the noble Lord, Lord Pannick, indicated that there may be some ambiguity—and, if there is such ambiguity, perhaps my noble and learned friend the Lord Advocate could take it back and consider it.

The second concern, which I share with the noble Lord, Lord Beecham, concerns Amendment 50, which requires full summaries as would be required by Amendment 49, even where it is impossible to give such summaries without disclosing material damaging to national security. I agree with the noble Lord, Lord Pannick, that the best course might be not to move that amendment today but to take it away and bring it back at Third Reading. I hope that the Government might come back with an amendment that balances the need for summaries with the need to withhold such material as is damaging to national security. The amendment as it stands might jeopardise national security when other considerations favoured a CMP with summaries that are as full as possible.

In conclusion, it seems to me that with the amendments proposed by the joint committee, on balance the flawed justice represented by CMPs but safeguarded is better than no justice at all. Accordingly, if the JCHR amendments succeed, I will vote against Amendment 45.

Lord Phillips of Worth Matravers: My Lords, I find myself in familiar territory, as I sat in a judicial capacity on a number of appeals dealing with closed material, including Al-Rawi. Closed material is anathema to any court, and the Supreme Court always managed to deal with issues relating to closed material without looking at the material itself. I am, however, reluctantly persuaded of the need, in the interests of justice, for a closed material procedure in exceptional cases where the Government would otherwise have no alternative but to submit to a civil claim for damages because to defend it would necessarily involve putting into the public domain material that would cause disproportionate harm to national security. It is for that reason that I support the batch of amendments tabled by the noble Lord, Lord Pannick, and other noble Lords in relation to Clauses 6 and 7.

I would expect the Government and those supporting Clauses 6 and 7 to welcome these amendments. Let me explain why. I draw attention to Clause 11(5)(c), which provides that,

> "Nothing in sections 6 to 10 … is to be read as requiring a court or tribunal to act in a manner inconsistent with Article 6 of the Human Rights Convention".

That is a very significant provision. It means that a judge will be precluded from acceding to a closed material application unless satisfied that to do so will be compatible with the Article 6 right to a fair trial.

The use of closed material in civil litigation will undoubtedly be challenged as a matter of principle. That challenge will surely reach the Supreme Court and, if it fails, will be renewed before the Strasbourg Court. If it reaches that court, its decision is likely to be critical. If it holds that the use of closed material in civil proceedings is incompatible with Article 6, the English judges are likely to follow that ruling; and Clauses 6 and 7 will become a dead letter.

The Bill as it stands makes no provision for the application of a test of proportionality. The test is simply: would disclosure be damaging to the interests of national security? If the answer is yes, the court is mandated to accede to the application that the material in question be not disclosed. Clause 7 then leaves it in the discretion of the court as to the extent to which, if at all, the closed material can be deployed in support of the Government's case. The amendments proposed by the noble Lord, Lord Pannick, and other noble Lords introduce a test of proportionality. They also make it plain that a closed material order can be made only as a last resort when there is no other way of having a trial that is fair to both parties. The amendments also require a gist of the closed material to be given to the other party.

These amendments will, it seems to me, significantly increase the chances that the provisions in relation to closed material are held to be compatible with Article 6 by the Strasbourg Court. That court has made it plain that it considered that gisting was an essential feature of a closed material procedure in the context of control orders, and the court is likely to take the same view in relation to civil litigation. If and when this issue reaches Strasbourg, it is important to appreciate that the court is not likely to have access to the closed material that has weighed with the courts of this

[Lord Phillips of Worth Matravers]
country, nor to the closed judgments relating to that material. It seems to me likely that the Strasbourg Court will require to be persuaded that the English courts have applied a test of proportionality before allowing closed material to influence their decisions, that a gist of the closed material which is sufficiently specific to enable the other party to meet the case made against him has been provided to him, and that closed material has been admitted because there was no other way of procuring a fair trial. That is what these amendments set out to achieve.

If these amendments are made, it does not mean that the Government are going to be forced on occasion to disclose material that they consider to be adverse to the interests of national security. It means that where the court does not consider that the use of closed material will be proportionate, the Government may have to litigate without the benefit of that material if they remain unprepared to disclose it, or even to settle the claim made against them. The same will be true if the Government are not prepared to gist the closed material. As the noble Lord, Lord Pannick, has observed, the debate on Clauses 6 and 7 is not concerned with the protection of national security; it is concerned with the requirements of a fair trial.

It is for these reasons that I support the amendments in question.

5 pm

Lord Judd: My Lords, I should like to add a word of tribute to the Joint Committee on Human Rights for the thoroughness and courage of its work, and I pay tribute to those who put these amendments forward.

I am not a lawyer, but what concerns me in all this is what lies behind the issues we are discussing—we are trying to protect a society that is worth having. Central to the society that is worth protecting in the United Kingdom, as I understand it, has been the evolution of the cause of justice and fairness in our legal system. That has been the central pillar of what has made Britain a country in which it is good to live. Alongside this, of course, has been the independence of the judiciary; and the judge has a key role—not a role that is perceived by just those in the know, but one that can be widely seen as the key role—in ensuring that this happens.

The first thing I will say is that I find myself troubled by the fact that if we compare ourselves now with how we were 20 years ago, the quality of justice in our society is not as good; there has been an erosion. Of course I understand the acute and sinister pressures behind this trend. We are up against sinister, ruthless techniques and people. I worry that we are giving them the victory and legislating to underpin that victory by taking steps that may diminish the quality of our justice.

Let us look for a moment at the kind of issues that are being considered in the cases about which we are worried. They include torture and human rights, which are sensitive and emotive matters. If it becomes a growing concern in society that things are not as they should be in the administration of justice in these areas, and if it should be thought that the Government and Executive want to conceal things that happened which should not have happened, that will play into the hands of the extremists who are trying to build anxiety, doubt and instability into our society.

This is the very time that we must stand steadfast. Of course I am not suggesting—it would be madness to do so—that there are no matters that simply cannot be revealed in a court case. However, we must not regard this as something that on balance is right. If we are going to diminish the normal standards that we expect and see as central to our justice system, it must be an absolute last resort because we have to do it, and it should be confined to the narrowest possible areas of control. The amendments in this group are a step towards resisting a further erosion of our system of justice.

Lord Phillips of Sudbury: My Lords, I accept that my noble friend the Minister has an acutely difficult task in dealing with this part of the Bill and with these amendments. I do not think that anybody in this House pretends otherwise. Balancing national security against individual liberty and due process is judgment-of-Solomon stuff. However, I concur with the virtually unanimous voice of those who have said that there is a want of balance and proportionality in the arrangements in this part of the Bill.

In particular, I support Amendment 36. I will not repeat what others said very well, but I will draw the attention of the House—and perhaps of some beyond the House—to a very plangent example of the failure of the Bill to balance as it should the two competing issues. As was explained, Clause 6 requires a judge—it is not discretionary—to grant an application for a closed material procedure if,

"disclosure would be damaging to the interests of national security".

There is no qualification of "damaging". There is no talk of "substantial" or "significant" damage. As it stands, a judge would have to grant such an application if the damage were marginal or even trivial. That is why it is essential to agree Amendment 36—and Amendment 37 with it—and some other amendments in the group that would ensure that no judge was put in the difficult, highly undesirable circumstance of having to grant a closed material proceedings application in circumstances that, on any common-sense basis, would not be warrantable.

Lord Glentoran: My Lords, I will step out of the courtroom and into the street. Most of my life I have lived close to terrorism or among it. I have lived close to those in the secret services and many in the police. One thing that we must not vote for tonight is a reduction in the abilities of the public prosecution services, lawyers and, more importantly, police, who to my personal knowledge are extremely frustrated, certainly in Northern Ireland and in other areas that I know of, that they cannot get convictions when they know that people are guilty. They cannot get the evidence into court because they are protecting our secret services—our police and undercover agents. Throughout the problems in Northern Ireland which I have known, and throughout some of the other ones which I have known in my lifetime, those people have done a wonderful, brave job. They must not be put at risk on account of the human rights requirements.

Lord Owen: My Lords, although I did not intend to intervene, I urge the Minister, when he comes to reply, to develop any serious reservations he may have about Amendment 48. Perhaps the noble Lord, Lord Pannick, would consider doing for Amendment 48 what he is doing for Amendment 50. I do not hold the alarmist view of these amendments that is held by some members of the intelligence services; they are necessary and correct and I have no difficulty with any of them. However, I can imagine circumstances in which, under Amendment 48, it would be difficult to change "consider requiring" to "require". That is particularly true if one considers that Amendment 49 states,

"sufficient to enable the party to whom the summary is provided to give effective instructions on the undisclosed material to their legal representatives and special advocates".

That seems a pretty fair summary of what should be required, but it rings a certain alarm bell that there might be circumstances under which it would be necessary to try to persuade the courts, even in this difficult situation, that the pressures, particularly coming from people who have made available this intelligence, are so great that it would jeopardise the relationship of sharing information if we accepted Amendment 48. It would remove all discretion from the court.

In this debate those who have been justifying the amendments have often said that it is to avoid restricting the court and to give more power to the court's judgments. This amendment would go in the opposite direction. I would like a little more explanation as to whether it is really necessary to change "consider requiring" to "require".

Lord Macdonald of River Glaven: My Lords, I can be very brief. Following the publication of the Green Paper, the Government indicated a concession that the Green Paper's proposals were drawn far too widely and that the legislation that they would bring forward for consideration would be far tighter. In particular, they indicated that a judge rather than a Minister would have the final say and that closed material procedures would be available only in the most exceptional circumstances.

In fact, the Bill did not provide for either of those undertakings. It is only these amendments that are capable of securing them. The amendments finally give the judge the appropriate discretion to balance national security with the interests of justice, which is an essential tool for the judge if he is to control the fairness of the procedures in his own court, which is a critical aspect of the rule of law.

Secondly, the amendments secure a situation in which a closed material procedure would genuinely be a measure of last resort because they will require every other option to be considered first. My conclusion is that the amendments provide what the Government promised but did not secure in the Bill. For that reason, I shall support them.

Lord Woolf: My Lords, may I just add a few words to the very able speeches that have already been made? I preface them by saying that I am a hedger, not a ditcher. I hope that I will be forgiven for putting my words in the context of my own experience in this case because it is particularly relevant. For five years I was what was known as a Treasury devil or a Treasury junior, whose task, without having any political allegiance, was to be its representative in the courts in cases which would otherwise cause difficulty when being heard. One went to the court with the advantage that you were instructed by the Treasury solicitor. You were the general counsel of the Government in civil cases but when you were dealing with cases of the kind we are here considering you appeared in a completely neutral capacity.

As a result of that experience, I found that within the procedure then available—in which evidence which damaged national security would have to be excluded—there were all kinds of things that the courts and advocates could do to avoid the decision being made that the evidence could not be looked at in the court because of public interest immunity. As has been pointed out, that does not help the interests of justice because the court is blindfolded for some evidence which would otherwise be relevant. However, by using the tools available—which included members of the Bar on different sides accepting that they could rely absolutely on the integrity of the Treasury devil counsel—you could, in the great majority of cases, get evidence before the court in a way which achieved justice.

However, there was a very small minority of cases where that could not be done. One then had the unfortunate situation where there was relevant evidence that could influence the outcome which not even the judge could take into account, either for a claimant or a defendant. I suspect that no one in this House would like that situation to arise—certainly the judge did not like it—and that is why the kinds of efforts that I have indicated were taken regularly to avoid it happening. I emphasise also that, even where that happened, only a small portion of the case would not be investigated; other parts of the case could be investigated.

In generality, the proposals contained in the Bill have a great advantage over the existing process of public interest immunity: they allow the judge to have the material in a way which ensures that the interests of national security are protected. The European Convention on Human Rights does not intend or require a court system of any country to act in a way which is inconsistent with the interests of national security. It requires that the court, if it is going to take action which is not normally appropriate, should take all the steps which are open to it to minimise the effects of so doing. That is why, so far as proceedings in this country are concerned, the European Court of Justice in Strasbourg proposed the use of the special advocate. That was one step that could be taken to further the interests of justice which hitherto we had not taken. The noble Lord, Lord Lester, in his powerful speech, explained the history of how that form of action had its source in Canada, was praised by the European court, and when appropriate was adopted in this country. The procedure did not cure the disadvantages of evidence not being given in the ordinary way, but it did provide a way of getting closer to doing justice than was possible without it.

5.15 pm

We want, first of all, to protect national security, but secondly we want to do it in a minimal way—here I think I am reflecting what the noble Lord, Lord Judd,

[LORD WOOLF]
was saying when I say that that is what we should be trying to do—because we do not want to do any more than is really necessary. We should take advantage of the general proposals of my noble friend Lord Pannick without examining them in detail, which would take far too long for me at the present time, so as to find a means of squaring the circle as far as that is possible. At the centre of what my noble friend Lord Pannick said in his speech—I hope that I have not misunderstood him—is that the weakness in what has been proposed by the Government can be summarised by saying that it diminishes the role of the judge in relation to the closed procedure. It is true that the closed procedure will not apply to a whole case but only to what the judge considers, under the provisions of the Act, to those areas where it is appropriate. The closed procedure will enable him to take advantage of the evidence, which may or may not be favourable to the Government; indeed, it may be to the advantage of the claimant.

The whole of our court process is under the control of a judge. The present public interest immunity procedure is under the control of a judge. The Government have the important role, one that I sometimes played, of intervening in proceedings by saying that part of the evidence should be excluded from consideration because it is damaging to national security. In those circumstances, the judge has to be satisfied that the contention being advanced is meritorious. To do that he might read things that are only going to be read by him—which he will do in chambers, so the procedure is closed to that extent—in order to come to a conclusion about the merits of the claim for public interest immunity. I would suggest that, just as he performs that role, he is the natural and indeed the only person, consistent with doing justice generally, who can deal with the matters which my noble friend Lord Pannick, under the guidance of the conclusions of the Joint Committee, feels it is appropriate to put before the House for consideration. If we approach the matter in that way, we will retain our standards of general justice.

Of course justice should always be open whenever that is possible, but Article 6 of the European convention deals with the doing of justice in a wholly different way from that which it deals with the question of forbidding torture. The provision there is absolute. The provision relating to a fair trial does not lay down that certain things can never be done, but gives the standards that should be generally applied. Strasbourg, as the noble and learned Lord, Lord Phillips, has pointed out, would expect that this legislation will take a course that will enable justice to be done in the conventional way in a case, so far as is possible. However, it will recognise that, if there is a matter of national security that cannot be dealt with otherwise, it is appropriate and proper for there to be a new and additional ability for the court, where national security issues arise, that allows the judge to deal with the matter in a special way, with a closed procedure, so far as that is necessary to do justice in that case and where it could not be done otherwise.

Lord Faulks: My Lords, I will be very brief as all the arguments have been well rehearsed. I share the concern of all other noble Lords about these provisions and the agonising balance that has to be struck. I particularly agree of course that either party should have the right to go to these proceedings, very much as a last resort. However, I have one particular anxiety and I hope that the noble Lord, Lord Pannick, will be able to satisfy me and other Members of the House when he comes to sum up at the end. The various amendments that the noble Lord, Lord Hodgson, proposes include a number of hurdles—a Grand National of hurdles in fact—while the JCHR amendments provide a slightly fewer number of hurdles. If those amendments become part of the Bill, there will be circumstances in which we are left in precisely the same situation that we are in now; namely, that a judge does not accept the Government's view about national security in operating the balancing act and the Government will then be left with the choice of doing exactly as they are now, and either settling the case or giving up.

Although I entirely applaud all the sentiments behind these amendments, I worry about how they are going to work in practice and whether they have a danger of defeating the Bill as a whole.

Lord Carswell: My Lords, the issues in this Bill can be fairly described as a clash of rights. They could also be described as a clash of wrongs. It is wrong—terribly wrong—that people's safety and lives should be put at risk by the disclosure in the public domain of evidence that could, in some way, be withheld without irretrievably compromising the interests of justice. It is wrong, as the Government have said, that they should have to expend enormous sums of taxpayers' money to settle claims because that evidence might put at risk the lives of people or the intelligence interests and co-operation of our allies. It is also terribly wrong that litigants be left in a Kafkaesque limbo, where they cannot know the case that is being made against them or the evidence that is being produced, or cannot be allowed full consultation with their advocates to ensure that they are able to put forward their own case, if they have one, as effectively as possible.

The balancing of interests and considerations has been traditionally not just a principle but a very strong instinct running through our law. It is far, far better if we can incorporate compliance with that instinct into the present issue rather than impose certain rigid requirements that are incapable of being observed without the risk of considerable and great injustice. I pay tribute to the Joint Committee on Human Rights for the quality of the argument and expression of its report.

There is a range of means in practically every case for reaching a proper solution that acknowledges and gives effect to the different considerations. I give an analogy that is not from the present issues, not from civil law but from criminal law: the protection of witnesses who would fear for their own safety if they were to give evidence in public. This is something of which I have had fairly considerable experience over the years, sitting as a trial judge when many witnesses, quite understandably, were extremely fearful for their lives and safety if they gave evidence.

There was a graduated list of possible ways of dealing with this and one had to consider that in any given case. It started at the lowest end, allowing the

witness to give his or her name and address on paper to the judge only, but otherwise giving evidence in the normal way in open court and subject to ordinary cross-examination. At the other end of the scale, the witness was hidden behind a curtain or a screen and his or her voice was distorted so that the persons in the court could have no idea, unless they were clairvoyant, who was giving this evidence. It could have its humorous side. I remember a group of Army witnesses sitting in court—they all had dark glasses on and the most curious wigs, and they looked an amazing sight. But we applied that list as best we could and I suggest that this approach exemplifies the way in which Parliament should deal with this problem. For that reason I support the amendments.

This will not be an easy task for the judges who have to shoulder it. One has to acknowledge that it may not always be discharged perfectly, and certainly it will not always be discharged in a way that pleases the Government of the day. But undertaking that sort of burden is part of the function of a judge and we must trust them to take it on and to discharge it to the best of their ability. We must bear it in mind that in any given case the judge will have expert argument—and the noble Lord, Lord Pannick, has said how effective and persuasive that can be—setting out the issues, giving the judge the opportunity and the time to weigh them up and attempt to come to the best possible solution. I submit that it is far better to run the risk of justice being imperfectly administered than to put the judges into a straitjacket at the Government's behest. I support the amendments.

Lord Elton: My Lords, many noble Lords have said that striking a balance between justice and public security is a very difficult task, and that is exactly what this House is now being asked to do. Your Lordships who are learned, or learned in the law, will no doubt have made up your minds by now, but as a Member of the House who is a layman in these matters I rise simply to make a plea to my noble friend. He has brought a Bill to the House asking for more powers to be given to the Government to protect their agents working in the public interest. History is full of such appeals, and the duty of Parliament is to look at them with grave suspicion, particularly, as my noble friend Lady Berridge says, at a time when a Government have achieved so much preponderance in the other place. I am therefore very anxious to have clear statements, in one voice, from the Government who are putting this case, as to the individual merits of the different amendments.

It seems to me that there are not two simple, discrete packages, but that there are individual bits that are appealing and others that are not. Each will have a price. That price will be paid either in cash, by not going forward with the case, or in security, by risking exposure. We need to know that price as we make up our minds on each individual case. I speak as a layman, and I believe that there are many who need this guidance.

5.30 pm

Lord King of Bridgwater: My Lords, I hesitate to intervene in such a distinguished judicial gathering. In my time, I have had some involvement with intelligence matters. I recognise, as has been very well recognised by a number of noble Lords, how extraordinarily difficult these issues are and the challenges that they will pose for a judge when exercising his responsibilities.

The noble and learned Lord, Lord Woolf, made the point very well that what we should be concerned about is national security. We should also be concerned with public respect for the system of justice. If there were to be, as we are told, an increasing number of cases that cannot be defended by the Government, in which perhaps substantial payments have to be made to what may appear to be thoroughly undeserving claimants, the public outrage and the damage that will do to respect for justice in this country will be extremely grave. I have been very impressed by what I think is a general consensus emerging that this is not a measure that should be abandoned by voting against Clause 6 but that this is a measure of last resort, provided that there are proper protections in place.

It cannot be emphasised too strongly that we depend for our defence in this country not just on the very able capabilities of our own intelligence and security services but on the vital liaison that we have with a number of key allies. Those allies are now spread much more widely than people may realise. A number of them are extremely sensitive about whether the security of the intelligence that they provide under the tightest restrictions, which is held most closely in their own countries, is going to be maintained in whatever arrangements we introduce into the justice system in this country.

The noble Lord, Lord Marks, was querying whether there had been any such case. Of course, we are familiar with the issues that arose in the Binyam Mohamed case, when the Divisional Court ultimately rejected the Foreign Secretary's third PII certificate. David Anderson QC, who has been referred to on a number of occasions, said that on the basis of what he was shown,

"there are signs that we are currently on probation and that there has already, in some respects, been a diminution in intelligence sharing".

That is a very serious concern and certainly not a judgment that I would challenge. In my own experience, I was very conscious of the sensitivity in these matters and the importance of maintaining the most open channels.

Lord Lester of Herne Hill: I am sorry to interrupt my noble friend, but does he accept that in the Binyam Mohamed case, neither the Divisional Court nor the Court of Appeal presided over by the noble and learned Lord, Lord Neuberger, revealed any information that in any way prejudiced national security, even though it is true that some of the affidavit evidence of the Foreign Secretary and of Hillary Clinton was questioned at the Divisional Court level?

Lord King of Bridgwater: I do not think I have ever quoted Donald Rumsfeld, but when my noble friend very firmly asserts that there was no risk to national security, my worry always is the,

"things we don't know we don't know"

in these issues as to what sensitivities there may be. That is the worry that emerges out of this.

[Lord King of Bridgwater]

Let us be quite frank, there is not always a huge enthusiasm to share intelligence. There are plenty of people in the intelligence agencies of other countries who are very secretive indeed about the intelligence that they have and deeply distrustful of any other country that they do not believe will properly protect it, so any excuse that they can have—which they will argue internally in their own organisations—not to share intelligence in this way is something that we have to be extremely careful about.

It is against that background that I look with great interest to the reply of my noble friend the Minister. I have listened with great respect to the points that have been made. Some very good points have been made about the importance of ensuring judicial discretion in these matters. I got the impression that the Government have already moved quite significantly in that direction, which I wait to hear. However, in respect of my noble friend's Amendment 31, I think that CMPs definitely have an advantage over PIIs. I do not support Amendment 31. I support the noble Lord, Lord Owen, in what he said about Amendment 48. I believe that Amendment 50 is also one that people have reservations about and I hope that that will not be pressed either.

Baroness Manningham-Buller: My Lords, I well understand the concern coming from all angles of this House on this legislation, and it is entirely right that these issues are fully scrutinised and judged by us. I think that everybody accepts that what is proposed is not ideal, but the question is: what is the best answer? There is the central dilemma of how to deploy into court a wealth of secret information that can be judged and weighed by the court without compromising it.

I am sorry to repeat this, but I think that I have to: the dangers of compromising secret information are several. The first is the obvious risk to the officers who are concerned with it and, as the noble and learned Lord, Lord Carswell, made clear, to the sources of it. The second is the technologies that are available but are fragile and can no longer be used. We are trying to deal with those two things.

If the House will indulge me, I want to say something pretty personal. It is deeply distressing to me and to my former colleagues to be accused of really wicked iniquities in the case of torture and maltreatment. We have not been able to defend ourselves. The closed material procedure gives the opportunity for this material, which may or may not reflect badly on the security and intelligence services—I naturally think that it would not, but others may judge differently—to be looked at. We have been judged by many to have been engaged in criminal activity. But there has been no prosecution; there has been, concerning my service, one police investigation and the CPS found no case to answer. There are other police inquiries going on at the moment and, because I believe in and respect the rule of law, I cannot comment on them; we will see what the outcome is. However, I believe that closed material procedures are a way in which the judiciary can make a judgment on the validity of those claims. We need CMPs for a range of reasons, and I am glad that it seems that, with some exceptions, the need for them is accepted by this House.

When we get on to the next part of the Bill, we will talk about intelligence sharing and Norwich Pharmacal. I may wish to comment at that stage; I do not now.

PII, apart from keeping out of court material that we wish the judge to look at, will be impractical in some cases. I believe—this is information from my former colleagues because I had retired by then—that around a quarter of a million documents were involved in some of the claims that have already been settled. Going through those line by line would be a mammoth and very long task.

Finally, perhaps I may pick up the point made by the noble Lord, Lord Faulks. We should hope to avoid reaching a stage where, because of the need for the open practice of justice and because the balancing act rules out the use of secret intelligence, the Government will have to withdraw and settle and we might get back to where we started, with these cases not being heard. That is a risk that we will probably have to cope with, but I hope that the House will support the central value of having some proceedings to hear these cases in the absence of any at the moment.

The Advocate-General for Scotland (Lord Wallace of Tankerness): My Lords, I thank all noble Lords who have taken part in this debate. By any account, it has been a very well informed debate, with people speaking from some rich experience. The contributions from those who claim to have no legal background are equally important in bringing the perspective of those who do not deal day-in and day-out with legal issues. As my noble friend Lord Elton said, we are dealing with the difficult issues of trying to achieve a proper balance between liberty, justice and security.

I was encouraged by my noble friend Lord Elton to look at the amendments in turn, but perhaps I may make some introductory remarks. It has been some time since we last considered Part 2, although much has been said about it in the mean time. It is important to remind the House why the Government have brought forward the clauses introducing closed material procedures into civil proceedings where sensitive national security material is relevant. As my noble friend Lord Marks indicated, in a letter which is available in the Printed Paper Office, which I sent to the chair of the Joint Committee on Human Rights, we believe, having done a cross-departmental trawl, that there are about 20 current civil damages cases where material relating to national security would be central. There have been seven new cases during the 12 months leading up to 31 October this year. As my noble friend said, if for some reason we were thought to be a soft touch and did not have any means of properly determining those cases with evidence being allowed to come before a judge, a trend could be established.

Intelligence operations depend, inevitably, on surveillance, investigation and, most critically, information -sharing between agencies, their sources and their liaison partners, as was said by my noble friends Lord King and Lady Neville-Jones. Underlying those arrangements are two principles. The United Kingdom does not confirm its involvement or the involvement of its liaison partners and sources, as to do so would result in a loss of trust and information-sharing would dry up. We rely on others to keep our information

safe; and our partners rely on us to do the same. Although much reference has been made to the United States, I recall from our deliberations in Committee that it was made clear that there is a number of other countries whose information we also depend and rely on.

In cases where people are bringing proceedings alleging that the Government were involved in detention, rendition or torture, the Government's defence would be likely to include: the nature of any involvement, which would require the Government to breach their long-standing policy not to comment publicly on whether or not they had been involved in any particular operation; what the Government knew at the time, potentially risking the lives and safety of sources; what the Government had shared with its partners, potentially revealing the fact of, and nature of, relationships with partners; and any assurances sought and/or received about an operation, again, potentially revealing the fact of, and nature of, those relationships. All those things could be central to any defence and none of them could be put in the public domain without the risk of jeopardising the safety of sources or the willingness of partners to work with the United Kingdom.

It is interesting that the shadow Justice Secretary is on the record as saying:

"In two and a half years' time, it could be me in that seat making that tough decision. So it is very important for ministers to have the opportunity to protect sources, to protect delicate operations and all the rest of it. They shouldn't be jeopardised by a civil action".

At present, as has been said in our debate, the only way to prevent the disclosure of such highly sensitive national security material when civil litigation arises is through public interest immunity. Although the system of PII works well in most cases, it is not working in a small number of cases that hinge on sensitive national security material. That point was clearly and eloquently made by the noble and learned Lord, Lord Woolf. He said during our deliberations in Committee:

"PII has the very unfortunate effect that you cannot rely on the material that is in issue, whereas both the claimant and the Government may want to rely on that material".—(*Official Report*, 11/7/12; col. 1189.)

PII requires the court to balance, on the one hand, the damage that would be caused to the public interest with, on the other hand, the public interest in the administration of justice. That includes the impact excluding the material will have on the claimant's and defendant's cases, as well as the general public interest in open and transparent proceedings—the so-called Wiley balance.

5.45 pm

I will pause to make it clear what that means. In most cases, the judge will decide that the national security of the United Kingdom outweighs the damage to the administration of justice from excluding the material. In that case, the judge will exclude the material from the court's consideration, no matter how relevant it is. The judge also has the power to look at material and agree that it would damage national security if revealed in open court but, nevertheless, decide it must be disclosed anyway. I think many of us, if we were agents, would feel that that might be a somewhat frightening theoretical prospect. Where the Government's case rests wholly or substantially on sensitive national security material, there is clearly a real problem. That has been identified by a number of contributors to the debate.

The noble Lords' amendments raise important issues in this Bill on the relative benefits of and interaction between closed material proceedings and public interest immunity. Perhaps your Lordships can identify three distinct packages within this group. Amendment 31, moved by my noble friend Lord Hodgson, would, with Amendments 32 and 44, put PII on the statute book where national security is concerned, require the Secretary of State to go through this process for every document before a CMP declaration can be made and prevent CMPs being used in claims,

"which arise in connection with the claimant's loss of liberty".

Amendments 36, 37, 38 and 40, proposed by the noble Lord, Lord Pannick, but emanating from the report of the Joint Committee on Human Rights, deal with stage one of the CMP, in which the Secretary of State makes an application to the court for there to be a CMP in principle.

Amendments 47, 48, 49 and 50, also tabled by members of the Joint Committee, are a separate group, introducing balancing and additional gisting requirements at stage two, within the CMP itself. As I think the noble Lord, Lord Owen, indicated, and as the noble Lord, Lord Pannick, indicated in regard to Amendment 50, Amendments 48 to 50 may be a subset of these amendments. I will refer to those later in my remarks.

Perhaps I may start by dealing with the amendments spoken to by my noble friend Lord Hodgson. I have made general remarks about the problems with PII in this context. Amendment 31 would introduce a system of statutory PII for national security material only. My reading of the amendment is that it would go beyond the purposes of this Bill. Indeed, where there is national security material it would put PII on a statutory basis generally in civil proceedings. There is no such procedure currently set out in legislation. PII is a common law principle that the courts have developed to deal with the handling of sensitive material over the years. A wide and flexible range of public interests fall within its umbrella.

Over recent weeks, it may not surprise your Lordships to know that I have had to engage with a number of groups and individuals who were very concerned on these issues and who have been advancing the importance of PII. I am sometimes somewhat surprised that there has been a love affair with PII that was not always apparent some 10, 15 or 20 years ago, but the point made regularly to me was its importance because it has grown out of and been developed by the common law, thus allowing the flexibility that the common law brings to changing circumstances.

In our *Justice and Security* Green Paper, we ruled out statutory PII because we believe that it does little to advance on the current system in providing clarity on applicable principles and stability and certainty for the UK Government. In Committee, the noble and learned Lord, Lord Woolf, said:

"I would urge that flexibility is very important here. PII has been developed as a common law principle, and if it is accepted on all sides, as I believe it is, that PII in the present proceedings

[Lord Wallace of Tankerness]
should remain, I question whether we need to reduce into statute that which the common law has developed. Of course, if the common law has developed it, it can continue to develop according to new circumstances that we may not anticipate in the course of the argument taking place in this debate".—[*Official Report*, 11/7/12; col. 1188.]

The Government would strongly endorse this view.

Amendment 32 would require PII to be exhausted first. The test the court must apply when considering an application for a CMP would therefore be much tighter. The Government do not agree that PII must be exhausted before applying for a closed material proceeding; nor do some notable commentators. Mr David Anderson QC, who probably gets the prize for the most quoted person in these debates, said that,

"if the exercise is plainly going to be futile, I do not think legislation should require it to be performed."

I note that the report on the Bill by the Constitution Committee of your Lordships' House did not go so far as to recommend that the Bill should require PII to be exhausted before a CMP declaration should be sought from the court. That report stated:

"We can see force in the argument that it will sometimes be otiose to push the PII process to its completion before turning to CMP".

My noble friend Lord Hodgson claimed that PII would not be time-consuming. I think it was my noble friend Lord Marks who mentioned the Guantanamo civil litigation. It was settled because the Prime Minister wanted to draw a line under detainee issues and to illustrate the potential scale of the problem. There were around 250,000 relevant, sensitive documents in that case. It would have taken several years to complete PII, requiring a full-time Minister who barely did anything else. If PII had been successfully asserted, the Government would have had excluded a large part of their defence.

My noble friend Lord Hodgson referred to the toolkit on PII, but there is a toolkit in Clause 7 on the different ways in which the judge in closed material proceedings can deal with individual items and pieces of information. I know my noble friend Lord Marks does not think that goes far enough, but we should not lose sight of the fact that there is within the Bill the opportunity for the judge to consider each individual piece of evidence once the gateway has been passed with regard to the principle of closed material proceedings in any one case.

Amendment 44 was spoken to by my noble friend and prevents CMPs being used in claims which,

"arise in connection with the claimant's loss of liberty".

Claims relating to issues of liberty might be thought more routinely to arise in the United Kingdom in the context of criminal proceedings. Although I think all noble Lords have acknowledged it, I emphasise that the provisions in the Bill do not relate to criminal proceedings. Noble Lords may be thinking of a recent case in the civil courts, the case of Rahmatullah. In that case, proceedings were brought in the UK in relation to a person in US custody. There was no relevant national sensitive security material in that case and no claim for PII was made. The UK Supreme Court and the courts below were able to determine the issues without a CMP.

I have emphasised a number of times that the use of a CMP is designed to include more material in determining the case rather than excluding it. This ensures that the claim can proceed on the basis of all the relevant material. We would wish to see as much material as possible, and we cannot understand why noble Lords who tabled these amendments would wish to produce a situation in which material relevant to a case could not be taken into account by a judge. I therefore ask my noble friend to withdraw Amendment 31 and not to move Amendments 32 and 44.

Moving now to the second set of amendments within this group—Amendments 36, 37, 38 and 40—I preface my remarks by expressing gratitude to the members of the Joint Committee on Human Rights for their thorough and detailed report on this Bill, which was published last week. My noble friend Lord Hodgson mentioned concern about the thin end of the wedge, which is what the members of the Joint Committee on Human Rights perhaps sought to do in their views about how to address the procedural aspects of the Bill. I welcome the committee's acknowledgement of the changes that have already been made from the proposals originally put forward in the Green Paper. I welcome the contributions by two distinguished members of the committee, my noble friends Lord Lester and Lady Berridge. My noble friend Lord Lester gave a very clear indication of how we got into closed material proceedings at all, which goes back some 15 years to cases in which he was involved and which evolved from a decision in a case before the European Court of Human Rights. As we have heard, the report contains a number of clear and detailed recommendations, which are reflected in the amendments we are considering this evening. For example, the recommendation to remove from the Bill the order-making power to extend CMPs is one that we have already been able to agree and we will debate it later. The issues raised by some of the other recommendations are complex, and one would expect the Government to give them the careful consideration that they merit. We will respond fully to the Joint Committee's report in due course.

One recommendation was picked up by the noble Lord, Lord Beecham. He said that it is difficult to define national security. That is accepted. Twenty years ago, no one would have thought of cybersecurity. He acknowledged that you could be stuck with a definition, but he asked whether we could say what is not included. The Joint Committee recommended that the Government confirm to Parliament that Clauses 6 to 11 of the Bill are not intended to cover material the disclosure of which would be damaging to international relations, such as diplomatic exchanges. I confirm to the House that "national security" is deliberately a very narrow definition, and a term well understood by the judiciary. It excludes other aspects of the public interest, such as international relations or the prevention or detection of crime, which will still be dealt with under the PII regime.

By way of comparison, the Special Immigration Appeals Commission must uphold the Secretary of State's view that material should be closed material where disclosure of that material would be contrary to

the public interest. As I have said, in this case it is limited, as a response to the previous report of the Joint Committee on Human Rights, to national security.

Amendment 36 would introduce full judicial balancing into the court's decision to grant an application for closed material proceedings. The Government agree that judicial discretion is vitally important. Quite properly and thankfully, no one in your Lordships' House suggested that CMPs might be used to deal with issues and inquiries arising from the Hillsborough tragedy, although I have had to deal in other forums with that allegation being made. Quite clearly, a judge seeing that coming up would readily identify that it was not a matter of national security, and deal with it appropriately.

The Government believe that such elements of judicial discretion must be provided for in the right way and at the right stage of the process. If it is to be meaningful, it must have regard to the Government's responsibility for matters of national security. We believe that the duty on the Secretary of State to consider PII first and the flexibility that the judge has at the second stage of the process to which I have already referred, which critically includes the duty to ensure Article 6 rights are guaranteed, is both meaningful and appropriate. As my noble friend Lord Faulks said in Committee:

"It should be emphasised that CMPs are not of themselves a novelty and exist in a number of different contexts".—[*Official Report*, 19/6/2012; col. 1740.]

In none of these contexts do they begin with a balancing test or a PII exercise.

Other amendments in this group would give the court discretion to grant an application if the potential damage to national security outweighed the public interest in the fair and open administration of justice and if it considers that a closed material procedure is the only way fairly to determine the issues. These amendments would require the test the court must apply when considering an application for a CMP to be much narrower, not only making a CMP an absolute last resort but making it available to dispose of the issues only in the situation where a fair determination of the proceedings is not available by any other means.

I will indicate why I am not persuaded that this is the right approach. It leads to two questions. First, what other way might the issues be determined? Secondly, how far should the judge have to go to attempt these routes? The noble and learned Lord, Lord Lloyd, from his experience, expressed some concern about the test here. He said that the difficulty with Amendment 66 was balancing harm with public interest in the fair and open administration of justice. I can understand that it would be somewhat uncertain. As I have said, it is vital that we produce clear legislation that signals what Parliament intends. One of the aims of this Bill is to provide clarity on these issues and when these procedures should operate. The noble and learned Lord, Lord Phillips, indicated that he presided over the court in the Al Rawi decision where the court passed the baton to Parliament to determine the procedure and the circumstances in which closed material proceedings should apply in civil proceedings. The court indicated that Parliament should legislate and make it clear in what circumstances CMPs should be available. I somewhat fear that the test here does not give the clarity which ought to apply. This particular phraseology is used at the second stage—the Clause 7 stage—through Amendment 47.

One route sometimes pointed to is in-camera hearings and confidentiality rings but, where national security—and potentially individuals' lives—are at stake, these mechanisms cannot give the required degree of assurance. There may be no way to manage or contain the harmful impact of making sensitive information public. David Anderson has said,

"I would suggest that a confidentiality ring … is not the answer to everything. It drives a barrier between counsel and client, which can be very difficult to maintain".

6 pm

My noble friend Lord Carlile of Berriew asked the JCHR,

"not to be too enthusiastic about confidentiality rings in this range of cases. They are not right in principle here."

The only other option, therefore, which would appear to be available is PII, but going through the whole PII exercise may well be an irresponsible waste of the court's time in cases where, quite clearly, at the outset, material would be excluded.

Fundamentally, none of the options—settling, using PII, offering no defence to serious allegations or having the court strike a case out as untriable—enables the courts to get to the truth of what happened. The noble Lord, Lord Beecham, pointed out that I had said that in some cases the court could strike it out, and he felt that that would safeguard national security. It would certainly do that if no information was ever made available before a judge, even under closed proceedings. PII also achieves that to some extent at the moment, when some material is excluded, but that does mean that relevant information may not come before a judge. Perhaps some people look at it from the perspective of the Government and agencies that were not allowed to put a defence forward, but equally, if a claimant puts forward a valid claim, they may not be able to get judgment, to have that claim properly vindicated, if a case has to settle because material was necessarily excluded from the court. That is why I take on the point made by my noble friend Lord Faulks.

It still could be the situation, even under the proposals that the Government have made. Under the test that would apply under Clauses 7, 72 and 73, if the Government do not feel able to bring forward information if the court requires it, and feel able to disclose it, they would not be allowed to use that information. In these circumstances, even under proposals here, it might still be necessary to settle. We are seeking to try to reduce as much as we can the cases where settlement is the option. We would much prefer cases where relevant information could be brought before a court for a determination.

Settling is sometimes portrayed as an easy option, but it is far from certain. For a start, it relies on the other party being willing to settle. If they are not, the Government are left with the same problem of seeking to exclude their own defence by means of PII, facing potentially damaging disclosure of sensitive material, or offering no defence and losing by default. They would not even be able to put any evidence before the

[Lord Wallace of Tankerness]
court that might determine the quantum of damages, which opens up the Government potentially to even greater cost.

Settling is not without serious consequences. Although cases are settled without admission of liability, people assume that the UK is only settling because somewhere there has been some wrongdoing. As the noble Baroness, Lady Manningham-Buller, has said, that has huge reputational damage, and can be used to legitimise extremism or terrorism against the UK. In Committee the noble Baroness said that,

"public confidence in the security and intelligence community is not helped by the fact that, in many cases, we have been unable to defend ourselves".—[*Official Report*, 11/7/12; col. 1228.]

She believes, as I do, that inviting the court to look at all the relevant secret material—and it will decide what, if any, weight is to be put on it—is an advance over where we are today.

As I have indicated, the claim that balancing in PII leads to more disclosure of national security material ignores what happens in practice. I will briefly pick up the point made by the noble Lord, Lord Marks, about Amendment 38. There is a technical issue here. Amendment 38 goes to the leg of the admission to closed material proceedings, that there must be a requirement to disclose. If PII has been successfully invoked there would be no requirement to disclose, and that would almost be self-defeating. However, I accept how the noble Lord, Lord Pannick, put it, that it was all part of a wider package. As it stands on its own—and we had this debate in Committee—it is there not in any sinister way to exclude PII, but rather to not find a position where the judge can say "I can't allow this, because you could have excluded it with PII".

Under the new arrangements, where the court declares that the case is one where a closed material procedure may be used, this does not mean that all material in those proceedings is automatically heard in closed proceedings. Only material that is damaging to the interests of national security will be considered in closed session, and as with PII, there will be a painstaking exercise to ensure that as much of the evidence as possible is heard in open court. I certainly recognise the point that the noble and learned Lord, Lord Phillips, made, about the Strasbourg court's views on these provisions. If the Strasbourg court were to say that CMPs could never be compatible with the ECHR, then we might be in some trouble.

However, the court has not made such a finding, and in fact, it has found that CMPs can occur compatibly; for example, the case of Kennedy. As the noble and learned Lord, Lord Woolf, indicated, the provisions of the convention do not put a stoppage on Governments taking measures through their judicial proceedings to consider national security. However, as it is indeed the case, there is an express requirement on the court in Clause 11(5)(c) to have proper regard and to bear in mind the provisions and requirements of Article 6, and if Article 6 requires disclosure, then the court must order it.

Lord Lester of Herne Hill: I am sorry to interrupt my noble and learned friend. Does he accept the Joint Committee's point that, instead of relying on Article 6, to weaken the common law, one should approach the convention through our legal system, including common law guarantees of fairness? Does he also accept that we should not use Article 6, which is a compromise, for mainly civil countries' standards, but that we should be looking at our own common law, as explained by the Supreme Court in the Al Rawi case?

Lord Wallace of Tankerness: My Lords, Article 6 has been a very good safeguard for many claimants, or people appearing before the courts, of securing a fair trial. The fact that the courts are expressly enjoined to have regard to it does mean that in particular cases, if the requirements of a fair trial lead to requirements of disclosure, when one comes to that second stage of the CMP process the court would be obliged to order disclosure. However, as I have already indicated, it may well be that in these circumstances the Government take the view that even then, disclosure could be damaging to national security, but they must bear the consequences, as set out in Clause 7(3), if they feel unable to disclose.

I finally come to Amendments 47 to 50. They relate to the second stage of the process—and I indicated before that Amendment 47 has the same considerations that I expressed with regard to Amendment 36. The aim of the provisions is to put more material before the court—not the same amount—so that cases that currently cannot be tried because they hinge on highly sensitive national security material can be heard, leading to real findings on important allegations about government action.

Where the consequences are the inclusion of the material in the case, there is no precedent for including Wiley balancing. Other CMPs that already exist and do not use it have been upheld by the courts as being fair and compliant with Article 6. The position of Government is therefore that there is no case to include balancing of the sort that is implicit in these particular amendments.

The noble Lord, Lord Owen, expressed concern about the requirement, as opposed to an obligation to consider to require, in terms of disclosure. As a Government we share that concern about this set of amendments. Amendment 49 also goes even further and provides for disclosure under the AF no. 3 principle, meaning that material can be disclosed, even if it is damaging to national security, if that is necessary for the individual to be able to instruct their special advocate. This amendment does not take full account of the judgment of the Supreme Court in Tariq—and I will stand corrected by the noble and learned Lord, Lord Phillips, if I get this wrong—which held that Article 6 does not provide a uniform gisting requirement in all circumstances.

The noble and learned Lord, Lord Mance, said at paragraph 27 that,

"the balancing exercise called for in paragraph 217 of the European Court's judgment in A v United Kingdom depends on the nature and weight of the circumstances on each side, and cases where the state is seeking to impose on the individual actual or virtual imprisonment are in a different category to the present"—

the present being an employment tribunal—

"where an individual is seeking to pursue a civil claim for discrimination against the state which is seeking to defend itself."

The noble and learned Lord, Lord Hope, went on to say at paragraph 72:

"The context will always be crucial to a resolution of questions as to where and how this balance is to be struck".

I could not help but think of the point that the noble Lord, Lord Owen, made, that when so much has been said about judicial discretion, this is perhaps an area where there ought to be proper judicial discretion, and where an absolute requirement on the judges should not be made. Wherever it is possible to provide gists and summaries of national security-sensitive material without causing damage, they will be supplied. In those cases where Article 6 requires gisting of this type, as I have already indicated, Clause 11(5)(c) means that the court will order it.

Finally, Amendment 50, which the noble Lord, Lord Pannick, indicated that he may not move, would instruct the court to ensure that any summaries only do no damage to the interests of national security,

"so far as it is possible to do so".

I am afraid that that is a risk that the Government cannot take. We cannot say to our international partners that we will protect their information,

"so far as it is possible to do so".

Perhaps above all, we cannot say to sources who are risking their lives for us, "We will protect your identity and, accordingly, your life and safety as far as it is possible to do so". We do not believe that that is a risk that the Government should take and we believe that we should be categorical about it.

This set of amendments puts at risk our national security in order to hear compensation claims that can be fairly dealt with by the model set out in this regard in the Bill. The Government's duty is to protect national security and it is not an optional duty. It is fundamental and some may say that it is our very first duty. Against that background, I very much hope that the noble Lord will withdraw his amendment.

Lord Pannick: Before the noble Lord, Lord Hodgson, replies, it may be of assistance to the House if I seek to respond to a specific question put to me by the noble Lord, Lord Owen. I am very grateful for the general support around the House for the concept of judicial discretion in this area and that CMPs should be a last resort, if they are to exist at all.

The noble Lord, Lord Owen, asked me to address Amendments 48 and 49, to which the Minister referred. I am grateful to the Minister for the very careful way in which he went through the amendments. The noble Lord, Lord Owen, was concerned that Amendments 48 and 49 would introduce a duty to provide a summary or a gist of the material if the closed material proceeding is to be ordered. The answer is that disclosure of the summary or the gist would be required only if the Government wish to proceed with a CMP. If they do not wish to disclose the gist or the summary, which is a matter entirely for them, they do not have to do so under the amendment. There simply would be no closed material proceeding. I suggest that that is entirely appropriate if we are to have a fair balance of the interests in open justice and other competing interests. I am grateful to the House.

Lord Hodgson of Astley Abbotts: I am extremely grateful to my noble and learned friend for the courteous and extensive way in which he has replied to Amendment 31, on which this debate has hung. Perhaps I may make clear to my noble friend Lady Neville-Jones that this was not to end CMPs: it was merely to narrow the gateway to CMPs by requiring a PII process first. The noble Lord, Lord Pannick, has discussed a number of amendments that give effect to the recommendations of the Joint Select Committee. If I was going to be irreverent, I might say that I regard those as offering 80% of the loaf, as opposed to 100% of the loaf that I was seeking.

However, I have to recognise that the Joint Select Committee has spent a great deal of time on this, a great deal more time than I have. Speaking as it does for both Houses of Parliament, it speaks with great authority. I also practically recognise that 80% of a loaf is better than no loaf at all. I shall seek, with the leave of the House, to withdraw my amendment and then give my support to the noble Lord if he chooses to move his amendments to give effect to the Joint Select Committee's proposals. I beg leave to withdraw the amendment.

Amendment 31 withdrawn.

Clause 6 : Proceedings in which court permits closed material applications

Amendment 32 not moved.

Amendment 33

Moved by ***Lord Pannick***

33: Clause 6, page 4, line 18, leave out from first "The" to first "a" in line 19 and insert "court seised of relevant civil proceedings may, on application of either party or of its own motion, make"

Lord Pannick: My Lords, I can be very brief because I can see that your Lordships are keen to move to vote on this matter. Amendment 33 addresses a specific aspect of fair balance. Under the Bill, a CMP may be ordered only on the application of the state. Amendment 33 would provide that the judge is able to order a CMP also on the application of another party to the proceedings or on the court's own motion. That may be a practical matter for the reason given by the noble Lord, Lord Marks. The claimant, on the advice of the special advocate, may prefer the case to be heard by means of a CMP or at least part of it, rather than to have the evidence excluded altogether, given that the evidence may assist the claimant. I beg to move.

6.15 pm

Lord Beecham: My Lords, to be clear, the Opposition support this amendment.

Lord Wallace of Tankerness: My Lords, consistent with the spirit of the way in which the noble Lord moved his amendment, I shall try to be brief, but I think that it is only fair that I explain why the Government are not accepting this amendment.

It is part of the principle behind our system of government that the Executive are the guardian of the United Kingdom's national security interest. Courts have frequently stated that the Government's function to protect national security by claiming PII is a duty rather than an option. Correspondingly, we believe that it should be the responsibility of the Secretary of State to apply for a declaration that a closed material procedure may be used. The courts play an essential role in scrutinising the Government's exercise of these functions, but the question of whether to claim PII, and accordingly whether to make an application for a declaration that a closed material procedure may be used, should be a question for the Government.

In practice, it is the Secretary of State who holds national security-sensitive material and is in the best position to judge the scope and nature of that material, with advice from the security and intelligence agencies. Other parties may not even be aware that the national security information exists. It will remain open to a third party to approach the Secretary of State and request an application for a CMP if they do have reason to want one. If the Secretary of State refuses, that decision could be judicially reviewed.

I accept there is an underlying concern that the Government could inappropriately use this power because there is a feeling the courts are powerless to prevent the Government claiming PII to hide something, and conversely claiming a CMP when it is to the Government's advantage to have material before the court. I do not think this is a concern that is ever likely to be raised in practice. In the first instance, it is for the Secretary of State to instigate the CMP application or PII claim, and the power to order a CMP or to accept a PII application rest solely with the judge. The judge would be alert to any unfairness to the non-government party, and within the CMP would have the case management powers to be able to ensure that the claim is fairly heard.

That is, in summary, why we would resist the amendment, and I invite the noble Lord to withdraw.

Lord Pannick: I am very grateful to the noble and learned Lord. If we are to have CMPs there must be equality of arms and there must be fairness, and it must be open to the applicant to apply to the judge for a CMP to be ordered. I wish to test the opinion of the House.

6.17 pm

Division on Amendment 33

Contents 273; Not-Contents 173. [The Tellers for the Contents reported 273 votes: the Clerks recorded 272 names.]

Amendment 33 agreed.

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6.33 pm

Amendment 34 not moved.

Amendment 35

Moved by ***Lord Pannick***

35: Clause 6, page 4, line 21, leave out "must, on an application under subsection (1)," and insert "may"

Lord Pannick: My Lords, the amendment would provide for judicial discretion in this context. We have had a full debate on whether or not there should be judicial discretion. I beg to move.

Lord Tunnicliffe: The amendment is supported by these Benches.

Lord Wallace of Tankerness: My Lords, I am not quite sure that I can say that we do not support the amendment and just leave it at that, as that would not be courteous to the House.

Very briefly, the Bill states that the judge must order a CMP if he considers that a party to the proceedings would be required to disclose material and that such a disclosure would be damaging to the interests of national security. The amendment would change the "must" to "may", introducing greater judicial discretion. However, the Government do not consider that this is a necessary amendment given the narrow criteria that are set out for triggering a CMP and the other safeguards in the process.

When the Secretary of State makes an application whereby a CMP might be used, the judge needs to be satisfied of two things: first, that there is material that a party would normally be required to disclose; and, secondly and significantly, that disclosure of that material would damage national security. That is not a fig leaf, as some have described it. The judge will have the final say about whether or not those conditions are satisfied. The Secretary of State has to demonstrate that genuine damage to national security, not embarrassment, would be caused by the material being disclosed publicly; and if the judge disagrees with that assessment, he could refuse to order a CMP. Equally, if he considered that the material was not relevant to the facts of the case and the Secretary of State was therefore seeking a CMP where one was not necessary to protect material that was relevant to the case, he could refuse to order one on that basis, too. This is a significant role for the judge.

It is also important to remember that the process does not end with the court's declaration that a CMP may be used. It is, as has been described in our previous debates, a gateway. Stage 2, set out in Clause 7, is a process whereby the special advocate can then challenge individual documents as to whether they should go into open or closed proceedings, and this is done successfully.

In those circumstances, I encourage the noble Lord to withdraw his amendment, although I suspect that he is not going to do so.

Lord Pannick: The noble and learned Lord is very wise. If we are going to have CMPs, it should be at the discretion of the judge rather than as a matter of duty. I wish to test the opinion of the House.

6.36 pm

Division on Amendment 35

Contents 264; Not-Contents 159.

Amendment 35 agreed.

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6.50 pm

Amendment 36

Moved by ***Lord Pannick***

36: Clause 6, page 4, line 27, at end insert—

"( ) the degree of harm to the interests of national security if the material is disclosed would be likely to outweigh the public interest in the fair and open administration of justice"

Lord Pannick: I beg to move.

6.50 pm

Division on Amendment 36

Contents 247; Not-Contents 160.

Amendment 36 agreed.

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7.03 pm

Amendment 37

Moved by ***Lord Pannick***

37: Clause 6, page 4, line 27, at end insert—

"( ) a fair determination of the proceedings is not possible by any other means"

Lord Pannick: I beg to move.

Lord Wallace of Tankerness: My Lords, it may be for the convenience of the House if I indicate that, while the Government do not accept Amendments 37, 38 and 40, we do not propose to resist them at this time. There will obviously be an opportunity to reflect on them.

Amendment 37 agreed.

Amendment 38

Moved by ***Lord Pannick***

38: Clause 6, page 4, line 30, leave out paragraph (a)

Amendment 38 agreed.

Amendment 39

Moved by ***Lord Wallace of Tankerness***

39: Clause 6, page 4, line 35, at end insert "and any other enactment which would prevent the party from disclosing the material but would not do so if the proceedings were proceedings in relation to which there was a declaration under this section."

Lord Wallace of Tankerness: My Lords, in Committee, my noble friend Lord Thomas of Gresford tabled an amendment seeking to amend the effect of the disclosure gateway provisions in the Security Service Act 1989 and the Intelligence Services Act 1994. The amendment was based on a suggestion that emanated from the Bingham Centre for the Rule of Law. At that time the Government resisted the amendment on the grounds that it was not necessary to secure the agencies' compliance with their disclosure obligations and that it was wider than appropriate because it would mean the courts could order disclosure into civil proceedings regardless of the connection between those proceedings and the agencies' functions.

[Lord Wallace of Tankerness]

However, following the Committee stage, Professor Sir Jeffrey Jowell from the Bingham Centre wrote to me urging the Government to reconsider the issues raised by the amendment. After careful consideration and consultation with experts on this complex area of law, the Government have concluded that a similar amendment would be necessary. This is a technical area of law and it may help if I briefly explain why the change is needed.

Under Clause 6, the court must, on an application from the Secretary of State, make a declaration that the proceedings are ones in which a closed material application may be made if the court considers that a party would be required to disclose material in the course of proceedings and disclosure would be damaging to the interests of national security. The problem with the Bill as drafted is that it does not make it clear that statutory bars to disclosure into open court should not prevent there being disclosure into closed material procedures.

I assure the House that the Liberty analysis of this amendment is wrong. In an e-mail to parliamentarians its policy director described the amendment as being able to expand the categories of secret information on which the application for a CMP declaration can be based. That is not the case. The amendment makes it clear that the court should ignore any statutory provision that would prevent the disclosure of relevant material into open court but not into closed material procedures when the court is deciding the question of whether a party to proceedings would be required to disclose material. In other words, we do not want to be in the unfortunate position where we are unable to use a CMP as a result of these Acts covering the Security and Intelligence Agencies. These Acts are in part designed to ensure that highly sensitive information is not made public in the interests of our national security. The closed material procedures, however, have been assessed to be secure enough to allow highly sensitive information into a courtroom to be considered by a judge. The Government and agencies want the chance for a judge to come to an independent judgment. We do not want silence on these important matters.

Once again, I am grateful to my noble friend Lord Thomas for having raised this issue in Committee. While we may not have agreed on every point today, I am always grateful for his tireless work in holding the Government to account and for his detailed contribution. I am particularly grateful to the Bingham centre for taking time to scrutinise the Bill and for writing to me and asking the Government to rethink. The centre is an important legal research institute and the Government welcome its contribution to make sure that the Bill is suitably drafted. I beg to move.

Lord Thomas of Gresford: My Lords, have I not always said that this is a listening Government? I am grateful to my noble and learned friend for taking on board what I said on the last occasion, which I confess I have now totally forgotten. However, clearly it was very persuasive and I thank the noble and learned Lord for the amendment.

Amendment 39 agreed.

Amendment 40

Moved by ***Lord Pannick***

40: Clause 6, page 4, line 42, at end insert—

"( ) Before making a declaration under subsection (2), the court must consider whether a claim for public interest immunity could have been made in relation to the material."

Amendment 40 agreed.

Amendment 41

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

41: Clause 6, page 5, line 10, at end insert—

"( ) Rules of court must make provision—

(a) requiring the Secretary of State, before making an application under subsection (1), to give notice of the Secretary of State's intention to make an application to all of the parties to the relevant civil proceedings,

(b) requiring the Secretary of State to inform all of the parties to the relevant civil proceedings of the outcome of the application."

Baroness Stowell of Beeston: My Lords, I shall speak to Amendment 41 now but I hope it will assist the House if I do not speak to the other amendments in this group until after they have been debated. I shall therefore respond at the end of the debate to both this amendment and the other amendments in the group which have been tabled by other noble Lords.

When I was responding to a debate on a topic which falls within this group, I boldly announced that I am not a lawyer. In the course of my remarks I said something which provoked a strong response from some of the lawyers who were involved in the debate that day and it is therefore a pleasure to move a government amendment that addresses the concerns raised in debate at that time. The point at issue then was the provision of notice by the Secretary of State to the other parties in a case in which a CMP is to be applied for. The Government committed to considering the issue. We gave it more detailed consideration over the Summer Recess and wrote to the noble and learned Lord, Lord Falconer, together with a number of other noble Lords who raised questions at the time of the debate.

In that letter, the Government explained that on further consideration it was clear to us that there were difficulties of both principle and practice with having CMPs without notice. We made it clear that closed judgments would exist without anyone other than the judge and the Secretary of State being aware of their existence if we were not to give notice, and that special advocates would also be unable to take instructions from the individuals whose interests they represent or to communicate with them at all. It was our view that this problem could be sorted out in the detailed rules of court for CMPs. However, the Government have considered this further and believe that it should be safeguarded in the Bill. The amendment provides for two procedures: the Secretary of State must give notice of his or her intention to apply for a CMP to the other parties in the case, and he or she must also inform the other parties of the outcome of the application.

I hope noble Lords will agree that this enhances the safeguards available under the Bill to ensure that the maximum amount of information that can be provided to the open representatives in the case is provided. I hope noble Lords will also agree that this amendment materially advances the continued efforts of the Government to ensure as much openness and transparency as possible, and to ensure that nothing is kept secret that does not need to be for genuine national security reasons. I beg to move.

Lord Pannick: My Lords, I shall speak to Amendment 56 in this group, which has been proposed by the Joint Committee. It would ensure that rules of court make provision for the media to be notified of any application for a closed material procedure so that they can make representations on the issue to the judge. The amendment would also ensure that a party to a closed judgment may apply for it to be made open at a later stage. It is not sufficient for the Secretary of State to give notice of an application for a CMP to the parties to the case. The reason for that is that a CMP will severely impede the ability of the press to report legal proceedings. It may be that it is only the media who are concerned about a proposal to introduce a CMP in a particular case; the other parties may not be focusing on the matter or may not object.

It is also essential for rules of court to provide a mechanism by which judgments that are closed can be reopened and published after the passage of time if there is no longer any reason for secrecy. These provisions were recommended by the Joint Committee, and perhaps I may quote what was said yesterday in a lecture by the president of the Supreme Court, the noble and learned Lord, Lord Neuberger:

"Without judgement there would be no justice. And without Judgments there would be no justice, because judicial decisions, at least in civil and family law, without reasons are certainly not justice: indeed, they are scarcely decisions at all. It is therefore an absolute necessity that Judgments are readily accessible".

I accept entirely that if there is a CMP, of course that part of the judgment will be closed, but it is essential that rules of court allow for the possibility of a later application to open up that which no longer needs to be secret.

Baroness Kennedy of The Shaws: My Lords, I support the comments of the noble Lord, Lord Pannick. I serve on the Joint Committee on Human Rights and we were concerned that confidence in the judiciary is absolutely vital in our society. The press coverage of matters and their entitlement to come to a court and to make applications is an important element of democracy and open justice. We would encourage the Government to accept this amendment.

7.15 pm

Lord Phillips of Sudbury: My Lords, Amendment 56A in this group is tabled in my name. I am afraid that it is a manuscript amendment and I hope that noble Lords have got it, but for those who were not given a copy when they came in, it is an addition to Clause 10 which is about the general provisions under Section 6 proceedings. It requires that the:

"Rules of court under subsection (2) shall only diverge from rules of court pertaining to proceedings outside the scope of this Act to the extent necessary to prevent disclosures of information damaging to the interests of national security".

The whole point of the amendment is to put some constraint on the otherwise unacceptable breadth of the provisions in Clause 10(2) which allow rules of court to be made. Perhaps I may briefly give noble Lords a gist of the breadth of this provision-making power. The first set out in paragraph (a) is,

"about the mode of proof and about evidence in the proceedings".

There are no qualifications, there is no limitation, guidance or definition, so they can just make rules about the mode of proof and evidence in the proceedings; paragraph (b) concerns whether the proceedings shall have a hearing attached to them at all; paragraph (c) concerns whether there shall be legal representations in the proceedings; and paragraph (d) concerns whether the person against whom the proceedings are launched shall have full particulars of the reasons for the decision reached in those proceedings, and so on.

I do not understand why the Government have produced a rule-making power relating to a highly sensitive and important clause with no constraint, limitation or definition. All my amendment seeks to do is to put a lasso around what I believe are unduly wide powers. It would provide that, in effect, the only use of these powers shall be,

"to prevent disclosures of information damaging to the interests of national security",

which is what this part of the Bill is principally all about. I have put the amendment forward in the hope that the Government will accept it or, if the wording is not to their liking, that they will undertake to bring new wording back at Third Reading.

Lord Beecham: My Lords, for the avoidance of doubt, I should say that the Opposition support Amendment 56. My noble friend Lady Kennedy beat me to the Public Bill Office in putting her name to it. As she and the noble Lord, Lord Pannick, have said, it is important that the press and the media generally should have notification of applications of this kind. It complements a later amendment that will require the regular reporting of the number of applications that have been made, so to some degree the two things flow together.

The manuscript amendment tabled by the noble Lord, Lord Phillips, has arrived very late in the day and, given the other excitements we have been enjoying, I confess that I personally have not given it sufficient attention. I will be interested to hear the views of the Minister if she is replying to that particular amendment in due course. I would also be interested to learn the views of the noble Lord, Lord Pannick, on it, if he is able to give them. On the face of it, the amendment seems fairly persuasive, but it has been brought forward so late that I am finding it difficult to come to a decision, although other noble Lords may find it easier to do so. But certainly so far as Amendment 56 is concerned, and indeed the original amendment in this group, the Opposition are fully supportive.

Baroness Stowell of Beeston: My Lords, I am grateful to all noble Lords for their remarks. I will speak generally and respond to the noble Lord, Lord Phillips.

[Baroness Stowell of Beeston]
The noble Lord, Lord Hodgson, has not said anything about his amendments in this group but what I will say applies to those as well.

The Bill does not seek to change the rules in relation to civil proceedings, save where this is necessary to have a closed material procedure; we are not otherwise changing the ordinary rules in civil procedures relating to disclosure of evidence. The noble Lord, Lord Phillips, in speaking to his manuscript amendment, talked about adding a lasso. We believe that the Bill already provides a lasso. We agree with the thrust of the points he makes but do not think it is necessary to accept his amendment, because the Bill provides for the essence of this point in Clause 9, where it says that, subject to securing closed material procedures, the ordinary rules of disclosure must otherwise apply. The way that his amendment is worded may also be a potential source of confusion in that it is unclear what is meant by the word "necessary" in the amendment in a particular case. More specifically, we are already providing for the concerns that he has raised.

Lord Phillips of Sudbury: I apologise again to my noble friend and to the House for the lateness of this amendment. I think her argument was that Clause 9 makes my amendment redundant, but am I right in thinking that Clause 9 relates to rules of disclosure whereas Clause 10(2) relates to rules across a much wider plain, governing standards of proof, evidence, whether or not there is a hearing, legal representation and so on?

Baroness Stowell of Beeston: I will address that point by saying that we are not seeking to change any of the ordinary rules for civil proceedings in this Bill. The normal rules for civil proceedings apply in the same way here except for where it is necessary to change them in order for us to meet the requirements of a closed material proceeding.

Lord Phillips of Sudbury: The noble Baroness says that the normal rules of civil procedure apply but Clause 10(2) gives extraordinarily wide powers to make new and different rules. That is my point and that is my concern.

Baroness Stowell of Beeston: It is probably easier if I turn to the other points that have been made in this debate. In the course of doing so, maybe I will receive some assistance that will allow me to answer the noble Lord's question in greater detail. As if by magic, I have been handed a note. Clause 10(2) gives powers to make rules but these are in consequence of CMPs.

I move on to the question of media reporting and the points raised by the noble Lord, Lord Pannick, and the noble Baroness, Lady Kennedy. The amendment that I have moved, which hopefully the House will accept, means that the parties to CMPs will be notified when an application has been made. In essence, the point was that this is not sufficient in terms of notifying the media. It is obviously a matter for the parties to the claim to decide whether to inform the media. This amendment will ensure that the judge notifies the parties, such that this will be disclosed in the normal proceedings of disclosure that courts make. The noble Lord is looking at me quizzically. He will know more about this than I do, but when the judge notifies the parties that there has been an application, unless it is necessary for him not to do so in the interests of national security, that will be in the public record that exists in the court, which presumably the media are monitoring at all times. This is not about withholding information from the media.

Furthermore, if the media had the right to intervene in this process, it would be necessary for them to have access to all the material so that they could judge or come to a view as to whether it should be a matter for a closed hearing or not. That would be contrary to the whole point of a closed material procedure.

Lord Pannick: I am not of course suggesting that the media should have access to the closed material, any more than the claimant does. The claimant is notified but does not see the secret material. The point is that the media should also simply be notified, so that they can object to a closed procedure.

Baroness Stowell of Beeston: They will be notified, if not directly, by the process of the court notifying both parties to the claim. If the parties wish to notify the media, they can. The media will also be aware through the court disclosing its business in the normal way. The media will also be aware if the claimant wishes to tell them—as I am sure many will—about accusations that they wish to bring against the Government and the reason for them bringing the case in the first place. It is quite unlikely that the media will not be made aware of the application that has been made for a closed material procedure.

I would also add the point I made in Committee, that the media are not an institution with formal responsibilities to represent the public interest. Once they are notified formally in this way, it seems sensible or logical to me that they would then feel that they need to know more about the case—one limb of the amendment covers this—in order for them to have some kind of useful contribution to make about whether this should be a closed hearing or not.

Baroness Kennedy of The Shaws: In what way is this really significantly different from the many circumstances in which the press are excluded, or are advised not to print matters that are taking place in a court, such as the names of individuals, and a notice is posted to ensure that that is not done? We are really asking for a process of posting. The Minister is, of course, absolutely right that the rumour mill is likely to lead to people knowing and to the press finding out, but this is about making sure that there are formal processes rather than relying on the press being informed by lawyers, the parties or persons who would want the press to become interested. I would have thought that this is much better done through a formal process. I wonder why it is so different from other cases.

Baroness Stowell of Beeston: The amendment means that the judge will notify the claimant that the Secretary of State has made an application. Following

normal practice, the judge's decision will be part of the public record and so the media will be informed of that in the normal way.

Obviously, the press will have access to all the open elements of the case in the same way as they have access now. The sort of scenario that the noble Baroness describes would be a normal open court hearing within which there are aspects that the judge has decided to put some rules around. This is a specific issue about an application for a CMP and is therefore slightly different but, in terms of the direct analogy with the open part of the hearing, it would be exactly the same.

7.30 pm

Lord Lester of Herne Hill: My Lords, I apologise for the fact that I missed the very beginning of this and it may be that in doing so I am about to say something stupid. However, am I right in taking from what the Minister is saying that the Government oppose Amendment 56 even though the Joint Committee attached enormous importance to this as a way of securing open justice without in any way damaging national security? In other words, in accepting Amendment 41, are the Government saying that Amendment 41 is instead of Amendment 56?

Baroness Stowell of Beeston: The point that I am trying to make, and I have made it several times, is that in the amendment that the Government are moving we are ensuring that it is now going to be part of the formal process of the courts to alert those who may be interested of the judge's decision. As far as the media are concerned, we do not feel that it is necessary for there to be a specific notification to the media of the fact that the CMP has been applied for and consequently has been agreed or not agreed. There is nothing in that that is about withholding information.

The media report on other cases that use CMPs, in particular they are able to report on a finding on the issues. Indeed on other CMPs there does not seem to be a problem at all with the way that this works. In terms of the media being able to intervene in individual cases, which is another aspect to this amendment, civil damages cases that would be heard under this legislation are private law claims and it could be inappropriate for third party interventions to be made in such claims. The claimant may not want the media to intervene in the proceedings. I think that the most important point is that the outcome of all CMP cases will be reportable, increasing the opportunities for the media to report on these kinds of cases, as at present the Government are obviously having to settle rather than a claim being seen through to its conclusion.

I will turn to the other point that the noble Lord, Lord Pannick, raised about closed judgments, which is also covered in the JCHR amendments. It may be helpful for noble Lords if I briefly give some background on how closed judgments already work. There is a judicial safeguard on the use of closed judgments. In a case involving sensitive material, the judge must be satisfied that any material in the closed, rather than open, judgment would be damaging to national security and so could not be released. Special advocates can also make submissions to the judge about moving material from the closed judgment to the open judgment. If the court is persuaded that there would be no harm to national security, the material can then be moved to the open judgment.

The Government believe that it is important that those that are entitled to access closed judgments are able to do so. For this reason, the Government have created a searchable database containing summaries of closed judgments that will allow special advocates and HMG counsel to identify potentially relevant closed judgments. It is worth making the point that this new initiative has been put in place following the various stages of the passage of this Bill, both in terms of hearings and of discussion at JCHR. I am grateful to all noble Lords who have led to that new database being available.

The amendments also propose a review mechanism. Although I welcome this suggestion, the Government do not think that this particular proposal would work in practice. As drafted, it could mean that a person could attempt to subvert the disclosure process built into closed material proceedings by applying for the information immediately after the court had decided what information should be contained within the open and closed judgment, and then at regular intervals thereafter. A person could also abuse the process and put in an application each day. This would place a serious resource burden on the courts and agencies.

Having listened to the debate today and the findings from the JCHR report, the Government recognise that the review of closed judgments is an important issue and needs further thinking. The Government therefore request that Ministers have more time to look into the issues and report our findings to Parliament during the passage of this Bill. Obviously this may be something that would be looked at in the other place. To conclude, I ask noble Lords to accept the government amendment not to have CMPs without notice. I hope from the course of this debate that the noble Lords who have amendments in this group feel able to withdraw them at this time.

Lord Beecham: Before the noble Baroness sits down, in relation to the amendment of the noble Lord, Lord Phillips, would it be a way forward for her to take that back so that it might be raised, if necessary, at Third Reading? It is very late and the Minister is in difficulty—I think that we are all in difficulty—in terms of understanding the implications of the amendment, so this may be a way through the dilemma.

Lord Phillips of Sudbury: I am grateful for that suggestion. I do not want to keep apologising, but I do think, if the Minister agrees, that that is the way to deal with this.

Baroness Stowell of Beeston: I cannot commit to anything at this stage, but what I can do is to consider the amendment outside the Chamber and certainly to have a further discussion with the noble Lord.

Amendment 41 agreed.

Amendment 42

Moved by ***Lord Wallace of Tankerness***

42: Clause 6, page 5, line 17, leave out "or"

Lord Wallace of Tankerness: My Lords, I will also speak to Amendment 43, the effect of which would be to add the Supreme Court to the High Court, the Court of Appeal and the Court of Session as the courts that would be covered by closed material proceedings in the context of this Bill.

I think that it is important that there is consistency within the hierarchy of courts covered by these provisions. As I have indicated, this amendment would add civil proceedings before the Supreme Court of the United Kingdom to the list of courts in the Bill in which closed material procedures under Clauses 6 to 11 may be used. At present, the only courts for which this is available are the High Court, the Court of Appeal and the Court of Session.

I understand that there might be some concerns about adding to the list. The reason for adding the reference to the Supreme Court is to seek to put beyond doubt that the Supreme Court is empowered to apply closed material procedures. It was felt that the Supreme Court was likely to be considering points of law only and the Supreme Court already has some of its own bespoke procedures where it can exceptionally exclude parties from proceedings if in the public interest. However, after the Bill was introduced, the Government became concerned that omitting the Supreme Court might be a gap in the legislation. The lower courts would be able to rely on the procedures set out in the Bill but the Supreme Court—the supervisory court for those courts—would have either no exceptional procedure or a different one.

I do not think that the Government are naive. I think that we are realistic enough to realise that once we enact this Bill, the early uses of the procedure in the High Court almost certainly will be appealed in some form or another, and it seems quite likely that at least some of these appeals will make their way to the Supreme Court. This amendment will put beyond doubt the Government's intention that the Supreme Court should continue to have the ability to consider sensitive material and ensure that we are not left in the very unusual situation of the highest court in the land not being able to adopt the same procedures used in the lower courts.

For completeness, I should add that noble Lords may have noted that the first set of rules of court under the Bill for the High Court and the Court of Appeal in England and Wales and Northern Ireland are to be made by the Lord Chancellor. This is simply a matter of ensuring that the implementation of the CMP provisions of the Bill can occur swiftly. We do not think that the same rationale applies for the Supreme Court. The first set of rules are to be made by the president of the Supreme Court, as now.

I very much hope that the reasons for adding the Supreme Court will satisfy your Lordships' House. We are not talking about the horizontal scope of the Bill but the vertical reach, namely the courts in the hierarchy that may hear such claims.

Concern was also expressed in Committee that in the future the reference to "relevant civil proceedings" to which there could be an extension by order could include inquests and fatal accident inquiries. That was not the Government's policy, as we made clear in our response to the Green Paper consultation. We had brought forward a Bill we believed would not allow any Government to add inquests to the definition of relevant civil proceedings now or in the future, but we were grateful to the Delegated Powers Committee's consideration and we took on board its comments.

Likewise, the report by the Joint Committee on Human Rights also made comments regarding this order. I understand that the remaining concerns are to ensure that closed material proceedings should be used only when absolutely necessary and in a narrow and targeted context. It is for this reason that the Government have tabled an amendment to remove the order-making power completely; in other words, removing Clause 11(2) to 11(4).

I can assure your Lordships that this decision has not been taken lightly. Parliament has legislated for CMPs no fewer than 14 times over the past 10 years. It is conceivable that national security material may become relevant in contexts other than the narrow ones listed in the Bill. The impact of cases not being heard is felt by not only the Government but claimants, whose cases can be severely delayed. Nevertheless, the Government understand the importance of the issue. This amendment will set to rest any fears raised by the Joint Committee that the order-making power could have been misused or that this clause would open the door to commonplace use of CMPs. It will also put beyond any doubt that inquests are beyond the scope of the Bill.

My noble friend the Duke of Montrose has tabled an amendment to require the consent of the Scottish Government and the Northern Ireland Executive for the Secretary of State to make an order to amend the definition of civil proceedings. The Government are committed to properly respecting the devolution settlements, but if the amendments to delete the order-making power altogether are carried, my noble friend's amendment would not be necessary. I hope that this also satisfies the amendment tabled by the noble Lord, Lord Pannick, and others that takes forward the recommendation of the Joint Committee on Human Rights. I beg to move.

Lord Pannick: I am very grateful to the Minister for confirming that the Government are proposing the deletion of Clause 11(2) and the order-making power.

I have a concern about Amendment 43, which includes the Supreme Court in the list of courts that will have power to make a CMP. Given the role of the Supreme Court as the final court of appeal in this jurisdiction, it is highly undesirable that it should decide points of law of public importance in judgments that the public and lawyers generally cannot see.

I do not intend to divide the House on Amendment 43. Given the amendments supported by the House earlier this evening, I would understand that the Supreme Court would have ample discretion to decide whether or not it is appropriate for it as the final court of

appeal to order a CMP, and no doubt it would wish to take into account the undesirability, if so perceived, of the Supreme Court issuing judgments that, at least in part, the public and lawyers generally would not be able to see. However, I raise that concern.

The Duke of Montrose: My Lords, I thank my noble and learned friend for the way in which he presented his amendments. As he notified the House earlier, if his Amendment 59 is approved, my Amendment 60 will become superfluous. I raise the point that without Amendment 59, there would be a very real danger that anything that the Secretary of State had decided to amend by order in the Scottish courts would be seen as meddling in the affairs of the Scottish legal system. At present, there is nothing more likely to inflame the amour propre of the Scots than actions such as this.

The possibility of this problem was drawn to my attention by the Law Society of Scotland. If Amendment 59 is adopted, we will have a much clearer and more workable piece of legislation than one that is likely to cause controversy. If by any chance it is not carried, I will still wish to bring my amendment forward.

The Bill appears to be walking a fine line on what might be termed issues that might require a legislative consent Motion in the Scottish Parliament and those that would not. Even now, Clause 6(7)(c) of the Bill gives powers to the Court of Session. I understand that early in Committee it was briefly drawn to the attention of the Justice Committee in Edinburgh. Can my noble and learned friend tell the House whether this question of a legislative consent Motion has finally and satisfactorily been resolved?

Lord Wallace of Tankerness: My Lords, as I indicated, the intention is that the Supreme Court should not have available to it powers that are available in the lower courts, but the noble Lord, Lord Pannick, makes an important point with regard to judgments.

With regard to my noble friend's concerns, it probably would have been the case that had we had a power that involved Scottish Ministers, a legislative consent Motion would have been required. Although the Bill refers to the Court of Session, it has become abundantly clear in our deliberations that the substance of these matters relates to national security, and national security is very clearly reserved to the United Kingdom Parliament and therefore a legislative consent Motion would not arise.

Amendment 42 agreed.

Amendment 43

Moved by ***Lord Wallace of Tankerness***

43: Clause 6, page 5, line 18, at end insert ", or
( ) the Supreme Court"

Amendment 43 agreed.

Amendment 44 not moved.

7.45 pm

Baroness Stowell of Beeston: My Lords, I beg to move that further consideration on Report be now adjourned. In doing so, it is worth noting that the dinner break business this evening is not time-limited. Without prejudging the debate, it is possible that we may be able to return to the Bill in less than an hour. Following discussions in the usual channels, I suggest that Report will not resume for 45 minutes, so not before 8.31 pm.

Consideration on Report adjourned.

Care Quality Commission (Healthwatch England Committee) Regulations 2012

Motion of Regret

7.46 pm

Moved by ***Lord Collins of Highbury***

That this House regrets that the Care Quality Commission (Healthwatch England Committee) Regulations 2012 (SI 2012/1640) fail to provide sufficient safeguards to ensure the independence of Healthwatch England from the Care Quality Commission, despite Government assurances given to the House at report stage of the Health and Social Care Bill on 8 March 2012, and that the regulations fail to provide for effective national patient representation in the health service.

Lord Collins of Highbury: My Lords, my purpose in tabling this Motion is to highlight how these regulations, in their present form, may undermine the one thing Healthwatch England needs to succeed: public trust and confidence.

As my noble friend Lord Harris of Haringey argued so brilliantly on Report, an effective organisation for patients must be measured against three basic criteria: first, independence from the providers, commissioners and regulators of health services, because a patient complaint may involve the need to challenge any or all of these interests; secondly, genuine grass-roots representation from groups and individuals—no top-down organisation; thirdly, that its work and comments be derived from sound local information.

Over the past 40 years, we have seen community health councils, then patient participation forums and, most recently, LINks. They may not have always fully met these criteria, but each built on the progress of its predecessor in delivering greater patient involvement. No matter how often the Government assert to the contrary, the arrangements proposed in these regulations do not pass the test of independence. They say that Healthwatch England will have genuine operational independence by ensuring that the majority of its members are not also members of the Care Quality Commission. However, under the regulations the Healthwatch England chair must consult the CQC chair before the first appointments are made. That does not exactly reinforce the notion in my mind of independence. However, even with this measure and some of the others in place, it remains difficult to see

[LORD COLLINS OF HIGHBURY]
how Healthwatch England can build public trust when its governance is controlled by the CQC, a body whose own organisation and resource problems have been so publicly aired.

The fear for many is that that the Healthwatch England committee will be rapidly absorbed into, and moulded and overwhelmed by, the dominant culture and infrastructure of the CQC. The Government have told us how important the duty of collaboration is within their reformed NHS. If that is the case, why not use this duty rather than leave Healthwatch England within the governance structure of the CQC?

The skill and ability of the new Healthwatch England chair will no doubt be a significant factor in whether it succeeds. I congratulate Anna Bradley on her appointment. Having worked at *Which?* for many years and been a former chief executive of the National Consumer Council, she is extremely well qualified to meet the challenge. From her public statements, it is clear that she fully appreciates that for Healthwatch England to succeed it must meet the challenge of independence and effective patient representation.

A key to this will be the strength of the local Healthwatch network. As local Healthwatch develops during the next six months, it must show that it listens to patients and service users and captures their feedback, a role that LINks have performed with distinction in many areas.

However, with no clear rules in law, we are potentially left with a range of different local social enterprises determining national representation. By not providing statutory status to local Healthwatch, the Government missed the opportunity for them to be organisations that were fully trusted and supported by patients and public alike. At the launch of Healthwatch England, Anna Bradley also acknowledged that, with stretched health and social care budgets, an ageing population and significant systems reform, it was essential that HWE be focused on real people, their experiences and their needs. She said that Healthwatch England would actively seek out evidence from all sections of the community and collate it to find out what needed to change. I fully understand her desire to ensure that such evidence is not dependent on those who shout the loudest. She said that Healthwatch England would go out of its way to hear from those who sometimes struggle to be heard. However, I fear that, with these regulations, we will have a body that is perceived to be appointed from high—a top-down organisation which is not representative. The 10 members recently appointed to Healthwatch England have highly relevant knowledge and experience, and I have no doubt that their specific skills and expertise will be a tremendous asset to its work—three have been appointed because of their specific local involvement. However, to be genuinely representative, there is a case for more, if not a majority, to be drawn from local Healthwatch.

Healthwatch England will be looked to by 152 local Healthwatches as an organisation that understands and has experience of both national and local problems and issues, including the special needs of deprived communities, people suffering as a result of health inequalities and people living in rural areas. The connection between local Healthwatch and Healthwatch England must be more than a brand, a name and a conversation.

The decision to restrict local Healthwatch membership of Healthwatch England to only four members, one from each of the four NHS regions, Greater London, North, Midlands and South, appears totally inadequate. In addition, the decision to restrict from 2013 local Healthwatch membership of Healthwatch England to people described as "directors" of local Healthwatch organisations is limiting and confusing.

Not only is there a risk of reduced funding with local authorities commissioning local Healthwatch, some of which we have already seen in the tendering process that has commenced, but there is also huge potential for conflicts of interest. Can we really ask a patient or carer to have confidence in a complaint being properly pursued when it involves a regulatory failure in a local authority social service? I am sure that patients will see the potential conflict of interest even if the Government cannot.

We are facing the prospect of fragmented services being delivered by multiple providers even within a single local authority. One issue of particular concern for me, which I have raised previously in the House, is the patient advocacy service, used by adults, young people and children wishing to make a complaint about NHS healthcare. There are currently three providers of the Independent Complaints Advocacy Service in England, commissioned by the Department of Health centrally. In future, this will be commissioned instead by 152 local authorities. It has been estimated that this will add £2.2 million to the cost of the service—which currently costs £11.7 million—massively reducing what is available for other patient services provided by the Local Involvement Networks.

Further, while there will be only one local Healthwatch contracted in a single local authority, this body will be permitted to subcontract most, if not all, of its activities. This will result in some areas in multiple contracts, solicitors' fees and all the other on-cost of commissioning. The waste of public money on contracting is absolutely appalling.

In the end, it will come back to how the structure proposed in these regulations will play out in practice and how conflicts of interest between Healthwatch England and the CQC, or indeed Healthwatch organisations in local authorities, will be dealt with. The issues that the Minister must therefore address and questions that he must answer tonight are: how will public trust be maintained when a complainant about a CQC investigation into a care home discovers that the body investigating the complaint or championing improved quality of care on behalf of patients is a committee of the CQC itself? How will the culture clash between Healthwatch and the CQC be addressed and managed? How will the Minister, to quote the word used many in this House, stop CQC "suffocating" Healthwatch England? How will he ensure that potentially serious conflicts of interest are dealt with?

I conclude with the issue I started with: public perception and understanding of, and confidence in, the independence of Healthwatch. It is important that Healthwatch is seen to be credible and truly independent,

able to challenge and to scrutinise the work and decisions of the regulators, both CQC and Monitor. We need an independent Healthwatch England and we need local Healthwatch bodies that everyone can rely on to be genuine patient representatives. I am afraid that these regulations give us neither.

8 pm

Baroness Jolly: My Lords, I will not speak at length this evening and will speak mainly of the issue of the independence of Healthwatch England. I was at the launch of Healthwatch England and met some of the members of the committee. As the noble Lord said, many come from wide and relevant backgrounds, and they were really enthusiastic about the task in hand. They represent all regions of the UK, disabilities and gender. I understand that the full committee is now appointed.

There is an undoubted need for a patient watchdog, as we have heard. Many hours were spent in debate in this Chamber, in Committee and on Report, on the Health and Social Care Bill to try to mould it as best as possible to achieve that. During that debate, some of us carried out a campaign with Ministers outside the Chamber as well as inside, but there was no acknowledgement that the siting of Healthwatch England as a committee within the Care Quality Commission would cause concern. Indeed, it was said that the connection would be beneficial to the process and result in improved channels of communication.

Those arguments are now past, and Healthwatch England is now constituted, but the secondary legislation we are discussing today is silent on the issue of independence. We are left to wonder whether that is a missed opportunity or a deliberate omission. I always look on the bright side, so let us assume that it is a missed opportunity.

We know that the chief executive officer of the CQC holds the budget for Healthwatch England. What safeguards are in place to ensure that the money is not used to support core Care Quality Commission business or, indeed, to prevent the board of the Care Quality Commission, of which the chair of Healthwatch England herself is a member, saying that the way that the Healthwatch England committee wanted to spend the allocation was not as it thought fit?

If so, where does that put both the Care Quality Commission and Healthwatch England—and, indeed, the confidence of the public in their watchdog—if a future chair of Healthwatch England goes native or a chair of the Care Quality Commission becomes overbearing? That is a reflection not on personalities or individuals but on roles and responsibilities. Both current incumbents of those positions have assured me that that could never happen, but we all know of instances where what seemed perfectly good appointments change the way that they work over time. Working arrangements honoured under one regime may not carry over to a successor.

I commend the work that Anna Bradley has done thus far in setting up the organisation and her commitment and understanding of the role. She has said:

"We will be accountable to Parliament not the CQC ... We will work with the CQC as strategic partners. Guarding that independence will be a very important aspect of my job and the committee's job".

As I said, Anna Bradley sits on the Care Quality Commission board as part of her role and is appointed directly by the Health Secretary. She is adamant that the patients' champion will be fully independent from the regulator.

A set of arrangements has been developed to safeguard the independence of Healthwatch England, whose budget—£3 million in 2012-13—is determined by the Department of Health. Healthwatch England will have full editorial independence over its publications; its committee will set its own priorities; and the chair will appoint the committee, ensuring that a majority are not Care Quality Commission commissioners, and oversee the work of Healthwatch England's director, its senior officer. Any disputes between the Care Quality Commission and Healthwatch should be resolved through "open and frank discussion", with the Department of Health responsible for resolving any intractable issues.

The Government's intention was clear about the independence of Healthwatch England when the Bill was being debated, and it is to be regretted that that did not find its way into legislation or this secondary regulation. This organisation will be closely watched. Its relationships with partners are clearly defined in legislation. Its first chair has been absolutely explicit about its independence very early in her appointment, with the clear support of both the CEO and the chair of the hosting organisation, the Care Quality Commission.

I want Healthwatch England and local Healthwatch to succeed. We owe that to all patients across the country. With all the changes working their way through the NHS and the care system—it is essential that, despite its name, we should not forget that Healthwatch watches after health and care—it is imperative that it is working as efficiently as possible to its agenda, not that of the many stakeholders. For the sake of the public, those in receipt of care, it must succeed.

I would welcome reassurance from my noble friend that the lack of regulation or independence will not impede Healthwatch England's independent operation and an indication of how that can be guaranteed.

Lord Harris of Haringey: My Lords, I am pleased to have the opportunity to follow the noble Baroness, Lady Jolly, on this Prayer. She has highlighted the weakness in the Government's position. I am confident that the people who have set up Healthwatch England are of good will and that they intend and wish it to work; that Anna Bradley will be an excellent person as chair of Healthwatch England; that the outgoing chair of the Care Quality Commission is committed to making it work; and that the chief executive of the Care Quality Commission is committed to making it work. I even believe that Ministers in the Department of Health are committed to making it work.

The problem is that we are provided with a framework of regulation which does not guarantee that in future. One or two appointments down the road, with a new leadership of the Care Quality Commission and, perhaps, with different Ministers at the Department of Health, how will those things be ensured, especially if budgets remain tight and Healthwatch England starts to be effective and makes criticisms which are difficult for

[Lord Harris of Haringey]

Ministers—or, worse still, in this context, for the Care Quality Commission? That is when those problems may arise.

That is why, when the Bill was passing through this House, there was so much concern about the importance of independence for the Healthwatch structure. My concern is that, given that the legislation has passed, this is a wasted opportunity to make it stronger.

One of the lessons that is expected to come from the Mid-Staffs inquiry relates to independence. The report is expected to identify the systemic failure of organisations to focus primarily on the needs of the patients of that hospital. Because each was looking at its own area, nobody was taking the step back to say, "How does this work from the point of view of patients?". That is where Healthwatch should come in and be influential: to cut through the complicated organisational structures which the Health and Social Care Act has bequeathed to the NHS. That is why the simple issue of how it preserves its independence is so vital.

When the Bill was going through Parliament, the noble Earl held a meeting to discuss how Healthwatch England should work. He made the point that there would be valuable synergies from Healthwatch England being located within the Care Quality Commission. He did not stress, but it was clearly part of the equation, that there would also be some useful cost savings associated with that. The cost savings could be achieved in a whole variety of ways. It would be possible to have an agency agreement whereby some of the back office functions were provided by the Care Quality Commission or any of the plethora of structures that the Health and Social Care Act has bequeathed to the NHS. Similarly, because the duty of co-operation exists, you would hope that those synergies could be activated without the need for the Healthwatch organisation to be subservient to the Care Quality Commission. It would have been possible in these regulations to create a structure which, while preserving the general framework of the Act, would ensure that there was independence.

If we look at the regulations that we have before us, we see a number of flaws. First and foremost, for example, is the size of the Healthwatch England committee. Potentially, this will be a committee of as few as six members. I appreciate that in the initial instance it is larger than that, because people of goodwill are trying to make this structure work. However, in three, four or five years' time there may not quite be the same atmosphere or there may be a feeling that the wings of Healthwatch England need to be clipped back. In any event, with six to 12 members it is going to be extremely difficult to ensure that there really is the geographical diversity that is necessary; the coverage of all the many major areas of special need that exist as far as health and social care is concerned; and proper recognition of ethnicity and gender within that. Again, the initial membership has provided a reasonable attempt to achieve that diversity, but where is the guarantee of that in the future?

I know there is a feeling that small boards work well. The noble Baroness, Lady Cumberlege, who is not in her place on this occasion, has talked to us glowingly about the value of having small, dynamic boards to run organisations but this is a different sort of organisation. It is supposed to be one that represents the generality of the interests of patients across the whole country and which derives its authority from what is happening in local Healthwatch organisations around the country—the 150-odd local organisations that will exist. It is therefore not appropriate to have a small board in such a case, as it is not the same sort of structure.

Then we have the rather strange arrangements for the appointment process. In the first instance, the chair of Healthwatch England has to get the approval of the chair of the Care Quality Commission before appointments can be made. The future arrangements are that the chair will make the appointments directly but let us be clear: the chair of Healthwatch England is a Secretary of State appointment and has the potential to be the poodle of the Department of Health. I have been in the position of being in charge of the organisation representing patients and I remember successive Secretaries of State, from two parties, making attacks on the organisation because we were being effective and raising issues that were uncomfortable.

Under those circumstances, can we be satisfied with a future arrangement whereby the Secretary of State solely makes the appointment of that individual, who then appoints all the other members of the Healthwatch England committee? In the initial stage, you have a double lock where the chair of the Care Quality Commission gets involved but in future you will have someone who might be appointed as a poodle or to muzzle the watchdog nature of Healthwatch England appointing individuals who are, no doubt, like-minded. That is why the arrangements are strange.

We then have the provision for suspending members, which is set out here. Presumably, the suspension is different from disqualification but the Secretary of State may dispense with the chair of Healthwatch England for a variety of reasons, which includes,

"failing to carry out those duties".

Who is going to determine what those duties should be? Essentially, we are being told that the Secretary of State will decide what he or she thinks is appropriate for Healthwatch England to be carrying out. Again, the chair then has similar powers in respect of individual members. I make a specific request of the Minister: that in his reply he spells out absolutely that it will not be appropriate for either the chair or the members of Healthwatch England to be suspended from their membership if they are pursuing their interpretation of what is in the interests of patients and their organisations, and the people that they represent.

8.15 pm

Because of the requirement saying that the chair of Healthwatch England must be a member of the board of the Care Quality Commission, we are inevitably creating that subservient relationship. Will the chair of Healthwatch England be subjected to, in essence, the collective responsibility of the members of the board of the Care Quality Commission? There have been recent issues with the membership of that commission's board, where the chair has taken a different view about what the role of individual members should be. That has led to conflict and serious problems.

Let us pan forward a few years: if the chair of the Care Quality Commission does not like the approach being taken by the chair of Healthwatch England, are they then able to say, "You are not fulfilling your duties as a member of the board of the Care Quality Commission because you are not abiding by the collective responsibility of that board's members. I am therefore asking the Secretary of State to remove you from office and suspend you because you are not fulfilling your roles"? Even if that does not happen we will have, as my noble friend Lord Collins said earlier, the appearance of potential conflict of interest. Ultimately, how are the public going to have confidence in a structure where it looks to them as though the leadership of Healthwatch England is subservient to the Care Quality Commission, one of those important agencies about whose effectiveness it may have to make criticisms?

We should remind ourselves that the aim of all this is to enhance the collective voice of patients in the NHS. You will succeed in doing that only if the public at large have confidence in the structures that you have created. If you build into them the appearance of subservience and potential conflicts of interest, you are weakening that voice. That cannot in any way be in line with what either your Lordships would expect to see from this, or indeed with what I believe Ministers' intentions to be as far as Healthwatch England is concerned.

Baroness Masham of Ilton: My Lords, the Explanatory Memorandum to these regulations states:

> "The instrument also places a requirement on the chair to ensure that arrangements for the selection and appointment of persons take into account the principles of openness and transparency".

The votes this evening illustrate that people want openness and transparency, and I commend this. I would like an assurance from the noble Earl, Lord Howe, that the members of Healthwatch England and the local Healthwatches will be treated well. As volunteers, LINks members have not been given enough support. It is disappointing that Healthwatch England will not be independent. It must not become a puppet of the CQC, which has had problems, and the local authorities that host it.

There is an immense amount to do to keep patients safe in the health service— those in care homes and those with mental problems. One hopes that Healthwatch England will support local Healthwatches. When there is so much fragmentation and so much to do, will the CQC and Healthwatch manage to cope? I hope there will be spot checks, otherwise inspections do not mean very much, as has been shown in the awful problem of the care home near Bristol. I hope that the Minister, who I think believes in independence in his heart, can give us some assurances tonight.

Lord Whitty: My Lords, I do not want to repeat the arguments that have been made. I was going to repeat the arguments that I made about the history of consumer representation in other sectors, but time is against us. The conclusion from that would be that independence and the perception of independence are vital for all the reasons that my colleagues have spelt out today. The Act is there, and the regulations will be there after tonight, but the Minister at least ought to be prepared to say that he will review the situation after, say, two years. If he were prepared to say that tonight, I would give Anna Bradley, who I have great respect for, and the other members the chance to prove that this situation works, but it might also show up some strains in it. If the Minister could say that, I would walk away tonight a happier man.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): My Lords, the noble Lord, Lord Collins, has posed a number of questions about Healthwatch England and how it will work within the Care Quality Commission, and I welcome this debate. In view of the time constraint, I am not sure that I am going to be able to cover all the points, particularly those relating to local Healthwatch, but I will do my best.

First, I would like to take a step back to the White Paper *Equity and Excellence: Liberating the NHS* where our first plans for Healthwatch were set out. The Health and Social Care Act 2012 was passed by Parliament in March this year and enacted the proposals for Healthwatch to be the new consumer champion for people in health and social care. As a result, locally and nationally, Healthwatch will bring about better national leadership on public engagement and better communication for patients, service users, members of the public and communities to enable their concerns to be heard and acted on.

In the debate on the Bill in the Lords, the Government made it clear that Healthwatch England has an important role to play for patients and the public to present their views on health and social care at the national level to inform service improvements. Accordingly, the 2012 Act set up Healthwatch England to be the national body that would present the collective voice of the people who use health and social care services so as to influence national policy, advice and guidance. The Act sets up Healthwatch England to have relationships with other national bodies, such as the NHS Commissioning Board, Monitor and the Care Quality Commission itself, and with local authorities and the Secretary of State. Healthwatch England has the power to advise these bodies and the Secretary of State for Health, which could include making recommendations, and the recipients of such advice are under a statutory duty to respond. This is an important power for Healthwatch England to drive the consideration of issues, get a response and make the correspondence public, which I believe is a very tangible way of delivering openness and transparency in how these bodies respond to the issues that Healthwatch England raises. That could be a matter relating to the actions of the CQC itself.

I believe that these arrangements will engender trust. They will also embed the patient and public voice and the experiences of patients and the public at the heart of services. Healthwatch England is able to build other national relationships, such as with Public Health England. In addition, Healthwatch England will provide the leadership and support to a network of local healthwatch organisations which, in turn, will feed back the information from local people and communities to inform the national picture of what needs to be heard, and acted upon.

[Earl Howe]

Since the Act was passed, the Healthwatch England committee was launched on 1 October at a stakeholder event hosted by the first chair of Healthwatch England, Anna Bradley. The chair has appointed to the committee 10 members so far who, collectively, bring the range of expertise and experience required for Healthwatch England to operate strategically at the national level. Those members were shortlisted and interviewed by a selection panel through an open and transparent process. Independent members of the panel included Joe Irvin, chief executive of the National Association for Voluntary and Community Action, and the criteria were drawn up in consultation with external stakeholders.

I shall name the 10 members for the benefit of noble Lords. They are: John Carvel, who was social affairs editor of the *Guardian* for nine years and a *Guardian* staff writer for nearly 40 years; Alun Davies, who has worked as a policy and planning manager in an adult social services department in a unitary council in the south-west and has been actively involved disabled people's politics; Michael Hughes, an independent policy and research adviser who was the director of studies for six years at the Audit Commission overseeing national reports on a range of topics including adult and children's social care; Christine Lenehan, who is director of the Council for Disabled Children and has worked with disabled children and their families for over 30 years; Jane Mordue, who is deputy chair of Citizens Advice; Dave Shields, who was a health and well-being strategy manager for Southampton City Council, developing the city's health and well-being partnership; Patrick Vernon, who was the chief executive of the Afiya Trust, one of the leading race equality health charities in the country and previously worked as regional director for MIND; Christine Vigars, who is chair of Kensington and Chelsea LINk and a trustee and former chair of Age UK Kensington and Chelsea—she has taught social work and worked in community care development in the voluntary sector; David Rogers OBE, who is a councillor for East Sussex County Council and chairs the Local Government Association's community well-being board; and Dag Saunders, who is chair of Telford and Wrekin LINk and is one of two representatives for LINks on the Healthwatch programme board at the Department of Health. I hope the House will agree that this membership will give Healthwatch England not only strong and independent leadership but also the right skills and knowledge in relation to the commissioning and delivery of health and social care services, as well as on public engagement, consumer advocacy, equality and diversity, and specialisms such as children and young people.

The noble Lord, Lord Collins, has questioned the extent to which Healthwatch England will be able to act independently. I suggest to him that it will be able to do this in a very real sense. Healthwatch England will set its own strategic priorities, separate from the CQC; it will have its own operational and editorial voice, again separate from the CQC; and it will develop its own business plan and take responsibility for managing its own budget.

Under the leadership of its new chair, Healthwatch England has already made great progress in putting arrangements in place to ensure that it will function independently of the Care Quality Commission, while benefiting from its position as a statutory committee of the commission, without compromising good governance and lines of accountability. In fact, the benefit of this structure runs both ways. It will immensely strengthen the link between the views of patients and the public and regulation. The advice that Healthwatch England provides to the Care Quality Commission will enable the commission to address failings in the provision of health and social care services. It will also enable the commission to address any local risk management systems and, at the same time, Healthwatch England will have the commission's offer of valuable expertise in data management, the gathering and use of intelligence, analysis and an evidence base of information to pool and share knowledge. The CQC has publicly committed in its consultation document on its strategy for 2013-2016 to make the most of the opportunity Healthwatch offers and to support its development to make sure people's views, experiences and concerns about their local health and social care services are heard. The CQC has made it clear that people's views, experiences and concerns will more systematically inform its work.

Working as a committee within the Care Quality Commission makes Healthwatch England very well placed to connect people's concerns about safety and quality with the work of the commission. This symbiotic and symbolic relationship is unique and will go a long way to embedding what I know noble Lords want to see, which are the voices of the patient and the public at the heart of care.

I was asked what will happen if Healthwatch England goes off the rails in some way or goes native. The Secretary of State has a duty to keep the performance of the health service functions under review. That requirement involves keeping the effectiveness of the national bodies under review; these bodies are listed in the Act. The list includes the Care Quality Commission, and Healthwatch England as its committee. That reassurance should go a long way to make sure that the functions that these bodies are meant to perform are ones on which they will be held to account.

8.30 pm

My noble friend Lady Jolly asked about the Healthwatch England budget. Healthwatch England has been allocated £3 million for this financial year. In future years, the budget will be negotiated with the Department of Health in the same way as that of the Care Quality Commission. Healthwatch England's budget will be held by the CQC, but will be kept separate from that of the CQC so that it is safeguarded and only spent on Healthwatch England functions. It will be accounted for separately in public accounts.

Healthwatch England is now here, real and ready to take forward the task we have given it to be the national consumer champion, leading the way for its Healthwatch network to have coherence. The first chair, Anna Bradley, has publicly stated that Healthwatch England,

"will actively seek views from all sections of the community to build a national picture of what matters most to local people and make sure their views and experiences are really listened to, analysed and acted upon. Better health and social care services has to be the result".

Let us not doubt what it can achieve before it even starts; how it can work at meeting the challenge we have given it to be truly the patient and public voice; and how it can embed that very voice in the new health and care system.

I ask the noble Lord, Lord Collins, and noble Lords opposite in particular, to support Healthwatch England, with Anna Bradley at the helm, to achieve our common goal which is to build confidence among the public that they will be heard—that confidence is important—and to do that in the interests of health and social care services, and the outcomes that those services deliver.

Lord Collins of Highbury: My Lords, I thank the Minister for his response, and all noble Lords for their contribution. The noble Baroness, Lady Jolly, said that this was a missed opportunity and I am glad that she recognises that on this occasion. I wish that, on Report, we could have pushed through some of those concerns in a much more positive way. I am afraid that it is still a missed opportunity in view of the contribution from the noble Earl. As my noble friend Lord Whitty says, there was an opportunity today to state publicly not only a genuine commitment, but how we can translate that commitment into the assurances that the public will want. I hope that the Government will keep this matter under review. It is a sad fact that we have an organisation whose formal governance is under the Care Quality Commission. The chief accounting officer of Healthwatch England will not be Anna Bradley; it will be the Care Quality Commission. That poses some fundamental issues for the public.

Nevertheless, we have had a good debate. Everyone on this side of the House wishes Healthwatch England every success. We certainly wish its new chair every success. In the light of the debate, I beg leave to withdraw the Motion.

Motion withdrawn.

Justice and Security Bill [HL]

Report (2nd Day) (Continued)

8.34 pm

Amendment 45

Moved by ***Lord Dubs***

45: Clause 6, leave out Clause 6

Lord Dubs: My Lords, in the earlier debates this evening, we discussed the CMPs at great length. As I said in passing, many of the arguments against or seeking to modify the CMPs could easily have ended with a move to abolish them altogether. So in one sense, the case has already been made, except that I have to go back over it briefly. We are talking about probably the most fundamental aspect of the Bill: whether or not we should have anything like CMPs on our statute book at all.

CMPs represent, as was said earlier, an absolutely fundamental change in our judicial system—more fundamental than, perhaps, was fully appreciated. For the things that will fall under CMPs, it is the end of our adversarial system, when judges will no longer have to hear both sides of an argument in order to come to conclusions. It has been said by people who are more expert than I that if you take away one side, then injustice is virtually guaranteed. Our adversarial system depends upon two sides: two parties. Without that, our system can hardly be assured of providing justice. Indeed, it may well not do that at all.

We are, after all, talking about 350 years of applying a principle and doing this in practice. If we depart from such a fundamental principle, we are damaging our basic freedoms. It means that citizens can no longer challenge the powers that be in court and be heard openly in doing so. It takes away one of the most fundamental rights of the British citizen: that they can go to court, that they can challenge authority and the powers that be. That will no longer be possible.

Indeed, this will tarnish the reputation of British justice. I understand that at least one newspaper in Russia has already commented—approvingly or not, I do not know—that these proposals will provide secret courts. Maybe the Russian paper thought that that would be a good idea, or was seeking to justify something in that country. Certainly, however, if other countries are already commenting before we have even passed the legislation, we ought to be pretty careful about it.

Of course, as has been said before, the system will work on whispers. The Minister or the Government will whisper to judges and the decisions will be made accordingly. Indeed, David Anderson QC, the independent reviewer of terrorism who has often been quoted this evening, has said that these measures cannot be justified on security grounds. He had other reasons for justifying them in terms of cost or not paying people money, but, on security grounds, he did not think that they could be justified.

One of the concerns, which has been expressed quite frequently, is that even if you give a Government powers, even on a limited basis, they will inevitably start using them more widely. This is no disrespect to any Minister—it is simply the way the system works. We can all visualise a civil servant saying to a Minister, "Well, Minister, you know you do have the powers to do this, and they're on the statute book", and the Minister will say "Hmm, I forgot that", and then "Can I get away with it?", or "Will Parliament notice?", or words to that effect. This is how Governments of all colours work. We therefore have to be careful that when we give powers that are intended to be limited, they will inevitably be used more widely. The special advocates themselves—all those consulted in a survey, which was almost all of them—said, I believe, that this whole idea was "incurably unfair".

I want to give one example. I have lots of them, but I do not want to trespass on the time of the House too much. I have a document here which was in fact produced by the Ministry of Defence in court, so I am not giving away any secrets, though it was headed "Confidential" before it went into court. It is produced by an organisation called the United Kingdom Detention Oversight Team, or UKDOT. Its job is to visit detainees in Afghanistan who are held by the Afghan authorities. I will quote from this document, because it came out in court because we did not have CMPs. If we had had

[Lord Dubs]

CMPs, it is almost certain that none of this would have been known. The document is headed "Electric Flex-Redux".

"The team arrived. On arrival we interrupted an interview (we conduct our interviews in one of the two interview rooms) which caused the interrogator and prisoner to vacate the room in haste to accommodate the UKDOT. In the interview room we found on the floor behind the interviewer's desk the same UK socket electric flex the UKDOT had seen on a previous visit"—

It refers to the visit in September and then continues:

"We took a photograph of the flex (see photograph) and after a few minutes a guard appeared and, in an uncomfortable silence, removed the flex: no explanation was offered and, for fear of causing a scene, none was asked for".

I have here a photograph of the flex lying on a carpet. There may be an innocent reason for this, and this is not an investigation of how this operated. The point is, this would never have come out if we had had the legislation that the Government wanted. Therefore, I argue that the CMPs would help cover up things that we ought to know about. It would not have come to light if the CMP had been in use at the time.

I will conclude with the following. I was a member of the JCHR some time ago, when we produced the first report on these proposals, although I was not a member when it produced a second report. However, both reports have a number of things in common, one of which is that they said that the Government had produced no evidence to substantiate the use of CMPs. In the end, that is the most crucial argument. We are stumbling along, setting a very dangerous precedent, as far as our judicial system is concerned, and we are doing it without the evidence that would justify such a dramatic and drastic change. All we have is the say-so that there are a number of cases in the pipeline—and I do not doubt the Minister's good will—which might or might not come under this system, and which might or might not contain something important that would be revealed if we did not have CMPs. No evidence produced by Government could justify this major piece of legislation. I beg to move.

Lord Strasburger: My Lords, when I spoke to your Lordship's House on Second Reading, I highlighted how the injection of closed material procedures into our civil justice system would infect it with unfairness and corrupt it with secrecy. Currently, the British people hold their courts in high regard, and respect their decisions. This is partly because our judges are seen as incorruptible, independent and wise, but the main reason is that court decisions are the result of a fair and transparent process. In an adversarial system such as the English one, the right to know and challenge the opposing case is not merely a feature of the system—it is the system.

Judges do not have the resources or power to investigate the merits of the case themselves. They depend upon the process in which both sides assemble and present their evidence, and then challenge each other's cases. They then judge which case is the stronger in the light of those mutual challenges.

The Government have stated that,

"protecting the public should not come at the expense of our freedoms".—[*Official Report*, 19/6/12; col. 1660.]

This seems to be precisely the cost that the Government wish to exact in the name of greater security. In fact, the Bill does very little to provide the public with greater security, while giving an unacceptably high level of protection to the security services from exposure of their alleged wrongdoings by the civil courts.

The Government would need to advance the most persuasive reasons to justify such serious damage to our civil justice system. They have completely failed to do so. That is the conclusion that the Joint Committee on Human Rights came to. It stated:

"We remain unpersuaded that the Government has demonstrated by reference to evidence that there exists a significant and growing number of civil cases in which a closed material procedure is 'essential'".

Listen to the clear opinion of the special advocates, the government-appointed lawyers who spend much of their time working at the coalface in this dark and murky part of our legal system. A memorandum about the Bill, which was signed by 59 out of 67 of them, states that,

"the Government would have to show the most compelling reasons to justify their introduction",

referring to the CMPs. It went on to say,

"that no such reasons have been advanced; and that, in our view, none exists".

The Government have completely ignored this highly authoritative condemnation of the need for the Bill. The only comments that I can recall are an admission by the former Lord Chancellor that,

"the evidence of the special advocates most unsettled me".

But he has done nothing to correct his unsettled condition and I presume that he is still unsettled, as I am.

8.45 pm

The Minister has not responded to the special advocates' strong evidence but instead has showered them with praise for the work that they do. I say to my noble and learned friend that if he respects the special advocates so much, listen to them, stop ignoring them and drop CMPs from this Bill. In case that idea falls on deaf ears, I will carry on.

What are the Government's justifications for all the damage that they want to do to our civil justice system? Many justifications have been and gone. However, one keeps coming back but without any evidence to support it. It is this: the Government argue that the Bill is necessary because otherwise they will be forced to settle claims and to pay damages, even when they have a good defence, because they cannot use secret evidence without risking harm to national security. That sounds very beguiling and plausible, does it not? However, it is flawed as a matter of principle and is factually incorrect.

The Government usually point to the Guantanamo litigation as their example of a case which had to be settled because they could not defend themselves without a closed material procedure. I am not aware of any other identified case that they have put forward. As a matter of principle, it is no answer to the claim that the system is unfair to the Government to introduce a procedure which means that they can use the secret material, but that the other side cannot see it and is therefore unable to rebut it. All that has been achieved is to substitute one form of unfairness for another, and the new unfairness is much worse.

Under the existing PII system, which works very well, the inability to use a document affects both sides equally. But a closed material procedure will always give the Government an unfair advantage. It destroys the fundamental principle of equality of arms, as well as one of the pillars of natural justice.

In any case, defendants and claimants settle claims every day of the week because they do not wish to disclose confidential, damaging or embarrassing documents, or do not want particular evidence to be given in court and reported publicly. There is no good reason why the Government should be uniquely entitled to bypass this normal and salutary part of the pressure of civil litigation by having at their disposal a procedure that enables them to fight their case in secret and in the absence of the other side

The Government's reliance on the Guantanamo litigation as an example of a weak claim against them—that they were forced to settle because they could not use a closed material procedure—is disingenuous for two reasons. The Government settled the Guantanamo claims, by mediation, before the Supreme Court had ruled that closed material procedures were not permissible. The Government can hardly assert that they had to settle because they could not invoke CMPs. The decision on whether a CMP was permissible or not had not been taken when the Government chose to settle.

Furthermore, a significant quantity of evidence had already been disclosed in the case and it was apparent that the Government did not have a good defence to the claims. In fact, they were very far from having a good defence to the claims. That is likely to have been the real reason for the settlement, together with the desire to avoid the public embarrassment that would have followed exposure of the fact that, while publicly condemning rendition and Guantanamo in Parliament, the Government were actively involved in interrogating prisoners and assisting the USA in its torture and rendition programme. Therefore, the Government's star case—in fact, their only case—to support the assertion that they are having to settle cases that they could have won with CMPs just does not stand up and is discredited.

So where are all these cases on which the Government rely? The JCHR was told that the Government had a number of other cases that were "posing difficulties". This number was at different times put at 27, 15, six and three—and, since the JCHR reported last week, it has become 20. I do not know what noble Lords think, but to me this sounds more like parliamentary bingo than rational law-making. In any event, the Home Secretary declined two requests from the JCHR to let the special advocates evaluate these cases. We should remember that the special advocates are government-appointed security-cleared lawyers. The Home Secretary refused to see whether any of them supported the Government's contention.

The special advocates' response to the JCHR was as follows:

"There is as yet no example of a civil claim involving national security that has proved untriable using PII and flexible and imaginative use of ancillary procedure".

That is coming from the special advocates, who are the people who really know what they are talking about, and really understand these cases. And still the Government keep repeating their claim that there are cases where PII cannot cope and which need CMP, as if saying it often enough will make it come true. It is not true; there is no evidence to support it, and there is no evidence to support this claimed justification.

As to the JCHR amendments, they address the regime around CMPs, tighten it up and will reduce the frequency with which the Government can use CMPs—and I voted for all those amendments. But with all those JCHR amendments, we still end up with CMPs inserted into our civil justice system, where they have no place. They are still unfair, still secret and still incompatible with our adversarial common-law system. Only one set of amendments tonight deals with the unfairness and secrecy of CMPs—only one that ejects them from this Bill. That is the one led by Amendment 45, and I commend it to the House.

Baroness Kennedy of The Shaws: My Lords, I should say immediately that I am a member of the Joint Committee on Human Rights, and I supported the amendments that have just gone through this House. But in fact my position is quite a clear one; I do not approve of the closed material procedure at all. I was prepared to make concessions and vote for the amendments that have just gone through, but really I do not think that it is needed at all.

This country is just emerging from a very dark period in our history in which there is compelling evidence that in the aftermath of 9/11 our intelligence services departed from the standards that we would expect of them and became too closely connected with those who torture. There has been evidence of involvement in rendition, and allegations of being too closely proximate to places where torture has been taking place, providing questions and information to interrogators who have used horrifying procedures to extract answers from people who are detained. Unfortunately, our desire to be a supportive ally to the United States of America often led us into activities that are unacceptable but should not have been covered up by secrecy—and nor should they be in future. It is important for the good standing of our country in the world, but also for the standards that we normally set ourselves, that that history is placed before the public, and that we know that it happened so that it cannot happen again.

I accept that there are matters of national security that should not be in the public domain, but national security cannot be used to cover up conduct that is criminal and which debases our standing in the world. Over many years of practice in the courts I have done many cases involving national security, and I am sensitive to the issues involved. The prohibition of torture is one of the few absolutes in the law of human rights. The United States of America forgot that in the Bush era, despite being a signatory to the conventions, as indeed we are. It insisted on calling its methods, "enhanced interrogation procedures"—anything more than waterboarding being outsourced to other countries that were not quite as squeamish.

[Baroness Kennedy of The Shaws]

I support the amendment because the flag of national security is too often a flag of convenience to prevent shameful or embarrassing conduct being exposed. We have well established procedures in our courts and our system to deal with issues that need the cover of secrecy. I have been involved in many cases where PII has been used, where witnesses appear behind screens, or where there is non-disclosure of names or anything that could be identifying material. There are methods and ways in which material that is sensitive to national security can be received without putting our security in jeopardy or, indeed, not received at all.

Let us be clear. This piece of legislation arises at the behest of the United States of America, and we should not behave like a lapdog. One of the reasons is because the USA is also unhappy about being revealed as having participated in many of these shameful activities. However, this legislation has arisen in particular because of the exposure of the terrible facts in the case of Binyam Mohamed. I keep hearing people saying, "But of course these were people suspected of terrorism". I heard the young American colonel who came to this country who did not choose to represent Binyam Mohamed, but eventually, when it was said that there had to be representation of people in Guantanamo Bay, she acted for him. I heard her presenting to a gathering of lawyers evidence of the extent to which he had been tortured and rendered from Pakistan to north Africa, and eventually to Guantanamo, where his genitals were subjected to insult and attack, and where he was tortured. There is no doubt that he experienced terrible events. It does not matter whether you are talking about someone who is a suspect of terrorism or not; such conduct is unacceptable.

Torture is one of the most egregious of crimes and we are trying to stamp it out in the world. That will be done only if we set ourselves the highest standards, take the lead in doing that and do not succumb to the entreaties of even our closest ally to enter into court processes that might make it more difficult for people who want redress for any role that we might have played in their torture. When they seek redress and come to our courts, they should be able to expect not to be spurned by the courts, which is, in the end, what this piece of legislation will allow to happen.

I remind this House that not long ago in Libya, papers were found after the events in that country and its liberation from Gaddafi, which disclosed that we, Britain, had played a part in the rendition of a man who now sits in government in Libya—a man who was an opponent of Gaddafi. However, at the request of Gaddafi, we had participated in his rendition back to that country.

I want also to raise another issue that is of profound moral and ethical importance to us if we are to care about such issues—the use of drones. There is evidence that our intelligence services are providing locational intelligence to the Americans in order that a CIA operative, sitting in Oregon, can direct a drone even into Pakistan, and sometimes find that large numbers of civilians, including children, are at the receiving end of the bombing. It may have the success of taking out people considered to be enemies, but it has the horrifying additional outcome of killing innocent people.

The closed material procedure will make it impossible for us to reach into these dark parts of conduct that may be taking place in our name. It would be shameful to allow this to go through our House without calling it to account. It is not a piece of legislation to which we should put our names. I regret that the Labour Benches are empty. Perhaps it is because a lot of this might have happened on a Labour Government's watch.

9 pm

Lord Lester of Herne Hill: The noble Baroness gave the example of drones. Could she explain how anything in the Bill would impact on a claimant in the context of drones?

Baroness Kennedy of The Shaws: There is a case going through the courts. A British resident called Noor Khan is seeking a judicial review. He wants a declaration of unlawfulness made because his father—a civilian, not a terrorist—was killed in northern Waziristan in an American drone attack. This was not in the conflict area of Afghanistan but in Pakistan, and the victim was a civilian casualty. I am told that a number of cases that concern people are linked to the use of drones in Afghanistan, Pakistan and elsewhere. People in Britain will call into question certain legalities because our domestic law covers the behaviour of people who are not in a war zone, and who therefore are subject to domestic law. The noble Lord, Lord Lester, will know that that does not mean that international humanitarian law gives them any protection.

Lord Lester of Herne Hill: I am sorry to press the noble Baroness, but I still do not understand what she is saying. It must be my fault. I would like to know how, in a judicial review of that kind about drone policy, what is in the Bill will change the matter in a way that will not allow the applicant for judicial review to secure justice. How will the process be different from what we have now? That is what I am trying to understand.

Baroness Kennedy of The Shaws: I am interested to hear the noble Lord, Lord Lester, the great human rights lawyer, defending secret processes of this kind. There is no doubt that applications will be made for closed material proceedings in those sorts of cases because the state will not want to divulge the circumstances in which locational intelligence was given. What we as members of the public would want to know would be whether we are playing the role of providing that kind of intelligence, which may in turn lead to the deaths of many civilians, particularly in places that are not covered by war.

I call upon the moral impulses of the House. Do noble Lords think that this is a proper way of dealing with activities that may be covered by national security, when national security is being used as an excuse to cover unacceptable behaviour? It may mean that we will never be able to find out the truth about rendition and the use of torture, and about any role that British operatives played. That would be a very unhappy state of affairs, and a departure from a very proud part of our common-law history and principles. It is a source of regret that so many people are prepared to go down this road.

Lord Reid of Cardowan: My Lords, it is always a pleasure to follow the noble Baroness. I am sorry to start by correcting her, but the Labour Benches are not empty, nor bereft of any representative of the previous Government. As a former Home Secretary, I am one such representative. Unfortunately, the other Home Secretaries—Mr Clarke, Mr Straw, Mr Blunkett and Ms Smith—cannot be here because they are not Members of this House, which may account for their absence.

I may be a lone voice among the speakers, who all seem to have come from the Joint Committee on Human Rights, but I will say two things. First, on the moral question, I deprecate torture as much as anyone in this House. I deprecate it in the cases that have been mentioned. I also deprecate it in the 62 British citizens who were tortured by being burnt to death in the Twin Towers and the 50-odd British citizens who were tortured to death by being blown up in the subway and on the buses in London. They had human rights as well, and the primary human right is the right to life. There is a moral obligation on government to take that into consideration.

I find that one of the astonishing things about these debates is that there is never any context about the nature of national security. It is paraded camouflaged in words such as murky, corrupt, and lapdog—the disparaging avalanche of comments against our security services. Politicians can take it. We are used to it from the Opposition, from people outside and from some of our errant Back-Benchers, but the intelligence services do not deserve that. Were it not for them, I can tell you, thousands of British citizens would have had their basic human right of life removed from them. In one incident in August 2006, 2,500 people would have been blown out of the skies over the Atlantic were it not for our intelligence services and, yes, their colleagues in the American intelligence services.

So let me just say a word to balance the quite proper legal points that have been made about national security. We have come through a dark time. I regret to say that we still live in a dark time, not just here but throughout the world—anyone who thinks that areas of Pakistan are not a conflict zone does not begin to understand that. There are two elements to the threat to the British people, as there always are in any threat. The first is intention and the second is capability. The real question that we should be asking is not whether this proposal arrives from the Government because they are corrupt, because they have been seduced by civil servants or because they are lapdogs of the Americans. We should be asking what particular set of circumstances regarding the threat to national security brings a measure like this on to the agenda. We should then analyse the two elements of threat: intention and capability. Let me to say a word on both. The intention of those who wish to inflict terrorism on the citizens of this country is now unconstrained. It is not limited, as it was with the IRA in terms of tactical questions. It is not limited by their concern for what the public might think. It is not limited in terms of the numbers that they wish to kill. Anyone who tried to kill 10,000 people in the Twin Towers would be happy to kill 10 million people. Indeed, not only are they not constrained in their intent by politics or ideology, they are driven in their ideological premise towards a massive massacre of people.

That on its own would be bad enough to weigh in the minds of today's Home Secretaries if it were not for the fact that the other element of threat, which is the ability to carry out the intent, is now unfortunately unconstrained as well. Those in the past who had a genocidal intent, such as the Nazis, were constrained by the technical ability to achieve their intention—in the Nazis case either by carbon monoxide or Zyklon B canisters. Biological, chemical and radiological weapons now mean that we live in a world where unconstrained intent to do damage is allied with the potential for unconstrained capability. That is the burden that sits on the shoulders of government Ministers nowadays, not whether they will fall out with the Americans or anyone else. It is in that context that we have to consider the unique circumstances that we have never had to face before because the means of mass destruction have not been available to small groups of non-state actors and, by and large, non-state actors have not had an unconstrained intent to murder in a wholesale fashion. It is those circumstances that make the protection of intelligence all the more important. Had it not been for that exchange of intelligence—in one case, across 29 countries—we would not have achieved the protection of our British citizens and their fundamental right to life.

Lord Thomas of Gresford: I am sure the noble Lord is not suggesting that those of us who oppose these clauses are in favour of terrorism. He must appreciate that we are not concerned with proposals that will make security information available to the public. All we are concerned about is, what is the response to an action that is brought by a claimant against the security services or any other government department? I appreciate the noble Lord's sincerity but is he not a little off the point?

Lord Reid of Cardowan: There are three points there. First, of course I was not suggesting that there was any intent on the part of the noble Lord. However, I was explaining that there is a law of unintended consequences. You do not need an intention to make it easier for terrorists in order to embark on a course of action that ends up assisting in that. The second point relates to the Government's response. As I understand it, the Government are saying that we currently have a system that does not give us justice because the requirement to protect national security information is such that they cannot take it to court, and therefore, whether or not it is just, someone is in receipt of benefits.

Lord Strasburger: My Lords—

Lord Reid of Cardowan: Let me finish with the questions that I have been asked and then I will happily come back to the noble Lord.

The third question is whether I am off the point. I do not see how this issue can be discussed without a deeper understanding of the security—I truly do not—and yet in this Chamber I hear speech after speech about

[LORD REID OF CARDOWAN]
law but no one sets out the circumstances in which we have to face these threats. We might as well try to exist in a vacuum. Of course we can turn our eyes and act blind to the world outside but we have at least to try and understand the circumstances that give rise to what the Government are doing, or alternatively we will be forced to say that they are either mad, bad, corrupt with power, lapdogs, murky, conspirators or acting at the behest of evil civil servants.

Baroness Kennedy of The Shaws: The noble Lord is presenting a parody of the argument that I have made, and I refute it. I understand—as does everyone in this House because we have debated it so often—the incredible context of having to deal with terrorism. Sensibly, however, most of us accept that you do not sacrifice the high standards of legal procedure that we have developed in this country to the terrorists. When the British state does that, it descends to the level of the people who bomb, kill and do all the things that the noble Lord has described so powerfully. If there is any question that our security services have in any way fallen from grace—and no one is suggesting that they have tortured—in the standards that we expect and which they normally set store by themselves, it is important that that should be explored so that we can put right any of the wrongs that have taken place. That is the issue.

9.15 pm

Baroness Manningham-Buller: My Lords—

Lord Reid of Cardowan: Perhaps I may respond and then I will give way to the noble Baroness, Lady Manningham-Buller. I was not trying to parody or even respond to the argument of the noble Baroness, Lady Kennedy, with the exception of her incorrect statement that there is no one from Labour here and her reference to Pakistan. The rest of it actually applied to the generality of the arguments that I have heard since I came in. I have made my position known on torture, but I have also made my position known on the obligations of government to protect the rights of the British citizen, including the basic one of the right to life.

Baroness Manningham-Buller: The noble Lord, Lord Strasburger, should speak first.

Lord Strasburger: Can the noble Lord tell the House about a single occasion when a British court has released into the public domain any information that has been detrimental to the country's national security? Can he name a single one?

Lord Reid of Cardowan: That is rather a Catch-22 question, is it not? The reason they have not is that they have settled out of court. That is the point that we are trying to make. The noble Lord is asking for evidence that cannot be adduced. The very purpose of bringing forward this provision is precisely to meet a situation which has arisen because they cannot.

Lord Strasburger: Then the answer to my question is no.

Lord Reid of Cardowan: The explanation for a no is always more substantial than a straight no.

Baroness Manningham-Buller: My Lords, I feel I have to rise to speak because of the presumption of guilt suggested by some people on the part of my organisation in the past. I should say first that torture is a crime in our law and in international law. It is morally wrong, ethically wrong and it is never justified—even when, as the Americans would claim, you get the truth from it. That is irrelevant. It is not what a civilised country does and it is illegal. For my colleagues to be accused of it is to accuse us of a crime.

I can now talk about the Binyam Mohamed case. We interviewed him in Pakistan in 2002, where he was in American custody. Later that year we sent questions to the Americans to put to him. There were two things that we did not know in 2002. We did not know that our closest intelligence ally was resorting to waterboarding; that is, torturing people. We did not know that in 2002. Additionally, we did not know that Binyam Mohamed had been rendited by the Americans to Morocco. Had we known that, we would have been more careful about the questions we had put, as I said to the parliamentary committee in 2006 and as it was recorded in its report. Certainly we regretted that.

Because torture is a crime, the person who interviewed Binyam Mohamed in Pakistan was extensively investigated by the police. A report went to the Crown Prosecution Service and it was decided that there was no case to answer. If any of my colleagues had been involved in criminality, the criminal courts—we are not talking about civil proceedings here—the police and the Crown Prosecution Service would have been involved. We are absolutely subject to the criminal law, and so we should be. But I find it pretty difficult to accept a presumption of guilt without it being proved in a court.

I shall put a caveat on that, picking up the comment of the noble Baroness, Lady Kennedy. I cannot talk about matters to do with Libya because those are the subject of current civil proceedings, as I understand it, and criminal investigations. It would be inappropriate for me to comment at this stage.

Baroness Kennedy of The Shaws: I must ask the noble Baroness if she was listening when I made my speech. I made it very clear that there was no suggestion of British officers being directly involved in torture. I spelt out clearly and precisely what the noble Baroness has just described—being in places where people were being detained, providing questions and information that was ultimately used in interrogations where horrifying procedures were used. We know that happened in Binyam Mohamed's case, and I made the suggestion that there was compelling evidence that it had happened in other cases. I would ask this question of the noble Baroness: does she accept that Britain played any role at all in rendition?

Baroness Manningham-Buller: Because it relates to the Libyan thing, I cannot answer the question. It is the subject of criminal investigations.

Baroness Kennedy of The Shaws: Does the noble Baroness agree that—

Viscount Younger of Leckie: My Lords, perhaps I may remind the House that the *Companion* sets out that, at Report stage, a speaker other than the mover of an amendment, a Minister or the noble Lord in charge of the Bill can speak twice only if granted the leave of the House, and then to explain a material point of his own speech that may have been misunderstood or misquoted.

Lord Reid of Cardowan: I will give way but I was not quite finished. I have heard of being overtaken by events but I think that I was overtaken by Baronesses in the middle of my speech. I did give way to the noble Baroness, Lady Manningham-Buller.

I have said what I wanted to say, which was mainly to try to give to the debate a balance which I think is, perhaps wrongly, missing. We are discussing a justice and security Bill generally, and the actual analysis of the security elements of that seemed to be somewhat missing from our deliberations, both in this group of amendments and previously.

Lord Lester of Herne Hill: I hope the fact that, with Roy Jenkins, I helped produce the first anti-terrorism Bill, which became the Prevention of Terrorism (Temporary Provisions) Act 1974, illustrates that I take national security at least as seriously as the noble Lord, Lord Reid—if not perhaps quite as seriously, because no one could take it as seriously as he does.

Neither the noble Baroness, Lady Kennedy, nor my noble friend Lord Thomas of Gresford were present when I explained earlier today that the origin of the closed material procedure, which they both deplore, comes from suggestions made by civil society—that is to say organisations such as Justice, Liberty, the AIRE Centre and Amnesty International—both in the Chahal case and later, through me, in the Tinnelly case. They both deplore the procedure as criminal lawyers, and I quite understand that as a criminal lawyer you regard everything in terms of the context of criminal trials and that the CMP is seen to be totally incompatible with their concept of justice. I understand and respect that. However, they have to face the fact that the procedure came in because the Strasbourg court could not find any other way of weighing the needs of national security with the interests of justice. It had regard to the Canadian procedure, because that is what Liberty, Justice and the AIRE centre—and perhaps also Amnesty, although it denies it—suggested to the Strasbourg court.

When Lord Williams of Mostyn was responsible for the SIAC Bill in 1997 I was one of those who spoke in favour, because although it is imperfect justice, I could not think of a better way of weighing the needs of national security against the interests of justice. I believe that it has worked pretty well in the context of SIAC, and we, as the Joint Committee on Human Rights, have recommended that SIAC's jurisdiction be extended. I do not think that the noble Baroness, Lady Kennedy, as a party to the report, will disagree with that. I do not think that she has so far.

The short answer to the supporters of this amendment is that we have today incorporated into Clauses 6 and 7 almost all the safeguards that the Joint Committee on Human Rights advocated. We did so in order to strike a better balance between fairness and national security. If the supporters of this amendment succeed, they would remove Clauses 6 and Clause 7 altogether. That would mean that the Bill would go to the House of Commons with no safeguards. The Prime Minister, the Foreign Secretary, the Home Secretary and others would have little difficulty in ridiculing what we had done. They would find that, having spent the period before the dinner hour putting in the safeguards, we had spent the period after it removing them. I can be accused of being over-logical, but it seems to me that to walk upon your head is a very strange thing to do. It makes me realise the wisdom of the noble Lord, Lord Campbell of Alloway, when he once rebuked me for making a serious point after the dinner hour. I now realise that all the serious points were made before the dinner hour and what we now have is a kind of tragic comedy. I very much hope that we do not as a House approve amendments that will have the effect of undoing all that we have been doing since 3.30 pm.

Lord Macdonald of River Glaven: I am going to be fairly brief. I hope that the noble Lord, Lord Reid, will accept that I have an abiding interest in national security. I was Director of Public Prosecutions and chief prosecutor for some of the period that he was Home Secretary, and during the worst of those years that he has been referring to, between 2003 and 2008. We had the London bombings on 7 July, the attempted bombings on 21 July, the airline plot, the dirty bomb plot, the fertiliser plot, and a conspiracy to plant bombs in the Bluewater shopping centre—deliberately at half term, so that there would be women and children present.

I understand all those issues. I should like to say to the noble Baroness that my presumption is that members of the security services do not go to work to commit crimes and that they work tirelessly in the national interest and to protect public safety. That is my view about national security and about the security services. I think that the debate that we are having here is slightly different from that and I do not believe that anything that is proposed in this amendment would damage national security in any way or needs to be in effect an insult to members of the security services. It is a question about the sort of legal system that we want, and therefore questions of law are bound to intrude. But I accept the national security context.

Baroness Manningham-Buller: I am not insulted, I just feel that when the suggestion is that we have committed serious crime, I need to retaliate to that.

Lord Macdonald of River Glaven: I understand that.

What I want to do is to return, I am afraid, to the legal context. I will be fairly brief. I want to address three questions in the context of closed material procedures: one is public confidence; one is fairness; and I think the most important one is the delivery of justice, as this has been a large part of the Government's argument. To what extent can closed material procedures deliver justice where no justice is presently available?

[Lord Macdonald of River Glaven]

The first issue is public confidence. How is public confidence in the justice system achieved? My own view is essentially that it is won through securing the trust of the public. This is achieved in a number of ways, particularly I think through openness and—that overused word—transparency, especially in terms of the judgments given. It is particularly important that judgments in cases are given in public and so the judgment itself is open to public scrutiny. If a judgment is not open to public scrutiny, that judgment will struggle to win the trust of the public. Why should the public believe that something is so simply because a judge says that it is so? The ability to scrutinise a judgment is absolutely critical.

Not least of the damaging effects that closed material procedures may have—I think will have—will be to damage public confidence in our judiciary. Who is to trust a judgment against him made upon the basis of material that he has never seen? What litigant would trust the judge who makes the judgment based upon material that that litigant has never seen? The question of public confidence is not simply a question of public confidence in the system, it is a question of public confidence in perhaps the most important people who populate the system, the judges.

This brings me to my second point, fairness. I think that everyone accepts, as they must, that closed material procedures are unfair. In one profound sense, and I do not need to labour this point, they are not fair because they are not balanced. As the noble Lords have been told, special advocates are very eminent lawyers instructed by the Government to secure fairness in these proceedings. It is well known that the special advocates themselves oppose the creation of closed material procedures precisely on the grounds that they believe that the process is unfair. I remind the noble Lords again of something that the noble Lord, Lord Strasburger, said. These special advocates, who have been in all these cases, have said that they have not seen a single case in which the issues could not properly be litigated safely using PII and other ancillary procedures, securing justice without revealing the slightest hint of national security secrets.

The final and perhaps most important point of all—it has been made persuasively by the noble Lord, Lord Lester, and others—is the delivery of justice. This has been a common theme in this debate, including contributions from very distinguished former judges. The argument is that closed material procedures will provide some justice where none is presently available, in the absence of material that would otherwise be excluded under PII; in other words, the courts will now be able to consider material that they could not consider before, and that is a better form of justice.

9.30 pm

I take issue with this argument, perhaps because I am a criminal lawyer and I have spent many years in criminal courts watching evidence that at first sight seemed persuasive, truthful and accurate disintegrating under cross-examination conducted upon the instructions of one of the parties—my client or someone else's client. Perhaps the key task facing a judge in evaluating evidence is to determine accuracy and reliability. This determination is the product of a process of testing, usually by cross-examination. That is how the judge comes to the determination as to whether evidence is accurate, reliable and honest. It is the questioning of the witness that gives the judge the clue as to whether the witness is mistaken, confused or, indeed, telling lies. I have seen this happen countless times: evidence that seemed strong and persuasive disintegrating and the case collapsing.

Of course, the danger of a closed material procedure is that this essential process is compromised, disastrously in my view, precisely because one party, the very party who wishes to engage in this process of challenge to defeat the Government, is expelled—that is not too strong a word—from the proceedings and must fall silent. He must rely on an advocate he is forbidden to speak to—he is represented by a lawyer who is forbidden to speak to him and to whom he is forbidden to speak. That lawyer then goes into the closed room with the judge and the government lawyer and is expected to test the evidence on behalf of the claimant. Again, the special advocates themselves have attested to the limits and the precariousness of their position in this situation.

To the argument that some evidence is better than no evidence, I am with the noble and learned Lord, Lord Kerr, of the Supreme Court, who said in a recent case that the whole point of untested evidence is not just that it may be unreliable but that it can "positively mislead". That is the risk that we are facing, that we are introducing into civil justice—in the most sensitive and controversial cases, where deeply serious allegations are made against the Government and the security services—a process that expels the claimant and gives him a form of justice that is not better than nothing. It is worse than nothing because it may be justice that is based on entirely misleading evidence.

In its outstanding report, the JCHR was careful to give its considered assessment of the case the Government have made for the insertion of this quite extraordinary procedure into our criminal justice system. It was very frank. It said that the Government have not made a convincing case. For my part, I would not introduce these processes into our system without the most compelling evidence to justify this extraordinary change, and I do not see it.

Lord Judd: My Lords, the noble Lord has spoken very powerfully about the importance of public trust and how the amendments before us are emphasising the means by which that trust can be secured. But when we divert from the practices of justice as we have come to understand and appreciate them, we must do so only in the most extreme and exceptional circumstances, and there must be no opportunity for a drift towards this process becoming a matter of convenience. I may be overegging it slightly but that is a fear one must have in mind.

The noble Lord also spoke about the importance of public confidence in the law and the administration of the law. I want to take that argument a little further. My noble friend Lord Reid, in a very powerful intervention that I am sure we all took extremely seriously, underlined the danger of small numbers of people with modern technology and devices at their disposal.

That is why the whole case for maximum, transparent justice in the process of law is so important. Many of the issues behind the cases involved will be extremely controversial and elicit a lot of passion in particular sections of the community. If it can ever be argued or demonstrated that we are not applying a commitment to justice in the way it can be achieved, but are finding that because of the terrorist element we are deserting that position, that will play straight into the hands of the extremists who want to exploit frustration, alienation and the rest. We are giving ammunition to the enemy—if you like me to put it as bluntly as that—and I find that unforgivable. Why give ammunition to an extremist who is determined to undermine our society by failing to stand by the principles of what we know justice is about, unless it is a most exceptional, extreme case where special circumstances have to apply?

Lord Faulks: My Lords, the Justice and Security Bill demands justice and security. We have been quite rightly reminded by, among others, the noble Lord, Lord Reid, how important it is to consider security. In human rights terms, Article 2 of the convention places a responsibility on the Government to protect life and to take all steps appropriate to ensure that the human rights of citizens generally are protected, so that human rights are not just for the litigants involved in these proceedings but for all of us. However, justice is to be done by this Bill and there is undoubtedly a justice gap. I thought that, during Committee stage, we had moved towards a consensus that CMPs, although not a desirable option, were nevertheless a necessary evil in order that justice should be done.

Contrary to what my noble friend Lord Strasburger has said, the JCHR, of which I have the good fortune to be a member, acknowledged, relying in part on the evidence of David Anderson, that there were a limited number of cases in which justice could not be done in the current situation. That is why the Bill has been brought before your Lordships' House. As to the possibility of justice being done under these provisions, the noble and learned Lord, Lord Woolf, who has experience of these things, said in Committee that the special advocates were underestimating their capacity to represent those clients. Nobody suggests that it is an optimal position, but my own experience of judges tells me that they customarily do everything they can to remedy any disadvantage that a litigant might have—and of course they will have a disadvantage in CMPs. The suggestion that the Government's case will simply be accepted by a judge without challenge or question is wholly unwarranted. Within the Bill as it is at the moment, judges have considerable powers; now that these amendments have become part of it, they will have considerably more powers.

I therefore suggest that the Bill presents an opportunity for security and justice, as the name suggests. The amendment proposed will wreck that opportunity and justice will be denied.

Lord Thomas of Gresford: My Lords, I have had experience of a torture case, the Baha Mousa case, which involved the death of a hotel owner in British custody in Basra. Your Lordships will recall that there was a long trial in which what had happened in the stinking hellhole of a derelict guardhouse was investigated. Men had been held in stressed positions with their hands tied behind their backs and hoods over their heads, and Baha Mousa, after a night during which passing soldiers from other regiments were called in to have a pop at the prisoners in that position, died with some 90 injuries to his body. What happened as a result of that? There was the trial and then a long inquiry, chaired by Lord Justice Gage, which lasted more than two years. His report has brought significant publicity and changes to what goes on. The noble Lord, Lord Judd, was talking about transparency. There is something that was brought out into the open. I do not think that any commanding officer in the British Army will not have regard to the treatment of prisoners by troops under his command hereafter. That is what transparency and publicity do. I was very interested to hear the noble Lord, Lord Dubs, cite an interrogation that had taken place in Afghanistan more recently when, no doubt, proper safeguards for the prisoners were in place.

Reputational damage? Of course there was reputational damage to the soldiers, the officers, the regiment and the British Army, but that is the price that has to be paid to put things right. I am not particularly moved by the argument that settling cases causes reputational damage to the security services. Of the civil cases brought in this country, 95% are settled, often without any admission of liability. I have never heard it suggested that there is reputational damage from a settlement from such circumstances. Nor have I heard it suggested anywhere that because the security services have settled cases brought against them, they have suffered reputational damage in any meaningful sense. When one reads what happened in the Binyam Mohamed case, one feels that there should be more transparency about what happens within the security services. Perhaps then, the suspicions with which the noble Baroness is so concerned would go away.

Everything that can be said on the issue of principle has been said, even if not by me, so I do not propose to go back to that. I just want to raise one or two practical points. The first is this. A lot has been said about fairness to the security services—that it is not fair that they should settle. What about fairness to the claimant? Suppose, for example, that a claimant wishes to sue the security services for exposing him to torture or to unlawful rendition. Let us assume that his claim is entirely genuine. Let us not start with the assumption that one hears in certain quarters that of course he is lying. Let us assume that it is a genuine case. There is no legal aid. He cannot find a lawyer to act for him on a no-win, no-fee basis because it will be impossible for a lawyer to assess his chances of success. How can any lawyer take on a case when it is possible for the defendant to go behind the scenes, talk to the judge and disclose evidence which the claimant never sees? How can you take on a case on that basis?

Of course, the special advocate is allowed to see the secret evidence, but can he go back to find out whether there is any possibility of challenging that evidence? How can he go back to his client to talk to him? He is not permitted to under the system. He cannot take proper instructions and, as my noble friend said, use the ordinary method of ascertaining the truth in the

[Lord Thomas of Gresford]
British courts of justice for centuries: by cross-examination, by challenging and testing the evidence and the credibility of the person who is giving that evidence. It is just not possible, so nobody is going to take the case on. That is the first problem to get through. We talk as if practical considerations such as that do not count. The claimant never gets his case going, or if he does he loses and never knows why.

9.45 pm

Let us take another case and get away from terrorism. Take a highly decorated NCO who has his leg blown off in Afghanistan while using faulty equipment. He sues the Ministry of Defence for negligence. It claims that the design and safety record of the equipment is national security sensitive: "This is material that we could not possibly disclose because it might assist those who are preparing bombs in the areas where we operate". The Ministry of Defence discloses that information to the judge. The special advocate also sees it but can he go outside and instruct an independent expert on the evidence that the Ministry of Defence put before the judge, so that that evidence on the capability of the particular equipment can be tested? Of course he cannot, so the claimant loses and never knows why.

Let us take another case: an ordinary citizen sues the police for wrongful assault, false imprisonment and malicious prosecution and the police, in their defence, ask for CMPs to show the judge secretly that they have obtained some national security sensitive intelligence from MI5, which gave them a reasonable cause for the arrest. The citizen is suing them for wrongful arrest; he does not know what the judge knows and has no chance of challenging it. What happens? He loses and is never told why. It does not appear in the judgment. Nothing is made public.

We could have a situation where a person is interned in a special camp without trial. It has happened here in this country, particularly with IRA suspects. He seeks a writ of habeas corpus, that absolutely fundamental right that exists for the citizen to challenge detention, and the Government may deploy closed material procedures to keep him interned for reasons that he neither knows nor can challenge. Is that beyond comprehension? At Second Reading the noble and learned Lord, Lord Wallace, conceded that CMPs could be used in habeas corpus proceedings. We are not just talking about terrorists wrongly challenging the security services. We are dealing with any issue where national security may be involved.

This is another important practical point for those of us who have practised in the courts for far too long. You try to settle cases, if you can, but if a claimant can find a lawyer to act for him that lawyer cannot assess the strength of his claim. The cards are all in the hand of the government department. The authorities hold the cards and can conceal wrongdoing. They can say to the representative of the claimant, "We will give you £100 and an apology to go away"—a derisory settlement. They may hint that they will use closed material procedures if an offer is not accepted or they can play the long game. They can exhaust whatever funding that claimant may have obtained, from a charity that is prepared to support him in these proceedings: "Play it long. Make him spend all his money so that nobody will now represent him". Or they can drive him to trial when, of course, at that point, the trump card is taken out of the hand of cards that the government department has, and it is played. The case is lost, and the claimant never knows why. This cannot be justice. We cannot approach this issue on the basis that we must be fair to the security services and to the Government. There is fairness to the claimant also to be considered. That is the reason that we, as lawyers, appreciate this very much.

The noble Lord, Lord Lester, pointed out that he supported the introduction of special advocates back in 1997—we discussed it earlier—and I opposed it, so nothing much has changed. Suppose it were a criminal trial, and the judge were to say to the defendant, "You go down to the cells", and to the defendant's lawyers, "Get out of the court", and then the prosecution were to introduce before the members of the jury—who are the decision-makers, just as the judge is the decision-maker in the civil case—evidence that was decisive against the defendant who was in the cells. Could you call that justice? This is the same sort of thing applied in a civil context. That is why I oppose Clauses 6 and 7.

Lord Beecham: My Lords, I begin by paying tribute to my noble friend Lord Dubs, who has spent a lifetime in the indefatigable support of human and civil rights. I certainly listened very carefully to what he said today.

I confess to some disappointment that during this debate we have heard little evidence of the Deputy Prime Minister's references to sympathy for the report of the Joint Committee on Human Rights and still less of the amendments that he said the Government would sympathetically consider. I do not know at what stage, if at all, this House will have an opportunity of considering such amendments. We have Third Reading next week, and there is no indication from the Minister that that would be an occasion when such amendments might come forward.

However, I would welcome the recognition of reality on the part of the Government Benches on three of the amendments that were moved earlier this evening. If those amendments had not been carried, we on the Opposition Benches would have voted for the amendment moved by my noble friend and supported by a number of your Lordships tonight, but we conclude that it would be better to send to the House of Commons the considered views and the amendments passed by very large majorities in this House than to send the Bill without those amendments, and simply leaving it that the provisions that caused most of us considerable anxiety were deleted from the Bill. In my judgment, and that of many of us in this House, that would leave us in possibly the worst of all possible worlds.

In terms of the practical politics of the situation, we might conceivably end up with a worse Bill returning to us than the one that, if this amendment is rejected, would be leaving us. For that reason, I am inviting my colleagues on these Benches not to support the amendment, but equally not to vote with the Government against it. My recommendation to my colleagues is

that we should not vote on this amendment but should abstain. We look forward to the amendments that the Deputy Prime Minister spoke of yesterday which, presumably, would go further than those which this House approved with such substantial majorities this afternoon and this evening.

The Advocate-General for Scotland (Lord Wallace of Tankerness): My Lords, this has clearly been an important debate with passions expressed on both sides of the argument. Following the votes that we have already had —on amendments which my right honourable friend the Deputy Prime Minister was talking about; the House has had an opportunity to consider the amendments emanating from the JCHR report—the Bill looks very different from that which arrived on Report. The CMP process has now altered with the wishes already expressed by this House. I therefore urge noble Lords not to remove these clauses altogether after such time has been taken to scrutinise and amend them. My noble friend Lord Lester summed it up very well: there is no point in spending a long time before the Dinner Break putting these safeguards, as he described them, into the Bill, only to simply take them all out after the Dinner Break.

Lord Dubs: Is the Minister saying that the amendments we passed this afternoon will not be reversed in the Commons?

Lord Wallace of Tankerness: This is the Bill as the House has now passed it. The House has accepted that CMPs are needed. The Government will and should properly reflect on the steer that this House has provided as the Bill moves to the other place. Crucially, we believe that closed material proceedings are absolutely necessary and are, indeed, a significant improvement on the current system.

I am not going to rehearse all the arguments that we have been through on a number of occasions. I will just pick up one or two points that were made in debate. The noble Lord, Lord Dubs, talked about a system of "whispers". The closed part of the proceedings will not be a cosy chat between the judge and the government lawyers. The non-Government parties will be excluded from the proceedings, as will members of the public, but the interests of the excluded parties will be represented by special advocates, about which I will say a word in a moment. In other words, the closed proceedings will look much like open proceedings in that they will have counsel for the Government and counsel who are special advocates representing the interests of the excluded party and making submissions to the judge.

I understand the concerns that are expressed about the special advocate, but it is also fair to say that the special advocates themselves sometimes underplay their own abilities. The noble and learned Lord, Lord Woolf, said that he has read the transcripts in the case of M v Secretary of State for the Home Department, and had been impressed with the openness and fairness with which the issues in closed session were dealt with by those who were responsible for the evidence in that case before the SAIC. He went on to say that while the procedures that the SAIC adopts are not ideal—no one is pretending that this is a perfection of justice or making that argument—

"it is possible by using special advocates to ensure that those detained can achieve justice and it is wrong therefore to undervalue the SIAC appeal process".

The noble Lord, Lord Dubs, also referred to what he said were "cover ups". This was echoed by a number of contributors to the debate. This completely misunderstands the whole purpose of closed-material proceedings. I share the view of those who have expressed in these debates that they abhor torture. The Government abhor torture. The Government do not condone it, and nor do they seek others to conduct torture on their part.

My noble friend Lord Thomas said that we should assume a case where there has been malfeasance on the part of someone acting on behalf of the British Government. The point is that if there were such as case, it is important that these issues are properly considered and investigated. The point under the present situation, with public interest immunity certificates, is that if public interest immunity is successfully asserted, none of that evidence will actually be before a judge. It is important that that evidence should be before a judge. It is important that there is fairness for the claimant, and there is not necessarily fairness for the claimant if the claimant has to settle because important information cannot be considered in open court and we have not allowed them the opportunity of closed material proceedings. While there may be some satisfaction in getting a financial settlement, it might not be a satisfaction if you have indeed been wronged and do not have a court judgment to confirm that. It is not only the security services, on which we have perhaps focused our debates, for which the present system can act unfairly. It is unfair, too, on someone with a just claim who cannot get it properly vindicated in the courts because evidence cannot be brought before them. That makes the point that that is also, as has been said, unfair to those who believe that they have a proper defence and cannot deploy it. In our first group of amendments today the noble Baroness, Lady Manningham-Buller, indicated that that has the effect of lowering morale in cases where people believe that they have done no wrong and they have a proper defence but cannot deploy it.

10 pm

Settling is not always as simple as it seems but, equally, people have talked about the damage that it might do to the justice system. As my noble friend Lord King said in our first debate, increasingly I believe that if payments are given out but no case has been proven, that, too, can be damaging to the justice system. As the much-quoted David Anderson QC said in evidence to the Joint Committee on Human Rights about settling:

"It seems to me that it is corrosive if not of national security then at least of justice, and that there is a public interest in these very sensitive national security cases being fairly resolved. If Government has to settle a vast and high-profile series of damages claims … while feeling that it has perfectly good evidence on which to defend the case, that is corrosive of trust in the security services; it is corrosive of trust in the authorities; it is corrosive of trust in the legal system".

[Lord Wallace of Tankerness]
There is, therefore, corrosion of trust, if indeed there is a whole series of cases that are settled without any proof having been made.

My noble friend said something about reputational damage, and perhaps felt that that was not so important. Other people have settled cases without reputational damage. The real concern comes when a case is settled without admission of liability, and there has been a very serious allegation—for example, of torture or of rendition, which indeed is wrong. There will never have been an opportunity to go before a court, even if in the less satisfactory situation of closed proceedings, and that opportunity will have been denied because such proceedings are not available.

If there has been a settlement, then people can go to recruit those who may wish to take action against this country. They will be able to say, "This person claimed that the United Kingdom Government tortured them, and the United Kingdom paid out sums of money to them", and you can bet your life that the small print saying "without liability" will never be mentioned. However, that is more than reputational damage; it is potentially damaging to our national security as well.

No one has pretended that closed material proceedings are in fact as good as the open proceedings that have been the hallmark of our justice system. It has been said many times in these debates that imperfect justice is better than no justice at all. I therefore urge the House to reject the amendment in the name of the noble Lord, Lord Dubs.

Lord Dubs: My Lords, we have been over these issues a number of times this evening, so I shall confine myself to making some very brief points. Of course, everyone is against torture. It is abhorrent and criminal. We are all opposed to terrorism and will do nothing to weaken the security of our country. Had I not left my London residence late and had left at the usual time, I would have been going through Edgware Road on the day of the bombings. I therefore felt fairly close to that, although I was a quarter of a mile away at the time. I certainly would do nothing that would weaken our safety and security.

I do not think that there are widespread cover-ups in our society but there have been a number. We have had a number of inquiries which were intended to reveal to people what actually happened when there had been a suspicion of a cover-up and what happened when there had been a cover-up. Hillsborough is only one example and there are several. The argument is not so much that we are hiding cover-ups but that we should be open and transparent. People should see that there are no cover-ups. I fear that the CMP will make people feel suspicious about the integrity of our justice system.

I would like to use many arguments to rebut what the Minister said but the hour is late. I wish to test the opinion of the House.

10.04 pm

Division on Amendment 45

Contents 25; Not-Contents 164.

Amendment 45 disagreed.

Division No. 4

CONTENTS

Bath and Wells, Bp.
Brinton, B.
Clement-Jones, L.
Doocey, B.
Dubs, L. [Teller]
Greaves, L.
Hamwee, B.
Hussain, L.
Judd, L.
Kennedy of The Shaws, B.
Kidron, B.
Linklater of Butterstone, B.
Macdonald of River Glaven, L.
Maclennan of Rogart, L.
Pannick, L.
Roberts of Llandudno, L.
Scott of Needham Market, B.
Shipley, L.
Stern, B.
Strasburger, L.
Thomas of Gresford, L. [Teller]
Tonge, B.
Tope, L.
Walmsley, B.
Wigley, L.

NOT CONTENTS

Addington, L.
Ahmad of Wimbledon, L.
Alderdice, L.
Anelay of St Johns, B. [Teller]
Armstrong of Ilminster, L.
Ashdown of Norton-sub-Hamdon, L.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Barker, B.
Bates, L.
Berridge, B.
Bew, L.
Black of Brentwood, L.
Blencathra, L.
Bridgeman, V.
Brittan of Spennithorne, L.
Brougham and Vaux, L.
Brown of Eaton-under-Heywood, L.
Browne of Belmont, L.
Browning, B.
Burnett, L.
Butler of Brockwell, L.
Byford, B.
Caithness, E.
Cathcart, E.
Chadlington, L.
Chalker of Wallasey, B.
Chester, Bp.
Colwyn, L.
Cope of Berkeley, L.
Cormack, L.
Cotter, L.
Courtown, E.
Crathorne, L.
De Mauley, L.
Deech, B.
Dholakia, L.
Dixon-Smith, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Eden of Winton, L.
Elton, L.
Empey, L.
Falkner of Margravine, B.
Faulks, L.
Flight, L.
Fookes, B.
Fowler, L.
Framlingham, L.
Fraser of Carmyllie, L.
Freud, L.
Garden of Frognal, B.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert, L.
Goschen, V.
Green of Hurstpierpoint, L.
Hamilton of Epsom, L.
Hanham, B.
Henley, L.
Hennessy of Nympsfield, L.
Hereford, Bp.
Hill of Oareford, L.
Hogg, B.
Hooper, B.
Howard of Rising, L.
Howe, E.
Howe of Aberavon, L.
Howe of Idlicote, B.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Jenkin of Roding, L.
Jolly, B.
Jopling, L.
Kakkar, L.
King of Bridgwater, L.
Kirkham, L.
Kirkwood of Kirkhope, L.
Knight of Collingtree, B.
Kramer, B.
Laird, L.
Lawson of Blaby, L.
Lee of Trafford, L.
Lester of Herne Hill, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Luke, L.
McNally, L.
Maddock, B.
Magan of Castletown, L.
Manningham-Buller, B.
Mar and Kellie, E.
Marks of Henley-on-Thames, L.
Marland, L.
Marlesford, L.
Martin of Springburn, L.
Masham of Ilton, B.
Mawson, L.
Mayhew of Twysden, L.
Montrose, D.
Morris of Bolton, B.
Neville-Jones, B.
Newby, L. [Teller]
Newlove, B.
Nicholson of Winterbourne, B.

Northover, B.
Norton of Louth, L.
O'Cathain, B.
Oppenheim-Barnes, B.
Parminter, B.
Perry of Southwark, B.
Phillips of Sudbury, L.
Popat, L.
Randerson, B.
Reid of Cardowan, L.
Rennard, L.
Ribeiro, L.
Risby, L.
Roberts of Conwy, L.
Rogan, L.
Roper, L.
Sanderson of Bowden, L.
Sassoon, L.
Seccombe, B.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharkey, L.
Sharples, B.
Shaw of Northstead, L.
Shephard of Northwold, B.
Shutt of Greetland, L.
Spicer, L.
Stedman-Scott, B.
Steel of Aikwood, L.
Stewartby, L.
Stoneham of Droxford, L.
Stowell of Beeston, B.
Strathclyde, L.
Taverne, L.
Taylor of Holbeach, L.
Thomas of Winchester, B.
Tordoff, L.
Trimble, L.
True, L.
Tyler, L.
Tyler of Enfield, B.
Ullswater, V.
Verma, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Warsi, B.
Wasserman, L.
Wheatcroft, B.
Wilcox, B.
Williams of Crosby, B.
Williamson of Horton, L.
Wright of Richmond, L.
Younger of Leckie, V.

10.14 pm

Clause 7 : Determination by court of applications in section 6 proceedings

Amendment 46 not moved.

Amendment 47

Moved by ***Lord Pannick***

47: Clause 7, page 5, line 33, at end insert "and that damage outweighs the public interest in the fair and open administration of justice"

Lord Pannick: My Lords, we debated the amendment much earlier this evening. It relates to Clause 7 and is the equivalent to Amendment 36 in Clause 6, which was an amendment that your Lordships voted on and approved. I therefore beg to move.

10.15 pm

Division on Amendment 47

Contents 87; Not-Contents 123.

Amendment 47 disagreed.

Division No. 5

CONTENTS

Addington, L.
Alderdice, L.
Ashdown of Norton-sub-Hamdon, L.
Bach, L.
Barker, B.
Bassam of Brighton, L.
Bath and Wells, Bp.
Beecham, L.
Berridge, B.
Blackstone, B.
Brinton, B.
Burnett, L.
Clark of Windermere, L.
Collins of Highbury, L.
Cotter, L.
Dholakia, L.
Donoughue, L.
Dubs, L.
Elder, L.
Elystan-Morgan, L.
Falkner of Margravine, B.
Faulkner of Worcester, L.
Gale, B.
German, L.
Greaves, L.
Grenfell, L.
Hamwee, B.
Harris of Haringey, L.
Haskel, L.
Hollis of Heigham, B.
Howarth of Newport, L.
Howe of Idlicote, B. [Teller]
Hussain, L.
Jolly, B.
Jones of Whitchurch, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kidron, B.
Kilclooney, L.
Kirkwood of Kirkhope, L.
Knight of Weymouth, L.
Kramer, B.
Lee of Trafford, L.
Lester of Herne Hill, L.
Linklater of Butterstone, B.
McAvoy, L.
Macdonald of River Glaven, L.
McIntosh of Hudnall, B.
Mackenzie of Framwellgate, L.
McKenzie of Luton, L.
Maclennan of Rogart, L.
Marks of Henley-on-Thames, L.
Martin of Springburn, L.
Morris of Handsworth, L.
Oakeshott of Seagrove Bay, L.
Pannick, L. [Teller]
Parminter, B.
Phillips of Sudbury, L.
Prashar, B.
Prosser, B.
Rennard, L.
Roberts of Llandudno, L.
Rogan, L.
Roper, L.
Royall of Blaisdon, B.
Shipley, L.
Shutt of Greetland, L.
Smith of Basildon, B.
Soley, L.
Stern, B.
Strasburger, L.
Symons of Vernham Dean, B.
Taverne, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Tonge, B.
Tope, L.
Tordoff, L.
Touhig, L.
Tunnicliffe, L.
Tyler, L.
Tyler of Enfield, B.
Walmsley, B.
Wheeler, B.
Williams of Crosby, B.
Williamson of Horton, L.
Young of Norwood Green, L.

NOT CONTENTS

Ahmad of Wimbledon, L.
Anelay of St Johns, B. [Teller]
Armstrong of Ilminster, L.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Bates, L.
Bew, L.
Black of Brentwood, L.
Blencathra, L.
Bridgeman, V.
Brittan of Spennithorne, L.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Butler of Brockwell, L.
Byford, B.
Caithness, E.
Cathcart, E.
Chadlington, L.
Chalker of Wallasey, B.
Colwyn, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E.
Crathorne, L.
De Mauley, L.
Deech, B.
Dixon-Smith, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Eden of Winton, L.
Elton, L.
Empey, L.
Faulks, L.
Flight, L.
Fookes, B.
Fowler, L.
Framlingham, L.
Fraser of Carmyllie, L.
Freud, L.
Garden of Frognal, B.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert, L.
Goschen, V.
Green of Hurstpierpoint, L.
Hamilton of Epsom, L.
Hanham, B.
Henley, L.
Hereford, Bp.
Hill of Oareford, L.
Hooper, B.
Howard of Rising, L.
Howe, E.
Howe of Aberavon, L.
Hunt of Wirral, L.
Hussein-Ece, B.
Jenkin of Kennington, B.
Jenkin of Roding, L.
Jopling, L.
Kakkar, L.
King of Bridgwater, L.
Kirkham, L.
Knight of Collingtree, B.
Laird, L.
Lexden, L.
Lingfield, L.
McNally, L.
Maddock, B.
Magan of Castletown, L.
Manningham-Buller, B.
Marland, L.
Marlesford, L.
Mawson, L.
Mayhew of Twysden, L.
Montrose, D.

Morris of Bolton, B.
Neville-Jones, B.
Newby, L. [Teller]
Newlove, B.
Nicholson of Winterbourne, B.
Northover, B.
Norton of Louth, L.
O'Cathain, B.
Oppenheim-Barnes, B.
Perry of Southwark, B.
Popat, L.
Randerson, B.
Reid of Cardowan, L.
Ribeiro, L.
Risby, L.
Roberts of Conwy, L.
Sanderson of Bowden, L.
Sassoon, L.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharkey, L.
Sharples, B.
Shaw of Northstead, L.
Shephard of Northwold, B.
Stedman-Scott, B.
Stewartby, L.
Stoneham of Droxford, L.
Storey, L.
Stowell of Beeston, B.
Strathclyde, L.
Taylor of Holbeach, L.
Trimble, L.
True, L.
Ullswater, V.
Verma, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Warsi, B.
Wasserman, L.
Wheatcroft, B.
Wilcox, B.
Younger of Leckie, V.

10.27 pm

Amendments 48 to 51 not moved.

Clause 8 : Appointment of special advocate

Amendments 52 to 54 not moved.

Clause 9 : Saving for normal disclosure rules

Amendment 55 not moved.

Clause 10 : General provision about section 6 proceedings

Amendments 56 and 57 not moved.

Clause 11 : Sections 6 to 10: interpretation

Amendment 58 not moved.

Amendment 59

Moved by ***Lord Wallace of Tankerness***

59: Clause 11, page 8, line 1, leave out subsections (2) to (4)

Amendment 59 agreed.

Amendments 60 and 61 not moved.

Amendment 62

Moved by ***Lord Beecham***

62: After Clause 11, insert the following new Clause—

"Extent

(1) The powers under sections 6 to 11 of this Act expire at the end of the period of 5 years beginning with the day on which this Act is passed.

(2) The Secretary of State must before the end of the period of 5 years propose to Parliament that a Parliamentary select committee be established to conduct a review."

Lord Beecham: My Lords, sunset clauses are never popular with governments and I suspect not too popular with Members of the House at this time of night either. I will accordingly not detain the House for long on this, and I do not intend to put the amendment to the vote. However, I ask the Government seriously to consider it given the magnitude of the change under whatever form this Bill now takes. Whether it rests with the amendments agreed today by your Lordships' House or it comes back to us from the House of Commons in a somewhat different form, it is in any view still a major change in our system of justice. It is one that should be monitored as it takes effect over a period.

10.30 pm

I hope, therefore, that the Government will, in principle, if not explicitly tonight, consider and ultimately accept that in these exceptional circumstances it would be proper to have a sunset clause to ensure careful scrutiny of the operation of these new provisions along the lines suggested in the amendment. The amendment embodies not only a period of five years, which is long enough to allow the workings of the new legislation, in whatever form it emerges, to be adequately assessed, but also requires that the process should be conducted by a parliamentary Select Committee established for that purpose.

It is not necessary for me to take up your Lordships' time by rehearsing all the arguments that we have heard over these weeks, and particularly in the impassioned but reasoned debates that we have had today, to emphasise the concern that is widely shared within and outside this House about the operation of these new provisions. It would give some comfort to those who are genuinely concerned about the implications of the measures to know that scrutiny and monitoring would be required if ultimately a sunset clause were to be applied in the way suggested in the amendment.

I do not intend to test the opinion of the House tonight but I hope the Government will consider the amendment in the spirit of the Deputy Prime Minister's remarks yesterday because it would complement the approach he adumbrated, the effect of which we await with interest. I beg to move.

Lord Wallace of Tankerness: I thank the noble Lord, Lord Beecham, for moving the amendment, which I say at the outset we are not in a position to accept. However, let me give an indication as to why sunset clauses are not necessarily appropriate here. Apart from anything else, I am trying to get my head around the idea of a sunset clause for litigation which could go over a period of time and it is difficult to think that you might have to sunset something. A case might start under a particular form of procedure and, if the sunset clause was effective, that procedure could be reverted in midstream.

There are also other considerations because this goes beyond what is proposed for the closed material proceedings we have been discussing. In relation to the case of Norwich Pharmacal, one of the primary concerns we are seeking to address is how we provide reassurance to those who give us important intelligence information so that we can protect information shared with us in confidence. A time-limited protection would undermine any reassurance we were able to give.

Lord Beecham: My Lords, the Minister should recognise that the amendment relates only to Clauses 6 to 11.

Lord Wallace of Tankerness: I apologise. Other amendments are grouped with it which I suspect have not been spoken to. None the less, the point I was making earlier applies to Clauses 6 to 11. If there was a procedure in train and the provisions were to sunset, I am not sure how that would rest.

However, I may be able to give some reassurance. The Constitution Committee did not recommend a sunset clause but said that the House may wish to consider the Bill being independently reviewed five years after it comes into force. Of course, Bills are subject to review normally some three to five years after Royal Assent, and it might be appropriate to do that should the Select Committee with responsibility decide that it wished to conduct a fuller post-legislative inquiry into the Act.

I recognise what the noble Lord, Lord Beecham, has said and it is self-evident from the debates that we have had that this is a material change. However, it is right and proper that we should leave it to the Select Committee to decide the form that the independent post-legislative scrutiny should take. That is a proper way in which this matter might be addressed.

Lord Beecham: I beg leave to withdraw the amendment. I welcome the noble and learned Lord's indication that some kind of Select Committee procedure might be adopted for this purpose.

Amendment 62 withdrawn.

Amendment 63

Moved by ***Lord Taylor of Holbeach***

63: After Clause 12, insert the following new Clause—

"Use of intercept evidence in employment cases involving national security

(1) Section 18 of the Regulation of Investigatory Powers Act 2000 (exclusion of intercepted communications etc. from legal proceedings: exceptions) is amended as follows.

(2) In subsection (1), after paragraph (d) insert—

"(dza) any proceedings before an employment tribunal, or (in Northern Ireland) an industrial tribunal, where the applicant or the applicant's representatives are excluded for all or part of the proceedings pursuant to—

(i) a direction to the tribunal by virtue of section 10(5)(b) or (c) of the Employment Tribunals Act 1996 or (as the case may be) Article 12(5)(b) or (c) of the Industrial Tribunals (Northern Ireland) Order 1996 (S.I. 1996/1921 (N.I. 18)) (exclusion from Crown employment proceedings by direction of Minister in interests of national security), or

(ii) a determination of the tribunal by virtue of section 10(6) of that Act or (as the case may be) Article 12(6) of that Order (determination by tribunal in interests of national security),

or any proceedings arising out of such proceedings;

(dzb) any proceedings on an appeal under Article 80(2) of the Fair Employment and Treatment (Northern Ireland) Order 1998 (S.I. 1998/3162 (N.I. 21)) where—

(i) the appeal relates to a claim of discrimination in contravention of Part 3 of that Order (employment cases) and to a certificate of the Secretary of State that the act concerned was justified for the purpose of safeguarding national security, and

(ii) a party to the appeal or the party's representatives are excluded for all or part of the proceedings by virtue of section 91(4)(b) of the Northern Ireland Act 1998,

or any proceedings arising out of such proceedings;".

(3) In subsection (2)—

(a) in the opening words, for "(db)" substitute "(dza)",

(b) after "anything—" insert—

"(zza) in the case of proceedings falling within paragraph (dza), to—

(i) the person who is or was the applicant in the proceedings before the employment or industrial tribunal, or

(ii) any person who for the purposes of proceedings so falling (but otherwise than by virtue of appointment as a special advocate) represents that person;

(zzb) in the case of proceedings falling within paragraph (dzb), to—

(i) any person who is or was excluded from all or part of the proceedings on appeal under Article 80(2) of the Fair Employment and Treatment (Northern Ireland) Order 1998, or

(ii) any person who for the purposes of proceedings so falling (but otherwise than by virtue of appointment as a special advocate) represents that person;"."

Lord Taylor of Holbeach: My Lords, I have a speaking note for this amendment and I will not take the risk of moving it formally because it adds a new clause to the Bill. I hope noble Lords will forgive me if I explain this quite lengthy and complex clause, although it is simple enough in its intention. It would allow intercept material to be adduced in closed material procedures in national security cases in employment tribunals.

Intercept material is excluded from legal proceedings under Section 17 of the Regulation of Investigatory Powers Act 2000, but an exception already applies in limited circumstances by virtue of Section 18 of that Act. The section lists those specialised proceedings, including the Special Immigration Appeals Commission and cases relating to terrorism prevention and investigation measures proceedings, where intercept material can be used in the closed part of the proceedings. It is the Government's objective to find a practical way to allow the use of intercept evidence in court. Section 18 does not currently include employment tribunals, and the amendment seeks to change this. The change would enhance the effectiveness and fairness of employment tribunals, it would be consistent with the objectives of this Bill and wider government policy, and it will help protect national security. Perhaps I may take these issues in turn.

The first is consistency with the Bill and its effectiveness. By allowing intercept material to be adduced in a limited number of cases where such material may be available, the amendment would enable employers to defend claims, for example, for unfair dismissal with a broader set of evidence than is currently available. The ability to adduce intercept material in CMPs is consistent with the wider provisions of this Bill, in particular paragraph 9 of Schedule 2, which includes a provision for an amendment to Section 18 of the Regulation of Investigatory Powers Act to allow for intercept material to be admitted in any Clause 6 proceedings. This further amendment would bring employment tribunals in line with the small number of specialised civil proceedings in which the disclosure of intercept product is already permissible.

[Lord Taylor of Holbeach]

Perhaps I can now address the question of operational necessity. This amendment does not represent an academic exercise. There will be cases before employment tribunals where an employer is not properly equipped to defend its actions as it is unable to adduce the full breadth of material available. For example, there will be cases where the Government are defending a claim for unfair dismissal following the removal of a former employee's vetting clearance. Currently, if the vetting is based on intercept material, it would not be possible to adduce that material in support of the vetting decision. The national security vetting system is designed to provide an assurance that those with access to sensitive information do not pose a security risk. It is very important that an assessment of the risk is made on the basis of all the relevant material, regardless of the source.

Where a decision is made to withdraw vetting clearance it is important to the integrity of the system that the decision can be maintained and is capable of being defended from legal challenge. Where intercept product or intelligence based on intercept is integral to the decision, its unavailability in employment tribunal findings could result in employers wrongly losing their case and an adverse impact on the national vetting system. Furthermore, departments may become reluctant to rely on information provided by the security and intelligence agencies for fear of not being able to defend decisions taken. It is also important that those bringing proceedings in employment tribunals can be confident that the tribunal has access to all the information on which a decision was made so that decisions can be properly examined.

I believe that the widening of the number of settings for a very small number of important cases in which intercept material can be considered should be welcome. I hope that noble Lords will see fit to support this important amendment. I beg to move.

Lord Dubs: My Lords, I do not dissent from the Minister's reasoning, and indeed am grateful to him for explaining the issue. However, he has opened the door to a much wider issue that I want to touch on but not debate, because the hour is too late and this is not the Bill on which to do it.

The Minister will be aware that many noble Lords, including those of us on the Joint Committee on Human Rights, have for a long time been arguing that intercept evidence should be permissible in criminal cases as a way of bringing people to justice who otherwise cannot be brought to justice and have to be dealt with in other, less sensible ways, such as control orders, TPIMs and things like that. If the Government are so anxious to justify the use of intercept evidence in these instances, I wonder why we cannot take a step further and consider very seriously the use of intercept evidence in criminal cases where we would have a proper system of justice and where people who are guilty of offences, or thought to be guilty, could actually be brought to trial as opposed to being dealt with in the way that they are. This is a bit of a thin end of the wedge, but it is important and I would like to feel that the Government will think hard about it.

On the Joint Committee on Human Rights, we were on two occasions able to meet civil servants dealing with this, who always said to us that they were looking at it but that it was difficult. I can see it is difficult, because it is hard enough in this case and even harder in criminal cases. Will the Government consider looking seriously into the use of intercept evidence in criminal cases now that they have this as a very useful precedent?

Baroness Hamwee: My Lords, I will follow that by asking whether the Government are satisfied that the objections that they have told us there are to the use of intercept evidence in other cases do not apply in the case of employment tribunals. I have been listening to the introduction of this amendment, wondering whether I am in favour of it because I am in favour of the use of intercept evidence or against it because, presumably, the intercept evidence could be treated as closed material. I am rather torn on this, but the question that the noble Lord, Lord Dubs, raises is a very important one.

Lord Beecham: My Lords, I endorse my noble friend's remarks. I touched on a similar point during Second Reading and I think other Members of your Lordships' House have also expressed an interest in this matter. We obviously do not expect the Minister to confirm that the principle will be adopted forthwith, but it would be helpful if an indication could be given as to when the Government might respond to the interest in this that has been evident in various of our debates as this Bill has made progress through the House.

Lord Taylor of Holbeach: I am grateful to noble Lords for extending the scope of our debate somewhat, outside the frame of the particular Bill that we are dealing with. It raises some very interesting issues and both the noble Lord, Lord Dubs, and my noble friend Lady Hamwee got to the nub of the issue. I take the advice of the noble Lord, Lord Beecham, to perhaps not make a commitment on this issue. However, I can describe the parameters, because Article 6 of the European Convention on Human Rights, the right to a fair trial, differs between civil and criminal proceedings. In particular, the exacting standards imposed by the criminal limb of Article 6, which is at the heart of the legal difficulties for a workable IAE regime, do not apply in the context of civil proceedings.

Furthermore, the nature of CMPs—which may well be involved of course, because of the nature of the intelligence—means that legitimate national security interests, such as the need to protect sensitive techniques or capabilities, can be more certainly protected than in criminal proceedings. I think all noble Lords would understand that. The proposals in the Bill demonstrate our commitment to making progress wherever it is possible. We continue to engage with the cross-party advisory group of privy counsellors in this work.

Amendment 63 agreed.

10.45 pm

Clause 13 : Disclosure proceedings

Amendment 64

Moved by ***Lord Dubs***

64: Clause 13, page 9, line 40, at end insert—

"( ) Section (Application for public interest immunity) applies in disclosure proceedings to which this section applies."

Lord Dubs: I will be very brief. We now come to the Norwich Pharmacal issues: applications for public interest immunity. In this group there are two points to which I would like to draw the attention of the House. First, there is subsection (4) in Amendment 65, where we would exempt from open disclosure any matters that are the basis of,

"any agreement with foreign intelligence services that intelligence is shared confidentially and cannot be disclosed without the consent of the intelligence service which provided the intelligence".

That is accepted in this amendment.

However, the amendment really seeks to say that there are certain domestic and international wrongs that should not be kept quiet or confidential. They are listed. They are matters of the utmost seriousness: genocide; murder; torture; slavery; cruel, inhuman or degrading treatment; child abuse; or,

"serious breaches of the Geneva Conventions".

It is my contention that these matters are so serious that they ought not to be protected with confidentiality under the Norwich Pharmacal procedures, but that they should be made open and publicly known. If they are to be made open and publicly known, of course that fact in itself will possibly deter people from being involved in such criminal activities. I think that this is a worthwhile amendment. I beg to move.

Baroness Kennedy of The Shaws: I, too, feel strongly that this is an issue of some importance and I thank my noble friend Lord Dubs for raising it. I know that it is too late an hour for us to consider voting but, when these matters are taken up in the other place, I would really like this to be considered. In any consideration, one wants a judge to recognise that there are some things that basically cannot be covered even by national security or by any control principle that operates between intelligence services.

If we were to discover that there had been crimes of such an egregious nature, such as genocide, murder, torture, slavery, and all the most horrifying of crimes that we can document, and that those crimes would be covered by some kind of secrecy, that would be a source of great shame to us. That must be something that is taken into consideration when looking at ways of introducing new procedures into our courts. In the end, any consideration of such serious human rights abuses has to trump even issues of national security.

Baroness Williams of Crosby: I also support this important amendment. We know that some countries that are considered to be relatively close allies of the United Kingdom have human rights records that are indescribably bad. It would be a tragedy to have a situation where we cannot take seriously these human rights violations because of the limits that are placed in the language of this Bill.

We are increasingly seeing human rights becoming a new, very important structure of international law, which perhaps encouraged such movements as the Arab spring, and which undoubtedly helped to release many people from the acts of coercion by their own governments. We have close relations, as does the United States and our other allies, with some countries with poor human rights records. When those poor human rights records enter into the area of international criminal action, of the kind described by the noble Lord, Lord Dubs, I hope that we recognise that we have an obligation as a country with a very strong record of supporting human rights to maintain that standard and record. Indeed we are basically the founder of the original European Convention on Human Rights legislation, which binds us all today. We therefore will expect the Government to look very closely at the wording of this part of the Bill before we get to Third Reading to ensure that it will not mean that such major acts of criminality will be disregarded because of our legislation.

Lord Wallace of Tankerness: My Lords, I thank the noble Lord, Lord Dubs, for moving this amendment. We now move on to the Norwich Pharmacal part of this Bill. I thank the noble Baroness, Lady Kennedy, and my noble friend Lady Williams for their important contribution on an issue that, going by the earlier debate, is of considerable importance with regard to human rights and serious breaches of human rights.

The noble Lord, Lord Dubs, highlighted two points: one relating to serious breaches involving, for example, torture; and the other part of his amendment that relates to the control principle. To put this in context, the approach taken by this Bill is consistent with other legislation that has been passed by Parliament. For example, in the Freedom of information Act 2000, Parliament explicitly ruled out a right to access intelligence material; and the Evidence (Proceedings in Other Jurisdictions) Act 1975 and the Crime (International Co-operation) Act 2003 provide for exemptions from disclosure of evidence into overseas proceedings where such disclosure would prejudice the United Kingdom's national security.

First, I will indicate why limiting the protection offered by legislation to the control principle, which I think is what the noble Lord was seeking to do, does not go far enough. We appreciate that it is important that this is recognised and, of course, as has been said numerous times in our debates, it is essential that the originator of the material remains in control of its handling and dissemination. However, it is often the fact as well as the content of the sharing arrangements that needs to be protected. Certifying information as subject to a control principle agreement could reveal the fact that such a highly sensitive relationship exists. Countries may not thank us for revealing that fact, and might come under pressure to end co-operation with us.

Moreover, there are also some considerable difficulties in identifying what qualifies as control principle material, and these difficulties could lead to further uncertainty and litigation. Perhaps I might be allowed, even at this time of night, to indicate again evidence given by Mr David Anderson QC in June to the Joint Committee on Human Rights, when he discussed these practical difficulties. There may be correspondence between the intelligence services commenting on control principle material, or assessments based on a mix of domestic and foreign material, and it would often be very difficult to distinguish between them.

[LORD WALLACE OF TANKERNESS]

It is important that we respect human rights and that we take seriously human rights violations, and that we take measures to ensure that there are effective remedies available. I spoke at some length in Committee about what the Government do, both in the United Kingdom and overseas, to promote and uphold human rights. It bears repeating that the United Kingdom Government stand firmly against torture and cruel, inhuman or degrading treatment or punishment. As I indicated in a previous debate, we do not condone it, nor do we ask others to do it on our behalf.

We work on human rights around the world through bilateral contacts, membership of international organisations and development aid and assistance, and in partnership with civil society. Our efforts worldwide on combating torture are guided by the Foreign and Commonwealth Office Prevention of Torture Strategy 2011-2015. The United Kingdom is working to strengthen legal frameworks to prevent and prohibit torture, develop the will and capacity of states to prevent and prohibit torture, and help organisations on the ground to get the expertise and training they need to prevent and prohibit torture.

In recent months the United Kingdom has made its position on torture clear in public statements on countries of concern, lobbied to strengthen adherence to the convention against torture and the ICCPR, and delivered in-country training to officials of other countries on handling complaints of torture in places of detention. In addition, the Government devote significant resources overseas to combating torture. This work is often done behind the scenes, but there is also much work in providing consular assistance as well as in lobbying and capacity-building projects.

In the Norwich Pharmacal context, however, the Government believe that such disclosure is not the most effective solution to the problem. Disclosure in a single case can have far-reaching long-term effects on the United Kingdom's national security and international relations, making it harder for the United Kingdom to act as a positive influence on human rights world wide. It is not in any way the case that we do not take these matters seriously. I hope I have indicated that there is a very extensive programme of work and commitment on the part of the United Kingdom Government to tackle torture, but we do not believe that using the Norwich Pharmacal procedure is the way in which to do that. In these circumstances, I invite the noble Lord to withdraw his amendment.

Lord Dubs: My Lords, the hour is late. We could debate this for a long time, but I beg leave to withdraw the amendment.

Amendment 64 withdrawn.

Amendment 65 not moved.

Amendment 66

Moved by ***Lord Pannick***

66: Clause 13, page 10, line 7, after "is" insert "certified"

Lord Pannick: My Lords, one of the main concerns with Norwich Pharmacal provisions is the breadth of the definition of "sensitive information" contained in Clause 13(3). Amendment 73 would confine the scope of the relevant information to that which needs to be protected. I entirely accept that it may be appropriate to expand the drafting of Amendment 73, but I am quite sure that what we have at the moment in Clause 13(3) is far too broad. I hope that the Government will be able before the Bill is enacted to consider this matter again; I hope that the other place will give specific consideration to this issue. I beg to move.

Baroness Smith of Basildon: My Lords, I shall speak to our amendments on this clause, Amendments 69, 70, 71, 72 and 76. I do not wish to detain the House and I shall not press our amendments to a vote at this late stage, but there are some important issues of principle that I want to put on the record and to which I seek a response from the Minister. I hope that he can take some of the points away and consider the issues.

The purpose behind the amendments is to suggest an alternative definition for the "sensitive information" ouster of the court's jurisdiction. The reality is that less information is being shared with the UK as a result of fears that the Norwich Pharmacal jurisdiction might mean that the UK Government were forced to disclose intelligence shared with us, thereby breaching the control principle. We have heard that from the reviewer of terrorism legislation, David Anderson, to whom the Minister referred, as well as from members of the ISC and the Government. I know that we have assurances from the US that we will never be denied life-saving intelligence, but I refer the House to the comments made on this issue in Committee by the noble Baroness, Lady Manningham-Buller, who said that that was no consolation to her, given the position that she has held. She went on:

> "The nature of intelligence work is putting together information from perhaps five or six different countries and 20 different organisations—little bits and pieces of a jigsaw that, together, might save lives".—[*Official Report*, 23/7/12; col. 553.]

The question of whether a UK court would ever in practice authorise the disclosure of such information has been widely debated. I do not intend to go into that tonight, because I do not believe that that is the question now facing this House.

Rightly or wrongly, the flow of intelligence to the UK has been restricted—we understand and accept that. The two questions for the House are: should the UK respond in order to deal with the concerns of our intelligence partners and, if so, what is a proportionate response? The Opposition's response to the first question is emphatically yes; it is on the second question that I think we would have a difference with the Government; namely, whether it is a proportionate response. We take the view that any restriction of intelligence to the UK is a serious problem and we would agree with David Anderson QC who said of Clause 13 that there was "an element of overkill". The ouster proposed by the Government reaches far wider than simply the control principle. While we recognise—there is no question about this at all—that there is a need to ensure the absolute protection of information related to our national security, this clause goes wider.

We therefore propose to restrict the definition of "sensitive information" to cover material whose publication would represent a clear breach of the control principle. We would amend Clause 13(3)(b) and (c) to refer only to "foreign" intelligence and to where that intelligence is such that it would jeopardise our national security or strategic national interests.

When we proposed similar amendments in Committee, the Minister described the practicalities, as he did just a moment ago, as being "challenging" and referred to the difficulties of being able to define and separate the two. We took note of what the Minister had to say and, as a consequence, the limitations that we propose in these amendments would retain the ouster for all the examples to which he referred.

Correspondence commenting on control principle material would presumably be covered by amended paragraph (c), which would remain an ouster for information derived in whole or in part from information obtained from or held on behalf of foreign intelligence services. That would allow for either the part of the correspondence that referred to foreign intelligence to be prevented from disclosure, or the entire correspondence, if it solely referred to that intelligence and would represent a disclosure of that information. As I understand it, that is much the same way as the original PII for certain redacted paragraphs in the court's judgment on the Mohamed case argued.

11 pm

I have read widely on this, but as far as I can see, the Government have not put forward any specific justification for an example where paragraph (d), which states,

"relating to an intelligence service",

would be specifically required to protect the control principle information. That is a very wide definition. I suggest to the Minister that there is a clear difference between descriptive information about foreign intelligence services and the intelligence supplied by them. It is the second, not the first, that the control principle relates to and which our foreign partners are concerned could be disclosed.

We recognise that there is a need to ensure the protection of information related to our national security or strategic national interest. We would therefore retain the certification procedure by the Secretary of State where information does not qualify under paragraphs (a) to (c). In addition, we believe that there should be an absolute exemption where certification does not provide for information related to our national security or strategic national interest that is held by our intelligence service, regardless of whether it is derived from foreign or domestic sources. Our amendments therefore retain amended paragraph (a), which states that information held by a security service will not be disclosed if it is national security-sensitive in nature.

However, we propose to delete the reason for certification on the basis of subsection (5)(b), for the,

"interests of the international relations of the United Kingdom".

We do not think that including such broad criteria can be justified on the basis of the control principle. We believe that the proposed alternative definition of sensitive information is a more proportionate response to the dilemma that the Government face. It acknowledges the clear need for cast-iron assurance to our foreign partners that the intelligence that they share with us will not be publicly disclosed and that, similarly, there should be no risk that information could be published that could in any way damage or harm our national security or strategic or national interests. It would also tighten the ouster provided in the Bill, which is drawn far wider than justifiably necessary.

I end on what I hope is a relatively humorous but serious note that David Anderson put in his evidence to the JCHR. I think that the Minister already recognises the quote that I am going to use. He said that,

"it applies to all information within the possession of the intelligence agencies. Presumably that includes the bill from Tesco for their sandwiches, to which no security importance whatever attaches".

It is very difficult to see how that could be proportionate. As I said, we do not intend to press the amendment to a vote, but I hope that the Minister can take away some of those points for further consideration and come back with a response.

Baroness Manningham-Buller: I just say that I understand the concerns about the scale of the paragraph on sensitive intelligence. Equally, I think that Amendment 73 is a bit too narrow. Perhaps the Government can table something between the two by the next stage.

Lord Wallace of Tankerness: I am very grateful to the noble Lord, Lord Pannick, for moving his amendment and the noble Baroness, Lady Smith, for speaking to her amendments. There is recognition on both their parts and across the Chamber of the importance to us of information which we receive from other intelligence agencies. It is often crucial, and it is important that we can reassure them of its confidentiality. We have been trying—I acknowledge that this is the spirit in which the amendments have been moved—to ensure that there is a proportionate response to ensure that the information is protected.

There is the fundamental problem that the novel application of the Norwich Pharmacal jurisdiction, which has its origins in the intellectual property sphere of law, into the national security context has potentially been damaging to the United Kingdom's national security and international relations. As I have said, its very existence can erode the confidence of our agents and our intelligence-sharing partners that we can protect the secrets they share with us. Moreover, in the case of human agents—because it is not just information that we receive from other intelligence agencies; it is important to remember our own agents—there are real concerns of threat to life if there is a requirement to disclose. Each case that goes through the court has potential to cause damage, not just through the disclosure of sensitive information but by highlighting the risk that it could be disclosed.

In addressing the amendments moved and spoken to by the noble Lord, Lord Pannick, I will indicate that in this sphere we believe there is a need to provide certainty and to reduce the scope for litigation. The noble Lord's suggestion of moving to a certification model, with a narrowed definition of what qualifies as sensitive information, would allow the uncertainty and damage to remain. If we do not legislate in a way

[LORD WALLACE OF TANKERNESS]
which provides sufficient clarity, we could again have the difficulty that our intelligence-sharing relationships stand at risk of deteriorating.

A certificate-only approach would only partially address the concerns of our intelligence partners and of our own agents that sensitive information is at risk of disclosure under the Norwich Pharmacal jurisdiction. It might leave them with the fear that a certificate might not be upheld and that their material might ultimately have to be disclosed. That in itself could have a chilling effect on the activities of our intelligence services and our intelligence-sharing relationships. An absolute exemption therefore provides a clearer and neater protection for this material and more certainty for our partners and our own intelligence services.

I turn to the restriction of the statutory protection to identity, which seeks to define what might be the intelligence with national security concerns. The noble Lord, Lord Pannick, illustrated this by the identity of intelligence officers, their sources and capability and to control principle material alone. We believe that is insufficient, as there is sensitive information falling outside of these two categories that also requires statutory protection. That picks up the point made by the noble Baroness, Lady Manningham-Buller, that this is far too narrowly defined.

Given that the work of the intelligence services is covert, a considerable amount of material would not fall into the category of identities and capabilities but the disclosure of which could nevertheless still be very damaging. Such information includes information about operations and investigations, as well as threat assessments in relation to sabotage, espionage and terrorism, assessments of vulnerabilities of critical national infrastructure or systems, military plans, weapons systems and information on the development or proliferation of nuclear weapons overseas. It may also include operational planning and intelligence reporting, as well as material relating to national security policy and intelligence policy issues and funding, and so on. I hope that giving these examples shows that it is a much broader sphere of activity than is proposed in the amendment.

Likewise, that narrow definition can also create scope for litigation about what does and does not fall within the definition—what, for example, would be meant by the "capability" of intelligence officers? These issues alone could result in lengthy litigation, all of which would divert intelligence officers from front-line duty. The model proposed by the noble Lord, Lord Pannick, also allows no statutory protection for sensitive information whose disclosure could cause damage to the interests of the international relations of the United Kingdom. This point was also picked up on one of the latter amendments in the group by the noble Baroness, Lady Smith. The Government need to offer protection to this category of material to ensure that our international partners remain willing to talk to us in a frank way, so that we can protect and further the United Kingdom's interests. The mere embarrassment that would be caused from disclosure of diplomatic material would be no basis to certify. Only if material would cause damage to international relations would we be able to certify.

Diplomacy does not work if diplomats cannot talk in confidence and no Government would, or should, sacrifice the benefits which effective diplomacy can offer. As an example, vital work that is done in promoting human rights is not always done in public. Talking to international partners in confidence about their human rights record is an important part of how we seek to influence that agenda. The possibility that such discussions could be made public could have serious consequences for our ability to influence. Clearly, if international partners do not trust the United Kingdom to keep advice and assessments confidential, this could have a serious impact on the United Kingdom's interests in the fields of human rights co-operation—as well as on consular assistance, trade and investment, and jobs, to name just a few other implications.

The noble Baroness, Lady Smith, proposes adding after,

"held by an intelligence service",

the qualifier,

"where that information relates to national security or the interests of the United Kingdom".

We do not believe that that is the right approach. The Freedom of Information Act, which I referred to earlier, does not try to exclude those agencies from the operation of the Act only in so far as they hold information relating to national security. Rather, it excludes them from the Act as a whole in recognition of the fact that, as far as the agencies are concerned, their entire function and raison d'être is to do with national security and necessarily the information they hold is connected with that. The Security Service Act 1989 and the Intelligence Services Act 1994 both make express provision that the heads of those organisations are to make arrangements to ensure that no information is obtained by their agency,

"except so far as is necessary for the proper discharge of its functions".

I am concerned that adding the wording suggested might only confuse the matter and give further opportunity for unnecessary litigation. We have heard about the canteen menu, and I think the noble and learned Lord, Lord Falconer, referred to someone who had slipped on the floor and wanted to sue the cleaners. I do not think those examples have so far been used in Norwich Pharmacal to get information out of the security services. If that were the issue, there are many other ways that that information could be sought. We are talking about far more serious information, and I do not think that is being challenged.

The noble Baroness said that she could not find anywhere where the Government had said what they might mean by,

"relating to an intelligence service".

The Opposition propose removing the clauses that protect information relating to an intelligence service and information obtained from or held on behalf of one of our own intelligence services, as opposed to a foreign intelligence service, or information derived from such material. Sensitive information that would not be afforded statutory protection under these amendments includes sensitive intelligence material held by, say, the Home Office, that has been passed to it by the Security Service in support of executive

action, for example, deportation on national security grounds or a TPIM notice. It would also include intelligence the Security Service shared with the police in counterterrorism operations, the disclosure of which would readily compromise those operations in either preventing a terrorist attack or bringing terrorists to justice. Work done in other government departments on national security policy and intelligence policy, which relates to the intelligence services, would not be protected if the "relating to an intelligence service" clause were removed.

The Government have reflected on the constructive analysis and considered comment in the legislative period to date. Picking up the point made by the noble Lord, Lord Pannick, I have no doubt that it will be considered further when this Bill goes to another place, but we have concluded, so far, that in the Norwich Pharmacal context, we need to provide absolute exemption for intelligence services information and certification for other sensitive information, the disclosure of which would be damaging to national security or international relations. Only by this can we provide the clarity required to enable the UK to protect its sensitive information in cases of third-party wrongdoing and to restore the confidence of our intelligence-sharing partners and our own security and intelligence services.

I have tried to outline some of the responses to what I appreciate are constructive approaches to what we all agree is a difficult issue. I hope I have explained why the Government resist these amendments, and I hope the noble Lord will withdraw his amendment.

Lord Pannick: I am very grateful to the noble and learned Lord. I recognise the difficulty of defining with precision what information should be covered. I maintain the position that Clause 13(3) does not do a very good job of it. I suggest that the Minister and the Bill team would benefit considerably by having a word with the noble Baroness, Lady Manningham-Buller—although not tonight. At some stage, perhaps they could discuss a way of improving what is a very unsatisfactory Clause 13(3), but for the moment, I beg leave to withdraw the amendment.

Amendment 66 withdrawn.

Amendments 67 to 76 not moved.

Clause 14 : Review of certification

Amendments 77 to 82 not moved.

Amendments 83 to 86 not moved.

11.15 pm

Schedule 3 : Transitional provision

Amendment 87

Moved by ***Lord Wallace of Tankerness***

87: Schedule 3, page 19, line 33, at end insert—

"( ) Sub-paragraph (1) does not apply to rules of court in relation to proceedings before the Supreme Court."

Amendment 87 agreed.

Amendment 88

Moved by ***Lord Taylor of Holbeach***

88: Schedule 3, page 20, line 25, at end insert—

"3A (1) An order under section 15(2) may, in particular, make provision about the application of section 12, and paragraphs 7, 8 and 10 of Schedule 2, to any direction or decision of the Secretary of State which—

(a) is of a kind falling within section 2C(1)(a) and (b) or (as the case may be) 2D(1)(a) of the Special Immigration Appeals Commission Act 1997, and

(b) was made before the section 12 commencement day.

(2) Provision of the kind mentioned in sub-paragraph (1) may, in particular, provide for—

(a) the Secretary of State to certify under section 2C(1)(c) or (as the case may be) 2D(1)(b) of the Special Immigration Appeals Commission Act 1997, on or after the section 12 commencement day, any direction or decision falling within sub-paragraph (1),

(b) the termination of any judicial review proceedings, or proceedings on appeal from such proceedings, which relate to a direction or decision which is so certified (whether such proceedings began before, on or after the section 12 commencement day).

(3) In this paragraph "the section 12 commencement day" means the day on which section 12 comes into force."

Lord Taylor of Holbeach: My Lords, noble Lords will know by now that Clause 12 of the Justice and Security Bill amends the Special Immigration Appeals Commission Act so that the commission—SIAC—is able to consider applications to set aside exclusion or naturalisation decisions, which have been made on the basis of sensitive material.

Currently, we have a rather unsatisfactory arrangement whereby the only course of action open to an individual who wishes to challenge the decision to exclude them from the United Kingdom, or refuse to allow them to naturalise as a British citizen, is to seek judicial review. The problem is that our High Court does not have the capacity for closed proceedings. Where the decision in question has been made by the Secretary of State on the strength of sensitive evidence, the court cannot consider it. The JR claim is therefore stymied, to the satisfaction of neither party, nor to the interests of justice.

In the case of AHK, the High Court called upon Parliament to remedy this situation through legislation; hence, Clause 12. The Joint Committee on Human Rights has also supported this approach. The amendments before the House are intended to ensure a tidy transition from the old arrangements, towards the new arrangement in which SIAC will consider the application to review decisions such as these.

First, there is a jurisdictional matter relating to the United Kingdom's Crown dependencies. Officials in the Isle of Man and Channel Islands have requested the power to extend the provisions in Clause 12 to their own territories by way of permissive extent. Accordingly, we should allow for these sections of the Bill to be so extended, with or without modification. The Government and our friends in the Crown dependencies are quite sure that we would not want inadvertently to create a loophole on the Isle of Man or Channel Islands whereby justice is done differently from the UK mainland.

[Lord Taylor of Holbeach]

These amendments also propose that the Bill's rule-making power shall include provision for "transitional" exclusion and naturalisation cases. The Government are keen to allow for a seamless and fair transition from old arrangements to new. It would not do to have a two-tier system in operation, in which judicial review proceedings already before the courts would continue to be heard in the imperfect setting of the High Court, while decisions made after the commencement of Clause 12 would benefit from being heard in SIAC. There are a number of JRs already on the books of the High Court, with judges unable to consider key evidence on which the Secretary of State's decision was based. Accordingly, it seems right and proper that, in these cases, the claimant be given an opportunity to apply to have their case heard afresh in SIAC, where a decision can be made that takes into account all of the relevant evidence.

There will also be a number of cases in which, for instance, a decision has been made to exclude someone shortly before the commencement of Clause 12, leaving them a window of opportunity for applying for a JR which runs over into the new arrangements. It would be untidy to allow these claims to be considered in the High Court, and would create a two-tier system. It would be preferable for the Secretary of State to be able to certify material as sensitive on or after commencement, thereby transferring the venue of redress to SIAC. I should add that the amendments will allow for the rule-making power to take effect—commence—from the day that the Bill receives Royal Assent. This is consistent with the rule-making power already set out in the Bill.

These amendments, while not altering the fundamental purpose of Clause 12, will ensure that we are fair when offering individuals a suitable avenue of redress in respect of decisions that have been made against them, and will eliminate the possibility of inconsistency as to how we go about that. I beg to move.

Amendment 88 agreed.

Clause 16 : Commencement, extent and short title

Amendment 89

Moved by ***Lord Wallace of Tankerness***

89: Clause 16, page 12, line 4, leave out from beginning to "come" and insert "The following provisions—

(a) section 1 and Schedule 1,

(b) sections 2 to 14,

(c) section 15(1) (except so far as relating to paragraph 3A of Schedule 3),

(d) Schedule 2, and

(e) Schedule 3 (other than paragraph 3A of that Schedule),"

Amendment 89 agreed.

Amendment 89A not moved.

Amendments 90 to 92

Moved by ***Lord Wallace of Tankerness***

90: Clause 16, page 12, line 7, at beginning insert "The following provisions—

(a) section 15(1) so far as relating to paragraph 3A of Schedule 3,

(b) paragraph 3A of Schedule 3,

(c) "

91: Clause 16, page 12, line 9, leave out "subsection (4)" and insert "subsections (4) to (4B)"

92: Clause 16, page 12, line 17, at end insert—

"(4A) Her Majesty may by Order in Council provide for section 12 and paragraph 7 of Schedule 2 to extend, with or without modifications, to any of the Channel Islands or to the Isle of Man.

(4B) An Order under subsection (4A) may, in particular, include (with or without modifications) transitional provision of the kind permitted by paragraph 3A of Schedule 3."

Amendments 90 to 92 agreed.

In the Title

Amendment 93

Moved by ***Lord Wallace of Tankerness***

93: In the Title, line 3, leave out "provide for" and insert "make provision about"

Amendment 93 agreed.

House adjourned at 11.21 pm.

Written Statements

Wednesday 21 November 2012

Correction to Commons Written Answer

Statement

Earl Attlee: My honourable friend the Parliamentary Under-Secretary of State (Stephen Hammond) has made the following Ministerial Statement.

I regret to inform the House that there was an inaccuracy in the answer given by the then Parliamentary Under-Secretary of State to Parliamentary Question 97198 on 1 March (*Official Report*, col. 450W) about driving: licensing.

The answer says:

VOSA identifies poor performing MoT testing stations through a transparent and proportionate disciplinary points system published in the MoT Testing Guide. VOSA cessate individual testers called authorised examiners (AEs) from carrying out MoT tests, not the test stations. AEs cessated in the past three years are 111 in 2008-09, 90 in 2009-10, and 89 in 2010-11 all after appeal.

The answer should be:

VOSA identifies poor performing MoT testing stations through a transparent and proportionate disciplinary points system published in the MoT Testing Guide. VOSA can take action against authorised examiners (AEs) and nominated testers (NTs). AEs are an individual, partnership or company approved to carry out MoT tests. NTs carry out the actual tests. In the past three years, the agency struck off 111 AEs in 08-09, 90 in 09-10, and 89 in 10-11, all after appeal.

ECOFIN

Statement

The Commercial Secretary to the Treasury (Lord Sassoon): My right honourable friend the Chancellor of the Exchequer (George Osborne) has today made the following Written Ministerial Statement.

The Economic and Financial Affairs Council was held in Brussels on 13 November 2012. Ministers discussed the following items:

Economic governance—Two pack

The presidency updated Ministers on the current state of play of trialogue negotiations with the European Parliament.

Revised capital requirements directive (CRD IV)

The presidency updated Ministers on the progress of negotiations in trialogues since the council's 9 October meeting. After brief discussion the presidency indicated acceptance of the council's desire to maintain the general approach agreed in May.

Banking supervision mechanism

At the invitation of the presidency, the Commission updated Ministers on the current state of play. I made clear that the UK would not be taking part.

Financial transaction tax (FTT)

The Commission presented its proposal for an authorising decision on a proposal for the introduction of a FTT by some member states using the enhanced co-operation procedure.

Mandate for negotiations of amendments to the savings taxation agreements with third countries

Ministers discussed the mandate for negotiations. No agreement was reached. The presidency indicated that it would report to the European Council.

Follow up to the European Council on 18 and 19 October 2012

The presidency provided a brief summary of the discussion on deepening economic and monetary union at the European Council's meeting on 18 and 19 October.

Follow-up to the annual meeting of the IMF and World Bank Group in Tokyo and the G20 Finance Ministers and Governors Meeting

Council briefly discussed the outcomes of these meetings.

Preparation of the United Nations Framework Convention on Climate Change (UNFCCC)

Council adopted conclusions endorsing the Fast Start Finance report to be presented at the convention.

EU state aid modernisation

Ministers noted the plans for reform set out by the Commission.

Ministerial dialogue with European Free Trade Association (EFTA) countries

Ministers met their counterparts from EFTA countries: Iceland, Liechtenstein, Norway and Switzerland.

Hurricane Sandy

Statement

Baroness Northover: My right honourable friend the Secretary of State for International Development has made the following Statement.

I wish to inform the House that, in response to the devastation caused by Hurricane Sandy in the Caribbean, the Department for International Development is today deploying vital humanitarian support to help save lives and reduce suffering.

This emergency relief will be provided to Haiti and Cuba, the countries outside the USA that were most devastated by the hurricane, following an urgent appeal by the United Nations on 12 November. The hurricane hit Haiti on 23 October and Cuba on 25 October. It caused widespread destruction, destroying crops, homes and public infrastructure.

The UK will contribute £7 million for Haiti and £850,000 for Cuba, to provide immediate life-saving support. Our priorities are to meet food, emergency shelter, water and sanitation needs. I have sent an assessment team from the department to the region. The team will ensure that a rigorous approach is taken to assessing the most pressing humanitarian priorities so that UK funding is used to achieve the greatest impact on the ground.

The Department for International Development will continue to monitor the situation, consulting with other government departments, including the Foreign and Commonwealth Office in our response to this humanitarian emergency.

Local Government: Finance

Statement

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): My honourable friend the Parliamentary Under-Secretary of State for Communities and Local Government (Brandon Lewis) has made the following Written Ministerial Statement.

Business rates retention

I am today publishing a policy statement that provides early confirmation of the Government's policy decisions in a number of key areas following this summer's technical consultation on the new business rate retention scheme. This policy statement will support local authorities, ahead of the provisional Local Government Finance Settlement, in their preparations for smooth implementation of the business rates retention scheme from April 2013.

The business rates retention scheme will enable local authorities to retain a large proportion of locally collected business rates to help fund the services they provide, thereby creating a direct link between business rates collected and local authority income, and reducing local authorities' dependency on central government grants. The scheme will give all councils a strong incentive to go for growth and could add approximately £10 billion to the wider economy by 2020.

The policy statement confirms the Government's intention to proceed with the implementation of a range of proposals that were set out in the technical consultation. It also sets out a number of changes to those proposals, in response to comments received to the consultation, including the Government's intention to maintain the 1:1 proportionate levy but with a limit of 50p in the pound. This will translate into very real benefits for authorities, allowing at least 25p in each extra pound of business rates generated locally to be retained locally. In addition, the policy statement sets out the Government's intention to fix the safety net at 7.5%—the most generous level within the range consulted upon. This guarantee will be maintained in real terms, since baseline funding levels will be uprated by RPI for the purpose of calculating eligibility for the safety net.

Overall, the Government consider that these policy decisions will result in a system that provides a strong growth incentive for authorities, while being underpinned by robust protections to help councils maintain effective services.

I have placed a copy of the policy statement in the Library of the House. The policy statement and a revised Plain English Guide to Business Rate Retention are also available on the gov.uk website at: https://www.gov.uk/government/policies/giving-local-authorities-more-control-over-how-they-spend-public-money-in-their-area--2

Data consultation

I am also today publishing the data consultation on the 2013-14 Local Government Finance settlement. The consultation sets out the majority of data that may be used in calculating the provisional baseline funding levels and Revenue Support Grant allocations from 2013-14. This release will enable local authorities to begin checking the indicator data.

The consultation can be found on the gov.uk website at: http://www.local.communities.gov.uk/finance/1314/settle.htm.

Local council tax support

In preparation for the introduction of local council tax support schemes in April 2013, the Government consulted on aspects of the funding arrangements to support authorities to offer council tax support.

Next week, I will publish an update on these arrangements, including on the Government's approach to addressing budget pressures to ensure all authorities have a fair starting point. Final funding allocations will be included in the provisional Local Government Finance Settlement.

I will also be publishing the council tax base regulations and the Government response to the consultation on providing certainty for the funding of local precepting authorities.

Also the final versions of two key council tax support regulations (first published in July) have been made and are soon to be published and laid before Parliament—the Prescribed Requirements Scheme and the Default Scheme.

Links to the regulations will be available on the gov.uk website at: https://www.gov.uk/government/policies/giving-local-authorities-more-control-over-how-they-spend-public-money-in-their-area--2.

Written Answers

Wednesday 21 November 2012

Asylum Seekers

Questions

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government to which countries failed asylum seekers were returned from the United Kingdom in (1) 2005, (2) 2009, and (3) 2011. [HL3163]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): The table below shows the number of failed asylum seekers removed or voluntarily departing from the UK by destination for 2005, 2009 and 2011.

It is not possible within these figures to say what stage in the asylum process individuals have reached at the time of their removal, including whether their claim has failed at that point, as those departing voluntarily can do so at any stage without necessarily notifying the UK Border Agency.

Following a change to the published categories that separated removals and voluntary departures, figures for 2005 and 2009 are not directly comparable with those for 2011. Latest figures for removals and voluntary departures due to be published on Thursday 29 November will include updated figures published under the new categorisation backdated to 2004.

Figures provided are latest published statistics on those removed or voluntarily departing from the UK appearing in Tables rv.06 and rv.06.q of the release, Immigration Statistics: April-June 2012. This is available from the Library of the House and from the Home Office Science, research and statistics web pages: http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q2-2012/removals-q2-2012-tabs.

Table rv.06: Removals and voluntary departures by country of destination for asylum cases

Year		*2005*	*2009*	*2011*	
Geographical region	*Country of destination*	*Total asylum cases; removed or voluntary departed*	*Total asylum cases; removed or voluntary departed*	*Total asylum enforced removals*	*Total asylum voluntary departures*
Total	*Total	15,685	11,636	5,774	4,303
Africa	*Total Africa	2,791	2,171	976	693
Americas	*Total Americas	1,022	456	250	73
Asia	*Total Asia	3,478	4,410	3,062	2,450
Europe	*Total Europe	6,800	2,374	1,276	270
Middle East	*Total Middle East	1,419	1,628	144	439
Oceania	*Total Oceania	7	10	3	1
Other	*Total Other	168	587	63	377
Asia	Afghanistan	912	1,166	943	375
Europe	Albania	1,000	342	144	39
Africa	Algeria	243	162	98	59
Oceania	American Samoa	0	0	0	0
Europe	Andorra	0	0	0	0
Africa	Angola	165	50	17	12
Americas	Anguilla	0	0	0	0
Americas	Antigua and Barbuda	0	0	0	1
Americas	Argentina	0	1	0	0
Europe	Armenia	15	3	5	4
Americas	Aruba	0	0	0	0
Oceania	Australia	6	4	1	1
Europe	Austria	197	26	21	0
Europe	Azerbaijan	51	6	1	0
Americas	Bahamas, The	0	0	0	0
Middle East	Bahrain	2	3	2	6
Asia	Bangladesh	259	173	255	127
Americas	Barbados	0	1	0	0
Europe	Belarus	25	7	8	2
Europe	Belgium	110	76	83	2
Americas	Belize	0	0	0	0
Africa	Benin	10	3	0	1
Americas	Bermuda	0	0	0	0
Asia	Bhutan	0	1	0	0
Americas	Bolivia	53	15	21	9

Table rv.06: Removals and voluntary departures by country of destination for asylum cases

Year		*2005*	*2009*	*2011*	
Geographical region	*Country of destination*	*Total asylum cases; removed or voluntary departed*	*Total asylum cases; removed or voluntary departed*	*Total asylum enforced removals*	*Total asylum voluntary departures*
Americas	Bonaire, Sint Eustatius and Saba	:	:	0	0
Europe	Bosnia and Herzegovina	24	9	1	2
Africa	Botswana	6	8	4	3
Americas	Brazil	35	32	16	8
Other	British overseas citizens	:	:	:	:
Asia	Brunei	0	0	0	0
Europe	Bulgaria	34	4	7	0
Africa	Burkina	3	0	0	0
Asia	Burma	3	4	3	14
Africa	Burundi	14	10	2	5
Asia	Cambodia	0	0	0	0
Africa	Cameroon	33	74	23	9
Americas	Canada	20	15	13	10
Africa	Cape Verde	0	0	0	0
Americas	Cayman Islands	0	0	0	0
Africa	Central African Republic	2	0	0	0
Africa	Chad	21	2	1	1
Americas	Chile	12	2	4	0
Asia	China	246	1,075	381	519
Oceania	Christmas Island	0	0	0	0
Oceania	Cocos (Keeling) Islands	0	0	0	0
Americas	Colombia	262	54	20	5
Africa	Comoros	1	0	0	0
Africa	Congo	60	31	6	0
Africa	Congo (Democratic Republic)	43	96	19	6
Oceania	Cook Islands	0	0	0	0
Americas	Costa Rica	1	0	0	0
Europe	Croatia	85	14	0	7
Americas	Cuba	3	0	1	4
Americas	Curacao	:	:	0	0
Europe	Cyprus	7	4	2	3
Europe	Cyprus (Northern part of)	0	0	0	0
Europe	Czech Republic	6	10	10	0
Europe	Denmark	21	13	9	0
Africa	Djibouti	2	1	0	1
Americas	Dominica	1	0	0	0
Americas	Dominican Republic	1	1	1	1
Asia	East Timor	0	0	0	0
Americas	Ecuador	171	36	7	3
Africa	Egypt	62	68	31	30
Americas	El Salvador	0	1	3	0
Africa	Equatorial Guinea	1	2	0	0
Africa	Eritrea	1	8	0	1
Europe	Estonia	2	2	1	1
Africa	Ethiopia	38	49	9	10
Americas	Falkland Islands	0	0	0	0
Europe	Faroe Islands	0	0	0	0
Oceania	Fiji	1	1	2	0
Europe	Finland	4	7	6	1
Europe	Former Yugoslavia	:	0	0	2
Europe	France	246	204	174	4
Americas	French Guiana	0	0	0	0

Table rv.06: Removals and voluntary departures by country of destination for asylum cases

Year		*2005*	*2009*	*2011*	
Geographical region	*Country of destination*	*Total asylum cases; removed or voluntary departed*	*Total asylum cases; removed or voluntary departed*	*Total asylum enforced removals*	*Total asylum voluntary departures*
Oceania	French Polynesia	0	0	0	0
Africa	Gabon	0	0	1	0
Africa	Gambia, The	36	51	29	20
Europe	Georgia	53	52	13	7
Europe	Germany	415	124	78	3
Africa	Ghana	242	118	72	15
Europe	Gibraltar	0	0	0	0
Europe	Greece	264	239	0	4
Europe	Greenland	0	0	0	0
Americas	Grenada	0	1	4	0
Americas	Guadeloupe	0	0	0	0
Americas	Guam	0	0	0	0
Americas	Guatemala	2	2	0	0
Africa	Guinea	21	12	6	4
Africa	Guinea-Bissau	10	1	0	0
Americas	Guyana	9	10	4	1
Americas	Haiti	0	0	0	0
Oceania	Heard Island and McDonald Islands	0	0	0	0
Americas	Honduras	0	0	2	1
Asia	Hong Kong	3	7	2	5
Europe	Hungary	11	17	12	0
Europe	Iceland	0	1	0	0
Asia	India	362	678	352	622
Asia	Indonesia	10	6	1	1
Middle East	Iran	389	343	53	86
Middle East	Iraq	818	1,106	66	273
Europe	Ireland	69	199	73	67
Middle East	Israel	39	8	4	11
Europe	Italy	424	217	323	5
Africa	Ivory Coast	13	26	2	7
Americas	Jamaica	404	229	101	9
Asia	Japan	0	2	1	4
Middle East	Jordan	29	38	4	8
Europe	Kazakhstan	20	2	2	1
Africa	Kenya	58	90	37	15
Oceania	Kiribati	0	0	0	0
Asia	Korea (North)	0	1	0	2
Asia	Korea (South)	4	8	3	5
Europe	Kosovo	:	133	9	8
Middle East	Kuwait	10	13	1	8
Europe	Kyrgyzstan	9	2	2	4
Asia	Laos	1	0	0	0
Europe	Latvia	5	3	2	2
Middle East	Lebanon	62	29	5	9
Africa	Lesotho	1	2	1	0
Africa	Liberia	24	6	2	2
Africa	Libya	38	35	12	47
Europe	Liechtenstein	0	0	0	0
Europe	Lithuania	7	1	2	4
Europe	Luxembourg	3	3	1	0
Asia	Macau	0	0	0	0
Europe	Macedonia	33	4	0	0
Africa	Madagascar	0	0	0	0
Africa	Malawi	105	97	28	13
Asia	Malaysia	29	28	35	8
Asia	Maldives	0	1	0	0
Africa	Mali	4	3	2	2

Table rv.06: Removals and voluntary departures by country of destination for asylum cases

Year		*2005*	*2009*	*2011*	
Geographical region	*Country of destination*	*Total asylum cases; removed or voluntary departed*	*Total asylum cases; removed or voluntary departed*	*Total asylum enforced removals*	*Total asylum voluntary departures*
Europe	Malta	25	38	8	1
Oceania	Marshall Islands	0	0	0	0
Americas	Martinique	0	0	0	0
Africa	Mauritania	3	0	0	0
Africa	Mauritius	9	22	16	17
Africa	Mayotte	0	0	0	0
Americas	Mexico	1	5	2	6
Oceania	Micronesia	0	0	0	0
Europe	Moldova	61	25	4	11
Europe	Monaco	0	0	0	0
Asia	Mongolia	128	36	14	22
Europe	Montenegro	:	0	0	0
Americas	Montserrat	0	0	0	0
Africa	Morocco	11	14	14	7
Africa	Mozambique	1	4	1	0
Africa	Namibia	4	14	14	4
Oceania	Nauru	0	0	0	0
Asia	Nepal	130	66	31	19
Europe	Netherlands	142	26	27	4
Americas	Netherlands Antilles	0	0	:	:
Oceania	New Caledonia	0	0	0	0
Oceania	New Zealand	0	5	0	0
Americas	Nicaragua	0	6	3	0
Africa	Niger	6	1	1	0
Africa	Nigeria	574	558	353	122
Oceania	Niue	0	0	0	0
Oceania	Norfolk Island	0	0	0	0
Oceania	Northern Mariana Islands	0	0	0	0
Europe	Norway	36	15	29	0
Middle East	Occupied Palestinian Territories	9	22	1	6
Middle East	Oman	6	1	0	1
Other	Other and unknown	168	587	63	377
Asia	Pakistan	910	736	599	570
Oceania	Palau	0	0	0	0
Americas	Panama	1	0	0	0
Oceania	Papua New Guinea	0	0	0	0
Americas	Paraguay	0	0	0	0
Americas	Peru	11	4	0	0
Asia	Philippines	9	7	6	1
Oceania	Pitcairn Islands	0	0	0	0
Europe	Poland	9	2	6	1
Europe	Portugal	13	6	4	3
Americas	Puerto Rico	0	0	0	0
Middle East	Qatar	1	4	1	1
Other	Refugee	:	:	:	:
Africa	Reunion	0	0	0	0
Europe	Romania	673	13	10	3
Europe	Russia	82	29	8	16
Africa	Rwanda	7	4	3	5
Oceania	Samoa	0	0	0	0
Europe	San Marino	0	0	0	0
Africa	Sao Tome and Principe	0	0	0	0
Middle East	Saudi Arabia	0	9	3	4
Africa	Senegal	10	4	4	4
Europe	Serbia	:	2	2	1

Table rv.06: Removals and voluntary departures by country of destination for asylum cases

Year		*2005*	*2009*	*2011*	
Geographical region	*Country of destination*	*Total asylum cases; removed or voluntary departed*	*Total asylum cases; removed or voluntary departed*	*Total asylum enforced removals*	*Total asylum voluntary departures*
Europe	Serbia and Montenegro	1,488	:	:	:
Africa	Seychelles	9	2	0	0
Africa	Sierra Leone	67	31	17	7
Asia	Singapore	0	2	0	1
Europe	Slovakia	57	9	6	0
Europe	Slovenia	7	1	1	0
Oceania	Solomon Islands	0	0	0	0
Africa	Somalia	22	25	5	11
Africa	South Africa	107	83	28	24
Americas	South Georgia and South Sandwich Islands	0	0	0	0
Europe	Spain	45	19	18	1
Asia	Sri Lanka	407	208	292	139
Africa	St. Helena	0	0	0	0
Americas	St. Kitts and Nevis	0	0	0	1
Americas	St. Lucia	4	3	3	1
Americas	St. Maarten (Dutch Part)	:	:	0	0
Americas	St. Martin (French Part)	0	0	0	0
Americas	St. Pierre and Miquelon	0	0	0	0
Americas	St. Vincent and the Grenadines	2	0	5	0
Other	Stateless	:	:	:	:
Africa	Sudan	46	29	6	12
Africa	Sudan (South)	:	:	0	0
Americas	Surinam	0	0	1	0
Europe	Svalbard and Jan Mayen	0	0	0	0
Africa	Swaziland	0	4	2	0
Europe	Sweden	70	27	21	1
Europe	Switzerland	9	4	18	2
Middle East	Syria	32	14	3	10
Asia	Taiwan	0	0	2	0
Europe	Tajikistan	1	1	0	0
Africa	Tanzania	43	23	22	8
Asia	Thailand	9	11	3	7
Africa	Togo	46	2	1	0
Oceania	Tokelau	0	0	0	0
Oceania	Tonga	0	0	0	0
Americas	Trinidad and Tobago	9	12	4	6
Africa	Tunisia	6	5	7	73
Europe	Turkey	818	359	94	37
Europe	Turkmenistan	0	4	1	1
Americas	Turks and Caicos Islands	0	0	0	0
Oceania	Tuvalu	0	0	0	0
Africa	Uganda	265	126	57	15
Europe	Ukraine	118	64	18	14
Middle East	United Arab Emirates	7	26	1	16
Americas	United States	10	25	30	5
Americas	Uruguay	0	1	0	0
Europe	Uzbekistan	6	6	12	2
Oceania	Vanuatu	0	0	0	0
Europe	Vatican City	0	0	0	0
Americas	Venezuela	10	0	5	2

Table rv.06: Removals and voluntary departures by country of destination for asylum cases

Year		*2005*	*2009*	*2011*	
Geographical region	*Country of destination*	*Total asylum cases; removed or voluntary departed*	*Total asylum cases; removed or voluntary departed*	*Total asylum enforced removals*	*Total asylum voluntary departures*
Asia	Vietnam	56	194	139	9
Americas	Virgin Islands (British)	0	0	0	0
Americas	Virgin Islands (US)	0	0	0	0
Oceania	Wallis and Futuna	0	0	0	0
Africa	Western Sahara	0	1	0	0
Middle East	Yemen	15	12	0	0
Africa	Zambia	16	13	4	4
Africa	Zimbabwe	282	201	19	117

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government whether they undertake monitoring of the lives of failed asylum seekers following their deportation from the United Kingdom; and, if so, how. [HL3164]

Lord Taylor of Holbeach: The UK does not routinely monitor the lives of failed asylum seekers who return to their home country. They are, by definition, foreign nationals who have been found as a matter of law not to need the UK's protection and it would be inconsistent with that finding for the UK to assume an ongoing responsibility for them when they return to their own country.

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government to which countries failed asylum seekers are not currently deported by the United Kingdom. [HL3165]

Lord Taylor of Holbeach: There are no countries to which the UK Government will not return failed asylum seekers.

At any given time, there may be countries to which the UK Border Agency does not enforce returns due to practical and logistical considerations.

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government whether they ensure that deported asylum seekers in need of medical attention are not deported to countries where the necessary medical treatment is not available. [HL3167]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): Individuals whose asylum claims have been refused and who require medical treatment which is either unavailable or difficult to access in their countries of origin will not be removed to those countries where this would be inconsistent with our obligations under the European Convention on Human Rights. Each person in this situation is considered individually, but for removal not to take place, there must be truly compelling humanitarian considerations.

Asylum Seekers: Children

Question

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government how they ensure that children under 16 are not deported to countries where they are threatened with harm. [HL3166]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): The UK Border Agency does not seek to remove any individual—whether adult or child—unless the agency and the courts are satisfied that they are not at risk of harm on return. All asylum applications are given full consideration within the requirements of the Refugee Convention and the European Convention on Human Rights, and by using up to date and wide ranging country specific information.

Bank of England

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government, further to the Written Answer by Lord Sassoon on 2 November (*WA 159*), whether the cancellation of government debt acquired by the Asset Purchase Fund for quantitative easing falls within the remit of monetary policy and the terms of reference of the Monetary Policy Committee of the Bank of England.[HL3195]

The Commercial Secretary to the Treasury (Lord Sassoon): The Bank of England's Monetary Policy Committee (MPC) was given authorisation to use the Asset Purchase Facility (APF), for monetary policy purposes, by the then Chancellor, on 3 March 2009.

The APF is a wholly owned subsidiary of the Bank of England. Gilts purchased under quantitative easing are a tool for the MPC to use in order to meet the inflation target.

Carbon Monoxide Poisoning

Question

Asked by ***Lord Harrison***

To ask Her Majesty's Government how many attendances at accident and emergency units have been attributed to carbon monoxide poisoning in the past year; and how many deaths have been recorded as resulting from it. [HL3418]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): This information is not routinely collected or reported by the department; however analysis conducted by the department in 2011 estimated that there had been around 4,000 attendances at accident and emergency units in England in 2009-10 as a result of accidental carbon monoxide poisoning based on the experimental Accident and Emergency Hospital Episode Statistics.

Information provided to the Department by the Office for National Statistics shows that there were 33 deaths in England in 2011 as a result of accidental carbon monoxide poisoning.

Care Services: Autumn Grange Residential Home

Questions

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government whether they intend to take any action against the owners of Autumn Grange Residential Home in Nottingham following concerns raised by the Care Quality Commission about the standard of care at the home and the closure of the home by its owners at very short notice. [HL3307]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Government cannot comment in detail on this matter, which is the subject of police investigation. However, it is not for the Government to take action directly against the owners of the home. If the home is found not to have complied with any regulatory requirement, it will be for the organisation(s) responsible for enforcing those regulations to decide what action, if any, may be appropriate.

Asked by ***Baroness Pitkeathley***

To ask Her Majesty's Government what consultation with residents and their families owners of care homes are required to undertake before closing a home; what consultations with residents and their families were carried out by the owners of Autumn Grange Care Home in Nottingham before their decision to close it; and whether the Care Quality Commission or others were able to carry out any such consultation. [HL3381]

Earl Howe: The Government cannot comment in detail on this matter, which is the subject of police investigation.

We understand that no consultation with residents and their families took place between the owners and residents and their families, or with the Care Quality Commission, in this case. Nottingham City Council and residents received very short notice of the owners' intention to close the home. The council responded rapidly to ensure that all residents were supported to move into a suitable alternative accommodation and met with residents and their families to discuss and explain the matter at the time.

The decision to close a care home voluntarily is taken by the operator, either the local council or National Health Service or, if it is an independent home, the proprietor(s). There is no specific requirement on an operator to consult. However, the department is concerned that any decision to close a home should be handled as sensitively and appropriately as possible.

It is essential that proper arrangements are made for the safe and satisfactory transfer of residents to other suitable homes. Adequate time should be allowed for the process, so that residents and their relatives can make decisions and arrangements in a way that minimises stress. Local authorities have a statutory duty to reassess the needs of residents of a home which closes and to arrange suitable alternative accommodation for those who are assessed as needing residential care.

In June 2011, the University of Birmingham and the Association of Directors of Adult Social Services, in association with the Social Care Institute for Excellence, published guidance for councils entitled, *ACHIEVING CLOSURE, Good practice in supporting older people during residential care closures*. The guidance includes advice on how to cope with the closure process and how to reduce any negative impact on residents. It addresses issues such as providing continuity of care, needs assessment and choice for residents, intelligence and information sharing, resource implications and legal issues.

It is available on the University of Birmingham website at: www.birmingham.ac.uk/news/latest/2011/06/08JuneCareReport.aspx.

Charities: Religious Charities

Questions

Asked by ***Baroness Berridge***

To ask Her Majesty's Government how many churches and Christian charities have successfully applied for charitable status in the past 12 months. [HL3494]

To ask Her Majesty's Government how many churches and Christian charities have had their applications for charitable status turned down as not satisfying the public benefit test in the past 12 months. [HL3495]

To ask Her Majesty's Government how many religious places of worship, excluding churches, have successfully applied for charitable status in the past 12 months. [HL3496]

To ask Her Majesty's Government how many religious places of worship, excluding churches, have had their applications for charitable status turned down on the grounds of failing to satisfy the public benefit test in the past 12 months. [HL3497]

To ask Her Majesty's Government how many religious-based charities, excluding Christian charities, have successfully made applications for charitable status in the past 12 months. [HL3498]

To ask Her Majesty's Government how many religious-based charities, excluding Christian charities, have had their applications for charitable status turned down in the past 12 months on the grounds of not satisfying the public benefit test. [HL3499]

Lord Wallace of Saltaire: The information requested falls within the responsibility of the Charity Commission. I have asked the Commission's Chief Executive to reply.

Letter from Sam Younger CBE, Chief Executive, Charity Commission to Baroness Berridge, dated 21 November 2012.

I have been asked to reply to your Parliamentary Questions on the registration of religious organisations in the past 12 months.

How many churches and Christian charities have successfully applied for charitable status in the past 12 months [HL3494].

1175 churches and other charities identifying themselves as Christian on the register of charities have successfully applied for charitable status in the past 12 months (1 November 2011-1 November 2012). There may be additional Christian charities which do not show as such from their entries on the register because they have not self-identified as Christian or having purposes to advance the Christian religion.

How many churches and Christian charities have had their applications for charitable status turned down as not satisfying the public benefit test in the past 12 months [HL3495].

One Christian organisation has had its application for charitable status turned down in the past 12 months on grounds which included not satisfying the public benefit requirement.

How many religious places of worship, excluding churches, have successfully applied for charitable status in the past 12 months [HL3496].

It is not always possible to identify from the details a charity has given for its entry on the register whether or not it operates a place of worship. To produce a definitive figure would require a manual search which unfortunately is not possible in the time available.

How many religious places of worship, excluding churches, have had their applications for charitable status turned down on the grounds of failing to satisfy the public benefit test in the past 12 months [HL3497].

None of the five organisations with purposes to advance religions other than Christianity which have had their applications for charitable status turned down in the past 12 months appears to operate a place of worship.

How many religious-based charities, excluding Christian charities, have successfully made applications for charitable status in the past 12 months [HL3498].

433 religious-based charities, excluding the Christian charities and churches counted above, have successfully made applications for charitable status in the past 12 months.

How many religious-based charities, excluding Christian charities, have had their applications for charitable status turned down in the past 12 months on the grounds of not satisfying the public benefit test [HL3499].

One charity with purposes to advance a religion other than Christianity has had its application for charitable status turned down in the past 12 months on grounds which included not satisfying the public benefit requirement.

Child Protection

Question

Asked by ***The Lord Bishop of Ripon and Leeds***

To ask Her Majesty's Government when they will publish the recommendations from the Department for Education Expert Data Group. [HL3193]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): As part of urgent action to improve the care and protection of children in residential care, the department has chaired an Expert Data Group. This has been considering how to safeguard looked after children who go missing, or are at risk of going missing, by developing improved local and national data collection arrangements, and strengthening practice amongst carers, children's homes, local authorities and the police. The group includes representatives from the Association of Directors of Children's Services, police organisations, the Office of the Children's Commissioner, the Children's Society and Ofsted. It has met frequently since July and is in the final stages of its work. We will consider its proposals and announce the action we intend to take in due course.

Children: Care

Question

Asked by ***The Lord Bishop of Ripon and Leeds***

To ask Her Majesty's Government when they will publish the recommendations from the task and finish group on out of area placements of children in care. [HL3194]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): The Out of Area Placements Task and Finish Group has been focusing on how to improve arrangements, and the quality of care and support, for looked after children placed out of area by their local authorities. This is part of the wider work announced by Ministers in July to reform children's residential care. The group has comprised senior expert representation from children's services, local authorities, providers, Ofsted and others. It has met frequently since the summer. We will consider its proposals and announce the actions we intend to take in due course.

Cultural Olympiad

Question

Asked by ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government how they intend to embed the success of the Cultural Olympiad in future arts initiatives. [HL3444]

Viscount Younger of Leckie: The Department for Culture, Media and Sport (DCMS) is delighted with the huge impact that the Cultural Olympiad has made.

This Government purposely intended that the Cultural Olympiad be delivered by and through the cultural sector, and in that sense, the opportunity remains for the sector to build on the many individual projects that were inspired by the 2012 Olympic and Paralympic Games, rather than for the Government to attempt to prescribe future artistic and cultural initiatives.

However, DCMS has asked Lord Hall of Birkenhead, as chair of the Cultural Olympiad Board, to continue to lead the board as it oversees and ensures that the legacy from the Games becomes fully embedded within the cultural sector.

Education: Careers Advice

Question

Asked by ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government how they are monitoring changes to the National Careers Service; and what steps they are taking to ensure that the quality of advice to young people is improved. [HL3262]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): Schools are subject to a new duty to secure access to independent and impartial careers guidance on the full range of 16-18 education and training options, including apprenticeships. This is underpinned by statutory guidance and a practical guide, published by the Department for Education. Ofsted is carrying out a thematic review of careers guidance, reporting in July 2013, which will highlight good practice and provide a benchmark for future improvements in the quality of provision. Schools are expected to work in partnership, as appropriate, with external and expert careers providers. This can include organisations engaged in delivering the National Careers Service (NCS) or other specialist providers. Young people can also access support from appropriately qualified advisers through the NCS helpline, or by visiting their website. The Skills Funding Agency is responsible for the delivery, design and development of the NCS, reporting to the Department for Business, Innovation and Skills (BIS). Changes to the NCS are monitored by BIS and the Agency through the Careers Guidance and Accounts Board, involving the Department for Education in consideration of the service for young people. The board reviews performance data, quality, policy updates and customer satisfaction and progression reports for consideration and advice as appropriate.

Education: Special Educational Needs and Disability

Question

Asked by ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government what proportion of secondary school pupils (1) overall, and (2) entering academies in 2011–12 and 2012–13 had special educational needs. [HL3257]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): From next year all young people in England will be required to remain in education for a further year after the compulsory school leaving age. They will have a choice of curriculum and route of full-time education at a school or college, an apprenticeship or full-time work combined with part-time study.

We have accepted all of the recommendations from Professor Wolf's report on vocational education. A new fairer, simpler and more transparent funding system will support the introduction of study programmes for 16-19 year-olds from 2013. The published principles for study programmes will ensure post-16 education has a focus on substantial qualifications, English, maths and work experience—the key ingredients that employers want. A series of workshops has been held to help schools and colleges understand these reforms, and we trust them to put on programmes that meet the needs of young people, employers and universities.

We are also considering how best A-levels can meet the needs of universities and employers. Ofqual have consulted on A-level reform and, further to the recent announcement on the ending of January exams, are giving further thought to how best to engage universities in the design of the qualifications.

Energy: Fuel Prices

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government on what date they expect the planned increase in fuel duty to take effect. [HL3367]

The Commercial Secretary to the Treasury (Lord Sassoon): On 26 June 2012, the Chancellor announced that the 3.02 pence per litre rise in fuel duty that was due to take effect on 1 August 2012 would be deferred until 1 January 2013.

The Chancellor keeps all taxes under review.

Energy: Wave Power

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government whether they encourage the generation of renewable energy from wave power; and, if so, in what way. [HL3372]

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma): The UK Government encourage the development of wave and tidal energy through active engagement with the industry through the Marine Energy Programme Board (MEPB) and bringing together key players for the development of the industry through marine energy parks. We have also contributed to the development of testing centres for these devices such as the European Marine Energy Centre (EMEC) in Orkney and the WaveHub in Cornwall.

In the past, various funding schemes have been made available towards the development of these technologies; the most recent being the £20 million

marine energy array demonstrator (MEAD) scheme. Support is also given under the Renewables Obligation (RO) which is currently 2 ROCs/MWh but will increase from 2013-17 to 5ROCs/MWh for projects up to 30MW.

EU: Common Agricultural Policy

Question

Asked by ***Lord Monks***

To ask Her Majesty's Government which agricultural estates in the United Kingdom were the 10 highest recipients of funds from the European Union's Common Agricultural Policy in the last year for which records are available. [HL3168]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): The following businesses and organisations were the 10 highest recipients of funds from the European Union's Common Agricultural Policy in 2011.

Beneficiary Name	*Total*	*Paying Agency*
National Trust	£8,095,950.58	RPA
Lantra	£4,526,362.71	RPA
RSPB	£3,997,559.71	RPA
Herefordshire Council	£3,193,885.15	RPA
Northumberland County Council	£2,904,194.64	RPA
Serco Regional Services Ltd	£2,729,017.63	RPA
Cadwyn Clwyd Cyfyngedig Ltd	£2,318,476.63	WG
Farmcare Limited	£2,179,353.17	RPA
Berry Gardens Growers Ltd	£2,173,062.83	RPA
Frank A Smart & Son Ltd	£1,824,206.97	SGRPID

Food: Aspartame

Questions

Asked by ***The Countess of Mar***

To ask Her Majesty's Government what average daily intake (ADI) was established for methanol at the time when an ADI for diketopiperazines was established at 7.5mg/kg by the Committee on Toxicity of Chemicals in Food and the Environment in 1982 when they considered aspartame for approval. [HL3337]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): In 1982, the Committee on the Toxicity of Chemicals in Food, Consumer Products and the Environment (COT) classified aspartame as Group A, "Substances that the available evidence suggests are acceptable for use in food". In 1992, when the COT moved towards the use of acceptable daily intakes (ADIs) in the assessment of food additives, ADIs were established for both aspartame and its breakdown product diketopiperazine. The COT did not establish an ADI for methanol as they noted that the amounts of methanol that could be present in aspartame sweetened products were lower than those present in some foods and were not of concern.

Asked by ***The Countess of Mar***

To ask Her Majesty's Government what testing measures have been established for the Food Standards Agency and Trading Standards officials to ensure that the amount of aspartame added to food and drink by manufacturers meets the prescribed average daily intake of 40mg/kg; and how many prosecutions there have been for infringement. [HL3338]

Earl Howe: Maximum permitted levels for aspartame are established in legislation, which also specifies the various foods in which it is permitted. These levels are set so that consumers, including certain sub-populations such as children, are unlikely to exceed the acceptable daily intake of aspartame.

It is the food businesses' responsibility to comply with food law; however, enforcement of food legislation is the responsibility of local authorities. Data held by the Food Standards Agency (FSA) for 2012 shows that 175 samples were analysed for aspartame. Only one sample was found to be non-compliant as it was not permitted to contain aspartame. This figure only covers those local authorities who are using the UK Food Surveillance System national database.

The FSA is not aware of any prosecutions regarding aspartame.

Government Departments: Coalition Agreement

Questions

Asked by ***Lord Ryder of Wensum***

To ask Her Majesty's Government what progress the Attorney General's Office has made since May 2010 in respect of commitments relevant to it in the coalition agreement. [HL3177]

The Advocate-General for Scotland (Lord Wallace of Tankerness): The Attorney-General's Office does not have any direct policy responsibilities relating to the commitments made in the coalition agreement. Information on the progress made by the Government as whole in meeting these commitments can be found in a Written Ministerial Statement made by Lord Wallace of Saltaire dated 11 June 2012, which provides an update on actions as of May 2012, and the live display of the 2012-13 business plans on the structural reform plan section of the No 10 website.

Asked by ***Lord Ryder of Wensum***

To ask Her Majesty's Government what progress the Department for Culture, Media and Sport has made since May 2010 in respect of commitments relevant to it in the coalition agreement. [HL3181]

Viscount Younger of Leckie: Structural reform plans detail the concrete steps this Government are taking to implement their agenda.

Information on progress can be found in a Written Ministerial Statement dated 11 June 2012, which provides an update on actions as of May 2012, and the live display of the 2012-13 business plans on the structural reform plan section of the No.10 website.

Asked by ***Lord Ryder of Wensum***

To ask Her Majesty's Government what progress the Department for International Development has made since May 2010 in respect of commitments relevant to it in the coalition agreement. [HL3286]

Baroness Northover: The commitments in the coalition agreement relevant to the Department for International Development have, in the main, been taken forward through actions set out in the department's structural reform plans. The link below provides information on progress to date as well as actions which are currently in progress for each commitment for which the department is responsible for delivery.

Details of progress against the department's structural reform plan for 2012-13 can found in the No.10 Transparency website http://transparency.number10.gov.uk/

Details of progress against the department's structural reform plan for 2011/12 can be found in the DfID website http://www.dfid.gov.uk/About-us/How-we-measure-progress/DfID-Business-plan-2011-2015/

Asked by ***Lord Ryder of Wensum***

To ask Her Majesty's Government what progress the Scotland Office has made since May 2010 in respect of commitments relevant to it in the coalition agreement. [HL3289]

The Advocate-General for Scotland (Lord Wallace of Tankerness): The coalition's programme for government in May 2010 included a commitment to implement the recommendations of the Commission on Scottish Devolution. This commitment was delivered through the Scotland Act 2012, which received cross-party support in both the UK and Scottish Parliaments. The Act strengthens the devolution settlement and marks the most significant transfer of financial powers from Westminster to Scotland in 300 years.

Government Departments: Correspondence

Question

Asked by ***Lord Norton of Louth***

To ask Her Majesty's Government how many (1) letters, and (2) emails, were received by the Home Office in each of the past five years for which information is available; and, of those, how many were sent by (a) Members of the House of Commons, (b) Members of the House of Lords, and (c) members of the public. [HL3136]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): Please see the information requested presented in the table below. All ministerial correspondence is recorded as having been received by letter. Information on the split between correspondence received from Members of the House of Commons and House of Lords is not available for 2007-09.

Ministerial Correspondence (Correspondence from Members of the House of Commons and House of Lords)

Year	House of Commons	House of Lords	Total
2007	N/A	N/A	6,568
2008	N/A	N/A	6,933
2009	N/A	N/A	6,684
2010	4739	16	4,755
2011	7909	42	7,951

Treat Official Correspondence (Correspondence from Members of the Public)

Year	Letters	Emails	Total
2007	10,271	8,357	18,628
2008	9,625	7,401	17,026
2009	6,586	9,030	15,616
2010	5,838	7,552	13,390
2011	6,056	6,226	12,282

Government: Air Travel

Questions

Asked by ***Lord Ashcroft***

To ask Her Majesty's Government, further to the Written Answer by Lord Strathclyde on 24 October (*WA 67*), why his response did not state how much was charged to news organisations and the Conservative Party or the date on which they received funds from the party, as the original Question asked. [HL3267]

To ask Her Majesty's Government, further to the Written Answer by Lord Strathclyde on 24 October (*WA 67*), why names of individuals are not normally disclosed; and why the Answer did not give the names of those who travelled with the Prime Minister on a chartered flight to the United States on 13 March. [HL3268]

The Chancellor of the Duchy of Lancaster (Lord Strathclyde): A charge of £5,310 was made for international and internal flights, hotels and transport for the Prime Minister's visit to Washington in March. Three members of the Prime Minister's political office accompanied the Prime Minister; the names of staff accompanying the Prime Minister are not usually published. The invoice totalling £15,930 was paid by the Conservative Party on 16 October.

Health: Cardiology

Questions

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what assessment they have made of the efficacy of Omacor for treating post-heart attack patients; and whether they will intervene following the decision by Greater Manchester Medicines Management Group to deem it not suitable for prescription. [HL3308]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): National Institute for Health and Clinical Excellence's (NICE) Clinical Guideline 48 on secondary prevention of a myocardial infarction (MI) described best practice in the effective diagnosis and treatment of MI. We expect commissioners to take these guidelines fully into account in their decision-making. In view of their complexity and because of the different states of readiness for implementation in the National Health Service, clinical guidelines are not subject to the same statutory funding direction as NICE's technology appraisals.

Asked by ***Lord Sharkey***

To ask Her Majesty's Government, further to the analysis submitted by Professor Sir Brian Jarman to the NHS Medical Director that child heart surgery units at Glenfield Hospital and the Royal Brompton Hospital rank 1 and 3 in terms of outcomes performance, what is their response to the recommendation of the Joint Committee of Primary Care Trusts that these units be closed. [HL3312]

Earl Howe: The Safe and Sustainable review of children's congenital heart services is a clinically led, National Health Service review, which is independent of Government. However, we understand that the standards against which all the units providing children's congenital heart surgery were assessed were agreed by the relevant professional organisations. The Joint Committee of Primary Care Trusts accepted advice from the professional associations, including the Central Cardiac Audit Database, that mortality rates should not be used to compare hospitals as meaningful comparisons are not possible given the low caseloads.

Asked by ***Lord Harrison***

To ask Her Majesty's Government what actions will be taken to address inequalities in rates of cardiovascular disease between different areas of England under the Cardiovascular Outcomes Strategy. [HL3353]

Earl Howe: This Government are committed to reducing the gap between the health of the richest and the health of the poorest, so more people can look forward to an independent and active old age. The forthcoming cardiovascular disease outcomes strategy will reflect how this will be achieved for people with and at risk of this group of diseases.

Health: Hypercholesterolaemia

Questions

Asked by ***Lord Harrison***

To ask Her Majesty's Government what proportion of the population in England considered to have the condition familial hypercholesterolaemia are known to have been diagnosed with the condition.[HL3350]

To ask Her Majesty's Government what proportion of the United Kingdom population have been diagnosed with familial hypercholesterolaemia; and how this compares with other European Union countries. [HL3351]

To ask Her Majesty's Government what initiatives are being undertaken to increase the number of people diagnosed with familial hypercholesterolaemia in England. [HL3352]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The information requested is not available centrally. However, Heart UK's survey of lipid clinics and clinical practice published in 2008 estimated that around 15,000 people have been diagnosed with familial hypercholesterolaemia (FH) in the United Kingdom. The National Institute for Health and Clinical Excellence (NICE) states that the prevalence of FH in the UK to be around 1 in 500, which means that approximately 120,000 people may have the condition. This would mean that around 12.5% of those estimated to have the condition have been diagnosed.

NICE's Clinical Guidelines 71 on the identification and management of familial hypercholesterolaemia described best practice in the effective diagnosis and treatment of FH. We expect commissioners to take these guidelines fully into account in their decision-making. In view of their complexity and because of the different states of readiness for implementation in the National Health Service, clinical guidelines are not subject to the same statutory funding direction as NICE's technology appraisals.

In addition, everyone who has an NHS Health Check will have a cholesterol test. The department has taken the opportunity in the Best Practice Guidance for the NHS Health Check programme to highlight FH for consideration if an individual's total cholesterol is >7.5 mmo1/1- as set out in the NICE clinical guideline.

Honours and Knighthoods

Questions

Asked by ***Lord Oakeshott of Seagrove Bay***

To ask Her Majesty's Government, in relation to the granting of (1) knighthoods, and (2) other honours other than peerages, what checks are made with HM Revenue and Customs (HMRC) on the tax status of individuals under consideration for an honour and on whether they have been the subject of special investigations or prosecution by HMRC; and, if so, over what period. [HL3108]

To ask Her Majesty's Government what are the criteria for granting (1) knighthoods, and (2) other honours other than peerages, to (a) non-resident United Kingdom citizens, and (b) non-domiciled United Kingdom citizens; and what proportion of honours granted in each of the last five years have been to (i) non-residents, and (ii) non-domiciled United Kingdom citizens. [HL3109]

Lord Wallace of Saltaire: As part of the process for considering nominations, the Honours and Appointments Secretariat invite government departments with an interest in a particular case to contribute their view.

All nominations for honours are judged on merit and on a case by case basis. Meritorious candidates for honours who are non-resident in the UK would usually appear on the Diplomatic Service and Overseas List.

Housing

Question

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government how many affordable housing starts there were in each year from 2005 until the last year for which records are available. [HL3357]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): Statistics on new housing starts taken from the National Statistics on House Building are published in live table 211 on the Department for Communities and Local Government's website, which is available from the following link: https://www.gov.uk/government/statistical-data-sets/live-tables-on-house-building.

International Crimes Tribunal: Bangladesh

Question

Asked by ***Lord Avebury***

To ask Her Majesty's Government what reports they have received of the conduct of the International Crimes Tribunal in Bangladesh; whether they consider that it confirms with international norms for such tribunals; and whether they will find monitors to attend some of the tribunal's hearings. [HL3468]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): The UK follows the conduct of the International Crimes Tribunal (ICT) in Bangladesh closely including through direct observation by staff based in our High Commission in Dhaka, reports from concerned human rights organisations, and through discussions with a range of stakeholders including representatives of the government, civil society, and defendants.

We have called on the Bangladesh Government, publicly and privately, to ensure that trials meet appropriate international standards. We continue to do so, including this year with the Prime Minister, Foreign Minister, Law Minister, Home Minister, and, most recently with the Bangladesh Foreign Secretary earlier this month. With EU partners, the UK also continues to make clear our strong opposition to the application of the death penalty in all circumstances.

We welcome the Government of Bangladesh's commitment to allow independent observers to attend the ICT. The UK has no plans to fund independent monitors, but Foreign and Commonwealth Office staff based in Bangladesh will continue to attend certain hearings as appropriate.

Israel

Questions

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what representations they have made to the Government of Israel about the incident at the Erez crossing on 24 October. [HL3011]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): We have no information about the incident on 24 October. However, the escalation of violence in Gaza and southern Israel was raised by our ambassador to Tel Aviv with the Israeli National Security Adviser and the Israeli Defence Minister in the week beginning 22 October.

I also refer the noble Baroness to the oral statement regarding the current crisis in Gaza and the Middle East Peace Process made by the Secretary of State for Foreign and Commonwealth Affairs, my right honourable friend the Member for Richmond (Yorks) (Mr Hague), on 20 November (*Official Report*, col. 443-446).

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether they will resist attempts to divide the West Bank into two blocks by creating a continuous zone of settlement extending from East Jerusalem to the Dead Sea; and if so, by what means. [HL3464]

Baroness Warsi: We regularly raise our concerns over settlements with the Israel Government, including at the highest levels, most recently with the Prime Minister's office on 24 October and in the course of the UK's strategic dialogue with Israel in London on 1 November. We regularly make clear concerns about any settlements that would risk separating East Jerusalem from the West Bank or dividing the West Bank into two blocks.

Lobbying

Question

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what progress they have made in implementing the coalition commitment to regulate lobbying through introducing a statutory register of lobbyists. [HL3173]

Lord Wallace of Saltaire: The consultation document, *Introducing a Statutory Register of Lobbyists,* was published earlier this year to gather evidence from experts in the field and members of the public. It asked a number of specific questions, the answers to which are informing policy development in this area. We are currently analysing the evidence collected through the consultation exercise.

Overseas Aid

Question

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government, further to the Written Answer by Baroness Northover on 30 October (*WA 125*), whether they are working with the European Commission to ensure that the Commission adopts as policy the provision of humanitarian aid without exception to provide safe abortion care for victims of rape in armed conflict. [HL3248]

Baroness Northover: UK aid without exception can be used to provide safe abortion care where necessary, and to the extent allowed by national laws, for victims of rape in conflict zones. The UK Government are not working specifically with the European Commission to ensure the European Commission adopts this as policy.

Pakistan

Questions

Asked by ***Lord Ahmed***

To ask Her Majesty's Government what is the value of Department for International Development support for Pakistan in each of the next three years. [HL3196]

Baroness Northover: DfID's planned bilateral support to Pakistan in each of the next three years is:

2012-2013—£266.6 million;

2013-2014—£412 million; and

2014-2015—£446 million.

This information can also be found in the Bilateral Aid Review technical report: http://www.dfid.gov.uk/barmar.

Asked by ***Lord Ahmed***

To ask Her Majesty's Government how much Department for International Development education awareness programme money is being spent on advertising in Pakistan. [HL3197]

Baroness Northover: Through a combination of political advocacy, media campaigning, civil society engagement, and international pressure, the UK is encouraging the Government of Pakistan and Pakistan's provinces to supply better education. As part of this strategy to improve the amount and quality of education, DfID has spent just over £950,000 to date on a media campaign to raise awareness of Pakistan's education emergency, through print radio and television. This is a powerful campaign designed to raise awareness of Pakistan's education emergency and the need for immediate action. It represents less that 1% of the total projected education spend in Pakistan.

Asked by ***Lord Ahmed***

To ask Her Majesty's Government how much funding they have given to Geo/Jang Group in the present and previous financial years; and what is the predicted allocation of funds for this organisation in the next two financial years. [HL3199]

Baroness Northover: DfID has not provided any direct funding to the GEO/Jang group. The Mir Khalil ur Rahman Foundation, which implements the awareness raising component of a DfID funded education programme in Pakistan, has however purchased television time from GEO at a discounted rate, as part of a transparent process of subcontracting media organisations to deliver this aspect of the programme.

Police: Overseas Service

Question

Asked by ***Lord Avebury***

To ask Her Majesty's Government how many British police officers have been sent to Bahrain since 31 July; what duties they are carrying out there; and what charges are being made, and to whom, for their services. [HL3296]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): No serving police officers from England and Wales have been sent to Bahrain since 31 July 2012. However, staff from National Police Improvement Agency (NPIA) have recently provided assistance to the Bahrain authorities.

Post-2015 Development Agenda

Question

Asked by ***Baroness Kinnock of Holyhead***

To ask Her Majesty's Government what representations they have received on the inclusion of peacebuilding in the post-2015 development framework. [HL3188]

Baroness Northover: The Government have received a number of representations on the inclusion of peacebuilding in the post-2015 framework. These were letters from two UK-based organisations to the Secretary of State for International Development, and a joint public statement by 42 civil society organisations from across the world entitled *Bringing Peace into the post-2015 Framework*.

Religious Freedom

Question

Asked by ***The Lord Bishop of Guildford***

To ask Her Majesty's Government what consideration they have given to publishing a strategy on freedom of religion or belief overseas to help guide the Foreign and Commonwealth Office's human rights annual work programme in this area.[HL3347]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): Freedom of religion or belief is one of the Government's human rights priorities. We do have a strategy on strengthening our approach to defending this fundamental freedom.

The strategy sets out our objectives and makes a series of recommendations to further promote the freedom of religion or belief both through our bilateral work and within various multilateral institutions. These recommendations were shaped by discussions among the Foreign Secretary's Advisory Group on Human Rights, a Wilton Park conference on freedom of religion in July 2011, and discussions with Foreign and Commonwealth Office (FCO) departments and posts.

The strategy also draws on the FCO's freedom of religion or belief toolkit, which was compiled after extensive consultations with non-governmental organisations. It contains a large amount of detail, some of which relates to sensitive country situations. We will give consideration to whether there would be value in publishing an edited version.

Schools: Sport

Question

Asked by ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government how they will ensure that all young people continue to participate in school sport; and what funding they will provide beyond 2012–13 to support a comprehensive school sport service. [HL3261]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): The draft programme of study for national curriculum physical education will be released for consultation in the new year. It will have a greater focus on competitive sport and will remain compulsory for all four key stages. The new curriculum is expected to be introduced in schools for first teaching from September 2014.

The department fully supports the School Games, which has provided opportunities for young people of all ability levels and backgrounds to enjoy competitive sport. The national level School Games event is held yearly and will next take place in Sheffield in September 2013. Over 10,000 schools are currently signed up for the School Games. We are currently looking at ways in which we can increase this number.

The Secretary of State is considering a range of measures to improve school sport and will make an announcement in due course.

Shipping: Employment Visas

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government how many non-European Economic Area citizens have been employed on United Kingdom-flagged fishing vessels in each of the past five years; and on what types of employment visa. [HL2742]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): Crew employed on fishing vessels which fish in international waters are not subject to visa or work permit requirements; the Home Office does not have the basis for records of crew members. Any non EEA crew members entering the UK for other reasons are subject to immigration control in the usual way, but are not differentiated in records.

Small and Medium-Sized Enterprises

Questions

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government whether their procurement from small and medium-sized enterprises has increased in value since May 2010. [HL3174]

Lord Wallace of Saltaire: Yes. Government procurement from small and medium-sized enterprises continues to increase quarter on quarter at a time when overall spending on goods and services has been reduced.

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government which small and medium-sized enterprises have been awarded contracts under the Civil Service Learning Contract. [HL3175]

Lord Wallace of Saltaire: SMEs that have been selected to deliver discrete pieces of work under this contract as a result of competitive procurement since March 2012 are shown in the table:

Epic Performance Improvement Ltd	Roffey Park
Elevation Learning	Stephen Lloyd Associates
John Cooper Associates	JRT Associates
Dove Nest Group	Technical Training
Teetch	Yellow Hat
Cordie	Praesta
In-Company Training Services	Good Practice
Training Synergy	Development Partnership
Rare Recruitment	Challenge Consultancy
Premier Partnerships	Axis12
Userfocus	BYG systems
The Knowledge Academy	Catalyst
QA	Media First
Course Monster	Media Friendly
Mind Gym	Government Knowledge
Assist KD	Global Knowledge
Steve Radcliffe Associates	Techniques for Change
Roffey Park	SLA Training
Stephen Lloyd Associates	Westminster Explained
JRT Associates	Ashridge
Technical Training	
Yellow Hat	
Praesta	
Good Practice	
Development Partnership	
Challenge Consultancy	
Axis12	

In addition, a number of independent trainers are used for ongoing training delivery services and they would also be classified as SME suppliers.

South Sudan

Question

Asked by ***The Earl of Sandwich***

To ask Her Majesty's Government what is their assessment of conditions in Yida refugee camp in Unity state in South Sudan; whether those conditions have recently deteriorated; and, if so, whether relocation further from the Sudan border will be in the interests of the refugees. [HL3265]

Baroness Northover: The UK monitors the conditions in Yida camp and, despite the regular inflow of refugees that put additional pressure on facilities, there has

been a gradual improvement in service provision. However, we are concerned that water provision currently stands at 10.2 litres per person per day, which is below the recognised minimum standard of 15 litres. Similarly there are fewer latrines per person, at one latrine for every 54 people, than the recognised minimum standard of one per 20 people. The humanitarian community is working to improve this. The UK has been providing supporting through the Common Humanitarian Fund in South Sudan, and the Secretary of State for International Development recently decided to provide a further £5 million to the United Nations High Commissioner for Refugees (UNHCR) to support the response.

UNHCR has consistently lobbied for Yida camp to be moved away from the border, although this is for security reasons rather than as a result of the conditions in the camp. There has been little progress so far. UNHCR is continuing to engage with the Government of South Sudan, the refugee leadership, and the refugees in order to resolve the issue, including through efforts to identify a new site away from the border to which all future arrivals will be sent.

Sport: Disabled People

Question

Asked by ***Lord Pendry***

To ask Her Majesty's Government what plans they have to increase funding to disability sport. [HL3329]

Viscount Younger of Leckie: The Department for Culture, Media and Sport wants to inspire more people with disabilities to play sport regularly, and for opportunities to be included within all London 2012 legacy programmes. Sport England will confirm investment into a number of National Governing Bodies of sport in December 2012, and for the first time, this investment will require delivery of specific targets around delivering an increase in participation by disabled people.

In addition, Sport England has established "The Inclusive Sport Fund" with at least £8 million of National Lottery Funding to invest in programmes designed to grow the number of disabled young people (age 14+) and adults regularly playing sport, and is looking at other possible funding streams.

Sudan

Questions

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government whether they have provided any funding for the Sudanese Disarmament, Demobilisation and Reintegration Partners summit in London on 27 November; and, if so, how much. [HL3170]

Baroness Northover: We will not be providing any financial or other support to the Sudanese Disarmament, Demobilisation and Reintegration (DDR) Partners summit that will be held in London in November.

The UK does remain supportive of the need for DDR in Sudan following political agreement with armed groups.

Asked by ***The Earl of Sandwich***

To ask Her Majesty's Government whether they will discuss with the Government of Sudan the case for humanitarian access by aid agencies to displaced persons facing starvation in South Kordofan. [HL3263]

Baroness Northover: We have consistently urged the Government of Sudan and Sudan People's Liberation Movement-North immediately to cease hostilities, and allow humanitarian agencies access to Southern Kordofan to deal with the great humanitarian need there. We continue to believe that the United Nations/African Union/League of Arab States Tripartite process remains the most effective way to provide an independent assessment of needs and to deliver the required relief. The UK continues to make it clear to both parties that they must immediately implement the Tripartite proposal that they signed in August to allow full humanitarian access—further delays are unacceptable. When access does become available, the UK will provide funding—including through non-governmental channels. We will not cease in our efforts until humanitarian access is secured.

Asked by ***Baroness Rendell of Babergh***

To ask Her Majesty's Government what representations they have made recently to the Government of Sudan, rebel groups, and international bodies to promote greater access for humanitarian organisations to Darfur; and what is the result of those representations. [HL3311]

Baroness Northover: We regularly raise these issues in bilateral discussions with the Government of Sudan and with members of the Darfuri rebel movements. We also stand firmly behind the United Nations (UN) and partners in their broader efforts on humanitarian access to Darfur. We raised our concerns through the UN Security Council in discussions on 24 October.

The Security Council President sent a letter earlier this month to the Government of Sudan raising specific concerns about access. The UK Special Representative for Sudan and South Sudan also raised the issue during a meeting of the Implementation Follow-Up Commission, which oversees the Doha Document for Peace in Darfur, on 12 November.

Syria

Question

Asked by ***Lord Clarke of Hampstead***

To ask Her Majesty's Government what is the value of the funding Hezbollah currently receives from the European Union. [HL3203]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): Hizballah does not receive funding through the European Union.

Taxation: Corporation Tax

Question

Asked by ***Lord Sharkey***

To ask Her Majesty's Government what discussions they have had in the past two financial years with water utility companies regarding their past and planned corporation tax payments; and what was the response. [HL3313]

The Commercial Secretary to the Treasury (Lord Sassoon): HM Revenue and Customs has had regular discussions with water utility companies in the last two years, in relation to tax affairs, in line with its strategy for ensuring that all large businesses pay the tax they owe.

Taxation: Cycling

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government whether they will introduce a hypothecated bicycle sales tax allocated to the cost of new dedicated bicycle lanes and other facilities to improve the safety of bicycling.[HL3207]

The Commercial Secretary to the Treasury (Lord Sassoon): All tax revenues are passed to the Consolidated Fund (the Government's current account) because this is the most efficient way to fund the Government's public spending objectives. Hypothecating taxes to particular spending programmes causes inflexibility in spending decisions and can lead to a misallocation of resources.

In June 2012, the Government announced a £15 million fund to improve safety for cyclists outside London, by tackling dangerous junctions. This was in addition to the £15 million fund awarded to Transport for London in March 2012, for the same purpose.

Universal Credit

Question

Asked by ***Lord Touhig***

To ask Her Majesty's Government what is their estimate of the number of employers in the United Kingdom who will have to supply details of their employees' salary and national insurance each month as part of universal credit. [HL3213]

The Commercial Secretary to the Treasury (Lord Sassoon): HM Revenue and Customs (HMRC) does not hold information on the number of employers who will have employees claiming universal credit. However, of the, approximately, 1.7 million PAYE schemes in the UK, HMRC would expect the majority of these schemes to employ at least one person who claims tax credits.

Visas

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Lord Taylor of Holbeach on 30 October (*WA 130–2*), why the information on the number of student migrants with visas at each A- and B-rated and legacy tier 4 sponsoring institution is not centrally recorded; whether the information is held electronically; and, if so, what is the estimated cost of extrapolation. [HL3123]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): The number of students currently at A rated, B rated and legacy institutions is not centrally recorded on the sponsorship IT system linking it to a tier 4 sponsor.

Information relating to migrants is electronically recorded on a separate system and the two cannot be reconciled without incurring disproportionate cost.

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