Vol. 716
No. 21

Thursday
7 January 2010

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

For column numbers see back page

£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/100107.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

Thursday, 7 January 2010.

11 am

Prayers—read by the Lord Bishop of Bradford.

House of Lords: Secretaries of State
Question

11.06 am

Asked By ***Baroness Boothroyd***

To ask Her Majesty's Government whether they have proposals to enable Secretaries of State in the House of Lords to appear in the House of Commons chamber to answer questions from Members of the Commons.

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, all Secretaries of State should be fully accountable to Parliament. In principle, we see no reason why Secretaries of State in the Lords should not appear before the House of Commons, if that were the will of the two Houses.

Baroness Boothroyd: I thank the noble Baroness the Leader of the House for her response. Does she agree that any proposals to make Secretaries of State in this House answerable to the House of Commons at its Dispatch Box introduce an entirely new principle into our bicameral Parliament? Do the Government propose that Secretaries of State who sit in the Commons will equally be answerable to this House at the Dispatch Box? Will the Government therefore publish the Prime Minister's letter to Mr Speaker Bercow, reported in the press on 25 October, and give an assurance that the Lord Speaker and this House will be fully consulted before any constitutional changes of this nature are contemplated?

Baroness Royall of Blaisdon: My Lords, it is my understanding that Peers can already appear before the Commons as witnesses if this House gives them leave to do so and they themselves consent or think fit. However, that is a power that has lain dormant for some time. If Members of this House or anyone else were to envisage Secretaries of State from this House answering questions at the Dispatch Box in the other place, there would have to be a change in the procedures of that House, and it would require the consent of both Houses. It is precisely a matter for both Houses, not for the Government—that is an important point.

I am aware of the Prime Minister's letter. I will seek authorisation vis-à-vis its publication.

Lord Strathclyde: My Lords, does the noble Baroness the Leader of the House agree with me that, whatever arrangements are made in another place to scrutinise government Ministers, Ministers in this House owe their primary responsibility to this House, and it is to this House that they should answer questions? Will she therefore join me in welcoming the new arrangements made by the Procedure Committee to give specific questions to Secretaries of State who are Members of the House of Lords, and in wishing this experiment well?

Baroness Royall of Blaisdon: My Lords, I completely concur with the words of the noble Lord, Lord Strathclyde. It is an interesting innovation, which I look forward to. I am sure that it is going to be a great success, and it will enhance the accountability of our Secretaries of State in this House.

Lord McNally: My Lords, I endorse the comments of the noble Lord, Lord Strathclyde. I hope, and I hope that the noble Baroness agrees, that all Members of this House will make a real success of the innovation of questions to Secretaries of State sitting in this House.

I approached this Question with some trepidation because I thought I was going to have to disagree with the noble Baroness, Lady Boothroyd, but hers is a timely warning. The Cunningham committee, which I sat on, reported that the strength of both Houses was their differences in procedures and practices. We should be careful before we start blurring the edges.

Baroness Royall of Blaisdon: My Lords, the noble Lord is absolutely right. It is for this House to make a success of this new opportunity for questioning Secretaries of State. It is important that we have procedures at this end which are different and distinct from those in the other place. The questions that we will be putting to the Secretaries of State from next week onwards constitute a very different procedure from the procedure in the House of Commons, and I welcome that difference.

Lord Peston: My Lords, is my noble friend aware that the best definition of conservatism is that we should never do anything for the first time? Many of us would welcome major changes in the way that Secretaries of State are scrutinised in both this House and the other House, and clearly we agree that both Houses should take the decision. However, the idea that it would be totally out of the question for us to make any changes is certainly not acceptable to me and, I imagine, not acceptable to most of our colleagues.

Baroness Royall of Blaisdon: My Lords, I think that there is agreement around this Chamber that everybody welcomes the innovation of having Secretaries of State answer more questions in this House, thus enhancing their accountability. I completely agree that change is a good thing, but I also detect an appetite on all Benches, including the Conservative Benches, for the sort of change that we will be having next week in this House.

Lord Jenkin of Roding: My Lords, will the noble Baroness bear in mind that a good many years ago, when the Department of Energy was first set up, my noble friend Lord Carrington was appointed Secretary of State in this House? It was my honour to be the

[Lord Jenkin of Roding]
Minister of State in another place. Will she also bear in mind that since then we have had the first stage of the reform of the composition of this House, which Ministers have repeatedly said makes this House more legitimate? Is it not strange that we are having this pressure now to enhance the powers of another place by giving Ministers the opportunity, as some are suggesting—not the noble Baroness, Lady Boothroyd; I agree entirely with what she said—to go along there to answer questions instead of, as we are now proposing, and as my noble friend has rightly pointed out, a new procedure for them to be answerable to this House? Is not that the point that she needs to bear in mind?

Baroness Royall of Blaisdon: My Lords, it is absolutely right and proper that Secretaries of State sitting in this House should have more opportunities to answer questions in this House. What happens in the other place is largely a matter for the other place; but whatever decisions are taken in the other place, we will have to agree those procedures if they have an impact on the Members of this place. However, what we are doing is a good innovation. It is good for this place and good for democracy.

Lord Boston of Faversham: My Lords, perhaps I may ask the noble Baroness the Leader of the House whether, if ever Secretaries of State in another place were to answer questions in your Lordships' House, they would not bring with them the raucousness which sometimes emanates in another place? I ask that question not in any way criticising another place, just to draw attention to the differences.

Baroness Royall of Blaisdon: I am grateful to the noble Lord for drawing the attention of the whole House to the differences and distinctions between this House and the other place.

Lord Campbell-Savours: Would not one of the benefits of our Secretaries of State appearing in the Commons be that there would be more Secretaries of State appointed from this House?

Baroness Royall of Blaisdon: My Lords, that may well be a benefit, but I think that we would have to look to the future for that.

House of Lords: Procedures

Question

11.15 am

Asked By ***Lord Brooke of Alverthorpe***

To ask the Leader of the House what proposals she is considering for reforming the procedures of the House of Lords.

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, it is up to the House itself as a self-regulating body to determine any changes that it wishes to see to the procedures under which it operates. I have recently put proposals to the Procedure Committee relating to Oral Questions to Secretaries of State, the tabling of Written and Oral Questions, and procedures for operating the new powers conferred on Parliament by the Lisbon treaty and the European Union (Amendment) Act 2008.

Lord Brooke of Alverthorpe: I am grateful to my noble friend the Leader for the work that she has done on that and for the work that she has been doing so admirably on the code of conduct and on our expenses and allowances—I understand why those have been taking priority. She has mentioned previously in responding to debates that she is aware that there is a good deal of feeling in all quarters of the House that it is now time that we had a comprehensive review of the way in which our practices and procedures operate. It is nearly eight years since this House last had a look at its procedures and I believe that it is now high time, given the pressures coming from different quarters, for us to look for a degree of change to improve our efficiency and effectiveness. In the best spirit, I congratulate her on the work that she is doing, but I hope that she will return to the Procedure Committee and press through the usual channels for the establishment of a Leader's Group with the following terms of reference: to consider how the procedures of the House can be improved, to increase its effectiveness and efficiency and to make recommendations to the House in due course.

Baroness Royall of Blaisdon: My Lords, we all want an efficient and effective House. The noble Lord points to the fact that we have not had a review of our procedures for eight years. It may well be that a review should take place, if that is the will of the House, but we should not forget that there have been profound changes over the last eight years—relating to the Lord Chancellor and to the establishment of the Supreme Court and the post of the Lord Speaker—all of which have led to procedural changes. Then we have our expenses and code of conduct. We have made fantastic progress, but those issues have not yet been completed. I made it clear at the Procedure Committee in December that, in view of the recent report from the Wright committee and suggestions from many Members, I was conscious of the desire in many parts of the House for a review of Lords procedure. I look forward to hearing the views of the committee on that issue and then perhaps we will take it further.

Lord Strathclyde: My Lords, given that the noble Baroness is a senior Cabinet Minister, can she tell us whether any of her colleagues have complained that your Lordships' House is not effective enough? Can she give us any examples in recent years of where she believes the House could have been more effective?

Baroness Royall of Blaisdon: No, my Lords, I have had absolutely no complaints from my Cabinet colleagues, all of whom think that we in this House are doing an excellent job. However, we should all be vigilant—every

Chamber and authority and all elected and unelected representatives should have a view to efficiency and effectiveness. That is our duty as public servants.

Lord McNally: My Lords, as the noble Lord, Lord Strathclyde, reminds us, the Chancellor of the Duchy of Lancaster is a senior Cabinet Minister, yet she has been on her feet now for 11 minutes without expressing undying support for the Prime Minister. Is this an oversight?

Baroness Royall of Blaisdon: My Lords, the whole House will know of my admiration and full support for the Prime Minister of this country.

Lord Alton of Liverpool: My Lords, in looking at ways of strengthening the procedures and using the expertise in your Lordships' House, does the Leader of the House recall the question that I put to her recently about the desirability of creating a foreign affairs Select Committee, which would be able to harness the considerable expertise and experience available in your Lordships' House? Will she tell your Lordships whether she has been able to make any progress on that stand-alone proposal?

Baroness Royall of Blaisdon: My Lords, at the time I said that that was an interesting and rather good idea. However, it is not for me to take that proposal forward. The noble Lord needs to take it forward to a committee of the House—forgive my ignorance, but I will speak to the noble Lord after this Question Time and we will find a way of taking the suggestion forward.

Lord Campbell-Savours: My Lords, would my noble friend accept that there is a need to amend paragraph 5.07 of the *Companion*, which deals with Members' supplementaries on ministerial Statements? On a recent occasion a Member of the House took five minutes of the total of 20 minutes in asking a supplementary question on such a Statement. Are not such Members making a mockery of self-regulation? If we cannot make self-regulation work in that area because Members are not prepared to respect the request made from the government Front Bench, then surely we should transfer that responsibility to the Lord Speaker.

Baroness Royall of Blaisdon: My Lords, on the whole, self-regulation works extremely well in this House. However, in order to ensure that it functions properly, all Members of the House, including members of the Government, have a duty to ensure that the procedures are properly applied and to show self-restraint in relation to speaking times.

Lord Mackay of Clashfern: My Lords, is the Minister aware that this House greatly admires the way in which she answers questions only with relevant considerations, as she showed on this occasion, until she was misled by the leader of the Liberal Democrats?

Baroness Royall of Blaisdon: My Lords, I confess that I am easily led astray.

Alternative Medicine: Astrologers

Question

11.21 am

Asked By ***Lord Taverne***

To ask Her Majesty's Government whether, following their proposals to regulate practitioners of alternative medicine, they plan to regulate astrologers.

Baroness Thornton: No, my Lords, the Government have no plans to regulate astrologers.

Lord Taverne: My Lords, I declare an interest as chairman of the charity Sense About Science. The forms of alternative medicine which the Government propose to regulate have as much scientific basis as astrology. As official regulation is likely to give such practices a spurious scientific reliability and respectability, is it not unfair to leave out astrologers? More seriously, will the Government note that august bodies of proper scientists—the Medical Research Council, the Royal College of Pathologists, the Academy of Royal Medical Colleges and other eminent professional bodies—strongly oppose the proposed regulation? Will the Government ignore the assiduous lobbying for pseudoscience from Clarence House?

Baroness Thornton: My Lords, I am aware that the noble Lord is making a wider and serious point about alternative therapies. At present there is no statutory regulatory system in the United Kingdom to govern the practice of complementary and alternative medicine, with the exception of chiropractitioners and osteopaths who are regulated by statute. We are undertaking a consultation exercise to determine whether and, if so, how to regulate the practitioners of acupuncture, herbal medicine and traditional Chinese medicine. The Science and Technology Committee of this House suggested that we should address that issue. No other complementary therapies, including medical astrology, are within the scope of this consultation and we have no proposals to regulate in any of these other groups.

Baroness Pitkeathley: My Lords, I declare an interest as chair of the Council for Healthcare Regulatory Excellence. I remind the House and the noble Lord who asked the Question that the purpose of regulation is to protect the public, and that is what we try to do. However, in order to help me do my job better, can my noble friend give me a definition of medical astrology?

Baroness Thornton: My Lords, medical astrology is traditionally known as iatromathematics and is an ancient medical system associated with various parts of the body, diseases and drugs and the influence of the sun, moon, planets and the 12 astrological signs. For example—I did the research on this issue myself—the noble Lord, Lord Taverne, and I share the same birth sign, Libra, which apparently rules excretory functions through the kidneys and skin. I could go on about lumbar regions but noble Lords will get the picture. I am happy to say that the underlying basis for medical

[Baroness Thornton]
astrology is considered to be a pseudoscience and superstition as there is no scientific basis for its core beliefs. The Government remain neutral on this issue.

Earl Howe: My Lords, does the Minister share my view that this is an uncharacteristically flippant Question from the noble Lord, Lord Taverne? Does she accept that statutory regulation is not a badge of rank but exists, as the noble Baroness, Lady Pitkeathley, has just said, to safeguard the public? The key regulatory bodies—the Health Professions Council and the Medicines and Healthcare products Regulatory Agency—have both concluded that acupuncture and herbal medicine practitioners should be subject to statutory regulation.

Baroness Thornton: The noble Earl is quite correct and I concur with him that this is a very serious matter. Although we do not specifically promote or endorse the use of complementary or alternative medicine, we have to appreciate that a high proportion of the population actually uses these medicines, and our concern, as my noble friend said, is to protect patients. Responsible complementary practitioners adhere to codes of ethics, know the limits of their competence and make appropriate referral of patients to orthodox practitioners where there is potential risk to their health and well-being. However, the noble Earl is completely correct—we have to look to how best to safeguard patients in respect of those complementary medicines such as acupuncture and Chinese herbal medicines that have the potential to cause harm. Therefore we need to take serious action to make sure they are regulated in the correct fashion.

Baroness Tonge: My Lords, I confess to being an Aquarian, and share my birth date with Copernicus and my Auntie Ivy, although I have to say that my Auntie Ivy had much more influence on me than my birth sign. However, on a more serious note, does the Minister agree that the popularity of mumbo-jumbo such as astrology and many forms of alternative medicine is due to the fact that people have very little scientific education at school? Will she say what this Government, in their 10 years in power, have done to further education in science and mathematics?

Baroness Thornton: We have done a great deal for further education in science and mathematics, although that is not exactly what this Question was about. I agree with the noble Baroness that of course people often turn to things like medical astrology because they do not understand the basis of whatever ailment it is they are looking at, and that can be a risky thing to do. However, I simply do not accept this Government have not put a significant amount of investment into mathematics and science in our schools.

Baroness McIntosh of Hudnall: My Lords—

Lord Rees of Ludlow: My Lords—

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): My Lords, we have not heard from the Cross Benches yet.

Lord Rees of Ludlow: My Lords, I declare an interest as Astronomer Royal, and therefore as someone who could enhance his income hugely by becoming an astrologer and offering horoscopes. Does the Minister agree that, even though were we in India it might be appropriate to regulate astrology because government ministers there, one is told, are heavily guided by it, in this country to do so might imply that the problem has rather more seriousness that it really deserves?

Baroness Thornton: The noble Lord is completely correct.

Baroness McIntosh of Hudnall: My Lords, does my noble friend agree that we should indeed have no truck with pseudoscience? As it happens, I have some sympathy with the point that the noble Baroness, Lady Tonge, raised about the teaching of science and mathematics. None the less, there are, as Hamlet observed,
"more things in heaven and earth … than are dreamt of in your philosophy",
and some very respectable branches of medicine were once alternative in their day. Therefore, it is important that we keep an eye on the things in which people invest confidence, and make sure, as my noble friend Lady Pitkeathley observed, that they do not cause harm.

Baroness Thornton: My noble friend is right. Complementary and alternative medicine therapies have proven to be effective, cost-effective and safe. Decisions about which treatments to commission and fund, for example, are the responsibility of the NHS locally, and indeed primary care trusts often have their own policies about funding complementary medicine such as osteopathy or chiropractic. Indeed, we are funding research into complementary therapies, for example in the care of cancer patients.

Lord Harris of Haringey: My Lords, I speak to the Minister as a fellow Libran. Is she satisfied with the quality of regulation of therapies such as psychotherapy? Is it still the case that anyone can set themselves up as a college of psychotherapy or any other therapy, and offer diplomas and apparent validation to practitioners whose skills may be negligible?

Baroness Thornton: My noble friend raises an important point, which the House has discussed in the past year. I had a huge postbag about that; I was inundated by suggestions from psychotherapists of all different kinds on this issue. My noble friend is quite right that there is an issue, and the department is looking at it.

Defence: Chinook Helicopters

Question

11.30 am

Asked By ***Lord O'Neill of Clackmannan***

To ask Her Majesty's Government whether the concerns about FADEC software and the general safety of Chinook helicopters expressed by the Ministry of Defence's Aircraft Testing Centre at Boscombe Down before 2 June 1994 were made available to and seen by Air Chief Marshal Wratten and Air Vice Marshal Day during their inquiry into the cause of the accident at the Mull of Kintyre.

The Minister for International Defence and Security (Baroness Taylor of Bolton): My Lords, first, I am sure that the whole House will wish to join me in offering sincere condolences to the family and friends of those killed in Afghanistan recently: Lance Corporal David Leslie Kirkness, 3rd Battalion The Rifles; Rifleman James Stephen Brown, 3rd Battalion The Rifles; Corporal Simon Hornby, 2nd Battalion The Duke of Lancaster's Regiment; Lance Corporal Michael Pritchard, 4th Regiment Royal Military Police; Lance Corporal Christopher Roney, 3rd Battalion The Rifles; Lance Corporal Tommy Brown, The Parachute Regiment; Rifleman Aiden Howell, 3rd Battalion The Rifles; Sapper David Watson, 33 Engineer Regiment (Explosive Ordnance Disposal); and Private Robert Hayes, 1st Battalion The Royal Anglian Regiment. I am sure that our thoughts are with their families and friends and, indeed, all those who are serving in Afghanistan.

Turning to the Question, the concerns expressed by technical experts at Boscombe Down were widely known. These concerns had been addressed in operating restrictions imposed by the initial release service for the Chinook mark 2. The air marshals both gave evidence to the House of Lords committee that they had been aware of questions raised about FADEC, but had discounted them as possible factors in the accident.

Lord O'Neill of Clackmannan: I thank my noble friend. I share her concern about the loss of servicemen's lives at any time, not least during the current struggle in Afghanistan. As chairman of the Mull of Kintyre Group, I am used to such replies as she has given us this morning. Is she aware that, since the findings of the inquiry conducted by Wratten and Day were, in effect, overturned by the Scottish fatal accident inquiry, grave doubts have been raised about the quality of the evidence that led to the far higher requirement of guilt that Wratten and Day were able to place on record against the service personnel? These concerns have never been satisfied. I ask the Minister whether she would be prepared to appoint a senior legal figure—a retired judge, for example—to assess all of the evidence that was before the original tribunal and anything that was not available at the time but has since come to hand, and to confirm that this higher level of proof of guilt of gross negligence can be justified. Until such assurances can be given, grave doubts will be raised by the families not only of the pilots and crew but also of the other men whose lives were lost in this dreadful tragedy.

Baroness Taylor of Bolton: My Lords, my noble friend and everybody who has been involved in this issue have taken it extremely seriously. The fact is that the board of inquiry was properly conducted and properly reviewed. Many Secretaries of State for Defence and other Ministers have looked at this issue time and time again, as have chiefs of air staff. The simple point that we must reiterate is that no new evidence has been presented. The issue in my noble friend's Question was included in the Powers report that he himself was instrumental in submitting to the Secretary of State two years ago and which was looked at in great detail. In the absence of any new information it is not possible to raise any hopes that this inquiry can be revisited.

Lord Craig of Radley: My Lords, does the Minister agree that Air Chief Marshals Wratten and Day are men of great probity? I served with them when I was in the Royal Air Force. While I appreciate the great distress caused to the families of all who died, is not the fundamental point about this tragedy the standard of airmanship displayed in the vicinity of the Mull on a routine transit flight with many passengers on board?

Baroness Taylor of Bolton: My Lords, I have to agree completely with the noble and gallant Lord. I was very open-minded about this issue when I looked at the information. It is very disconcerting to consider what happened on that day, but I am afraid that the judgment that it was about a fundamental standard of airmanship is the correct one.

Lord Lee of Trafford: My Lords, first of all can I enjoin these Benches in the earlier tribute to those who have been lost so sadly in Afghanistan? Just before Christmas, a number of us were engaged in querying aspects of the Haddon-Cave report into the tragic loss of the Nimrod in Afghanistan and discussing the Statement made to the House. Now the Chinook affair has flared up again. Developing the point that the noble Lord made a little earlier, would it not make sense for a truly independent commissioner to be appointed to consider any personal appeals in these types of situation, or the importance of any new evidence that may come along?

Baroness Taylor of Bolton: My Lords, it is important to recognise that the Haddon-Cave review made no criticisms of the board of inquiry procedures. There are very clear procedures laid down. When there is an accident of any kind, action is taken very quickly to set up the appropriate kind of inquiry. We should not hold out hope to people when there has been such an extensive inquiry, as there has been on the Mull of Kintyre incident. I have heard it described as the most extensively examined air crash in the history of British military aviation. There comes a point when we have to draw a line and accept the conclusions that have been arrived at.

Video Recordings Bill

First Reading and Statement

11.37 am

The Bill was brought from the Commons, read a first time and ordered to be printed.

Lord Davies of Oldham: My Lords, the House has just given a First Reading to the Video Recordings Bill, and of course I am delighted with that. This may therefore be a useful point for me to set out the Government's plans in relation to this Bill. With the agreement of the usual channels, the Government intend to fast-track this Bill through its stages in this House. Many of your Lordships will be aware that this is the first time that we have introduced a Bill with the

[Lord Davies of Oldham]
intention of fast-tracking it since the Constitution Committee published its report on *Fast-Track Legislation: Constitutional Implications and Safeguards*.

One of the committee's key recommendations was that, for all Bills that are to be passed with unusual expedition, an explanation of the reasons for using a fast-track procedure should be provided. The Government accepted that recommendation, and in a Written Answer in December last year my noble friend the Leader of the House gave an undertaking that, for any future Bill being fast-tracked, the Explanatory Notes accompanying the Bill would contain a full explanation of the case for fast-tracking, addressing the key questions set out in the Constitution Committee's report. I am pleased to say that the Explanatory Notes accompanying this Bill, which will be printed tomorrow morning, address each of those questions.

The committee also recommended that when the Bill is introduced to the House, the Minister responsible be required to make a Statement outlining the case for fast-tracking. With the leave of the House, that is what I propose to do.

The purpose of the Video Recordings Bill is to repeal and revive the existing provisions of the Video Recordings Act 1984 to make the criminal offences in that Act enforceable. The 1984 Act established a system of age classification for video works administered by the British Board of Film Classification, together with a regime of criminal offences and penalties. The Bill does not introduce any new provisions or offences into the 1984 Act. The Act is simply revived without any substantive changes.

Noble Lords may be asking why it is necessary for us to do this. Unfortunately, the offences under the Act were made unenforceable because of a failure at that time to notify certain provisions of the 1984 Act in draft to the European Commission in accordance with the technical standards directive. This failure to notify was only discovered last August in the course of preparing the draft Digital Economy Bill which is currently before the House. The 1984 Act has now been notified to the Commission in accordance with the directive.

Until the 1984 Act is made enforceable, no new prosecutions can be made under the Act and prosecutors cannot oppose appeals made in time against convictions. This means that publishers of video games and DVDs can distribute their goods free of classification requirements and retailers can sell or supply classified and unclassified material to any person, regardless of age, with limited statutory powers to stop or prosecute them. The Government therefore are seeking to fast-track the Video Recordings Bill to restore the protection afforded to the public under the 1984 Act; the only certain way of providing the important public protections set out in that Act is to ensure that its provisions are made enforceable as soon as possible.

The Bill consists of only two clauses and one schedule. Clause 1 repeals the provisions of the 1984 Act and immediately revives them. Clause 2 relates only to the Short Title, commencement and extent of the Bill. The schedule sets out transitional provisions to ensure that the repeal and revival of the provisions of the 1984 Act do not change their effect or the effect of other enactments, instruments and documents that refer to them, thereby making the classification system under the Act seamless following the passage of the Bill. I am sure that the House will share the Government's desire that these public prosecutions be reinstated as soon as possible.

Finally, if I may detain the House just a few moments longer in my capacity as Deputy Chief Whip, it may be helpful if I set out the proposed timetable for the Bill agreed with the usual channels. We propose Second Reading as first business on Monday 18 January. That leaves the usual minimum interval of two weekends between First Reading and Second Reading. A list of speakers for the Second Reading debate is now open in the Government Whips' Office. We then propose to take Committee as last business on the same day, with Report and Third Reading being taken on Wednesday 20 January. This will allow the Bill to gain Royal Assent on Thursday 21 January. To assist the House in considering the Bill, the Public Bill Office will be accepting amendments in advance of Second Reading. I hope that the House will support the Government's approach and will also support the Bill.

Baroness Anelay of St Johns: My Lords, I am grateful to the Minister for outlining both the procedure and the policy with regard to the Bill. Earlier, during Question Time, the Leader of the House responded to questions about whether this House can react to changing circumstances to make sure that the Government are more accountable to the wishes of this House. The noble Lord, Lord Davies of Oldham, has today outlined the way in which the Government have responded to the request of this House to be more accountable in matters whereby expedited legislation is proposed by the Government, and responded in an appropriate manner. The House may believe that some matters outlined by the Minister would more normally and properly be outlined at Second Reading, and therefore he needed to take some time today because, in order for the Government to be accountable, some Second Reading comments had to be made. It was most helpful to hear about the policy and the difficulties encountered. I support everything that the Minister said and am sure that all noble Lords on the Benches behind me will wish public prosecutions to be reinstated, and for there to be no uncertainty with regard to matters subject to criminal prosecutions that could proceed as a result of the Bill.

Lord Elton: My Lords, the novel experience of hearing the usual channels justifying their decisions is very agreeable and welcome. I entirely support the intentions of the Bill. However, I reflect—this is the first occasion on which one has been able to do this—that we are denying ourselves an opportunity to give mature reflection to the standards that are enforced in the management of the video-games industry, and to the effect of these games on young people and society. That cost should have been taken into account by the usual channels when they agreed this procedure.

Lord Morris of Aberavon: My Lords, on behalf of the Constitution Committee, of which I was a member when the procedural recommendations were made, I thank the Minister and Government.

Third Parties (Rights against Insurers) Bill [HL]

Membership Motion

11.46 am

Moved By ***The Chairman of Committees***

That, as proposed by the Committee of Selection, the following Lords be appointed to the Special Public Bill Committee on the Third Parties (Rights against Insurers) Bill [HL]:

L Archer of Sandwell; L Bach; L Borrie; L Goodhart; L Henley; L Hunt of Wirral; L Lloyd of Berwick (Chairman); L Methuen; L Paul; L Sheikh; B Whitaker

That the Committee have power to send for persons, papers and records;

That the evidence taken by the Committee shall, if the Committee so wishes, be published; and

That the Committee do meet on Tuesday 12 January at 11 am.

Motion agreed.

Equality Bill

Order of Consideration Motion

Moved By ***Baroness Royall of Blaisdon***

That it be an instruction to the Committee of the Whole House to which the Equality Bill has been committed that they consider the Bill in the following order:

Clauses 1 to 6; Schedule 1; Clauses 7 to 31; Schedules 2 and 3; Clauses 32 to 38; Schedules 4 and 5; Clauses 39 to 52; Schedule 6; Clauses 53 to 80; Schedule 7; Clauses 81 to 83; Schedules 8 and 9; Clauses 84 to 88; Schedule 10; Clause 89; Schedule 11; Clauses 90 to 94; Schedule 12; Clauses 95 to 98; Schedule 13; Clause 99; Schedule 14; Clauses 100 to 106; Schedules 15 and 16; Clauses 107 to 115; Schedule 17; Clauses 116 to 148; Schedule 18; Clause 149; Schedule 19; Clauses 150 to 184; Schedule 20; Clauses 185 to 187; Schedule 21; Clauses 188 and 189; Schedule 22; Clauses 190 to 194; Schedule 23; Clauses 195 and 196; Schedule 24; Clauses 197 and 198; Schedule 25; Clauses 199 to 203; Schedules 26 and 27; Clauses 204 to 206; Schedule 28; Clauses 207 to 210.

Motion agreed.

National Security Strategy

Motion to Approve

Moved By ***Baroness Royall of Blaisdon***

That it is expedient that a Joint Committee of Lords and Commons be appointed to consider the National Security Strategy.

Motion agreed, and a message was sent to the Commons.

Sudan

Debate

11.47 am

Moved By ***Baroness Cox***

To call attention to recent developments in Sudan; and to move for Papers.

Baroness Cox: My Lords, I am grateful to all noble Lords who will be contributing to the debate at this critical time for Sudan. Tomorrow will be the fifth anniversary of the signing of the comprehensive peace agreement, which has brought some respite from the relentless war unleashed by the National Islamic Front regime after it seized power in 1989—a war that has resulted in 2 million people dead and 4 million displaced. Then the conflict in Darfur erupted, with hundreds of thousands killed, displaced, injured and still suffering in refugee camps. Now there are fears that the CPA will be breached and that the war against the south will be reignited; or that the country will implode, creating chaos and instability.

I will focus first on the urgent need to promote and protect the peace process, and for the international community to encourage all parties to adhere to the provisions regarding the census, the elections and the referendum; and on the need to prepare for the post-referendum scenario, whatever the outcome, and the critical issues of wealth-sharing and power-sharing agreements and security. I will deal, secondly, with the recent violations of the human rights of people in northern Sudan, including the arrest of opposition leaders in Khartoum; thirdly, with the continuing violence in southern Sudan; fourthly, the humanitarian crisis in many regions; fifthly, the continuing suffering of people in Darfur; and sixthly, the plight of people, including the Beja, in marginalised areas such as southern Blue Nile, Abyei, southern Kordofan and eastern Sudan; and finally, slavery.

I will briefly state my own interests. I first worked in Sudan as a nurse in a remote area of desert in northern Kordofan in the 1980s, establishing an immunisation programme in the small township of Hamrat-el-Wiz. After the war erupted in 1989, I returned 30 times to locations in Bahr-el-Ghazal, eastern and western Equatoria, the Nuba mountains, southern Blue Nile, eastern and western Upper Nile and the Kassala region. During that war, Khartoum would regularly announce airstrips open to the UN's Operation Lifeline Sudan and the closed locations. It would then carry out military offensives in the closed areas so that no one could take aid to the victims or tell the world what it was doing. I focused on those locations, incurring the NIF's displeasure and numerous threats, took aid to civilian victims and obtained evidence of atrocities perpetrated by the NIF, including massacres of civilians, destruction of livestock, villages and crops in a scorched earth policy, and the abduction of tens of thousands of women and children into slavery.

Since the CPA, the small NGO, HART—the Humanitarian Aid Relief Trust—with which I now work, is establishing primary healthcare clinics and helping with agricultural programmes around Yei,

[Baroness Cox]
rebuilding a school in Bahr-el-Ghazal and supporting war widows in the Nuba mountains. My contribution will therefore reflect some of the first-hand evidence from those areas, and I am most grateful to other noble Lords who will address other issues.

I turn to the CPA and other peace agreements, drawing on a comprehensive report by the International Crisis Group. It states:

"Sudan is sliding towards violent breakup. The main mechanisms to end conflicts between the central government and the peripheries—the Comprehensive Peace Agreement (CPA), the Darfur Peace Agreement and the East Sudan Peace Agreement—all suffer from lack of implementation, largely due to the intransigence of the National Congress Party (NCP). Less than thirteen months remain to ensure that national elections and the South Sudan self-determination referendum lead to democratic transformation and resolution of all the country's conflicts. Unless the international community, notably the US, the UN, the African Union (AU) Peace and Security Council and the Horn of Africa Inter-Government Authority on Development (IGAD), cooperate to support both CPA implementation and vital additional negotiations, return to North-South war and escalation of conflict in Darfur are likely".

At the core of the current political crisis are delays in implementing key benchmarks laid out in the CPA. The referendum on independence for the south is due in January 2011. Before then, Sudan must hold national elections. These are set for April 2010, but President Omar al-Bashir's Government have failed to pass key democratic reforms promised by the agreement, and without these, there is no way that the results of the elections can be accepted.

Tensions have been rising between the NCP in the north and the SPLM in the south. In October, the President of southern Sudan, Salva Kiir, for the first time openly called for the south to secede. Both sides are rearming. Another civil war would be devastating for the Sudanese people, as well as for the entire Horn of Africa and other neighbouring countries. The situation was exacerbated on 7 December, when the Khartoum Government arrested and maltreated SPLM leaders and other peaceful protesters who were angered by the NPC's use of its majority to impose amendments to the crucial referendum law which they deemed totally unacceptable.

But there are some signs of hope. On 29 December, the National Assembly finally adopted the referendum law, and the recent progress of negotiations on the Abyei area referendum and the popular consultations in south Kordofan and Blue Nile regions are positive steps. However, agreements still need to be found on many crucial issues before the referendum takes place, including border demarcation, demilitarisation of border areas and arrangements for security and wealth-sharing, including oil revenues. There is also concern that the donor community has not fulfilled its 2005 commitments. Only a small fraction of the $4.8 billion pledged has reached essential infrastructure projects, as humanitarian aid for Darfur has absorbed most of the money.

Consequently, many parts of southern Sudan and the marginalised areas have been off the radar screen for many major aid organisations and the international media, resulting in largely unreported humanitarian crises. For example, southern Sudan has the lowest immunisation rate in the world. In January last year we were told that only 17 per cent of children are immunised, leaving 83 per cent vulnerable to preventable killer diseases such as polio, tetanus, measles and TB, with one in seven children dying before they reach the age of five. One in seven pregnant women dies as a result of pregnancy-related problems, and a girl is more likely to die in childbirth than she is to finish school. Three years ago, we discovered previously unidentified leprosy in eastern Upper Nile. There has also been a lost generation of children unable to receive education because of constant aerial bombardment. Even now, less than half the children in southern Sudan receive even a basic five-year primary education; and 85 per cent of adults are illiterate, with an even higher figure of 92 per cent for women.

The effects of an infrastructure devastated by war include the desperate need for rebuilding roads, without which people cannot move freely, especially in the rainy season, so people in rural areas cannot reach towns for healthcare or education, or polling stations to vote. Yesterday, I read a welcome announcement that Her Majesty's Government will be giving a very generous donation of £54 million, I think, to Sudan. Of course that is most welcome. However, is the money which the Government are providing through DfID being most effectively used in southern Sudan? One concern recently raised with us was the decision adopted by many aid agencies to change priorities from relief to development. That is understandable, but given the statistics of child and maternal mortality and morbidity, there is clearly still an urgent need for relief aid.

Perhaps I may offer a practical suggestion regarding voting. Will Her Majesty's Government and the EU press the authorities to arrange polling stations in a mobile form to reach remote rural areas? Otherwise, with no roads and the fear of attack from local militias in unstable areas, many people will effectively be disenfranchised. Can there also be an extension of voting over two days, to enable such mobile stations to reach all remote locations?

Problems of violence and insecurity claimed 2,500 lives last year and displaced 350,000 people. The notorious Lord's Resistance Army, or LRA, which created havoc and horror in northern Uganda for 20 years, has now been responsible for many deaths, injuries and abductions in southern Sudan; intertribal fighting has been responsible for the rest. There is widespread concern that Khartoum is supporting the LRA and instigating the tribal clashes. Given Khartoum's support for it in previous years, when it allowed the LRA to operate its brutal military training camps for children abducted from Uganda in NIF-administered territory, suspicions of northern involvement in last year's deadly confrontations are not unreasonable. To date, no evidence has been found, but there is an urgent need for confidence-building measures if such conflicts are not to exacerbate instability and undermine the peace process.

For example, would Her Majesty's Government use their influence to encourage the United Nations Mission in Sudan to undertake a more proactive civilian protection role, in accordance with its mandate, and to define more clearly the circumstances under which it will provide protection with appropriate intervention rather than mere observation? Darfur remains cause for grave

concern. Tens of thousands of displaced Darfuris still suffer extreme deprivation in harsh conditions in camps, and I am grateful to my noble friend Lord Alton who will be speaking on that continuing tragedy.

In other regions of Sudan, the people continue to suffer the after-effects of war and continuing political challenges. Last year I visited southern Kordofan, formerly known as the Nuba mountains, a name which is still preferred by the local people. The area is now governed from Khartoum and the peoples in the SPLM-administered areas describe systematic discrimination. For example, they have a desperate need for education but claim that the resources being made available from Khartoum are limited to schools in the Islamic tradition. Even the Muslims who live in those areas are deeply unhappy, as they wish their children to receive the more broadly-based southern Sudan or east African curricula. There is also an acute shortage of healthcare and provision for vulnerable people such as war widows.

Other marginalised peoples continue to suffer humanitarian crises. For example, the plight of the Beja people in eastern Sudan remains so serious that the southern Sudanese, whose own predicament is dire, undertook an investigation and claimed that the Beja people's plight is even worse than their own. Can the Minister say whether EU and DfID funding therefore includes appropriate weighting to provide essential assistance to those all too often forgotten people in the marginalised areas?

Finally, I turn to the still unresolved problem of the systematic abduction of tens of thousands of African civilians, mainly from Bahr-el-Ghazal and the Nuba mountains, during the 1980s and 1990s. For some years, many major international organisations denied the existence of slavery in Sudan. However, Gaspar Biro, the UN special rapporteur, confirmed the reality and subsequently many reports, books and documentary films, including a BBC "Everyman" programme, have testified to that inhuman and large-scale practice of slavery, supported by Khartoum. The slave raids, the after-effects of which I witnessed many times, were perpetrated by combined forces of government soldiers, mujaheddin jihad warriors and the murahaleen local tribesmen, who swept through the countryside, generally killing the men and abducting women and children.

My first encounter was typical. In Nyamlell in Bahr-el-Ghazal in the early 1990s, 82 men had been killed and their bodies thrown into a mass grave and 282 women and children had been abducted. We were able to assist with the rescue of many hundreds of women and children and their stories were heartbreaking. Some are recorded in a book on modern day slavery which I wrote with my colleague Professor Marks. I shall put a copy in your Lordships' Library in case any of your Lordships would be interested to read the evidence. Eventually an organisation was established in Khartoum, CEWAC, to identify and repatriate those enslaved. But it is estimated that there are still tens of thousands in captivity. In the past few months, I have met two people, one an Anglican priest, who know they have relatives still enslaved in the north. But, as the priest said with infinite sadness,

"I cannot go to rescue my brother. I will just be killed and no one will be able to do anything about it".

When I had the privilege last year of meeting the President of southern Sudan, Salva Kiir, and other southern leaders, they acknowledged this tragic situation, but with so many problems related to the CPA, this is an "issue too far" for them to raise. However, they did ask us to urge the international community to press Khartoum to ensure the urgent identification, repatriation and rehabilitation of all still in captivity in the north. I ask the Minister to raise this issue.

I greatly look forward to the Minister's reply. Along with other noble Lords, I have great respect for her commitment to justice, peace and freedom in Africa and beyond that great continent. I believe that she may be visiting Sudan in the near future and I hope that this debate will be helpful in the important discussions which she will be holding with the leaders there.

The Sudanese people always look to the United Kingdom to play a special leadership role, given our historic involvement and responsibility. I hope that this debate will demonstrate our commitment to provide that help and that it will be a source of encouragement; a sign of true friendship; and a support for all in Sudan who are seeking to achieve the peace, freedom and justice which they so urgently need and so richly deserve. I beg to move.

12.02 pm

Lord Sheikh: My Lords, I am grateful to the noble Baroness, Lady Cox, for initiating this debate. Achieving peace and stability in any region that has been ravaged by war and has a wealth of cultural differences is always a challenge. In this region of Africa, the task is that much greater as these variations are coupled with intense poverty and tribal intolerance. Since independence from Britain in 1956 and the subsequent civil war, Sudanese politics has been characterised by violence, ethnic and religious prejudice. Sudan's vast area, 133 languages and mineral wealth should have given it great responsibility and influence. It has yet to rise to this challenge.

National elections in Sudan are scheduled to take place in April this year. The continent's longest civil war formally ceased with the ratification in Kenya of the 2005 comprehensive peace agreement. The CPA has been successful in returning thousands of refugees and internally displaced persons to southern Sudan. The agreement has enjoyed further success with the creation of the Abyei Boundary Commission. The comprehensive peace agreement will expire in July 2011.

It is encouraging to see that the vice-president of Sudan and his counterpart in southern Sudan have reached an agreement on increasing the allocation of seats in the National Assembly for southern Sudan. The recent approvals of the southern Sudanese referendum law and legislation that will determine the future of the Abyei region are also positive developments. Both Governments must now agree to accept the results of these imminent elections. Southern Sudan will vote in January 2011 on secession. The Sudan People's Liberation Movement has expressed its concern about a clause in the Bill that would allow the use of absentee ballots for southerners who live outside the territory. A census produced by the Sudanese Government suggests that

[LORD SHEIKH]
over half a million southerners live in northern Sudan at present. This figure has been disputed by a number of officials in the south.

The Government of southern Sudan have welcomed the Abyei Referendum Bill. Residents of the Abyei region, which has significant mineral wealth, will be able to decide whether to continue as part of northern Sudan in the southern Korfordan state or to revert back to being part of southern Sudan. This decision has not been welcomed by all southerners. Representatives from the Misseriya tribe of Abyei have asked President al-Bashir not to ratify the Abyei referendum law. The Misseriya group in the National Assembly left the parliament in protest before the Bill was announced, as the Bill does not give the Misseriya people the right to vote. Some members of the tribe see this as discrimination and have pledged to disrupt the result of the vote if the Bill is not amended in their favour. The Speaker of the Assembly has stated that the Bill would not be amended and participation in the Abyei vote is the decision of the commission, which will be chosen by the National Congress Party and the Sudan People's Liberation Movement. Members of the SPLM have argued that the comprehensive peace agreement only grants the Misseriya people access to water and grazing for their cattle.

This dispute reflects the extent to which Sudan is a fractured state. The complex nature of this disagreement should serve as a reminder to the international community that Sudanese politics should not be viewed in simplistic regional terms. Tribal divisions within the SPLM have also contributed to the volatile situation in southern Sudan. Violence in the region resulted in 1,200 deaths last year. Most of the unrest has occurred in Jonglei, which is the biggest state in the south, and hostilities among southerners could cause the election in 2011 to be postponed. The Government of southern Sudan must take steps to improve security in the region to avoid the outbreak of a civil war. The current climate in the region suggests that more efforts should be made to bring extra security to southern Sudan. Does the Minister agree that the African Union could play a vital role in bringing peace to the region? If so, what steps will the Government take to support an enhanced role for the union?

I welcome the decision taken last month by Chad and Sudan to renew discussions about promoting peace on their mutual border after years of tense relations. I am optimistic that the meeting scheduled to take place in Chad today will result in a significant breakthrough for the security of the region. The historic context of diplomatic difficulties between Chad and Sudan has its foundations in the Darfuri conflict and ethnic identity. Tribal identity is at the heart of the unrest that has devastated this region. The obvious lack of confidence of the citizens in the state and the constant struggle for food, land and resources have caused some people to seek militia groups rather than the Government for protection. The Janjaweed in particular bypasses national divisions to recruit members along tribal lines. An improvement in relations between Chad and Sudan will contribute to achieving peace in Darfur, where approximately 300,000 people have died since hostilities began in 2003. Darfur has resulted in 3 million people being displaced, a number of whom have crossed the border into eastern Chad.

The instability in the region also has implications for the elephant population in Chad. Janjaweed militiamen have been raiding Zakouma National Park and areas surrounding the shared border, killing elephants for their ivory. As a consequence, the elephant population in the park has been significantly reduced. The profits gained from selling ivory have helped the Janjaweed and other militias to purchase weapons and to finance their operations in Chad and Sudan.

The activities of the Lord's Resistance Army in the region have caused a number of refugees to seek asylum in both Chad and Sudan. The terror unleashed by the LRA is one of the main stumbling blocks to peace in the region. The United Nations was forced to suspend humanitarian work in Sudan near the border with the Democratic Republic of Congo as a result of sustained attacks from the Ugandan LRA rebels. The LRA and other militias in that region have unashamedly abused women and children in their quest for power. The international community must put greater pressure on the Sudanese Government to implement the recommendations made as a result of the Doha peace process and the Sudan People's Initiative. A successful resolution of violence in Darfur will become a reality only if regional dialogue among the neighbouring countries is implemented. There are humanitarian implications, with widespread malnutrition among infants and a scarcity of resources as a whole.

The progress that Sudan has made in the last few weeks is to be commended. Greater challenges lie ahead over the next 12 months. We have a duty as part of the international community to assist both Sudanese Governments in making sure that all elections held over the next year are free and fair. The Abyei dispute must be monitored to ensure that it does not result in violence between the Ngok Dinka and Misseriya tribes. Tribalism is viewed as far superior to nationalism in this region. We must therefore respect this outlook in our dealings with all groups in Sudan.

Sudan is the largest country in Africa. We have a historic connection with Sudan. We need to continue to work towards resolving the political, tribal and humanitarian problems in order to achieve peace and prosperity not only in Sudan but in Africa as a whole. With regard to humanitarian issues, I declare that I am the chairman of the Sheikh Abdullah Foundation and that my charity has undertaken humanitarian work in Sudan. The Muslim charities in the United Kingdom have now agreed to work in harmony when carrying out aid work in Sudan and I hope that we can all undertake good work there.

12.13 pm

Lord Chidgey: My Lords, I too congratulate the noble Baroness, Lady Cox, on introducing this debate, and on the comprehensive manner in which she has given us an overview of the situation. I hope that I can reinforce many of the points that she has made.

Peace in Sudan remains very fragile. In 2009 alone, violent conflict claimed some 2,500 lives in southern Sudan and displaced more than 350,000 people, almost

double the figure for 2008. The latest reports from the UN Office for the Co-ordination of Humanitarian Affairs confirm that the LRA continues to destabilise most of Western Equatoria State in southern Sudan. Internal fighting has intensified, resulting in massive displacements, abductions of children, gruesome injuries and huge death tolls.

As the noble Lord, Lord Sheikh, mentioned, the Ugandan LRA rebels are a key threat to the relative calm established by the 2005 comprehensive peace agreement. The collapse of the CPA, should it happen, would likely revitalise the LRA as a force that could easily destabilise both Sudan and the whole region. The re-emergence of the LRA in different parts of southern Sudan may force the Sudan People's Liberation Movement to consider an appropriate riposte, according to some military sources in southern Sudan. In that regard, there are growing concerns over reports that a number of LRA splinter groups are continuing to move unchecked across the region, terrorising civilians in northern DRC, parts of the Central African Republic and Sudan.

It is of course important that the door be kept open for the diplomatic approach, but attempts by the UN special envoy to the LRA-affected areas, Joaquim Chissano, to effectively engage the LRA high command have apparently failed so far. With the final refusal of Joseph Kony to sign the Juba peace agreement, there is now a greater acceptance that a targeted and strategic military approach may be the best of a bad set of options, although always preferably combined with a diplomatic approach.

Much more needs to be done to apprehend the key LRA leaders and, in doing so, weaken the command and control and leadership of that movement. In October 2009 the European Council issued a statement calling for the LRA to honour its commitment to sign the final peace agreement and stressing the necessity of a comprehensive approach to defining a solution to LRA-related problems. On 17 November 2009 the UN Security Council, of which the UK is a permanent member, called for a better co-ordinated strategy between UN forces in the DRC, in the Central African Republic and in Sudan to protect civilians against further LRA attacks.

The Government have stated that they support legislation currently going through the US Congress, the Lord's Resistance Army Disarmament and Northern Uganda Recovery Act, which in part aims to target and apprehend Joseph Kony and LRA top commanders. Informed sources have confirmed that military intelligence is available within the international community to pinpoint his location. While the failure to acknowledge that facility may neatly avoid any commitment to the Security Council and, on the ground, to the resources needed to secure his apprehension, failure to act is allowing the LRA to regroup and flourish.

Will the Government commit to comprehensively reviewing how they could contribute intelligence and logistical support to a careful and credible apprehension strategy? How could they better bring pressure to bear on the LRA to accept a peaceful solution? Will the Government then work for a unified military approach to tackling the LRA, working with other EU member Governments to apprehend and remove Kony and the top LRA commanders, therefore ensuring stability to the wider region? What representations will the Government make to the United Nations Security Council in order to support a more co-ordinated approach to tackling the LRA across the region?

Simply commending regional states that are targeting the LRA is not sufficient. What is required is targeted and strategic action. Recent successes—for example, the death, reportedly at the hands of Ugandan forces, of the second-in-command of the LRA, Bok Abudema, and the surrender of "Captain" Ocen—are positive signs, but continued and increasing acts of violence against civilians in Sudan, the DRC and the Central African Republic are proof that removing just one or two key individuals is not enough.

The report from the UN High Commissioner for Human Rights in December records that in the three months to March 2009 a series of 27 confirmed attacks were carried out by LRA elements in Western and Central Equatoria, including attacks on 19 villages and four vehicle ambushes. More than 80 villagers were killed, with many others injured, mutilated, raped, abducted and forced to work as child soldiers and sex slaves. Villages were destroyed and more than 38,000 people displaced near the border with the DRC. LRA groups entered southern Sudan after a joint military offensive against them by the Ugandan and Congolese armies in December 2008. In recent months LRA attacks have resulted in a further 135 deaths and 67,000 people driven from their homes. Attacks are now extending to looting food distribution points, where the LRA is also abducting children and young women.

The cross-border nature of the LRA is a clear threat to international peace and security in the region. There is a growing concern among NGOs such as the Enough Project that the UN Security Council has yet to take seriously its responsibility to protect civilians from the LRA, and to put in place an effective counterinsurgency strategy. There is a growing call for the UN Security Council to authorise, and for member states to resource, a comprehensive strategy to protect civilians in LRA-affected areas, to identify and sever external lines of support, to increase opportunities for rank-and-file fighters to defect and to end the insurgency once and for all through more effective military pressure on LRA leader Joseph Kony and his high command. Through what means do the Government plan to target and sensitise LRA fighters in order to encourage them to disarm, demobilise, repatriate, resettle and reintegrate, commonly known as DDRRR?

The Government are contributing £400,000 to MONUC's DDRRR effort, part of which will be spent targeting the LRA. Can the Minister provide a breakdown of how this money will be used to target the LRA? Given the Security Council's recent statement that it would like to see a more unified, regional approach to combating the LRA, how do the Government intend to support UNMIS, as they have pledged to support MONUC, to target and apprehend LRA fighters and protect civilians?

The Government have committed to encouraging MONUC to increase its presence in LRA affected areas. Given the porous nature of the borders between

[LORD CHIDGEY]
the DRC, Sudan and the Central African Republic, and the regional aspect that LRA movements have taken in recent years, it would seem necessary to adopt a similar approach with UN forces in southern Sudan. What plans do the Government have to support an increased civilian presence in Sudan?

DDRRR efforts led by MONUC in the DRC have been successful to an extent but have not prevented new LRA recruits from being either abducted or simply recruited from the civilian population. To be effective, DDRRR must be accompanied by a strategic and targeted military approach that will prevent LRA command structures operating effectively and will weaken co-ordination and recruitment. Do the Government recognise the need for a multipronged approach to the LRA problem, and if so what plans do they have to approach the problem from both military and DDRRR points of view? I hope that the noble Baroness can comment on how this policy might be affected by the £54 million that has just been pledged for the forthcoming elections.

According to the report by the UN High Commissioner for Human Rights in December 2009, evidence suggests that LRA actions during attacks in the early part of that year,

"may amount to crimes against humanity".

The high commissioner notes that under the statute of the International Criminal Court, murder, enslavement, imprisonment, torture, rape and sexual slavery are all considered to be crimes against humanity if carried out,

"as part of a systematic attack directed against any civilian population".

He calls for Governments in the region to co-operate with the ICC to apprehend the LRA leaders. What steps are the UK Government taking, as a member of the international community, to co-operate with the International Criminal Court and with Governments in the region to search for, arrest and surrender the LRA leaders accused of crimes against humanity and war crimes under the Rome statute?

The United Kingdom is a member of the troika of the UK, US and Norway, and is a guarantor of the comprehensive peace agreement. Therefore, what steps are the Government taking, and what have they taken so far, to ensure that the LRA is not allowed to become a threat to the peace process in Sudan by threatening local populations and therefore impacting on the implementation of the CPA?

A new International Crisis Group report, which I believe the noble Lord, Lord Sheikh, mentioned, notes that the failure to stabilize Jonglei and other areas of concern risks seeing south Sudan become increasingly unstable ahead of next year's national elections and the planned 2011 self-determination referendum. Intertribal fighting has taken on a new and dangerously politicised character, with the worst violence in and around the vast, often impassable, state of Jonglei. The escalation of violence has deepened divisions among its communities and leaders, some of whom may be manipulating conflicts to their own ends.

Action is needed now to stop the LRA becoming stronger and more uncontrollable—a threat underlined by reports that the LRA is now being sponsored by the Government of northern Sudan in much the same way as the Janjaweed. In this context, the Government of southern Sudan need to tackle the inability or unwillingness of the police to address domestic security issues, of which the LRA must be a prime concern. Police reform must become a greater priority in southern Sudan. The United Nations mission in Sudan should undertake a more proactive civilian protection role, as set out in its mandate, and better define the circumstances under which it will provide protection. That apart, there are serious concerns about the integrity of the forthcoming election process. Notwithstanding the difficulties mentioned earlier by the noble Baroness about accessing polling stations, voter registration has been greatly delayed. It has proved extremely difficult to motivate and organise people to register, which does not augur well for the success of future elections and referenda.

Finally, there is a pressing need to ensure local stability to work towards regional recovery and development. Without an active peace process, a commitment to increasing accountability for crimes committed against civilians, a fully deployed, equipped and performing UN/AU peacekeeping force, and serious planning for regional recovery, the situation across southern Sudan will continue to fester, destabilising the country and the region.

12.26 pm

Lord Judd: My Lords, I am sure the House will be agreed on three points: first, our gratitude to the noble Baroness, Lady Cox, for having given us an opportunity to debate this important subject today and our respect for her personal experience and consistent interest in the people of Sudan; secondly, that we ought all to be sending a message of solidarity to the front-line workers in southern Sudan and Sudan as a whole who carry so many burdens on our behalf and do it so effectively, with so much commitment; and thirdly, how good it is to see my noble friend handling this issue on the Front Bench—nobody can question her long-standing commitment to the people of Africa. I understand that she may soon be going to visit southern Sudan. When she does, I hope she will take the opportunity to meet with and hear the insights of NGOs such as Oxfam and Saferworld—in which I declare an interest as a trustee—which are anxious to share with her what they are discovering.

This month sees the fifth anniversary of the comprehensive peace agreement. It is, therefore, sad that it is faltering so badly. There is an urgent need for the troika—the UK, the US and Norway—to re-energise it. The US, of course, has a lead role, but I believe that the UK must now become a catalyst and my noble friend is exactly the person to ensure that this happens. We have to learn from history. A re-energised comprehensive agreement must not be seen as an end in itself. What follows in terms of economic and social progress and human rights is what matters, and this will demand resources and sophisticated support from the international community.

Similarly, the result of the 2011 referendum on secession of the south must not be seen as an end in itself. Unless it is to contain the seeds of renewed

bitter conflict, the context in which it takes place will be vital. For example, there will have to be absolute clarity about where exactly the north/south border lies and about arrangements for sharing and handling oil revenues, together with convincing arrangements for both north and south on dependence on Port Sudan as the exit point for exports.

I vividly recall that I was in south Sudan in 1983, on a visit as the director of VSO, when the garrison down the road from Juba rebelled. General Garang had been recalled from his PhD studies in the States to try to persuade the garrison to behave itself. I was staying at an FAO project. General Garang arrived when the rebellion took place. It was interesting then to see that he was actively debating with himself and those immediately around him whether to stay with the Government of Sudan or take the road that he did take of leading the SPLA and the independence movement.

That was almost 30 years ago, and it is more than 50 years since the bitter dispute began. It is difficult to envisage the pain, suffering, slaughter and bereavement which is the terrible reality of this dreadful saga. As we have been reminded, 2009 was the most violent year since the comprehensive peace agreement was signed, with 2,500 people killed and 350,000—I repeat, 350,000—people displaced. Meanwhile the poverty remains acute: one in seven pregnant women will die; one in seven children under five will die; less than 50 per cent of the population has access to safe water. We cannot compare the national neurosis about our current cold spell with challenges of that scale.

Against this background, it is troubling that the World Bank multidimensional fund is evidently not being dispersed as effectively as it might be. Front-line NGOs are seriously short of funds for the sustainable long-term work which they desperately want to do, as distinct from the short-term relief projects which come their way. As the noble Baroness stressed, roads are a critical element in this.

Yesterday afternoon I was able to have a personal briefing by Maya Mailer, the Oxfam policy adviser in Juba. She had returned on Tuesday from the searing heat of Juba to the snarled-up, frozen London for a brief working visit. It was a first-class but very challenging briefing. Later today, in Committee Room 4A, she, together with representatives of other organisations, will be presenting a report on the situation which they have just prepared.

The insights of those working on the front line lead me to make the following observations, which I hope my noble friend will take on board and respond to. While the Government of south Sudan are right to be concerned about the need to disarm the civil population, how realistic is it to overconcentrate on this in the total absence of effective human security? Surely the provision of convincing human security must be the first priority, although I recognise the chicken and egg dimensions of this. The situation is complex and confused. In Jonglei state alone, traditional cattle raiding has escalated into vicious attacks on whole communities and is made all the more devastating by the widespread presence of AK-47s, machine guns and grenades. The SPLA uniforms worn by some of the participants suggest that SPLA deserters have been opting to join their kin.

The noble Lord, Lord Chidgey, referred to the Lord's Resistance Army, which is involved in sinister and far-reaching destabilisation across the region as a whole. Children who should be at school are instead joining the so-called Arrow Boys, endeavouring to resist the LRA and protect their communities. One thing is sure: if human security is to be achieved, the international community must act resolutely and fast on the control of arms trafficking and the flow of arms into conflict regions such as this. The objective of an arms trade treaty is highly relevant in this context. There is also an urgent need for a regional strategy in dealing with the cruel presence of the LRA, whose real motivation has so far escaped analysis.

More generally in Sudan as a whole, there are other issues on which the policy of my noble friend and HMG will be important. I shall list them briefly. There is a need for independent assessments to be conducted throughout—I emphasise throughout—northern Sudan. These are also badly needed along the north/south border in order to pinpoint gaps in humanitarian assistance and basic services. There are similar requirements in the east. Apparently the current joint communiqué and subsequent monitoring system in effect apply only to Darfur. Similar agreements are a necessity for the rest of northern Sudan. The UN Office for the Co-ordination of Humanitarian Affairs and the resident co-ordinator's support office should be strongly supported by the international community in achieving these.

There is a need for the high-level committee to hold the Government of Sudan to account for their commitments to remove bureaucratic impediments and for their responsibility to ensure that commitments made at the federal level are turned into realities at the state level. There is also the imperative of ensuring that humanitarian services in northern Sudan are delivered to their targeted beneficiaries in an independent, neutral and impartial manner. In this context it is important not to let rest the inexplicable expulsion of certain key international NGOs such as Oxfam UK and to insist that the Government of Sudan should stop their internal and external misinformation campaigns and negative propaganda, enabling such agencies to return. I always recall that, when I was director of Oxfam, we realised that what we called in one of our publications on Central America "the threat of a good example" was invariably one of the most difficult challenges for liberal authoritarian regimes.

There is also the need for the UN donors and diplomats in Khartoum, through both the high-level committee and bilateral discussions, to persuade the Government of Sudan to accept a clear definition of humanitarian assistance, which includes the vital task of protection. The urgency of recognising that UNAMID must have a greater capacity to protect civilians and increase security to ensure humanitarian access cannot be ignored. Quick-impact operations can blur the ongoing civil-military imperative. UNAMID has a key role in protecting humanitarian assets and personnel. In the total absence of alternatives, it also has to

[LORD JUDD]
increase its role in the protection of civil populations by more patrolling of roads, towns and internally displaced camps. Its monitoring of human rights and human protection issues through its civilian and police elements is an essential part of this. However, if we will this, we have to will the resources for it to happen.

The UN mission in Sudan must be supported in putting its core mandate—namely, monitoring CPA security arrangements—more effectively into action. When the mandate of the UN mission is renewed this coming April, it would be unforgivable if the opportunity was not seized to reinforce its responsibility for civil protection. However, again, if we understand it and will it, the provision of adequate resources is an essential obligation. The situation on the ground is far too grim for playing intellectual, theoretical policy games on the international stage. Those involved internationally have, above all, strenuously to continue to seek and facilitate a cessation of hostilities, followed by an effective, monitored ceasefire which brings on board all major parties to the conflict. This is indispensable if human security and humanitarian access to people in need is to be ensured.

Finally, in all that we do we must constantly remember that, ultimately, sustained and enduring stability can be ensured only by the people of north and south Sudan, the wider region as a whole and their Governments. They have to own the solutions; the absence of such ownership contains the seed of inevitable failure. We must, therefore, constantly ensure that we are in the long run—and it will be a long run—enabling and not disempowering. One day we will all have to learn across the world that peace and security can only be painstakingly and patiently built; they cannot be imposed. We have all the time to remember that if we will the end, we must will the means. It is good that HMG take this point and are determined to pursue it.

12.40 pm

Lord Alton of Liverpool: It gives me great pleasure to join others in congratulating my noble friend Lady Cox on once again raising in your Lordships' House the long-standing suffering of the people of Sudan. I will speak about two issues: the situation—following the speeches of other noble Lords in this debate—in southern Sudan and the situation in Darfur. I remind the House of my non-financial interest as honorary secretary of the Associate Parliamentary Group for Sudan.

This debate is a particularly timely curtain-raiser, as that group will next week begin a series of hearings that will provide an opportunity to examine the fragile comprehensive peace agreement. There will be written and oral evidence from all the major players, including the Governments of north and south Sudan, international agencies and the Department for International Development, whose biggest programme in the world is in Sudan. A report will subsequently be published, focusing on the key challenges facing Sudan. I know that the Minister, the noble Baroness, Lady Kinnock, has welcomed this initiative, which will reinforce the distinctive British policy in Sudan. As my noble friend has said to the House, we should never underestimate the crucial role that Britain plays in Sudan, or the high regard in which Sudanese people hold the United Kingdom. The Minister has herself taken a long-standing interest in these issues—we collaborated while she was a Member of the European Parliament in highlighting the unfolding tragedy in Darfur. She and her predecessor as the Minister responsible for Africa, the noble Lord, Lord Malloch-Brown, have shown tireless commitment to the continent.

Sudan has the largest landmass in Africa. I first visited southern Sudan during the civil war, when John Garang's Sudan People's Liberation Movement took me to see some of the ravaged areas, devastated by 21 years of aerial bombardment, and which led to 2 million deaths and 4 million displaced people. I visited the Ilemi triangle and southern Sudan again last year. Following the January 2005 CPA and Garang's death, the SPLM has been led by Salva Kiir Mayardit, the president of southern Sudan, and vice-president of Sudan. He has had to face the massive legacy of that war, with acute needs for most basic services, including, as we have heard, healthcare, agricultural production and education. He has also had to face the complexities of a society comprised of a population of around 15 million people, with more than 200 ethnic groups.

The challenges, as the noble Lord, Lord Judd, has reminded us, are daunting. Last year, the south's immunisation programme reached just one in five, while there are a mere 20 secondary schools serving the whole region. Less than half the population has access to safe drinking water, and, as my noble friend has told the House, pregnant women in southern Sudan have a greater chance of dying from pregnancy-related complications than a woman almost anywhere else in the world. One in seven children will die before their fifth birthday. Close to 90 per cent of southern Sudanese women cannot read or write. Humanitarian agencies lack the capacity to reach people in need. In a region that is around the size of France, there are less than 50 kilometres of tarmac roads, and those centre on the capital, Juba. In the long rainy seasons, many rural locations are unreachable by road or air for weeks at a time.

In addressing these considerable needs, southern Sudan has been relying not just on aid from countries such as our own—I join others in welcoming the support that Her Majesty's Government give—but also on oil revenues to assist in its efforts to build its infrastructure. However, in a report last September, *Fuelling Mistrust*, Global Witness found that oil figures published by the Khartoum Government do not match those from other sources, and concluded that there is insufficient oversight of oil revenues. Another report suggested that $266 million of oil arrears were outstanding. Perhaps today the Minister can tell us the current position in respect of these desperately needed resources.

The House may be aware that earlier today 10 major non-governmental organisations—including Oxfam, Christian Aid, Tearfund, Caritas, World Vision, Save the Children and the International Rescue Committee—issued a briefing paper entitled *Rescuing the Peace in Southern Sudan*. The House will look forward to hearing from the Minister about the Government's response to the recommendations and

conclusions of those NGOs. They describe the situation in the south as "fragile", and they warn:

"The next 12 months will be critical for the future of Sudan … With landmark elections and a referendum on the horizon, the peace deal is fragile and the violence likely to escalate even further unless there is urgent international engagement".

Already there are worrying signs that Khartoum will seek to deny Sudanese people a chance to take part in fair and free elections. Only yesterday the political secretary of the National Congress, Professor Ibrahim Ghandour, said that the United Nations has "no right"—I stress that—to observe the coming elections. It would be helpful if the Minister would say something about independent monitoring of the elections and the provision of facilities such as the mobile election units that my noble friend referred to earlier; he might also mention the provision of a United Nations-sponsored radio station that could broadcast to the whole of Sudan during the run-up to the elections, disseminating much-needed information.

Despite the enormous challenges that Sudan faces, the political leadership in the south must be commended for its efforts to safeguard autonomy and to develop models of good governance and in particular for the improvements made in the treatment of minorities. This is all in stark contrast with the persecution and systemic abuses of human rights that characterise the policies of the Government of Omar al-Bashir in the north. Earlier this week, the Open Society Institute raised the cases of Sudanese human rights campaigners forced to flee Khartoum. Perhaps the Minister can tell us whether Her Majesty's Government are satisfied that they are meeting their obligations to implement the 2008 EU guidelines on human rights defenders.

Despite all of these significant issues, it is worth noting that the 10 NGOs that I mentioned suggest that although,

"Sudan faces many interlocking challenges … if the international community acts now, they are surmountable".

Surely the greatest of those challenges remains, as so many of your Lordships have said, the problem of conflict and insecurity. Instability and violence in the south has been fuelled by a number of contributory factors. The promised peace dividends have been slow to materialise and this is breeding disillusionment, which has replaced the initial post-war euphoria. In this climate, warlords and sectarian leaders have emerged. This inflammatory situation, in which 2,500 people have been killed and 350,000 displaced during 2009, has been ruthlessly exploited by Khartoum and its agents.

In a briefing for today's debate, the international agency, Saferworld, says that the Government of southern Sudan,

"continues to be driven by the belief that a renewed confrontation with the north is likely; this perception dominates its security thinking".

Saferworld points to the other danger to Sudan's peace process: escalating violence and insecurity among the south's diverse inhabitants. When the Minister comes to reply, perhaps she could say what is being done to develop southern Sudan's security and civil institutions.

Khartoum's hand is frequently found stirring tension and rivalry and inciting violence via its proxies. The north's belligerence and in particular its collaboration with the Lord's Resistance Army, led by Joseph Kony, about which we have heard so much, and which has been turned into a significant actor within the region, have continued to result in horrific violence in Sudan, northern Uganda and other neighbouring countries. This notoriously vicious rebel group continues to wreak havoc—since the end of 2008 alone, the LRA has displaced close to 70,000 southern Sudanese in Western and Central Equatoria states and led to an influx of some 18,000 refugees from the neighbouring DRC.

Within the last few weeks the LRA have carried out gruesome attacks in Ezo, Nzara, Yambio, Tambura, Nagero and Ibba counties. The attacks are always characterised by abductions, killings and looting. Let me refer to an extract from the joint NGO report published today:

"The unpredictable nature and brutality of the LRA attacks has sent waves of fear through Western Equatoria, the most badly hit area. With its fertile soils and relatively educated population, this should have been one of the first states in southern Sudan to thrive after the CPA. Instead, some communities are too frightened to stay in their villages or venture into the fields to cultivate. As a result, rural school enrolment has declined, and normally productive farming families are going hungry. To defend themselves against LRA attacks, communities have formed voluntary youth militia armed with traditional weapons. According to community accounts, the presence of these 'Arrow Boys' has provided a sense of security. But the reliance on a militia, which includes children among its ranks, is extremely worrying and is a sign of the inability of the GoSS security forces and the UN peacekeeping mission (UNMIS) to protect civilians".

In a letter that I, the noble Lord, Lord Chidgey, the noble Baroness, Lady Chalker of Wallasey, and the right reverend Prelate the Bishop of Winchester, along with Mr Eric Joyce, MP, sent to the noble Baroness on 4 November, we argued:

"LRA attacks exacerbate underlying political and ethnic tensions and have the potential to destroy advances made in the development of democratic government—and it neutralises the considerable investment of UK aid".

In her reply of 8 December, the Minister admitted:

"The LRA continue to undermine efforts to provide humanitarian and other assistance in parts of South-Sudan ... The insecurity they create also risks hampering local level preparations and conduct of the 2010 elections and the Referendum in 2011".

The Minister told us that Ban Ki-Moon,

"is also considering establishing a regional office to focus on the LRA".

Perhaps the noble Baroness can today tell us where we have reached in this process. Are we raising within the Security Council the proxy role of the LRA, which has a clear and deadly intent to sabotage any stability or progress in southern Sudan? Will she also propose that the Security Council strengthen the civilian protection mandate of the UN Mission in Sudan by increasing its operational presence, establishing a comprehensive civilian protection and conflict monitoring system, and creating rapid response capabilities for conflict-prone zones?

In her letter, the Minister cited the potentially positive impact of Senator Russ Feingold's Lord's Resistance Army Disarmament Bill. Perhaps she can tell us what progress this is making and what is being done to create a coherent regional strategy to deal with the

[Lord Alton of Liverpool]
LRA. Her Majesty's Government could do worse than to appoint a special envoy—perhaps someone of the calibre of the Minister's predecessor, the noble Lord, Lord Malloch-Brown—to spearhead our policy in a region which has seen the loss of more than 7 million lives in the past couple of decades: Africa's World War One.

We should never forget that the indictments against Omar al-Bashir and Joseph Kony are against war criminals responsible for crimes against humanity. Louis-Moreno Ocampo and the International Criminal Court deserve much more robust support from the world's political leaders than they have received thus far. The intelligence community should spare no effort to apprehend the leaders of the LRA.

We also ought to be doing more to ensure not just that we bring about disarmament, but that we stop the flow of arms into this deadly region. The weapons of mass destruction in Sudan are the hundreds of thousands of foreign-made deadly small arms. In a report issued last month, it was claimed that ″transport and brokering actors″ come,

"from a range of other states, including European ones, despite the EU embargo, which prohibits 'brokering services, financing and other related services'".

It points to European actors, including British companies and citizens, which have been involved in that. What are the Government doing about this? What are we doing to encourage China to stop supplying arms to Sudan? The acquisition of arms by Khartoum, which already has 470,000 weapons in its security forces and 2 million in the hands of civilians around the country, grievously adds to arms proliferation and insecurity. Millions have been killed in this part of Africa. If ever there is to be long-term peace and reconciliation, there must be a determination to secure justice and security.

In Darfur, 400,000 people have been killed, 2 million have been displaced and 90 per cent of the villages have been razed to the ground. There is no timetable or mechanism equivalent to the CPA. There is no durable peace agreement with Chad. The UN's proclaimed doctrine of a "duty to protect" has frequently been made a mockery of. We must concentrate our efforts on all these issues.

In our generation, conflict has led to 7 million deaths in Sudan, Congo, Rwanda and Uganda. We should be indebted to my noble friend for ensuring that we never lose sight of this appalling carnage. It is without parallel anywhere in the world.

12.53 pm

The Earl of Sandwich: My Lords, we owe our thanks to the noble Baroness, Lady Cox. I also pay tribute to her for all the work that she has put in over many years. She has helped to keep this important country, Sudan, in the public eye.

Sudan is generally seen by the media as a trouble spot, but we must also remember, as the noble Baroness said, that there are signs of hope. The threat of a return to civil war has undoubtedly served as a deterrent and has renewed the commitment of both sides to a comprehensive agreement, imperfect as it may be. The latest agreement on the Abyei ballot is an example of this determination to move forward. The south has gradually developed its autonomy, while the north has enjoyed prosperity—as yet, not shared equally with the south. In the east, Chad and Sudan have reached an agreement to monitor the border and expel rebel groups.

The framework of a peaceful transition to good governance is there, ready to be used as soon as the parties show enough willingness to use it. The international community, in my view, is doing its utmost to help to implement the CPA and, as the noble Lord, Lord Judd, said, it must be down to the Sudanese themselves to move as smoothly as possible towards the elections and the referendum.

As Ashraf Qazi, the Secretary-General's special representative and head of the UN mission, said a few days ago, this year will be critical, and continued:

"As far as possible, each and every Sudanese will need to make every effort, both individually and collectively, to contribute to the success of the CPA, which will be measured, above all, by the extent to which it brings about, consolidates and sustains peace".

Those are wise words. He would also recognise the key role of the churches in this success. It is a pleasure to look forward to the speech of the right reverend Prelate the Bishop of Bradford, although we are sorry not to have his colleague from Salisbury here.

There are problems right at the centre of the CPA and the most serious of these is wealth-sharing, which is absolutely fundamental to the success of the agreement and above all to the political trust that must be invested on either side. Sudan is potentially a rich nation—it is the third largest producer of oil after Nigeria and Angola with about 500,000 barrels per day. However, the north-south border, along which many of Sudan's oil fields lie, has still not been drawn and the status of Abyei and the other central states, Blue Nile and South Kordofan, is still not clear.

The whole question of the survival of the south as an autonomous state depends on a post-2011 wealth-sharing agreement. This must therefore be developed now. The terms of the CPA were agreed on the basis of a unified state , and will go rapidly out of date during the course of this year unless something is put in their place. With pipelines running as they are, the north will hardly give up its oil fields lightly.

There are, however, many technical difficulties, not least in determining how much oil there is. Most of the old oil companies have left. Out of the 15 oil companies remaining, only three—from China, Malaysia and India—control 88 per cent of oil production. The China National Petroleum Company takes 57 per cent of exports.

I have a number of questions for the Minister at this point, although I recognise that she may have to wait until she has returned from Sudan; I wish her well in that visit. Given the large and growing economic influence of China, what estimate can the Minister give us of its political influence and its contribution to peace in the north and south? To what extent have EU and US diplomats been able to engage and involve the Chinese in discussions about the implementation of the agreement? We must surely not wring our hands and assume that China, judging from its unwillingness to engage in human rights elsewhere, will not be a

willing partner in discussions over Sudan. I do not believe, for example, that China has not noticed events in Sudan such as the recent beating up of opposition and southern politicians.

China's doctrine of non-interference was understandable when it began trading in Sudan many years ago; indeed, every empire begins that way—ours did. But it becomes less justifiable when it achieves a degree of considerable economic power. Its political influence on and, indeed, support for the Government of Sudan is undeniable; my noble friend Lord Alton has reminded us of the arms shipments. The question is what will happen to China when north and south—and, therefore, its own interests—are divided in two. The south has by far the largest share of oil in the ground—some say 88 per cent—but it is certainly not receiving its fair share of revenues as laid down by the CPA. Global Witness says that the south has only received $2 billion a year since 2005. The SPLM secretary-general, Pagan Amum, says that only $7 billion of $50 billion of total oil revenues has gone to the south.

There are also concerns about lack of transparency. Both the actual production figures and the prices on which transfers are based remain uncertain. The south has too little influence in Khartoum, and there are not enough southern appointees in oil consortia or senior positions in the industry, perhaps because of inexperience or because not enough names have been put forward. To add insult to injury, oil transfers to the Bank of Southern Sudan remain largely in Sudanese pounds. And of course there is corruption. Much of the revenue has gone astray or ended up in false grain contracts.

There are also doubts about the quality of oil. High-quality Nile crude from the Muglad basin in Unity state is now declining rapidly and major companies such as Lundin have pulled out altogether. The new Dar blend in Upper Nile is taking over from Unity and South Kordofan. But there is a lack of refinery capacity and the inexperience of new companies, insecurity and political mistrust have together created new uncertainties.

To return to my original theme, we must be positive about Sudan. I was sorry that even the 10 aid agencies are straying into alarmist language in some of their reports this morning. As the treasurer of the all-party group I strongly endorse their general conclusions, but they must be careful how they record what they have learnt. To judge from some of the media, the civil war has never ended. An article published in the *New York Times* in December described an attack by the Nuer on the Dinka as "no cattle raid". We have to resist descriptions of Sudan such as:

> "The land here is unforgiving, and in places looks like a junkyard of war, with burned-out tanks and shot-down jet fighters sinking into the weeds".

I have seen one or two places like that in the south, but journalists tend to repeat the same stories based on the same places. This is a vast country, scarred by war perhaps, but full of promise. The Nuer, the Dinka and many others have reasons to fight each other, but they are not only warriors, but a wonderful pastoral people of considerable stature and integrity. They need and deserve our support as they move towards a self-reliant, autonomous and probably separate state.

The *Los Angeles Times* saw it from another angle when it recently interviewed one of the "lost boys", who escaped from the civil war in the south and was resettled in the United States. He is called Mayuol and has returned to start projects in his home village. He says,

> "There is no more shooting, but nothing else has changed. There is still a lot of suffering. People are dying of hunger. There is disease and no medication".

The drama of Sudan is therefore not war, but poverty, which is the original source of both conflict and corruption. I believe that we are addressing it, but it takes time and we need to persuade all the parties to the comprehensive peace agreement, including those on the sidelines, that that is the real priority in Sudan. As the noble Baroness, Lady Cox, and my noble friend Lord Alton said, too many suffer from hunger, malnutrition, ill-health and lack of education and the oil revenues are not coming through fast enough to help them.

1.03 pm

The Lord Bishop of Bradford: My Lords, I begin by offering apologies from the right reverend Prelate the Bishop of Salisbury. I spoke to him at about 9 o'clock, when he was on Salisbury station. He is still somewhere between there and Waterloo. He asked me to cover some of what he would have said. It is on my computer, so I shall be covering what he might have said.

I add my thanks and my admiration to the noble Baroness, Lady Cox, for prompting this very timely debate. As others have said, it is a year until the referendum is due. It is also timely because next Monday, Archbishop Daniel Deng of the Episcopal Church of Sudan will be visiting the Archbishop of Canterbury. Together, they will meet the Prime Minister to talk about the situation in Sudan.

The role of the church, as has already been mentioned, is key to the future of Sudan, especially the south. The Government of Southern Sudan have asked the Episcopal Church and the other churches to work for peace and to encourage people to register to vote. Indeed, in many parts of southern Sudan the churches are the only organisations on the ground that are there among the people and able to effect change. I was at Archbishop Deng's enthronement last April in Juba. He has committed himself to working for peace in Sudan and has committed the Episcopal Church to work right across Sudan in the peacekeeping and reconciliation process.

Peace can be achieved in Sudan only if there really is a concerted, co-ordinated international effort. First, the international community has to put together sufficient political and economic incentives to make it worth while for those warring or would-be warring parties—the NCP, the SPLM, the Darfuri rebels and others—to want peace rather than war. The current initiatives of the United States go part way towards what is needed, but they are not comprehensive enough and they are unilateral proposals.

So, secondly, the US, the UK and Norway, who helped to broker the CPA, together with China and other members of the Security Council, members of the African Union Peace and Security Council and the members of the IGAD need to agree to support an

[The Lord Bishop of Bradford]
individual of international standing who can lead negotiations towards returning to the peace process. I think it almost goes without saying that this person should be an African. The sticking points are many and have been referred to by previous speakers.

Thirdly, there must be a really determined action to provide security for civilians in the south. Much has been said about the Lord's Resistance Army already, but there is also the threat of other local tribal conflict being deliberately ignited to destabilise the region, and there is a real suspicion that the Government are acting as agent provocateur. The noble Earl, Lord Sandwich, referred to conflict between the Nuers and the Dinkas. I know that when Archbishop Daniel Deng, who has been travelling right across southern Sudan, visited that region, he was able to bring peace and reconciliation between those two factions.

Fourthly, we need to have hope and confidence and to look beyond the referendum itself. Negotiations need to begin now to map out the most peaceable way possible after the referendum, whether we have two countries or one, considering issues such as how the oil wealth is managed, movement of population, what the currency will be, and issues of security.

Sudan is often viewed as two countries artificially brought together by British administration. Superficially, separation might seem to be the easy solution and the one that appears most attractive at the moment, but there is no neat dividing line. My interest in Sudan arises out of the longstanding link between the diocese of Bradford and what was the diocese of Khartoum in the Episcopal Church of Sudan. That one diocese is now four, and at the end of March I am due to go to Sudan for the creation of a fifth northern diocese. The bishops in the north work hard with local and national government to keep the authorities honest about the plural nature of Sudanese society, including in the north.

On my first visit to Khartoum, I went round some of the camps of displaced people. I was told that there were 3 million displaced people, but I do not know how accurate that figure is. They are living in the deserts around the capital. Some of those settlements are still very primitive indeed; others are gradually becoming more developed. Many of those thousands of people are from the south, driven north by the civil war, but for economic and social reasons most of them would want to stay in Khartoum. Many of them are Christians.

Also in Khartoum, we have quite a number of members of the Sudanese Army who are from the south. One can imagine that if civil war were reignited, those southern soldiers would not stand idly by while their brothers and sisters suffered in those settlements. The fault line between north and south also runs right through the Nuba mountains, through what I know as the diocese of Kadugli. As a slight aside, our diocesan office in the West Yorkshire village of Steeton is called Kadugli House. Nobody has a clue why it should be called that, but it was a statement that I wanted to make of the link that we have between a very troubled part of Sudan and a very different part of England.

Before the civil war, Christians and Muslims in that region lived happily side by side. They were often related to each other. It is less easy to live like that today, but the religious demography of Sudan poses the question for the future of what should be the place of Sharia in a country or countries with such a high proportion of non-Muslims.

As we reflect on Sudan and as we make recommendations from the comparative comfort and ease of this country, we should realise the enormous logistical problems that there are. On my last visit I spoke to the director of Tear Fund in Khartoum. They had had to pull out of their office in Juba because of the violence there. I was there because my diocese works in partnership with Tear Fund in providing wells in Darfur. I could hardly believe what the director told me, that it takes seven or eight days for a lorryload of grain to travel from Khartoum to Darfur, and 30 per cent of those lorries are hijacked or disappear for some other nefarious reason. Quite a number of the drivers have lost their lives. When I travelled back from Juba to Khartoum, some people travelling back with me went by a special flight to Khartoum. They then had to travel half way back to Juba by road, because that was the only way to get back to where they were going. The logistics are enormous, and any thoughts of peacekeeping or providing aid need to take that into consideration.

The Motion of the noble Baroness, Lady Cox, refers to recent developments in Sudan. I hope that the House will allow me the indulgence of speaking about what is happening on the ground. Work for peace in that country needs to happen not only at national level and among the community of nations, but also locally within Sudan. The diocese of Bradford is helping in a very small way to provide education in the Nuba mountains and in the north. We have a project, Good Morning Teacher, which helps to build permanent classrooms and provides teachers' salaries. A little goes a long way: £15,000 will build a couple of classrooms. This then encourages local people to find extra resources for development of much-needed schooling. These schools that we are supporting are open to Muslims as well as Christians. I encourage Her Majesty's Government to do something similar. Education, education, education is true for Sudan as well as for this country. There are local as well as national initiatives that we need to support, and support altruistically, if there is to be any hope for the people of Sudan.

When I visited one of those settlements for displaced people, I discovered that its name was Jabarona, which meant, "We were forsaken". May it not be the comment of the nation of Sudan that they were forsaken. I give my wholehearted support to the Minister as she visits Sudan. I hope that, in the light of this rather depressing debate, she will perhaps take the advice of the general in one of the wars, who sent a signal of his situation, "We are surrounded on every side, my left wing is collapsing ... We shall advance". I urge Her Majesty's Government to help the community of nations to advance for peace for Sudan.

1.15 pm

Lord Avebury: My Lords, the noble Baroness, Lady Cox, speaks from long and continuous experience of humanitarian work in many parts of Sudan. As the noble Lord, Lord Judd, has said, we listen to her with the greatest respect and with gratitude for raising the formidable obstacles to implementation of the comprehensive peace agreement and the Darfur agreement. She quoted the opinion of an NGO that Sudan is sliding towards a violent breakup. That is the general fear of several others in a report issued just now, warning of a possible humanitarian disaster. That was also referred to by the noble Lord, Lord Alton. They are demanding urgent diplomatic effort to prop up the fragile five year-old deal that ended decades of internal conflict. I ask the Minister whether this can be left to the NCP, as the noble Baroness suggests, or whether it really needs interested action by the international community to reinforce those negotiations between the parties.

I am afraid that Sudan has had too little attention for a country that is ruled by a dictator accused before the International Criminal Court of war crimes, crimes against humanity and genocide, with the backing of the subservient National Congress Party. It is incredible to think that Omar al-Bashir, who has been in power for 20 years, is certain to win the elections when they take place, even though under his rule, as we have heard, 5 million to 6 million people have been internally displaced—the largest figure for any country in the world—with a quarter of a million refugees having fled over the borders to neighbouring countries and some 2 million people having been killed as a result of internal conflicts, including 300,000 in Darfur since 2003.

The NCP is the only recognised lawful political party, with 355 seats out of a total of 360 in the last parliamentary elections of December 2000. It is difficult to see how a reasonable and fair election can be held under these circumstances. The elections cannot possibly be free and fair when the Government have conspicuously failed to honour the conditions laid down in the CPA. According to the International Crisis Group, 16 provisions of the CPA remain to be implemented, including new laws reducing the powers of arbitrary arrest and detention, allowing the freedom of the media, an independent electoral commission and unrestricted access to international observer teams. The noble Earl, Lord Sandwich, rightly asked what discussions had been held with China, which has been conspicuously silent on these issues. I look forward to the Minister's answer to that question.

The noble Baroness, Lady Cox, referred to the arrest last month of three senior leaders of the opposition SPLM. They were released hours later, but while they were in custody, one of the detainees, the deputy secretary-general of the SPLM, sustained injuries that required hospital treatment. If this is to be the pattern, the election campaign will be a disaster. Our ambassador in Khartoum said last June that we were committed to "establishing an environment conducive to free and fair elections" and that we had "been supporting preparations for the elections for some time". What assessment have the Government made of the chances that any of the 16 conditions that were named by the ICG as not having been met will be accomplished in the short interval that remains before April? At what time does she think we ought to cut our losses and withdraw support, which is costing us a lot of money?

Since October last year, the US has been following the path of appeasement, and as its special envoy acknowledged under questions from a congressional committee, it is dealing with senior officials of a genocidal regime. If there were signs of reform, the new policy might be politically, if not morally, justifiable; but the goals of US policy in Sudan—the establishment of stable, sustainable governance and the prevention of a haven for Islamist terrorism—are nowhere in sight. Are we following in the footsteps of the US, as we usually do? Will the Minister say what is our policy, and that of the EU, on direct contacts with the regime, and as a result what concessions the regime has made on the implementation of the comprehensive peace agreement?

Meanwhile, the UK is a substantial contributor to the funding of UNMIS, the UN Mission in Sudan; UNAMID, the hybrid UN/AU mission in Darfur, and MINURCAT, the UN mission in Chad and the CAR, where the spillover from Darfur is a major causal factor of unrest. How much of the $2.2 billion cost of these three operations are we paying for as a Government, and what personnel are we providing? Is each of these operations likely to continue into 2010-11, and will their budgets be of the same order of magnitude? How can the Security Council justify spending such a large sum of money on a state which has defied the principles of democracy and human rights, and is heading now for a rigged vote?

The one bright spot on the horizon is that the terms of the referendum on the status of southern Sudan appear to have been agreed between the Government and the SPLM. I am pleased to hear that the people of Abyei, which is on the borderline between north and south, are to have their own referendum. South Kordofan and Blue Nile are to have what are described as "public consultations", although it seems that the terms of reference and timing of the consultations have still to be announced. If the Minister has any information about the details, it would be useful for it to be put on the record in this debate. I understand that the Security Bill, passed at the same time just before the Sudan Parliament was prorogued for an indefinite recess, provides a far-reaching power to arrest people without their constitutional right to fair process, legal counsel and a proper prosecution with a stated charge.

Although both parties want the April elections to succeed, the SPLM challenges the validity of the census which determined constituencies and boundaries, and there is the problem of the 2 million displaced people in Darfur who will be disfranchised because they would have had to return to their homes to be registered three months before 7 December, the last date of the process. The conflicts in South Kordofan, Blue Nile and Abyei must have made registration there equally problematic. Can the noble Baroness give us any indication of how many of the people who

[LORD AVEBURY]
would legitimately have been entitled to return to their homes and register to vote are now being deprived of their opportunity to take part in these elections?

The International Crisis Group recommends that a mediator of international stature be appointed, to convince the NCP and SPLM that they should renegotiate the timetable for meeting the comprehensive peace agreement benchmarks, with the April 2010 elections postponed to November, but the referendum still being held in the first week of January 2011. What is the Government's view on this proposal, and do they know what the reaction to it by the parties has been? Of course, if the Government have no intention of allowing free elections, a seven-month delay would be futile because the same considerations would apply after that gap. In any case, steps have to be taken to prevent a constitutional vacuum in July when the GNU and other interim institutions created by the comprehensive peace agreement expire. Does this not require a new protocol to the CPA? What steps are being taken for that purpose?

The CPA contained no provision about delineating the border between north and south, and in the five years since it was signed, that deficiency has been ignored, as the noble Earl, Lord Sandwich, pointed out. Since the main oilfields are in the border region, the matter has become extremely sensitive. Khartoum has been accused by the NGO Global Witness of falsifying the oil production figures so as to short-change the south on the revenue-sharing. Is it possible that the two entities might agree to commit themselves to agreement on definition of the line by an independent international commission, as with the Lauterpacht commission on the boundary between Eritrea and Ethiopia? If this is not practicable, what other methodology should be considered for reaching the decision in less than 12 months' time?

Finally, several noble Lords mentioned the depredations of the LRA, notably my noble friend Lord Chidgey and the noble Lords, Lord Sheikh, Lord Judd and Lord Alton. It has continued to wreak havoc in Western Equatoria, and on an even larger scale over the border in DRC. The noble Baroness asked whether UNMIS could be given a more active role in protecting civilians, presumably on the lines of the Security Council's Resolution 1906 giving an enhanced role to MONUC. Others, notably my noble friend Lord Chidgey and the noble Lord, Lord Alton, have made a case for strong action on this if the election is to be successful. It is an interesting idea that the goals of the two missions should be closely aligned, and it leads me to ask whether the Minister thinks that it would be possible to go a stage further. If UNMIS and MONUC were to co-ordinate drives against the LRA, as my noble friend Lord Chidgey was suggesting, by the regular armed forces on both sides of the DRC/Sudan border, it ought to be possible to eradicate this very unpleasant armed group once and for all.

1.27 pm

Lord Astor of Hever: My Lords, I, too, thank the noble Baroness, Lady Cox, for introducing this important debate on recent developments in Sudan. I echo the remarks of the noble Lords, Lord Avebury and Lord Judd, on the continual interest in and expertise of the noble Baroness on this area.

One of Sudan's most violent regions, Darfur, has almost disappeared from the news completely and has been deemed a "low intensity conflict". But the magnitude of the conflict has not lessened for those living in it who after all these years are still struggling to survive. Even the very survival of the state is uncertain, as is the quest for peace in this fragile country.

This is still the biggest humanitarian operation in the world, with almost 4.7 million people dependent on aid. More than 250,000 refugees from Darfur have lived destitute lives in truly horrendous conditions in refugee camps in Chad for six years. Camps with more than 2 million internally displaced people inside Darfur are even worse, and 30 per cent of those displaced are school-age children. On a daily basis, men, women and children as young as eight are raped, killed or abducted the moment they step out of camps to get food or water. Sadly, there have been reports of these atrocities occurring within the camps, perpetrated by family members, refugees and, disturbingly, some aid workers. This is not isolated in Darfur; it is occurring, and is largely undocumented, right across the refugee camps and killing fields of Sudan and its neighbouring areas.

Several noble Lords mentioned the Lord's Resistance Army, which emerged in Uganda and has kidnapped tens of thousands of children during two decades of guerrilla war. There are reports that the LRA is now striking across Sudan's south-western frontier, hunting for children. What representations have the Government made to the peacekeeping forces in Sudan to bring to their attention these security breaches and human rights violations so that they can act against them?

Part of the crisis in Sudan is caused by the influx of refugees from conflicts over the border in the Democratic Republic of Congo and the Central African Republic. Two thousand people have been killed in southern Sudan since January last year, including in horrific massacres. The United Nations mission to Sudan has described the situation in southern Sudan as a "humanitarian perfect storm" caused by intertribal fighting, a food deficit and a budgetary crisis. What are the Government doing to help resolve these three causes? What is the Government's stance on Omar al-Bashir's refusal to recognise the International Criminal Court, thereby evading justice for the crimes that he has been accused of committing? Many Sudanese do not recognise the ICC. What efforts are the Government making to strengthen its reputation and influence?

Despite the unimaginable monstrosities that continue in Sudan, there have been positive developments in some areas. Most notably, after much negotiation, the north and south have agreed on terms for a referendum in 2011 on southern independence. This was mentioned by my noble friend Lord Sheikh. Elections are due to be held in April this year. They will be the first since 1986. What actions are the Government taking to ensure that Sudan keeps its promises? How will both these events be policed and monitored for transparency and fairness? This point was made eloquently by the noble Lord, Lord Alton. It is almost certain that

violence will increase in the run-up to these events. What plans are in place in anticipation of such an occurrence? Will the Minister inform the House of any plans and support that are in place to assist Sudan after the election and referendum?

The implementation of the comprehensive peace agreement is a step towards enhancing political stability in Sudan. It provides a framework for wealth and power sharing. It also establishes restrictions on the resupply of military equipment to forces in the agreement's ceasefire zone. However, a study by the Geneva-based Small Arms Survey accused forces in north and south Sudan of engaging in an arms race that risks plunging the nation back into civil war. The study stated that,

"arms transfers to all parts of Sudan continue unabated and, in some instances, are increasing".

In the light of the fact that the report says that EU-based organisations are facilitating the arms trade, what action will the Government take to stop such activities?

Although Sudan is not officially at war, we all know that this does not equate to peace. All the underlying causes of conflict remain and extreme violence could return very quickly. My noble friend Lord Sheikh pointed out that our historical connections with Sudan go back a long way. Therefore we in the United Kingdom must do everything in our power to help that country's quest for peace.

1.35 pm

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): My Lords, as all noble Lords have quite rightly done, I pay tribute to the noble Baroness, Lady Cox, for her unstinting efforts and commitment on behalf of Sudan. Having visited Sudan many times myself, I know how respected and known her work is in that country, and we are very grateful to her for instigating this timely debate.

As all noble Lords have indicated, these are crucial times for Sudan. As the fifth anniversary of the CPA approaches, we know that that country is still suffering from relentless, pervasive poverty and violence. In southern Sudan in 2009, 2,500 people were killed and 350,000 people were displaced. That is not a firm peace: it must be described as still a fragile peace.

The CPA ended 20 years of war, during which millions of people died and thousands of women and children were captured and taken to live in the north. However, this week sees the launch of Sudan 365, which will take place across the world. There will be drumming outside 10 Downing Street, the visit to the Prime Minister of Archbishop Deng and lots of opportunities for us, including this evening when an excellent multi-agency report will be launched here.

This debate has, as the noble Baroness, Lady Cox intimated, added a great deal to the essential efforts needed to ensure that the campaign can see greater engagement and to recognition of the dangers of escalation into further conflict in Sudan. That is why we in the UK must continue with our strong and determined engagement in Sudan, and must be especially vigilant as it faces an election in a matter of months and a referendum on separation in January 2011. Our task is to ensure that that election is credible, and that difficult outstanding issues are dealt with and resolved ahead of the referendum. This will be necessary regardless of which way the people of southern Sudan vote next year.

The issues must be seen in the context of the fact that the south is awash with small arms, there is fierce competition over natural resources and there is the added misery inflicted by the LRA. Many noble Lords have alluded to that. In many areas, access to people needing humanitarian aid is difficult and deteriorating. We must work to ensure that this is improved and that the capacity of local NGOs and churches in the south can be increased, because they alone will be able to reach the more remote areas. As well as international engagement, Sudan's political and regional leaders must, in the coming year, redouble their efforts and engage in substantive political dialogue. This is the missing objective that we must emphasise. The motivation must be to steer a course away from violence, poverty and inequality.

Many questions were raised and I will do my best to deal with as many as possible. I will deal first with the points raised by the noble Baroness, Lady Cox. A number of noble Lords mentioned the report of the International Crisis Group. I agree that it is an excellent report and we welcome it, along with other reports from NGOs and think tanks such as Chatham House that are now being released.

On the question of insecurity in southern Sudan, we know that more people have died in the south as a result of tribal fighting than have died in Darfur. That is a shocking statistic. Attacks by the LRA have forced 300,000 people from their homes—more than double the number in 2008.

The Government are supporting a range of programmes to strengthen law-enforcement capacity and community-led security work, which is very important, as well as the promotion of reconciliation.

On the issue of the demonstrations, of course we are deeply concerned at the Khartoum Government's handling of the peaceful demonstrations held in Khartoum. In the context of this and other forms of violence, elections must be credible. Along with our international partners, we will be closely monitoring the run-up to the elections and polling itself, in order to ensure that freedom of expression, freedom of speech, media freedom and other precursors to a credible election are in place. We want full monitoring, as many noble Lords have said that we should, and we are keen for an early decision to go in from the European election observation teams. They took a technical mission before Christmas to make assessments, and we are waiting now to hear from them, but I am confident that they will announce that they will be taking a substantive mission to Sudan very soon to prepare the electoral commission work, and so on.

We welcome the Referendum Bill's passage through the National Assembly and see it, as the noble Baroness, Lady Cox, suggested, as an important step in the progress that must be made towards the referendum in 2011. We know that it is essential that we build trust between the two sides. They must work together before the referendum, not at cross-purposes. On our development money and what we are funding, the

[Baroness Kinnock of Holyhead]
budget in Sudan is £115 million for 2009-10, rising to £140 million from this year to next year. Our funding is focused on six thematic areas: supporting greater power-sharing and democratisation; promoting wealth-sharing; enhancing security, justice and reconciliation; strengthening public institutions to enhance the delivery of basic services—that includes education, which was raised by the right reverend Prelate, and I will come back to that later—improving natural resource management; and meeting the challenge of climate change, which has been proven to have important effects on conflict.

On the question of whether we are protecting civilians, raised by the noble Baroness, Lady Cox, and others, we have called and will continue to call for measures to protect civilians and give proper priority to those operations. We also call for close co-operation with the UN missions in LRA-affected areas—in particular, MONOC and UNMIS. The noble Baroness asked about mobile polling stations. Elections are currently scheduled for 18 April, and my latest news is that they will extend for two days. In rural areas, this is expected to give people three days to vote. As mobile polling stations would be moved around during the day, the concept has been rejected by national stakeholders, as the perception is that they would increase the risk of fraud and cause misallocation—which is a euphemism for losing ballot papers on purpose. That is probably a good point. The option for polling stations which, although stationary during the day, change location each day is still being considered, and that may be a helpful answer.

On the arrest of SPLM leaders, we are deeply concerned that Pagan Amum, Yasser Arman and others were detained in Khartoum on 7 December. We urge the Government of Sudan to avoid the disruption of peaceful protests, to respect the rights of freedom of assembly and freedom of speech, and to protect people from arbitrary arrest and detention. I will be raising that and other issues with the authorities in Khartoum when I am there next week.

On the former African slaves we are greatly concerned that, five years after the signing of the CPA, instances of abduction between north and south Sudan have not been investigated or resolved. We will continue to press the Government of Sudan to respect human rights and bring an end to the alarming culture of impunity which is allowed to exist. Again, I assure the noble Baroness that I will raise the issue next week.

Several noble Lords raised the issue of eastern Sudan. The population in the east is one of the poorest and most disadvantaged in the country. We are seeking increased focus on the situation in the east. We urge Sudan's political leaders to ensure implementation of the remainder of the eastern Sudan peace agreement. I can inform the noble Baroness that we are also providing funding and support through the UNDP to the state Governments in the east.

How do we ensure that our funding reaches marginalised people? In such a deeply unequal society as Sudan, we are well aware of the issue of marginalisation. DfID's approach is very much about reducing poverty and reaching the more marginalised people. Again in the east, we are involved in healthcare services, demining—another important issue—demobilisation and reintegration of former combatants. On EU funding for the east of Sudan, there are some development programmes, but perhaps we should press for more.

The noble Lord, Lord Sheikh, mentioned Abyei. The implementation of the ruling in July 2009 is a crucial part of the CPA. We are concerned that, despite public commitment by both the NCP and the SPLM, as the noble Lord suggested, progress remains very much behind schedule. Only a small number of border markers have gone down, and we continue to press for urgent action on that. A representative from our embassy visited Abyei in December as part of a joint UK-US evaluation, and we will continue to raise our concerns.

We are marking the fifth anniversary by a statement from the Prime Minister, the Foreign Secretary and the troika. The maintenance of the CPA for that period represents some achievements, but we hope that it will galvanise us to achieve not just a CPA that is a short-term, intermediate measure, but one that will lead to long-term peace and security for the people of Sudan. On Kordofan, Abyei and Blue Nile, we have provided humanitarian and early recovery support to the traditional areas since the signing of the CPA—£5.1 million to South Kordofan in 2008 and £28 million through the multi-donor trusts since the CPA was signed. We have committed £30 million over the next three years to provide basic services to those areas. On voting in Abyei, the referendum commission will decide who is eligible, as the noble Lord suggested. We welcome the recent improvement in relations between Chad and Sudan, and encourage more concrete steps likely to build security in the region. I have probably said enough about the assessment of the security situation in the region.

Several noble Lords asked about the LRA. In Sudan, we have raised the issue of the LRA at a senior level with the Government of south Sudan, including the chief of staff of the SPLA. We have urged the Government of south Sudan to co-operate regionally to address the issue robustly—more robustly than we have seen to date. We assess that LRA units are currently active in north-east DRC, south Sudan and the Central African Republic. It has been suggested, including by some Ugandan officials, that the LRA could, under continuing regional military pressure, head for Darfur or Chad. We have no confirmation that that is the case. We are providing significant humanitarian assistance to those who are displaced. DfID is the largest donor to the Common Humanitarian Fund. We are providing £6 million to the ICRC in Sudan and assistance and protection to those people displaced by the LRA.

Why has Joseph Kony not been arrested? That is a very difficult question, and I wish that someone could come up with an answer. To date, we have not been able to do so. We do not comment on intelligence measures, as I am sure that the noble Lord will understand, but I would be happy to offer any more detailed briefing to him on the matters that he raised. The LRA's impact is disproportionate to its size and we must do all that we can to end that terrible campaign. We will be in touch very soon.

We will continue to call for the protection of civilians and for close co-operation between the UN agencies. As for what we are doing to facilitate more defections from the LRA, as noble Lords will be aware, Uganda and other countries involved in operations against the LRA are working on encouraging defections. To some extent that is working; it includes work with the International Organisation for Migration, with UNICEF and with MONUC. We are studying whether more can really be done. I can come back to noble Lords on this when we have a better idea of what is possible in dealing with the abductions and coercion and the terrible implications for the individuals.

Will the Government make representations to the Security Council? The Security Council discussed the LRA in November and the Government very actively emphasised the need for regional governments to do all they can, and other matters. The noble Lord, Lord Chidgey, asked about the breakdown of the £400,000 and MONUC. I do not have those details to hand but, again, will be very happy to follow that up with him.

Lord Avebury: What does the noble Baroness think of the suggestion that there should be greater co-operation on military action against the LRA by all the Governments involved, particularly the DRC and Sudan?

Baroness Kinnock of Holyhead: I am sorry—we did not sit down for interventions in the other place where I worked. I shall have to learn new habits.

The activities of the regional players are now very important. They are all actively working to deal with the effects through regional military co-operation and are attempting to follow through. I will happily come back with more detail on the point that the noble Lord, Lord Avebury, makes, because quite a lot can be said on it .

On the north-south civil war, we believe that neither party in Sudan wishes to return to it. What possible interest could the north or, indeed, the south have in perpetuating further tension and conflict? However, we need to see full implementation of the CPA. We are pushing hard for that and on all the post-referendum and oil-sharing issues that have been raised.

As for the £54 million announced yesterday, this will provide £36 million to the Common Humanitarian Fund, £10 million to development in the south and a further £8 million to supporting the election. On the troika, we have been working very closely with all the players in Sudan—the United States, the Norwegians and others who, like us, have a close affinity and concern. We meet regularly with donors and agents. Regular telephone videoconferences and so on are taking place on these matters.

My noble friend Lord Judd made a number of important points. He is someone whom I have enjoyed working with over many years. He was a fine director of Oxfam, and he is always extremely effective and perceptive in the many roles that he plays. I can assure him that I will be meeting Oxfam in Khartoum on Monday and Saferworld in Juba later in the week. So those two things will be covered. I will also be attending the NGO launch this evening in order to add my thanks for the work that they have been doing. My noble friend also asked about UNAMID and protecting civilians. Since UNAMID's inception the UK has contributed more than £100 million to the mission. In March 2009, we contributed a further £1.8 million in discretionary funding for the training and equipping of a Sierra Leonean reconnaissance company which was then deployed to UNAMID.

What is the UK doing to support Darfur? We support the AU-UN Darfur political process through the leadership of the UN. Qatar's vital contribution should be noted as we seek a cessation of hostilities. We welcome the recent report of the AU Panel on Darfur, whose recommendations offer scope for progress on peace, justice and reconciliation. I will be attending the African Union summit in a few weeks' time in Addis and will specifically raise issues on Darfur and Sudan while I am there.

As for the assessment of the operating environment in Darfur, we are aware of the decision by the International Committee of the Red Cross to suspend its activity in Darfur and eastern Chad because of constant attacks on their employees and staff, which are of course deplorable and make it even more difficult for the people of that region. We should realise that, seven years after the crisis began, this is still going on; seven years down the road, people are still living in those camps and are still afraid to go home. The women are still being raped and still being surrounded by militias. I should very much hope that noble Lords will agree that it would be absolutely wrong for us to lose sight of the importance of continuing to focus on what is occurring in Darfur.

There are of course very many small arms moving around Africa, not least in Sudan. The north-south conflict has been responsible for a great deal of that. The borders of Sudan are extremely porous, and weapons are easily available and reasonably cheap for those who wish to purchase them. I welcome the APG hearings which the noble Lord, Lord Alton, mentioned. The Secretaries of State for Foreign Affairs and for International Development have written to the APG on this topic, and like the noble Lord, I am sure, I keenly look forward to the group's report.

As for oil production, we are aware of the Global Witness report. Indeed, I read it with interest and noted with deep concern some of the points that it raised. Transparency is extremely important on this matter, as the noble Lord, Lord Alton, the noble Earl, Lord Sandwich, and others have said. We have constantly emphasised the importance of transparency, and I agree that we need to look at the issue of auditing to ensure that all the parties—and this will be a key issue in how the referendum plays—are satisfied that the revenues will be shared fairly. That is one of the most contentious issues to be resolved, as the Chatham House report, which many of your Lordships will soon be seeing, says.

An audit of the oil revenues will be necessary. Oil is critical to both the north and the south, providing 97 per cent of the south's revenue and 44 per cent of the revenue for the Government of national unity. The noble Earl, Lord Sandwich, is quite right to suggest that the south has not been receiving revenues. There is currently a huge shortfall in the money owed by the

[Baroness Kinnock of Holyhead]
north to the south, so we need a post-CPA oil-sharing deal. I am receiving notes that I have to finish but I shall just plough on.

On the International Criminal Court and what recent assessment has been made, I reassure your Lordships that we have a long-standing position of support for the work of the ICC as an independent judicial body. We have repeatedly urged the Government of Sudan to co-operate with the ICC. We continue to monitor the situation closely, and to make clear our expectation that all countries should cooperate with the ICC in order to ensure that the particular obligations of states parties can be met. Needless to say, I shall not be meeting President Bashir next week.

I will close here. I think that I have covered points that noble Lords raised later in the debate. I hope that I have covered as many points as possible. I very much value and appreciate the expertise and experience shown by noble Lords in this debate. This House has continuously maintained its interest and support for Sudan, and the noble Baroness, Lady Cox, has played a central role in those efforts.

A great deal remains to be done. We are still struggling to believe that a sustainable peace and development in Sudan are within our grasp, but we have to believe that they are. I agree with the noble Earl, Lord Sandwich, that this is not a time for pessimism. We have a year, and there is time. If the political will is there, so much can be achieved. There is no time for any grim forebodings. We do not want to hear any of those; the noble Earl, Lord Sandwich, is absolutely right. There has to be political dialogue and an end to violence. On my many visits to Sudan, I have certainly understood that now really is the time for co-ordinated and urgent action. Above all, the task is to prevent any escalation into further violence, to encourage dialogue and to ensure that peace, security and reconciliation can be enjoyed by the long-suffering people of Sudan.

1.59 pm

Baroness Cox: My Lords, in opening the debate I expressed the hope that it would be a source of encouragement to all those working to promote peace and democracy in Sudan. I believe that every one of your Lordships' contributions, culminating in a very full response from the Minister, have fulfilled that hope. They have all illustrated a great diversity and breadth of experience; expressed the strongest possible support for the peace initiatives; shown a deep commitment to the welfare of people suffering from humanitarian crises; and reflected a profound and legitimate concern, because there is no room for complacency. However, we can hope that many of the recommendations made to the international community, along with the leadership of Sudan, will help to sustain the comprehensive peace agreement and promote the peace for which so many have died and for which so many have long yearned. Therefore, I thank every noble Lord who has contributed to this very important debate, as I thank the Minister for her detailed reply and the good news that it contained. We wish her well on her forthcoming visit and ask her to take our good wishes with her to those whom she will meet in Sudan. I beg leave to withdraw the Motion.

Motion withdrawn.

Health: Obesity

Debate

2.01 pm

Moved By ***Lord Pendry***

To call attention to the progress made in combating obesity among young people; and to move for papers.

Lord Pendry: My Lords, I am pleased to have secured this debate today, as the level of child obesity is unacceptable and, if current trends continue, it is set to rise even further. However, too often this debate has a negative and hopeless tone to it. The problem is serious, but it is not hopeless. There is plenty of hope. A number of organisations are doing good work, there is record investment in our young people and we are seeing the worrying trends begin to reverse.

Let us be clear about the facts. Too many people in this country are obese and far too high a proportion of them are children. In fact, the National Health Service Information Centre report on obesity published earlier this year found that 30 per cent of girls aged between two and 15, and 31 per cent of boys, are classed as overweight. Of the girls, 16 per cent are obese, while for the boys the figure is 17 per cent. The figures are the result of a steady and worrying increase in recent years. In 1995, only 12 per cent of girls and 10 per cent of boys were obese, which means that there are now around 300,000 more obese girls and roughly 550,000 obese boys.

On top of that, a sad and difficult but none the less true fact to absorb is that these increasing trends tend to be concentrated in less affluent areas, which has led to significant health inequalities over the years. The direct cost to the National Health Service has reached £500 million a year, with a further cost of £2 billion to the wider economy. The Government's worst-case projection of recent trends suggests that 75 per cent of the population could be suffering the ill effects of excess weight within 15 years, with spiralling annual costs. Thankfully, these projections have been downgraded recently, but the threat remains.

Obviously there are significant health risks associated with obesity, which can begin at a young age. They include heart disease, some cancers, high blood pressure, high cholesterol and mental health problems—mental health disorders now affect 10 per cent of all 10 to 16 year-olds. Worryingly, we have also seen a big increase in the number of young people suffering from type 2 diabetes, despite its normal association with adults. In order to do something about rising obesity levels and to prevent the problems that I have described, we have to go back to basics and ask ourselves why so many children are obese today. There is no great mystery about it: too many children take too little exercise and eat too much junk food.

Let us take diet first. An average of only 21 per cent of boys and girls consume the recommended five portions of fruit and vegetables every day, despite the fact that 65 to 70 per cent know that five a day is what they should be aiming for. Similarly, with physical activity, nearly 30 per cent of boys and 40 per cent of

girls are unlikely to take the recommended amount of exercise, despite the fact that they know, and their parents should know, that it is good for them.

It would be easy to despair at these figures and paint a picture of doom for the future, but it is not my intention to do that. I am perhaps more positive than many on this issue. It is very important to note that, although the figures for a good diet and plenty of physical activity remain too low, they are increasing all the time. For example, the 20 per cent of children now eating their five a day represents an increase of 10 per cent since 2001. That is good progress, because, as we all know, behaviour takes a long time to change.

Similarly, it would be easy to despair at the worrying lack of fitness among our young people. A report entitled *Nature, Childhood, Health and Life Pathways* was published in December 2009 by the University of Essex. The team found that aerobic fitness in English children is lower than the global average. However, that is not all; in fact, it is declining by 1 per cent a year, which is twice the global average. All the research behind the report suggests that in 1998 the average 10 year-old could beat in a fitness test 95 per cent of children of the same age in 2008. The report goes on to give specific examples as to why this is and why fitness and physical activity are not necessarily an integral part of our culture or mindset. In the east of England, for example, the study found very low levels of cycling among young people despite the fact that the region, as we know, is flat, relatively dry and has a mild climate. Only around 7 per cent of boys and 2 per cent of girls cycle to school. The report calculates that a small change in culture, so that children who are currently being driven to school cycled instead, would lead to a substantial increase in fitness and have the added bonus of a 70,000 tonne annual reduction in carbon emissions.

However, as with diet and nutrition, I am not going to paint a picture of despair. Some fantastic work is going on at all levels—by national and local government, in schools and through the national governing bodies of sport—that seeks to revolutionise the country's approach to physical activity. That is a source of great hope to me and, I hope, to other Members of the House and it will form the focus of the rest of my speech.

Members of the House will know that I have strong links with sport and recreation through various sports organisations and their umbrella body, the CCPR, and through my chairmanship of the All-Party Parliamentary Sports Group. I take great interest in these issues and I can say through my experience that more emphasis than ever before is being put on physical activity for young people by the Government, schools, PCTs and sports organisations. That is having a big impact on the ground and gives us hope for the future.

The benefits of physical activity are well documented and can be crucial in tackling crime and anti-social behaviour, improving education and fostering community cohesion. However, as we are talking about obesity, it is in health that the benefits of physical activity can really be seen in the young. That is underpinned by the fact that people involved in sport and physical activity are 20 to 30 per cent less likely to die prematurely and up to 50 per cent less likely to develop major chronic medical conditions. The World Health Organisation argues that positive and early exposure to physical activity can have a significant impact on healthy lifestyles for young people and therefore influence the choices that they make when they transfer to a less structured environment. Physical activity at a young age also provides key health interventions at an age when they can last. These interventions lead to lasting improvements in bones, muscles, joints, the heart, lungs, co-ordination and movement control and obviously to maintaining a healthy body weight.

As the European Non-Governmental Sports Organisation states, physical activity is,

"especially important as sedentary lifestyles amongst children are rising".

This is not a policy position or an opinion; it is merely part of the argument over the benefits of physical activity. That argument has been won and recognised by the Government. In adopting the Department of Health's *Be Healthy, Be Active* physical activity action plan, the Secretary of State celebrated the difference that physical activity makes to people's lives. He set a target for the UK to rise from 21st to fourth in the international physical activity table and pledged to hold regular ministerial summits on the issue in recognition of the cross-departmental benefits of physical activity. Of course, there is also the target of ensuring that young people are able to do at least five hours of organised physical activity per week—known as the 5 Hour Offer—which is as bold as it is necessary.

Staying with government initiatives, I believe that the Change4Life scheme is starting to make a big impact. If it is afforded the right support and time to become truly established, this impact will widen. Launched last January, the scheme's aim is to tackle the unhelpful habits that our way of life has caused many of us to fall into, by encouraging small changes in the way in which we eat and move, with the ultimate aim of allowing us to live better and longer lives. The scheme, which was launched through a series of targeted TV adverts, provides easy guides for parents wondering what to feed their children and how to get them moving; it even allows parents to plan active rather than sedentary family holidays. It also lets parents know what physical activity events are taking place in their areas, with Bike4Life, Swim4Life and Walk4Life events planned all over the country.

The Change4Life initiatives have inspired other, more specifically local schemes, such as one in Manchester, which as noble Lords may know is close to my heart. A sub-brand of Change4Life has been developed and will be launched this month as Points4Life. Developed by Manchester City Council and surrounding district councils, this is a loyalty scheme like a Tesco or Sainsbury's club card. It is designed to ensure that participants can have free access to leisure centres or purchase sports equipment. With the right support, this scheme can provide an enormous incentive for people to make small but necessary changes in their lifestyles.

The emphasis placed on physical activity by the Government is crucial in driving the agenda forward. However, despite the potential impact of things like

[LORD PENDRY]
Change4Life and the 5 Hour Offer, they are not delivered at the snap of a finger. It takes drive, determination and partnership on the ground, where the difference is really made. It is worth mentioning organisations that have done this best. The Youth Sport Trust is a central part of the offer. As schools present a unique opportunity in terms of time, facilities and supervision of young people and physical activity, the trust has worked individually and collectively with more than 500 schools across the country to improve physical activity provision for pupils. Together they are doing a great job and are reversing trends that have been embedded over a number of years.

It is right that we recognise that 93 per cent of young people took part in at least two hours of PE in 2007-08, up from 82 per cent in 2005-06. They have been helped by a number of institutions, which have attained sports college status. Those have been shown by government surveys between 2005 and 2008 to have had a very positive impact on the frequency of physical activity and on the health of pupils. The Organisation for Economic Co-operation and Development has acknowledged that the combined efforts of government, schools and the Youth Sport Trust have led to young people in this country doing more physical activity in schools than young people in many other countries do. This represents major progress.

The governing bodies of sports have also done great work in increasing the level of physical activity among young people. New initiatives have taken root in communities all over the country and are making a big impact. For example, the free swimming initiative is a £140 million programme driven by the Amateur Swimming Association and supported by central and local government. The British Cycling Skyride days are popping up all over the country, with 65,000 people taking part in the London ride in September. Cricket's Chance to Shine initiative, a £50 million programme to get cricket back into schools, led to nearly 250,000 young people playing cricket in 2,082 schools, with 56,000 coaching hours provided. England Netball is placing great emphasis on getting young people to play the sport again. This is great for girls, for whom this is one of the most popular activities, but it also ensures that many boys are playing netball. The Rugby Football Union's Go Play Rugby scheme focuses on player recruitment and retention. It provides local rugby events, training days and links to local clubs. There is also a reward system, which provides incentives for new players to get their friends involved.

Football is also playing its part through the auspices of the Football Foundation, of which I am president. For example, Brighton and Hove Albion last year received more than £113,000 for a healthy living project. Notts County received more than £222,000 over three years for a similar project. The Premier League and the Professional Footballers' Association's community fund has granted Middlesbrough FC £300,000 to help youngsters with healthy activities and Sunderland £270,000 to tackle obesity.

These are only a handful of examples, but there are many more across the whole range of sports and activities. It is laudable work and it adds great value to what is going on in schools. The work by schools and governing bodies has been consolidated further by the excellent work of a number of outside organisations, which we should also celebrate. The StreetGames organisation, for example, provides physical activity opportunities in deprived communities that lack facilities and in which childhood obesity is heavily concentrated. It brings the chance to be active to the doorstep and at the same time fosters a sense of togetherness and community pride. According to the legal firm KKP, which undertook an assessment of StreetGames programmes, there is growing evidence of their,

"positive impact on the social capacity and community infrastructure of run down and neglected housing estates, making sport accessible to everyone regardless of income and social circumstances".

Because of the time, I will not go on to talk about some of the other developments that are taking place. Although childhood obesity remains too high, I hope that I have painted an optimistic picture for the future. There is more investment and more emphasis on physical activity than ever before; people are working with drive and expertise to provide new and constantly improving physical activity opportunities for the young people of this country. If we support this work properly and allow it to flourish, the worrying rise in childhood obesity can be reversed and this country will be much better off for it.

Baroness Farrington of Ribbleton: My Lords, I congratulate my noble friend on managing to make his speech in spite of his obvious difficulty because of his heavy cold. Other noble Lords will not get such laxity.

2.21 pm

Baroness Walmsley: My Lords, there is only one cause of obesity and that is taking in more calories than you use up. For a normal active child on a healthy diet there is really no problem about obesity—the difficulty arises when they either eat too many calories or use up too few, or perhaps both. My noble friend Lord Addington will talk about the issue of sport and exercise and their role in using up calories and strengthening the heart. So, apart from recommending dancing as a very enjoyable and fashionable way of taking exercise in these days of the popularity of "Strictly", I am going to concentrate on one of my favourite topics: food.

I love food. Indeed, I would die without it. I like to grow it, pick it, cook it, eat it and socialise with it. I certainly like to know as much as possible about what is in the food that I do not grow myself and how it was produced. I have a great aversion to factory-farmed meat with all its animal health issues and to battery hens and eggs. I have also found that children are fascinated by growing and picking food and then, of course, eating it. However, one of the main causes of child obesity these days is that their parents do not cook, so they eat a lot of fast food or processed food. Then you really do not know what is in it; there is often too much salt, too much sugar, too many additives or preservatives and too many calories. But when you cook your own food you know exactly what is in it. You can have a wonderful school meals service, and I will say more about that later, but if the parents

cannot or will not cook at home, school meals are only taking care of a minor, though important, portion of the child's diet, although the advent of breakfast clubs has increased that proportion.

Having been brought up in a household where my mother cooked and then taught me, I find it sad that there are many young parents who did not have that advantage and did not learn to cook at school, since for many years it was not taught. Indeed, many schools simply did not have the facilities, and then we had a subject on the curriculum called Food Design and Technology which had more to do with processing, packaging and labelling than with real food. However, these days cooking has become part of the entertainment industry so, even if you did not learn at school, you can hardly fail to see cooking done on TV. How many cookery programmes are there, and what proportion of books and magazines are devoted to it? Cookery books have become bedtime reading, but I sometimes doubt how much of their contents land up on the plate. But I wonder what other leisure activity saves you money, improves your health and extends your life.

Famous chefs may not thank me for saying this but I think cooking is not difficult. Certainly, following the many recipes you find in women's magazines and even newspapers is not too difficult. I cooked a soup from the weekend *Guardian* on Monday. I think the *Sainsbury's Magazine* in particular has done a fine job in showing that cooking can be easy, fun and accessible, and I would point out that you do not have to shop at Sainsbury's to read it. These magazines, if the recipes for family meals were followed, would certainly save a great deal more than their cover price for the family budget. In these times of recession, many magazines have concentrated on economical cuts of meat and other cheaper but nourishing ingredients. I think that it is more a matter of confidence than ability when people say they cannot cook. So how do we get over that?

We must certainly teach children to cook in school. How are the Government getting on with their pledge that every child will learn to cook? I heard an excellent programme on Radio 4 last week about school food. It talked about one particular school where the 11 and 12 year-olds were actually helping in the school kitchen to cook school lunches and food for the breakfast club. The health and safety issues had been overcome and the idea was being rolled out across the county. The cook was running after-school cookery clubs for parents, showing them how to make some of the dishes that were most popular with the children. There is now, I am pleased to say, a lot of this sort of innovation in schools. School dinner ladies and gentlemen have vastly improved their skills, and facilities have improved enormously under the Building Schools for the Future programme.

It is five years since Jamie Oliver, inspired by a particular dinner lady who has now taken a national role, called attention to the state of our children's school food, and enormous strides have been made since then. I pay tribute to him and the school caterers, the School Food Trust and the many schools that have put their minds to improving their food and attracting more children to choose it over packed meals. Mind you, there is nothing at all wrong in principle with a packed meal as long as it is healthy and balanced, though I would much rather have a hot one in this weather.

The advantages of children taking school meals are many. Apart from the new criteria on quality, balance and nutritional content, which are difficult to achieve in a packed lunch, they learn to socialise when eating, which is what they will do for the rest of their lives. They learn table manners and about green issues, such as food miles and GM, and about the food culture of other cultures, and, in the best schools, they are encouraged to be adventurous and try a little of something they do not get at home. There are lots of good reasons for making school food attractive to children so that they will choose it.

Some schools encourage children to bring in recipes that their parents cook at home. Some that have the space have started a school garden where the children grow fruit and vegetables and then cook and eat them. I heard about one school that displayed its very first lettuce from the school garden with such pride on the counter at lunchtime that I am not sure if anyone ate it. I understand that pride. My husband often laughs when I come in from the garden proudly laden with my own produce—he laughs and then he eats it. Unfortunately, many schools do not have the open space to enable them to grow food. Does the Minister know of any scheme whereby other land such as a free allotment might be made available for a school that wanted it?

Of course, many of us these days are so busy that we rush our food. There is a great danger of that in schools as well, since there is a limited time for lunch and hundreds of children to get through the system. It presents a great logistical problem. However, I am very concerned about one particular solution to this: the biometric solution whereby children are fingerprinted and pass through the till by putting their finger on a screen that then deducts the cost from the balance their parents have put into their account. Some schools have done this without asking or even telling the parents, and I feel that it is an infringement of the child's privacy. I have every sympathy with the need for a quick cashless system but I feel that a personal bar code would be more acceptable. Of course a cashless system also has the advantage of lacking stigma for those children on free school meals, but there are other ways of doing that.

There are also lunchtime clubs to which children want to rush off so they hate queuing in the dining room, which is an enormous challenge for the caterers. This is one of the most frequent reasons given by secondary-age pupils for not having school meals. The trouble is that their solution is often not a packed lunch but whatever they happen to buy at the nearest supermarket or fast food outlet.

That is why education for the pupils themselves about the importance of a healthy diet is vital for preventing obesity. In the end it is the child who will choose his food, but I strongly support those head teachers who make it a school policy that children do not leave the premises at lunchtime, particularly because of the social problems that it often causes in the

[Baroness Walmsley]
neighbourhood when hordes of teenagers descend on the local chip shop. I realise that I will not make myself popular with the managers of chip shops by saying this.

As long as the school meals offer is attractive, good value and of high quality, and there is an option of a packed lunch, I see no reason why such a policy should not be enforced. Therefore, it is important that as many children as possible take school meals, now that they are usually of good quality. Price, of course, is an issue for hard pressed families. I am sure that you can put together a filling packed lunch more cheaply than a school lunch, but it may not be as nourishing. Only this week, the School Food Trust has suggested that schools should offer discounts or special offers on lunches for a limited period to encourage children to try school meals, just like a January sale. The trust says that such a move would dramatically increase take-up of healthy school meals as demand for school food is more sensitive to price changes than other foods. Research by London Economics has estimated that a 10 per cent increase in the price of school meals can lead to a fall in take-up of between 7 and 10 per cent. The trust adds that areas where discounts have been offered have successfully boosted demand. A three-week period of discounts in 2009 in York and Waltham Forest increased take-up by 22 per cent and 10 per cent respectively according to an analysis of the relationship between school meal take-up and prices.

I accept that it can be very difficult for caterers to keep quality up and prices down. However, there have been interesting experiments whereby local councils have made school meals available free to all pupils, not just to those who qualify for them. This increased uptake terrifically and, I believe, improved school discipline and learning, but it is hard for a council to offer such a programme in these constrained days. However, the results showed that the outcomes were very beneficial to both behaviour and learning. Do the Government have any plans to do their own experiments along these lines in order to inform national policy?

I end by giving your Lordships an example of what can be done given the will to do it. I found this case study, and many more interesting ones, on the School Food Trust website. In 2004, six Liverpool primary schools identified the need to improve the quality and choice of their food, so they set up a not-for-profit consortium called Food for Thought, an apt name given that children's ability to learn has often been reliably shown to be affected by what they have for breakfast or lunch. They brought in lots of partners including the local authority and the local Sure Start programme and invested their delegated budgets in it. Within a year they were delivering meals in all six schools, replacing processed food with homemade dishes from fresh locally reared and sourced ingredients. Meal prices remained fixed and were cheaper than the meals at other schools provided by the city council. Menus run on a six-week cycle, subject to pupil preference and the seasonal availability of produce.

Staff rotate across the schools and share best practice. Children are encouraged to experiment and get a more varied diet than before. They have open days when parents can come in and try the food with the children, and they are pleasantly surprised. Local NHS staff deliver training and taster sessions for parents, teaching them about diet and nutrition. They also have small groups of children helping in the kitchen to prepare the food. The result was a 67 per cent increase in uptake in one school and big improvements in the others. Children enjoy their food and look forward to it. Their director, Mike Carden, says:

> "The solution to healthy food is to develop a service that actually cooks its own meals. It is only by adding value to fresh vegetables, meat and fish in the kitchen that real costs and real quality can be managed effectively".

I quite agree with him, especially in these days when, for so many families, cost is a real issue. We are what we eat. It is only by cooking from basic ingredients that you can feed a family on a tight budget, so we owe it to our children to teach them how to do it and to make sure that our schools have the facilities to do that.

2.34 pm

The Lord Bishop of Bradford: My Lords, I thank the noble Lord, Lord Pendry, for calling for this debate on childhood obesity. Your Lordships may think that I speak simply as an act of confession. My robes hide the fact that I suffer from central adiposity; in other words, I put on weight around my middle and therefore carry an increased risk of type 2 diabetes and cardiovascular disease, and when I look round the Chamber, I see that I am not the only one. Therefore, the topic for debate is close to home.

Obesity in this country has reached epidemic proportions and the trends in childhood obesity are so serious that we now expect life expectancy to be shortened by its knock-on effects. The cost to the economy is predicted to be £45 billion a year by 2050. The second reason why this debate comes close to home for me is that Bradford has a higher rate of obesity among children than the national average, and standards of healthy eating and physical exercise are among the lowest in the country. I suggest that in the battle against obesity we are focusing, so far at least in this debate, far too narrowly and that we are starting too late in a child's development. The message—I know that we want a message which is easy to understand—seems to be to children, and, yes, through their parents, to take more exercise, give up junk food and eat their five fruit and veg. It is an important message but it only goes so far. I asked my daughter, who is a paediatrician, what one thing she would like me to say in the debate. She said, "Educate the parents. Don't put blame on children for things they can't control. Get parents to think about what they want their children to be like as grown-ups".

The obesity epidemic has come about through a change of lifestyle: the availability of energy-dense foods; the plethora of fast-food outlets; use of microwaves; pre-prepared meals; decline in cooking skills; the fact that families do not eat together but graze on their own; and the decline in physical activity. These have been mentioned by previous speakers. Is it not ironic that there is so much sport and so many cookery programmes on television but we are so busy watching them that we do not exercise or eat properly? But these

are lifestyle choices and they are adult choices, not children's choices. They are choices that adults make for their children.

Chronic stress leads to obesity as well. First, our bodies respond to stress by depositing fat around the middle rather than on the hips and thighs. Secondly, we turn more and more to comfort foods. Three years ago the *Sun* newspaper had a feature on child obesity. One child gained 15 stone in five years after his parents divorced. The stress is caused by the parents. In poor countries obesity is a disease of the rich but in the developed world it is a disease of the poor, as the noble Lord, Lord Pendry, noted. Wilkinson and Pickett, in their book, *The Spirit Level*, argue that this is more about relative wealth and poverty than actual wealth and poverty. They compare the Netherlands, a comparatively equal society where 7.6 per cent of children aged 13 to 15 are overweight, with the United States, the most unequal of rich countries, which has 25.1 per cent overweight. They also note that when the Berlin Wall came down and inequality increased dramatically in what had formerly been East Germany, there is evidence that the social disruption led to an increase in the body mass index of children as well as adults, although this could, of course, have been due to stress as well as to the greater disparity between wealth and poverty.

Poverty itself restricts choice. Some poor people do not simply have access to the nutritional foods recommended in the Sainsbury's recipes in the same way that most of us do. I could take you to a large council estate in Bradford where there is no greengrocer. There is nowhere for the people to buy their five fruit and veg which we would not be without. The local vicar saw the problem so he went to the wholesale market every week early in the morning, bought the fruit and veg and sold it in the church hall to everybody who came to the various clubs and so on. This enterprise has grown to such an extent that the wholesaler now delivers to the church. The point I am trying to make is that overcoming obesity is not purely a matter of individual exercise and diet. It is about the way we shape our society institutionally and corporately. I would add that educational programmes are too narrow and suggest that they start too late in a child's development.

My third and main local reason for choosing to speak in this debate is to commend to this House a wonderful piece of epidemiological research known as Born in Bradford. Fourteen thousand mothers are being recruited during antenatal care and 80 per cent are responding. Fifty per cent of these are of south Asian origin. Their family history is recorded and their child's growth and development monitored. As your Lordships will know, obesity leading to type 2 diabetes and CVD is particularly prevalent among south Asians in Britain. The aim of the programme—or at least the part of it relevant to our debate—as laid out in a grant application made in 2007 is as follows: to strengthen public health systems for monitoring excess weight gain in infants; to deliver new protocols and supporting tools to enable the identification of children who are at risk of obesity; to improve our understanding of the aetiology of childhood obesity in multi-ethnic populations; and to test new family-based solutions to prevent obesity in these populations. Twenty per cent of the 14,000 children in the project are monitored in detail.

A few months ago I had a preview of some of the early results of the project. Unfortunately for us they have not yet been published but they prompted me to wish to speak in this debate. Professor John Wright, the co-ordinator of the project, has allowed me to say that they have identified levels of obesity starting off in the first year of life common to white British and Asian babies. Yet the advice given by NICE on obesity in 2006 does not look at the evidence base for children under the age of two and, as far as I know, there is no advice available to health visitors in relation to obesity management for under-twos, in particular those in south Asian families where in-laws are an especially important influence on babies' diets. There is also the need to explore further what has for some time been known as the Varca hypothesis that those who are underweight at birth are more prone to cardiovascular disease later in life.

The noble Baroness, Lady Thornton, kindly gave me samples of booklets from the Change4Life project. I am grateful to her. They are a valuable and attractive contribution to the battle against obesity. I suggest that materials such as CDs be prepared for those who are not comfortable with the written word and in some other languages besides English and I particularly urge that there be greater focus on the impact on childhood obesity of infants' experience in the womb and in the first year of life.

2.44 pm

Lord Giddens: My Lords, I begin by congratulating my noble friend Lord Pendry on initiating this debate. I commend him for all the excellent work that he does to support sport and physical well-being in this country.

The subject of this debate is much more interesting, consequential, and intellectually and practically challenging than might appear at first sight. Obesity among young people and adults is not just a problem for the UK but is a genuinely global issue. The WHO's international obesity task force estimates that in 2007 some 1.4 billion people in the world were obese or overweight using standard measures. This number includes a rapidly accelerating proportion of children and young people under 21. The scale is truly extraordinary. In Europe there are few countries reporting obesity rates below 10 per cent and in several European countries these rates are above 20 per cent, including the UK and countries as diverse as Germany and Finland. In fact, the most rapid increase of all is in this country, where rates rose threefold between 1980 and 2001. In the United States, famously, obesity affects one in three adults and reaches rates of 50 per cent among some groups. This touches on what the right reverend Prelate said because these groups especially include poor black American women. In Latin America, obesity rates are rising in many countries; they are more than 20 per cent in Paraguay, for example, and have reached 36 per cent of women in that country.

Similar figures pertain to Asia, where Japan is an interesting case. Japan was easily the longest-lived society in the world, largely as a result of the Japanese

[LORD GIDDENS]

diet, but rates of obesity are climbing very steeply and have now reached more than 20 per cent among adults. They are climbing especially strongly among young people and the rates among those aged 15 to 21 are the same as for the adult population—20 per cent. It is a quite extraordinary secular change.

Some people say that with a phenomenon such as obesity we can apply the post-modern argument that you cannot judge; that there are many different kinds of people's bodies and we should not sit in judgment over what size they might be. That argument is demonstrably wrong for reasons which have been alluded to by my noble friend Lord Pendry. There are deep connections between obesity—and, indeed, being overweight by the standard measure—and dramatic health consequences, the most important one of which is type 2 diabetes. In the United States it has been noted that 45 per cent of children with newly-diagnosed diabetes have type 2 diabetes and almost all of them are radically overweight or obese at the time of diagnosis. Looking at the United States healthcare system, some people argue that it could be overwhelmed by the prevalence of type 2 diabetes some 15 or so years down the line simply because of the implications of this. As my noble friend said, these problems converge with a range of other harmful effects.

A phenomenon this profound and on this scale is not going to be dealt with by homilies such as we should take more exercise, eat less or eat more healthily; it will not be dealt with by public health programmes. I support what the Government are doing, what my noble friend said and the importance of education and health programmes, especially those aimed at young children, but a phenomenon which is this deep-rooted and global will not respond significantly to such endeavours and we will have to look elsewhere if we are seriously going to confront it.

I hope your Lordships will forgive a slight digression. A few years ago I wrote a book on anorexia, the rise of which in modern societies correlates more or less directly with the expansion of supermarket culture. Once you have supermarkets there are no longer local diets; you cannot follow a local diet. Everyone has to decide what to eat in relation to how to look and how to be. At this point there is a tremendous acceleration in compulsive or addictive eating patterns, not only here but across the world. It occurs mostly in the affluent parts of the poorer world as well as in the developed world. Anorexia is obviously the opposite of obesity but the two often go in tandem. For example, you will sometimes find young girls who will starve almost to the point of death and six months later they are really fat; you get an alternation between the two.

The scale of this phenomenon and its expansion shows that we are dealing with addiction or compulsiveness. When you have strong addictive or compulsive elements it is difficult to alter them. We will have to be much more radical and structural if we are to get to terms with the impact on our society to which obesity and being radically overweight, and eating disorders in general, should be closely linked.

There is an interesting overlap between the issue of obesity and being overweight and the more general debate around the issue of well-being. The two matters are closely connected and have common policy implications. I disagree with the right reverend Prelate because, to me, obesity across the world is by and large a phenomenon of affluence. It is certainly heavily class biased—it tends to be concentrated among poorer groups—but it is mainly in those countries which are becoming richer where obesity takes off in a radical way. We are, by and large, dealing with the phenomenon of affluence, even though it is heavily related to inequality for well known reasons.

If your Lordships take the point that obesity often has a strong component of addictiveness or compulsiveness about it, let me offer three observations on a more radical and structural approach to the issue. First, certainly in the UK and in many other countries too, alcohol consumption is significantly related to obesity. It is also strongly addictive, not only physiologically but socially and morally. When we consider the issue of obesity, we should take on board what the Chief Medical Officer is saying about alcohol because the two are intimately related. Quite apart from whatever you eat, if you consume enough alcohol it makes you fairly robust; it follows the similar fast food addictive pattern of behaviour. The Chief Medical Officer says—and I agree, although it was very controversial when it was announced recently—that we should radically curb children's access to alcohol, eliminate the availability of cheap alcohol and regulate the siting of alcohol in shops and supermarkets.

Those are the kinds of interventions that I feel we need, not just because of the direct overlap with obesity, but because of the obvious relationship between commercial sales, obesity and being overweight. In a supermarket, where do they put the sweets—they put them where you leave the shop, knowing that is where you make impulse buys. That is also the case in other kinds of shop. I am not going to mention the name of the shop, because I am speaking in the House of Lords, but you go out of the House of Lords, you get into the Tube station and there is a well known paper shop there. You buy a paper and they offer you an enormous chunk of chocolate, reduced in price by 60 per cent. That is ridiculous. You need some kind of structural regulation of the sale of certain kinds of food goods, and you need to break the pattern that is initiated by an organised consumer culture. That is essential both for alcohol and for food related to obesity and being overweight.

Secondly, by all means do what my noble friend Lord Pendry is suggesting, which I strongly support, and encourage young children and young adults to take more exercise. We hope that the coming of the Olympics to this country will have some positive impact on that. Indeed, my noble friend mentioned the progress that has been made. But again, we are talking about massive social changes here, which underlie the phenomenon of obesity. This is essentially the transformation from an industrial, agrarian society, which happens with affluence, to a service-based society, a post-industrial society. A life of physical labour sustained the health of a large number of working people—although it sometimes also broke their health in coalmines. Now only 10 per cent of the population are involved in physical labour, and mostly it is not of the old kind.

A post-industrial society is a car-based society. It has been mentioned that not many children cycle to school. Well, hardly any parents walk their children to school anymore; they drive them. So you are talking about a whole form of social organisation that underlines these patterns. A significant interventionist aspect of coping with obesity is actually intervention in urban design. That is the only way we are going to resolve these issues in a satisfactory way.

I shall refer to one or two of the countries that were alluded to by previous speakers. Denmark has low rates of obesity, not just because of eating patterns, but because in Denmark you have a lot of cycle paths and quite rationally organised cities in which there is encouragement to use public transport and to walk to work. These sorts of things are structurally implicated in the phenomenon of obesity and therefore we have to intervene on this kind of level and have a convergence of policy.

Thirdly, we should consider a more stringent and targeted use of the fiscal system, where it seems to me—strange though it might appear—that there is a kind of analogy with the politics of climate change. In fiscal systems, for obesity or being overweight, we should apply the "polluter pays" principle. For example, in New York State, a 15 per cent tax is being proposed for all sugar-based soft drinks. We should consider such tax-based interventions here, unpopular though they are with the food industry. We should recognise that producing structural change will meet resistance from vested interests in that industry, but it is in the interest of the Government to try to secure as much co-operation from it as possible.

At the moment, the situation is very like climate change, because you have an industry that is deeply implicated in promoting a certain kind of diet, linked to a certain kind of sedentary lifestyle, where that industry does not pick up the social consequences of what it is producing. This is directly analogous to organisations that are producing greenhouse gases. They are not picking up the cost to the environment of those gases. We should apply the "polluter pays" principle to them.

My concluding thought is that we had an interesting report from the Government yesterday on food security. We do have to plan ahead for food and I hope that the programme on food security will be extended to include the issue that has been the subject of this debate.

2.59 pm

Lord Rosser: My Lords, I, too, thank my noble friend Lord Pendry for enabling us to have this debate. As my noble friend said, one of the ways of addressing obesity among young people is through the development and expansion of sporting activity. I recently participated in Parliamentary Sports Fellowship Scheme, which provided me with an opportunity to spend some time with Sport England and see the kind of projects and schemes in different parts of the country that it supports financially, and develops with other organisations and bodies in order to increase involvement and participation in sport.

Among the many benefits which the evidence shows that increased participation in sport and physical activity delivers is a reduction in the specific risk factors that contribute to poor health, one of which is obesity. Sport England is investing nearly £880 million in sport in the run-up to the Olympics to create a top-class community sport system, to benefit people of all ages by getting 1 million to take part in more sport. To achieve that will involve reducing the numbers of children and young people who drop out of sport when they leave school, as well as developing those with talent to fulfil their potential. We need a sporting structure that enables more people to stay and enjoy being involved in sport—whether as players, coaches or volunteers—throughout their life. In terms of the Olympics and Paralympics, it means ensuring that as many of the venues as possible are designed and developed for community use once the Games have finished.

According to the Active People Survey results, 635,000 more people of all ages are doing more sport since the Olympic bid was won. As only one example of how this is being achieved, I mention that over 100,000 young people have completed Paddlepower Start, a Canoe England initiative aimed at getting more young people into canoeing.

In autumn 2008, Sport England also launched a £36 million Sport Unlimited programme to give 900,000 young people aged 11 to 19 access to 10-week high-quality courses in an array of sports out of school. The young people concerned are asked what sports they want to do, and the 10-week taster sessions are then laid on in the sports that people are interested in doing. Results to date show that 177,000 young people have completed courses since the launch of the scheme, and the three-year programme aims to get 300,000 of the participants to go on to play regular sport in a club.

One of the big challenges for Sport England is tackling the drop-off in sports participation when people leave school. Links have to be further developed between clubs and schools, as young people who join a sports club are far more likely to continue playing sport when they leave school. In 2008-09 School Club Links enabled 1.5 million to take part in sport at accredited clubs, which was an increase of 130,000 on the previous year. On average, schools had links with seven different clubs in 2007-08 compared to five in 2003-04, and 32 per cent of pupils participated in club sport in 2007-08 compared to 19 per cent in 2003-04. Nine sports have signed up to reduce the number of children dropping out of sport when they reach 16: badminton, basketball, football, gymnastics, hockey, netball, rugby league, rugby union and tennis.

Sport England also invests in StreetGames, to which my noble friend Lord Pendry referred, a national charity with a proven track record in overcoming barriers to participation in disadvantaged areas by delivering what is called doorstep sport, which uses tailored, neighbourhood-based sporting initiatives delivered at a time, location and in a style that meets the needs of local people. Figures show that StreetGames should have met its target to achieve its 1 millionth attendance by the end of 2009, having only officially launched in 2007.

StreetGames has committed to working with at least six national governing bodies of sport, and will be increasing that to 14 bodies, which will involve

[Lord Rosser]
connecting doorstep sport to mainstream clubs, leagues and talent development structures, as well as help in recruiting and deploying volunteers within disadvantaged areas. Since its launch in 2007, StreetGames has recruited and trained over 5,500 coaches, community sports leaders and volunteers and has successfully engaged groups of young people who are often hard to reach; 87 per cent of participants are from disadvantaged communities and 31 per cent are from black or ethnic-minority backgrounds.

Sport England also runs leadership and volunteering programmes for young people to promote and organise sport, particularly among their age-group peers, and then works with local clubs, schools and the community to create the broader opportunities that allow such young people to create a formal and valued contribution to sport.

Of course, addressing obesity is not just a question of seeking to increase participation in sport and physical activity. It also involves issues of diet, lifestyle and the activities and objectives of the major food and drink manufacturers and retailers. However, investment in sport can have an impact on obesity as well as having many other benefits. I have never ceased to be impressed by the energy, enthusiasm and commitment of the thousands of volunteers who give up so much of their free time and play such a significant role in helping to provide and develop sporting opportunities and facilities for people of all ages, including young people. I also see this through my involvement as an honorary vice-president of the Ryman Isthmian football league, where so many of the 66 constituent clubs also run teams for young people from the age of eight, thanks to the involvement of committed volunteers.

There is now an increasing clamour for swingeing cuts in public expenditure. The resources and support that a body such as Sport England provides enables all those thousands of volunteers, as well as the paid professionals, to provide the opportunities for young people to participate in increasing numbers in more sports and physical activity. That provides a benefit in a variety of ways, including addressing obesity, not only to the young people themselves but to the community as a whole through the financial and social advantages of having a healthier and happier population.

I hope that in the months and years ahead, common sense and sound financial sense will prevail and we will continue to see the necessary resources provided to enable the good work that has already been done on increasing and developing sporting and physical activity, particularly among young people, to continue and thrive.

3.07 pm

Lord Moynihan: My Lords, I am grateful for this opportunity to contribute to this debate by speaking in the gap. I participated in a debate earlier in the week, but it was somewhat curtailed by the weather and I was unable to pay tribute to the noble Lord, Lord Pendry. His contribution to young people and, above all, to sport and recreation, through a long and distinguished political career is, without doubt, outstanding, as was his contribution to the debate this afternoon. His assessment of the subject of obesity characteristically focused with equal weight on diet and medical treatment on the one hand, and on activity levels through sport and recreation on the other. As he knows, I firmly believe that an Olympics sports legacy from London 2012 must reach far wider than the confines of the Olympic park and the satellite venues. I declare an interest as chairman of the British Olympic Association, a director of the organising committee for the Games and a member of the International Olympic Committee's international relations committee.

I shall confine my brief comments to London. To tackle obesity in London, we must transform the landscape for Londoners by improving access to improved sport and recreational faculties at an affordable cost. As a starting point, what is required is for government to introduce a much needed statutory requirement to ensure adequate provision of facilities for sport and recreation in England and Wales. In Scotland, where such legislation exists, the per capita funding for sport is £46; in England, where local authorities are under no such obligation and are struggling to meet their statutory requirements, it is no surprise that the per capita spend is £19. Working with Kate Hoey and her London Community Sports Board, of which I declare membership, we are seeking to make a small difference by delivering a genuine grass-roots legacy for sport in London. The facts provided by the Government's Active People Survey make disturbing reading for Londoners. Only one-fifth of Londoners regularly take part in sport and while the most recent results, published last month, show a slight increase on the previous year, participation in sport still remains significantly lower than it was on the day that London was awarded the 2012 Games. We have, I believe, only one 50-metre swimming pool in operation. Almost half of London's adult population does no activity at all. Participation rates for disabled people are less than 10 per cent. One in six Londoners is obese. On current trends and without a major increase in facilities, 50 per cent of Londoners are predicted to be obese by 2050.

More seriously, in many respects, one of five London children is obese, and one in three is in the category of obese or overweight, which is significantly higher than in England as a whole. In short, we need action. We need to build a London-wide programme to deliver on the four goals identified by the mayor in his 2008 plan for increasing participation. They are: get more people active; transform the sporting infrastructure; build capacity and skills; and maximise the benefits of sport to our society by recognising its immense value as a tool for tackling crime and promoting community cohesion, as well as improving health and contributing towards tackling obesity. These are key objectives in the challenge to deliver a true Olympic sports legacy for the country.

3.11 pm

Lord Addington: My Lords, this is one of those debates when we have a lot of old friends and a lot of themes that occur again which we have to look at. The noble Lord, Lord Pendry, displays that great political quality of persistence on this. We have to keep coming back to the subject and monitoring what the Government

do, how we look at it and how we develop our approach to problems such as obesity and the relative factors of sporting activity and diet.

I was cursing the right reverend Prelate the Bishop of Bradford at one point during his speech because he got to the joke that I wanted to make about the fact that we seem to have produced a nation that sits on a sofa watching TV, predominantly sport and cookery programmes. We are told consistently by various chefs, whether they are selling books or trying to do a public service, or some combination of the two, that we should understand what we eat and that, if you are going to eat meat, it is probably better that it is healthy meat, both for the taste and for the sake of the animal before it becomes a lump of protein on your plate, and so on. They go on about this, but you are watching it sitting at home with a bag of crisps in front of you, the crust of a take-away pizza with far too much cheap cheese on it and several cans of lager that were sold at a discount in a supermarket.

It is not a very good image, but then again, as somebody pointed out to me, historically did we ever have that great a diet? No, we did not. The British were renowned for the fact that, if we did not boil it, we fried it; to us, vegetables were exotic things that had to be boiled into submission before they could be eaten, just in case they misbehaved in some way.

As the noble Lord, Lord Giddens, pointed out, we used to break a sweat when we went out to work; we actually worked and used our bodies much more. Even in getting to work and back we would invariably use muscle power. The whole process is out of whack. We are an animal that has developed a body based on muscle designed to move and do certain types of functions. If you do too much of it you will break the body down eventually, but it is designed to move and be active. We have got to a point where many people in our society are not doing this.

Many people have enjoyed and do enjoy types of physical activity. Sport is a natural expression of this, as are recreational activities. There is a bizarre dividing line between exercise and sport; it does not really exist, but we try to put it in. I would say that going jogging is not sport, because you are not competing with somebody, yet on many government statistics it is. It does not matter. We are talking about certain types of recreational physical activity.

I was one of the few people to be told that they had lost a few pounds over Christmas, because I now have a much fitter dog and I live out in the countryside with hills. That leads to my other point. If you happen to live in a part of the countryside where you can walk, you will take exercise because it is a pleasant activity. If you live somewhere that does not have well marked footpaths or you do not have the opportunity or a pleasant environment to do this, you will not. Of course, many people in extreme green politics would tell us to go back to a world where we live in unheated houses. Being cold and trying to keep yourself warm burns off calories; possibly we will all be a pound or two lighter at the end of the current spell of weather. Unless we can make a society where this type of taking exercise is encouraged as a pleasant leisure activity, it is not going to happen. The temptation to sit on the sofa and watch a professional athlete or a professional chef doing something is always there. We have all done it. If you have not, you are very unusual.

We should also remember that eating can be seen as a leisure activity, which we have all delved into. There has to be some reason to encourage us to go out. Saying that it is good for you may make you join a gym or buy a diet plan, but it does not make you use the gym or the plan. That is the fact of the matter. Many people in the fitness industry used to make a great deal of money out of people who joined a gym and did not use it. Of course, they now realise that there was a huge greater potential in putting people on prescription activity, but I welcome their self-interest, which is possibly the nation's self-interest here. Perhaps the Government would like to comment on how much they intend to encourage the use of gyms, predominantly in down periods, for treatment. I would be very interested.

How are we going to encourage people to exercise? The noble Lords, Lord Rosser and Lord Pendry, touched on this. We have done a lot of work for the self-interest of sports to keep people coming through, trying to make sports more enjoyable, especially in the initial phases. I have bored the house silly about Rugby Union's transition from a 15-a-side game, played at the age of 13 when the wingers froze to death and there were three people round the ball hugging on to it all the time and everybody else pretended to tackle and got out of the way, to a game that encourages minis and juniors. I thought that that was the case until I discovered my nephew at a state school announcing that he would rather be a soccer player and being told that he should play for the honour of his school—it was an honour to be there, not something for him. Despite the fact that I think that soccer is probably a second-best option, which should be considered only in a dire emergency—it helps to have your prejudice on the table occasionally—I still felt on that occasion that the school was very wrong, because it should be encouraging people to take part in a sport that they enjoy.

That leads to my other point, which is where clubs are better. Clubs will make sure that you do not drop the activity at the first available opportunity. We have to work on this. How are the Government going to encourage it? What is their ongoing process? The Government have done a lot. The noble Lord, Lord Pendry, mentioned some of the projects, but the fact is that they still are not working well enough. A great deal of effort has gone in. In the debate on Tuesday, to which the noble Lord, Lord Moynihan, referred, I asked which of the schemes for initiating people into a sport and encouraging them to keep active works best. I was promised an answer. The Minister who gave me that promise is sitting beside the noble Baroness, Lady Thornton. Has the Department of Health made an assessment of the best return in its terms about this? What do we have to do to deliver? Is the best option to go through the junior clubs to get the mass participation levels up? Is it things such as infrastructure? Is it making sure that parks are available and that buses take you to somewhere to go for a walk, with or without a dog? What is being done? How are we encouraging people?

[Lord Addington]

As my noble friend said, growing your own vegetables in allotments is popular. You are taking exercise if you do some gardening. How are the Government taking on and structuring the task of making activity pleasant? They have to do it that way. Unless we forget about 150 years of technology, most of our lives are not going to be ones of heavy manual labour. For many, there will not be even the labour of walking somewhere or riding a horse. We must to try to find a way to show that taking the right amount of exercise to keep us healthy is a pleasant experience. The challenge for this Government and anyone who supports this aim is how to integrate it into society. The structures that are needed to take in the changes and the sticks and carrots that will have to be used on society are complex. There will be more than one answer. There will not be a right answer; there will be better answers. We know that nothing is absolutely for free.

I have raised sports medicine on numerous occasions in this House. Are we investing enough in sports medicine, physiotherapy and educating doctors about when to use sports medicine? I have a permanently misshapen left arm, because only a couple of years ago a consultant did not know that anything could be done about it. Apparently I am lucky that I still have function in the arm, as that might not have been the case. What are we doing about making sure that the medical profession knows about maintaining people in activity and making sure that they are not frightened, for instance, of being curtailed in work activity because of sporting activity? How is all this being integrated?

We have the advantage in this House that when we ask the Government questions we do not ask individual departments. I suggest that when the noble Baroness replies she tells us how to bring these matters together. The noble Lord, Lord Davies, has told us that the Treasury takes overarching control of sport, despite the fact that it has no way of delivering. It has to go through the departments responsible for health and education and through the DCMS, which does not have much of a chance of delivering. How does that come together? Unless we take sport and recreational activity more seriously and give them more thrust, the Government are bound to waste effort. Will the Government give at least some of the answers to this great, multifaceted question?

3.22 pm

Earl Howe: My Lords, the noble Lord, Lord Pendry, deserves our thanks for giving us the opportunity to debate this extremely important public health issue, which we have not done for a considerable time. I thank him in particular for his very powerful opening speech.

Indeed, I am sure that the Minister will agree that we have had some excellent contributions this afternoon from around the House, pointing to a good measure of cross-party consensus on this subject. Although I do not intend to fracture that consensus too much, because there are many things which the Government are now doing right, I think it is worth beginning by putting today's situation into context. We are living at a time when nearly a quarter of all adults in this country, and nearly a fifth of children, are obese under the standard definition. Those percentages have practically doubled since 1993.

The real wake-up call, if any were needed, came with the Foresight report of two years ago, which predicted that, without corrective action, Britain could be a "mainly obese society" by 2050. Pro rata, the UK now has more obese people than any other OECD country except Mexico, the USA and, perhaps surprisingly, New Zealand. The penalty to be paid for this in the long term will be measured, certainly, in premature mortality; but its effects will chiefly be felt in terms of increased morbidity, which will carry with it a high knock-on cost to the general economy. The noble Lord, Lord Giddens, rightly mentioned diabetes.

The seriousness of the threat posed by obesity is nothing new. However, that is why it is all the more reprehensible that, until recently, Ministers have failed to place due emphasis on it. The Minister may not like to be reminded that the last Conservative Government put considerable emphasis on this area of policy. As early as 1992, we set a target of reducing obesity to 6 per cent of men and 8 per cent of women. In 1999, the Government scrapped that target and did not replace it. It took two scathing reports—from the Chief Medical Officer in May 2003 and the Health Committee in May 2004—to prod the Government into setting a new target in July 2004. That target was to halt the year-on-year rise in obesity among children under 11 by 2010. What happened to that? It was abandoned in the 2008 Comprehensive Spending Review, when it became obvious that it was not going to be met. Instead, Ministers published a new target to reduce the proportion of overweight and obese children to 2000 levels by 2020. That is an incredibly ambitious target, bearing in mind that thus far the Government have not even managed to stall, let alone start reversing, obesity levels.

For too long, the Government took their foot off the pedal when it came to the effort and resources devoted to the issue. The story is all of a piece with their general record on public health. In many major problem areas, such as deaths from alcohol and the incidence of sexually transmitted infections and teenage pregnancy, the trends have been and still are in the wrong direction. By their own admission, the Government are even on course to miss their target for infant mortality and life expectancy at birth. The difference between the life expectancy of the richest and poorest in our country is now greater than at any time since Queen Victoria. That is not the sort of legacy that any Government, let alone a Labour Government, would wish to leave behind.

Only in the last two years has the government effort to combat rising obesity levels begun to take shape. Change4Life, with its various offshoots such as Start4Life, is a well conceived and worthwhile programme. It explicitly acknowledges that success in tackling obesity depends not only on the state, but also on industry and, crucially, families and individuals taking action. In this respect, the problem of obesity is different from the public health challenges that we faced in the past. The issue cannot be solved by passing laws, as we did with water sanitation in the 19th century and air pollution in the 1950s, because obesity originates in

private space and does not impinge directly on the freedom or well-being of others. Any sustainable solution to the problem must start from that realisation. Only by changing people's attitudes and motivation will we be able to make a difference over the long term.

What does it take to do that? Of course there is a role for government: regulation is important. The Government's job is to provide leadership and an environment in which consumer tastes can be influenced and healthy eating choices made. The obvious examples of creating such an environment are food and alcohol labelling, making sure that there are consistent and clear public messages on nutrition, and making physical activity more accessible to greater numbers of people. However, if the key to the problem is changing people's motivation and attitudes, the trick is to encourage them to take responsibility for their own lifestyles and health. You do not encourage a sense of responsibility by nannying people and lecturing them on the negative consequences of being overweight. Instead, you provide them with positive messages about the benefits and enjoyment to be had from healthy living. You provide them with information with which to make choices, and examples and role models to follow. This applies to children as much as adults. Young people most of all have to feel empowered rather than put upon. We have to tap into their self-esteem.

One mistake made by the Government was their failure to recognise that when they introduced healthier school menus. Healthy meals can deliver benefits, but they will not do so if there is no motivation on the part of the children and their families. The introduction of those menus led to an increase in the uptake of packed lunches stuffed with crisps and chocolates. What was the Government's response? To impose another regulation to inspect school lunchboxes. We ended up with mothers feeding their children burgers through school railings. Thankfully, the Healthy Schools programme has come some way since then, including, I am glad to say, the introduction of cookery classes. I quite agree with what the noble Baroness, Lady Walmsley, said about that.

In fact, many of the decisions that people take about what they eat and drink are not really decisions at all; they are actions driven by force of habit—even compulsiveness, as the noble Lord, Lord Giddens, said. A lot of people damage their health without understanding what they are doing or how to put things right. In that context, the Minister may be aware of some research published recently by Volterra, which accounted for the rising obesity over recent years by reference to the phenomenon of peer acceptance. Peer acceptance is about people continuing to follow modes of behaviour because other people within their social group are behaving in the same way. People feel less pressure to change their actions and habits if their friends are not also doing so. It becomes socially acceptable to be fat. Volterra does not claim that that is the only factor that accounts for the rise in obesity—far from it—but it is certainly one that ought not to be ignored in any study of the subject. That takes us into an interesting realm: the psychology of human behaviour and the way in which societal norms are created and maintained. Those are difficult subjects for policy-makers, but ones that must be grappled with.

I said that I am supportive of Change4Life, but if there is a difference between the Government's approach and that of my party, it relies in the split of responsibilities between the different stakeholders. My view is that regulation in areas such as food advertising has reached its limit of usefulness, apart from trying to put in place a consistent approach in all media channels such as the internet. On the other hand, the Government have taken too long to give a clear commitment on food labelling. The traffic light system may have the merit of simplicity, but its main flaw is that it characterises food as good or bad when what matters is whether a diet is good or bad. The EU Commission has said that we need to adopt a uniform system based on guideline daily amounts, combined with a colour indication system, and I agree. On interventionist measures, I also agree with what the noble Lord, Lord Giddens, said about urban design and the use of fiscal levers, particularly in relation to high-strength alcoholic drinks.

Looking at the wider agenda, the food industry is capable of taking on greater responsibility for promoting healthy living—not just in reformulating products, which it is already doing very successfully, but in initiating and sponsoring exercise and wellness programmes. Many large food manufacturers are doing great work along those lines in schools, in the workplace and in the community under the Business4Life banner. I have no doubt that we should encourage more businesses, including SMEs, to buy in to that sense of shared responsibility. We owe a debt to the Advertising Association and, not least, to its former chief executive, my noble friend Lady Buscombe, for having secured a commitment worth about £200 million from industry to resource those initiatives.

Recent reports have suggested that childhood obesity is levelling out. We need to treat those reports with caution, because some of them look only at averages. A team at University College, London, reported last month that obesity in children from wealthier backgrounds may indeed be improving, but that the problem is still getting worse—indeed, considerably worse—in children from lower socio-economic groups. Those are the people who should give us the greatest concern, and we should bear in mind, too, that hospital admissions of patients being treated for obesity have shot up over the last five years. Within normal value-for-money constraints, I believe we owe it to the Government to support them in any properly researched programme designed to combat obesity in the young. With an expanding buy-in from industry as well, it may at last be that we are on the right road to achieve results.

3.35 pm

Baroness Thornton: My Lords, I thank my noble friend for raising this important issue and congratulate him and other noble Lords on their usual informed and important contributions. It is of enormous regret that, due to the weather, the noble Baroness, Lady Finlay of Llandaff, has not been able to make what I know would have been an outstanding contribution to the debate. I understand that she will seek another opportunity in future and I very much look forward to that.

[Baroness Thornton]

I welcome the opportunity to update noble Lords on the progress we have made in tackling obesity. First, however, like most other noble Lords, I shall refer to the scale of the problem we face. In 2007, as the noble Earl, Lord Howe, mentioned, the Foresight team published its report entitled *Tackling Obesities: Future Choices*. It predicted that if action was not taken, the levels of obesity would rise by 2050 to 60 per cent in men, 50 per cent in women and 25 per cent in children. It also forecast that the direct cost of obesity and overweight to the NHS would double by 2050 from the already massive current figure of £4.2 billion. My noble friend Lord Pendry quite rightly mentioned the obvious health effects, such as the increase in childhood diabetes.

Obesity is a complex and long-term phenomenon, and no sensible analyst would pretend that there is only one answer or there is an easy one. A number of factors drive people towards overweight and obesity. Foresight has described the "obesogenic environment": the physical and social environment in which we are often encouraged to expend the least amount of physical effort while consuming a large number of calories. Noble Lords have given various descriptions of that in this debate. Of course it is essential that we eat healthily and exercise appropriately, but, as noble Lords have also said, simple exhortations telling people to engage in more activity or to exercise greater self-control are not enough. Indeed, that can be counterproductive when talking to the young and children. My noble friend Lord Giddens is quite correct that the homilies are not working.

In January 2008 we published our obesity strategy *Healthy Weight, Healthy Lives*, which set out how we will help people to reach and maintain a healthy weight. Further commitments were made in April 2009 when we published our *One Year On* plans. Our aim is to be the first major nation to reverse the rising tide of obesity, with the initial focus on reducing the percentage of obese children to 2000 levels by 2020. Our strategy has four essential strands for action which commit us to helping people to make healthier choices, creating an environment that promotes healthy weight, ensuring effective services are available for those at risk and strengthening the delivery system of their services. Our strategy is based on expert input from Foresight and is internationally recognised.

I am pleased that we have made some progress in the past year on a number of fronts in addressing obesity among children and young people. However, my noble friends Lord Pendry and Lord Giddens rightly say that this is about changing culture and changing habits. Noble Lords may be aware that child obesity rates are beginning to level out, so I would say to the noble Earl, Lord Howe, that this reflects some progress. New data published in December from the Health Survey for England for 2008 show that child obesity levels are the lowest since 2001. Among two to 10 year-olds, the reported figure for 2008 is 13.9 per cent compared with 15.5 per cent in 2007 and 2006. These figures are supported by data from the National Child Measurement Programme 2008-09. However, obesity levels are still too high, especially for teenagers and adults, and we certainly cannot be complacent. What we can say is that we have taken a tiny step towards progress.

We have been helping children and their families to make healthier choices, and many noble Lords have referred to the importance of recognising that parents remain the biggest influence on their children. There is a significant correlation between obesity in parents and their children. In families where both parents are overweight or obese, a child is six times more likely to be overweight or obese than a child in a family where the parents are both of a healthy weight. Nurture, not nature, is the main reason for this. What children eat and drink and how much physical activity they get is largely determined by the choices that their parents make for them. Therefore, last year we launched Change4Life, a highly innovative campaign which aims to help families to,

"eat well, move more and live longer'.

The campaign, aimed primarily at families with children aged five to 11, seeks to motivate individuals and families to make behaviour changes around diet and activity. More than 412,000 families have registered with the campaign and receive information and advice tailored to their needs on healthy eating and physical activity. At the national level, we already have the support of over 170 companies and organisations that are Change4Life partners and who promote Change4Life to the people who use their services. Noble Lords mentioned the importance of working with industry at all sorts of levels, and indeed that is exactly what we have aimed to do with the Change4Life campaign.

I hope that the right reverend Prelate the Bishop of Bradford will be pleased to learn that on 1 January we launched Start4Life, a sister campaign to Change4Life. Start4Life is aimed at parents-to-be and parents of babies and children up to the age of two to encourage them to get their babies off to the best start in life through breastfeeding, effective weaning and active play. If we are to head off the obesity epidemic of the future, we need to begin with the parents and children of today. My native city of Bradford is clearly a target for this campaign. I was keen to learn what the right reverend Prelate had to say and I join him in expressing my concern for our city.

My noble friend rightly mentioned the work of the Sports Trust and other organisations with these campaigns and initiatives. I join with other noble Lords in paying tribute to all organisations, particularly in the third sector, which are active in this area. I mention in particular the sports and leisure trusts across the country which have fully embraced Change4Life in its various manifestations such as Swim4Life.

We have been trying to create an environment that promotes healthy weight. The Healthy Child Programme covers the first five years of life. This universal health visitor-led programme has a clear focus on promoting healthy weight, with more targeted support for those who need it most. In September, we issued comprehensive new guidance for the review that takes place when a child reaches the age of two. At the same time, we launched the new Healthy Child Programme for children and young people aged five to 19. Led by nurses working with families, schools and young people

themselves, and in partnership with other providers, this means that we have for the first time a comprehensive programme to promote the health of all children and young people. The noble Baroness, Lady Walmsley, made a superb case for good food and cooking, and we would all agree with her that cooking is in fact easy. Indeed, I join her in paying tribute to Jamie Oliver as one of our celebrity cooks who makes the case that cooking is easy and something that everybody can do.

For children at school we have extended the statutory nutritional standards for the types of food that can be served in schools, and we have restricted choice to healthy options in maintained secondary schools and special schools so that all state schools are now covered. The regulations also ban high salt, fat and sugar foods from vending machines in schools. We are supporting schools with funding for new and refurbished kitchens and to train cooks to prepare healthier menus. We provided £220 million-worth of funding over three years from 2005-06 to help schools and local authorities manage the transition to the new standards, and a further £240 million over the following three years to 2010-11 to subsidise ingredients and other costs directly related to the cost of providing a school lunch. In all we have invested £650 million between 2005-06 and 2010-11 to support school food. We believe that this investment is paying off. The noble Earl may be right that this had a slightly unsteady start, but we know that the proportion of children eating school lunches is rising again. The latest figures show that nearly 44 per cent of primary pupils and 36 per cent of secondary pupils are now eating healthier school meals.

The noble Baroness, Lady Walmsley, mentioned new initiatives and the importance of the School Food Trust which, of course, is financially supported by the Government. Cookery classes are compulsory in primary schools and have been reintroduced into the curriculum at key stage 3, so that pupils aged 11 to 14 can learn the basics of cooking simple, healthy meals.

My noble friend Lord Pendry is known for his work promoting sport and physical education in schools, and he will be aware that nine out of 10 pupils aged 5 to 16 now take part in two hours of high quality PE and sport in the curriculum each week, but we need to go further. Our PE and sport strategy for young people sets out our ambition that this age group should be able to take part in five hours of sport per week. The noble Lord, Lord Moynihan, knows that we want to use the enthusiasm and interest that will be generated in the run-up to the Olympics in 2012. We are putting more professional coaches in schools, upgrading school sports facilities and providing more attractive sporting opportunities for the community, but I welcome the noble Lord's remarks and hope that he will agree that we are making some progress. I congratulate him on the work of the London School Board.

For 16 to 18 year-olds in education, schools and colleges will be expected to work in partnership with clubs and community groups to ensure that at least three hours of appropriate activity are available. For young people not in education, training or employment, community providers and local authorities should work together to provide access to affordable opportunities to take part in sport. In the eight years to 2012, we will have invested £2.4 billion in PE and sport for children and young people.

My noble friend Lord Rosser outlined the achievements of and challenges faced by Sport England; he is quite right that we have a huge problem of young people dropping out of sport in their teens, particularly girls. We should not think of physical activity only in terms of PE and sport, as the noble Baroness, Lady Walmsley, said. We are encouraging children and young people to be physically active in their everyday lives through travel, play and leisure. The Chief Medical Officer recommends that children and young people should undertake a minimum of 60 minutes of moderately intensive physical activity each day. We are reviewing these guidelines and consulting on new recommendations for infants, toddlers and pre-school children, with the aim of producing guidelines to help them. We also think that travelling to school is very important, and have invested £140 million in travelling-to-school projects which encourage schools to have travel plans to get children walking, using public transport or cycling to school.

Children and young people have a life outside school. In the Children's Plan we announced a new agenda for supporting play, with the biggest ever investment in play by the Government. We have put in £225 million over three years, and an additional £10 million was pledged in April 2008, underlining the importance of play and why it should be taken seriously by every council in the country. We have consulted on our play strategy, which sets out a commitment to deliver 3,500 new or refurbished play spaces, and 30 new staffed adventure playgrounds, so that there is one in every neighbourhood in the country.

I have already mentioned the work that we are doing to improve the quality of food in schools. We agree with the noble Baroness, Lady Walmsley, about the need to increase the number of children taking school lunches. We are also promoting healthier food choices in a number of other ways.

The noble Earl referred to advertising. Working with Ofcom, we have placed restrictions on the broadcast advertising to children of foods high in fat, salt and sugar. Ofcom has reported a 34 per cent reduction between 2005 and 2007 in children's exposure to adverts on television for foods that are high in fat, sugar and salt. We will conduct a further review of the impact of these restrictions during 2010. We have committed to look at developing a set of voluntary principles to underpin all marketing communications about food to children, and we will be working with stakeholders on this over the coming months.

Front-of-package nutrition labelling is now widespread in the UK. The noble Earl asked how that would be taken forward. I agree with him that the FSA will need to resolve this issue; indeed, the intention is that that should happen in the course of this year.

Much of our focus is on preventing problems arising in the first place. We are also working to meet the needs of those at most risk of becoming obese, including those who are already overweight. We know that weight management services can play an important role in helping overweight or obese children to move towards

[Baroness Thornton]
and maintain a healthier weight. This is very important; nothing makes a young woman more miserable than being seen as and called "plump" during her teenage years. As well as the physical impact of these issues, we should not underestimate their impact on young people's mental health. In this financial year we are therefore providing PCTs with funding of £69 million within overall allocations that are about commissioning more weight management services.

I turn to specific issues raised by noble Lords. The noble Baroness, Lady Walmsley, raised the issue of cookery classes. As I said, they are already compulsory in primary schools and will be compulsory in secondary schools from 2011. The Cook4Life pilot programme aims to train Sure Start children's centre staff to run cookery activities for families with children, and the aim of the pilot is to develop skills, inspire and give confidence to parents with young children to cook healthy and nutritious food. That is an example of the kind of programmes that we are taking up.

The noble Baroness also raised the issue of the take-up of free school meals. We know that the take-up is increasing but we have commissioned the Child Poverty Action Group to report on the stigma of free school meals. It found that not all parents are aware of their entitlement and others do not know how the system at their school works, so we are also aiming to tackle it from the point of view of the amount of information that is available to parents as well as how the school handles those issues.

The noble Baroness raised the issue of biometric systems and barcodes for cashless food payment. I took her point about that, but she will know that these arrangements are made locally.

The right reverend Prelate raised several issues. I want to refer particularly to the Born in Bradford research that is going on, which I think is going to be very important and informative. I hope that he will take the opportunity of his presence in your Lordships' House to bring that information to us at a time when he is allowed to do so. He made an important point about the lack of money and the availability of healthy food in poorer communities.

The right reverend Prelate asked about NICE guidance for the under-twos. The evidence base for obesity in that age group is still quite small and not conclusive, but obesity in children may well begin in habits picked up from birth. We are therefore giving guidance to health visitors about what happens at the review at two years old. I suspect that the research from Bradford is going to assist us with this issue.

The Change4Life material is on DVD. Leaflets and information in languages for the black and ethnic minority community are expected to be available from February this year.

My habits from being a student at the LSE die very hard, and I nearly took up my pen and started making notes while my noble friend Lord Giddens was speaking. His analysis was spot on. I very much take the point about anorexia and obesity going hand in hand and about the issues of addiction and compulsion. We hope that some of the work that we are doing will address these problems. I think that he recognised that. I totally took his point about alcohol.

My noble friend Lord Rosser made a very important contribution about the work that he has been doing through the Parliamentary Sports Fellowship Scheme. It is one of those activities that I have always intended to do but never quite managed due to time constraints.

The noble Lord, Lord Addington, never bores the House silly on these issues. He is part of the expertise available in this House on these matters. Many of our programmes are working. I say to the noble Lord that it is not a choice of parks, clubs, change for life or allotments; we have to work across government. It is the responsibility of the whole of government, but also of all of us, to take these issues forward.

Lord Addington: What I am really calling for is a government analysis of the best way forward in the various fields of physical activity because I am absolutely sure that a lot of such activity is wasted or is not as good as it could be.

Baroness Thornton: I take the noble Lord's point about the need to monitor and assess these activities to see which is the most effective. That is built into these programmes. We will be monitoring and assessing them. That is why they are often changed.

The noble Earl, Lord Howe, made an interesting comment about the targets for obesity being set by a Conservative Government. I wish to make two comments on that. It was a Conservative Government who put us in the terrible position in which we found ourselves as regards school meals. It was also a Conservative Government who allowed the sale of playing fields and did not even bother to record the number of playing fields that were sold, thereby reducing the availability of playing facilities. We have steadily reduced that. The first thing we did in 1998 was to start to count the number of playing fields that were being sold.

Lord Moynihan: I am grateful to the noble Baroness for giving way, but how would the Government know the number of school playing fields that had been sold given that she has just said that no statistics were kept to identify whether new playing fields were being added or sold?

Baroness Thornton: The point I am making is that if you are not even counting the number of playing fields that are being sold, that suggests there is no commitment to ensuring that children have access to those playing fields. The first thing you need to do to stop the sale of playing fields is to find out how many of them you are selling and where.

However, I think that the noble Earl and I agree on most of these issues, particularly as regards food and alcohol labelling and people taking responsibility for themselves as well as the Government providing leadership on these issues.

As regards the 2004 target for halting the rise in child obesity, we wanted a more ambitious target which included overweight as well as obese children.

We do not regulate school lunch boxes. Schools decide their policy on packed lunches and have their own rules.

No one should be in any doubt that this Government have made tackling obesity a top priority. I thank my noble friend Lord Pendry and all other noble Lords who have taken part in this debate. I hope that noble Lords will be assured that we are working across government to help today's children to have a healthy and happy future as the young people and adults of tomorrow.

3.58 pm

Lord Pendry: My Lords, I, too, thank everybody for participating in this debate. I am glad that my throat virus did not prevent me being here. I do not intend to reply to all the points that have been made. However, I thank those who covered points other than the ones I made about sport and physical recreation. Food was the first one that came up. We also heard about the problems of alcohol with youngsters.

There have been some very thoughtful contributions. I always enjoy the speeches made by the noble Lord, Lord Giddens. He referred to the problems of obesity in a more global way than I did and I learnt a great deal from what he said. I also enjoyed contributions from the noble Lord, Lord Rosser, and from the noble Lord, Lord Addington, who is always here in debates relating to sport and physical recreation. I agree with the right reverend prelate the Bishop of Bradford and his daughter that the importance of this should not be put on children alone, or even parents alone, but on the environments in which they are brought up. The highest percentage of obesity is in those run-down estates.

I would like to thank my old sparring partner, the noble Lord, Lord Moynihan, for his kind words. When I was shadow Minister for Sport in another place, I had to shadow five Ministers for Sport but he was by far the best. I have said that publicly before but I say it here in this House. However, I must correct him on his intervention in the Minister's speech. We do know that 3,000 playing fields were sold off. When I debated this with the then Prime Minister, John Major, he agreed. We must place on the record that the Prime Minister of the day agreed that those had been sold off. Let us not have that from the noble Lord again because it is not the first time I have heard him say it.

I thank the Minister for her thoughtful response to the debate and the noble Earl, Lord Howe, for his contribution. I beg leave to withdraw the Motion.

Motion withdrawn.

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

Order of Commitment Discharged

4.02 pm

Moved By ***Lord Tomlinson***

That the order of commitment be discharged.

Lord Tomlinson: My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

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

Order of Commitment Discharged

4.03 pm

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

That the order of commitment be discharged.

Lord Morris of Manchester: My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

House adjourned at 4.04 pm.

Grand Committee

Thursday, 7 January 2010

Bribery Bill [HL]

Committee (1st Day)

2 pm

Clause 1 : Offences of bribing another person

Amendment 1

Moved by ***Lord Lyell of Markyate***

1: Clause 1, page 1, line 3, after "if" insert "acting with corrupt intent"

Lord Lyell of Markyate: I will speak to Amendments 1 to 4, which are happily grouped together. Indeed, I suggested that they should be grouped together when I tabled them. The amendments seek to add to the Bill the overall comment that bribery should be an offence that should carry, as an essential ingredient, the requirement that it be exercised or committed with corrupt intent. I put down as an alternative that it should be committed dishonestly, but I put forward my "dishonestly" aspect more as a probing amendment. I put it down because I spoke at Second Reading on the relevance of dishonesty and its closeness to corruption. I thought it would be helpful, rather than just to leave it out, to let us explore that so that I can better explain the value to the Bill of adding the words "corruptly" or "with corrupt intent". The exact words can be better dealt with by the parliamentary draftsmen, but it is the objective of adding "corrupt intent" that I hope to persuade the Committee to adopt.

Transparency International has absolutely nothing to fear from the addition of these words. I am very glad to see both the noble Lord, Lord Thomas of Gresford, and the noble Baroness, Lady Whitaker, in their places.

Lord Goodhart: I am a member of Transparency International; my noble friend is not.

Lord Lyell of Markyate: Yes, indeed. I know and deeply respect the noble Lord's work for Transparency International. It is not the membership of Transparency International of the noble Lord, Lord Thomas, which I was referring to, but a very pertinent comment that he made at Second Reading. He said that this could all be sorted out in court. He said that by the time we get to court, what might seem complex on paper will all seem clear. I will come to that in a moment.

I say to Transparency International: do not worry. I am not putting this in to make it more difficult to convict guilty people. I am putting it in to make clear what the Bill is about. It is the Bribery Bill and, for more than 100 years what the courts have been dealing with is bribery and corruption. Those words have always been an essential part of the legislation. Yes, there has been some discussion as to whether corruption involved dishonesty. I have looked at all the cases and, with the greatest respect to, I think, Professor Lanham, it is unfair to the courts to say that the understanding of the word "corruption" is in "impressive disarray". There have been times when learned judges have said that it imports the concept of dishonesty. There have been other times when it has been said that it was unnecessary to bring in the concept of dishonesty.

I am much indebted—as, I think, the Committee would acknowledge that it is indebted—to the work of Colin Nicholls QC. He has written probably the standard work on this subject and has made amendments and prospective amendments to it. He has kindly provided these to the Committee; I am sure the Government and those assisting the Minister will have them. I know Colin Nicholls well, and I respect him very deeply. We have worked on cases together on subjects that bring in his expertise. He is extremely thoughtful. One of the things that he has done for the Government—I have not put this down as an amendment because I want to concentrate on the key point—is to redraft the opening clauses of the Bill in a way that makes them easier to read. I say that with all respect to parliamentary draftsmen, who have done a skilful job. At this stage in our consideration of the Bill, however, I am disinclined to try to redraft the first four clauses. I am not saying that it could not be usefully done, but I ask the Minister to get his team to reflect on it, because in many ways Mr Nicholls' redraft has much to recommend it.

I return to the advantages that will be gained by making it clear that corruption and bribery still mean very substantially what they have always meant. Without that, the use of the word "improper" may cause considerable difficulty. I am sad to see that the noble Viscount, Lord Colville of Culross, cannot be with us on this occasion; no doubt he will play a part at other times.

The primary source of statutory interpretation in every case is the natural and ordinary meaning of the words that Parliament has chosen to put into a Bill. The words that we are considering here are principally "corruption" and "improper" or "impropriety". In the most recent version of the *Shorter Oxford English Dictionary*, the word "corruption" has other meanings, such as bodies corrupting after death, which are obviously completely irrelevant, but as soon as you get to the area of criminality, you find under "corrupt" as a verb:

"to induce to act dishonestly or unfaithfully … to bribe".

That is the meaning of the word which the Law Commission, as I pointed out in my earlier speeches, said is understood by 95 per cent of the population. I was quite impressed to see that it put the figure so high, but people understand bribery and corruption. *Hansard* will not be able to write down what I am about to do, but jurymen will well understand the gesture of the backhander. They know that it means bribery and that that is corrupt. They are swift to see it, and they are quite rightly ready to convict for it. It has not caused trouble in the past. I specifically asked the new Director of Public Prosecutions, Mr Keir Starmer QC, to let us know of any instances in the past 15 years when it had caused any problem. He has written to the committee—I have the letter here; the

[LORD LYELL OF MARKYATE]

Minister will certainly have it—saying that he knows of no case in which it has caused any difficulty in the past 15 years.

I was quite closely involved in this whole area when I became Parliamentary Private Secretary to Sir Michael Havers in 1979, when we were looking at this whole business of prosecuting the broader areas of fraud. I personally know of no cases in the past 30 years where the legislation, for all its faults and overlapping, which could be tidied up and tightened up quite usefully, actually caused difficulties in prosecution. If the Minister can bring forward examples, it will illuminate the work of the Committee, but I do not know of any such cases. I have looked at all the cases that deal with the question of conflict between the words "bribery" and "dishonesty".

Those cases are wonderful lawyers' stuff, in which great names that I remember from my earlier days, such as Lord Hutchinson of Lullington, who was a very famous defender, were putting forward all kinds of wonderful arguments about why the learned trial judge, learned recorder or whoever should or should not have mentioned the word "dishonesty". I learnt from that, and revised what I said at Second Reading. In the end, what the courts came down to was not to mess about by adding unnecessary concepts. Corruption probably does incorporate dishonesty, as it does in the dictionary definition that I just read out, which says,

"to induce to act dishonestly or unfaithfully".

The ordinary dictionary meaning incorporates it, but the courts said, "Don't muddy the waters. Corrupt means tendency to corrupt", and that is a straightforward meaning.

That has a lot to recommend it over complete reliance on the word "improper". If we look at the natural and ordinary meaning of that word from the same volume of the most recent *Shorter Oxford English Dictionary*, there are three different meanings. It can mean,

"incorrect, inaccurate, irregular, wrong",

or,

"unsuitable, inappropriate",

or,

"unbecoming, unseemly, indecorous".

Then there is a wonderful quote from the famous writer Santayana, who said:

"This deportment, undignified on weekdays, was positively improper on Sundays".

I say that only to give the Committee a little pleasure, but it is obviously a very long way from the criminal context, which is being built around the word now.

I am not seeking to dismantle that context or take away what parliamentary draftsmen and the Law Commission have skilfully and with great effort constructed. I am simply seeking to group them together with one other important concept, which has stood the test of time, which is the concept of "corruption".

If I am successful, or if the Minister finds favour and we go away and look at this, we shall not be alone in the common-law world. Again, I am indebted to Colin Nicholls QC for this. In the United States federal code, the essence of the offence of bribery is that it should be done corruptly. The object must be to induce the recipient to misuse his official position, and inclusion of the word "corruptly" denotes an "evil motive or purpose". That idea of evil motive or evil mind was picked up by Lord Chief Justice Parker when one of these cases came before him.

2.15 pm

Canada, New Zealand and South Africa all include the word "corruptly" without further statutory definition. In Australia, the offence requires mens rea or a criminal mind, although interestingly at the federal level they choose to use the word "dishonestly" rather than "corruptly". However, Australian states variously use the words "dishonestly", "corruptly" or "improper".

As I said, I looked at the cases right up to the level of Lord Chief Justice and the one most often referred to is the very one to which the Minister referred when he wrote to us after Second Reading—I have his letter here. It is the case of Cooper v Slade of 1858, in which it was said that to do something corruptly is to do an act that the law forbids as tending to corrupt. So, again, there is a concentration on straightforward language which is well understood.

I shall deal with the practical problems and will then sit down. The practical problems were raised partly by the noble Lord, Lord Thomas of Gresford, to whom I have referred. I agree with the noble Lord that, particularly in a great many of the more serious cases, when a case gets to court it will be possible to slot the facts into the fairly complex structure of the present first five clauses of the Bill. They have to be slotted into a structure which basically falls back on five or four other concepts. One is "good faith". I do not think that that is too difficult; it is pretty clear whether someone has operated in bad faith. The second is "impartially", which is quite difficult, and I shall come to a planning example in a moment. The next is "breach of trust". That may be clear because there may be very obvious cases where people are paid money to break trust, but breach of trust is a slightly more complex idea. When we look at what is regarded as "improper performance", the Bill tells us that it is performance in breach of—and I am about to produce the clearest words in the English language—a "relevant expectation". That may be regarded as irony, and it is always dangerous to use irony in Parliament, but what is a relevant expectation? In Clause5, we find that a relevant expectation is what a reasonable person would expect.

I come to the interesting exchange at Second Reading between my noble friend Lord Waddington and the noble Baroness, Lady Whitaker. My noble friend personalised it to himself but I shall not personalise it in any way. He said that if someone arriving at the baggage-claim area of an airport wanted to get away and paid a tenner to one of the baggage-handling staff to go round the back and find his bags, that surely would not be intended to be caught by the Bill. In a moment, I shall ask the Minister what he has to say about that.

Baroness Whitaker: The noble and learned Lord referred to my presence. I do not know whether he was going to refer to my rejoinder. If not, perhaps I might

add for the sake of completeness that I said that if were behind the noble Lord, Lord Waddington, in the queue and was too poor to have £10, I would regard it as corrupt on his part to have made that facilitation payment.

Lord Lyell of Markyate: I am very grateful to the noble Baroness. I must apologise for a serious frailty, which is that I wear two hearing aids; they went dead on me, partly because I was trying to make them clearer, when she was making her point. I now have the loop. Will the noble Baroness be kind enough to make her point again?

Baroness Whitaker: Of course. I just said for the sake of completeness that my comment after the noble Lord, Lord Waddington, made that point was that if I were behind him in the queue to get my luggage off the carousel and was too poor to have an extra £10, I would resent his action and consider it bribery.

Lord Lyell of Markyate: I am extremely grateful, because the noble Baroness, Lady Whitaker, has pointed up the dilemma. If the person behind in the queue had known that the person giving the tenner was doing it because the baggage included that of his companion who needed to get swiftly to hospital, they would probably take a very different view of it. The difficulty arises from deciding whether we are intending by this Bill to make what in the circumstances could either be well justified, or at least well understandable, but what might also be a selfish act by a rich man for his own advantage, a criminal offence. Is that the criminal offence of bribery which, among other much more major offences, the Bill is intended to capture?

Lord Borrie: The use of the word "improper", which I know the noble and learned Lord wishes to expand on in his amendment, suggests to me that those cases are all improper. Whether those with power to consent or not to prosecution would wish to proceed is another matter. If it went to court, again it would go to mitigation. Surely we are talking here not about whether something is a bribe, but whether prosecution is justified.

Lord Lyell of Markyate: The noble Lord brings me on to the next part of my probing. In his reply at Second Reading, the Minister made a number of points about both guidance and proportionality. It is important to remember that there are two tests for the prosecution of any offence. The first is whether there is a sufficiency of evidence to give rise to a realistic prospect of conviction before a jury. The second is whether it is in the public interest, which will be much affected by a large number of matters. One may be that it is too trivial to prosecute; another relates to the person committing the offence. Those of us who are older well remember the unfortunate Isobel Barnett, who became a kleptomaniac and was, I think, eventually prosecuted—I have a horrible feeling that she killed herself. Those sorts of things raise very difficult public-interest questions.

Before you give a tip to someone to do something slightly out of the ordinary, should you say to yourself, "I am committing bribery if I give this tip"? Perhaps you are in a hurry for a good or a bad reason and want help from a servant of the airport. If you want to give them a tip in circumstances where the noble Baroness, Lady Whitaker, says it should be the offence of bribery, are you to say to yourself, "It is only the fact that I might be prosecuted which prevents me. I am actually committing a criminal offence"? That is my problem.

I do not believe that we would commit a criminal offence if the word "corrupt" is inserted. If you look at it like that, will a jury say that that kind of behaviour is an offence, although it may be justifiable or despicable in some cases? The behaviour of a cigar-smoking fat cat who gives a tenner just to get personal advantage is not attractive. It is rather improper: I would not like to be seen doing it. But is it the offence of corruption? Is that what we are dealing with here? That needs to be clear in the Bill and not simply left to prosecutorial discretion. That deeply worries me.

The noble Lord, Lord Borrie, may be able to throw light on a planning example: a large store wants to build a superstore on the edge of a medium-sized town, which will have a substantial effect on the high street. Outside Hemel Hempstead, one of the towns that I represented and my first constituency, there are a number of superstores. To a great extent, the main part of the town now consists of estate agents and charity shops. Much business has moved away. Small businesses cannot possibly match the planning gain that a big firm can operate. What is a planning department expected to do? I think that it would be expected to act impartially, but perhaps it is not. That raises one of the difficulties as to the intent of this Bill. I do not think that people would say that a planning department is being corrupt in accepting planning gain on behalf of a community, even though it is heavily influenced by it. It raises a grey area.

If the word "corrupt" is added, people would say, "No, it is perfectly clear that this is not corrupt". But if you break down impropriety into its factors, it probably matches up with all the factors and you are left with relevant expectation. How do you decide what is relevant expectation? In civil law, that is fine. It is well understood that a council will take that sort of decision, and people accept it. However, we now introduce a criminal aspect to this and say that the same conduct matches the evidential requirements for criminality and that it is only the prosecutor's individual judgment that stands in the way.

2.30 pm

Although I was not able to take part in the debate, the same problem came before this House in relation to the Equality Bill. In the other place, my right honourable friend Michael Howard made the point that it is Parliament and not guidance from government that must lay down the law. I shall come to a close shortly but I look forward to seeing the guidance, about which there are amendments, and it would be of very great help to our debates if at least the first draft of the guidance were available to this House before

[Lord Lyell of Markyate]
Report. We would then be able to understand better what is being dealt with in black letter law in the Bill and what is being dealt with in guidance.

My final point concerns facilitation payments. We should remember the United States' Foreign Corrupt Practices Act. The Americans have in many ways rightly been pushing bodies such as Transparency International to broaden international standards of conduct. That is a very good thing and I strongly support it; I am not trying to put a spanner in the works. However, 11 years after the FCPA of 1977, a major amendment was introduced in 1988 allowing facilitation payments, and questions such as the one raised by the noble Baroness, Lady Whitaker, in relation to a tip or bribe would be dealt with by the facilitation payments aspect of American law. I myself am not very keen on the idea of facilitation payments but, although I am not going to table any amendments to suggest that we have them, they do leave a lacuna.

I hope I have said enough to show that this is a serious issue. I am not trying to put a spanner in the works; I am trying to improve the Bill by making it clearer and using language which is much better tried and tested than some of the comment on it suggests. It has caused no practical problems in the past and would, in my opinion, stand us in good stead in the future.

Lord Goodhart: My Lords, I believe that Amendments 1 to 4 introduced by the noble and learned Lord, Lord Lyell of Markyate, are unnecessary and, indeed, potentially damaging. The requirement under Clause 1 is that the accused person must either have encouraged or be aware of the improper actions by the recipient in relation to the advantage that the accused will be giving or has given the recipient. I believe that that in itself involves and defines corruption on the part of the accused, and I think that it is clearer than just using the word "corrupt".

Therefore, including in Clause 1(1) a specific reference to "acting with corrupt intent" or "acting dishonestly" is, in my view, unnecessary. Worse, it provides an opportunity for arguing that the new words provide an additional condition that must be satisfied before there can be a conviction. For example, it could be argued that if the accused person did not wish to pay a bribe but was aware that he or she would not get a contract or other benefit which they were seeking without an improper bribe, they are not acting with corrupt intent or dishonesty. However, I believe that coming to the conclusion that paying a bribe with reluctance is not in itself dishonest will undermine the Bill. The Bill intends that it should be a crime not only to offer a bribe, but to pay a bribe however reluctantly.

The same arguments apply to Clause 2, which makes the request or receipt of a bribe a crime by the recipient. I should also point out that the amendment proposed by the noble and learned Lord to Clause 2 is completely inconsistent with subsection (7) of Clause 2. For those reasons, I hope that the noble and learned Lord will consider withdrawing his amendment.

Lord Lyell of Markyate: I take the noble Lord's point in relation to the word "dishonesty". Although I would not give it much credence myself, I could see that the defendant might seek to say that he was not acting dishonestly. But to say that you are not acting corruptly because you are going into a den of corruption and taking part in it does not seem to carry any weight at all. Although I respect the points that the noble Lord has made, I do not believe they are an answer.

Lord Goodhart: With respect to the noble and learned Lord, that simply strengthens the argument that the new wording he proposes is unnecessary. It is potentially either unnecessary or possibly damaging to the purposes of the Bill and for that reason I hope that he will withdraw his amendment. If it goes further, I hope that it will not reappear at Report.

Lord Mackay of Clashfern: My Lords, it is important to have in mind the situation of facilitation payments that my noble and learned friend mentioned. The question of whether you put in something about dishonesty or corruption in relation to the conduct of the potential briber raises the very issue of whether you wish the Bill to include facilitation payments. If you include facilitation payments, they are not offered corruptly. If you want to exclude facilitation payments, you put in "corruption" and the Bill has that effect, but the two are very closely linked. At the moment anyway, I do not see much possibility of distinguishing them.

As my noble and learned friend reminded us, the United States of America, with experience of its legislation, decided expressly to exclude facilitation payments. That is an important matter of policy. It is more than just a question of the drafting of this Bill: it is a fundamental question of policy about whether we go along with the United States or go in the way that I think the Bill, as presently drafted, suggests.

Facilitation payments are a difficult class of payment. I mentioned some examples at Second Reading and other noble Lords mentioned examples too. The noble Lord, Lord Robertson of Port Ellen mentioned them to the committee and they are referred to in the committee's report. They include no element of corruption. The easiest example to take is that of the man who turns up with a ticket, payment having been made for flights at an airport. There is an official handing out boarding passes. The man says, "I am absolutely entitled to a boarding pass and there is no question of anything being wrong in giving it to me because I am entitled to it". But the official responsible for handing them out says, "You'll get your boarding pass in return for a payment". "Is that an airport tax?", the man asks. The official replies, "No. You have paid the airport tax. This payment is for me". The option is that you either pay it and get on to the aeroplane, or you do not pay it and he declines to give you the boarding pass and you can get no further.

The question is whether we want that to be a criminal offence. It is an important decision. At Second Reading, the Minister explained that we want it to be a criminal offence. That is the essence of these amendments because, as I read them, they do not deal with impropriety on the part of the person concerned. Let us take Clause 1, dealing with the situation affecting P, the person who is supposed to be committing the offence.

The impropriety referred to in case 1 is that on the part of the person receiving the money. The improper performance appears in subsection (2)(b)(ii). Therefore, the corrupt intent is being added as a condition of the conviction of the person who, in this case, is giving the money and not the person who is taking it.

The problem is that, in the case I have given as an example, it is very difficult to see that the person entitled to get the favour is in any way corrupt, dishonest or anything of the sort. The person giving the money is doing so in order to obtain that to which he is entitled. Therefore, there is no dishonesty on his part in relation to this matter.

The Government intend, as the Minister made clear at Second Reading—he will tell me whether I am wrong—that the facilitation payments should be covered. If they are, the idea of corruption is therefore out of place. On the other hand, I can see the arguments, persuasively put by my noble friend, trying to get at a crime which involves dishonesty, but there is a question of whether this case does involve dishonesty. That is the substantial and important issue, and it goes much more deeply than mere drafting.

Lord Goodhart: Before the noble and learned Lord sits down, perhaps I may ask for his views on what was said by the Joint Committee on the Bill. It said:

"We agree with the Government that facilitation payments should continue to be criminalised. A specific defence risks legitimising corruption at the thin end of the wedge. At the same time we recognise that business needs clarity about the circumstances in which facilitation payments could be prosecuted, particularly given the difficult situations that can arise. Therefore the basis principles of prosecution policy, which we would expect to adhere firmly to the concept of proportionality, must be made clear".

Does the noble and learned Lord disagree with that?

Lord Mackay of Clashfern: I think that there is a question about where proportionality comes in. We are trying to define an offence, and as my noble friend explained, and as the noble Lord, Lord Goodhart, knows well without explanation from anyone else, prosecution requires demonstration that there is evidence that there has been a breach of the statute. Public policy questions then arise about whether it should be prosecuted. I can see that proportionality may come in at the stage of applying the public policy. However, we are here considering whether it is a crime, and that is anterior to, and more basic than, any question of proportionality. It is a question of what, as a matter of policy, this country decides.

As I am not completely sat down—the noble Lord has reactivated me, as it were—I want to give another example that occurs to me. I have seen something of this kind in the past. If you are waiting in a queue to get through a canal, and if you are willing to be—what should I say?—generous to the people who are operating it, you are likely to be through sooner. Indeed, if you do not achieve some degree of co-operation with them in handing out some easement—or back-hander, to use my noble friend's expression—you will be waiting a long time to get through. It is a question of priorities, and the priority of getting through the canal may not be particularly efficiently or fully explained. But as a matter of fact, that is what happens; unless and until the pourboire appears, you will be waiting in the port anterior to the canal for some time.

2.45 pm

Lord Thomas of Gresford: Does the noble and learned Lord agree that all those sitting in their barges, waiting to go through the canal, would be dissuaded from giving any pourboire to an official if they knew that they were committing a criminal offence? Is that not the thrust of the legislation?

Lord Mackay of Clashfern: Yes, of course. The only trouble is that some of the barge people will be from the United States. They will give the pourboire and get through, while the people from the other countries are left behind. We are not living in a perfect world. After hearing the then Attorney-General the noble and learned Lord, Lord Goldsmith, explain what had happened and the decision to stop the inquiry into the business about Saudi Arabia, one of my colleagues said that he realised that we were not living in a perfect world. Sadly, we are not, although it may be that when the Liberal Democrats get going we will be—but that, I fear, is a long way off. We have to take the world as it is.

At the moment, I do not seek to go one way or the other on this point. I want to understand and ensure that we understand that this policy is fundamental to these amendments. We really have to decide this one way or the other in considering the relevance of the amendments to this issue.

Lord Williamson of Horton: Unfortunately, the Minister cannot escape from facilitation payments, even on Amendment 1. I am afraid that they will be around for a bit. In the earlier discussion on the Bill, we decided that we would draw this as widely as possible. That is what we have done. We have included facilitation payments in the Bill as bribes, which is a bold approach and has the advantages of a bold approach. It is fully defensible vis-à-vis international opinion, and so on. However, it has the disadvantage to which the noble Lord referred; that is, that others are not covered by this broad approach, such as traders from the United States and so on.

We have a straight choice between sticking with the broad approach, with its advantages—and let us remember that there are advantages—or go back in the other direction and make some distinct exception for facilitation payments. There is no amendment down to do that, although it is effected by the amendment that we are now discussing. I make the point now, so that I will not have to do so later on, that if we stay with the current approach, in giving advice or making information available to companies, particularly small companies, it is extremely important to emphasise that, although these types of payments are covered by the Bill, there is an existing discretion for the prosecutorial authority. That is a second best in one sense, but it is extremely important that they should understand that because, unlike noble Lords in this Committee, they will not have it all in their heads. Some companies and organisations will be quite worried that what we might call a minute payment of some kind might bring them into serious difficulty. It is very important to keep that in mind when we come to the later stages of the Bill.

Baroness Whitaker: I should say, following, the noble and learned Lord, Lord Mackay of Clashfern, that it is pretty clear that the amendments in the name of the noble and learned Lord, Lord Lyell of Markyate, would make the act less easy to prove. As the noble and learned Lord, Lord Lyell, said, the existing law has been there for more than 100 years. That 100 years did not result in a realistic number of prosecutions. I take the view, which I think was implied by the noble Lord, Lord Thomas of Gresford, that the standpoint that one should adopt with regard to the Bill is that it is intended to change culture. The culture has meant that there have been very few prosecutions. It is a culture in which bribery has not been castigated. This is not really the culture in which our best companies live any more. They need the support of this legislation. It is quite important that we resist these amendments, because they would return the law to the vague and inadequate states which the Law Commission decided, quite rightly in the view of the committee, to end.

Lord Lyell of Markyate: I am most grateful to the noble Baroness. It is very difficult to say whether there has been an adequate number of prosecutions. My experience as a Member of Parliament is that you learn a lot of things via a side wind; people come and talk to you about all sorts of things. The point that I have been making is that the problem with prosecuting bribery and corruption has been not the law but the evidence. It would be one thing if the noble Baroness knew of lots of cases of bribery—I do not believe that she could—so that she could, if she wished, as I am sure she would, ask the prosecuting authorities why they were not doing something about it; but that is not, unfortunately, the case.

My recollection of the bribery cases that came up is that they were planning cases in which a corrupt person in the planning department was known to be taking bribes from someone else and a sting was set up. Either they were caught in the act of handing over the money or some recording was made. The evidence was there, the case was prosecuted and a conviction was achieved. It is a matter of evidence rather than the law. If the noble Baroness can put her finger on the vague state of the law, as she puts it, I would be happy to know of the cases.

Lord Mayhew of Twysden: I largely support my noble and learned friend for many reasons which he knows very well, but I am troubled by the example he gave of the baggage handler case, in which someone in the queue says, "I need to get on very quickly. Here's a tenner. Please go and get my bag out quicker than you might otherwise do". My noble and learned friend asked whether we really want that to be criminalised and caught by the Bill. What worries me about this relates not only to the point made by the noble Baroness, Lady Whitaker, but to the fact that the baggage handler is paid to do his job without favour.

In my noble and learned friend's example, the person is asking the baggage handler, "Please breach that requirement of your job as a favour to me". It would not have been impractical to suggest to the baggage handler, "Look, I've got this terrible problem. I've got to get to hospital quickly, so can you please have a look". That would not have involved a tenner. The tenner is there to induce the baggage handler to act corruptly, which is caught by the notion of corruption. If my noble and learned friend could help me with that, I shall be extremely relieved.

The Earl of Onslow: I must apologise, first, for being slightly late and, secondly, for letting my telephone off not once but twice, so I grovel before your Lordships.

I find it very difficult to see where a facilitation fee ends and a bribe begins. The difference between the jumping of a queue by a baggage handler and the jumping of a queue via a civil servant to see a Minister in a contract is surely a question of degree rather than fact. The problem of corruption is such that we ought to be as tough as we possibly can on it—it enters into the canker of humanity. On a holiday in India, I watched our driver hand over a dozen or so rupees to a policeman who failed to give him a minor traffic infringement ticket. Had he asked us to reimburse him that, would we have been acting corruptly or would it have been a facilitation fee? The problem is that it is an area which slides. You know it when it is there, but it is very difficult to define a boundary. Even though I sympathise with and can understand the argument of my noble and learned friend Lord Lyell, I go along with my noble and learned friend Lord Mayhew.

Lord Lyell of Markyate: I have every sympathy with what my noble and learned friend said, and with half of the argument of the noble Baroness, Lady Whitaker. I do not like people handing over bribes to get advantage, but I am worried that all this is being handed over to prosecutorial discretion. The good sense of juries may well restore common sense to the way in which the Act is implemented, and it may not have the effect of catching a lot of possibly unpleasant minnows. I quite agree with my noble and learned friend Lord Mayhew that it is much better just to ask the baggage handler to do it and that handing over the tenner is not attractive. If you thought it appropriate to hand over the tenner afterwards—or the fiver; I am terribly Scottish on these matters—there would be no question of your having induced the person, although it might have been a justifiable thank-you. Again, we are in grey areas. We want clarity for the jury, which is why I am proposing the amendment. I do not believe that existing use of the word "corruption" has stood in the way of any significant prosecutions; rather, it has always been the lack of evidence. I do not wish to detain the Committee, but I can think of other difficult examples, such as lorry drivers who are held up at Calais by the French police. They say, "This is intolerable. We are having to put it into our costings". I write on their behalf to the Minister and get a sensible but, understandably, rather vague reply. I would like bribery to be stamped out just as much as anybody else on the Committee, but I just want a well balanced Bill with language that people understand. That is the difficulty.

3 pm

Lord Henley: My Lords, thinking back to my noble and learned friend Lord Lyell of Markyate's earlier definitions of impropriety, I hope it is not now improper

for me to intervene at this stage on a Thursday afternoon. In doing so, I hesitate after so many interventions from distinguished members of the Select Committee that examined the draft Bill under the noble Viscount, Lord Colville of Culross. The Opposition are very grateful for all the Select Committee's work in looking into the Bill and for the report that it produced. I am sure the Government will echo this.

Briefly, I have considerable sympathy for what my noble and learned friend has said in arguing that the offences in Clauses 1 and 2 would benefit from redrafting to include elements of dishonesty or corrupt intent in the Bill. I think he was particularly arguing for corrupt intent and less for dishonesty. My noble and learned friend is not alone in that assessment. I think it was the Bar Council that suggested that the proposed offences are technical and exhibit complex features which are likely to inhibit efficient investigation and prosecution.

Having said that—again, I refer to the work of the Select Committee—I am aware that other members of it were not fully in agreement with my noble and learned friend's arguments, if I can put it as simply as that. They were supportive of the Government's drafting. On balance, therefore, they may be right. I will listen to the defence that the Minister puts forward for his Bill and we will then weigh that against the arguments that my noble and learned friend has put forward. No doubt he will, if necessary, come back to this at a later stage. At this stage we want to hear the Government's arguments.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, the noble and learned Lord's amendments seek to amend the general bribery offences by introducing the requirement that the person must either be acting with corrupt intent, or acting dishonestly to commit the offence. We are bound, of course, to take seriously any suggestions put forward by a lawyer as distinguished as the noble and learned Lord, who has served as Attorney-General.

The noble and learned Lord has expressed concern about the complexity of the definition of bribery used in the Bill. We have common ground with him in believing that there should be as much clarity and certainty as possible in the formulation of these offences, but we would argue that his amendments will not achieve that effect. Indeed, the effect of adding just those few words—whichever variant one took—would be to alter fundamentally the basis on which the Law Commission, the Joint Committee and now the Government have decided to approach the offence of bribery.

In a sense, that is part of the point made by the noble and learned Lord, Lord Mackay of Clashfern. He argues that, as far as the law is concerned, it is important that the word "corruptly" would, if added, make the position on facilitation payments much clearer than it is under the proposed law. I will come back to that. The noble and learned Lord has, with a true advocate's skill, tried to persuade us that adding these words would have little effect on the strategy employed or the basis on which the Bill is arranged, whereas it would fundamentally change it.

The concept of acting corruptly is found in the existing Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906, but is not defined in either statute. We would argue that it has proved to be a vague and inherently difficult concept. Courts have expressed differing opinions on whether it involves dishonesty or "doing an act which the law forbids as tending to corrupt". The Law Commission concluded that the lack of clarity surrounding this concept weakened the effective application of the law.

One of the main planks of the noble and learned Lord's argument is that his concept of acting corruptly has withstood the test of time. But the analysis of the case law by the Law Commission suggests otherwise. The Law Commission also considered suggestions that the impropriety of the conduct constituting the offence should be linked to whether it was done dishonestly, but decided against such a link in its final report.

Lord Lyell of Markyate: As I understood the Minister, he said that the analysis by the Law Commission showed that it had not worked very well. But the cases—I can be corrected from those behind the Minister if he receives the information—of which there do not seem to be more than a dozen, are cases where people have tried to get out of their convictions in the Court of Appeal. I cannot bring to mind one case where a conviction was quashed on the basis of the argument about whether dishonesty ought to have been included. Even the definition of "corruption" which I read out today includes the word "dishonesty". That is the English dictionary direction. It has not been a practical problem. The Law Commission's paper does not give any evidence that it was a practical problem, but if the Minister knows otherwise he will tell us.

Lord Bach: I can only quote from the Law Commission's report. Paragraph 2.33 states:

> "Both the 1889 and the 1906 Acts require the defendant to have acted 'corruptly', but neither provides a definition. The majority of the House of Lords in *Cooper v Slade* (1885)"—

the case that the noble and learned Lord mentioned—

> "took the view that 'corruptly' did not mean "dishonestly" but rather 'doing an act which the law forbids as tending to corrupt'. This was thrown into doubt by *Lindley* (1957) … which suggested that dishonesty must be proved. Yet *Smith* (1960) … and most recent appellate authority *Wellburn* (1979); *Harvey* (1999); *Godden-Wood* (2001) have favoured the earlier view, requiring proof of intent to corrupt without needing dishonesty. The lack of clarity surrounding this critical adverb weakens the effective application of the law of bribery".

Lord Lyell of Markyate: I am most grateful to the Minister. Of course, I have read all that and I have looked at the cases. Yes, that is what the Law Commission has written in its report and I have great respect for the Law Commission. But when one looks at the cases, one sees that it has not caused people to be let off. A thoroughly sensible reason, which is why I have withdrawn from my liking for the word "dishonesty" in the Bill, although I have put it down simply to probe today, is that it is unnecessary. As many of my noble and learned friends present in Committee know perfectly well, if you have got an established formula, the Court of Appeal is very sensibly not minded to shift it. That is why use of the words "tending to corrupt" would be a wise decision. The word "corrupt" is clear in its

[Lord Lyell of Markyate]
dictionary meaning. Unfortunately, that is not true of almost any other words in the Bill. That is why it would be beneficial.

Baroness Whitaker: Does the noble and learned Lord accept that the problem is not cases that were quashed, it is cases which were never brought in the first place because the law did not permit proper evidence?

Lord Lyell of Markyate: It is true that the DPP claims to have looked back only 15 years, but 15 years is pretty significant given that this has—quite rightly—been a high profile matter for the past 10 years. He says that it has not caused a problem.

Lord Bach: There may even be cases that were brought before the court but which the jury for some reason or other acquitted because of the state of the law. Those are matters that would not be in the law reports in the same way as the cases quoted in the Law Commission's report. I must move on.

The Law Commission also considered suggestions that the impropriety of the conduct constituting the offence should be linked to whether it was done "dishonestly", but it decided against such a link in its final report. The Law Commission was particularly concerned that it would effectively create a defence that conduct that would elsewhere have been a corrupt action was undertaken only because the business environment was known to be steeped in corruption. For example, expert evidence might be provided as to the typical nature of the payments made in different business environments overseas. That would also weaken the effective application of the law.

The Law Commission considered the alternative approaches to the formulation of the general bribery offences in great detail and consulted widely on them. Its report, however, recommended that a model based on improper performance was the best possible option. Under that model, an offence is committed where a financial or other advantage is given to induce or reward impropriety in relation to what is described as a relevant function or activity. There must be an expectation that the relevant function or activity is to be carried out in good faith, impartially, or the person performing it is in a position of trust.

Following that model, Clauses 1 and 2 set out two active and four passive bribery cases that describe the conduct of the payer or the recipient that will constitute a bribery offence. Those cases can be readily understood and provide the required legal certainty. I recognise that the terms "good faith", "impropriety" and "position of trust" are not defined in the Bill, but they are readily capable of being understood by juries in the relevant context of the case without further elaboration.

I now come to the Joint Committee, on which many noble Lords present and others served with distinction. The Joint Committee on the Draft Bribery Bill endorsed the "improper performance" test proposed by the Law Commission. It commented that,

"the reliance on a reasonable person's expectation of "good faith", "impartiality" and "trust" represents a careful balance between simplicity, certainty and effectiveness".

As a consequence of the Joint Committee's report on the draft Bill and the Law Commission's view, when publishing the Bill the Government came to the view that this is the right approach.

The noble and learned Lord, Lord Lyell, asked some questions about planning gain in particular, which I must attempt to answer. As he knows, Section 106 of the Town and Country Planning Act 1990 allows planning gain in the UK. It obviously follows that compliance with the statute will not amount to improper performance.

The noble and learned Lord asks very pertinently what are our intentions regarding guidance. I hope that we will shortly come to a debate on guidance. My noble friend Lord Tunnicliffe will outline our approach in more detail and some of the matters that we intend to cover in our guidance. We hope to expand on this in time for Report but we also live in hope that we will reach that stage of the Bill by the end of this month of January. Everyone knows the constraints to getting this Bill on the statute book. I cannot, therefore, undertake to have a draft of the guidance available by the time the Bill leaves this House.

3.15 pm

On the baggage-handler example, we find the answer put forward by another noble and learned Lord and previous Attorney-General—the noble and learned Lord, Lord Mayhew—fairly convincing. I am left with the arguments referred to by the noble and learned Lord, Lord Mackay of Clashfern, in relation to facilitation payments, and the speech he made on Second Reading also covering that issue. He is right that we do not live in a perfect world—we are unlikely ever to do so. However, without sounding too corny, trying to make it a little better in this regard is not a bad motive. That is what the Bill does, and it is intentionally an attempt to strengthen the law in this field so that it catches people who are guilty of improper conduct. I do not believe that anyone will disagree that that is a good thing.

The noble and learned Lord points out that we have to make up our minds about facilitation payments. That is his main point, and he says that we cannot have it both ways—we cannot say that facilitation payments are fine and at the same time want to strengthen the law. The point I want to make is that the official handing out the boarding passes, in one of his examples, will undertake improper conduct by accepting the facilitation payment. Therefore, the receiver of the bribe will have acted improperly. If the person paying the bribe believes this to be the case, he or she will also be committing bribery under Clause 1(3) of our Bill. That is what we intend. We do not believe that under this law the question of whether a person is liable will be different from that under the current law.

Lord Mackay of Clashfern: With respect, that is the doubtful issue. I do not believe that the person paying in that situation is necessarily corrupt in any sense. He wants to get what he is entitled to and there is a force majeure, as far as he is concerned, in the way of his getting that, so he pays. If one tried to prosecute such a case under the corruption arrangements which presently

exist, the prosecution would have a pretty good chance of failing. That is why I believe that the corruption point made by my noble and learned friend Lord Lyell is fundamental to the policy of whether you include facilitation payments. The point about the previous law and so forth is aside from this issue. Whatever we are doing, we are adding to the existing law by introducing facilitation payments whose previous existence is at least doubtful.

I am sure that some of the people who have handed out money to get a boarding pass would regard themselves as utterly law-abiding, never thinking for a minute that there was anything corrupt about it. However, I can see the force of introducing the provision because it tries to get at the corruption that demands the money. When you make it a crime to give money in that situation, it may tend to discourage people from asking for the money. In order for it to be universal, everyone would have to do it. However, I can see that there is an advantage in being first to do it, although certain practical disadvantages might arise, as I illustrated in my answer to the noble Lord, Lord Thomas of Gresford.

Lord Bach: I accept what the noble and learned Lord said in the sense that it is not worth us debating whether the current law would deal with the situation. What we are concerned about is what is in the Bill. However, it is worth mentioning that the prosecutorial discretion is the important point. If we intend to cover facilitation payments in this Bribery Bill, it is important that prosecutions are brought proportionately and not unnecessarily. We can rely on the code and the way in which prosecutors carry it out in being fairly confident that on the whole sensible decisions will be made.

I am about to sit down. I have already prayed in aid the Law Commission and the Joint Committee and I finally pray in aid the speech that the chairman of the Joint Committee made at Second Reading, when he powerfully but gently made the point that what we were proposing in these early clauses was the proper way to go. In spite of the advocacy of the noble and learned Lord, Lord Lyell, the Government are not persuaded. We think that we have got it right here, and I ask him to withdraw his amendment.

Lord Thomas of Gresford: Since we are in Committee, I may be permitted to speak in support of the Government's approach. Bribery and corruption in this country has been underprosecuted in the past. One reason for that is that it has not been clear. Let me take the noble and learned Lord, Lord Mackay, a step further and refer to a case that I have referred to before. It is clear in my own mind what happened on this occasion. A property developer paid money to the local authority official. When arrested by the police, he was most indignant, asking why they were arresting him for paying over £1,000 to the official. He said that it cost him £10,000 a year to do his job. He did not think that he was acting dishonestly; he thought that it was the price to pay and that he was in a force majeure situation. However, he was prosecuted for bribery. The great issue in the case—which is why it is in *Archbold*—was whether the words, "It costs me £10,000 a year to do my job" were admissible in that case. In fact, they were excluded, although I shall not bore your Lordships with that, and he was acquitted in due course. But that just shows that you can start by paying a facilitation payment for your boarding ticket and end up paying an official to grant you planning permission.

In certain areas that culture has spread widely. There have been very famous cases, such as the Newcastle case—without naming names—of that culture, supported by the nature of the law at that time, which was not clear enough. It was not simply a question of evidence; there was more to it than that. In my experience, over many years at the Bar and as a solicitor, bribery cases have been very few and far between. I do not think that we live in a corrupt society, but there have been areas of corruption that have not been properly tackled. That is my first reason for saying that bribery has been insufficiently prosecuted in this country.

My second reason is the amusement and disdain shown by the officials of the Independent Commission Against Corruption in Hong Kong, with which I have had a lot of dealings—on the opposite side, I must say—about the way in which bribery is not stepped on in this country. Hong Kong is third in the Transparency International tables for non-corruption, while we are 17th and China is 45th. That gives some idea how an organisation like that clamps down on bribery and corruption; it brings many cases and has altered the climate within a community of some 7 million or 8 million people. This Bill is designed to prevent corruption, and not simply to assist in prosecution but to make it obvious to everybody that the simple act of becoming a party to an official corruptly receiving a sum of money or advantage of some sort is in itself a criminal offence, even though force majeure operates in that situation. We are changing the climate with this Bill, which is why I support the Government's position.

Lord Lyell of Markyate: I am most grateful to all noble Lords who have taken part in this debate. I am glad that I initiated it because I think it has thrown quite a lot of light on the real issues here. I am most grateful to my noble and learned friend Lord Mackay for tying it in so firmly with the very difficult question of facilitation payments. I suspect that that will come back to haunt us.

As I said, I entirely agree with my noble and learned friend Lord Mayhew, and with the noble Baroness. I do not want a world of corruption. I agree with the noble Lord, Lord Thomas: I want us to bear down on this. My first job before I came to the Bar was in Newcastle. I have forgotten the name of the fraudster, beginning with P, who gave a name for corruption to that whole area in the north-east.

The Earl of Onslow: Poulson.

Lord Lyell of Markyate: It was absolutely and completely scandalous and should have been clamped down on much, much harder and much sooner; I suspect that with the will there would have been the evidence to do so. He was eventually convicted and rightly sentenced to a very long term of imprisonment.

At the end, my noble and learned friend Lord Mackay brought out the links with extortion and demanding with menaces. That is probably a legitimate

[Lord Lyell of Markyate]
defence to some aspects of this kind of so-called facilitation payment and might provide a genuine example. The noble Lord, Lord Williamson, has told us privately of some really terrible examples of the kind of demands that can be made in utterly corrupt circumstances where ship owners and stevedores and so on are completely placed over a barrel. I, as much as anyone else, want to see that stamped out.

I intend to withdraw the amendment at this stage but I remain anxious because we are not in a world where this matter is treated in the same way. As I said, the Americans put in the elaborate facilitation payment scheme, which one would like to know more about, and I hope that before we get to Report the Minister will be able to be even better informed than he is at the moment. We are in a world where other common law jurisdictions are using precisely, or very nearly, the language that I am suggesting we should stick with. However, we have had a valuable debate and for the time being I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2 not moved.

Clause 1 agreed.

Clause 2 : Offences relating to being bribed

Amendments 3 and 4 not moved.

Clause 2 agreed.

Clauses 3 to 5 agreed.

Clause 6 : Bribery of foreign public officials

Amendment 5

Moved by ***Lord Henley***

5: Clause 6, page 3, line 42, after "is" insert "corruptly"

Lord Henley: My Lords, the previous debate having made it clear that we are broadly content with the approach taken in the drafting of Clauses 1 and 2, I wish to explore the operation of the third offence in the Bill—that is, bribing foreign public officials. I propose three simple amendments. In moving this amendment, I shall also speak to Amendments 6 and 7. As I think the Committee will recognise, they are merely probing amendments to allow your Lordships to consider the offence, under Clause 6, of bribing foreign officials.

3.30 pm

Much of the way in which Clause 6 is designed to operate depends on what is allowed by the written laws of the foreign country in question. I am aware of the recommendation by the Joint Committee that the Bill should refer to "written law" to avoid any loopholes. There is much merit in that approach and I do not seek to overturn or undermine it.

The three amendments which I have tabled refer more to the behaviour of the person who might be said to be offering the bribe, called P in the Bill; namely, that they would be acting with a corrupt intention to gain an undue advantage in business by offering an improper financial advantage. That may be overloading somewhat on the nefarious adjectives, but will the Minister explain clearly where the distinction will be drawn in deciding what bribery is?

The explicit reference to the written laws means that established custom and practice would not be taken into account. For example, if it is established practice for a ship's captain to pay a harbourmaster in a foreign country what we might euphemistically call an "unofficial" fee to dock and unload, I am sure that the Minister would agree that that would amount to a facilitation payment. Noble Lords will know that the United States, for example, has a defence where small facilitation payments are involved. I, however, share the view of the Joint Committee that facilitation payments should remain criminalised, but by focusing on the intention of P and the nature of the payment, it may be easier to retain the concept of proportionality in prosecutions. My amendments would direct prosecutors to the nature of the bribery to determine whether a prosecution is proportionate, rather than to the study of foreign laws, where a written provision may simply not exist to cover a practice or custom.

While I raise that point as a matter of general debate and look forward to hearing the views of the Committee, I have a specific question for the Minister. Have the Government made an assessment of any impact that Clause 6 might have on British companies operating abroad? Will it, for example, disadvantage them in cases where other OECD nations operate according to local custom while their UK counterparts must strictly observe the local written laws?

I wish to develop a further point. The Government have said that they do not seek to outlaw legitimate expenditure, such as reasonable corporate hospitality. Will the Minister expand on where that line might be drawn? I take a possible example: that of a British company that wishes to demonstrate its product to officials from a foreign state and then flies them to its headquarters in the United Kingdom for a demonstration. If the company were to put up the officials in a hotel, it might seem reasonable. We could then argue—I think of noble Lords' expenses—whether a three-star or a five-star hotel might be reasonable, but that is better left to prosecutors. But we might consider a scenario involving officials from two countries who are put up in a hotel, but the laws of one of those countries are silent as to whether that is permitted. What about that scenario? Would the United Kingdom company be committing bribery of one set of officials but not the other, even though it is behaving in the same way towards both? Would it matter if one set of officials ended up purchasing the product, and the others did not? We could speculate on possible, if implausible, scenarios all day, but clarity on the operation of Clause 6 is necessary. How will legitimate expenditure be made distinct? Would the Government be prepared to consider a specific defence for reasonable hospitality? Will advice be available from the Government on

potentially confusing cases where the fact of bribery depends not on the intention of P, but on an understanding of foreign written laws?

As I said, I merely wish to debate the measures, not signal any particular disagreement with them. I shall listen carefully to what the Minister has to say in response and, for that matter, what other Members of the Committee have to say in relation to the question I posed about Clause 6. I beg to move.

Lord Tunnicliffe: My Lords, Amendments 5, 6 and 7 in the name of the noble Lord, Lord Henley, seek to qualify the Clause 6 offence of bribery of a foreign public official. They seek to do so by limiting the offence to cases where a bribe is intended to corruptly influence a foreign public official in order to obtain an undue advantage in business by offering to give the official an improper financial or other advantage. We believe that these amendments are undesirable and I am grateful for the opportunity to explain why.

As the Committee will be aware, the current clause makes it an offence to bribe a foreign public official. Unlike the general offence, this clause only covers the offering, promising or giving of bribes and not the acceptance of them. Also, unlike the general offence of bribing another, culpability is not premised on any intention to elicit improper contact, although this will often be the case. The Clause 6 offence is formulated so as to avoid the need to identify precisely the nature of the functions of and duty owed by foreign public officials. Such matters have proved to be one of the difficulties experienced by prosecutors in this kind of case under the current law.

Because of its special focus, the Clause 6 offence describes bribery in a different way to the general offences but, equally accurately, describes conduct that would be characterised as corrupt by all right thinking people. We submit that the clause achieves its purpose without the need for the additional language proposed by the noble Lord, Lord Henley.

Let me explain why. First, the person giving the bribe must intend to influence the recipient in the performance of their function as a public official. Secondly, the bribe must be intended to obtain or retain business or a business advantage. Lastly, the advantage finally or otherwise offered, promised or given to the foreign public official is defined as a bribe when the foreign official is neither permitted nor required to be influenced by the offer, promise or goods as determined by the application of written law.

I appreciate what the noble Lord may be seeking to reflect in the offence normal business practice. Of course, it is the very nature of a business in a free market that one company will seek a business advantage over another, but such an advantage must be secured through honest and legitimate means. Contracts should be won by presenting a tender that represents for the client the best value for money and not by offering additional payments or advantage to secure the contract. Qualifying Clause 6(2) by referring to an undue advantage in the conduct of business could provide a let out to a person charged with a Clause 6 offence. I can foresee endless legal arguments over whether the advantage the defendant sought to secure was or was not an undue advantage.

The same can be said of the proposed qualification in subsection (3). In the absence of a clear definition, where is the line to be drawn between, on the one hand, a financial or other advantage and, on the other, an improper financial or other advantage? If the noble Lord's intention is that the concept of impropriety in Clauses 1 and 2 should equally apply here, there would be a need to identify precisely the nature of the functions of and the duties owed by foreign public officials. This is precisely what the model in Clause 6 seeks to avoid. Experience shows that such a requirement places significant difficulties in the way of effective prosecutions in cases of this kind.

In both cases, the additional words introduce an unnecessary and added complication. They represent additional matters for the prosecution to prove which could undermine the value of the bespoke offence. In using the words "undue" and "improper" the noble Lord may be probing whether the wording should more closely follow the wording of the OECD convention, which is the source of this bespoke offence. However, we believe that the offence in Clause 6 fully achieves the purpose and effect of the offence in the convention as drafted. It has the backing of the Law Commission, the Joint Committee and the OECD itself.

Amendment 5 seeks to insert the term "corruptly" into the clause. As my noble friend Lord Bach indicated in response to the first group of amendments, we are having considerable difficulty with the use of this term. It is an inherently difficult and vague concept found in the existing statutory offences. We have made a conscious decision to abandon its use in the Bill. The use of the word "corruptly" here will inevitably require the courts, in searching for the meaning of the word, to revert back to old, inconsistent case law and thereby introduce another level of unnecessary complexity and uncertainty. It would allow the old and failing current law, which we intend completely to reform, to haunt the application of the new law from beyond the grave.

The noble Lord, Lord Henley, raised a number of points which I shall now do my best to deal with, with the caveat that if I say anything that needs correction I will write to him and other Members of the Committee.

On the issue of whether custom and practice will be a defence, it is quite clear that it will not be. That is why there is a specific reference to the written law. Ignorance of the local law will not be a defence in relation to the offence in the Bill. Those involved in international business activities should have ready access to legal advice on the legitimacy of payments to foreign officials and should think twice before offering, promising or giving advantage to foreign officials. The Joint Committee fully considered the impact of the Clause 6 offence on bona fide commercial activities such as corporate hospitality. In its report at paragraph 147 the Joint Committee noted that the prosecutorial discretion would be able to differentiate the good from the bad in respect of corporate hospitality and was content with this approach. The evidence of Professor Horder of the Law Commission was highlighted in the report, which stated:

"Might it not be said, then, that 'improperly' should be tacked on as an adverb after 'influence' so as to distinguish legitimate from illegitimate hospitality? … The answer is 'no' because that

[Lord Tunnicliffe]
would inevitably re-introduce questions about whether cultural norms and expectations can make a payment 'proper', and that is exactly the result that this offence is designed to prevent".

Should there be a defence for reasonable corporate hospitality? We do not believe one is needed. The offence applies only to advantages given to foreign public officials which are intended to influence officials and to obtain or retain business. This will not necessarily be the case in respect of hospitality. To the extent that any corporate hospitality might be caught by this division—which will certainly not generally be the case—it is appropriate for prosecutors to take a view on where the public interest lies. It is unlikely that reasonable hospitality to foreign officials will attract the interest or action of enforcement authorities.

I hope that answers, at least in part, most of the questions posed by the noble Lord, Lord Henley. We shall of course examine his remarks with great care and consider whether there is any further information that we might sensibly provide in writing and, if so, we shall write to him. On that basis, I ask him to withdraw the amendment.

Lord Mackay of Clashfern: My Lords, perhaps I may draw the noble Lord's attention to a small point on subsection (3)(a) which refers to P bribing F,

"if, and only if … directly or through a third party, P offers, promises or gives any financial or other advantage",

and so on.

Paragraph (b) says:

"F is neither permitted nor required by the written law applicable to F to be influenced in F's capacity as a foreign public official by the offer, promise or gift".

Would it be better if it said "other advantage", because it is really referring back to paragraph (a)? Changing the wording to "gift" suggests a possible difficulty with corporate hospitality, although it is hardly a gift. I raise that as a matter that might have a slight bearing on the amendments.

3.45 pm

Lord Tunnicliffe: My Lords, I spent a lot of time going through this clause, trying to find the places where questions would be asked, but I did not notice "gift". It is a well made point and we will reflect on it.

Lord Lyell of Markyate: The Minister referred to the OECD requirements and laid proper emphasis on the question of undue hospitality. I may have missed it, but is the concept of undue hospitality reflected in the Bill? If it is, that will at least narrow the degree to which one has to rely on prosecutorial discretion. My only concern, as it was in my previous interventions, is that the extent of the law should be clear and that every instance of giving hospitality should not constitute a crime, which is only not prosecuted because of prosecutorial discretion. I do not think that that is the Government's intention; I think that it is that there should be some threshold that you would have to reach before a prosecution would even begin to think that there was a crime. If any clarification can be given on this, I would be most grateful.

Lord Tunnicliffe: My Lords, my understanding is that the Bill does not at any point define undue hospitality, but the very fact that I have read into the record the evidence from Professor Horder and the Law Commission about how that should be considered meets the idea without using the word "undue". The essence of it is to influence the official, and the issue is about whether it is allowed in local or written law. I do not think that I can go further today on corporate hospitality. We will see if we can come back with more detail at a later stage.

The Earl of Onslow: My Lords, this hospitality business is extraordinarily difficult. I think that we all realise that. Company A and company B are both attempting to sell a product to a foreign buyer, who says to company B, "I had lunch with company A two days ago and they took me to a Happy Eater". Company B says, "Ah, I think that we can do a bit better than that—we've booked a private room in Claridges". I have obviously exaggerated in that case, but where do we go and how do we get round the problem and where do we draw the line? We do not want the Claridges syndrome to work but, equally, it must be reasonable to take them to the Onslow Arms as opposed to the Happy Eater.

Lord Henley: I have not been to the Onslow Arms, but I am sure that it is a very reputable place.

The Minister described my amendments as undesirable, which was not what I particularly wanted to hear because I knew they were undesirable. They were there purely as probing amendments. I wanted answers to a number of questions that I put to him. I counted eight questions that I posed, to which I had a certain number of answers, which I shall need to examine with some care between now and a later stage.

The principal point that I was trying to make, which has been underlined by my noble friend Lord Onslow and others, is that we seek clarity in the operation of this clause. It is important to know where the borderlines are between the Happy Eater and Claridges, to put it in simple terms, as my noble friend always does. No doubt the noble Lord will want to reflect on that. We will want to reflect on his answers so far and come back to this on Report, to explore a little further what the Government intend and what the Bill intends, which is far more important, so that those who have to make use of the Bill when it becomes an Act know what to do and how this will affect them.

At this stage, the best thing for me to do is to beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendments 6 and 7 not moved.

Clause 6 agreed.

Clause 7 : Failure of commercial organisations to prevent bribery

Amendment 8

Moved by ***Lord Henley***

8: Clause 7, page 5, line 8, leave out "adequate"

Lord Henley: I shall speak also to Amendment 10. I understand that this is also grouped with Amendments 11 and 16 in the names of the noble Lords, Lord Goodhart and Lord Thomas of Gresford.

Clause 7 creates the offence of failure of commercial organisations to prevent bribery. It is a strict liability offence, and a successful conviction could lead to an unlimited fine. It creates an offence, although some of us remember an occasion last year of a strict liability offence that led to a fine of some £5,000 which the Attorney-General described as merely being an administrative error. On this occasion, we are told that it is an offence.

There is a defence set out in subsection (2) which would allow the organisation, here referred to as "C", to prove that it had in place adequate procedures designed to prevent a person associated with it engaging in bribery. A number of noble Lords raised this point on Second Reading, and I and, I am sure, noble Lords speaking from the Liberal Democrat Benches seek with these amendments to find out what is meant by "adequate".

Amendment 8, which is a probing amendment—I do not need to be told that it is undesirable—would delete "adequate" from the defence in subsection (2). Who is to judge what is adequate and what is not? If a company has stringent rules in place, checks on its employees, has transparent accounting and so on, but a determined associate of that company still manages to bribe another, were those procedures adequate? They did not, after all, prevent the offence of bribery taking place. What about a company with weak procedures in place which nevertheless managed, perhaps more by chance than anything else, to stop an embryonic plan to commit bribery? Which of those cases should be prosecuted? I am sure that the Minister will say that such matters could be left to the discretion of the prosecuting authorities; it would be quite reasonable for him to do so.

What about the commercial organisations themselves? How will they know if they have put in place adequate procedures? Clearly, this is a place for guidance from the Government. The Joint Committee noted that there was near unanimity among those from whom it had heard evidence that the meaning of "adequate" procedures will require amplification through guidance. The Joint Committee noted too that there was a widely held concern among commercial organisations regarding the lack of certainty about what would be considered adequate procedures. It acknowledged that this Bill would affect a large range of organisations, making it difficult for the Government to produce comprehensive guidance. It thus recommended that appropriate bodies should be able to draft guidance tailored to their membership that could be approved by the Government to provide it with official status; in other words, sector-specific guidance.

This approach has been re-emphasised by the Law Society and the Bar Council. The law firm DLA Piper noted that companies that dealt with it were eager to comply with the law. I am sure that that will be the case for most, if not all, companies. However, unless they know what the law is, compliance will be difficult. It should not be left to years of court cases for the law to be clarified.

There could be severe consequences should the position remain uncertain. As well as being subject to an unlimited fine if successfully convicted, corporations are concerned about how the confiscation regime under the Proceeds of Crime Act 2002 might relate to this offence. The present legislation was designed to deprive individual defendants, particularly drug dealers and organised criminals, of the benefits of their criminal conduct. However, there has been no acknowledgement or recognition that there could be serious implications for companies caught by the legislation, which in some cases could see them being put out of business if the full weight of the law were applied. This might not be the time or place to address the operation of the Proceeds of Crime Act 2002, but the fact that businesses wish to draw it to the attention of Parliament during our debates on the Bill highlights how unsettled they are by the introduction of a strict liability offence to which the defence is worded so vaguely. It is for these reasons that I have tabled Amendment 10. While I will leave it to noble Lords on the Liberal Democrat Benches to introduce their own amendment, I suspect that this is the reason for it.

Amendment 10 simply commits the Secretary of State to publish guidance before the clause comes into effect. I do not think that the Minister disagrees on the need for guidance. He may argue that it need not be statutory. Again, I will listen with interest to the Government's views, but I am uneasy about allowing the Bill to pass without an idea of how its provisions will work. I beg to move.

The Deputy Chairman of Committees (Viscount Simon): Unfortunately there is smoke coming up from somewhere and I have been asked to adjourn the Committee for 10 minutes.

3.57 pm

Sitting suspended.

4.12 pm

Lord Goodhart: I start by apologising to the Committee for having become so overheated that I seemed to set forth a problem with the microphones. I continue with the debate on the group that includes Amendments 8 and 10, which have already been spoken to by the noble Lord, Lord Henley, and Amendments 11 and 16 in my name and that of my noble friend Lord Thomas of Gresford.

Clause 7 is a very important clause—perhaps the most important in the Bill. This is because it is extremely difficult under the present law to prosecute a company for a failure to prevent bribery carried out on its behalf. Clause 7 will require all corporations conducting business to treat bribery as a serious issue and compel them to set up proper systems to prevent bribery on their behalf. Clause 7 replaced Clause 5 in the draft Bill, which was presented to the Joint Committee for pre-legislative scrutiny. That clause would have made it far more difficult to convict corporations that tolerate

[LORD GOODHART]
bribery. Its replacement—Clause 7—was unanimously supported by the Joint Committee, and the principle behind it has been accepted by the Government.

Under Clause 7, where bribery is committed on behalf of the corporation, the corporation has to prove, if it is to escape from prosecution, that it has put adequate procedures into place to prevent bribery. The word "adequate" is, as matters now stand, an essential part of Clause 7. Plainly, it will not be sufficient for a defendant corporation simply to say, "Oh, we set up procedures to prevent bribery". That corporation must provide procedures that are, to use a cliché, fit for purpose. Amendment 8, by seeking simply to remove word "adequate", is in effect a wrecking amendment, but I will take it no further because, as I understand it, the noble Lord, Lord Henley, tabled it as part of a probing issue.

Amendment 10 relates to guidance and takes us on to Amendments 11 and 16. Penalties under Clause 7 could be very serious, so we believe that it is necessary to provide guidance so that corporations are not at risk of straying unintentionally into a field in which they may become liable for serious consequences. The guidance could be made available from business associations such as the CBI, but several organisations could offer advice that may vary between them. Some—I am not suggesting that the CBI is one of them—might give advice which the clients would like to hear rather than advice that is meaningful and effective. We therefore believe—I think we share common ground here with the noble Lord, Lord Henley—that guidance should come through the Government. As matters now stand, the Government have promised to introduce guidance, but nothing in the Bill requires this, and there is no obligation on any Government to continue to provide guidance after the Bill is enacted.

Amendment 10 takes one step by requiring the Secretary of State to lay guidance before Parliament before the commencement of the Bill. That is okay as far as it goes, but we need to take one step further by making guidance a continuing obligation in the law against bribery. This is what Amendment 11 seeks to do. It requires a continuing obligation to publish, and from time to time to amend, guidance to inform people what will happen and where the boundary is between bribery and fair play.

Amendment 16 would give guidance to the guides, if I may put it that way. It makes no attempt to define what the contents of any guidance should be; it merely sets out a couple of general principles. That is right, because guidance given through the Government may vary from country to country, from time to time, and from product to product. We want the Government to explain why it is not necessary or desirable to put into the Bill a continuing duty to provide guidance that will be of necessary assistance to companies, particularly those that operate in parts of the world in which there is a great deal of bribery and where they need to be very carefully advised on what will and will not be permissible in general terms.

Lord Williamson of Horton: We are dealing with a point which was recognised as very important at Second Reading; namely, the provision of guidance to companies and other organisations. It is important and I hope that the Government will be able to respond to some of the points covered by the three amendments which specifically relate to guidance in this group. They all relate to Clause 7 entitled "Failure of commercial organisations to prevent bribery" and the "adequate procedures"—to use the good text that is there—put in place to provide defence. This is the part of the Bill where we definitely need guidance.

Of the three proposals on guidance covered by this group, there is, first, the question of timing. Amendment 10 would require:

"Before the commencement of the section",

the laying before Parliament, which seems reasonable to me. If we can do that, I see no problem. Secondly, Amendment 11, as indicated by the noble Lord, is substantially more important because it puts in a continuing commitment. It is also more specific. I do not think that the noble Lord quite made that point, but it is more specific because it relates guidance to subsection (2), which is the substance of any defence. That, too, seems sensible. Amendment 16 has at least one element which is not in the other amendments; that is, the taking into account of the size and resources of such organisations.

Woolworths is no longer with us but the Minister will see what is known as "pick and mix" in these amendments. I remain sympathetic to them all. But, most importantly, we should have a continuing commitment in the Bill and a direct relationship with the size and resources of organisations. Those elements are important. Obviously, the Government are relatively sympathetic to this point, but they will have to decide how far they can go. That is an expression of my view on these amendments.

The Earl of Onslow: I remember when we heard that the United States Government had provided guidance for their companies on exactly this premise and how impressed we were by the comfort that they gave to United States companies. I know that there are differences in the structure of our governmental organisations which would make it impossible to copy exactly. But it is important. A combination of adequate and proper procedures and decent guidance will make it very difficult to step beyond the line of appropriate and decent behaviour. Furthermore, it is essential to put that in the Bill and it should be perpetually kept up to date. They are protections for companies, which make sure exactly where our ideas lie and where the borders are. That would be a great improvement.

Lord Mackay of Clashfern: I support the probing of the word "adequate" in this clause, which is the purpose of the amendment proposed by my noble friend Lord Henley. It is important that we should have, during the proceedings of the Bill, a statement of the Government's view on that. I also very much agree with the proposals for guidance. At Second Reading, I indicated that that issue is important. It is absolutely essential that the guidance should be available in authorised form before the statute comes into operation.

I also entirely agree with the view put forward in Amendment 11 that the guidance should be continuous. The circumstances of individual countries can change

and it is important that the guidance should take account of that. I do not believe that the guidance can be as simple as the noble Lord, Lord Patten, suggested at Second Reading when we take account of the facilitation payment included, for example. I might have no hesitation about having publicity about the fact that I had to pay to get what I was entitled to—because I could not get on the plane otherwise. That must be dealt with especially. I also agree in principle with Amendment 16. I am especially pleased to see that subsection (3) allows the guidance to be taken into account in deciding whether there is a defence. In other words, people who rely on the guidance are entitled to have that taken into account in the case if they are prosecuted. I know that that is proposed in principle here. I think that it would need to state some mechanism by which the Secretary of State issues the guidance—for example, by statutory instrument, so that some parliamentary procedure would have taken place before commencement.

My former understanding was that "the Secretary of State" meant any Secretary of State. I think that that has been somewhat modified, if I understood it correctly, by the Constitutional Reform Act, which made a number of other changes—not all of which I personally regard as reforms, but that is what Parliament has called them, so I must accept that. I should have thought that the responsibility for the guidance should come from the department of state, which is not exactly a small department, which deals with relationships with companies and businesses, rather than with the Ministry of Justice. The Secretary of State for Justice, in evidence before the Select Committee, expressed doubt about whether he could give guidance. On the whole, it might be better that the guidance came from another department, because the prosecution responsibilities, such as they are in government at all, are to some extent in the Ministry of Justice—although I am glad to say that the Attorney-General is still in position, and I hope that that will continue. We will come to a later amendment about that.

It would be appropriate for the department responsible for relationships with business to deal with the matter, because it will have the necessary expertise in business methods and organisation to judge what would be adequate, rather than the Ministry of Justice, which is expert in the area of justice, but this is not of that type. I venture to make that additional comment.

I hope that the draft guidance will be produced as soon as possible, but I can see that the parliamentary timetable and the timetable for producing draft guidance may not make that possible. It is essential, before companies are charged under or bound by a statute that requires adequate provision, that they should know what the Government believe adequate provision in principle would be in their particular case.

4.30 pm

Lord Henley: Before my noble and learned friend sits down, I assure him that on the small question of the nomenclature of the Secretary of State, the noble Lord, Lord Tunnicliffe, is a great expert on these matters. We dealt with this twice on the Coroners Bill, which, if I remember rightly, for some odd reason referred to the Secretary of State for Business Innovation. That then had to be amended during the course of the Bill to reflect the new Secretary of State's further titles that he had acquired as that department had expanded, and no doubt will have to be amended by means of primary legislation at later stages as that job changes yet again. We would have been far better off if we had stuck to the drafting, as in this Bill, of simply "the Secretary of State". But when the Minister comes to reply, I assure my noble and learned friend that he is the expert on these matters.

Lord Thomas of Gresford: My Lords, sometimes I wonder if the Secretary of State for Business et cetera is seeking to have the longest title, rather like Llanfairpwllgwyngyllgogerychwyrndrobwllllantysiliogogogoch has the longest name of a Welsh village, or any village.

I draw the Committee's attention to paragraph 109 of the Joint Committee's report, which quotes the evidence of Louise Delahunty, a solicitor of Simmonds and Simmonds, who noted the "plethora" of international sources of advice and stated that the Government were best placed to bring clarity to the situation. Then Mr James Maton of the UK Anti-Corruption Forum added that it was costing companies large amounts of money to develop policies and seek advice on a fragmented basis. During the Committee proceedings, I think I made the point that although it is all very well for a large company to go to a specialist lawyer and obtain advice, it is not so easy for the smaller company to obtain the necessary advice that would be desirable.

The Director of Public Prosecutions, as paragraph 110 points out, said that centrally issued guidance on prosecution policy could be prepared by prosecutors, but he was prepared to draw a clear distinction between prosecutorial practice and compliance issues, such as the meaning of "adequate procedures". He considered that the latter type of issue would be best addressed by informal industry-led guidance, which prosecutors and juries would then take into account when deciding whether to charge or convict. Your Lordships will note that the prosecutors and juries could take into account such industry-led guidance.

As paragraph 113 points out, the Secretary of State for Justice said that he was,

"very far from clear whether we as a department would publish guidance … We have to be quite imaginative about this, and we have got to take in our traditions, but that is what I undertake to do".

So he gave an undertaking to be quite imaginative. I say that because that will introduce my Amendment 17 in due course.

Lord Borrie: My Lords, I support the substantive point made by the noble and learned Lord, Lord Mackay of Clashfern, that the Department for Business—I forget the full title—should take the ultimate lead in determining the substance of the guidance that will be produced. I hope the Minister will understand that this is not in any way to knock the Ministry of Justice but to tie in the other department to the whole matter of bribery and corruption and our concerns that lay behind the Bill and our support for the Law

[Lord Borrie]
Commission's proposals. I agree with the noble Lord, Lord Henley, that one would like to stick with the broad phrase "Secretary of State" in order to avoid the need for constant change when departmental nomenclature changes, but I fully support the substance of what the noble and learned Lord, Lord Mackay, said.

Lord Lyell of Markyate: I support the objective of these amendments. Will the Minister clarify, if it is not already clear, that this guidance will be the subject of a statutory instrument, that it will be laid before the House and that Parliament will continue to have a say? It will have a significant effect on the law of the land as it applies to businesses and citizens. My understanding is that that is what is intended, but if that is not the case we ought to be told now. I hope that it will be implemented by statutory instrument.

On the question of adequate procedures, words are always difficult. I threw out the possibility of "reasonable procedures" because "adequacy" suggests that it can be adequate only if it succeeds, whereas "reasonable" would certainly require a decent standard, which we certainly demand, but would not necessarily give the impression that, if it did not succeed, you had no defence.

Lord Tunnicliffe: My Lords, I have received guidance from the noble Lord, Lord Henley, on probing amendments and not responding to them too literally. However, I think that the noble and learned Lord, Lord Mackay, did invite me to respond to it literally. I understand that the noble Lord, Lord Henley, does not intend to press the amendment. If "adequate" were taken out, that would drive a loophole through the offence. I see that he nods, so I will move on to the substantive debate concerning guidance.

The Government are committed to publishing guidance on the meaning of adequate procedures well before this offence is brought into force. As the noble and learned Lord, Lord Woolf, put it at Second Reading:

"Normally, it is not desirable for guidance to enter into areas of criminal law".—[*Official Report*, 9/12/09; col. 1100.]

We agree, but we recognise that the offences in this Bill are a special case and that guidance is necessary to assist those who might be directly affected by the offences in this Bill.

As the noble Lord, Lord Bach, said in his letter of 16 December to the noble Lord, Lord Henley, Ministry of Justice officials have already made a good start on the development of guidance. Officials have already met with a number of experts from organisations such as Transparency International, the Institute of Business Ethics and the Anti-Corruption Forum about what should be included in the guidance and they will be meeting other stakeholders with an interest in this subject over the coming weeks.

In addition, my ministerial colleague, Claire Ward, met a wider group of stakeholders, including the Confederation of Business and Industry and the Federation of Small Businesses on 15 December to discuss the Bill in general. Naturally, that discussion turned to the Clause 7 offence and the need for government guidance on adequate procedures. What is clear from these discussions is that there is a wealth of information published by reputable organisations on which we can and should draw when developing our own guidance. The OECD is working on good practice guidance on internal ethics and controls, due to be published later this year, which we will undoubtedly wish to reflect in our own guidance. Organisations such as Transparency International and the Global Infrastructure Anti-Corruption Centre have published impressive anti-bribery strategies on their websites, which, if adopted by commercial organisations, would go a long way to eradicating bribery.

We would expect our guidance to cover much the same ground as the examples to which I have referred. Among the issues that I anticipate will be addressed are: the responsibilities of an organisation's board of directors; the identification of a named senior officer with particular responsibility for combating bribery; risk management procedures; gifts and hospitality policy; facilitation payments; staff training; financial controls; and reporting and investigation procedures. This is not a comprehensive list, but it will provide the Committee with a flavour of the issues we would expect to cover. We aim in advance of Report to let noble Lords have a more detailed list of the content of our guidance. Having given an absolute commitment to publish guidance, we remain unpersuaded of the case for enshrining that undertaking in statute. I again pray in aid the noble and learned Lord, Lord Woolf, who said at Second Reading that,

"it is of no great significance whether it is statutory or non-statutory guidance".—[*Official Report*, 9/12/09; col. 1100.]

The Government are often criticised, I might add unfairly, for legislating needlessly. Our submission is that Amendments 10 and 11 fall into that same trap. They are unnecessary and would create an unwelcome precedent.

I turn now to Amendment 16, which would require the guidance to address certain specified matters. The guidance will undoubtedly cover the points suggested by the noble Lord, Lord Goodhart; that is, that it will be indicative guidance setting out the broad principles and supported by a list of examples of good practice. The guidance will also be designed with businesses of all sizes in mind. What constitutes adequate procedures for one organisation will be over the top for another. The procedures put in place by any organisation must reflect the circumstances of that organisation. Indeed, the flexibility of non-statutory guidance should help to achieve that objective.

I shall address some of the specific points made by noble Lords. Again, I may not answer all of them in the detail required, but I shall write if that is useful. Under the Proceeds of Crime Act 2002, the exercise of confiscation powers is directed towards the recovery of the proceeds of crime. It is not intended to be punitive in effect. We are satisfied that the courts will take into account all relevant information—

The Earl of Onslow: Will the noble Lord give way on that? The Proceeds of Crime Act was used recently in relation to a chemist who fiddled £350-worth of prescriptions and had £212,000-worth of stuff taken

away from him. That was overtaken on appeal, but the Proceeds of Crime Act can be used as an extra punishment and we should be very wary of those provisions. I hope that the noble Lord will take that into account when he takes further advice.

Lord Tunnicliffe: The fact that it was overturned on appeal reinforces the assurance that I am giving in the sense that we are satisfied that the courts will take into account all relevant information to ensure that the powers of confiscation operate in a reasonable and proportionate manner. It is a matter for the courts to determine the benefit derived from an offence in any individual case.

As with everything else involved in this issue, we all agree on the sentiments; it is the detail that is the problem. Clause 7 is an important provision that concerns strict liability and is, we think, the only way to get at this type of crime that we all want to stamp out as far as practically we can. We agree that it is necessary to provide guidance and that it should come through the Government. I have given an indication of when the initial guidance will be ready, but we accept the ongoing need to look at it. To that end, we would expect that to take the form of a review at some point. The exact words I am supposed to use are these: we would certainly expect to keep the guidance under review as appropriate.

Lord Goodhart: I am most grateful to the Minister for giving way. Could he explain what seems to be the rather difficult point here? He has produced an impressive list of matters for guidance and has accepted that there will be an ongoing need to look at it. What is the objection to putting a simple provision into the Bill that would require the guidance to be made on the face of the Bill for as long as it lasts, but without imposing any duties as regards the subject matter of that guidance?

Lord Tunnicliffe: My Lords, we have made the point that if it is that simple, it is exactly the same as the assurance we have given and it is not necessary. That is the view we take on the guidance. We do not see the value of putting it on the face of the Bill.

I come now to a more important point. It seems to me that some of the probings of noble Lords have suggested that we are proposing case-by-case guidance. We are not proposing that, and I want to make it quite clear that this guidance will be about the procedures that businesses adopt in order to show in a particular case that they had those procedures in place and therefore they can pray them in aid with the defence that is contained in Clause 7.

4.45 pm

I hope that I have covered the point about size and resources. Later in our discussions, we will come to the alternative approach put forward by the noble Lord, Lord Henley. We believe that the crime as set out in Clause 7 means that businesses will be able to take a proportionate response, judging by their own exposure to bribery the extent to which they will need to commit resources. Highly exposed companies will sensibly commit significant resources to these proposals and companies with low risk will not have to commit such large resources. It will be about the risk, frankly. If you are trading in a business that has this risk, whether you are big or small you have to take appropriate procedures to protect yourself. The law is framed to allow for that proportionality and allows individual firms to make their own judgments on proportionality.

A number of noble Lords took the view that the guidance would be something that courts could take account of—I will not be more precise than that. We accept that the guidance will have that role. My noble friend Lord Borrie wanted me to tie it into BIS. It is not currently our intention to do that: it is our intention that the Ministry of Justice will create the guidance initially. However, we see the Ministry of Justice working together with the Department for Business, Innovation and Skills to produce the guidance.

At that point, there was an intervention from the noble Lord, Lord Henley, who said that I am a world expert on secretaries of state. I remind him that that had nothing to do with changing laws. In that particular case, the Secretary of State would personally take responsibility for significant powers, which was unusual and unprecedented. I am still smarting from the number of occasions that he ridiculed our excellent drafting on that matter.

Finally we were asked whether it would be a statutory instrument. No, it will not and it will not come before Parliament. I hope that I have at least answered many the questions raised.

The Earl of Onslow: Why will be guidance not come before Parliament? This is an extremely important document. For something like this not to come before Parliament is, with respect, a disgrace.

Lord Tunnicliffe: The noble Earl touches on the difference between our two approaches. We are not proposing to put the requirement for this guidance in the Act. Therefore, there is no legal basis on which a statutory instrument would come before Parliament. If it were part of the Act, we would obviously have to reassess that. Presently, however, it is our intention that it should be a result of our undertaking, not because it is on the face of the Bill. We will seek to persuade the House of that position.

Lord Goodhart: My experience is that powers of guidance, as opposed to the creation of something that is binding as a matter of law, are not necessarily matters that require parliamentary approval. My experience in the Delegated Powers and Regulatory Reform Committee makes it clear that that is the case. While I would not object to this being done by parliamentary procedure, I would not seek to press for that necessarily to happen.

Lord Mackay of Clashfern: I must inquire why this guidance should not be statutory if it is clear that it will be taken into account by the courts. The passage that we read from the Joint Committee shows that there is a lot of guidance about. All sorts of people are offering guidance and the important thing is to have

[Lord Mackay of Clashfern]
authoritative guidance. The mere fact that it has come from the Ministry, among many international authorities putting out guidance, does not make it authoritative. If it is done under the authority of Parliament, with that authority telling the court that it must take the guidance into account, it is a much more effective remedy for the people who are extremely anxious about this serious offence. It is being introduced for the first time and it is very difficult to say what the ultimate consequences might be, as the noble Lord, Lord Henley, has pointed out. I cannot see why that should not be done by putting in place the necessary provisions in the Act of Parliament, as well as the consequences for companies if they should be found to have failed in some way to take account of what the guidance told them.

Lord Thomas of Gresford: I support what the noble and learned Lord, Lord Mackay of Clashfern, has just said. Would the Minister like to think about it? If there is a case against a company that is charged with an offence of strict liability—very unusual in criminal law—and it puts forward as part of its defence that it was relying on procedures that it had read about in some book or other, written by somebody with some authority and experience in the area, the judge can easily tell the jury to ignore all that. There is no force behind what an individual has written in a book or set of procedures. There is no force behind anything like that. It is very different if the guidance is under a statutory power and the judge must tell the jury that it must take into account the fact that procedures which have statutory backing were relied on—or that is the defence—by the company that stands before it, charged with a strict liability offence.

Lord Tunnicliffe: My Lords, we are coming to an area where we do not share common ground. We do not believe that there should be a reference in the Bill. We will of course reflect on everything that has been said in Committee and the force with which it was said. As I quoted, the noble and learned Lord, Lord Woolf, whom we look on as a considerable authority in this area, took the view that,

"it is not of great significance whether it is statutory or non-statutory guidance".—[*Official Report*, 9/12/09; col. 1100.]

It is unnecessary to have something in the Bill to require the courts to take account of official guidance. We expect the courts to take account of all relevant information, including any official or industry-produced guidance, when determining whether a particular company's procedures were adequate. With that, I again invite the noble Lord, Lord Henley, to withdraw his amendment.

Lord Henley: My Lords, we will want to consider these matters very carefully. I will deal with the four amendments in the right order. I come first to Amendment 8, which would leave out "adequate" and is a purely probing amendment. Since I tabled it there have been further suggestions. My noble and learned friend, Lord Lyell, suggested that a word such as "reasonable" might be better than "adequate". I was much more interested to hear the noble and learned Lord himself use "appropriate", rather than "adequate" at one stage. I do not know whether that was intentional. Again, it might be worth looking at what the right word is. Although I will withdraw the amendment, because it is obviously ludicrous to take out "adequate" without putting something in its place, it might be something that we want to come back to in due course.

More importantly, I move on to my Amendment 10 and Amendments 11 and 16 in the names of the noble Lords, Lord Goodhart and Lord Thomas of Gresford. These are about guidance and seek to get that guidance—or at least an instruction that there should be guidance—in the Bill, as well as the idea that Parliament should look at the guidance one way or another in due course. Two points were made in interventions in the noble Lord's speech that he ought to think hard about. One was from my noble and learned friend Lord Mackay, who stressed that this will be taken into account by the courts in any prosecution and therefore is should be looked at by Parliament. For that reason, the amendments or some variation on them should be put in the Bill. The other point was made by the noble Lord, Lord Thomas of Gresford, who pointed out—I mentioned this in my opening remarks—that this was an offence of strict liability, which is very unusual, particularly for a company. For that reason, he felt that it was important for Parliament to take a good look at it and incorporate amendments in the Bill.

Although I will not press the amendments, as is customary at this stage and in this Room—where we can still smell smoke, although it is not billowing out—we will certainly want to have another look at them. Possibly we will want to discuss them with colleagues on the Liberal Democrat Benches. I note the assurance from the Government, which I think I have got right, that in advance of Report we will see a draft of the guidance.

Lord Tunnicliffe: My Lords, I am afraid that we have not given that assurance, much as it might satisfy people. We will produce a revised statement of the things that will be going into that statutory guidance. We are not saying that we cannot do it by then, but we are not giving an assurance that a draft will be available by Report.

Lord Henley: My Lords, it seems that the assurance from the noble Lord is that we will have a draft of what might be going into the draft—or something like that—that we can look at in advance of Report. I suspect that it will not be enough and that we will wish to come back to this in one form or another. Perhaps we might merge the different ideas behind our amendments and those of the Liberal Democrats. I beg leave to withdraw Amendment 8, but I will come back at a later stage to points raised in the debate.

Amendment 8 withdrawn.

Amendment 9

Moved by ***Lord Henley***

9: Clause 7, page 5, line 10, at end insert "and, where A is a contractor to C or a fellow member of a consortium for the joint execution of a project or projects and C does not control A, then it shall be sufficient to establish the defence if C can prove that it

diligently investigated A as to A's abstention from bribery and that C instituted and continued a reasonable audit of A with respect to such abstention during the time when A was associated with C or that C used all practicable influence to prevent bribery by A"

Lord Henley: My Lords, I will speak also to Amendment 15. Amendment 9 also deals with Clause 7, which, as we have established, creates an offence of failure by a commercial organisation C to prevent a mischief done by a person A who is associated with that organisation. What I seek to explore with Amendments 9 and 15 is the nature of that association. Amendment 15 is the simpler of the two. It would simply make the determination of whether A was performing services for C subject to reference to all the relevant circumstances. Amendment 9 is more specific in extending the defence in subsection (2) to situations where C did their best to stop A, where A is a contractor or a fellow member of a consortium. I seek to tease out from the Minister how close a relationship there must be between C and A for the offence and defence to apply, and what circumstances may be considered to determine that.

I raise the subject of consortia for good reasons. Much international business in the petroleum, mineral, banking, financial and construction industries is conducted through consortia or contractors who have sole or overall responsibility for a project. The relationship with the other entities is not one of control, but regulated by contract only. In many cases, the partners may be state entities. A UK company, especially in one of the extractive industries, may have no choice but to take a state entity as a partner. It can investigate potential partners and then monitor them for bribery, using contractual provisions or by exercising its maximum influence. The latter is regarded as acceptable in United States practice, and that may be the maximum extent of the control of its fellow consortium member that the UK company would be able to exercise. Would the provisions in the Bill be sensitive enough to deal with such situations? If they are not, there is a risk that the Bill could put UK businesses at a distinct disadvantage.

5 pm

The United States recognises, especially in the audit provisions, the importance of the degree of control when deciding the responsibility of the company for bribery by associates. The Bill makes no such allowance, the sole criterion being whether services are being performed. There is no doubt that partners in the industries mentioned mutually perform services. Accordingly, in certain regions and in respect of certain resources, a UK company would have no choice but to abstain from participation. The cost to the United Kingdom could be considerable. It would rise to an even greater magnitude if UK companies had to withdraw from existing groups because of the potential impact of the Bill. In any event, the place that might have been available for UK enterprise would quickly be filled by companies from other jurisdictions.

I hope that the Government have foreseen these possible consequences. If they have, I hope that the Minister will be able to point to the flexibility in the Bill that is necessary to avoid them. I beg to move.

Lord Tunnicliffe: My Lords, Amendment 9, tabled by the noble Lord, Lord Henley, seeks to address circumstances in which a bribe was paid by a contractor or a fellow member of a consortium and the bribe payer is not under the control of the defendant. It would allow a defence to the Clause 7 failure to prevent bribery offence where a commercial organisation could prove that it diligently investigated the contractor or consortium partner and conducted a reasonable anti-bribery audit during the time the bribe payer was associated with the commercial organisation, or that it had used all reasonable influence to prevent bribery. The organisation would not be guilty even though the bribe was paid to obtain or to retain business or an advantage in the conduct of business for that organisation. I know that some noble Lords, along with organisations such as the International Chamber of Commerce, have concerns about the application of the Clause 7 offence to corporate structures, such as joint ventures, where there is little or no direct control by the commercial organisation of their operations.

Our purpose is clear; we want to encourage organisations involved in joint ventures to ensure that they are satisfied that adequate procedures are built into the arrangements for the joint venture. The same can be said of any other business model. Given this overarching objective, I am not persuaded that a separate defence is necessary or desirable. The Clause 7 offence applies whenever a person performing services for a commercial organisation bribes another to obtain or to retain business for that organisation. Where that connection cannot be made, the organisation will not be guilty. However, where the organisation can benefit from a bribe that is ostensibly paid on its behalf, liability will be determined by the procedures that the organisation took to prevent such bribes from occurring. It is for the courts to determine whether a person was performing services for the organisation in question based on all the circumstances. Consideration of liability will then rest on whether the commercial organisation had adequate procedures in place to prevent bribery.

The formulation of the defence under Clause 7 is broad enough to cater for different corporate structures: including contractors, consortia and joint ventures. The Government are also committed to publishing guidance on the meaning of adequate procedures well before the offence is brought into force. We are considering what guidance may be appropriate in respect of different corporate structures. This is not a one-size-fits-all approach. The procedures should be appropriate to the circumstances of the enterprise. This issue was considered by the Joint Committee, which examined the draft Bill. The committee considered a number of suggested amendments to the draft Bill that sought to limit the offence to cases in which the commercial organisation controls the subsidiary or joint venture. The committee noted, however, that the same end could be achieved through suitable guidance. Introducing separate conditions in respect of preventing bribery by contractors, members of consortia or joint ventures will, we believe, add little of substance and risk creating confusion and uncertainty in the application of the law.

That said, the Joint Committee also noted that a parent company's liability for a subsidiary is one of the issues being considered by the Law Commission as

[Lord Tunnicliffe]
part of its general review of corporate criminal liability. The Law Commission is due to publish a consultation as part of its review this coming summer. We will have to see where the commission comes out on this issue. It may or may not address it head on, but we submit that the proper course is to await the Law Commission's consultation.

Amendment 15 arguably seeks to address broadly the same issue but adopts a different approach. It would generalise the factors that a court would take into account when considering whether person A was performing services for commercial organisation C for the purposes of the offence in Clause 7. A person may be performing services for an organisation for the purposes of Clause 7 even though there is no formal relationship between them. This may be the case, for example, where the person is representing a number of organisations in a joint venture and has a formal relationship with the lead organisation but not with the commercial organisation charged with the Clause 7 offence.

We believe that the words that the amendment seeks to remove are necessary and desirable as they signal to the courts, and indeed to organisations which the offence is intended to cover, that an organisation may be liable in circumstances where there is no formal relationship between A and C.

As the clause makes clear, whether A is performing a service on behalf of C will be determined by taking account of all relevant circumstances. This includes, but is not necessarily limited to, the nature of the relationship. There are of course an infinite variety of ways in which A performs services on behalf of C, so it is right for a jury to take a view on the particular circumstances of the case.

Taking the generality of the concern expressed by the noble Lord, Lord Henley, I think that we will be seeking to help industry in this area not by varying the Bill or making special provision for consortia but by taking account of them in the guidance that we will be producing. Therefore, I invite the noble Lord, Lord Henley, to withdraw his amendment.

Lord Henley: My Lords, yet again I look forward to seeing the guidance, or rather the draft of what is to be in the guidance, that we are promised before Report. That might assist me in deciding what to do with these amendments and such matters on Report.

I note, too, that we are looking for a further report from the Law Commission, which is likely to be produced some time in the summer, as that might also address these matters. Obviously, that will not make any difference to the Bill but I note what the noble Lord had to say on that subject. Therefore, at this stage I think that the best thing to do is to withdraw Amendment 9 and to say that I look forward to seeing whatever the Government produce between now and Report, and I shall then consider what to do. I beg leave to withdraw Amendment 9.

Amendment 9 withdrawn.

Amendments 10 and 11 not moved.

Amendment 12

Moved by ***Lord Henley***

12: Clause 7, page 5, line 26, leave out from "Kingdom" to end of line 27

Lord Henley: My Lords, I shall speak also to Amendment 13. Again, these are probing amendments which I hope are simple in the extreme. They are designed simply to elicit a fuller meaning of the language used in Clause 7(5)(a) and (b), which give the meaning of a relevant commercial business. In paragraph (a) there are apparently two limbs to the definition. A commercial organisation must be incorporated under UK law and carry on a business, although the second limb is contained in parentheses. I am sure that there is a very straightforward explanation for this drafting which will not detain the noble Lord for long, but I confess that I am a little puzzled. If the body is not carrying on a business, how can it be relevant to a business-related act of bribery, and so why is the provision there? Is there likely to be any confusion over whether an organisation is conducting a business or not—and, if so, how is that to be determined, and what for that matter is "part of a business", as raised by Amendment 13 to paragraph (b)?

These might be trifling points but, on first reading through this section, I did not feel that the drafting was quite as clear as it might be. I ask the noble Lord to enlighten me. I beg to move.

Lord Tunnicliffe: My Lords, I shall do my best. These amendments relate to the definition of a relevant commercial organisation for the purposes of the Clause 7 offence of the failure of commercial organisations. Clause 7(5) states that a relevant commercial organisation means a body which is incorporated under the law of any part of the United Kingdom and which carries on a business, whether there or elsewhere. It also covers any other body corporate, wherever incorporated, which carries on a business, or part of a business, in any part of the United Kingdom.

Amendment 12 would have the effect of widening the scope of the clause so that any body incorporated in the UK would be covered by the offence, whether or not it was carrying on a business. Widening the scope of the offence in this way is not justified in our view because the offence is specifically targeted at commercial organisations that use bribery in the course of their transactions. This is why subsection (1) requires that the person concerned intended to obtain or retain business or an advantage in the conduct of business. It would also be inconsistent with the approach to bodies incorporated outside the UK, where, under subsection (5)(b), the requirement that the body concerned carries on a business remains unchanged by these amendments. The noble Lord asked how it could reasonably apply if it were not carrying on a business. We agree, but for the avoidance of doubt we are leaving it as it is in the wording.

We also consider it important to make clear that the offence applies whether a body incorporated in the UK carries on a business in the UK or elsewhere. It is

a crucial part of our foreign bribery strategy, and our desire to create a level playing field internationally, that the offence covers UK corporations that carry on business overseas. This fact has been welcomed by the OECD, which has stated that,

"such coverage is necessary, since foreign bribery is often committed by multinational enterprises that operate in multiple jurisdictions around the world".

With regard to foreign companies operating in the UK, I recognise that the Joint Committee voiced some concerns that the phrase "part of a business" might be difficult for the courts to interpret, but we believe the courts will interpret the term in a common-sense manner. Clearly, if a foreign corporation has part of its business in the UK, and that part is guilty of paying bribes, we would want the jurisdiction to prosecute the organisation concerned.

We believe the amendments tabled by the noble Lord, Lord Henley, would weaken the offence unnecessarily by casting doubt on its jurisdictional extent. I therefore invite the noble Lord to withdraw the amendment.

Lord Henley: My Lords, I am not sure whether I am much the wiser for that, but I shall read it most carefully in *Hansard* in due course and no doubt fully understand what the draftsman was getting at when he drafted the clause in that manner. I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendments 13 and 14 not moved.

Clause 7 agreed.

Clause 8 : Section 7: supplementary provision

Amendment 15 not moved.

Clause 8 agreed.

Amendment 16 not moved.

Amendment 17

Moved by ***Lord Thomas of Gresford***

17: After Clause 8, insert the following new Clause—

"Advisory service

(1) The relevant department may respond to specific enquiries from any commercial organisation concerning the adequacy of its procedures for the purposes of section 7(2) of this Act.

(2) A response under subsection (1) shall not prevent the Director of Public Prosecutions, the Director of the Serious Fraud Office or the Director of Revenue and Customs from consenting to proceedings for an offence under this Act."

Lord Thomas of Gresford: This is a proposal to add an additional clause to this part of the Bill, which is headed, "Failure of commercial organisations to prevent bribery".

I have referred on a number of occasions to the Independent Commission Against Corruption in Hong Kong. It has a corruption prevention department with an advisory services group annexed to it. The group provides a management consultancy service free of charge and tailor-made to the company's needs. It handles information in strict confidence with a pledge to respond to any request within two working days—which is probably beyond the competence of the Government in this country. Clients are free to accept the recommendations and to implement them at their own pace.

5.15 pm

The group provides tailor-made corruption prevention advice on system/internal controls. It also assists companies to draw up staff codes of conduct and, in particular, a policy on solicitation and acceptance of advantages, a policy on acceptance of entertainment, guidelines on declaration of conflict of interest and guidelines on handling confidential information. Any company can go along to the advisory services group and seek its free advice on the adequacy of the systems and procedures that it has drawn up. It will be assisted in the areas which I have outlined. The advisory services group also formulates and distributes codes of industry best practice, and organises talks and seminars to promote them.

So there is an advisory group under the shelter of the ICAC which assists companies to set out adequate procedures. It goes about it by discussing with the management of the companies their operational procedures and practice, identifying potential risks and malpractice, and formulating recommendations for the client's consideration.

I shall give your Lordships some idea of the feedback that it has had. The chairman of the Hong Kong Institute of Directors, Mr Herbert Hui, said:

"Directors are entrusted with the execution of corporate governance standards within each corporation, listed company, SME or NGO. The Advisory Services Group of the Corruption Prevention Department assists corporations to enhance corporate governance standards from a corruption prevention point of view. We highly recommend directors of corporations to make use of the Group's free and professional consultancy services".

The director and chief executive of Cathay Pacific Airways Limited, Mr Philip Chen, said:

"Since its establishment in 1985, the Advisory Services Group of the Corruption Prevention Department has been conscientiously assisting private sector companies in enhancing system controls and promoting to staff the importance of corruption prevention. In the past, we had sought advice from the Group on various parts of our operation. I highly value the Group's work and contributions to the community".

Since 1985, the advisory group has advised a total of 3,000 companies—that is a rate of about three a week—covering manufacturing, financial services, property management, hotel and catering, welfare and education associations and so on. It discusses such things as common malpractices and vulnerabilities in procurement, sales and marketing, administration, store management, information systems, security and so on.

So there is an essentially government-sponsored body providing a service, which does not require great expense, at a rate of three companies a week to companies in Hong Kong. That has contributed very significantly to making Hong Kong the third least corrupt territory, if I can put it that way, in the whole world. It is not something to be set aside lightly. I have already quoted

[Lord Thomas of Gresford]
the Secretary of State for Justice saying that we have to be quite imaginative about how we tackle advice. It is in that sort of area that I am sure imagination is required.

Under my amendment,

"The relevant department may respond to specific enquiries from any commercial organisation concerning the adequacy of its procedures for the purposes of section 7(2)"—

that is, for the purpose of getting advice on what are adequate procedures. It continues:

"A response under subsection (1) shall not prevent the Director of Public Prosecutions, the Director of the Serious Fraud Office or the Director of Revenue and Customs from consenting to proceedings for an offence under this Act".

I appreciate the point that the Government and others made to the Joint Committee that one cannot confuse the prosecutorial system with the giving of advice. It would be wrong to ask the Director of Public Prosecutions to hand out chits to companies say that they could go and do this or that. My amendment suggests not the giving of immunity from prosecution to a particular company but that authoritative advice and expertise should be built up over a period of time, as has happened in Hong Kong, whereby companies from all sorts of sectors, whether large or small, whether they have been in business for a long time or are just entering into the market, can go to such an advisory body and ask it to look at their procedures, help with them and make sure that they do not have procedures in place that would in any way encourage bribery. If the purpose of the Bill is to prevent bribery, this is a very small price to pay.

I have used the expression "the relevant department" deliberately, because that could cover the Secretary of State for LlanfairPG, to use a shorthand term, or it could be another department of state that could give out advice of this sort. It would be hugely advantageous to the commercial companies in this country and would at the same time make sure that the purposes of this Bill were addressed and that bribery was prevented. I beg to move.

Lord Mackay of Clashfern: My Lords, I must say that I think this is a very good idea. I think I am right in saying that on Second Reading the noble Lord, Lord Thomas of Gresford, said that he had tried out the system of advice that the present business department offers. I think he made a request. He had not received an answer by the time of the Second Reading but I assume he has received it now. If we have a department of that kind in operation already, it seems very good to build on it, as the Hong Kong experience has proved so valuable.

The Earl of Onslow: My Lords, it is, after all, a British idea, because when it was introduced, Hong Kong was a British colony. We surely cannot say that it is novel to our arrangements. It strikes me as a totally excellent idea.

Lord Tunnicliffe: My Lords, Amendment 17 brings us back to the issue of adequate procedures for the purpose of Clause 7. The noble Lord, Lord Thomas of Gresford, has proposed that an advisory service be established that would enable companies to seek advice on the adequacy of their procedures for the purpose of Clause 7. As the noble Lord will be aware, the Joint Committee rejected the proposals to provide an advisory service with a wider remit, particularly given that such a service would call into question the independence of prosecutors. The Joint Committee recognised the significant differences between our criminal justice system and those where such a service is provided, that those prevent direct analogies being drawn, and that it would in practice be difficult to establish such a service here. We agree.

The amendment would not prevent prosecutors instituting proceedings where advice has been given. However, the principle of Government providing advice to individual organisations about their particular procedures is highly inappropriate. It would amount to the Government advising individual organisations on whether, if a person acting on their behalf committed bribery, they would be guilty of the corporate offence.

Even if the advice were given by an independent official body—no such body exists—our concern remains. The Joint Committee drew attention to the evidence given by the Director of Public Prosecutions and the Attorney-General, who both expressed concern at such a body giving advice on prosecutorial issues as it would risk undermining the independence of prosecutors.

While the amendment would preserve the ability of prosecutors to bring charges where advice was given, the reality is that the body would be directly advising on what are ultimately prosecution decisions. In addition, the process gives rise to significant practical concerns. In the event of a prosecution being brought despite advice, it is not difficult to envisage the criminal proceedings being entirely distracted by an examination of the adequacy of the advice from the department or official body rather than the key question as to whether the proceedings that the defendant organisation took were adequate in the circumstances.

We are not lightly setting the idea aside; we have considered it carefully. We note that the Joint Committee considered it carefully, but also note the concern of the DPP and the Attorney-General. For those reasons, we cannot commend the amendment to the Committee.

Lord Thomas of Gresford: My Lords, I draw the Government's attention to the Joint Committee report. I would like them to take a step back, start again and rethink the issue. At paragraph 124, the committee quoted Mr Philip Bramwell of BAE Systems plc. He said that a formal advisory service would be,

"of immense value to companies looking for certainty about how conduct would be treated and about the efficacy of their proposed approach to compliance".

I emphasise,

"the efficacy of their proposed approach to compliance".

He continued:

"It is especially useful around mergers and acquisitions and new businesses that may have an uncertain history".

The director of the Serious Fraud Office again did not wish to mix up prosecutorial discretion with the granting of permits to people to go and commit criminal offences, quite rightly. The Attorney-General and the Director

of Public Prosecutions agreed to that. However, at paragraph 126, Professor Horder said:

"[I]f I could start from a slightly different view, were we to have in this country an anti-bribery body, a commission, a semi-official body of some sort, charged with giving this kind of advice"—

he was talking about an advisory service—

"I could well see as being appropriate […] Were we to have somebody charged with giving advice of this kind I think that would be very much of benefit both publicly and to companies and would give them reassurance".

About the ICAC and its advisory services group, the committee said:

"The lack of time available to carry out our inquiry has prevented us from exploring this body in any detail, although we understand that its services are focused on compliance procedures aimed at minimising the risk of corruption rather than the risk of a prosecution arising from prospective action".

The committee drew the distinction between advising on minimising the risk of corruption and advising on the risk of prosecution—the latter is a separate matter altogether, and my amendment is not about it. My amendment is entirely about minimising the risk of corruption.

5.30 pm

In paragraph 129, the Committee stated:

"We acknowledge that a formal advisory service similar to that provided in the United States and Hong Kong could have great benefit",

and then went on to note the differences in the criminal justice system. That is fine as far as the risk of prosecution is concerned, but giving advice to companies is a different matter. That is what the advisory group does in Hong Kong. As I indicated to your Lordships, the corruption prevention department is under the section of the ICAC, and not the prosecution department. Even within that organisation, which has powers of prosecution, there is a separate body concerned with prevention. That is what we should seriously consider.

The response given by the Minister was thinking along the lines of what the DPP and the director of the SFO were thinking about. I want the Government to take a different view, and to step back and look again at the benefits that the Joint Committee did not have time to investigate. I want them to consider whether this is an idea that they should take up and provide the sort of advice to companies that they clearly want. For the moment, I ask the Government to look at that. I will return to this issue on Report and I hope that they will have had a full reconsideration. I am happy to talk to the Government at any time about this. For the moment, I beg leave to withdraw the amendment.

Amendment 17 withdrawn.

Clause 9 : Consent to prosecution

Amendment 18

Moved by ***Lord Henley***

18: Clause 9, page 6, line 11, leave out paragraphs (a) to (c) and insert "the Attorney General"

Lord Henley: In moving this amendment, I will also speak to Amendments 19 and 20. Amendment 18 refers to who must give consent before a prosecution for an offence under the Bill can be instituted. The Bill as drafted gives that power to the DPP, the director of the Serious Fraud Office or the director of Revenue and Customs Prosecutions in England and Wales. My amendment scraps that and reinstitutes the Attorney-General. Amendment 19 does that for Northern Ireland and Amendment 20 is consequential.

I had been hoping to have the debate in the presence of at least two former Attorneys-General who were here earlier, but the time and circumstances today meant that they were unable to stay. I am afraid that my noble and learned friends Lord Lyell of Markyate and Lord Mayhew are not here, so this is something that we will probably have to come back to at a later stage.

The Minister will not have been surprised to see these amendments, as considerable strength of feeling was expressed at Second Reading that the Government had erred in removing the Attorney-General from a decision-making role in such prosecutions. Certainly, my noble and learned friends Lord Mackay of Clashfern and Lord Lyell of Markyate made succinct and powerful points that deserve careful consideration. Why has the role of the Attorney-General been so reduced? Is it because of criticism that a member of the Government cannot be trusted to exercise untainted discretion? It may be that the arrangement has attracted some question from partners in the OECD. However, that is simply the way our constitution is, and the Government should be legislating within our constitution and not running scared of it.

The criticism that a member of the Government cannot act impartially should be proved incorrect and not acceded to. There are enough former holders of this office in the House for us to know that the very idea is anathema to them. As my noble and learned friend Lord Mackay said, it is important that a person making decisions in this area should be accountable to Parliament as that is where the proper scrutiny, independence and accountability for such decisions lies.

My noble and learned friend Lord Lyell made the very good point, which must also be borne in mind, that it is not the Government who prosecute an offence; it is the independent prosecuting authorities. However, it is important that someone who is answerable in this House or in another place should have the ultimate responsibility for that. We do not believe that the role of the Attorney-General should be downgraded in this way. I accept that this is not a universal opinion—I am sure that the noble Lord, Lord Goodhart, who is scribbling away hard, will not agree—but I accept that these are points of high principle that, as the noble Lord himself said at Second Reading, are not really a matter for the Bill. In my view, even the changes which the Bill makes to the Attorney-General's role are not appropriate. The Government have a vehicle for full debate on these and many other matters in the Constitutional Reform and Governance Bill, which is currently on the horizon, and the role of the Attorney-General should be left as it is. If the Government want to tinker further with our constitution, they should do it in a Bill on the constitution.

[LORD HENLEY]

I could say more. I will certainly come back to this at a later stage because I am sure that others, such as my noble and learned friends and former Attorneys-General of whom I have spoken, will want to address this matter; but, for the moment, I beg to move.

Lord Mackay of Clashfern: My Lords, noble Lords will not be surprised to learn that I feel rather strongly about this matter. Indeed, the OECD's observation on this point just shows what is behind this idea: that someone who is intimately concerned with government cannot be trusted to decide independently matters of criminal prosecution. Our constitution has preserved that role for the Attorney-General—and in Scotland for the law officers—for longer than any of us have been familiar with it.

The idea behind the amendment is that a person in government cannot properly decide a really important matter, but we are talking about a general principle that applies to all government. Politicians may wonder why people do not have more confidence in them. If politicians themselves subscribe to the idea that people in government cannot be trusted to take independent decisions, it is not surprising that the public find it possible to take that view too. It is extremely important that we preserve the role of the independent law officers who are accountable to Parliament. This has been an important part of our constitution for generations.

I know that continental countries have an entirely different system, but, as the Minister said in our debate on the previous amendment, the Joint Committee felt that the examples given in support of the noble Lord, Lord Thomas of Gresford, were from a different system and therefore could be set aside. I suggest that we should not, in our constitutional principles, give way to the manner of handling these matters that has prevailed in some other countries. I have no doubt whatever that the Attorney-General is the proper person to account to Parliament in this very important area of the Bill. As we know, the noble and learned Lord the Attorney-General of the day did exactly that in relation to the SFO matter.

One colleague in the Lords said in a debate on the planning system and on whether the decisions in planning should be taken by Ministers or by a panel that you could not trust democratically-elected people to take unpopular decisions within sight of an election. Any Government who give way to that kind of principle in the future will certainly be in a very chaotic position. I believe very strongly that we should maintain the position of the independent law officer who is associated with the Government and a member of the Government for certain matters but who on prosecution policy is completely independent of Cabinet colleagues who have no responsibility assigned to them in that matter.

Perhaps I may say that I have the most profound confidence, if that is the right word, in the present Attorney-General to carry out this role efficiently. I do not believe for a minute that there is any question of her interfering with the decisions of the directors, but, being intimate to them and having responsibility for them, she is in a better position to account to Parliament for the result than she would be if she did not carry that responsibility.

Lord Goodhart: My Lords, there is a most distinguished league of former Attorneys-General sitting nowadays on the Conservative Benches in your Lordships' House. They are strongly and very persuasively supported by the even more distinguished noble and learned Lord the former Lord Chancellor. But I regret to say that I am not persuaded by them. Clause 10 removes the need for consent to a prosecution to be given by the Attorney-General. However, she retains the powers of direction, which is important. This provision was agreed unanimously by the Joint Committee. Volume 1 of the report on the draft Bribery Bill makes reference to the Attorney-General. Paragraph 171 states:

> "The Attorney General's powers of consent and direction raise complex constitutional issues that lie at the heart of ensuring parliamentary accountability for the criminal justice system. We agree with the Government that the power of direction should remain in place without being reformed by the draft Bribery Bill. Since this power will remain in place, we are satisfied that the power of consent should be transferred from the Attorney General to the Directors of the prosecuting authorities ... Any broader reform of the Attorney General's Office, including her power of direction, must await comprehensive proposals being pursued in the future".

As is true of all decisions of the Joint Committee, that was a unanimous decision.

I see no reason why the Attorney-General should be required to consent to any prosecution for bribery, however minor the case. Bribery is not distinct from other offences. The Attorney-General does not have to give her consent to every trial for murder. It is not a matter of trust. I, too, have the utmost trust in the present Attorney-General and think that she is an outstanding holder of that office. But I do not think that that in itself is a reason for retaining her power to give consent. It is of course arguable that the Attorney-General's power of direction should be removed as well. That, indeed, is the Attorney-General's own view, as stated in paragraph 170, which states:

> "The Attorney General acknowledged the strength of opinion on both sides over this issue. She stated her view that powers of direction were no longer necessary in view of the proposed protocol"—

that is, the protocol between her and those responsible for prosecutorial decisions. However, I accept that, as the Attorney-General said, this would be a change in the constitutional role of the office of Attorney-General, which would not be appropriate to include in this Bill.

I would suggest that that reflects in no way on the behaviour of the present Attorney-General or any foreseeable behaviour by future Attorneys-General. But it seems to me that this would remove from the Attorney-General what is, frankly, an anomalous power, which is the requirement that any prosecution for bribery must receive her consent.

5.45 pm

Baroness Whitaker: My Lords, with some trepidation as a citizen rather than a lawyer, I would like to say why I think this amendment ought to be resisted. First of all, like many other enshrined British traditions, it is worth unpicking how it originated. I think its purpose in 1906 was to prevent irresponsible private prosecutions. Of course, there was no DPP then. It seems to me that the DPP system is hardly likely to allow irresponsible

private prosecutions. He has a duty to safeguard the public interest, so I think it is the last thing that he would do.

The second point, which appears to me very important, is the very powerful OECD principle against anyone with a political role having a hand in a prosecution decision and anyone with a political role indeed making a decision about a prosecution and then having to be accountable for that to the legislature. I absolutely understand the respect which very distinguished former legal officers hold for the principle of the consent of the Attorney-General, and this is in no way a personal reflection. The OECD principle is not a personal reflection on the character of any individual law officer; it is a statement of a constitutional principle relating to the separation of powers. That is why I think it is important.

Following the noble Lord, Lord Goodhart, I think it is also important to remember that many decisions under the Bribery Act, as I hope it will become, will be on quite small matters. It will not always be BAe. I see a parallel with other prosecuting authorities. We do not ensure that the Attorney-General has to consent to Inland Revenue prosecutions. We do not ensure that the Attorney-General has to consent to Health and Safety Executive prosecutions. I really think that bribery is on that level.

My final point is, even so, even with all the considerations that I have just outlined, I am perfectly content, and I am sure everybody on the committee was, for the Attorney-General to retain the formal authority that he or she has under the present Bill. The Attorney-General has not been airbrushed out of the picture; simply, the role of the Attorney-General has been put in a proper constitutional context.

The Earl of Onslow: My Lords, I think that what we are looking at here is the result recently, or over the past 25 years, of rather disputed decisions by Attorneys-General. The Westland case springs to mind. If my noble and learned friend Lord Mayhew were here he would be able to inform us about that in much greater detail. There have been accusations thrown about about Lord Goodhart—sorry, the other one, the noble and learned Lord, Lord Goldsmith—and the Gulf War, and I think also on the withdrawal to do with BAe Systems. These have produced accusations that I am sure are untrue, because of all the people who I have met who have been involved in those, I have never doubted their personal integrity. I may have disagreed with them on some things, but never have I doubted their personal integrity in that particular role.

The noble Baroness, Lady Whitaker, talks about the separation of powers. This is one of the great myths. Montesquieu got it wrong and misunderstood Locke, which is why the American Constitution is different from ours. He failed to realise that all powers eventually end up in the sovereign, and so they have to come down. They do separate, but they do not have to be so rigidly separated as the Americans do. That gets them in just as many muddles as our one does.

Therefore, we should be careful about bandying around the concept of the separation of powers. We have had honest, upright men and women of great integrity as Attorneys-General, and we should not change things unless there is an obvious reason so to do. If we want to change the role of the Attorney-General, surely it should be done in a constitutional Bill with proper thought and proper pre-inquiry. Therefore, I support my noble friend on this amendment.

Lord Hodgson of Astley Abbotts: My Lords, I have not so far participated in the proceedings on this Bill but I should like to say a few words in support of my noble friend's amendment. I do so on grounds not of high principle but of practical commercial activity and the fact that this provision envisages at least three routes by which a prosecution can be launched. The danger therefore is of different thresholds of prosecution. Of course, the lawyers will say that the legal grounds are there and that they are statutory, but those in the real commercial world know that interpretations can vary greatly. When we have the additional words "with the consent of", that means that yet other people may wish to bring prosecutions and obtain the consent of the three bodies listed.

Those of us who have been involved in commercial activity will know of companies that have got across some of the bodies listed—in particular, HMRC. There may be a situation where a firm has done something with which HMRC disagrees and it may even have brought a prosecution and failed in its endeavours, but that means that that firm will then be marked by HMRC as a body whose future activity should be considered carefully. There is a real danger that in these circumstances people will find themselves being lifted up the scale for consideration for prosecution in connection with the activities considered under the Bill.

In the debate on the previous amendment, the noble Lord, Lord Thomas of Gresford, talked about certainty and efficacy. I think that my noble friend is saying—and I certainly support it—that it is a question not of being indifferent to bribery but of practical commercial activities, and the Attorney-General, who is of high principle, should be the person through whom a prosecution is launched without having many alternatives.

Lord Bach: My Lords, with these amendments the noble Lord, Lord Henley, seeks to retain the requirement to obtain the prior consent of the Attorney-General before commencing proceedings for the new statutory bribery offences. He is right: there was considerable strength in the arguments put on this side at Second Reading, but I know that he will be the first to agree that there was also considerable strength in the arguments put on the other side. This is one of those issues where there seems to be a genuine difference of opinion and it is rightly debated today.

My ears pricked up and I sat up to listen when the noble Earl, Lord Onslow, started to say that there were accusations against the noble Lord, Lord Goodhart, in this field. It may be that the noble Earl has a crystal ball that the rest of us do not have and that one day—

The Earl of Onslow: My Lords—

Lord Bach: Perhaps I may just finish the point and then of course I shall give way. Perhaps one day the noble Lord, Lord Goodhart, will be open to these accusations in the same way as others have been. I know not.

The Earl of Onslow: I must set the record straight. It was purely an idle lapse of memory, which confused me. I was not in any way assuming it to be the noble Lord, Lord Goodhart. I knew that I meant the noble Lord, Lord Goldsmith.

Lord Bach: I think I knew that too.

We all agree, I hope, that there is need for a consent provision for the new bribery offences to ensure, if nothing else, consistency in prosecution decisions. That does not appear to be an issue. What is an issue is the level at which such consent should be given. There are strong arguments on both sides. I say to our distinguished ex-law officers that in providing for consent to be given by the director of the relevant prosecution authority, we are not for one moment suggesting that previous Attorneys have done anything other than their duty in their decisions on whether to grant consent to a particular prosecution.

Having said that, this is clearly a sensitive area, where perceptions matter as much as reality. As the Joint Committee which considered the draft Corruption Bill in 2003 put it:

"Without doubting the independence of the Attorney General and his predecessors, we accept that the appearance of ministerial involvement in the prosecution decision would best be avoided".

This view is shared by, among others, the OECD itself; the Council of Europe's monitoring body; Transparency International UK in a particularly strong way; and the Corner House. Importantly, the recent Joint Committee was similarly satisfied, as the noble Lord, Lord Goodhart, reminded us, that the power of consent should be transferred from the Attorney-General to the director of the relevant prosecution authority. The Law Commission was also of this view.

I do not dismiss lightly the arguments around the need for parliamentary accountability for such important decisions. However, such accountability will continue to be provided through the Attorney-General's fulfilment of her important role in superintending the main prosecuting authorities. The protocol between the Attorney and the prosecuting departments, published last July, sets out how the Attorney-General and the prosecutors will work together to ensure that the Attorney-General can discharge that responsibility. I know—and the Committee will know—that the present Attorney personally attaches considerable importance to parliamentary accountability. The noble and learned Lord, Lord Mayhew, asked my noble and learned friend the Attorney about this point when she gave evidence to the Joint Committee on 25 June. She made it clear to him and the Joint Committee that,

"Accountability will remain because, for so long as the Law Officers, that is the Attorney General and the Solicitor, remain the supervisors and superintendents of the prosecutorial authority, there is a vehicle through which that accountability can take place".

Of course, a balance must be struck between prosecutorial independence and parliamentary accountability.

This is not the occasion for debate on any wider reform of the powers of the Attorney, but it is right that when legislating for new offences we consider on a case-by-case basis—as we are today—whether there is a need for prior consent to a prosecution and, if so, at what level such consent should be granted or withheld. Our judgment is that for the new bribery offence, prior consent to a prosecution is desirable and that it would be appropriate for such consent to be given by the director of the relevant prosecuting authority. This strikes the right balance and this view is widely shared by external organisations, some of which I have mentioned. Some of those organisations have been pressing us to reform our bribery laws for some years. We should heed their views and I therefore invite the noble Lord to withdraw his amendments.

The passion with which the noble and learned Lord, Lord Mackay of Clashfern, supported the amendment is something that we very much take into consideration. His defence of the status quo is a powerful argument. We do not agree with him on this occasion. I want to put right one factual matter that the noble and learned Lord mentioned, which was also referred to in passing by the noble Earl, Lord Onslow. The decision about the Serious Fraud Office's discontinuance of what has been described as the BAE Saudi investigation was made by the director of the Serious Fraud Office and not the Attorney-General of the day. I want to put that clearly on the record.

Lord Mackay of Clashfern: That is the factual position as I have known it, but the accountability of the Attorney-General for that decision was what was important. The accountability is the main issue as far as I am concerned, although consent is part of that.

Lord Bach: I repeat that in our view accountability stays with the Attorney-General as I have tried to describe. I invite the noble Lord to withdraw his amendment.

Lord Henley: My Lords, in my generous way and in accordance with proceedings of the Committee, I shall in due course withdraw the amendment. However, I assure the Minister that I shall bring it back on Report, because others may take part in this debate and such an important point needs to be debated by a fuller House than is possible in a Committee in the Moses Room at six o'clock on a Thursday evening in January. With that, I beg leave to withdraw the amendment.

Amendment 18 withdrawn.

Amendments 19 and 20 not moved.

Clause 9 agreed.

Committee adjourned at 6.01 pm.

Written Statements

Thursday 7 January 2010

Defence: Grob Tutor Service Inquiry

Statement

The Minister for International Defence and Security (Baroness Taylor of Bolton): My honourable friend the Minister of State for the Armed Forces (Bill Rammell) has made the following Written Ministerial Statement.

I wish to inform the House today of the findings of the Royal Air Force service inquiry into the accident involving two Grob Tutors operated by the RAF in south Wales on 11 February 2009. Tragically, this crash resulted in the deaths of two air cadets, 14 year-old Katie-Jo Davies and her cousin, 13 year-old Nikkita Walters, a volunteer reserve pilot, Flight Officer Hylton Price (Wing Commander Retired), and Flight Lieutenant Andrew Marsh. Our deepest sympathies remain with their families and friends. I know that the RAF community was deeply saddened and shocked by this terrible accident.

The purpose of a service inquiry is to establish the circumstances of the loss and to learn lessons from it; it does not seek to apportion blame. The service inquiry was convened on the 12 February 2009 and has now presented its findings.

It found that on the morning of 11 February 2009 Grob Tutor G-BYUT and G-BYVN of the University of Wales Air Squadron (UWAS) No. 1 Elementary Flying Training School (EFTS) departed MoD St Athan to conduct air experience flights (AEF) for the two cadets. Radar trace recordings show the flight path of both aircraft manoeuvring through different turns and heights until 10.46Z, when both paths intersected and the crash occurred.

The service inquiry panel concluded that the cause of the accident was the controlled flight of both aircraft into the same airspace at the same time as a result of both aircraft captains being unaware of the position and proximity of the other aircraft. Either the pilots did not see each other or they did not do so until it was too late. A number of contributory, probable and aggravating factors were identified, including technical and procedural factors. The service inquiry panel made a total of 29 recommendations to address these factors. These are being implemented as soon as is practicable.

A redacted version of the inquiry findings will be placed in the Library of the House shortly. It will also be made available on the MoD internet site and can be found by following the link below:

www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/BoardsOfInquiry/

The Ministry of Defence will co-operate fully with the coroner who will hold an inquest in due course.

Defence: Training Review

Statement

The Minister for International Defence and Security (Baroness Taylor of Bolton): My honourable friend the Minister of State for the Armed Forces (Bill Rammell) has made the following Written Ministerial Statement.

I am today announcing an update to the key project timescales for the defence training review package 1 project. My predecessor announced on 9 October 2008 (*Official Report*, col. 457) that an investment decision was expected in spring 2009, with contract signature following approximately 15 months later. Plans have advanced considerably, but the work has exceeded the assumptions made in 2008 and hence the change to when the investment decision will be taken. It is not uncommon for a project of this complexity and size to experience delays, but the project is under constant review to ensure that it meets value-for-money requirements. The benefits that the project will deliver are very considerable and include: real savings against existing defence budgets over the next 30 years; enhanced operational effectiveness through the use of modern teaching techniques in a purpose-built tri-service defence technical college delivered through a single PFI contract; the release of 1,200 service personnel for duties in the front-line commands, helping to reduce pressure on operations; significant capital investment in living accommodation through the provision of 3,240 single accommodation and 483 married quarters; and the delivery of further efficiencies through site rationalisation and efficient use of the estate, including the reuse of some accommodation for units returning from Germany.

I can today announce that the project is on track for an investment decision in the summer.

Economy: "Going For Growth"

Statement

The First Secretary of State, Secretary of State for Business, Innovation and Skills and Lord President of the Council (Lord Mandelson): A credible deficit reduction plan has to be accompanied by an equally credible growth plan. December's PBR had a clear objective: to halve the deficit by 2013-14. It was bold and tough—the equivalent of something approaching an £80 billion turnaround in the public finances. Today I am publishing *Going for Growth: Our Future Prosperity*, which sets out our plan for growth, building on the foundations that we have already put in place.

The recovery is only the beginning of how we are going to pay our way in the global economy. The jobs of the future will not be the same as those in the past. We will turn new technologies into jobs, like those in digital and biotechnologies. We will commercialise the output of our hugely successful science and research base. We will turn low carbon into business and employment opportunities. None of this is going to happen with the Government simply standing on the sidelines. Other Governments are actively investing in their industrial strength. We have to do the same.

The global financial crisis has given us the opportunity to reflect on our approach to industrial policy and the Government's role in shaping markets. Last year, we published *New Industry, New Jobs*, setting out our new activist approach. *Going for Growth: Our Future Prosperity* shows how we have developed that strategy and the steps that we are taking to ensure that the drive for sustainable economic growth is at the heart of the Government's agenda.

Making the most of this new changing environment requires us both to build on our strengths and to develop new capabilities that will enable us to thrive. That means continuing to take a more strategic approach to UK industrial policy in the future—focusing on those sectoral opportunities that will drive discovery and economic growth in this century and helping people to get the skills and experience that they need to secure high-value jobs throughout their working lives.

There are seven key areas of government action underpinning our approach:

supporting enterprise and entrepreneurial activity, including the access to finance required for starting and growing firms;

fostering knowledge creation and its application;

helping people to develop the skills and capabilities to find work and build the businesses and industries of the future;

investing in the infrastructure required to support a modern low-carbon economy;

ensuring open and competitive markets to drive innovation and rising productivity;

building on our industrial strengths where we have particular expertise or might gain a comparative advantage, and where government action can have an impact; and

recognising and employing the right strategic role for government in markets that allows us as a nation to capitalise on new opportunities.

Copies of the document have been deposited in the Libraries of both Houses and are available on the BIS website. Paper versions are available in the Vote Office and Printed Paper Office.

Gambling

Statement

Lord Davies of Oldham: My honourable friend the Parliamentary Under-Secretary of State for Culture, Media and Sport (Gerry Sutcliffe) has made the following Written Ministerial Statement.

On 30 April 2009, I announced that the Department for Culture, Media and Sport (the department) and the Gambling Commission (the commission) would undertake a review of the current system of remote gambling regulation in Great Britain focusing on consumer protection and ways to ensure that overseas operators contribute towards regulation, problem gambling treatment and the horserace betting levy.

We have examined the way in which the system currently works and explored the major regulatory changes taking place in Europe. I have decided, based on our findings, to consult on changing the existing system of remote gambling regulation in Britain so that all operators who want to target British consumers must be licensed by the commission.

Under an extended remote gambling licensing system, all operators active in the British market would have to adhere to the Act's provisions, its secondary legislation and the commission's standards and requirements. That would mean obligations to report suspicious betting activity to the commission and UK sports bodies, as well as compliance with the commission's software testing, age verification, self-exclusion, technical standards and social responsibility requirements, bringing a more consistent level of protection for British consumers.

My proposals would also assist the commission in effectively advising the Government about the gambling that takes place in Britain and ensure that it is properly funded for the regulatory work that it already undertakes, such as test purchase exercises on overseas websites and dealing with public inquiries.

British gamblers form one of the largest customer bases for online gambling in the EU. Yet, for many reasons, increasingly few companies active in the British market are now regulated by the commission. Though British consumers are not unprotected—most overseas jurisdictions have regulatory systems—standards vary and requirements differ from our own. Therefore, I feel that change is necessary to ensure that the protections in the Gambling Act—to keep gambling crime-free, to ensure that gambling is fair and open and to ensure that children and vulnerable people are protected from harm—continue to be afforded to British consumers.

These proposals would require legislative change to implement and there remain many complex issues to be considered—for example, how we can actively police an extended licensing system and keep burdens on industry to a minimum. We must also be mindful of wider issues of importance to the industry, such as taxation. But while tax forms part of the overall picture, it is right that we have focused exclusively on regulatory challenges. Taxation policy is a matter for the Chancellor of the Exchequer and, although close liaison with HM Treasury will be essential in ensuring that implications for taxation policy are properly considered, that need not prevent the regulatory proposals that I have outlined from being published for consultation

The department has also explored in some considerable detail the issues surrounding the application of the horserace betting levy to overseas operators. I will be continuing this vital work, in conjunction with the levy board, with the intention of ensuring that all operators taking bets on British races pay to support British horseracing.

NHS: Basildon and Thurrock University Hospitals NHS Foundation Trust

Statement

Baroness Thornton: My right honourable friend the Secretary of State for Health (Andy Burnham) has made the following Written Ministerial Statement.

Further to my Statement to the House on 30 November 2009 (*Official Report*, col. 855), I wish to update the House on the situation at Basildon and Thurrock University Hospitals NHS Foundation Trust.

Dr William Moyes, chair of Monitor, the independent regulator of NHS foundation trusts, has written to me about the progress being made at the trust. His letter dated 18 December 2009 has been copied to all local MPs and has already been placed in the Library.

The Care Quality Commission (CQC) has found and confirmed in its statement of 23 December that the trust has rectified the deficiencies over infection control that it had previously identified and is "now meeting the minimum requirements in this area". CQC will be carrying out further checks on remaining areas of concern, looking particularly at the quality of emergency care, via unannounced inspections. CQC will be "checking closely to ensure everything is put right, and we will not stop until this is done".

Also, Monitor has advised that Dr Foster has confirmed that the trust had achieved hospital standardised mortality ratios for the first six months of 2009 "within the expected range".

However, Monitor has advised me that, although there is evidence of material improvement, there is still a lot to do. The initial evaluation by the task force established by Monitor to support the trust confirms the need to increase the pace of change and to address co-ordination of plans to improve services and the governance of the trust. Monitor will continue to maintain close contact with the trust, and with CQC, until it is satisfied that the trust has returned to full compliance with its authorisation as a foundation trust.

I will receive regular updates once Monitor's board has reviewed the trust's progress on a monthly basis. I will continue to provide these updates to the House.

Perpetuities and Accumulations Act 2009

Statement

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My honourable friend the Parliamentary Under-Secretary of State (Bridget Prentice) has made the following Written Ministerial Statement.

The Perpetuities and Accumulations Act 2009 received Royal Assent on 12 December 2009. On 5 January 2010, I made an order on behalf of the Lord Chancellor bringing the remaining provisions of the Perpetuities and Accumulations Act 2009 into effect on 6 April 2010.

Schools: Revenue Balances 2008-09

Statement

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): My honourable friend the Minister of State for School and Learners (Vernon Coaker MP) has made the following Written Ministerial Statement.

The Department for Children, Schools and Families has today published information on the end-of-financial-year revenue balances of all local authority-maintained nursery, primary, secondary and special schools for the year 2008-09.

This information is presented alongside information on schools' revenue balances for the financial years 1999-00 to 2007-08, published on 24 February 2009. The information is taken from local authorities' published Section 52 outturn statements for the years in question but presents this in summary form. Copies of the information have been placed in the Libraries and will be accessible from the Department for Children, Schools and Families website, at: www.dcsf.gov.uk/everychildmatters/strategy/financeandfunding/informationforlocalauthorities/section52/schoolbalances/s52sb/.

Surplus balances totalled £1.92 billion and deficits £139 million at the end of 2008-09, giving net total revenue balances of £1.78 billion. This represents a decrease of £137 million or 7 per cent compared to the position at the end of 2007-08. At school level, 91 per cent of schools held a surplus balance, with 33 per cent holding an excessive balance, defined in guidance from my department as over 8 per cent of budget for primary and special schools and over 5 per cent of budget for secondary schools. Excessive surpluses totalled £495 million.

The Government welcome the fact that balances are coming down and in particular that excessive balances are reducing, but the level of surplus held by some individual schools is too high. While it is clearly sound financial management for schools to retain a small surplus from year to year, we expect revenue funding to be used to support the education and well-being of pupils in school now. It is, however, important that schools spend their funds wisely while ensuring best value for money. Local authorities have the power to claw back excess, uncommitted surpluses and redistribute the proceeds back to local schools in consultation with schools forums.

Where a school is in deficit, it must agree a recovery plan with the local authority to eliminate the deficit, normally over three years.

Former Schools Minister Jim Knight made it clear in his Statement to the House on 24 February 2009 (*Official Report*, column 15WS), about school revenue balances for 2007-08, that we expect schools and local authorities to work to reduce the level of balances by the end of 2010-11. If we do not see a substantial reduction of total revenue balances and in particular the excessive balances held by individual schools, the Government will consider further action from 2011-12 to bring the total down to ensure that the funding is being spent on improving outcomes for children and young people.

In the mean time, my department continues to work with its partners to prepare further guidance for local authorities on the control of surplus balances.

Written Answers

Thursday 7 January 2010

Education: Home Schooling

Questions

Asked by ***Lord Lucas***

To ask Her Majesty's Government further to the Written Answer by Baroness Morgan of Drefelin on 11 December (*WA 167*), whether they will provide an example to justify the statement that the release of the data requested might lead to individual children being identified. [HL812]

To ask Her Majesty's Government further to the Written Answer by Baroness Morgan of Drefelin on 11 December (*WA 168–9*), whether they will provide an example to justify the statement that the release of the data requested might lead to individual children being identified. [HL813]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): Some years ago a journalist located two children convicted of murdering another child using statistics provided through the Department of Heath secure units bulletin. Since then the Department for Children, Schools and Families has adopted protocols that prevent individual children from being identified through published statistical information.

The department has closely examined and reviewed its statistical disclosure controls when considering the release of data that could lead to individuals being self-identified or identified by others. Where there is a risk that individual children could be identified, the data are released by aggregation with other data, or released in a form where small numbers are rounded or suppressed.

We have applied this policy to the information collected recently on home education. We released much of the raw data in the form of graphs, which allowed users to see the distribution of data but which did not identify individual local authorities. This is because where numbers are low it would be possible for journalists or other researchers to combine press reports or other information collected formally or informally with published statistical information to identify individual children subject to child protection plans, or young people not in education, employment and training, for example.

This could lead to home-educating families being pursued for further information about their children—for example, the sort of information set out in the Answers given on 11 December (*Official Report* cols. *WA 167* and *WA 169*) and 15 December (*Official Report* cols. *WA 206* and *WA 207-WA 209*).

We are considering how we can release more of the statistical data collected in a format that protects individuals from being identified but which is more informative than the data already released.

Elections: European Parliament

Questions

Asked by ***Lord Kilclooney***

To ask Her Majesty's Government what was the electorate in Northern Ireland for the European Parliament elections in (a) 2004, and (b) 2009. [HL861]

Baroness Royall of Blaisdon: The Chief Electoral Officer for Northern Ireland is responsible for maintaining the electoral register in Northern Ireland and publishing related statistics. Statistics relating to the eligible electorate in respect of particular elections can be found on the Chief Electoral Officer's website (http://www.eoni.org.uk/index/statistics/election-statistics.htm) and demonstrate that the eligible electorate for the 2004 European elections was 1,072,669, and for the 2009 European elections was 1,141,979.

The noble Lord may wish to write to the Chief Electoral Officer directly with any further queries.

Asked by ***Lord Kilclooney***

To ask Her Majesty's Government what was the percentage turnout in Northern Ireland at the European Parliament elections in (a) 2004, and (b) 2009. [HL862]

Baroness Royall of Blaisdon: The Chief Electoral Officer for Northern Ireland is responsible for publishing information relating to turnout at particular elections. Statistics relating to the 2004 and 2009 European elections can be found on his website at http://www.eoni.org.uk/index/statistics/election-statistics.htm and show that the percentage turnout in 2004 was 51.72 per cent, and in 2009 was 42.81 per cent.

The noble Lord may wish to write directly to the Chief Electoral Officer if he has any further queries.

Asked by ***Lord Kilclooney***

To ask Her Majesty's Government how many applications for postal votes there were in Northern Ireland for the European Parliament elections in (a) 2004, and (b) 2009. [HL863]

Baroness Royall of Blaisdon: The Chief Electoral Officer for Northern Ireland is responsible for collecting information relating to postal vote applications. Statistics relating to postal vote applications at particular elections can be found on his website at http://www.eoni.org.uk/index/statistics/election-statistics.htm and show that there were 3,184 applications for postal votes in respect of the 2009 European elections (this excludes applications for an absent vote for an indefinite period in the run-up to the elections). The website does not contain information relating to postal vote applications for the 2004 European elections and the noble Lord may wish to write to the Chief Electoral Officer directly to request additional statistics.

EU: Legislation

Question

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government whether they will publish the recent opinions of the European Commission regarding the United Kingdom allegedly not giving full effect to European Union equality legislation. [HL826]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): The understanding between the European Commission and member states is that infraction correspondence remains confidential. The Commission publishes the fact that a reasoned opinion has been sent but not the letter itself. The Government will therefore not be publishing the two reasoned opinions that the Commission sent to us on 20 November.

NHS: IT Strategy

Questions

Asked by ***Lord Warner***

To ask Her Majesty's Government what was the gross expenditure on the NHS National Programme for IT at actual and constant prices in each year from 2002–03 to 2008–09; and what is the forecast expenditure for 2009–10. [HL827]

To ask Her Majesty's Government what is their forecast of the expenditure required from 2010–11 to 2013–14 to complete the NHS National Programme for IT in the light of the Pre-Budget Report; and when they expect to complete the programme. [HL828]

Baroness Thornton: Comprehensive information is not available in the form requested. This is in part because relevant local expenditure information is not collected in a way that differentiates expenditure on the national programme for information technology from other local IT-related expenditure. In addition, the department does not routinely produce programme-level expenditure figures separately from those covering its wider responsibilities for National Health Service IT.

Expenditure information covering all those responsibilities, for the years for which it is available, is shown in the following table.

	Actual Expenditure					*Forecast Outturn*
	2004-05 £ million	*2005-06 £ million*	*2006-07 £ million*	*2007-08 £ million*	*2008-09 £ million*	*2009-10 £ million*
Capital	360.0	429.0	589.0	686.0	535.1	562.6
Revenue	260.0	539.0	528.0	507.0	528.4	573.8

Notes:

1. All sums are actual expenditure for the year in question, compiled using the accruals accounting convention, and exclude capital charges.

2. The amounts include the original costs of NPfIT contracts, which have not changed, but also include new and additional requirements that have been added, supported by separate business cases and funding, as reported by the National Audit Office.

The expenditure is made up of a very significant number of different components and activity contracted at different times across the period. Converting the figures to a meaningful common price base could only be done at disproportionate cost.

The national programme comprises a number of separate systems and services for which, as a whole, there is no single national completion date. Systems will continue to need to be upgraded in the light of new technology and changing NHS requirements. Expenditure plans for years beyond 2009-10 are currently being reviewed in the light of announcements made in the Pre-budget Report, and of the evolving IT needs of the NHS.

Northern Ireland Office: Cars

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what percentage of officials in the Northern Ireland Office are in car-sharing schemes for work purposes which are officially encouraged. [HL870]

Baroness Royall of Blaisdon: A scheme is available at www.travelwiseni.co.uk through which staff can make car-share arrangements with other civil servants. Staff are encouraged, where possible, to car-share when travelling on official business.

The Northern Ireland Office does not keep statistics on the number of staff who are in car-share schemes, either for work purposes or for journeys to and from work.

Northern Ireland Office: Political Directorate

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what are the sections into which the Political Directorate of the Northern Ireland Office is divided; and what are their roles. [HL663]

Baroness Royall of Blaisdon: The Political Directorate of the Northern Ireland Office consists of four divisions: Rights, Elections and Legacy; Constitutional Policy and Liaison; Political Liaison and Protocol (including the work of the British Irish Secretariat); and Inquiries and Corporate Services. The Private Office, which supports the work of Ministers in the department, is also managed within the Political Directorate.

The role and objectives of the Political Directorate of the Northern Ireland Office are published in the annual departmental report, which can be found at:

http://www.nio.gov.uk/northern_ireland_office_departmental_report_2009.pdf.

A copy of the departmental report is also available in the Library of the House.

People Trafficking

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether 77 children suspected of having been trafficked went missing from a children's home near Heathrow since March 2006; if so, whether any of them have been found; and what steps have been taken to prevent such a situation happening again. [HL832]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): Children who enter the UK without an adult to take responsibility for their care, which could include children who may have been trafficked into the country, will become looked after by the local authority where they present. Where any looked-after children subsequently go missing from their care placements, the local authority must report their absence to the local police so that all necessary action can be taken to locate them and make sure that they are safe.

Information about the outcomes of individual children who have gone missing from care in any local authority is not collected centrally. However, following the Prime Minister's Parliamentary Answer to the honourable Member for Hayes and Harlington in the other place on 6 May, officials from the Home Office and the DCSF were asked to investigate concerns about potentially trafficked children from abroad going missing from the London Borough of Hillingdon.

Hillingdon works very closely with other local partner agencies through the Hillingdon Local Safeguarding Children Board, which has a child trafficking sub-group. Since 2007, stronger process and systems have been put in place to disrupt the trafficking of children through Heathrow Airport, which has had the effect of reducing the numbers both of young people arriving at Heathrow suspected as being at risk of trafficking and of children later going missing from residential care.

Prisoners: Literature

Question

Asked by ***Lord Ramsbotham***

To ask Her Majesty's Government further to the Written Answer by Lord Bach on 7 December (WA 96), why individual prison governors can determine which books may be received by inmates of their prisons. [HL878]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): The type of items and the frequency with which they may be received by prisoners while in custody are decided by individual prison governors in line with prison Rule 43(2) of the Prison Rules 1999.

The rule enables governors to exercise discretion as to the types of items that they consider to be appropriate for their local circumstances, the profile of their prison population (for example, whether a certain publication will have an adverse effect on a prisoner's physical or mental condition) and to fit in with their locally devised incentives and earned privileges scheme.

Prisons: Muslim Chaplains

Question

Asked by ***Baroness Neville-Jones***

To ask Her Majesty's Government further to the Written Answer by Baroness Andrews on 30 April (*WA 44*), whether the report into Muslim chaplains in public service has been completed; if so, how much it cost; and whether they will place a copy in the Library of the House. [HL825]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): In June 2008, The Experience Corps produced a draft framework of standards and recruitment process to be used voluntarily by institutions when engaging Muslim chaplains in public service. The Experience Corps was awarded £88,708 (excluding VAT) to complete this work.

Following a tendering process in August 2008, Faith Matters was contracted to pilot the draft recruitment process and standards. Following the pilot, Faith Matters will produce a final standards framework and recruitment process, which will be promoted for voluntary use in public institutions from spring 2010. The project is projected to cost a total of £90,000, with final payment on completion. A copy of the final documents will be placed in the Library of the House.

Roads: Motorways

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government further to the Written Answer by Baroness Royall of Blaisdon on 8 December (*WA 118*) which indicated that there have been no recent discussions on the joint funding of a motorway in Northern Ireland with the government of the Republic of Ireland, what discussions have taken place; when they took place; and what was the outcome. [HL806]

Baroness Royall of Blaisdon: The funding package for the incoming Northern Ireland Executive was announced by the Treasury on 23 March 2007. That package included details of the provision of £400 million to be made available by the Irish Government over four years as a contribution towards the new roads programme. Subsequent discussions on funding are a matter for the Northern Ireland Executive and the Irish Government.

No minutes have been found of any meetings at which these matters were discussed between members of Her Majesty's Government and the Irish Government either prior to devolution or subsequently.

Taxation: Personal Allowance

Question

Asked by ***Lord Rooker***

To ask Her Majesty's Government in which years since 1977 income tax personal allowances have not risen in line with inflation. [HL800]

The Financial Services Secretary to the Treasury (Lord Myners): The information requested is in the table below.

Personal allowance risen by less than inflation	1978-79
Personal allowance risen by more than inflation	1977-78, 1979-80, 1982-86, 1988-89, 1996-98, 2008-10
Personal allowance held constant	1981-82, 1993-95, 2003-04,2010-11

In years not shown, the allowance increased in line with indexation.

Thursday 7 January 2010

ALPHABETICAL INDEX TO WRITTEN STATEMENTS

Thursday 7 January 2010

ALPHABETICAL INDEX TO WRITTEN ANSWERS

NUMERICAL INDEX TO WRITTEN ANSWERS

Volume 716
No. 21

Thursday
7 January 2010

CONTENTS

Thursday 7 January 2010