Vol. 715
No. 15

Friday
11 December 2009

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

£3·50

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

The bound volumes also will be sent to those Peers who similarly notify their wish to receive them.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at www.publications.parliament.uk/pa/ld200910/ldhansrd/index/091211.html

PRICES AND SUBSCRIPTION RATES

DAILY PARTS

Single copies:
Commons, £5; Lords £3·50

Annual subscriptions:
Commons, £865; Lords £525

WEEKLY HANSARD

Single copies:
Commons, £12; Lords £6

Annual subscriptions:
Commons, £440; Lords £255

Index—Single copies:
Commons, £6·80—published every three weeks

Annual subscriptions:
Commons, £125; Lords, £65.

LORDS CUMULATIVE INDEX obtainable on standing order only. Details available on request.

BOUND VOLUMES OF DEBATES are issued periodically during the session.

Single copies:
Commons, £105; Lords, £40.
Standing orders will be accepted.

THE INDEX to each Bound Volume of House of Commons Debates is published separately at £9·00 and can be supplied to standing order.

WEEKLY INFORMATION BULLETIN, compiled by the House of Commons, gives details of past and forthcoming business, the work of Committees and general information on legislation, etc.
Single copies: £1·50.
Annual subscription: £53·50.

All prices are inclusive of postage.

House of Lords

Friday, 11 December 2009.

10 am

Prayers—read by the Lord Bishop of Salisbury.

Co-operative and Community Benefit Societies and Credit Unions Bill [HL]

Second Reading

10.05 am

Moved By ***Lord Tomlinson***

That this Bill be read a second time.

Lord Tomlinson: My Lords, the Bill began as a Private Member's Bill in another place, piloted through there by Mr Malcolm Wicks. It passed all stages in the House of Commons, but when it reached here, it was subjected to a critical report from both the Delegated Legislation Committee, and, perhaps more significantly, the Constitution Committee. Those criticisms were, quite properly, picked up by the noble Baroness, Lady Noakes, and formed the basis of certain amendments that she tabled.

It was impossible to make the necessary progress before prorogation, so, in essence, the Bill that I am introducing today has exactly the same purpose as the previous Bill, but the technical problems that were brought to our attention by the two committees and by the noble Baroness, Lady Noakes, have now, I hope, been ironed out. Certainly the Select Committees have given the Bill in its present form their blessing. I again express my gratitude to the committees and to the noble Baroness for their careful scrutiny of the Bill and for their constructive criticism, which has led to what I hope noble Lords will agree is an improved version of the Bill before the House today, and one which I hope that the House will be able to adopt in its present form.

I do not propose to go over all the background to the Bill or to sing the virtues of its subjects. Suffice it to say that, as far as I am concerned, it is axiomatic that co-operatives, community benefit societies and credit unions are good things. They are good of themselves, but they have been working in a very out-of-date legislative framework. The Bill, taken together with the legislative reform order which the Treasury will be introducing, makes the legal framework fit for the 21st century.

I mention the legislative reform order because the Bill arises from a wide public consultation on co-operatives, community benefit societies and credit unions. Everything that can be done by way of a legislative reform order will be introduced by the Treasury in that form, but essential parts of the outcome of the public consultation depend on primary legislation, and the Bill addresses that. As I said, the Bill forms part of a package to reform legislation affecting industrial and provident societies and credit unions. The Government will introduce their legislative reform order, but today I draw your Lordships' attention to the framework changes set out in the Bill.

Clause 1 deals with a change of name. It provides that societies wishing to register under the Industrial and Provident Societies Act 1965 shall be registered as co-operative societies or community benefit societies. Clause 2 changes the name of the Industrial and Provident Societies Act 1965, and other Industrial and Provident Societies Acts, removing a term, "industrial and provident societies", which I believe is somewhat outdated—much more a 19th and early 20th century term—from the statute book.

Clause 3 applies the Company Directors Disqualification Act 1986 to officers of industrial and provident societies as it applies to officers of companies, building societies and friendly societies. The Company Directors Disqualification Act 1986 provides for the disqualification of officers of companies and various bodies when such officers have seriously mismanaged them. Disqualification means being prohibited from being involved in the management of a company or acting as an insolvency practitioner for a period of time. Under the current law, officers of industrial and provident societies who have mismanaged their societies cannot be disqualified. Clause 3 makes their disqualification possible.

Clause 4 gives the Treasury power to apply to industrial and provident societies, with appropriate modifications, company law on the investigation of companies, company names and dissolution and restoration to the register. I shall give two or three examples. It gives the Treasury power to apply company law on striking off and dissolving defunct societies by the registrar of industrial and provident societies, which will become the Financial Services Authority, with appropriate modifications, which will include allowing the assets to be transferred to a society with similar objects. It also gives the Treasury power to apply company law on the investigation of companies and the requisition of documents to industrial and provident societies by giving the Financial Services Authority powers equivalent to those of the Secretary of State for Business, Enterprise and Regulatory Reform. Finally, it gives the Treasury power to apply company law provisions about company names, including general requirements on company names, indications of company type or legal form and power to direct a company to change its name if it is similar to other names, if the company provides misleading information in order to register by a particular name or if the name of a company gives a misleading indication of its activities.

Clause 5 enables provisions corresponding to building society law to be made for credit unions. The power will allow any provisions of building society legislation that are deemed appropriate to be mirrored for credit unions. Building society law has been tailored to deal with this use and is specific to institutions that accept deposits. It is therefore a suitable model to allow credit union law to keep pace with credit unions' expanding membership and operations. Clauses 6, 7 and 8 deal with technical issues, such as the making of consequential amendments and regulations under the Bill, commencement and territorial extent.

[LORD TOMLINSON]

I shall briefly address the major amendments to the original draft of the Bill. I again express my gratitude to all those who by their diligence in scrutiny led to the reconsideration. The Bill contains the same substantive changes to legislation that were set out in its predecessor, but the concerns that were raised about it form the basis of the amendments. The Delegated Powers Committee supports the amendments to the Bill and the Constitution Committee, in its first report for the Session 2009-10, which was published yesterday, also supported the changes. In essence, the concerns were in connection with powers granted to the Treasury to import measures from the Companies Act in relation to industrial and provident societies under Clause 4 and to apply building society law to credit unions under Clause 5. Specific concerns were expressed in respect of the powers granted to the Treasury to create criminal offences and of the fact that there was no express duty in the Bill to consult before making regulations under Clause 4. In addressing these concerns, I draw your Lordships' attention to Clauses 4(7)b and 5(1), which ensure that the Government can create offences only in circumstances corresponding to the offence in the legislation being applied and subject to a maximum penalty no greater than is provided in the corresponding offence. Additionally, I refer your Lordships to Clause 4(8), which makes explicit the requirement to consult before assimilating company law measures into industrial and provident society legislation. Such a requirement to consult in relation to building society law and credit unions existed in the previous draft of the Bill and is contained in Clause 5(6).

The co-operative sector and credit unions fully support the changes in the Bill and the legislative reform order that has been laid in another place. I hope that your Lordships will agree that the Bill provides much-needed amendment to legislation that has grown sadly out of date and that they will support its passage as quickly as possible.

I am not going to repeat what I said in the previous Session about how strongly I support the co-operative sector, the community benefits sector and the role of credit unions, particularly in the present economic circumstances. That should be taken for granted. Today, I am dealing with the technical differences between this Bill and the previous Bill. I beg to move.

10.16 am

Lord Kirkwood of Kirkhope: My Lords, it is a great pleasure to follow the noble Lord, Lord Tomlinson. I fully support everything he said. The House owes him a debt of gratitude for picking up this Bill and having the presence of mind to persuade the usual channels to give it a fair wind and an early start. It will need them if it is to reach the statute book in good order and due time. I hope it will, and I pledge myself to do everything I can to assist that progress.

I have two preliminary points. First, it is reassuring that the processes in this House have so acutely picked up any potential defects in the legislation. We should take some comfort from the fact that this place works so well. The committees that work behind the important considerations given to these issues in the Chamber do valuable work and we owe them a debt of gratitude.

Secondly—perhaps the Minister can help me understand this; I freely confess that I have stolen the point from my noble friend Lord Newby's speech on a previous Second Reading—I do not understand why this important tranche of financial legislation is left merely to Private Members' consideration. I do not mean to say that Private Members' consideration is not important, but if we think that this element of the nation's financial provision is as serious as some of us think it is, is it any longer safe to leave it to them? Members have difficulty in ensuring that they get all the provisions right. Perhaps it is just convention and practice. If so, perhaps I may simply make a plea that the Treasury should think about taking the matter in-house, looking after it and doing it as government business in future. I hope that this business will prosper and develop; and if it becomes much bigger, the legislative framework should be undertaken by the Government.

I declare an interest. I am a non-remunerated, non-executive director of the Wise Group, a social enterprise that provides intermediate labour markets in Glasgow. Part of that experience has reminded me of the issues that the noble Lord, Lord Tomlinson, referred to at the end of his excellent speech. These organisations are qualitatively different for a series of reasons. My Co-operative divvy number was 22919; I bet that the Minister cannot remember his. There are two types of person in this debate today: those who remember their divvy numbers and those who do not. Maybe he does not have one, or maybe memory loss affects us all as we advance. I used to use it as my computer password because it was the only number that I could ever remember. These are important matters.

As well as congratulating the noble Lord, Lord Tomlinson, I must say in passing that the excellent Mr Malcolm Wicks, who is a serious player, did the issue splendid service in the House of Commons. I enjoyed and learnt a lot from reading his speeches. He has had a deep interest in this matter for a long while.

There is a renaissance available to us. This is a technical Bill. The noble Lord, Lord Tomlinson, has explained exactly what it seeks to do. It is right that it should and important that it does, but it is not sufficient to leave it there. We need to understand, again as the noble Lord, Lord Tomlinson, said, that there is a timing issue here. It is apposite for this House to pass the Bill, but in passing it we must recognise what contribution we can make in the circumstances in which we will find ourselves in the future.

Mutuality is based on 19th century philosophy, which I will not go back to. It underpins local loyalties and enhances the idea of collectively owned assets. These organisations are basically run democratically. They meet mutual needs and have no requirement to make a return on capital. All these things make them special and apposite for the financial circumstances that we face as a country at the moment. In addition—I have learnt this from my experience in the Wise Group—they generally operate at lower cost because they can galvanise volunteer activity very positively, which helps, they serve specialist markets, but more than anything else they promote local loyalty.

My interest in this House is low-income families and low-income communities, and more than anything I think that promoting an attachment to people's local circumstances is missing from the work that is being done to increase the amounts of money available to low-income households. Actually, you need to do more than that, which is what the mutuality of co-operative credit unions and other organisations of that kind does. There is an urgent and important need to promote and develop these organisations right now as we go into the three-year public sector spend period, which will be very difficult, during the next Comprehensive Spending Review.

I agree with the noble Lord, Lord Tomlinson, that one of the most important things that this Bill will promote is a new image, a refreshing of the brand, an intelligent encouragement of the thought that this is useful and compatible with the internet age, because it can be if it is promoted properly. It is also a very good fit with a lot of other government policy goals. The consultation was referred to earlier. I acknowledge that the Government have done a lot of work in this area, and I do not think that anyone can deny that, but it needs further promotion and development. An example of an important government policy fit is the important work that the FSA is doing on financial capability and the pilot projects on face-to-face financial advice.

Another thing that credit unions do is to enhance greatly people's understanding of what financial arrangements they need to make for themselves in future. It is self-help in the very best sense and it is needed now more than ever. Credit unions are very important. They have developed very positively, but they need further attention and support. Importantly, as the recent Joseph Rowntree Foundation report said, credit unions are not just for poor communities. They are for communities across the board, and if they become organisations that are exclusively for the poor they will become poor organisations as a result. We need to bear that in mind. All sorts of communities throughout the length and breadth of the United Kingdom should consider promoting the interests of credit unions more generally.

The Government are in the very important position of being able to offer contracts to some of these new community-benefit organisations and mutuals. As an organisation and a service provider, the Government can offer service deals to a lot of these companies. I know this from the Wise Group, because we are applying for some of the Flexible New Deal contracts. These are very big contracts. These are not penny numbers, or street-by-street organisations competing for tiny amounts of money. It is now possible, with support and proper governance and advice, for social enterprise companies to compete with the biggest and the best in the private sector to offer their services for public-service delivery in the future, and the Government should promote that more actively.

Indeed, I would go further. Given that we are introducing programmes and pilot schemes such as those for the Flexible New Deal, we should encourage people who have been unemployed for long periods to consider setting up mutual organisations and becoming involved in that sort of activity, as well as considering important advice and suggestions about moving towards self-employment. There is a lot that the Government could do, and I hope that the government Front Benchers will think about that very carefully.

Finally, with all the work that is being done on the legislative reform order and the process that I know is ongoing, I hope that the momentum is being kept up. We have obviously lost a little time with the Bill, for the reasons that the noble Lord, Lord Tomlinson, has perfectly well explained, but I hope that the Minister can give us some assurance that, in addition to this Bill, there is activity downstream on the LRO, so that the other changes that can be made and that will fit behind the primary legislation that we are considering this morning are actively and urgently pursued.

I am very pleased to support this Bill. I hope that the Government understand the need to generate more interest around the whole subject, in addition to the valuable work that they have done in the past, and that the government Front Benchers will not only support the Bill but will champion the cause in future.

10.27 am

Lord Elystan-Morgan: My Lords, I am very happy to reiterate the words of the noble Lord, Lord Kirkwood, in congratulating the noble Lord, Lord Tomlinson, on introducing this Bill for the second time in five months, in addition to initiating a debate some two months ago on this very subject. These efforts crown his apparently many decades of distinguished and conscientious service to the principle of mutuality and co-operation. I have no doubt that this Bill will have impact and considerable importance in a wide area, both socially and financially.

I will confine my remarks this morning to credit unions, which in one respect are the most classical form of mutuality possible. They were once described as people's efforts on behalf of people. That is as good a definition of mutuality as one can ever have. I have no doubt that Clause 5 will greatly strengthen the legal and commercial position of credit unions. I appreciate also that the Treasury will make use of delegative framework powers, which are contemplated if they have not already been used, in this connection.

Credit unions have functioned now for well over 100 years. I understand that they started in Germany among agricultural workers, and spread to France, and throughout Europe, and to North America and the wider world. The effect is that in many countries they are massive institutions. The noble Lord, Lord Kirkwood, made the point that they should be something more than poor people's institutions. In the Republic of Ireland 50 per cent of people belong to a credit union; in the USA and Canada the figure is over 30 per cent and in Australia it is over 20 per cent. That is the tragedy, if I may so describe it, of the situation in the United Kingdom. I have calculated that at most about 1.2 per cent of our population belong to credit unions.

Despite that, there are 450 to 500 credit unions in the United Kingdom. They have a membership of not far from 700,000, they have assets of about £500 million and last year their income was in excess of £30 million. That is not insignificant, but it is not in the same league as what has been achieved in so many other parts of the world.

[LORD ELYSTAN-MORGAN]

The point that is obvious to us all is that there never was a situation more propitious for credit unions to flourish than exists at present. Infinitely more importantly, there was never a greater need for them. We were reminded in the debate a couple of months ago by the noble Baroness, Lady Noakes, that in Britain the average household debt is some £70,000 per family, of which about £9,000 is unsecured. She also reminded the House that one-third of the adults of this country have no savings whatever, and that among single parents the figure is in the order of two-thirds. These are chilling figures but they form the background to the real relevance of credit unions in this situation.

In this situation where the financial crisis is something that is very near to millions of families, all that is needed is one small factor to operate and people find themselves desperately in need of money—not huge sums very often, perhaps even as small as a few hundred pounds, but they face a critical situation unless that money can be found swiftly. Where can they turn to? Apart from credit unions, in theory they can turn to the high street banks, but those banks do not want to know them. These are small, finicky transactions, and the banks do not regard them as a seam of prosperity. Then there are the sub-prime lenders. Some such lenders are fairly decent but many charge monumental rates of interest, have punitive conditions in respect of default and act unconscionably when it comes to restructuring loans.

Lastly, there are the loan sharks. Their rates of interest are even higher. Someone once asked what the difference was between the worst of the sub-prime lenders and the loan sharks. The real difference is that the sub-prime lenders go to court and manage, usually by a default order, to have a judgment in their favour. The loan sharks use the heavy mob, Alsatian dogs, iron bars and all the other impedimenta of unlawfulness. Some of the cases that have appeared before the courts in the past few months have been utterly shocking. Thousands of people must be held in thrall by these thuggish and inhuman tactics.

That leaves credit unions. What can one do to strengthen the position? I have no doubt that Clause 5 will achieve that, and I have no doubt that the framework powers that I have referred to will bolster it as well. Over the past three years the Government have allocated about £100 million to credit unions, and apparently that has assisted above 160,000 people. I argue that with a stronger legal and commercial base, which this legislation will bring about, the Government should look to much more substantial assistance than that. Few people will have suffered the economic circumstances of the past few years as badly as these people now who are in need of that very assistance with regard to credit unions. Of course one can argue that these are difficult times and that the Government must look to every penny, but in view of the massive assistance that has been given to the banks—I do not cavil at that, because all the other alternatives would have been far worse—then it is only right and proper that a much more substantial subvention should be considered.

Local authorities have their parts to play, and often do so, in providing rent-free premises and giving advice and assistance to credit unions, as has the Assembly of Wales, which has shown a great pioneering spirit in this connection. It may be, though, that in practice the most relevant thing that could be considered at the moment is a partnership, though not a marriage, between the Post Office and credit unions. Credit unions have an important product—cheap and available credit for those who need it—but they have no distribution system. They are small, localised micro-units. The Post Office does not have a product but it has a distribution system. Put the two together and you have the possibility of considerable success. I wish the Bill godspeed in the limited road space that it has between now and the end of this Parliament.

10.36 pm

The Lord Bishop of Salisbury: My Lords, these Benches are also keen to support the general thrust of the Bill, Anything that can draw people together in what in our day-to-day prayers we call the building up of our common life with the trust and support of one for another is to be welcomed. It is the foundation of common life in this country that we have a mutuality of concern for one another, and unless that has some secure basis in the way that we legislate to live our life together, we will see increasing fragmentation.

In the diocese of Salisbury some seven credit unions have been set up in the past 10 years, all of which are working well, while one of my priests in Poole has been chairman of the national organisation of credit unions and is himself working to set up a credit union for the sake of the clergy, to assist them in facing those peaks of expenditure when their income is rather inclined to remain on a plateau. I welcome these initiatives and the detail of the legislative framework that lies behind them.

I want to speak about the importance of these credit unions and their social benefits. The positive benefits that credit union membership brings to communities are huge—especially to those on low incomes, of course, but also to everyone else who participates in them. I participate in a credit union, partly because I think it is important for people not just to use these institutions when it might be convenient to them. We all know that their origins are in the social management and help of one for another in the working years of the industrial revolution in the 19th century, but we all need to support these kinds of ventures because otherwise people will imagine that we are interested only in those banking organisations that exist primarily to make money for those who have shares in them. The reason why in many cases people do not get much out of a high street bank, as the noble Lord just now referred to, is just that: a high street bank will calculate what profit is in it for itself, rather than who needs cash now not to fall into serious debt or become the victims of a loan shark or worse.

The noble Lord referred, too, to the heavy mobs going in. I have seen the results of that in estates on the edge of Poole. Noble Lords may think that I have a leafy diocese but one-quarter of its population lives in Poole, a substantial area with its own estate cultures and one or two rather dangerous no-go areas. It has been just as he says in recent months and years, primarily as a result of the unavailability of credit of any kind when something happens that to you or me

might be of very little significance, like a washing machine exploding. But, in that kind of context, the replacement for people on very low incomes and living in very small housing units, something in which they can wash their children's clothes is of considerable importance and they have very little option. In normal ways, the banks would not lend them those kinds of sums because they would be considered to be a risk. I watch families fall into debt and for the first time, certainly since I have been in Salisbury, we have churches running substantial breakfast groups for children who are sent to school without anything to eat in the morning.

The reality is that there is a big gulf between those who have access to credit and those who do not. We need to support this timely Bill. With the mainstream banking sector in some disrepute, customers need a reliable and honest home for their money. Co-ops, mutuals and credit unions are already a significant part of the economy, with total assets of more than £400 billion and a combined membership, according to my information, of more than 30 million people. But that is not enough. We need to make this the mainstream of the way in which people bank and support each other. Because it works so well at the very local level this is really important. Often, those who have shares in the major high street banks seem to be at such a remove from those who need money immediately.

Seeing how the people next door are affected binds communities together. We talk a lot about the social glue that we need and here is a prime example of a way in which we can move to make it happen. I echo the call of my noble friend the most reverend Primate the Archbishop of Canterbury who last year called for the encouragement of locally based, entirely trustworthy, user-friendly, educationally sensitive and confidence-building methods of managing debt, such as those represented by the credit unions. I very much hope that this Bill will bring increased flexibility to the way in which these organisations can operate and will enable credit unions to work with corporate members, small family businesses, religious groups active in community work, local co-operative networks and so on, and will give the option to members of paying interest on continuing savings retained in the credit union, rather than receiving a dividend. That would be a very important sign to those who think that banking is primarily about what you can get out of it for yourself.

With this Bill being supported in all parts of the House—we will do our best to make sure that it gets through its stages on to the statute book, easily, completely and swiftly—we have a way in which to show people that our primary interest is to build local support and to get it right. I not only congratulate the noble Lord on bringing this Bill before the House again, but am pleased to note that the Government wish to support it. I look forward to what the Minister will say about how soon we can hope to see it on the statute book.

10.43 am

Lord Graham of Edmonton: My Lords, it is a pleasure to have the opportunity to take part in this debate. I begin, as have all other speakers, in congratulating my noble friend Lord Tomlinson on bringing his baby here today after the fully understandable hiccup which took place. As the noble Lord, Lord Kirkwood, said, it proved that the procedures and safeguards in existence are for a proper purpose and that, provided there is good will, a way around a problem will be found. The noble Baroness, Lady Noakes, played a major part in causing the matter to be stopped and reconsidered, which I appreciate.

I cannot better the explanation of the Bill than that given by my noble friend Lord Tomlinson. It may be technical, but underlying its purposes are social objectives which we all enjoy. I enjoyed the reference made by the noble Lord, Lord Kirkwood, to his mother's Co-op number. My mother's Co-op number was 65539. In 1987, I was in the boardroom of Tesco when I was given the great honour of being the president of the Co-operative Congress, which is the biggest single honour that can be given. At that time, the headquarters of Tesco was in Cheshunt, near my patch of Enfield and Edmonton. The noble Lord, Lord MacLaurin, is a great friend of mine. He invited me to his boardroom, in a sense, to pay tribute to my contributions. He said, "Well, I think it's not widely known but I owe a great deal to the Co-op and I can quote my Mum's Co-op share number", which he proceeded to do. He said, "Not many here can say that", whereupon half the assembly of directors and chief officers recited their numbers.

I have another story about numbers. In 1948, I was paying out the dividend in the Newcastle Co-op when a book was pushed through the grille to receive the dividend. I looked up and there was Jackie Milburn. He was a hero. He said, "What can I get on this book?". I looked at it and said, "I cannot pay you a penny". He asked why not. I said, "Because it is in your wife's name. Here is a form. Get her to sign it. Come back and I will pay you". He came back the next day and asked, "How much can I get?". I said, "There is seven pounds and 17 shillings in the book. I can pay you seven pounds and 14 shillings because you must leave three shillings". He said, "Seven pounds and 14 shillings—that is a week's wages", which it was. A week's wages for a footballer was eight pounds in the season and six pounds out of season. He said, "Thank you very much, bonny lad. If I can help you, I will". As he walked away, I said, "Jackie, you and I know that one of these days Newcastle will get to the cup final". He said, "Yes". I said, "I would like to be able to write to you". He said, "You do that bonny lad, I will get you a ticket".

In 1951, Newcastle United got to the final. I wrote a letter: "Dear Mr Milburn, you will remember that I paid out your wife's dividend and I would like a ticket". I enclosed a postal order for three shillings, which was the price of a ticket to stand at Wembley. Three days later, I received an envelope with the Newcastle United logo on it. Inside was my ticket, my postal order and a compliments slip, which was simply signed, "From your Jackie". I give that illustration to demonstrate the roots of the co-operative idea in credit unions, consumer co-ops and many others. The Co-op is going through something of a renaissance and is doing very well. That is borne out of not only the efficiency of the movement but also the conditions in which we are. It is a great credit.

[Lord Graham of Edmonton]

This Bill will be known as the Tomlinson Bill. Malcolm Wicks is entitled to feel slightly aggrieved at the turn of events, but his Bill, which was produced by my noble friend Lord Tomlinson, was the product of consultation with the co-operative movement in all its forms. I pay tribute to the officers of the co-operative moment who were consulted and the officers of the Treasury who worked on this for a long time.

In 1997, I became the chairman of the United Kingdom Co-operative Council. I took over from Lord Carter who had produced an all-embracing co-operative Bill, to become an Act. Over the years, because of time, it turned out not to be quite the appropriate vehicle. In the past few years, every now and again, a co-operative initiative is taken. My noble friend Lord Tomlinson referred to the Industrial and Provident Societies Act. I studied 1852, 1893 and 1960s co-operative law and administration. Periodically, there is a need for the legislation to be reviewed, so I warmly endorse what my noble friend has done.

I will sit down soon in deference to the debate in the name of my noble friend Lord Morris, a matter on which a lot needs to be said and done. My noble friend, as we know, is not only a hero and champion of the disabled, he is indefatigable in pursuing his issues. His Bill is a matter of life of death.

For many in this country, the Bill before us is not a matter of life and death, but when I started out people would say, "Well, in the Co-op, we never made a millionaire and never made a pauper". I do not think it has ever made a pauper, but in latter days it has made a few millionaires. I warmly congratulate the noble Lord, Lord Tomlinson, on the Bill and I wish it well.

10.50 am

Lord Newby: My Lords, it is always a pleasure to follow the noble Lord, Lord Graham of Edmonton, when he speaks with such passion on this subject. If this sector is to flourish, it needs additional support beyond that provided by the Bill. I was therefore particularly pleased to see the noble Lord, Lord Triesman, enter the Chamber while his noble friend was speaking. He has since been taking assiduous notes from which I take it that it is only a matter of time before the FA will indeed be offering tickets at three shillings each to co-operative, credit union and benefit societies that perform well as his great emporium in Wembley.

It is a great achievement for the noble Lord, Lord Tomlinson, to get his Bill back into the House so quickly after it was derailed at the last turn in the previous Session, so we are all pleased that he has done that. The problems that arose with this Bill previously demonstrated a more general issue that Parliament often has with legislation: the problem of what you put on the face of the Bill and what you leave to regulation. Now, as the Constitution Committee has made clear, the balance is right. Clearly it would be ludicrous to put into the Bill the 811 references to friendly societies in the existing legislation, but equally it is sensible to set out the other provisions that are now in place.

I do not intend to repeat the points I made in our earlier discussions on the Bill about the values of mutuality. Indeed, the speeches we have heard, particularly those of the right reverend Prelate the Bishop of Salisbury and my noble friend Lord Kirkwood about both the need for and the positive activities that are already taking in this sector have made the arguments very well. But as my noble friend Lord Kirkwood said, the Bill is not sufficient if we want to see this sector to grow as we would like. For it to do that, it may be necessary for a raft of other things to take place. We have to accept that in the current climate, much as we would like it, the sector will not grow as the result of additional government expenditure. Frankly, that is pie in the sky. I think it is fair to remember that the great expansion of the co-operative movement and the initial growth of the credit unions did not take place because the Government wanted it, but because people did. Unless people want these institutions and can see their relevance, they will not grow in any event.

However, that does not mean that the state in its various guises cannot help in various ways. The comments made by the noble Lord, Lord Elystan-Morgan, about the Post Office are relevant here. To many of us, the Post Office seems almost to have been scratching around looking for additional roles and not being very successful at finding them, not least because of the permanent crisis at the top of Royal Mail as a result of the industrial relations problems over many years. However, the Post Office is an infrastructure looking for a role and credit unions are a role looking for an infrastructure, so there is a potential marriage here. Bringing it about would require a considerable act of will by the Post Office rather than the credit unions because they are small and can do little unless the Post Office moves towards them. I hope very much that we will see such moves. I cannot say that I am completely optimistic given everything else that is happening in the Post Office, but I hope that we will see some movement.

Another area that has been touched on is that of the procurement rules and the need for local authorities and other public sector bodies procuring services to ensure that, as far as possible, those rules are compatible with the capacity of ordinary mortals to fill in the forms and bid successfully for business. At the moment, it is exceptionally difficult to secure public sector contracts unless you are a real expert in filling in the forms. Obviously a rigorous process is necessary, but I do not think that the state in all its guises has been good at providing a user-friendly process. Ministers talk a lot about small businesses bidding successfully for government contracts, but frankly, most small businesses would run a mile when they see the forms. Having grappled with them myself in the course of running my business, and as someone who is not bad at tackling forms, I know that I have fallen foul of them on a number of occasions. Sometimes I have just stopped because I felt that I did not have the will to complete them. I hope that further work is done by local government and others to see how to make the procedure more user-friendly.

The final challenge is one of ambition. Many co-operatives, community benefit societies, social enterprises and credit unions necessarily start small and then continue to think small. When you talk to them it is clear that they are very proud of what they do, and often they are delivering public services more

cheaply and effectively than the bigger state bodies. However, they suffer from the same problem as many NGOs in the past: they are good at doing something small, but do not know how to do it big. The challenge is how to encourage greater ambition and management capacity in the sector. When we discussed credit unions a couple of months ago, again at the behest of the noble Lord, Lord Tomlinson, I suggested that there should be an industry-wide programme from the banking world and the financial sector more generally under which bankers would spend pro bono time working with credit unions in the same way as lawyers do a lot of pro bono work, particularly in education but in other sectors as well. The noble Lord, Lord Myners, kindly took up my suggestion and wrote to Angela Knight at the British Bankers' Association suggesting that it might look at this. This happened only recently and I know that the BBA has had one or two other things to consider, but I wonder whether the Minister could let me know whether his noble friend had a reply to that letter.

More generally, just as my noble friend Lord Kirkwood is on the board of the Wise Group, many Members of your Lordships' House already serve on the boards of community benefit societies or enterprises and play a valuable part in them, not least in explaining how the system works to people who, while extremely well-meaning, highly motivated and hard-working, feel outfaced when they encounter what they see as huge entities with which they need to contract if they are to be successful. Perhaps we should have a Peers' mentoring or trustee initiative to get Members of your Lordships' House, who between them have a great deal of relevant experience including on boards in the commercial sector, to do more in this area. We need a range of additional measures to supplement the very good provisions contained in the Bill.

10.58 am

Baroness Noakes: My Lords, here we are again with the Co-operative and Community Benefit Societies and Credit Unions Bill. Let me remind the House that while this Bill has the appearance of a Private Member's Bill, it is to all intents and purposes a government Bill. I understand that the Treasury drafted the first version which did not complete its passage during the previous Session, and to my knowledge it has certainly drafted the revised version before us today. That said, I join others in paying tribute to the noble Lord, Lord Tomlinson, for persevering with the Bill. Last summer, as we have heard, he introduced the first version after it managed to navigate the obstacles put in the way of Private Members' Bills in another place. As the noble Lord, Lord Tomlinson, has said, that Bill was found wanting by both the Delegated Powers and Regulatory Reform Committee and the Constitution Committee of your Lordships' House.

One of the most important tasks of your Lordships' House is to prevent badly drafted legislation becoming law. However good the intentions behind a Bill—and, in its first version, the Bill was manifestly well intentioned and remains so—it is our duty not to pass into law substandard drafting. I am pleased that noble Lords around the House have supported the crucial role of your Lordships' House in that today.

I tabled amendments to the previous Bill in order that the House could consider the points raised by the committees. Having done that, the Bill could only have completed its passage before prorogation in November if the Government had been prepared to co-operate in making the changes; in particular, that required them to modify their approach to the handling of Private Members' Bills in another place. The Government chose not to pursue that course, even though it was a Private Member's Bill in name only. We were disappointed with that.

However, the noble Lord, Lord Tomlinson, did not take this lack of support lying down. He has pursued the approach, which we on these Benches suggested to him, of tabling a perfected version of the Bill early in this Session as his own Private Member's Bill. He has, of course, as I have noted, been assisted by the Treasury in doing so, but we should be clear that it is the noble Lord, Lord Tomlinson, who has pushed it forward.

I thank both the Delegated Powers and Regulatory Reform Committee and the Constitution Committee for considering this latest version of the Bill so promptly in this Session. Both committees raised points in relation to the order-making powers in Clauses 4 and 5 of the first Bill, and both committees, as the noble Lord, Lord Tomlinson, has said, are satisfied that their points have been addressed in the revised Bill.

The Constitution Committee also raised important points in connection with Clause 6, which was, and is, drafted in a wide and unspecific way. It felt that the Treasury should have identified the consequential provisions that it needed to alter in advance of drafting legislation. The Treasury said that this was the way that it usually did things. Reading between the lines of the Constitution Committee's report, it has accepted, quite sensibly, that having 811 existing statutory references to cope with was an acceptable reason for not pursuing a more detailed drafting approach in this Bill. However, as a matter of principle, it does not accept the Treasury's usual way of doing things, which is to draft a skeleton Bill and then flesh it out in largely unscrutinised secondary legislation. The Treasury is not the only department which likes to draft its Bills in a skeleton way and I hope that the whole of Whitehall has noted our Constitution Committee's warning that it will remain vigilant over this kind of drafting.

The Bill is relatively modest in its scope as it brings co-operative and community benefit societies and credit unions within the architecture which exists to regulate ordinary companies. For example, the powers in relation to the disqualification of directors may not amount to much in practice because relatively few are likely to be disqualified, as we have found with the use of the powers in relation to companies. However, we hope that they will be a strong reminder to those who take governance positions that they must follow the highest standards in relation to the organisations that they lead. These are extremely good things.

Like other noble Lords, I am not going to repeat the speech that I made on Second Reading of the first version of the Bill other than to reiterate that my party supports diversity of provision of financial services and, hence, supports credit unions and other financial mutuals for their contribution to that. As the right

[Baroness Noakes]
reverend Prelate the Bishop of Salisbury and the noble Lord, Lord Elystan-Morgan, reminded us, they play a crucial role in reaching parts of society which conventional financial services organisations either cannot reach or do not want to reach.

I shall not pursue that further but I should like to pick up on one or two points that arose in our debates on Second Reading of the first version of the Bill and which are worth pursuing again today. At the first Second Reading I asked the Minister when the Government planned to introduce the secondary legislation that the Bill provides for. I did not get an answer in the debate in July but the noble Lord, Lord Myners, wrote to me subsequently to say that Clauses 1 to 3 would be dealt with as soon as practical—that time-worn phrase—but that Clauses 4 and 5 would be subject to further consultation with the sector in order to see what the sector would like the powers used for.

I have a couple of questions for the Minister about this. First, can he give the House an idea of the timing for the Bill overall, on the assumption that it can proceed through your Lordships' House without substantial Committee or Report stages? When could it receive Royal Assent? Put simply, does it have a chance of becoming law if we have an election in, say, late March or early May? Would either of those timings allow the Government to introduce the relevant orders before likely dissolution? That is, does "as soon as practicable" mean that it will be in this Parliament? In relation to the more substantive powers of Clauses 4 and 5, can the Minister say a little more about the consultation? Will it take place in advance of the Bill receiving Royal Assent or must it be a sequential process?

I was intrigued by the reference of the noble Lord, Lord Myners, to consulting on what the sector wanted to do with these powers. The use of Clauses 4 and 5 should be a matter of public policy and the Treasury should have a clear idea of what it wants to achieve with those powers. Indeed, the Treasury should be consulting on what it believes should be achieved with the powers and not on what the sector wants to achieve. For example, implementing the powers for investigations, as allowed for by Clause 4(2)(a), should be a matter of policy whether or not the sector wants those powers. Can the Minister enlighten the House on that?

In another area, we know that the most important changes to credit unions will come not from this Bill but from the legislative reform order which has been consulted on. The noble Lord, Lord Myners, told the House in July that this reform order would be published in draft by the end of last July and would be laid before Parliament when the House returned from Recess in October. As I understand it, none of this happened in the previous Session of Parliament but a draft order was laid before the House in late November. I also understand that this will be dealt with by the super-affirmative procedure. What timetable are the Government working to in respect of this order? Furthermore, can he say whether the Government think it is appropriate to complete the processes in relation to the legislative reform order in advance of the Bill of the noble Lord, Lord Tomlinson, receiving Royal Assent; that is to say, are they connected together or are they entirely separate processes?

The Bill is, in part, about the governance of credit unions and other financial mutuals and I have one last question for the Minister relating to governance. In our Second Reading debate in July, the noble Lord, Lord Myners, told the House that the Treasury had asked Sir David Walker to extend to mutuals his review of corporate governance of financial institutions. This seemed to be a most interesting development and so I looked carefully through Sir David's helpful report, which was issued late last month. As far as I can see, he has not addressed himself to financial mutuals. I searched the rather lengthy document with a search tool and could find no reference to building societies, none to credit unions and only a few references to the word "mutual". The only organisation with the word "mutual" that comes up in the search is "Old Mutual plc" which, as I am sure noble Lords know, is not the kind of mutual that we have been talking about today.

I know that it is a slightly unfair question to the noble Lord, Lord Faulkner—who is the Minister today—because he is not the noble Lord, Lord Myners, but he will be able to help the House with whether Sir David Walker will produce anything about governance in financial mutuals. If that is not the case, what will the Government do to ensure that high standards of governance in financial mutuals, corresponding to those developed for banks and other financial institutions, exist?

I know that the noble Lord, Lord Tomlinson, is now interested only whether I shall table amendments to the Bill, so I shall conclude by offering my Christmas gift to him and say that I have no intention of tabling any amendments to the Bill.

11.11 am

Lord Faulkner of Worcester: My Lords, I think that the final words of the noble Baroness's interesting and supportive speech will be a Christmas present for everybody in the House. It will come as no surprise to her and the rest of the House that the Government fully support this Private Member's Bill, so ably introduced by my noble friend Lord Tomlinson. We have noted that support for it has come many from parts of Great Britain represented in the Chamber today: from Scotland, from Wales, from the Church and, in a very spirited way, from the north-east of England. We learnt about the role of the co-operative movement in ensuring that my noble friend Lord Graham got to the 1951 cup final.

Lord Graham of Edmonton: And we won.

Lord Faulkner of Worcester: My Lords, the Government recognise the need to develop the legislation affecting co-operatives generally. This Bill makes a valuable contribution in improving governance and administrative arrangements, which are lacking in the current legislation.

A number of noble Lords, particularly the noble Lord, Lord Kirkwood of Kirkhope, and the noble Baroness, Lady Noakes, referred to the legislative reform order. I can answer their questions straightaway. The LRO process and the Bill process are quite separate, and one is not dependent on the other. With the LRO,

there is a 60-day super-affirmative resolution procedure. My understanding is that the next committee scrutiny is on 13 January, followed by another on 19 January.

The noble Baroness asked whether the Bill has a chance of becoming law before an election either in late March or in May. It is hoped that it will receive Royal Assent in March, which will mean that there is a possibility that commencement on Clauses 1 to 3 will be undertaken before the election, but, as she pointed out, Clauses 4 and 5 will provide specifically for consultation with the sector, so their implementation will be after the election.

The noble Lord, Lord Kirkwood, made the fair point that this should perhaps be a government Bill rather than a Private Member's Bill. I agree with him about that, but given the pressure on the Government's timetable, it seemed to make much better sense to proceed with a Private Member's Bill today and as rapidly as possible so that we could progress this legislative reform of industrial and provident societies immediately. There is obviously nothing to stop a future Parliament coming back to the subject.

As many noble Lords have said, a Bill similar to this one was introduced in the previous Session—it was passed unamended in the other place. I am delighted that so many speakers in today's debate have drawn attention to this House's role in exercising scrutiny on it. The Delegated Powers and Regulatory Reform Committee, the Constitution Committee and particularly the noble Baroness, Lady Noakes, all made proposals which have strengthened and improved the Bill considerably. That the two committees and the noble Baroness have exercised the opportunity to scrutinise in this way and propose changes and improvements is very much to the credit of this House. I endorse the comments of other speakers to that effect.

The Bill was criticised in a number of ways, particularly in terms of consultation on measures that would have been introduced via secondary legislation. It was criticised also because it created the risk that new criminal offences and higher penalties might be introduced when assimilating either company law into the industrial and provident society legislation, or building society law in relation to credit unions. The Bill in front of us today takes account of those concerns.

The Delegated Powers and Regulatory Reform Committee commented on the new Bill in its report published on 3 December. The committee expressed the view that issues to which it had drawn attention previously concerning offences and penalties are addressed satisfactorily in the new Bill. Likewise, in a report issued only yesterday, the Constitution Committee confirmed that it was satisfied with the safeguards added to the Bill in its present form. It welcomed the new provisions at Clauses 4(7)(b) and 5(1), which address the specific concerns raised in respect of those clauses. It also accepted the explanation provided by the Financial Services Secretary to the Treasury concerning the operation of a power conferred on the Treasury to make consequential amendments to legislation under Clause 6. Having originally expressed concern that provisions requiring amendment should be identified before the introduction of the Bill, the committee accepted that the number of consequential amendments required, particularly as a consequence of the renaming of industrial and provident societies as co-operative societies or community benefit societies, are such that this would be impractical and that the power in Clause 6 is in line with current practice. The committee is content for that clause to remain as originally drafted.

The noble Lord, Lord Newby, raised a question about the letter of my noble friend Lord Myners to the BBA. I am afraid that I am unable to give him an answer on that; I certainly have not seen a reply. If one has not been received, we shall chase it up, and if one has been received, we shall make sure that it is available to the House.

Across the United Kingdom, mutuals have a membership comprising more than 30 million individuals and provide a viable alternative to the proprietary company model. I certainly endorse all the good things that have been said about mutuals and credit unions in the debate today. The co-operative-and-community-benefit-society form of mutual, being self-help and community-focused—so well described by the right reverend Prelate the Bishop of Salisbury—are owned and run by their members for their members. Mutuals, in the form of credit unions, instil and encourage a savings culture among their members. They play an important role in supporting and promoting many government initiatives such as ISAs and child trust funds. I very much endorse the views of the noble Lord, Lord Kirkwood, about their value. I should at this stage declare a personal interest as an account holder at the Co-operative Bank who can remember his account number, but, I am afraid, not his dividend number.

The noble Lord, Lord Newby, referred to how the Post Office could play a bigger role. We would very much like to look at that. The Co-operative Bank already has a close working relationship with the Post Office, and post office branches accept credit payments made in Co-operative Bank envelopes. I am sure that that co-operation can be built on.

Mutuality is appealing to many people, but the market share that mutuals have earned has been restricted because the law governing their operation has not kept up with company and charity reforms of recent years. The Government recognise this and wish to modernise and update the legislative and regulatory framework to meet the current and future requirements of the mutuals sector. The LCO is a further example of how we are taking this forward.

The Bill seeks to update the legislation for co-operatives, community benefit societies and credit unions. The proposed changes are welcomed by the sector and come as a result of the Treasury consulting on these issues and listening to what the sector says that it would like. The sector is highly regarded by the Government, and we want to see mutuality thrive and grow. We want to see mutuals continue to offer greater choice and diversity in the financial sector and continue to make a valued and significant contribution to the nation's economy.

I hope the House will agree that the changes that have been made to this Bill, compared to the one that we considered in the previous Session, are both necessary and proportionate and that they will help to further

[Lord Faulkner of Worcester]
enhance confidence in the sector and engender good corporate governance. I feel that they make what was already a good Bill a great deal better.

I am conscious that I have not answered the very last of the noble Baroness's questions and have a feeling that it may not be possible for me to do so this morning. However, I hope that she will allow me to write to her in the course of the next few days and give her the answer that she deserves. More than anybody else, she has helped to improve this Bill and the very least that she can expect is a sensible answer from me and the Government.

There has been cross party support for the proposed measures. I hope that this will continue for the passage of this Bill. I and delighted to know that the noble Baroness will not be tabling any amendments in Committee. I repeat the Government's gratitude to my noble friend Lord Tomlinson and commend this Bill to the House.

11.21 am

Lord Tomlinson: My Lords, I briefly thank everybody who has participated. When the noble Lord, Lord Kirkwood, spoke at the beginning, he made the sort of speech that I should have liked to make—the ideological case for co-operatives, mutuals and community benefit societies—but I had a fairly self-denying ordinance today, believing that my greater duty to the House was to make sure that I got the Bill through Second Reading with the support that, subsequently, we have seen. I am particularly grateful for the words of the noble Baroness, Lady Noakes, to whom I have already paid tribute, although I must stop making this look like a love-in. I was very grateful to hear from her that it is not her intention to table amendments so we can look forward to the Bill receiving a smooth reading.

I have one thing to say. There has been a lot of emphasis on credit unions from the right reverend Prelate, the noble Lord, Lord Elystan-Morgan, and my noble friend Lord Graham. There has been a lot of emphasis on the small-scale nature of co-operatives and credit unions. Let me just disabuse that slightly towards the end. Not all the business covered by the Bill is small scale. This morning I listened to Peter Marks, the chief executive of the Co-operative Group, on the radio. He was talking about the merger of the bank with the Britannia Building Society to form one of the biggest financial institutions in the country. He referred to the fact that the Co-operative Group is one of the United Kingdom's largest farmers and the country's fifth-largest supermarket. Although in the credit union sector a lot of the work is small scale, it is our ambition to see it grow and become greater. I am interested in the ideas put forward by noble Lords about the role that the Post Office could have in that development. But let us not think of co-operatives as being only small scale; they are very large-scale players in the economy, and the legislation is necessary for the stability of the large part of the sector as well as the potential for growth from the smaller parts.

I thank everybody who has participated. It is my pleasant duty to commend the Bill.

Bill read a second time and committed to a Committee of the Whole House.

Contaminated Blood (Support for Infected and Bereaved Persons) Bill [HL]

Second Reading

11.24 am

Moved By ***Lord Morris of Manchester***

That this Bill be read a second time.

Lord Morris of Manchester: My Lords, I beg to move that the Bill be now read a second time.

We are met to debate a measure conceived and drafted to give solace and support to arguably the most needful minority in Britain today. A small and stricken community of barely 5,000 people—already disabled by a rare, life-long blood disorder requiring continuous medical treatment—haemophilia patients have twice been infected en masse by contaminated blood and blood products used in their NHS treatment. Ninety-five per cent were infected with hepatitis C and one in four with HIV.

Of the 1,243 haemophilia patients infected with HIV only 361—29 per cent—are still alive; and the much higher number of deaths among the hepatitis C-infected patients is still increasing. As of now, an estimated 1,974 haemophilia patients have died from being infected by contaminated NHS blood and blood products in this worst-ever treatment disaster in the history of the NHS. If anyone disputes that assessment, they should look at the finding of distinguished statisticians that the disaster involved the haemophilia community in a loss of life more savage in proportion to the numbers of people at risk than the Black Death. While stigma is less explicit today than the warning cross scrawled on a plague-victim's door, it is no less cruelly oppressive in terms of social exclusion at a time of direst need.

Yet even the grievous and still ascending death toll does not tell the whole story of the suffering inflicted on the haemophilia community. As my dear and inspirational friend the noble Baroness, Lady Campbell of Surbiton, whose husband was among the haemophilia patients fatally infected, so movingly said in this House on 23 April, the history of the disaster is one of unspeakable suffering also for,

""mothers, fathers, sisters, brothers, wives, husbands and friends ... seeing their loved ones die".—[*Official Report*, 23/4/09; col. 1614.]

For parliamentarians, there can be no higher duty than to ensure just treatment and due care for people afflicted and bereaved by life-threatening medication supplied by the state; but as participants in this debate know, infected haemophilia patients, many of them now terminally ill, also suffer privation at a depth most other people can barely imagine. They speak day by day to me of no longer being able to work full-time, if at all; of having been made uninsurable by the prohibitively expensive premiums demanded of them by insurers; and, among numerous other burdens, of costs generally being too high for them to cope with.

I am most deeply grateful to all noble Lords who will be speaking in the debate, including my good and noble friend Lady Thornton, who will be replying for the Department of Health. Her awareness of the depth of anguish and despair in the haemophilia community is well understood across the House.

I want at the outset today also most warmly to congratulate my noble and learned friend Lord Archer of Sandwell on the highly prestigious Outstanding Achievement Award he received at this year's parliamentary awards ceremony three days ago. The award was backed by a very wide range of charities, as well as by Members of all parties and of none both here and in another place, for parliamentary service of the highest distinction, and nowhere is that distinction more clearly exemplified than by the landmark importance of the independent public inquiry he headed into the contaminated blood disaster.

I have two interests to declare in the debate, not pecuniary, as president of the Haemophilia Society and as the architect of the inquiry conducted so skilfully and with such excelling integrity by my noble and learned friend. As he knows, I am grateful beyond words both to him and his colleagues on the inquiry team: Dr Norman Jones, emeritus consultant physician at St Thomas's Hospital and Judith Willetts, chief executive of the British Society for Immunology. No inquiry team could possibly have shown more commitment or have been more eminently qualified for the arduous task they so readily and so ably undertook, entirely without remuneration.

I will comment on the Bill clause by clause as we proceed but, taken together, they transform the Archer report into the language of legislation; and my purpose in working during the Summer Recess to prepare this Bill, with unstinting help from Sarah Jones of the Public Bill Office, and on medical issues from Dr Norman Jones, was to guarantee parliamentary time for this House now to debate the Government's response to the report of the inquiry.

Together with noble Lords who took part with me on 28 April in a debate to amend the Health Bill then before the House, I thought that we had an assurance very close to that guarantee from my noble friend Lord Darzi. Speaking for the Government and having just announced that their response to the Archer report would be published at an early date, he went on,

"Furthermore, we will of course assist as far as possible in securing a debate on the Government's response".—[*Official Report*, 28/4/09; col. 143.]

Yet in the three months that then elapsed before the Summer Recess there was no sign anywhere on the parliamentary horizon of a debate being arranged. So there was nothing precipitate in my decision to spend much of the Recess addressing the tasks involved in having this Bill ready for a First Reading in your Lordships' House by 19 November. Indeed, it was then already nine months after publication of a report whose recommendations were vitally urgent to afflicted patients and bereaved families on the day they were published last February.

The privation I have described among those affected is addressed in Clause 4 of the Bill, which deals specifically also with the crudely discriminatory treatment now of widows of infected patients in deciding whether they are eligible for financial help solely on the basis of when their husbands died, even where they died within two days of each other from exactly the same cause. The ending of that discrimination was one of the issues of longstanding concern to the haemophilia community strongly and repetitively emphasised in evidence to the Archer inquiry. I mention it first today, in referring to Clause 4 of this Bill, because several of the widows excluded from help who wanted very much to be here for this debate have contacted me to say that they simply could not afford the fares; and at a time when just five NHS officials are seen to have been paid a total of almost £6 million over the past year.

Clause 4 addresses the whole range of compensation issues and has been welcomed as fair and balanced by commentators on social policy of wide experience, as was the Archer report itself all across the media. Everyone knows that there will be costs in giving full effect to the report, but there will also be priceless benefits in enabling haemophilia patients to live fuller and more fulfilling lives. Clause 1 of the Bill creates a widely empowered statutory committee, with patient and family representation, to advise government on the management of haemophilia; and Clauses 2 and 3 deal with blood donations and improving medical care, while Clauses 5 and 6 are about monitoring progress and the effects of regulations made under the legislation.

Turning to issues not dealt with in the Government's response to the Archer report, but worthy of close attention in this debate, there is the spectre now of a third deadly scourge facing haemophilia patients. In response to Parliamentary Questions about the growing number of haemophilia patients known by the Department of Health to have been treated with blood from donors who have since died of variant CJD, I was told on the authority of the Chief Medical Officer that the risk of infection in such circumstances was purely "hypothetical". That demonstrably is not the case today, a post-mortem on a hepatitis C-infected patient having found variant CJD in his spleen; and Ministerial Statements made to Parliament on this further scourge urgently need updating. We also need to know how the Government now assess the variant CJD threat to the haemophilia community.

As the House knows, the Archer report is about more than the unmet needs of infected patients and bereaved families. It addresses also highly disturbing administrative shortcomings, serious omissions and a failure to inform Parliament of the facts on why provision made in other countries is so much better than here in Britain. For example, there is no mention in the Government's response to the Archer report's findings on the behaviour of the Blood Products Laboratory in failing to comply with requirements of the Medicines Act 1968. This is a hugely important issue as is that of the effect of using Crown immunity to avoid any question of legal redress.

The Archer report states:

"In July 1979, the Medicines Inspectorate visited BPL, following which they reported that the buildings were never designed for the scale of production envisaged and commented that, if this were a commercial operation, they would have had no hesitation in recommending that manufacture should cease until the facility was upgraded to a minimum acceptable level".

Starkly, the Archer report then states:

"BPL was rescued by Crown immunity",

adding that:

"BPL's existing plant continued production, relying on Crown immunity to dispense with all the requirements of the Medicines Act, but was able to meet only 40 per cent of the national requirements".

[Lord Morris of Manchester]

That can only mean that by the use of Crown immunity, a relic of feudal England, the lives of countless haemophilia patients were put blatantly and gravely at risk.

The seriousness of this had already been underlined by my noble friend Lord Darzi himself. When responding to exchanges about thalidomide on 16 March he referred to,

"the tremendous amount of work that has gone into the marketing, testing and regulation of drugs, as encapsulated in the Medicines Act 1968, from which society has benefited greatly".—[*Official Report*, 10/3/09; col. 1059.]

Could there be any clearer text than that for condemning the BPL's use of Crown immunity to dispense with all the requirements of that renowned and so vitally important statute?

From whom was the BPL rescued by its use of Crown immunity? First, of course, it was rescued from those afflicted and bereaved by the disaster. At a stroke they were denied any right to legal redress, a denial made all the more cruelly unjust by the refusals of successive Governments to hold a public inquiry. They were left with no hope of any independent assessment of where responsibility lay for their plight until the Archer inquiry was announced. Of course, the BPL itself was rescued from any danger of censure by the courts.

Crown immunity was abolished by John Major in 1991, and the afflicted and bereaved ask why, since the present Government clearly have no intention of reinstating Crown immunity, they cannot now review the claims of those from whom the BPL was rescued by that immunity.

The noble Lord, Lord Thomas of Gresford, who is much respected here and outside the House for his role in this policy area, said in a speech on 23 April that it would be possible for actions to be brought now if, dating back as necessary, the Government chose to waive Crown immunity. Thus the question today is whether the Government, opposed as they must surely be to restoring Crown immunity, have considered this possibility or will now do so?

At the very least, Ministers could review the claims, where it is still feasible to do so, of the victims of contaminated NHS blood from whom the BPL was rescued by Crown immunity. If anyone thinks there is no way now of our being able to do any more to help the afflicted and bereaved, they should look at how the Irish Government found ways of compensating victims there by more than anything even contemplated by Ministers for NHS-infected patients.

Let me first, however, make it absolutely clear that the Government of the Republic did not, as stated in this House by my noble friend Lord Warner, briefed by and speaking for the Department of Health on 25 March 2004,

"set up their hepatitis C compensation scheme following evidence of negligence by the Irish blood transfusion service".—[*Official Report*, 25/3/04; col. 796].

That is untrue.

Again, it was wrong for the Department of Health to have briefed my honourable friend Gillian Merron MP to tell the House of Commons that,

"a judicial inquiry in Ireland found failures of responsibility by the Irish blood transfusion service",

had,

"concluded that wrongful acts had been committed",

and that the Government of the Republic,

"decided to make significant payments to those infected". —[*Official Report*, Commons, 1/7/09; col. 130WH.]

Brian O'Mahony, chief executive of the Irish Haemophilia Society, who was personally involved in the negotiations with the Department of Health and Children in Ireland in 1994 and 1995 which led to the establishment of a Hepatitis C Compensation Tribunal on a statutory basis on 16 December 1995, has written to me to say that my honourable friend's statement to the House of Commons was "misleading and erroneous".

He goes on to say that the Compensation Tribunal heard its first cases in early 1996 and that the first award for persons with haemophilia was made in March 1996. He concludes:

"Therefore the establishment of the Hepatitis C Compensation Tribunal, and significant payments by the Tribunal, pre-dated the setting up of both the Finlay Tribunal established in October 1996 and the Lindsay Tribunal of Inquiry set up in September 1999".

I also have a letter also from Kay Maher of the Republic's Department of Health and Children confirming Brian O'Mahony's statement, which concludes:

"I hope this will serve to clarify the sequence of events in Ireland for Ms Merron and I trust that her department will now correct the record".

I look forward to hearing the department's response to that extremely important request.

To conclude, I want briefly to mention two further issues: first, the treatment by the Department of Health of the Archer inquiry's call for help in securing the financial future of the Haemophilia Society, faced as it is by ever-increasing requests for assistance while, at the same time, trying to cope with the punitive 70 per cent cut made recently in its government grant. That the inquiry's call has not already been met appals noble Lords in all parts of the House. I am especially grateful to the noble Baroness, Lady O'Cathain, for her active support on this issue.

Finally, I want to make it clear in today's debate that sadly, as well as anguish and despair, there is evidence now also of anger in the haemophilia community about the treatment of the Archer inquiry and its report. It was five weeks ago that a then terminally ill, now deceased, haemophilia patient who gave evidence to the inquiry said to me: "While we crossed the whole of Britain to meet the Archer inquiry, Health Ministers refused even to cross the road to do so".

In the interests of creating hope in place of anger, let me assure the haemophilia community as a whole that it has in this House both a ready understanding of its despair and an unbreakable resolve that if this struggle has to go on, then go on it will until right is done. I beg to move.

11.46 am

Lord Archer of Sandwell: My Lords, not for the first time, I congratulate my noble friend Lord Morris, not only on securing a place for his Bill and the clarity with which he introduced it—so making possible this debate—but on his unflagging concern and support over many years for the victims of misfortune. They can have no better champion. With the campaigning skills of the strategist and the unrelenting determination of the bulldog, my noble friend well deserves his

reputation. This is not the first tribute that he has received this morning; he received one from my noble friend Lord Graham in the previous debate. Today he has demonstrated all those qualities again. I am grateful for his kind words, but there was no mutual admiration society prearranged between us.

It is sad, as my noble friend said, that he should need to employ those qualities today. His Bill is intended to implement the recommendations of our report, which was published, as he said, nine months ago. The Government have already published their response on 20 May. If my noble friend's Bill proceeds to Committee, I hope we will be able to discuss in detail some elements of that response. We are grateful that there was a response, but it is disappointing that it came with no previous discussion on a "take it or leave it" basis. I am aware that there have subsequently been meetings between Ministers and the Macfarlane Trust, and between Ministers and a cross-party group of concerned colleagues. We had hoped that it might at least have been possible to establish a more sustained dialogue. Perhaps my noble friend on the Front Bench—who we are delighted to see with us again and to whom I pay tribute for her readiness to discuss these issues—might take back that suggestion.

Second Reading is not an ideal vehicle for discussing details, but here it is the detail which conceals either the devil or the archangel. Our first proposal was for a statutory committee to bring together clinicians, researchers, scientific assessors, social workers, officials from the Department of Health and—most importantly—patients, so that all the expertise and experience could come together and there could be an ongoing dialogue. The response is that something of that nature already exists. The Haemophilia Alliance certainly brings together doctors, the Haemophilia Society and others involved in haemophilia care. The response announces proudly that:

"We will invite the Alliance to meet with Government twice yearly".

Twice yearly. We had hoped that there might be a committee provided with a standing secretariat, which would conduct an ongoing dialogue and which could react to new discoveries and new problems on an ongoing basis, whereby those concerned would come to know one another as colleagues. There are models enough for such an arrangement in many other countries.

It brings me no joy to say this, but we did not form the impression that patients feel represented and that they have the ear of government. They feel that their concerns pass unnoticed and that their voices are not listened to. Even the Haemophilia Society does not appear to us to perceive the Department of Health as a committed partner. Indeed, as my noble friend said, the evidence from the society at the time of the inquiry was that it was so unsure of its financial future that it could not guarantee its continued existence. Happily, the Government in their response to our report commit themselves to a subvention of £100,000 per annum for the next five years, together with certain other funding from the department. But will there then be a further period when the society feels that the Government have ceased to listen?

I do not believe that the Government are stonily unsympathetic or that that they are stronger on words than intentions. They have many things on their minds. Tragedies come and go, and good intentions are swallowed up by the next claim on their attention. Perhaps I may be permitted a quotation. The European Association for Haemophilia and Associated Disorders—abbreviated, thankfully, to EAHAD—in a recent paper had this to say:

"Clinicians and patient representatives should be part of national and/or regional haemophilia care decision making in partnership"—

I emphasise "in partnership"—

"with ministries of health and social affairs, as well as those organizations that deliver haemophilia care".

Those words now have the endorsement of the World Federation of Hemophilia and the European Haemophilia Consortium.

Of course, it would be absurd to suggest that nothing is being done. There is a network of provision for those who suffer from haemophilia and those infected with hepatitis or HIV. But the problem with a network is that some people fall through the holes, particularly where they have grown, piece by piece, over the years. They are often brought to the attention of those who can address them, if at all, only by the kind of systematic ongoing dialogue which we try to suggest.

One instance is well known, and has been referred to by my noble friend. It has never been addressed. The Skipton Fund was established in 2003. It may make payments, inter alia, to the dependants of people who have died from infection with hepatitis C, but the scheme was not made retrospective. Therefore, the dependants of those who died before 29 August 2003 are not eligible. They have slipped through the net. Then there is provided a window for dependants of those who died before that date and 5 July 2004. But dependants of those who died after the latter date are eligible only if the victim had applied to the fund before dying. Those distinctions are artificial. They do not reflect the merits or the need. For those excluded, the cause of death is the same, the tragic loss is the same and the financial needs are the same. But they are not eligible for payments.

The Government, in their response, have noted the problems of the Macfarlane Trust and the Eileen Trust. Although there is room for further discussion as to the amount of the provision proposed, the Government say:

"The Skipton Fund will continue to make payments to people infected with hepatitis C and we commit to reviewing it in 2014 when the Fund will have been in existence for ten years".

I repeat: 2014 is five years from now, and we proposed a new system of payments, creating a direct link between the Government and the beneficiaries. That has not been addressed in the response. Five years of their lives are important to the victims. Many are in deteriorating health. The Government's response does not reverberate with a sense of urgency. It may be that in these lean times the department has to fight for candle ends. I fully recognise that. In the context of the national budget, of course, these are candle ends. However, the Government's proposals and our recommendations are not worlds apart. Yet to those whose hopes depend on them, they appear a chasm.

[Lord Archer of Sandwell]

I hope that even if our report remains largely unread on departmental shelves we have at least laid to rest one misconception. It is surely common ground that infection with hepatitis or HIV, in addition to all the other consequences for quality of life, can have a devastating effect on the financial resources of a family. That is one issue which my noble friend's Bill seeks to address.

We are discussing people, some of whom were previously capable of substantial earnings. Some of them, before infection, enjoyed comfortable living standards. Some are now unable to work. Some find their earning capacity greatly reduced. Some have no pension, other than the statutory one. Their living expenses are greater than normal, because they have increased heating bills, special diets and they need domestic help. They are living out their lives in constant struggles that are not of their making. Of course, successive Governments have made some provision for them, although it represents not a generous and spontaneous gesture, but compromises on legal claims, and falls far short of the provision made for victims in other countries—particularly in Ireland, as my noble friend pointed out.

So often the debate has focused on the question of whether the Government should provide adequate financial relief, because it was the fault of previous Governments that the victims were infected. Successive Governments have, understandably, denied that they have a responsibility because the disaster was not their fault. As my noble friend pointed out, on 25 March 2004 my noble friend Lord Warner, whose misfortune it was to have been provided with the departmental brief, sought to explain the distinction between the relatively generous financial provision in Ireland and the less fulsome provision in the United Kingdom. In Ireland, he said,

"A judicial inquiry, the Finlay report, found that 'wrongful acts were committed'. It is important to stress that the blood services in the UK have not been found to be similarly at fault".—[*Official Report*, 25/3/04; col. 796.]

I direct no criticism at my noble friend Lord Warner, who had to recite the departmental mantra, but that argument is less than persuasive for two reasons. First, to argue that the distinction lay in the fact that blood services in the United Kingdom had not been found by a statutory inquiry to be at fault overlooks the fact that there has not been a statutory inquiry in the United Kingdom because successive Governments have refused to provide one. It is like arguing that dinosaurs were harmless creatures because there have been no recent reports of attacks by them.

Secondly, and more importantly, that argument addresses the wrong question. What matters is not whether any Government were at fault or whether time limits apply but the needs of those who have to live with the consequences. If my neighbour suffers from misfortunes that have not been caused by me, I can harden my heart and say that they are no business of mine, but a Government are not like a private individual—they cannot pass by on the other side. It is the responsibility of a Government to address the needs of their citizens, and it is not a response to say that they should not concern themselves with those needs unless it was the fault of the Government that they came about.

The party that I joined more than 60 years ago discussed those whose needs formed the subject of the Beveridge report, and the Government of that day introduced the National Health Service. They were not concerned only with those whose misfortunes were caused by the Government. In our report, we deliberately declined to address the question of fault liability. I emphasise that we did not say that Governments had not been at fault; we simply regarded that as irrelevant to our mandate. We attempted to survey the past in the hope that we could learn lessons for the future. However, addressing the consequent suffering is not about the past; for the victims, it is the future, and my noble friend's Bill seeks to make that future more tolerable.

12.01 pm

Lord Jenkin of Roding: My Lords, the House has had the privilege of listening to two very well informed speeches on this subject, and I found them immensely moving. No one who has had anything to do with this matter can be anything but seriously concerned about the impact that the contaminated blood disaster has had on those who have suffered its consequences.

I was the Secretary of State for Health from 1979 to 1981, at the very earliest stages of what was beginning to emerge as a serious problem. One of my predecessors, the noble Lord, Lord Owen, who also gave evidence to the inquiry of the noble and learned Lord, Lord Archer, had already identified from his knowledge as a practising doctor the need for this country to become self-sufficient in blood products. When I followed the late Lord Ennals, we were faced with the same problem; we were not self-sufficient. As I explained to the inquiry, I had on my team the late Dr Gerard Vaughan, himself a distinguished doctor, and I asked him to pay particular attention to this matter, of which he obviously had some knowledge. Sadly, he is no longer with us.

Anyone who has had responsibility in this field must feel not only some sense of responsibility but also some sense of shame that this matter has dragged on for so long. I add my tributes to the noble Lord, Lord Morris of Manchester, and the noble and learned Lord, Lord Archer of Sandwell, for the enormous amount of effort that they have made—the noble Lord, Lord Morris, for a long time and the noble and learned Lord, Lord Archer, with his outstanding inquiry—to try to get to the bottom of the problem and identify a possible solution.

Another group of people also need to be thanked: the private donors who helped to fund the inquiry. As has been spelt out—I do not need to repeat the figures—the expenses were very modest but they involved some tens of thousands of pounds. That sum was found from voluntary contributions because, as has been pointed out, successive Governments have refused to institute a public inquiry financed from the public purse. Despite the handicaps in conducting the inquiry faced by the noble and learned Lord, Lord Archer, and his colleagues, who must also be thanked, they received a tremendous amount of evidence from a

great variety of sources, and with great skill they succeeded in distilling it into what is by any standards a formidable report.

My evidence to the inquiry surrounded the fact that I had been invited by one of the haemophiliac sufferers to exercise my right as a former Cabinet Minister to go back and look through the files which would or might have passed across my desk during my period in office. However, as the whole of Chapter 8 of the report discloses, neither the noble Lord, Lord Owen, nor I could find any files in existence. They had all been destroyed. As the noble Lord, Lord Warner, whose name has been mentioned several times already in the debate, admitted in correspondence to me, this was apparently inadvertent. I find that extraordinary. It is very difficult to understand how such a major issue could somehow have been expunged from the records by someone at a low level of responsibility and with no senior accountability and certainly no ministerial accountability.

In those circumstances, it is not in the least surprising that there are those who have harboured suspicions. I have harboured them myself following discussions with senior officials—it is all in the evidence—including the noble Lord, Lord Crisp, who was two or three years ago the Permanent Secretary to the Department of Health. Somewhere along the line, the department had recognised this matter as being most serious. The report notes that it was,

"memorably described by Lord Winston as the worst treatment disaster in the history of the NHS".

I can well understand that the Department of Health has always been very anxious to put this matter behind it. It has, as the noble and learned Lord, Lord Archer, has just said, a huge raft of concerns, some new and some continuing, and it may not wish to dwell too much on this one. However, it remains a problem for the very reason that the noble Lord and the noble and learned Lord have already set out: there are still sufferers out there who have never felt that they have been either properly represented or properly compensated for what they experienced.

It is a pity that the noble Lord, Lord Morris of Manchester, has had to resort to a Private Member's Bill in order to have a full debate on this subject. He deserves tremendous credit for the work that he carried out during the recess in time to turn the report into legislative form, because that is indeed what he has done. It gives us the opportunity to raise some of the issues surrounding this problem, as has already been done by the two previous speakers, but, above all, it gives the Minister an opportunity to reply. Having been in the same position myself, although not on this subject, I express some sympathy with the position in which she finds herself. Nevertheless, I believe that the Department of Health owes a better explanation of, and a greater commitment to dealing with, this problem. We have not had that so far. As the noble and learned Lord, Lord Archer, said, the response published in May was in many respects inadequate, and we are still waiting.

I do not know whether anybody else has been approached, but an inquiry has now been set up in Scotland by the Scottish Minister for Health, chaired by a distinguished judge, Lord Penrose. I know about this because I was asked if I was prepared to give evidence. I said that I would but that I had no more evidence than I had already given to the Archer committee. They also offered to pay my expenses, but I subsequently had a letter saying that that was intended primarily for Scottish Ministers and others, not for Members of the United Kingdom Parliament. However, I have heard nothing more about the Penrose inquiry. It is an official inquiry, instituted by the Scottish Government. No doubt it will make progress in due course. Given the resources behind that inquiry, it will be interesting to see whether it is able to extract more evidence from official sources than did the noble and learned Lord, Lord Archer. We shall have to wait to see whether that is the case. However, in the mean time, I believe that the Department of Health—this is not at all a party matter—owes a considerable obligation to the haemophilia community, and to others who have suffered as a result of this matter, to give a much better explanation of its view of the present situation and how it intends to deal with the sufferers.

When I met the noble Lord, Lord Crisp, then Sir Nigel Crisp, he explained to me that, following a long process of negotiation, the HIV sufferers had been compensated, and that it was as a result of that being put behind them that the files had been destroyed. I said, "But surely they must have known that there were Hepatitis C patients and variant Creutzfeldt-Jakob disease sufferers out there? How could that conceivably have justified the destruction of all the files?". To that I have never had an answer. The noble and learned Lord, Lord Archer, looked at the matter extremely carefully and said there was no evidence of any malicious intent in that because he had no evidence about it at all. However, it makes the problem a great deal more difficult and one can understand that it lies at the heart of much of the pain and anguish suffered by the haemophilia community. Therefore, I am sure that I am not alone in looking forward to hearing the Minister's response. I congratulate the noble Lord, Lord Morris of Manchester, on giving us the opportunity to discuss this issue once again.

12.13 pm

Lord Low of Dalston: My Lords, I add my voice in support of the Bill. However, I shall try to be brief. For a start, it is Friday morning, but, more importantly, others are much better versed in the subject matter, and are better able to deploy the case in detail, than I am. We have heard from three speakers already and more are to come.

No one who has read the report of the independent public inquiry headed by the noble and learned Lord, Lord Archer of Sandwell, or who listened to the debate on that report in your Lordships' House last April, can fail to be shocked by the lack of any sense of urgency, and the catalogue of denial and prevarication that it revealed. Equally, no one who has known and worked with the noble Lord, Lord Morris of Manchester, for as long as I have can fail to be impressed by his tenacity and indefatigable persistence in campaigning for justice for those who suffer misfortune through no fault of their own, or who, as in this case, are the victims of state action or the actions of organs of the state, and I pay tribute to him.

[Lord Low of Dalston]

Over a 45-year career in Parliament—one thinks of thalidomide, vaccine damage and the fight for statutory recognition of dyslexia and autism—even after his distinguished tenure of the office of Minister for the Disabled, the first in the world, when many would have been tempted to rest on their laurels, the noble Lord went on to champion the victims of Gulf War syndrome, to fight for a separate War Pensions and Armed Forces Compensation Chamber for the Tribunals Service and now, over many years, to campaign for justice for those who have suffered, in many cases resulting in death, through the administration of blood and contaminated blood products by the NHS. As we have seen, he is a campaigner to be reckoned with. When the Government refused to set up an inquiry not once but twice, he simply went ahead and set up one of his own. In that connection, I add my tribute to the work of the noble and learned Lord, Lord Archer, and his inquiry team.

However, as the noble Lord, Lord Morris, said in the debate on 23 April,

"no campaigning should ever have been necessary to right the wrongs suffered by the haemophilia community".—[*Official Report*, 23/4/09; col. 1611.]

The recourse of successive Governments to the device of Crown immunity, requiring sufferers to sign waivers in respect of Hepatitis C in circumstances where they did not know that they might have it but the department knew they were at risk; the resistance to disclosure of documents to the multiparty group; the refusal to hold an inquiry, and then disingenuously relying on the fact that there have been no findings of fault against the British Government; the reliance on discretionary trust funds rather than a system of benefits as of right to provide a measure of compensation; the failure to recognise the claims of widows; and the suggestion that unless a Government are in some way responsible for a misfortune befalling a group of their citizens, they are under no obligation to relieve it, all these things and more can only bring shame on the reputation of this country and its handling of this tragedy, which has been so much less open and generous than that displayed by numerous other countries.

It is not my purpose to trawl back through the history of these matters. Nothing can be done about it now, and in any case the Second Reading of this Bill is not the place to do that. I make reference to it merely to underline the context in which it seems to me that the only honourable course that the Government have today, and the only way in which they can go some way to righting the wrongs that have been done to the haemophilia community, is to give their support to the Bill and to bring the recommendations of the Archer inquiry into effect. This is, after all, a fairly modest proposal; in six clauses it provides for testing, treatment and proper compensation. I should be interested to hear how the Minister could make the case that anything less is due.

I support the proposals for direct financial relief for those who have been infected and for their carers; that there should be a statutory committee to advise the Government on the management of haemophilia in this country with patient and family representation; that there should be free access to National Health Service benefits; and that there should be government assistance with access to insurance. We now have the Government's response to the Archer inquiry, which I fear falls some way short of what the noble and learned Lord, Lord Archer, and his committee asked for. However, I hope that the Bill will prompt Ministers to look again at their proposals. I will leave others to speak about the detail, numbers, money and technicalities; it was the ethics and the attitude which particularly struck me. In responding to the inquiry's recommendation of free access to home nursing and support services, the Government said that the provision of non-residential social care services, such as domiciliary care in England, is a matter for local authorities. This is indisputable as a matter of fact, but does it match up to what the victims of this tragedy deserve, and to the Government's responsibility? These people were harmed by the NHS; it is the Government's responsibility to put that right. Of course the Government could, if they chose, make the necessary arrangements to meet the recommendation. After decades of obfuscation, the people who are awaiting that response deserve something better. The Government are not unable, and they should act.

What chance does the Bill have of reaching the statute book? It would not be the first time that the noble Lord, Lord Morris of Manchester, has made history with a Bill in the wash-up. I hope that the Government will salvage something of the tattered reputation of successive British Governments in this matter, and snatch some measure of victory from the jaws of defeat by helping the noble Lord to do so again.

12.20 pm

Lord Rooker: My Lords, I intend to be incredibly brief in supporting my noble friend Lord Morris. I spoke on 23 April; I do not wish to repeat what I said then, everything still stands. I just wanted to be here today to give him support, so that the Department of Health knows that there are enough people prepared to get up on a Friday morning to come to support the issue, because it is not going to go away. I think that the Bill is a good idea. A Bill is always a good idea as a campaigning measure, particularly when it is one that one may possibly get through. It is a good vehicle.

I agree with all that has been said, and I reiterate a point made by the noble Lord, Lord Jenkin of Roding, which is to commend the unsung supporters of the measure who funded the inquiry. Obviously, I pay great tribute to my noble and learned friend Lord Archer; 35 years ago, I was his PPS. The funding, modest although it was, was necessary and important. The fact that we have the Bill proves—I shall be very careful about this—that, first, the Department of Health does not put patients first and that, secondly, we do not have the best health service in the world. If we had, we would not have the Bill; we would have dealt with the issue, as others have. Every time I hear that claim I am irritated by it, simply because of this case of what, to the centre, looks like a bunch of little people. As we heard from my noble friend on the radio this morning, the numbers are getting less. It will solve itself, this problem. That is the unspoken view in Whitehall at present. It is a complete lapse in the good standards of conduct of public administration in this country that we have got to this state. I hope that the

Scottish inquiry will uncover more detailed evidence and paperwork that has been kept back than we have in England. Frankly, many of us do not believe what we have been told, but we cannot prove the contrary.

Lord Archer of Sandwell: I am grateful to my noble friend for giving way. I just make it clear that 5,000 documents were discovered by the department and given to us too late for us to include them in our report, so we may have some optimism about the Scottish inquiry.

Lord Rooker: Absolutely. My noble and learned friend reminds me of that incident and the complaints made about it at the time. That may be possible, but, nevertheless, the Government argued for all those years that the information was not there and then, all of a sudden, it becomes available. In other words, they had not applied good administration rules, knowing that an inquiry was being set up which had a good degree of parliamentary support, even though it was unofficial. They refused to give evidence. Then to search for documents and produce them when it was too late to take evidence on them begs the question.

I wish my noble friend well with the Bill. He introduces it at a good time in the parliamentary process. It would have a fair wind if people in the other place got up off their knees and looked at particular issues on behalf of individual citizens—not many thousands of them, there are only a few, but that is what counts, little things mean a lot. If you get the little things right, the chances are that people believe you on the bigger things. There is a good opportunity if the Bill can leave this House and go to the other place before an election is called. As the noble Lord, Lord Low, just said, one does not know: the possibility in the wash-up is enormous. If people want to salvage reputations, that is good.

My noble friend who will reply to this debate has been very good on this issue but, nevertheless, she is going to have a miserable time—not today, but whoever is on that Bench, whether they be the Whip or the Minister, will have a miserable time both before and after the election unless this matter is seen to be dealt with seriously. The impression is being given that the matter will go away, that they are not bothered. Having a Bill in front of us gives us something to get our teeth into and to push for. Whatever the result of the election—it would be nice to get the Bill through beforehand and, as I said, I do not rule that out—if there is any real backbone in the management of the government machine, if whoever is the Prime Minister really wants to deal with this issue, I give them a solution. You send back to the Department of Health an ex-Minister. You find somebody—there are enough of them around on both sides of the House. You send someone back—the civil servants' worst nightmare, a Minister who returns—with the avowed instruction from the Prime Minister to get this sorted.

That can apply whatever the result of the election, because there is a serious issue here. The worry will be: will other similar issues be dealt with in the same way? The fact is that this is now a festering sore. Now that a Bill has appeared, it will keep festering. I use language somewhat more extreme than my noble friend, but he made it quite clear that this is not the NHS at its best, and he will go on, and on, and on. As long as he does that, I will be with him.

12.26 pm

Baroness O'Cathain: My Lords, I have been moved to take part in the debate on the Bill because of the sheer quiet tenacity of the noble Lord, Lord Morris of Manchester. A chance meeting in the Corridor some time ago led to a discussion about his great cause of the moment. As everyone who knows him or has had the pleasure of speaking to him knows, the noble Lord is a wonderful supporter and campaigner for those who have no strong voice. Among them are those on the real margins of society with chronic conditions, who never seem to come across our paths, who suffer and have suffered in silence for so long.

As an aside, it would be wonderful if our powerful media would publicise this cause and if the Haemophilia Society, which is so short of financial support at the moment, were nominated as the Christmas charity by one of the national newspapers for next year—it is too late this year. That is something we can do as a group of people who are deeply concerned. That is about the only thing that I can suggest from a practical point of view, having listened to all the moving speeches this morning. I am not going into the Department of Health to look for lost documents—I would not have any locus there and would be kicked out—but there must be something we can do. Of course, supporting the Bill is the first thing, but that is another idea, and I hope that someone will take it up.

After researching the whole issue of those who are affected—fatally affected—by contaminated blood and blood products after my chance encounter with the noble Lord, and after supporting him in previous exchanges in your Lordships' House, I became more and more depressed and appalled. There is no way that I could not support the Bill, and I do so wholeheartedly.

My sense of depression was somewhat alleviated when I realised that another noble Lord for whom I have the utmost admiration, the noble and learned Lord, Lord Archer, is still deeply involved in this issue. I have read his report. I have to admit that I read it reluctantly, because it made me feel deeply uncomfortable. I was astonished that such a situation could exist and that I could have been oblivious to it. It was rather like the experience I had a couple of months ago when we were examining the Coroners and Justice Bill. I undertook to investigate the issue of the prostitutes exploited and trafficked to provide sex. Of course, the victims of today's debate have no chance of recovery from their dreadful situation.

Let us not forget that we are talking about people with a significantly diminished lifespan. My intervention has been motivated by the huge injustice and by the lack of compassion shown to the victims. As has already been stated, the purpose of the Bill is to provide support for people who have been infected with certain diseases as a result of receiving contaminated blood and blood products supplied by the NHS. They were infected by the NHS. Their illnesses are not a result of a chosen lifestyle. They were infected unknowingly and were the tragic victims of mischance, mistake or negligence.

At this stage, I shall deviate from concentrating on blame because it does not help or strengthen the cause of the victims, and neither will it help the surviving

[Baroness O'Cathain]
dependants and loved ones. The Bill is a straightforward case of justice and compassion and just deals with a wrong that must be righted. Of course, I know that there are those who will argue that we should apportion blame, and one sympathises with them, but an in-depth analysis of who or what was to blame has already been carried out, and I trust that the factors have been isolated to such an extent that precautionary systems are now in place to make it as sure as one can ever make sure of anything that the root cause will never happen again. Further analysis is not the purpose of the Bill. I reiterate that this is a matter of justice and compassion. We as a nation can hold our heads up high only if we exercise justice and compassion in everything we do. I just hope that the Government will give the Bill a fair wind.

Before looking at the detail of the Bill, I must make it clear that as an economist—I do not often admit that—I am constantly conscious of the financial impact of any measure we blithely put before the Government in which we demand resources to improve a situation. The Bill does not give any indication of the likely cost of the measures proposed but, to be stark about it, the costs will diminish, and with so few tragic people involved, it is unlikely to be hugely costly. Already some £142 million in ex gratia payments has been given to patients and their dependants since 1988, and £46 million is being provided for the NHS to help fund the purchase of clotting factors in 2009-10. I fear I have already strayed into territory that is both unknown to me and distressing. I will leave it to others, but suffice it to say that there is a need for an impact statement so that we can have some idea of the financial impact of the Bill, if, as I hope, it becomes an Act.

The Bill has the great merit of being clear, written in plain English and completely comprehensible to mere lay people like me. Each section seems logical and comprehensive and provides answers to the questions that crowded into my mind when approaching the subject. In addition, it was good to be able to read a technical Bill quickly and understand every word. I fear I cannot resist the temptation to articulate the wish that each Bill produced in our Parliament was so well drafted.

The people who have been treated with, and infected by, contaminated blood and blood products are central to the Bill, and that is how it should be. I fear my heart sank to see that the objective of Clause 1 is to establish a committee to advise on haemophilia—yet another committee! Please do not let it be another quango. I suggest that a time limit be put on the operation of such a committee. I have just one further gentle suggestion about it: a lay person with a reputation for seeing the world through common-sense glasses could bring an additional, different and, probably, helpful perspective. Sometimes the experts get too close to the subject and need a jolt of the ordinary to clear the way.

I now turn to Clauses 2, 3 and 4. Of course, there should be provision for blood donations, a scheme for NHS compensation cards for those affected and provision for the compensation of people treated with, and infected by, NHS contaminated blood and blood products and their widows, dependants and carers. However, here I have a slight moan: what about widowers? I am sure that this is just a drafting point, but I suggest that an amendment be made to the relevant clause to cover them. I particularly approve of the fact that it is proposed that a review will be held within six months of the passing of the Act.

This is an excellent Bill and it would result in improving the lot of those so brutally affected. They are a hidden group. They do not seem to have celebrities promoting their cause. They have been living in despair and without hope. I nearly wept when I heard the description of the five people who wanted to come to give evidence but could not afford the fare. What sort of a society are we? It is time that we all realised that we have a duty of care towards these people, which is all part of justice and compassion. I hope that the Bill has an easy passage through both Houses and becomes law speedily.

12.36 pm

Baroness Masham of Ilton: My Lords, when I went to the Printed Paper Office and asked for the contaminated blood Bill, a Member of your Lordships' House, who must have come from the other place, said that it does not have time for such matters. My immediate thought was, "Shame on them". The Bill shows the importance of your Lordships' House because it gives time for such humane and important matters and for the scrutiny of legislation. I congratulate the noble Lord, Lord Morris of Manchester, on his continued persistence over this important and heartrending matter. I also congratulate the noble and learned Lord, Lord Archer of Sandwell, on his report, which is of great importance to many people. He will have spent much time and energy over its creation.

I declare an interest as a vice-president of the Haemophilia Society. I know the importance of blood transfusions. My life was saved by them when I sustained an internal haemorrhage at the time I broke my back. In later years, I also had blood transfusions when I became anaemic after travelling abroad. I also know how important it is to have experts who understand blood complications, as my blood group changed from negative to positive.

Patient safety, particularly when working with blood, blood products and transplantation, should be paramount. Health safety has not been given the top priority that it should have been given, and now we have the problems of healthcare-acquired infections and the disasters that your Lordships are discussing today, along with matters that could help the people afflicted and that are stated in this Bill, and I do hope the Bill will come into law.

The contaminated blood disaster has been described as one of the most tragic episodes in the health service's history. When haemophiliacs were infected with infected factor 8 in the early years of HIV, the first husband of my noble friend Lady Campbell of Surbiton, who was a haemophiliac, was infected with HIV and died. They lived in north Yorkshire near where I lived. Seventy-five per cent of the haemophiliacs who were treated at the haemophilia unit in Newcastle-upon-Tyne were infected with HIV from blood products that were imported from the USA. This was because the UK was not self-sufficient in blood products.

I was introduced by a friend to a young man called Jonathan Miller, who was one of the campaigners for help for haemophiliacs with HIV. Jonathan came to lunch with me at my home in Yorkshire, and afterwards told me privately in my study what terrible agony he was in because of his knee joints. He did not want to discuss this with his parents, and I felt privileged that he wanted to share this secret with me. Some time later, I attended his memorial service in London.

Again, in the early days, I heard a distraught father tell how his young son, aged six, and his best friend, both of whom were haemophiliacs and infected with HIV, had been denied a visit to Disneyland because they were HIV positive. They were HIV positive because they had been treated with infected blood products imported from the USA. I felt, and still feel, that the attitude of the USA to these children was unforgivable.

Is it surprising that I support this Bill, which supports infected and bereaved persons? It is not easy having to deal with being a haemophiliac patient, but they have to be dealt with, having been infected by HIV or hepatitis C. Now, 802 patients are known to have had blood from donors who subsequently died of vCJD, which constitutes yet another threat to this community.

A government scientific body has recommended that all red blood cells given in transfusions to children under the age of 13 should be filtered to remove the infection that causes the fatal brain disease of vCJD. Variant Creutzfeldt-Jakob disease is caused by mutated proteins known as prions, which infect the victim's brain, forming sponge-like holes in the tissue and causing a fatal neurodegenerative disorder. Derek Kenny from Portsmouth died of new variant Creutzfeldt-Jakob disease six years ago after being given a contaminated blood transfusion. His widow Judy said: "The idea of a filtration system is excellent. If it was proven to be effective, we ought to use it because that way we can be sure that the blood pool is safe and that everyone receives safe blood". Should filtered blood not be offered to everyone, irrespective of their age? Will the Minister update your Lordships on this today? Is it not time that the Government accepted the recommendations made in the report of the noble and learned Lord, Lord Archer? I hope that the Minister, who I am sure will do her best, will tell us today that a committee to advise on the treatment of haemophilia will be set up without delay.

Haemophilia has lots and lots of complications, as do the conditions hepatitis B, hepatitis C, human T-lymphotropic virus, syphilis and variant Creutzfeldt-Jakob disease mentioned in Clause 2(2). Expert advice needs to be forthcoming for everyone who needs it, and medical and nursing staff need training.

This committee should have been set up years ago so that people could share together for the good of patients and their supporters. A public inquiry into how people were infected with hepatitis C and HIV from contaminated blood has been set up in Scotland. I am a Scot. I read what Lord Penrose said:

> "Many people have died. Many of the patients who survive, and the families of patients who died, deserve our deepest sympathy".

Of course they do, but they want and deserve more than sympathy—they want action. This is a running sore that will not heal until there is a satisfactory solution.

12.45 pm

Baroness Barker: My Lords, I thank the House for the opportunity to speak in the gap today. I shall confine myself to three or four quick points because I have spoken in previous debates about the noble and learned Lord's report. I thank him and the noble Lord, Lord Morris, for their persistence with this matter. Their indefatigable campaigning is necessary for this group of people.

I want to set out the context in which I and my colleagues in the Liberal Democrat health team are approaching this matter. Today, of all days, it is easy to make this point: we are told that over the next four years there will have to be £20 billion-worth of savings in the NHS and £36 billion in savings across all government departments. That is the context in which we have to consider this matter.

The question is, therefore, how we as politicians answer the undeniable moral case that has been made for these people and the injustice and suffering that they have undergone. Unfortunately, I suspect the answer to that is not entirely contained in the noble Lord's Bill. My question to the noble Lord, Lord Morris of Manchester, and, most strongly, to the Minister, is: how do we arrive at a position in which the Government work with the people who have been affected by this to determine a set of priorities about how to address the urgent issues of today for some people, as well as the unfolding issues that we do not know about yet for the next 20 or 30 years?

The noble and learned Lord, Lord Archer, was right that it is not acceptable that the Government meet but twice a year with the Haemophilia Alliance. I suggest, as a way forward, that there should be a working group under the auspices of some part of the Government, though probably not the Department of Health, that is tasked with coming up with a plan to deal with this issue now and for the next 20 years or so.

Such a working group should urgently consider an issue that has not been mentioned much today. It is met in the report's eighth recommendation, that there should be a look-back exercise to try to identify those people who may have been infected but may not yet know that. In their response, the Government said that they were committed to doing so. Will the Minister tell us in detail how and when that will happen, and how comprehensive it will be? That will be an important means of finding out the true scale of what is happening.

The people who have been affected by this terrible tragedy demand and deserve justice, ongoing practical help and change. The last thing that we should do is raise their hopes again in ways that are unrealistic. That would be cruel treatment to people whose trust has already been shattered. The most responsible thing that this House could do would be to ensure that there was a realistic and practical response to the issue that was dealt with urgently. I can think of no better way of doing that, and I hope that I speak for all noble Lords who are taking part in this debate, than to send the noble Lord, Lord Rooker, into the Department of Health to do his best, with our best wishes behind him.

12.48 pm

Lord Thomas of Gresford: My Lords, I, too, pay tribute to the noble Lord, Lord Morris, for his tireless work, and to the noble and learned Lord, Lord Archer, and his colleagues for the report that they have produced.

I welcome the Bill. I am speaking from the Front Bench because I consider this to be a matter of justice. It is a wrong that must be righted, as the noble Baroness, Lady O'Cathain, has pointed out. These are victims who have been damaged by the state, and not entirely inadvertently: from an early stage concerns were expressed about the possibility of contamination in blood products that were being imported from abroad, yet health authorities were permitted to use imported blood products in a way that has been a disaster.

It is shameful that the Government have sheltered behind Crown immunity, which was abolished in 1991. Because they are able to do that, they say that there are no findings of fault. As I said in the debate on 23 April, if the Government were to take that attitude now, a test action should be brought to see whether they would dare to rely on limitation and dare not to waive the Crown immunity, which they could do. It is also shameful that no public inquiry has been brought by the Government. We await the report of the Penrose inquiry, to which the noble Lord, Lord Jenkin of Roding, and the noble Baroness, Lady Masham, have referred. The fact that documents were destroyed inadvertently is completely unacceptable. The Government did not participate in the Archer inquiry. Suddenly, 5,000 documents emerged after his inquiry was completed. That, too, is completely unacceptable.

In the past few days, it has been brought home to me that we should not be concerned about just the terrible illnesses, but also the stigma of those illnesses. The noble Baroness, Lady Masham, referred to children who were refused entry to Disneyland. I was told of a woman who, after many years of being widowed, summoned up enough courage to start a relationship with another person. When he learnt that her husband as died of AIDs as a result of contaminated blood, he immediately dropped her. That is the sort of thing that people have to live with. As a result of these things, people are also uninsurable. I welcome the Bill and the chance to come back to this subject, which we debated on 23 April, before the Government responded.

The noble and learned Lord, Lord Archer, has pointed out the wide nature of the committee that he proposed and the need for a standing secretariat. That was met by the Government saying, "Well, we have the Haemophilia Alliance, with which we meet twice a year". No doubt, the Haemophilia Alliance does good work, but it has no representatives from the Department of Health. No patients or families are part of it. It meets once every six months; so, presumably, its departmental meeting is once every six months. There is no statutory requirement for the Secretary of State to consult it. I would suggest to your Lordships that the Government's response to that part of the report of the noble and learned Lord, Lord Archer, is utterly inadequate.

Clause 3 proposes National Health Service compensation cards and access to free National Health Service treatment. In May, the Government's response was to say that they were awaiting the Gilmore review of prescription charges due in the summer. On 19 June, a question was asked in another place and the Minister said that that review would be published in the autumn. Since then, there has been silence. It is only right that the National Health Service, which was responsible for this disaster, should be under a duty to make free provision for its consequences without any question. As has already been pointed out, that domiciliary care should be shrugged off as the responsibility of local authorities is again a completely inadequate response.

Clause 4 deals with compensation, which is the only significant financial obligation in the Bill, and obviously it involves considerable sums of money. The Government say that ex gratia payments are enough. That took me back to the criminal injuries compensation scheme, of which both I and the noble and learned Lord, Lord Archer, were both once members. The scheme was first put forward on an ex gratia basis that was thought to be satisfactory. I resigned when the tariff system was introduced which cut back people's awards. That change was challenged in the courts, and as a result, the Government were forced to place the scheme on a statutory basis. The Government say all the time that victims are at the heart of the criminal justice system, so the victims of crime for whom the Government are in no way responsible now get compensation under a statutory scheme currently running at £200 million per annum. A permanent and ongoing assessment body is in place under a statutory responsibility that will continue year in and year out and which Governments will have to fund.

Here we are dealing with a finite number of people who have been damaged not by criminals, but by the state itself. How can it be said that they should not be under a statutory scheme whereby money is paid directly by the Government to those who have suffered? The ex gratia, lump sum and discretionary payments made to beneficiaries have been increased in response to the Archer report and it is said that repeat applications to these trusts are no longer necessary, but it is a matter of concern to families that they have to go cap in hand to plead their case to the trust if they have particular or special needs. A direct payment under a statutory scheme should be made, as the Bill provides.

Clause 4 irons out artificial distinctions and demands that regulations are put in place that do not draw distinctions on the basis of cause, age, date of receipt of contaminated products, or the date of death. It provides that there should be no means test and no impact on other benefits. The balance between lump sum and periodic payments can take into account the financial circumstances of the country at the time. We are in a bad way at the moment, but I hope that it will not be permanent.

As I have said, this is a question of justice. Compensation should not be a charge on the National Health Service budget because it is a matter of wider government responsibility. We should not accept that compensation paid to the victims of the state's default in this way should in some way affect the provision of care under the National Health Service to other people. I, too, believe that a review within six months to consider the present situation and to make recommendations,

as Clause 4 requires, is the right approach. The essential requirement is that the issue should be fully addressed now. The noble Lord, Lord Morris, has given us the figures: some 1,974 people have died as a result of the infections that they sustained. There should be justice for the living who have been damaged by the state while they are still alive. The noble Lord, Lord Rooker, said that the Minister will have a miserable time. So be it, but if a particular Minister feels sorry for him or herself, I would ask them to consider the permanent misery of those who live with what the noble Lord rightly called a festering sore.

1 pm

Lord Taylor of Holbeach: My Lords, I do not think I am chancing my arm in saying that all of us in this Chamber approach the subject matter of this Bill with a heavy heart, knowing as we do of the extensive suffering and grief that has given rise to it. The story that the noble Lord, Lord Morris of Manchester, has recounted, and which is laid out in detail in the report of the inquiry chaired so ably by the noble and learned Lord, Lord Archer of Sandwell, is one that can only move us profoundly. I therefore congratulate the noble Lord, Lord Morris, not only on introducing the Bill but on his assiduous championing, over many years, of that group of persons to whom life has dealt the cruellest of hands.

Nearly 5,000 people who received contaminated blood from the NHS in the 1970s and 1980s were thereby exposed to hepatitis C. Of those, more than 1,200 were also infected with HIV. Almost 2,000 have now died as a direct result, leaving behind in many cases widowed spouses and bereaved children. The origins of the disaster have been well described by noble Lords and I shall not repeat them. Successive Governments have taken the view that what happened was an accident which at the time could not have been foreseen or prevented and that no negligence was involved. Nevertheless, both the previous and the current Governments recognised the exceptional hardship inflicted on those haemophiliacs and their families and that, setting aside the issue of causation, what mattered was the well-being of those people in the future. Accordingly, the Macfarlane and Eileen Trusts, followed by the Skipton Fund, were established with the intention of alleviating the financial plight of the victims, a plight which, not infrequently, was severe.

However, it was the conclusion of the noble and learned Lord, Lord Archer, that those arrangements, well motivated though they may have been, were inadequate and flawed and that the time had come for the Government not only to make direct payments to the affected individuals and their families but to set up permanent mechanisms designed to ensure that the wider need of those people should never be lost sight of. Hence the provisions of the Bill which, as we know, closely reflects the recommendations of the noble and learned Lord, Lord Archer.

My noble friend Lord Howe, who very much regrets that he cannot be present for this debate, has spoken to one of the witnesses who gave evidence to the inquiry. As a result of those conversations, he is clear that one of the main hardships inflicted by this disaster is the very poor state of long-term health often experienced by the victims who, as a direct result of having received contaminated blood, have found themselves suffering from incurable and debilitating illnesses. That hardship is frequently made worse by a lack of access to prompt treatment. Little or no recognition is given to the fact that the NHS was instrumental in making these people ill in the first place, or to the idea that there is on that account an enhanced obligation on the system to look after them as well as it possibly can. It is therefore appropriate and unsurprising that both the noble and learned Lord, Lord Archer, and the noble Lord, Lord Morris, should wish to see provision made for access to effective and timely medical treatment for haemophiliacs—a call I fully support.

The anger and frustration underlying the Bill is not hard to discern. As the Archer report spells out:

> "The haemophilia community feels that their plight has never been fully acknowledged or addressed".

That complaint surely encapsulates much of the case. I do not doubt that the noble Lord, Lord Morris, would not have thought it necessary to bring the Bill forward had the Government responded more tangibly to the recommendations of the noble and learned Lord, Lord Archer, when they were first published.

It is, of course, for the Government to indicate whether they will now respond positively to the proposals presented here and for the noble Lord, Lord Morris, to press them on the Government as hard as he feels it appropriate to do. Nevertheless, having examined the Bill in some detail, I can say to the noble Lord that there are certain features of it which may not quite do justice to his intentions, and that he might therefore like to consider spending some time in Committee to enable some of the detailed wording to be looked at. For example, I am not certain that the function of the new committee in Clause 1 is described as precisely it ought to be, or that Clause 4 would deliver the kind of financial compensation which it is clear the noble Lord has in mind. There are also some more minor concerns, such as the apparent ambiguity of the territorial coverage of the support arrangements being proposed.

Nevertheless, these are matters of detail which it is inappropriate to rehearse at this stage. More important is the need for us to acknowledge the external reality. The distress of the victims of this tragedy and the uncertainty which they feel about the future came through loud and clear in the report of the noble and learned Lord, Lord Archer. Many simply want official recognition of what went wrong and why, and an acknowledgement of the suffering that they and their families have gone through, as well as a sense of confidence that nothing like the catastrophe that they experienced could happen again.

We are debating this Bill at a time when worry over NHS blood supplies has shifted from contamination by hepatitis C to possible contamination by variant CJD, as described by the noble Baroness, Lady Masham. We do not know, since it is currently impossible to know, how small or great such contamination may have been, but the explicit provision in Clause 2 for the testing of blood for contamination by variant CJD is a clear and appropriate signal that this is a live issue. When it comes to blood safety, we cannot afford to relax our guard.

[Lord Taylor of Holbeach]

It was a chain of chance circumstances which led to my involvement in this debate. I have learnt much. I say in all humility that I am very grateful for the opportunity of so doing.

I end as I began, by expressing my admiration for the noble Lord, Lord Morris, for having brought forward this Bill. Not many of us, I suspect, would have remained as undeterred as him by the formidable obstacles in the way of doing so. It is a mark of the noble Lord's deep compassion and sense of humanity that he should have initiated today's important debate. In thanking him for that, I look forward to hearing the Minister's reply and to the Bill's further stages.

1.08 pm

Baroness Thornton: My Lords, I congratulate my noble friend Lord Morris on this Bill and on the excellent and moving way in which he introduced it. I also join other noble Lords in paying tribute to my noble and learned friend Lord Archer for his leadership of the independent inquiry into contaminated blood and blood products, whose report was published on 23 February. I thank all noble Lords for their contributions, comments and insights.

The provisions of the Bill are based on the recommendations of my noble and learned friend's inquiry. Despite my efforts and those of my noble friend Lord Darzi—and, indeed, of the noble Lord, Lord Morris—to secure a debate on the Government's response to the inquiry, we failed with the usual channels, for which I was berating my noble friend the Chief Whip as he was sitting next me just now. We failed to secure time before summer for that debate. For that, I apologise. However, this Bill has given us a welcome opportunity, eloquently taken by noble Lords in this Second Reading debate. I assure my noble friend Lord Rooker, the noble Lord, Lord Jenkin, and in particular the noble Lord, Lord Thomas of Gresford, that I do not feel in the least sorry for myself. I am always delighted to discuss these important issues, although I always also welcome good wishes and sympathy.

The Government fully understand the nature of the appalling tragedy and are fully committed to supporting those affected by it. We continue to work to provide ever safer blood and blood products. We are also committed to consulting haemophilia stakeholders in developing a new policy, to which the noble Baroness, Lady Barker, referred, on the treatment of people with haemophilia. This will be an ongoing process covering all aspects of their treatment and care and will forge links with other groups—for example, specialised commissioners, as required in the health service.

I fully recognise the passionate commitment of my noble friend Lord Morris to this important cause. I congratulate him on the successes that he has already achieved. Today I have a number of reservations about whether there is a need for recourse to legislation. On 20 May, the Government published their final response to the report of my noble and learned friend Lord Archer, and we are working to implement the commitments that we made in our response. I will briefly set out how the Government's response has already addressed the main elements of this Bill, before moving on to address specific questions raised during the debate.

Clause 1 provides for a statutory committee to advise on the treatment of haemophilia. However, the majority of the Department of Health's advisory committees are not established on a statutory basis. Instead, we are now meeting twice yearly with the Haemophilia Alliance, which is an existing UK-wide partnership between patients, haemophilia doctors and others involved in their care. I emphasise the issue of patients and their families; several noble Lords have suggested that they are not listening, and I hope that my remarks will refute that contention.

The first meeting, which was very productive, took place on 20 November. The group unanimously agreed that it would be helpful for all parties to better understand how specialised services for haemophilia patients are commissioned and to identify how the Haemophilia Alliance can influence service provision countrywide. The committee will meet twice yearly, but it is also setting up a work stream that will run right through the work of the department with regard to haemophilia. The first meeting also saw a discussion of the terms of reference for the group, which include how new policies will be developed and how the department will be accountable to the community for ensuring that work is carried through.

The next meeting date is to be agreed, but it will be in the new year. I am just making the point that this is not a twice-yearly meeting but a meeting about a work stream. Similarly, the group agreed to a Department of Health proposal for a workshop for patients, carers and health professionals about vCJD. We are planning to hold this workshop during March or April 2010. The outputs of this workshop will be used to help to inform future communication with the haemophilia community about the risk of vCJD. I hope that noble Lords will see that this has come about without legislation and with a commitment from the Government.

Clause 2 provides for haemophilia patients to be offered testing for a number of specified infectious agents, and for blood donations to be screened for those same agents. I can confirm that testing for all but one of the specified agents is already available to haemophilia patients, if their clinicians advise they are needed, and that all blood donations are screened for the same conditions. The sole exception is vCJD, for which there is currently no validated test available, but I shall update the House later with where we are on that issue. Therefore, we cannot legislate on something that it is currently not possible to implement.

Clause 3 provides for a scheme of NHS cards for those infected through treatment with contaminated blood and blood products, which would enable access to NHS benefits free of charge, including prescription charges. The Prime Minister has already announced our intention to progressively phase out prescription charges in England for patients with long-term conditions. Professor Ian Gilmore has completed a review of prescription charges in England that considered how to implement and phase in the Prime Minister's commitment. We are considering the recommendations and will publish the report and a response to the recommendations and action in the new year.

The other services specified, such as counselling and physiotherapy, are already available in England under the NHS, where needed, while statutory guidance to local authorities on charging for non-residential social care services already makes it clear that they should assess and take into account service users' specific needs, and costs associated with their condition or disability. That includes any additional costs related to living with chronic infections.

I confess that am puzzled about Clause 3(3), which provides for priority access to NHS treatment for haemophilia patients whenever possible. We need some clarification. Does that not run counter to the fundamental principles, now enshrined in the NHS constitution, that the NHS provides a comprehensive service, based on equality and fairness, that is available to all, with access based on clinical need? I am sure that my noble friend does not mean that one patient group should be treated differently from others.

Lord Morris of Manchester: I am grateful to the Minister. She may know that I have close links with the ex-service community; in particular, that I have been honorary parliamentary adviser to the Royal British Legion now for 21 years. In that case, Ministers—and I was myself Minister for war pensions in the 1970s—have all through the years made it clear to general practitioners that in view of the special position of the ex-service community for contracting with the state to lay down their lives in its service, there should be an element of priority. Thus there is one precedent for saying that where the state feels a special responsibility for the illness or disabilities of patients, priority is defensible.

Baroness Thornton: I thank my noble friend for that clarification, but he needs to address that issue in the Bill itself.

I turn now to Clause 4. In his report my noble and learned friend Lord Archer recommended that levels of financial support to those affected by this tragedy should be similar to those paid in Ireland. I will take a moment to discuss the issue of Ireland, because the situation there is quite different from the situation here in the UK. There has been some confusion around the background to the establishment of the Irish payment scheme and the reasons for it, so it is worth taking a moment to explain the background.

Between 1977 and 1984, a large number of Irish women were infected with hepatitis C following treatment with a contaminated blood product. As a result, the Irish Government set up an expert group to look into the issue, which reported in January 1995. The expert group found that wrongful acts had been committed by the Irish Blood Transfusion Service, which led the Irish Government to set up the Irish Hepatitis C Compensation Tribunal to operate on a non-statutory basis to review claims for compensation arising from the many civil actions pending in the courts.

Following the report of the expert group, the Irish Government set up the Finlay tribunal of inquiry, which reported in March 1997. This also found that wrongful acts were committed. Following the findings of the Finlay tribunal, the Irish Government placed the Irish Hepatitis C Compensation Tribunal on a statutory footing.

The report of my noble and learned friend Lord Archer stated that,

"the Inquiry did not consider it appropriate to apportion blame, especially given the problems attendant on hindsight".

I think that he is right. In recognition, however, of the plight of those affected, the Department of Health has set up the payment schemes that have already been mentioned by various noble Lords.

Lord Thomas of Gresford: Does the Minister appreciate that it is unlikely that Crown immunity applied in Ireland when actions were brought against the state for what it had done? Ireland recognised its responsibility by holding a public inquiry, which found fault. That is something that this Government have never done.

Baroness Thornton: My Lords, I will return to Crown immunity and the inquiry in a moment. So far, more than £45 million has been paid out for HIV through the Macfarlane Trust.

Lord Archer of Sandwell: I hope my noble friend does not think that I am being tiresome; I am grateful to her for giving way. This is something that we ought to clarify. Is it the Government's position that they are under no obligation to relieve suffering that has not been the fault of the Government? That is the issue.

Baroness Thornton: The Government relieve suffering that they have no obligation to relieve in many different ways. Indeed, they are doing so in this case, too.

I return to the clause that we are addressing. I absolutely appreciate that people feel very strongly and are angry about this issue. We have decided to increase payments to those infected with HIV to a minimum of £12,800 each. The two trusts have the power to make discretionary payments to infected individuals as well as widows and dependants within the annual budget allocation available to them. In addition, the Skipton fund has so far paid nearly £100 million to those infected with hepatitis C. The Government have committed to review the Skipton fund in 2014. I look forward to the findings of the Penrose inquiry in Scotland; we should take those into account.

I have a great deal of personal sympathy with the remarks of my noble and learned friend Lord Archer about the review date. Perhaps I need to ask my honourable friend in another place to look at this again. I understand the plight of those affected by this tragedy. That is why we have already paid almost £150 million to those affected.

In Clause 5 of the Bill, which requires a review of several issues, all of which were covered in our response to the report of my noble and learned friend Lord Archer, again the question is put of whether there is any benefit in putting this work on a statutory footing. For example, in respect of insurance, the Association of British Insurers has assured us that insurers do not treat haemophilia patients or those affected only with HIV or hepatitis C differently from people with other pre-existing conditions. In all cases, a person's insurability and the level of premiums are determined by the assessment of their individual risk. Clearly, there are likely to be costs in obtaining such insurance. That is one of the factors that the Government took into account in deciding to increase the annual payments to those infected with HIV to a minimum of £12,800.

[Baroness Thornton]

I return to some of the particular points raised by individual noble Lords. My noble friend Lord Morris and the noble Baroness, Lady Masham, raised issues to do with vCJD. What have we done to address those issues? Evidence of variant CJD infection was recently found in the autopsy of a haemophilia patient in their seventies, who died from unrelated causes. However, the patient had displayed no symptoms of variant CJD or any other neurological conditions prior to death. Haemophilia patients who receive donor-derived clotting factors have previously been informed by clinicians of their increased risk of exposure to vCJD via clotting factors. This finding will undoubtedly have caused concern, as mentioned by the noble Baroness, among those who suffer from haemophilia and other bleeding disorders. However, the finding does not increase the risk to those patients, or mean any change to the way that they are treated. Our priority has been to address the patients' concern and ensure that they are able to obtain advice about this new finding and how it may affect them. This is an important part of our work with the Haemophilia Alliance.

The noble Baroness, Lady Masham, asked about filtering blood and prion filtration. The Spongiform Encephalopathy Advisory Committee, which is the Government's independent expert scientific committee on vCJD, recommended that filters undergo independent efficacy trials. The blood service has commissioned an independent assessment for the efficacy of prion filters currently on the market and is undertaking its own assessment of the quality and clinical safety of filtered red cells. As the results become available, they are considered by the UK National Blood Service's prion removal working group. The independent committee on safety of blood tissues and organs, SaBTO, with which noble Lords will be familiar, will advise on whether this technology should be considered for introduction. SaBTO has recently advised that it considers that there is now sufficient evidence that a particular filter is able to reduce infectivity in a unit of red blood cells, and has recommended the introduction of filtered blood to under-16s subject to satisfactory completion of clinical trials to assess safety. We are undertaking an evaluation of the cost, benefit and impact of implementing that recommendation.

The noble Lords, Lord Morris and Lord Thomas, referred to Crown immunity. I do not feel that the subject is appropriate, partly because it is not really included in the Bill. However, I will say that I understand that the activities of the BPL were covered by Crown immunity so were outside the requirements of the Medicines Act until 1991. That immunity protected not from civil suit but only from prosecution under the Medicines Act. Indeed, some affected person brought action in 1990 that was settled out of court. Affected persons therefore have the right of redress through civil law. However, our legal advice is that an act of retrospection to permit prosecutions under the Medicines Act after all this time would not be accepted by the courts as valid.

My noble friend Lord Morris and the noble Lord, Lord Jenkin, asked why the Department of Health did not give evidence. Indeed, I shall address several inquiries about evidence together, including those from the noble Lord, Lord Thomas, and my noble friend Lord Rooker. The noble and learned Lord, Lord Archer, asked that someone from the department meet him, and officials have done so on several occasions. I would say that we had gone further than any previous Administration in making information for the relevant period available. In total, 5,500 official documents have been released, and Department of Health officials have met the inquiry team several times to talk them through the documentation. Given that no one working in the department has direct knowledge of these events from the 1970s and 1980s, there is no additional evidence that any individual could contribute to the inquiry.

We regret deeply that some documents were inadvertently destroyed. However, I repeat that 5,500 documents relating to the period have been released and are on the website. I am sad that my noble friend Lord Rooker berated me and suggested impropriety in the department. However, he is right that there is still work to be done. Maybe his suggestion, supported by the noble Baroness, Lady Barker, has merit. The last tranche of the documents were indeed released after the inquiry had completed its consideration, but we partly released them in good faith, to show that we were trying to be transparent. They were available to the public and of course have been made available to the Penrose inquiry.

The noble Lord, Lord Low, asked about financial relief. There are good reasons to maintain the established mechanism for paying for financial relief. The Eileen Trust and the Macfarlane Trust have developed good relationships with their registrants over the years. This is not a case of going cap in hand. There is a discretionary element in the size of payments that they make. Those decisions are best made by the charitable trust, with its deep understanding of the small group of people with whom it works, rather than by civil servants.

The noble Baroness, Lady O'Cathain, and other noble Lords raised the issue of funding to the Haemophilia Society. We are providing £100,000 to the Haemophilia Society each year for five years to enable it to move to secure financial funding. In addition, there are always possibilities for it to contract with the department on other, project-based issues. She also raised the issue of the future safety of blood. The European directive set standards of quality and safety for the collecting, testing, processing, storage and distribution of human blood and blood components. NHS Blood and Transplant is responsible for ensuring a sufficient, safe supply of blood to meet the needs of patients in England and north Wales. This includes a clear responsibility to minimise the risk of blood transfusions transmitting infection to patients. The Independent Advisory Committee on the Safety of Blood, Tissues and Organs advises the UK health departments on blood safety measures.

The noble Baroness, Lady Masham, raised the issue of our self-sufficiency in blood products, as did the noble Lord, Lord Jenkin. The Department of Health reviewed its surviving documentation evidence from the period when the decision to pursue self-sufficiency was made and found no evidence to suggest that the hepatitis C outbreak in the late 1970s and early 1980s in this country could have been avoided if self-sufficiency had been achieved. In other words, the issue was one

of science. By the early 1980s there was evidence that commercial provision, from the United States, and UK plasma concentrates carried a similar risk of transmitting hepatitis. The review was published in 2006 and is available on the Department of Health website.

The noble Baroness, Lady Barker, referred to the look-back exercise. The Department of Health has agreed to fund such an exercise to ascertain whether patients not already identified with bleeding disorders might have been infected. The work is currently under way with the United Kingdom Haemophilia Centre Doctors' Organisation to put this in place. It will take a while to trace all these patients, but we hope to be able to report on progress in the summer of 2010.

I hope that noble Lords will not think that my remarks suggest that this Government are not listening or not taking action. We certainly regard the Haemophilia Society and the Haemophilia Alliance as partners in the progress that we need to make on this very important issue. We have put our money where our mouth is. I also recognise that this is never enough. The noble Baroness, Lady Barker, as ever, pointed to moral, realistic and practical questions.

In conclusion, many of the provisions in the Bill are either already in place, or are being put in place. Because of that, we believe that there is no need for recourse to legislation on this issue. I have also pointed to some technical issues regarding the Bill. I know that the arrangements that are in place might not always be as far-reaching as some noble Lords wish they would be. We need continually to strive to improve services for haemophilia patients and others affected by this tragedy. It is only right that I should finish by restating on behalf of the Government my deepest sympathy for those affected by this tragedy and restating our continuing efforts on their behalf.

1.32 pm

Lord Morris of Manchester: My Lords, I am deeply grateful to every participant in the debate, by no means least to my noble friend whose challenging task it was to respond. All the points raised today can be considered as proceedings on the measure go forward. A working group of the type suggested by the noble Baroness, Lady Barker, could well be appointed to work alongside the statutory committee for which Clause 1 would provide; indeed, that committee could itself set up such a working group. Meanwhile, I much agree with the noble Baroness that we must look forward and plan, not simply react to problems.

On the question of the reappearance of the 5,000 documents that were shredded "inadvertently" by an unnamed official at the Department of Health, what happened was that copies of the documents were found in the office of a Scottish legal firm, but too late for the noble Lord and learned, Lord Archer, to take account of in the report of his inquiry. It was the first case in history that shredded documents have had a second coming. Long may they be kept under lock and key, especially at the Department of Health.

There are other Bills awaiting the attention of the House and, in fairness to their promoters, I conclude there.

Bill read a second time and committed to a Committee of the Whole House.

Marriage (Wales) Bill [HL]

Second Reading

1.35 pm

Moved By ***Lord Rowe-Beddoe***

That this Bill be read a second time.

Lord Rowe-Beddoe: My Lords, I declare the following interests in relation to this Bill, which are contained in the Register of your Lordships' House; namely, I am both an ex officio member of the Governing Body and chairman of the Representative Body of the Church in Wales.

The Bill before your Lordships will, in matters relating to marriages, restore the concurrence which existed between the Church of England and the Church in Wales, notwithstanding disestablishment, until 1 October 2008. It has the full support of the Governing Body of the Church in Wales, whose official policy it therefore represents.

On 1 October 2008, the Church of England Marriage Measure 2008 came into force. Before then, banns of marriage could be called in a parish church if one or both of the parties to be married resided in the parish. If they lived in different parishes, the banns had to be called in the parish church of each parish. The Church of England Marriage Measure added five additional cases in which banns could be called in a church in the Church of England. Each of these is an example of what the measure calls a "qualifying connection" with the parish. In summary, they are: first, one of the parties was baptised or confirmed in the parish; secondly, one of the parties has at any time had his or her usual place of residence in the parish for not less than six months; thirdly, one of the parties has at any time habitually attended public worship in the parish for not less than six months; fourthly, a parent of one of the parties has during the lifetime of that party fulfilled either of the two previous conditions; and, fifthly, a parent or grandparent of one of the parties has been married in the parish.

These additional grounds widen significantly the scope for entitlement to be married in a particular church and reflect the fact that the population is now very much more mobile than in former years. People establish connections with a place during a particular phase of their lives and then move on, but not infrequently develop an attachment to a place in one of those phases and feel drawn back to it on significant occasions.

The Church in Wales recognises the force of that argument and, because it has always seen itself as having a ministry to everyone who lives in a particular parish, whether or not they would consider themselves formally to be members of the Church in Wales, it wishes to be able to offer that ministry on a basis which reflects the realities of current mobility.

The difficulty in which the Church in Wales finds itself is that the marriage measure was passed under the Church of England Assembly (Powers) Act 1919. It applies only to the Church of England and an extension of those powers to the Church in Wales requires an Act of Parliament. The Bill now before

[LORD ROWE-BEDDOE]
your Lordships follows the Church of England Marriage Measure closely, with only those amendments which are necessary for it to apply to the Church in Wales rather than the Church of England. I beg to move.

1.39 pm

The Lord Bishop of Salisbury: My Lords, I commend the noble Lord, Lord Rowe-Beddoe, for introducing this Bill which would make the provision that we enjoy in England exactly the same in Wales.

I speak only in order to make abundantly clear that the Church of England offers nothing but the strongest support for the Bill. That is partly because there are places along the border between England and Wales where the national boundary and the ecclesial boundaries of dioceses are not exactly coterminous. We could have the extraordinary situation that somebody who lives in the Church in Wales by diocese and boundary finds themselves in an English county and subject to one set of rules, and somebody who lives in the diocese of Hereford, which we would normally count as part of the Church of England, in spite of the fact that there is a Hereford East and a Hereford West, would, if they lived on the other side of the boundary, find themselves subject to an entirely different set of rules. We know how important it is to have that kind of parity.

Nothing in the Bill is the slightest bit contentious. Rather than read noble Lords a homily on the nature and goodness of marriage as an institution, which I hope we all support, I simply say that we should pass the Bill with the greatest expedition we can muster, because the longer we delay, the more confusion there is. One of the reasons that people often do not seek to marry in church is simply that they think that there are so many complicated rules and regulations that the Church will in the end say no to them. That is not the intention of the Church of England or, I believe, of the Church in Wales. We should do all we can to make the legislation exactly parallel. As my noble friend has said, there are, of course, one or two references to the Church of England's way of doing things or to the Church in Wales's statutory authorities which need to be different, but all the important regulations about who can be married where and when and under what conditions are exactly the same. Therefore, I hope that we can proceed with due expedition.

1.42 pm

Lord Thomas of Gresford: My Lords, I suppose I should declare an interest as I live in Gresford, which is in the Church in Wales but on the border. I have never found any particular difficulty in marriages there. It was in 1985 that Lord Gibson-Watt introduced a Marriage (Wales) Bill in order to ensure that the banns could be given in adjacent parishes. That was also to bring the Church in Wales in line with the Church of England. He commented at that time that there was no representative of the Liberal Benches present, which he thought unusual since it was, of course, Lloyd George who drove through the disestablishment of the church. Nor was there any bishop present, either. The matter was simply decided between the Front Benches of the party in power and the Loyal Opposition.

I am here today to congratulate the noble Lord, Lord Rowe-Beddoe, on introducing the Bill. He said that it requires an Act of Parliament. Back in 1912, Lloyd George said:

"What happened to the Church which was independent in doctrine, in ritual, in discipline, and which was absolutely self-governed? It became a State Church. Its very prayers are settled by Act of Parliament. I believe that purgatory was abolished by the casting vote of the Speaker. You cannot discharge a transgressing clergyman without the authority of the Act of Parliament. The ritual, doctrine, rubrics, everything of that kind in the Church, are matters for the control of Parliament, and according to Professor Maitland that happened at the Reformation".

Lloyd George was very concerned with where church property should go. I declare a further interest. It was Welsh Church Act funds that put me through my training to become a solicitor, so I have something to thank Lloyd George for in that respect. What he said about the transfer of property is worth repeating. He asked about what happened after the Reformation, Henry VIII's dissolution of the monasteries. He said:

"Property which was used for the sick, for the lame, for the poor, and for education, where has it gone to? Part of it went to the Navy, and part of it to the privy purse of the Crown, but the bulk of it went to the founders of great families. It is one of the most disgraceful and discreditable records in the history of this country. I do not want to go into all these cases, but I am bound to take note of one, because I think it is specially offensive. The Duke of"—

I will not name the Duke in question—

"issues a circular applying for subscriptions to oppose this Bill, and he charges us with the robbery of God. Why, does he not know—of course he knows—that the very foundations of his fortune are laid deep in sacrilege, fortunes, built out of desecrated shrines and pillaged altars"".—[*Official Report*, Commons, 16/5/1912; col. 1323-25.]

We do not make speeches like that any more, unfortunately, except in certain parts of Wales, as I am sure that the noble Lord, Lord Rowe-Beddoe, will confirm.

1.46 pm.

Lord Henley: My Lords, I have no interests knowingly to declare. I am not sure that I have ever spoken on Welsh matters before, and I have certainly never spoken on a Marriage (Wales) Bill before; I did not speak on the 1985 Act pushed through by Lord Gibson-Watt. I, too, congratulate the noble Lord, Lord Rowe-Beddoe, on introducing the Bill, and on introducing it with such admirable brevity. I notice that it is the official policy of the Church in Wales. I have no intention of opposing it, and I do not believe that it is something that my party would want to oppose. We wish it good measure and God's speed and hope that it makes its way through the House.

I have only one question for the Minister—who looks as though he is in need of some questions to answer. He will remember that in the past, Welsh disestablishment has been somewhat controversial. The noble Lord, Lord Thomas of Gresford, quoted from Lloyd George's speech during the passage of the Bill in 1912. As I remember, the Church of Wales Act did not become law until 1914, and it was the first Act to be passed using the Parliament Acts, which gives an indication of the controversy of the measure. We are very grateful that this measure is not as controversial and is unlikely to need the Parliament Acts to get it

through. Exactly why is it needed? If the Welsh Church was disestablished in 1914, 1 should have thought that it could deal with these matters itself and that it would not be necessary for it to seek legislative processes to achieve these very worthy ends. I hope that the noble Lord will be able to answer that question, because it is important—why this House, and possibly another place, should have to devote time to dealing with the measure. With that, I wish the Bill well and hope that the Minister can provide an appropriate answer. I am sure that advice will be winging its way to him. We hope that the Bill makes speedy progress through the House.

1.48 pm

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, on behalf of the Government, I, too, congratulate the noble Lord on securing this Second Reading debate. He will know—we have had words about this—that in accordance with normal practice for Private Member's Bills, the Government do not normally support or oppose them, and we make no exception in this case. I think that he will be able to tell from what I have to say which way the Government are minded on the Bill.

The Bill seeks to widen the opportunities for couples who wish to get married within a parish of the Church in Wales to have the ceremony held at a church with which they have a connection. Equivalent provisions have existed for couples wishing to get married within a parish of the Church of England since October 2008, as the noble Lord, Lord Rowe-Beddoe, reminded us. Our understanding is that these provisions have been successful in meeting a demand that already existed from people wishing to get married at a church or location which holds some special significance for them; for example, a place where they were brought up or regularly worshipped, or where their parents or grandparents were married. It does not seem unreasonable that the Church in Wales would wish to extend a similar welcome to people who wish to get married within one of its parishes but do not satisfy the current qualifying connection that demands that at least one of the couple is resident in the parish.

I have the answer to the question asked by the noble Lord, Lord Henley. This change has to be made by a Private Member's Bill because, unlike the Church of England, which can pass its own rules, the Church in Wales cannot make legislative changes relating to its own administration and organisation. It therefore needs an Act of Parliament if it is to make such changes.

Lord Henley: My Lords, it is disestablished!

Lord Bach: Yes, my Lords, it is disestablished, but that in no way takes away from the fact that it has its own rules.

The Lord Bishop of Salisbury: My Lords, I am not sure that I am going to be able to help definitively, but the I think the reason is that the Marriage Act has always stood independently of any ecclesiastical disciplinary matters. Therefore, because it is the law of the land, even when the Church in Wales was disestablished, it could not control it. I hope that that answers the question asked by the noble Lord, Lord Henley.

Lord Bach: My Lords, the House does not know how grateful I am to the right reverend Prelate. There we have it. We thank the noble Lord, Lord Rowe-Beddoe, for introducing this Private Member's Bill.

Lord Rowe-Beddoe: My Lords, I thank noble Lords who have participated in this debate. The right reverend Prelate the Bishop of Salisbury was completely right in his intervention to assist the Minister. It is just a quirk of history. The Church in Wales is disestablished, but it requires the Bill. I warmly thank the right reverend Prelate for his support and thank the noble Lord, Lord Thomas of Gresford, for reminding us of Lloyd George and the tempestuous birth pangs of this church and for referring to Lord Gibson-Watt. This time, we have a senior member of the Liberal Democrat Party and a bishop in the Chamber, so we have moved along a bit. I thank the noble Lord, Lord Henley, for his support and for the indication that his party will support the Bill, which has to pass through another place once it has completed its passage here. I thank the Minister for his reply and for wishing the Bill bon voyage.

Bill read a second time and committed to a Committee of the Whole House.

Rehabilitation of Offenders (Amendment) Bill [HL]

Second Reading

1.50 pm

Moved By ***Lord Dholakia***

That this Bill be read a second time.

Lord Dholakia: My Lords, I declare an interest as president of Nacro, the crime reduction charity. I want it to be noted that my association with it is entirely voluntary.

The purpose of my Bill is to enact a series of changes to the Rehabilitation of Offenders Act 1974 which the Government announced they would implement in April 2003. When I initiated a debate on this subject on 6 December 2006, these proposals received all-party support. I was pleased when the noble Baroness, Lady Seccombe, responding from the Conservative Front Bench, said:

> "In the current climate of crisis in our prison service, I would have thought that cutting the numbers that reoffend would make a significant difference to an already over-stretched system".—[*Official Report*, 6/12/06; col. 1233.]

I hope that the same all-party support will be given on this occasion.

The Rehabilitation of Offenders Act 1974 provided that after specified rehabilitation periods, ex-offenders do not have to declare spent convictions when they apply for jobs except in sensitive areas of work such as criminal justice agencies, financial institutions and work with young people or vulnerable adults. Since it was enacted in 1974, it has helped many ex-offenders to live down their past. However, the rehabilitation periods laid down in it are lengthy, and many genuinely reformed ex-offenders can never benefit from it. If an offender is given a three-month prison sentence, the offence takes seven years to become spent. If he or she gets a nine-month sentence, the offence does not become spent until 10 years later. Sentences of more than two

[LORD DHOLAKIA]

and a half years can never become spent. These provisions are noticeably less generous than the rules that apply in other European countries. Those countries typically apply the rehabilitation periods to sentences that are longer than two and a half years. Their rehabilitation periods are also much shorter; they are often half the length of ours, or in many cases less than that.

Since the Rehabilitation of Offenders Act 1974 was implemented, every length of sentence has significantly increased. Many offenders who would have received sentences of two and a half years or less back in 1974 receive sentences of between three and four years today. This means that many people who would previously have been helped by the Act now find that their offences will never become spent during their lifetime.

In 2001, the then Home Secretary, Jack Straw, set up a review group to examine whether, three decades after the Act's implementation, there was a case for reform. The review group was chaired by a senior Home Office official and included representatives of the police and probation services, the legal profession, the judiciary, employers, voluntary agencies and ex-offenders.

In 2002, the review group published its conclusions in its report *Breaking the Circle*. Following a consultation period, the Government published their own conclusions in April 2003, and accepted a modified version of the review group's proposals. Under that version, the current rehabilitation periods would be replaced by new buffer periods, which would begin after the sentence, including any post-release supervision, was completed. The buffer periods would be four years for custodial sentences of four years or more, two years for custodial sentences of less than four years, and one year for non-custodial sentences. These periods would apply to all offences except those that resulted in a life sentence. Sentencing courts would have the discretion to disapply these provisions in any case in which the sentencer decided that there was a particular risk. The new provisions would not apply to jobs in sensitive occupations, for which applicants would still have to declare their full criminal record.

These are the proposals in my Bill. A reformed system along these lines would greatly reduce the scope for unfair discrimination against ex-offenders in the job market. Regrettably, such discrimination is still widespread. A survey of ex-offenders in the projects in which the National Association for the Care and Resettlement of Offenders is involved demonstrates that 60 per cent have been explicitly refused jobs because of their criminal records.

Of course, it is sometimes reasonable to refuse an ex-offender a job because of his record. For example, you must obviously bar offenders with a history of offences against children from working with children, and offenders with a history of defrauding older people from work caring for older people. In many cases, however, employers are turning down applications because of offences that have no relevance whatever to the jobs for which they are applying.

The scope of discrimination is potentially wide because the decisions to employ or refuse people jobs are not made at the top of companies. They are made by a large number of individual managers who have usually had no specific training in how to deal with applications from people with criminal records. A large-scale research study undertaken by the Joseph Rowntree Trust found that no private sector employers in the sample, and only one in seven public sector employers, had provided specific training on this point to start making recruitment decisions.

At the time when the review group was set up, there was particular concern that discrimination could increase when Part 5 of the Police Act 1997 was fully implemented. That legislation is likely to be implemented in the near future. It will enable employers to require any job applicant for any job, not just one of the sensitive occupations, to produce a basic disclosure certificate from the Criminal Records Bureau listing his or her unspent criminal conviction.

Research by the National Institute of Economic and Social Research has found that if this provision were implemented, employers would be likely to reject people with criminal records for their vacancies and to reject those with more serious convictions for 90 per cent of their vacancies. That research has concluded that the introduction of basic disclosure certificates was likely severely to reduce employment opportunities for those with past criminal records.

My Bill would help to reduce the risk of an increase in such widespread and unfair discrimination by shortening the periods after which convictions became spent. That would reduce the number of old offences that would appear on basic disclosure certificates. The case for reform of the Rehabilitation of Offenders Act would be a powerful one, whether or not the basic disclosure provisions of the Police Act were implemented; it would be powerful on the basis of the discrimination that is already there against ex-offenders.

Unfair discrimination against ex-offenders is wrong in principle because it imposes an additional, illegitimate penalty of refusal of employment on people who have already served the judicially ordered punishment for their crime. It also reduces public safety because an ex-offender's risk of reoffending is reduced by between one-third and one-half if he or she gets and keeps a job.

Recently, when the Bill was published, a number of ex-offenders wrote to me. I shall quote from a letter from an individual whom I do not wish to name:

> "I am an ex-offender who committed a single criminal act at the age of 18 whilst in the grip of an addiction to gambling, for which I was sentenced to three years in a young offender institution. At the time I thought the loss of my liberty and my chosen career was the greatest punishment but I was so wrong. Having to live in fear at every job interview that I will be asked 'the' question has hung over me like a cloud since the day I was released over 21 years ago, even leading to bouts of depression".

The reforms to which the Government committed themselves in 2003 would allow many people who committed offences many years ago to start again with a clean slate. They would therefore reduce the risk of further offending by former offenders who are excluded from the job market.

In conclusion, I thank the noble and learned Baroness, Lady Scotland, who responded to my earlier debate. She said:

> "I will note with pleasure in my diary that this is something about which there is unanimity in this House. Therefore, we can all go joyfully to the Whips who, I am sure, will find a space".—[*Official Report*, 6/12/06; col. 1238.]

I hope that noble Lords of all parties will support this modest and long overdue reform. In conclusion, I should like to thank also my researcher, Paul Cavadino, and the Bill Office for their help in drafting this Bill. I beg to move.

2.05 pm

Lord Ramsbotham: My Lords, I salute the noble Lord, Lord Dholakia, for once again bringing forward a Bill to rectify the Government's shameful delay in honouring their 2003 commitment to review the outdated Rehabilitation of Offenders Act 1974 and for his habitual skill in so clearly outlining its content and intent. In vain we have waited for a Bill in all five Queen's Speeches during this Parliament. To be quite blunt, I believe that when the Government look back over what they have not done, they must hang their head in shame over the time that they have taken to do nothing to honour publicised commitments such as the review of the Rehabilitation of Offenders Act and acting on the European Court's ruling on the right of prisoners to vote, each of which exceeds the total length of World War 2.

As the noble Lord has reminded the House, the 1974 Act was a response to the 1972 Gardiner committee's report, *Living it Down*, which proposed the restoration of the offender,

"to a position in society no less favourable than that of one who has not offended".

However, 1975 saw the start of an increasing diminution of that position, which continues to this day, by the introduction of an exceptions order to limit the rights of the offender to ensure the protection of the public. Particular and understandable concern was expressed over the safety of children and vulnerable adults. I say "diminution" because the period since then has been marked by the inflation of sentence lengths, which affects the time during which disclosure is required, and the addition of more exceptions, quite apart from the problems faced by those awarded indeterminate sentences for public protection, which have yet to be resolved.

In 1999, the Better Regulation Task Force recommended that the Government should review the periods during which disclosure applies, following which the then Home Secretary, Jack Straw, ordered a more fundamental review of the Act. He felt that what the task force had recommended had not gone far enough. The resulting 2002 report, *Breaking the Circle*, has been mentioned many times today, and I merely remind the House of its key findings. First, the Rehabilitation of Offenders Act is not achieving the right balance between resettlement and protection and, secondly, it was confusing for offenders and employers alike.

I should like to focus on the second finding for a few moments. I believe that not only is the current Act confusing, it is also arcane and complex. To put those feelings in context, I must repeat that I find it extraordinary that a Government who continually praise themselves for their concentration on the reduction of reoffending and the successful resettlement of offenders should fail to follow up their announced intention to remedy one of the principal impediments to their being able to turn those claims into realities.

The present Act is confusing to offenders who not only do not understand it, but are unsure of what they are required to disclose. As a result, they often inadvertently disclose convictions that are spent, which may be used unofficially by the employer to disadvantage an applicant for a job. In their eyes, the legislation constitutes nothing less than an additional punishment because the fact that employers have the freedom to ask about all convictions puts offenders in a particularly difficult position. Many feel that while they have the freedom to lie about spent convictions, to do so potentially initiates a dishonest relationship with an employer. Here I must declare an interest as president of UNLOCK, the National Association of Reformed Offenders.

The Act is also confusing to employers and insurers, who in turn have a poor understanding of the Act, leading to their inadvertently asking questions to elicit information which may result in illegal discrimination. The Act is a paper tiger in this context because the consequences of contravening it are minimal. Finally, the Act is confusing within the criminal justice system itself, among prison officers, probation officers, legal advisers and third sector workers, whose lack of understanding often leads to inaccurate advice being given to offenders.

As far as achieving the right balance between resettlement and protection is concerned, I believe that in bringing forward the Bill, the noble Lord, Lord Dholakia, has not presumed to rectify all the shortcomings of the 1974 Act, but has rightly focused on the one issue on which every other reform depends; namely, the length of the disclosure period. I hope therefore that the Government, not least to exculpate themselves from the shame of having done nothing over the past five years, will make time to ensure that it reaches the statute book before the end of this Parliament. Once that is done, the next logical step must be for the next Government, from whichever party they come, to commit themselves to a full-scale revision of the 1974 Act at a very early stage.

There is no need to conduct yet another review of the situation because all the information they need has already been established and articulated. Numerous organisations such as the Prison Reform Trust, NACRO and UNLOCK can produce countless papers detailing the results of hours of research and study. All that is needed, as it has been for the past six years, is action and not prevarication in the certain knowledge that a strong body of supporters, certainly in this House, are ready and willing to help with such work. I appeal to the Minister to ensure that that process is put in train by pledging his support for the Bill today.

2.12 pm

Lord Woolf: My Lords, it is always a pleasure to follow in the footsteps of the two noble Lords who have already spoken in favour of the Bill, but while it is a pleasure, it makes the task of someone coming third a difficult one because, in many ways, everything that can be said has already been said. However, perhaps I will be forgiven if I detain your Lordships for a short time to stress that while this is a modest and certainly a sensible proposal to improve the criminal justice system, it is also one that has an important dimension. We know that, within the criminal justice system, we

[LORD WOOLF]
have a huge problem with reoffending. We know also that the circle is most likely to be broken if an ex-offender obtains employment. The purpose of the Bill is to assist in the task of getting ex-offenders into employment so that they remain ex-offenders. That surely must be a worthy objective and one that I would expect both the Government and the Opposition strongly to support.

Criticism has been made of the lack of action. There can be many explanations for that. We know that there is always pressure on the legislative programme of any Government, but this is just the sort of measure which must not disappear because of that pressure. Like my predecessor and successors as Lord Chief Justice, I have gone on record on many occasions in complaining about the amount of unhelpful legislation which arrives annually within the criminal justice system.

This Bill is truly helpful to one of the principal objectives of the criminal justice system—to reduce offending. In those circumstances, this measure is an opportunity to show commitment to the need to assist those who seek to break the habit of crime to do so. I ask the House to give the Bill a fair passage.

2.16 pm

Lord Goodhart: My Lords, I agree with everything that has been said by my noble friend Lord Dholakia, the noble Lord, Lord Ramsbotham, and the noble and learned Lord, Lord Woolf. I have a particular interest in this Bill because I have been a member of JUSTICE for 50 years and a member of its council for most of that time. The 1974 Act was one of its proudest achievements. This was due, in particular, to the late Paul Sieghart, who was for many years the chair of the executive committee of Justice. To a large extent the Act was his idea and he lobbied tirelessly to achieve it.

The Act has enabled many people convicted of crimes to later lead normal and productive lives as a result of being given qualified legal rights not to disclose their previous convictions. However, 35 years later, it is now time to consider whether the 1974 Act needs to be looked at again to see whether it still performs adequately the purpose for which it was enacted. I am afraid that it is all too obvious that it does not.

One main reason is that sentences of imprisonment have become much longer in the intervening years, with the result that many people who would have been within the scope of the 1974 Act when it was enacted now receive sentences which disqualify them from claiming the benefit of that Act. Let me tell of one occasion which made me realise the difference. Some three or four years ago, I saw an excellent film entitled "Vera Drake". It was set in the period shortly after the end of the Second World War. In that film, Vera Drake was a woman who gave abortions to young women out of a wish to help them. She was caught, tried and convicted. The judge said words to the effect of, "This is a most serious crime and I must give you a severe sentence. You will go to prison for two-and-a-half years". I sat up at this and said to myself, "The scriptwriters must have done their research well. No one now would regard two-and-a-half years as a severe sentence for a serious crime". Clearly there has been an enormous change since 1950; most notably since 1974.

Nowadays two-and-a-half years is the maximum sentence which enables any prisoner to claim the benefit of the 1974 Act. The increase in sentences since 1974 justifies the extension of the 1974 Act to cover sentences much longer than two-and-a-half years. As has been made clear, the Bill will bring into force reforms that were accepted by the Government in 2003 but never enacted. The Bill is not a complete answer. In particular, it does not deal with the problem that information about past convictions can often nowadays be obtained on the internet regardless of whether or not they have elapsed. However, the Bill is a good step forward.

I have some doubts about new subsection (9A), which seems to drag the Bill into the deeply unsatisfactory world of the indeterminate sentence. The danger-of-harm provision allows the court to declare at the trial whether it is necessary for the safety of the public to avoid the 1974 Act. Surely danger of harm in cases of this kind should be judged at the end of the sentence and not at the beginning. If the objective of making a convict a potentially decent citizen has been achieved, it should be recognised at the end of the sentence by making sure there is no extension of the period.

However, I welcome the Bill immensely. Whatever its chances of being enacted, this debate raises an important issue.

Lord Woolf: Before the next speaker rises, perhaps your Lordships might forgive me if I do now what I failed to do during my speech, despite the note that I made to myself about the need to declare an interest. I have the privilege to be an honorary officer of many bodies working in this field.

2.22 pm

Baroness Kennedy of The Shaws: My Lords, with your Lordships' indulgence, I am stepping into the gap because I want to support the Bill. Rehabilitation of offenders is such an important concept within the criminal justice system. As we have heard from all speakers, it is in urgent need of reform. I, too, pay tribute to the noble Lord, Lord Dholakia, who has been a great champion of justice in this House. He has always shown considerable foresight and is one of our most distinguished and humane Members. It is not surprising that he has brought this Bill to the House's attention.

As your Lordships might know, I still practise in the criminal courts, but I am also, like the noble Lord, Lord Ramsbotham, the patron of UNLOCK. I am also the chair of JUSTICE. I frequently hear from defendants shocking stories of their attempts to rebuild their lives after a conviction. The general public call for transparency in sentencing and often clamour for longer sentences. The Government have responded to that, reflected in the extent to which sentencing has increased in recent times.

This part of the law has not kept pace with that. The public are not really well informed about the way in which punishment continues long after people have served a sentence or completed what was required by the courts. The punishment often takes other forms, which we have heard about today; for example, the ways in which opportunities for employment are undermined, the loss of friends, the inability to take

up particular roles in society and inhibition felt by ex-offenders even about volunteering for roles in the community because they are anxious about exposure, particularly in the face of their children. They are unable to get insurance; they often cannot get visas to travel, because they fear that question, "Do you have a conviction?" and how they should answer it. We as lawyers are often asked how they should answer it, too. Many of us feel that there is a lack of clarity for everyone involved—not only for potential offenders but also for ex-offenders.

This Private Member's Bill creates that level of clarity and I hope that the Government will seize the opportunity to reform the law. It is, I think, precisely what the Government had in mind when they set up the review group and endorsed its conclusions. Surely, with the consent of this whole House—I do not imagine that there will be many here who disagree with it—some time for the Bill could be found. I hope that we can hear something positive from my Front Bench.

2.24 pm

Lord Henley: My Lords, I offer my congratulations to the noble Lord, Lord Dholakia, who is a tireless campaigner for the rehabilitation of offenders. He is to be thanked for producing this Bill.

The premise is relatively straightforward: the Bill amends the 1974 Act so that rehabilitation periods for various types of offences are reduced, meaning that the conviction will be considered spent sooner than is now the case. For example, a sentence of borstal training currently has a rehabilitation period of seven years, whereas under the noble Lord's proposals that would be reduced to two years plus a buffer period of two years. I see that the noble Lord nods, so I obviously have got that part right.

The noble Lord has drawn on the work of the Prison Reform Trust and the Howard League for Penal Reform, bodies which have long been highlighting one of the biggest problems with prisons and the criminal justice system, which is that they appear to do precious little to prevent recidivism. Among adult offenders, the rates for reoffending within two years are about 65 per cent, while for young offenders between 18 and 21 they are in the mid-70 per cent and for 15 to 17 year-olds the figure is over 80 per cent. There are many reasons to criticise the Government, but it must be one of their most damning failings that, despite the creation of 3,000-odd new offences and a deluge of criminal justice legislation which has poured forth from the Government—the noble and learned Lord, Lord Woolf, has referred to it in the past as a torrent of legislation—they have not checked reoffending rates. The very fact that we are debating the noble Lord's Bill today is evidence of that.

The noble Lord, Lord Dholakia, was highly critical of the inhibiting effect that a conviction can have. He argues that the rehabilitation periods are far too long and act like a millstone, preventing ex-offenders from making a fresh start. We have considerable sympathy with that position; we believe that the best way to ensure that an ex-offender does not become a reoffender is to offer them the chance of stability which, crucially, means employment. We do not wish to see unnecessary obstacles placed in the way of reintegrating offenders into society. It may be that the time limits set out in the 1974 Act are too long; it is 35 years or so since that Act was past, and it is correct to say that we need some fresh thinking in this area. However, the noble Lord's approach, in taking a scythe to them and halving them, is possibly oversimplistic. I wonder whether we need a slightly more nuanced approach, adopting flexible periods, tailored to meet the needs of offenders and society at large. None of us has an interest in encouraging recidivism, but there is much to be done in this area and much to be looked at if this Bill passes Second Reading and we go on to Committee.

I also believe, as the noble Lord, Lord Ramsbotham, said, that we have a very extensive debate on the balance between resettlement and protection. We hear a great deal about the Criminal Records Bureau and the Independent Safeguarding Authority, which seems to have its tentacles round virtually every person doing voluntary work in the country. As the noble Lord, Lord Dholakia, made clear, it is obviously right that we need appropriate protection and that people convicted of child offences should not seek employment again in that field for a considerable period, if ever at all—and there would be other examples. However, I have a sneaking suspicion that the balance there is wrong and needs looking at, and this Bill may provide some small chance to have part of that debate. It is a debate that will have to take place in due course, and I would welcome the Minister's comments when he comes to reply on that balance between resettlement and protection.

I congratulate the noble Lord on getting his Bill, among so many other Private Member's Bills, before the House for debate today. He is right to give the Government pause for thought. We need to look at our rehabilitation laws. Whether it is appropriate for that to be done by a Private Member's Bill is another matter, but it certainly provides for a welcome debate, and we look forward to the Government's response and to debating the Bill further in Committee at a later stage.

2.30 pm

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, the Government congratulate the noble Lord, Lord Dholakia, on getting his Bill debated today. We are grateful to him for introducing it in the way that he has and giving the House the opportunity for this short debate on Second Reading. I can only repeat what my noble friend Lady Kennedy said: the noble Lord has the huge respect of the whole House for his work in this field.

This debate gives us the opportunity to remind ourselves of the fundamental changes that there have been in the criminal justice system in the past 35 years. I will say a word about rehabilitation and then move to the background to the Bill itself.

Rehabilitation is very much at the heart of our approach. Of course, turning offenders away from crime is not only good for them: more importantly, it benefits the wider community as a whole. As far as those in prison are concerned, we have worked hard to ensure that prison is a more decent, humane and constructive place than even 10 years ago, and a place

[LORD BACH]
where rehabilitation programmes can thrive. No one underestimates the need for ever to build on our work to tackle reoffending, but reoffending has fallen in recent years, I understand, for both adults and young people. We believe that part of that is as a result of the approach that we have taken. The noble Lord knows better than I do about the increase in prison drug treatment, which has increased tenfold since 1996-97, and the extra spending on offender learning too.

For those who have not been sent to prison, we have focused on making sure that particularly vulnerable non-dangerous offenders are diverted away from prison when it is the right thing to do. I remind the House that the number of women in prison fell by 3 per cent last year. After what had been a rapid rise, the number of offenders under 18 went down by 8 per cent over that same period.

Lord Ramsbotham: My Lords, I hate to challenge the Minister in full speech, but at a meeting two nights ago with the Minister with responsibility for prisons, Maria Eagle, she told us that while the number of women in prison had gone down because of the longer sentences, the number of women received into prison during the year had gone up dramatically by more than 900. Therefore, the figure he gave is slightly disingenuous.

Lord Bach: I am grateful to the noble Lord for his intervention to my speech. Obviously, I will go back and talk to my honourable friend about that issue. My understanding is—and I did not think it was arguable—that last year the number of women in prison actually fell by 3 per cent. If that were so, I am sure that that is something that the noble Lord, above anyone, would be pleased about.

I was talking about community punishment and community sentences. We believe that a tough community punishment can often be much more effective in turning people away from a life of crime. It can allow more direct and visible ways to pay back to a victim and community and gives offenders a chance to turn their lives around. That is why we expanded community punishment from 140,000 sentences in 1997 to 195,000 by 2007. The different requirements for community sentence allow the courts to make offenders confront their specific problems, be they drug or alcohol abuse, or mental health and behavioural issues. A central purpose of community orders is, of course, punishment itself, through such penalties as community payback, curfews or banning orders.

Moving back to the background to the noble Lord's Bill, it reflects, as he told us, the proposals for reform published by the Government in 2003 and based on the recommendations of the review *Breaking the Circle*. However, that report was a creature of its time and we must think carefully about whether those proposals continue to strike the right balance between the resettlement of offenders and public protection. I take the point that the Government's commitment in this area is now six years old, but we have been far from idle in the mean time. Much has happened which has been a more immediate priority, particularly in relation to public protection and the needs of victims, and which has had a bearing on how and when the Rehabilitation of Offenders Act might be reformed.

Many of the changes that we have made since 2003 are still working through. First, the Bichard inquiry was set up in 2003 to look at the manner in which the police handled intelligence about Ian Huntley's past and the vetting process which ultimately led to his employment at a local school. The report made a number of recommendations relating to data retention and sharing, and about extending enhanced disclosures to more people who work with the vulnerable. Our response was to bring forward a major new piece of legislation which went through this House, the Safeguarding Vulnerable Groups Act 2006, to strengthen public protection for the vulnerable. This has an impact on the scope of CRB checks for employment purposes and has led to the establishment of the Independent Safeguarding Authority to operate a new vetting and barring scheme to prevent an individual working with vulnerable groups when there is a known reason why they may pose a risk to children or vulnerable adults.

This scheme has only just come into force in relation to regulated activity. As with any new scheme, there are some teething problems and issues have arisen on the scope and interpretation of the legislation. Sir Roger Singleton, the chairman of the Independent Safeguarding Authority, has been asked to look again at the scheme to make sure that the right balance has been struck on how many people are covered—that is, who will be required to register with the ISA. His recommendations are due to be published on Monday 14 December and may impact on who is required to have a CRB check and, therefore, who may or may not benefit from the Rehabilitation of Offenders Act.

The ISA, by its nature, will bring an independent, objective and consistent approach to the employment of ex-offenders in jobs where there is direct contact with children and vulnerable adults. The guidelines on making barring decisions require the ISA to take into account relevant offending history. Therefore, the creation of the authority will contribute to the Rehabilitation of Offenders Act's aims of ensuring that ex-offenders are not discriminated against when seeking employment on the grounds of irrelevant offending history. We shall need to see this fully in operation to assess what changes might now be required to the Act.

Since 2003 we have also seen fundamental changes in sentencing policy and practice. This includes a new adult sentencing framework in 2005 and wholesale changes to the youth justice sentencing framework. It is important that all these new reforms are taken into account when looking at the Act. It is not sufficient merely to rest on what has gone before.

Lastly, the Government have also been concentrating since 2003 on the need to put victims at the heart of the criminal justice system. Any reform of the Act needs to be subject to full consultation, particularly to take account of the views of victims. In view of all those developments, the Government would need to take a fresh look at the Act in the round and what might be best considered in the current context rather than what was considered appropriate in 2003.

There are some technical deficiencies with the Bill; the noble Lord himself would be the first to say so. For example, not all sentences are covered by its provisions. One important omission is the need to

consider the position of new indeterminate sentences. That was raised by the noble Lord, Lord Goodhart, who has strong and definite views on those sentences, but they exist—they are in law. If there were to be such a change, there would have to be some way of dealing with them and we agree with him that Clause 1(9) may not be the most appropriate method. We made imprisonment for public protection available to the courts to deal with dangerous offenders who are considered to present a significant risk to the public through the commission of further serious offences. Frankly, it would be anomalous to go forward with any reform that took no account of indeterminate sentences whatever. I doubt that anyone would disagree that such sentences should never be regarded as spent; were it to be otherwise the offenders in, for example, the Baby P case could see their record wiped clean at some point.

Also, the Bill does not take sufficient account of the position with regard to Scotland. Amendment of the Rehabilitation of Offenders Act is a devolved issue. However, it would be desirable to continue to have similar schemes on both sides of the border. Therefore, we need a dialogue with Scotland on the way forward. That would be appropriate rather than pressing ahead with a Bill that would create a somewhat different regime here in England and Wales from that in Scotland.

I am sorry that I shall disappoint the noble Lord in saying that we have some reservations about the Bill, for the reasons that I have given. Of course the Government will neither support nor oppose the Bill on Second Reading; we rarely do so as far as Private Members' Bills are concerned. I hope that he will accept that the Government are grateful for his giving the House the chance to have this debate by having put forward the Bill. However, much more work needs to be done to look at the Rehabilitation of Offenders Act in the round before we move to legislation.

2.42 pm

Lord Dholakia: My Lords, I thank all noble Lords who have participated in the debate. After 35 years of this legislation, it is rightly time for amendments so that we can meet the present situation. Obviously the tail-end of a Friday afternoon three days before the Christmas vacation is not the right time to enter into a detailed negotiation or discussion, but a number of important points have been raised.

The noble Lord, Lord Henley, suggested a different approach, and I thank him for what he called a more measured approach to the length of the rehabilitation period. He said that he would support the general principle, and I would not hesitate to consider appropriate amendments in Committee on the matter.

My noble friend Lord Goodhart mentioned the risk of serious harm, and that it should be judged only at the end of the sentence. All I did was to take Clause 1(9) from the suggestion of the Home Office working group. There again, there is no reason why the matter could not be discussed in Committee.

The two areas that the Minister mentioned cause me some concern. The case for the Bill is not changed by the Safeguarding Vulnerable Groups Act, which introduced strengthened provision—including the introduction of the Independent Safeguarding Authority mentioned by the Minister—which applies to jobs that are exempt from the Rehabilitation of Offenders Act and would remain exempt if the Bill were passed. There is no problem as regards my Bill's provisions co-existing with the Safeguarding Vulnerable Groups Act. I am unable to accept that this may be a legitimate ground for delay, but perhaps the Minister may wish to look at that between now and Committee stage, which I hope the House may grant me.

On the issue of serious offenders, I have a number of observations. I am very conscious of the time, but I shall take no more than a few seconds. First, ex-offenders who apply for any of the exempted provisions will still have to reveal all their convictions. That includes applications for jobs involving working with children and vulnerable adults, as I have explained. Secondly, anyone who receives a life sentence will always have to declare all their convictions. Again, there is no problem with that. Thirdly, many serious offenders, and all those whom the courts regard as posing a serious future risk, may receive indefinite sentences for public protection—the so-called IPP sentences. I would be prepared to consider amending the Bill in Committee to exempt IPP sentences if that would help to meet the Minister's concern. Finally, Clause 1(9) allows any judge, when sentencing, the power to disapply the provisions of the Rehabilitation of Offenders Act.

At this stage, all that I ask is that the House gives the Bill a Second Reading.

Bill read a second time and committed to a Committee of the Whole House.

House adjourned at 2.46 pm.

Written Answers

Friday 11 December 2009

Climate Change

Question

Asked by ***Lord Kirkwood of Kirkhope***

To ask Her Majesty's Government what scientific research they have commissioned to support the United Kingdom delegation to the Copenhagen climate change conference; and when they will publish the research. [HL51]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): Early this year DECC and Defra initiated a major new research programme (AVOID), aimed at assessing how the world can avoid dangerous climate change. AVOID is being delivered by a consortium of experts, led by the Met Office, and including the Grantham and Walker Institutes and the Tyndall Centre. A significant component of AVOID during the past 10 months has been to deliver new climate science evidence, specifically to inform the UK delegation ahead of Copenhagen, in particular with respect to emission pathways associated with limiting global temperature rises to 2 degrees Celsius, a review of climate change impacts and the costs associated with impacts and mitigation action. Key results to date are available on the programme website[1] and it is expected that associated research papers will, be published in the scientific peer-reviewed literature in the new year.

A summary of results will be presented at the Copenhagen negotiations in December.

[1] www.avoid.uk.net

Climate Change: Carbon Dioxide Emissions

Question

Asked by ***Lord Moynihan***

To ask Her Majesty's Government what are their projections for the carbon dioxide price in the European Union Emission Trading Scheme (ETS) over the next five years; and to what extent they intend to support the price of carbon dioxide in the ETS. [HL547]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): The Government's forecast for the traded price of carbon, published in July 2009, is €35 in 2020 with an EU reduction target of 20 per cent below 1990 emissions. This published value will be updated on a yearly basis, taking into account the latest evidence. The Government do not publish any other projections on the carbon price.

The Government have no plans to support the price of carbon. Whilst the UK's 2003 energy White Paper said we would leave the option open of intervening in the carbon market, we do not currently consider that there is a case for such an intervention.

Common Agricultural Policy: Single Farm Payment

Question

Asked by ***Lord Marlesford***

To ask Her Majesty's Government what financial penalties they anticipate being imposed by the European Union authorities on the Rural Payments Agency in respect of their administration of the single farm payment scheme in 2006, 2007 and 2008; and what arrangements have been made to finance the payments of any such penalties. [HL293]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): The European Commission has yet to reach a view on what, if any, disallowance should be applied in respect of the single payment scheme (SPS). However, provisions totalling £205 million have been made in Defra's accounts in respect of the administration of the 2005 and 2006 single payment schemes in England. No provisions have been made for subsequent scheme years.

Funding for near cash implication of any SPS related disallowance that is finally imposed in the current Comprehensive Spending Review period will be drawn in the first instance from a ring-fenced sum that Defra has agreed with HM Treasury for this purpose. Should any disallowance exceed that sum, the necessary additional funding would be met from within Defra's budget.

Education: Home Schooling

Questions

Asked by ***Lord Lucas***

To ask Her Majesty's Government why Sutton, Worcestershire, Tameside, Sandwell, Telford and Wrekin, Brent, Leicestershire County, Hounslow, Sheffield, Birmingham City, Knowsley, Bracknell and Suffolk local authorities, who filled in the supplemental questionnaire in relation to home education, do not appear on the list of local authorities to have done so published by the Department for Children, Schools and Families. [HL406]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): There have been three separate requests to local authorities for data relating to home education. A list of authorities that responded to the first request is found at (http://www.dcsf.gov.uk/foischeme/subPage.cfm?action=collections.displayDocument&i_documentID=881&i_collectionID=346), the list of authorities that responded to the second request is found at (http://www.dcsf.gov.uk/foischeme/subPage.cfm?action=collections.displayDocument&i_documentID=899&i_collectionID=347) and a list of authorities responding to the third request is found at http://www.dcsf.gov.uk/foischeme/. Where local authorities responded late to a data request their response may have been too late to be included in any analysis. Sutton, Sandwell, Telford and Wrekin, Brent, Leicestershire County, Birmingham City, Bracknell and Suffolk responded

to the third questionnaire but their responses were too late to be analysed. Worcestershire, Tameside, Hounslow, Sheffield and Knowsley did not respond to the third questionnaire, although the published lists show that they did respond to the first and second questionnaires.

Asked by ***Lord Lucas***

To ask Her Majesty's Government for each local authority for which they have data, (a) how many home-educated children are considered to be receiving no education, (b) what is the total number of home-educated children, and (c) how many of the home-educated children considered to be receiving no education (1) are from traveller families, (2) are children who first became home educated in years 10 or 11 with a previous history of irregular attendance, and (3) are children who have not yet been assessed. [HL407]

Baroness Morgan of Drefelin: I attach a table showing the number of electively home educated children in each local authority that responded to the questionnaire on home education distributed in September. The department's policy is not to release any information that might lead to individual children being identified where data released could be combined with other data. As 69 local authorities identified a total of 210 home educated children that they assessed as receiving no education at all, we are not able to release a breakdown of these data by local authority as the numbers for each individual authority would be very small and individual children might be identified.

We did not collect information on the ethnic or cultural background of home educated children receiving no education, nor their age, so we are unable to provide information on the number from a traveller background, or the number that are in years 10 or 11. Home educated children awaiting assessment were included in the data collection as a separate category.

Local Authority	*Total Elective Home Educated (EHE) Population*
Bath and North East Somerset	50
Bedfordshire	70
Bolton	81
Bradford	132
Brighton and Hove	157
Buckinghamshire	185
Calderdale	38
Cambridgeshire	200
Cheshire East	127
City of London	*
Cornwall	311
Coventry	60
Cumbria	261
Darlington	97
Derby	79
Devon	674
Dorset	157
Dudley	156
Durham	110
East Riding of Yorkshire	139
Essex	733
Gateshead	29
Gloucestershire	224
Greenwich	96
Halton	28
Hampshire	372
Isle of Wight	141
Isles of Scilly	0
Kent	673
Kingston upon Hull	84
Kingston upon Thames	44
Kirklees	67
Lancashire	465
Leeds	140
Lewisham	123
Lincolnshire	411
Liverpool	57
Manchester	91
Medway	195
Milton Keynes	96
Newcastle upon Tyne	52
Norfolk	375
North East Lincolnshire	49
North Somerset	121
Northamptonshire	183
Northumberland	46
Nottingham City	96
Nottinghamshire	238
Oxfordshire	329
Plymouth	135
Reading	50
Redbridge	55
Redcar and Cleveland	27
Rotherham	70
Sefton	58
Somerset	249
South Gloucestershire	108
Southampton	82
St Helens	33
Staffordshire	244
Stockton on Tees	31
Sunderland	66
Surrey	695
Torbay	91
Trafford	35
Wandsworth	47
Warrington	39
Warwickshire	123
West Sussex	407
Wigan	72
Wiltshire	148
Windsor and Maidenhead	*
Wirral	35
Wolverhampton	141
Total	11,6**

* indicates number < than 10 per LA

Asked by ***Lord Lucas***

To ask Her Majesty's Government for each local authority for which they have data, (a) how many home-educated children are considered to be not in education, employment or training (NEET), (b) how many home-educated children are not considered to be NEET, and (c) how many of the home-educated children in each local authority considered to be NEET (1) are from traveller families, (2) are children who first became home-educated in years 10 or

11 with a previous history of irregular attendance, and (3) are children for whom the local authority has no evidence of their current occupation. [HL409]

Baroness Morgan of Drefelin: The department's policy is not to release any information that might lead to individual children being identified where data released could be combined with other data. As 47 local authorities identified a total of 270 out of 1220 home educated children that were not in education, employment or training when the Connexions Service conducted its autumn survey of year 11 school leavers, we are not able to release a breakdown of these data by local authority as the numbers for each category in each individual authority would be small. The percentages for different authorities are given in the form of a histogram on the Every Child Matters website at http://www.dcsf.gov.uk/everychildmatters/ete/independentreviewofhomeeducation/irhome education/.

Data requested in parts (1) and (2) of question (c) were not collected. Only children who had supplied information about their education, employment or training status are included in the survey.

Asked by ***Lord Lucas***

To ask Her Majesty's Government what is meant by "Known to social care includes Section 17, 37 or 47 enquiries" in the Department for Children, Schools and Families' working paper Independent Review of Home Education—safeguarding evidence. [HL434]

Baroness Morgan of Drefelin: Known to social care in this context means children who, at the time of the data collection, were receiving or were planning to receive social care services in local authorities in England under the following sections of the Children Act 1989:

Section 17 (provision of services for children in need, their families and others);

Section 37 (care orders); and

Section 47 (local authority duty to investigate when there is reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm).

Legal definitions can be found at http://www.opsi.gov.uk/acts/acts1989/ukpga_19890041_en_1.

The questionnaire seeking information excluded some children that fell into these categories and this is shown at http://www.dcsf.gov.uk/foischeme/subPage.cfm?action=collections.displayDocument&i_documentID=801&i_collection ID=322.

Energy: Electricity Generation

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether feed-in tariffs for small-scale electricity generation are available throughout Britain; if not, whether there are barriers to doing so; and whether they will examine their use in Germany, in particular in Freiburg. [HL653]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): The Government have published proposals for feed-in tariffs for small-scale electricity generation. The Department of Energy and Climate Change published a consultation document in July, still available from the DECC website at http://www.decc.gov.uk/en/content/cms/consultations/elec_financial/elec_financial.aspx.

The consultation elicited over 700 replies which are currently being analysed in line with the proposal to introduce a scheme by April 2010.

In the course of developing the proposal Ministers and officials consulted a wide range of organisations, nationally and internationally. A number of supporting studies based on this are also available at the same website.

Energy: Renewables

Question

Asked by ***The Earl of Selborne***

To ask Her Majesty's Government what is the rate of tax charged on recovered fuel oil in the United Kingdom; and whether an assessment has been made of how that rate of tax compares with that charged in other European Union member states. [HL447]

The Financial Services Secretary to the Treasury (Lord Myners): Since 1 November 2008, following the end of a UK derogation from the EU Energy Taxation Directive, recovered fuel oil has been subject to duty at the same rate as fuel oil, the fuel for which it most commonly substitutes. This rate is 10.37 pence per litre.

The Chancellor keeps all duty rates under review, taking account of a wide range of factors including rates in other member states.

Finance: Bonuses

Questions

Asked by ***Lord Dykes***

To ask Her Majesty's Government what assessment they have made of the prospects of moves to ensure that bonuses in the financial sector are not linked to turnover, profits or short-term results. [HL177]

The Financial Services Secretary to the Treasury (Lord Myners): The Government have been clear that the banking sector needs to develop sustainable long-term remuneration policies that take better account of risk.

The FSA has published its remuneration code of practice which comes into force on 1 January 2010. In advance of this all the banks subject to the code had to provide the FSA with a remuneration policy statement to demonstrate compliance.

The Government have introduced the Financial Services Bill to Parliament which contains measures to ensure that the remuneration practices do not incentivise excessive risk taking.

These will ensure that remuneration policies are aligned with long-term success through a greater component of bonuses being paid in the form of shares as well as the use of deferral and claw-back should future performance deteriorate.

Furthermore, in the 2009 Pre-Budget Report the Government announced a temporary bank payroll tax of 50 per cent which will apply to discretionary bonuses above £25,000 awarded in the period from Pre-Budget Report to 5 April 2010 for each individual employee.

This tax will encourage banks to consider their capital position and to make appropriate risk adjustments when setting the level of bonus payments above the threshold, which is at the level of median earnings in the UK.

Asked by ***Lord Dykes***

To ask Her Majesty's Government what assessment they have made of the prospects for the full implementation of the Financial Services Authority's draft code of practice for executive remuneration, especially by companies in which the taxpayer has a stake. [HL178]

Lord Myners: The FSA has published its remuneration code of practice which comes into force on 1 January 2009. In advance of this all the banks subject to the code had to provide the FSA with a remuneration policy statement to demonstrate compliance.

The Government have also asked the FSA to provide an annual report on remuneration practices, including compliance by firms with the new code. This report will assess whether remuneration practices are likely to lead to a build up of systemic risk, and make recommendations for action if this is thought to be the case.

The banks in which the Government are a shareholder are managed on an arm's-length commercial basis by United Kingdom Financial Investments (UKFI). The Government expect their investee banks to beat the forefront of complying with the FSA's code and UKFI is working with the banks as a shareholder to ensure their remuneration policies are aligned with long-term value creation.

House of Lords: Fair Trade Goods

Question

Asked by ***Lord Hoyle***

To ask the Chairman of Committees what percentage of the bananas purchased by the House of Lords Refreshment Department were fair trade in financial years 2006–07, 2007–08 and 2008–09. [HL628]

The Chairman of Committees (Lord Brabazon of Tara): The current fruit and vegetable framework supply contract commenced in April 2008. For the year 2008-09, fair trade bananas were specified in all orders placed but supplies received depended on market availability. For the years 2006-07 and 2007-08, fair trade bananas were not a standard supply specification but were delivered subject to market availability. The Refreshment Department does not have the staff resource to monitor the proportion of fair trade bananas received.

House of Lords: Peers' Writing Room

Question

Asked by ***Lord Dykes***

To ask the Chairman of Committees on what date the Peers' Writing Room coffee machine will resume functioning. [HL389]

The Chairman of Committees (Lord Brabazon of Tara): The coffee machine is now operational once again. I regret any inconvenience caused over the past few weeks.

House of Lords: Pork and Bacon

Question

Asked by ***Lord Hoyle***

To ask the Chairman of Committees when the House of Lords Refreshment Department last reviewed the price of British bacon; and what was the result of that review. [HL629]

The Chairman of Committees (Lord Brabazon of Tara): The price of British bacon is reviewed on a weekly basis as specified in the current meat framework supply contract. For the week ending 11 December 2009, the price quoted was £6.63 per kilo (23.51p per rasher). The equivalent price for Dutch bacon was £4.48 per kilo (15.89p per rasher).

Friday 11 December 2009

ALPHABETICAL INDEX TO WRITTEN ANSWERS

NUMERICAL INDEX TO WRITTEN ANSWERS

Volume 715
No. 15

Friday
11 December 2009

CONTENTS

Friday 11 December 2009