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House of Lords

Wednesday, 13 January 2010.

3 pm

Prayers—read by the Lord Bishop of Chichester.

Prisons: Search and Restraint

Question

3.06 pm

Asked By ***Baroness Stern***

To ask Her Majesty's Government, following the report of 8 December from the Council of Europe's Committee for the Prevention of Torture, whether they propose to continue routine strip-searching and the use of restraint techniques involving the infliction of pain in prison establishments for those under 18.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, the Government are currently reviewing full search practice in the under-18 secure estate to ensure that it is proportionate and appropriate, and they will fully consider any recommendations that arise from the review. Physical restraint in the under-18 secure estate is to be used only as a last resort where all other options have not succeeded or could not succeed in bringing a violent or potentially dangerous situation under control. A new system of restraint for use in the under-18 secure estate is currently being developed.

Baroness Stern: I thank the Minister for that reply. Does he agree that this report from the Council of Europe committee echoes what has been said in your Lordships' House many times—that the deliberate infliction of pain as a method of controlling young people in custody is unacceptable? Does he recall that in December 2008 the Government said that the technique of inflicting pain on the nose in prison institutions for juveniles would be replaced with a safer alternative within six months? That was 13 months ago. Can the Minister tell the House what has happened to that commitment and when he expects this dangerous practice to be stopped?

Lord Bach: My Lords, I start by saying what is probably obvious to Members of the House: unfortunately, but in the real world, the behaviour of some young people in custody is extremely challenging and can put their own safety and that of other young people and staff at serious risk. We have to be realistic about this. We have accepted the recommendation from the independent review of restraints that the nose distraction technique should be withdrawn from use in the under-18 estate. The technique has been withdrawn from secure training centres and will be withdrawn from young offender institutions once a suitable alternative is in place. The decision not to withdraw it prior to that is based on the need to have in place a technique that enables staff to deal quickly and effectively with incidents of violence by young people where they may be biting a member of staff or another young person.

Baroness Walmsley: Will the Minister join me in regretting the decision by the YJB to appeal the decision by the Information Commissioner that the restraint manual should be published? Parents at the very least, if not the wider public, should certainly know what is happening to their young people. Will the Government go further and follow the model of the Australian department of corrections, which involves parents in planning the management of young people following serious incidents?

Lord Bach: I am afraid that I do not agree with the noble Baroness on that. The general part of the manual is already in the Library of the House. The part that has not been disclosed is the detailed description of the specific techniques. We believe that a detailed knowledge of the techniques, as applied, would allow those being restrained to take countermeasures that would reduce the effectiveness of the techniques and put trainees, staff and other persons in the secure establishment at risk. As the noble Baroness says, the Information Commissioner's decision on this is being appealed, and we will just have to await the result.

Baroness Corston: My Lords, perhaps I may draw the attention of my noble friend the Minister to one of the recommendations in my report on women in prison, the effect of which was to abolish routine strip-searching in women's prisons from 1 April 2009, and its replacement by a new system whereby strip-searching was done on an intelligence basis rather than as a matter of routine. I understand that the effect has been wholly beneficial. Might not that be considered in the light of this review of routine strip-searching for young people?

Lord Bach: I am very grateful to my noble friend for reminding us that her report led to that change, particularly with regard to female offenders aged 17. One of the matters that we are looking at hard, with the Youth Justice Board review about to go to the relevant Ministers, is whether intelligence-led searching is not a better way forward.

Baroness Howarth of Breckland: My Lords, I am sure that the Minister would not necessarily agree with me on the matter of placing our young people in penal establishments rather than in establishments that deal with their development and their particular difficulties. However, I have been responsible for some of the establishments that have had some of the most difficult young people in them, and it is my experience that changing from a regime that looks at their development and difficulties to one that places the majority of them in penal establishments leads, in fact, to a deterioration in their behaviour. Would it not be better to look more strategically at where young people are placed and at how we look at their future, rather than considering the matter piecemeal as we address this very difficult issue of inflicting pain?

Lord Bach: My Lords, I agree with a great deal of what the noble Baroness says. Unfortunately, young people occasionally need to be remanded in secure accommodation or, at a particular age, in a young offender institution. I hope she will agree that a huge change has taken place in the way in which training

[LORD BACH]
and education occur in those establishments—which are crucial to trying to ensure not only that young offenders are punished but that, when they come out, they can avoid crime in the future. I want to reassure her that the ideas that she has put forward are very much our ideas too.

Lord Campbell of Alloway: May I, for once, rather support the Government? In this particular situation, where gangs of children have taken charge of our streets and our cities, it is no easy problem. We are not obviously dealing with it in the right way, but it is difficult to criticise at this time, unless anyone can suggest a way in which to deal with the gangs of children on our streets.

Lord Bach: I am grateful to the noble Lord for his support. As the House will know, these are deeply difficult and sensitive issues. No one wants to punish children unnecessarily, but there are young people who need to be locked away for a while, as long as they are educated and trained and every effort is made to ensure that they do not reoffend when they come out. That is what we are trying to do. A huge effort on all sides is going into trying to deal with the difficult issue of young people in custody.

Further Education: Capital Investment

Question

3.15 pm

Asked By ***Baroness Garden of Frognal***

To ask Her Majesty's Government what assessment they have made of the extent to which the Learning and Skills Council's *16-19 Capital Fund and Policy Guidance: 2007-08 Onwards* takes into account the current capital needs of the further education sector.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): My Lords, the Learning and Skills Council's 16-19 capital policy and associated fund applies equally to school and college projects that lead to the expansion of 16-19 provision. This may be a result of 16-19 competitions or an identified strategic need for increased 16-19 places. In addition, the Department for Children, Schools and Families has contributed £40 million from its 16-19 capital fund for 2009-10, and £40 million from 2010-11, to the LSC's FE college capital programme to support the growth of 16-19 places within FE college capital projects.

Baroness Garden of Frognal: My Lords, I thank the Minister for his reply. On 21 December, we heard that the Learning and Skills Council announced that it was to spend allocations for the 16-19 capital fund on four schools and two colleges. That decision was taken based on guidance written in 2007 and did not take into account that, since then, the recession has vastly increased the demand for education and training and the disastrous collapse of the LSC's capital funding scheme, which has left colleges in so many difficulties. The Government declare a strong commitment to work-based learning for 16 to 19 year-olds and, as FE colleges provide the vast majority of those places, can the Minister give some assurance that there will be additional funding from the 16-19 capital fund or elsewhere, which can help the colleges meet their commitments?

Lord Young of Norwood Green: My department, through its FE capital fund, will spend £1.7 billion on college buildings in the current comprehensive spending review, with a further £900 million already earmarked for the next spending period. This government policy has meant that since 2001, 700 projects and nearly 300 colleges have been funded, transforming the FE estate for learners. I remind the noble Baroness that in 1997 not a single penny was earmarked for college building developments. Indeed, the NAO described it as a crumbling infrastructure. We have spent an enormous amount and will continue to spend on FE colleges in the light of the recommendations of the Foster report.

Lord De Mauley: Will the Minister take this opportunity to provide an update on the ministerial Statement of 26 June, which disclosed that only 13 of the 144 college building projects which had had their funding frozen had by then been given the go-ahead, every one of which happens to be in a Labour-held constituency?

Lord Young of Norwood Green: My Lords, that was an unfortunate remark—I give the noble Lord the benefit of the doubt in describing it as unfortunate. The 13 were chosen following a robust and thorough assessment by independent consultants against prioritisation criteria agreed with the sector, which built on Sir Andrew Foster's recommendations.

Baroness Walmsley: Why does it take so long for the LSC to process capital funding applications? It took nearly 12 months for the NSA Creative & Cultural Skills application to be processed. It then required the money to be spent within just over a year. Then, apart from two directors, the majority of the staff of the LSC got bonuses.

Lord Young of Norwood Green: Right. Perhaps I should deal with the second issue first before we get carried away in imagining that LSC staff are receiving bankers' bonuses, of which I am sure some noble Lords on the other side are so fond. LSC staff improved on the number of people who were successfully in learning, so they met a number of their targets.

In relation to the noble Baroness's first point on the National Skills Academy for Creative & Cultural Skills, we are supportive of that project. There was some delay, but we always made it clear to Creative & Cultural Skills that the money was budgeted for and had to be spent by the end of March 2011. We should not forget that the Government are providing a £5 million investment. We regret the delay in the first instance and we make it clear that we urge the National Skills Academy for Creative & Cultural Skills to work with the LSC to discuss how these issues can be resolved to mutual benefit.

Baroness Walmsley: The Minister said that the LSC met its targets. Is 12 months to process a capital application within the normal targets for that organisation?

Lord Young of Norwood Green: In referring to the targets in relation to bonuses, I was referring to the targets of the number of learners who have been taken successfully through the learning programmes. I have already made it clear that there were some problems with that budgetary allocation, but surely the main point, which I would have thought the noble Baroness would be pleased with, is that there is a guaranteed £5 million of government investment towards this project. The main objective ought to be, I am sure she will agree, that it ought to work with the LSC in ensuring that it can resolve this issue.

Public Expenditure

Question

3.21 pm

Asked By ***Lord Sheldon***

To ask Her Majesty's Government when they plan to begin to cut public expenditure.

The Financial Services Secretary to the Treasury (Lord Myners): My Lords, from 2011-12, the Government will reduce the rate of spending growth. Public sector current expenditure will grow by an average of 0.8 per cent a year in real terms from 2011-12 to 2014-15, and public sector net investment will move to 1.25 per cent of GDP by 2013-14 and will be maintained at that level in 2014-15.

Lord Sheldon: I thank my noble friend for that reply. It is clear that maintaining the levels of public expenditure has been a sensible element in the economy in the past year, but if there is to be a pre-election Budget, should it not reduce, or even further limit, the level of public expenditure?

Lord Myners: Maintaining the level of public expenditure, and indeed bringing forward public sector investment into the current period, has undoubtedly helped to ameliorate the worst outcomes of the recession, as a result of which we have seen much lower unemployment, much lower business failure and much lower levels of repossession. It is the judgment of the Chancellor that it is still too soon for us to reduce the fiscal push from which the economy continues to benefit. Whether there will be another Budget between now and the election is not a matter for me to determine.

Baroness Noakes: I notice that the Minister has difficulty in getting the words "expenditure cuts" out, a little like the Prime Minister, although the Prime Minister has now owned up to the fact that, because certain budgets will be protected, there will be very significant cuts to other budgets of anything up to 19 per cent. Since the Government are now partially owning up to the fact that there have to be cuts, is it not now time for a Comprehensive Spending Review, which would give planning certainty to all those on whom these cuts will have to fall?

Lord Myners: There have been five Comprehensive Spending Reviews since 1997, covering variable periods. The current CSR07 continues to apply until April 2011. My right honourable friend, the Chancellor of the Exchequer, has quite rightly concluded that, in an environment in which there is still poor global visibility about whether the recovery is well rooted and established, it would be inappropriate to carry out a CSR. I feel that the noble Baroness at times comes with her questions so well prepared that she may not listen carefully to what I say. I very clearly said that we will be reducing the rate of spending growth.

Lord Bilimoria: My Lords, I am sure that the Minister would agree that we now have record levels of public sector employment. On the other hand, we seem to have lost a sense of balance in that the old understanding was that the public sector had jobs for life, high pensions and job security, but relatively low pay. Today the public sector earns, on average, more than the private sector and has gold-plated pensions. Is not the public sector now having its cake and eating it too? Does the Minister feel that we can afford this unfair situation any longer?

Lord Myners: The first point I would make to the noble Lord, Lord Bilimoria, on unemployment is that the United Kingdom has lower levels of unemployment than the United States and many of our major competitor EU countries. That is precisely because of the policies that this Government have so successfully followed in dealing with this global recession. In identifying areas where savings can be made in public expenditure, we have been very clear that one of the areas we will be targeting is public sector employment costs. In particular, the Chancellor of the Exchequer has referred to the need for a 1 per cent cap on public sector pay entitlements in 2011 and 2012, which will save £3.5 billion a year, and for reforms to public sector pensions, which will save in excess of £1 billion a year from 2012 onwards.

Lord Howarth of Newport: My Lords, would we not have been obliged to cut public expenditure earlier and more deeply if the Prime Minister, when he was Chancellor of the Exchequer, had not had the wisdom to keep us out of the euro? Can my noble friend help me understand why any political party would want to inflict that kind of damage on public services gratuitously?

Lord Myners: It is not for me to explain the policies of Her Majesty's Opposition in this respect. I cannot dream up the arguments that would choose to bring an increase in unemployment and destroy the prospects of smaller companies in this country at such a fragile time in our economic recovery. However, the Chancellor of the Exchequer at that time, through his prudent stewardship of our economy, ensured that we went into the recession with the second-lowest borrowing as a percentage of GDP of any G7 country. Even on our worst case estimates of the outlook over the next four or five years, we will still have borrowing in line with, or below, the average of the world's major developed countries when expressed as a percentage of GDP. That is sound and prudent economic management for you.

Lord Brittan of Spennithorne: My Lords, does the Minister not agree that the only argument is about the timing of cuts, not about their necessity? If that is the case, would he not further agree that if a programme of cuts is not to be botched and therefore arbitrary, it needs careful planning and that it is not a moment too soon to begin the process of planning those cuts?

Lord Myners: The Chancellor of the Exchequer has been very clear that the next spending round will be the toughest for the past 20 years. We are going to have to look very carefully at all elements of public expenditure to ensure that programmes that do not represent priorities or for which there is not an immediate need are reprioritised, but that we continue to support programmes that are consistent with the Government's values: programmes about supporting British families, a fair society and a society of opportunity. I can assure the noble Lord, Lord Brittan, that thinking around those priorities is constantly taking place.

Lord Newby: The Minister said that it is too soon to reduce the fiscal push. Could he explain why the Government have recently announced major cut-backs in expenditure for higher education? Does he not think that that will be very damaging, not just to the overall fiscal position but to producing a flow of highly skilled young people into the workforce in future?

Lord Myners: In the most recent PBR, one of the areas that we gave significant priority to was to continue to invest in the provision of funds to support the education system. Of course, the scaling back of support for universities in the immediate future comes after a period of quite exceptionally strong growth in investment in that sector.

Lord Kinnock: My Lords, was not the Governor of the Bank of the England right to say to a committee of this House that the speed of deficit reduction should be contingent on the state of the economy? Is it not plain that sustained recovery requires gradual, deliberate deficit reduction on the path being followed by Her Majesty's Government and not the precipitate cuts that would sabotage the recovery that is being promised by the Opposition?

Lord Myners: I absolutely agree with my noble friend. That is why we are committed, through the deficit reduction plan, to halve the deficit as a percentage of GDP over a four-year period once recovery is firmly established. However, we will not place at risk the recovery.

HMRC: Winding-up Petitions

Question

3.30 pm

Asked By ***Baroness Noakes***

To ask Her Majesty's Government what proportion of total winding up petitions are being lodged by Her Majesty's Revenue and Customs and other Government departments.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): My Lords, the proportion of winding-up petitions filed by Her Majesty's Revenue and Customs in England and Wales between April and September 2009 is about 30 per cent. The proportion of petitions filed by other government departments over the same period amounted to less than 2 per cent.

Baroness Noakes: My Lords, I am grateful to the Minister for that response. It is in fact at variance with the research findings of the accountants Hacker Young that were published earlier this week, which found that, in the last six months, HMRC accounted for 43 per cent—nearly half—of all petitions for insolvencies. This is at a time of recession, when insolvencies are increasing at a rate that is a great tragedy. Can the Minister assure the House that HMRC, and indeed any other government departments, are treating small businesses fairly in these difficult times, given the pressure that they are putting on banks and other lenders to treat their customers fairly?

Lord Young of Norwood Green: I thank the noble Baroness for her supplementary question. I can assure her that departments are treating businesses fairly. HMRC's Business Payments Support Service has supported over 160,000 businesses collectively employing more than 1.2 million people, spread over £4 billion-worth of tax. Of this, more than £3 billion has already been repaid. HMRC will continue to offer this service as part of its time-to-pay arrangements. On company failures, I would say this. We currently have registered at Companies House double the number of companies registered in the early 1990s, when we had a failure rate of 2.6 per cent. Among the companies currently registered, we have a failure rate of only 0.9 per cent. So I think that the record of HMRC and the Government in assisting companies during a very difficult period of recession is exceedingly good.

Lord Hunt of Wirral: Is the Minister aware that this is a very serious situation? I think that we are all very concerned about some of the figures he has given. At a time of record levels of youth unemployment, will he extend the answer to cover winding-up petitions presented by companies in which the Government have a majority shareholding, such as banks?

Lord Young of Norwood Green: I will have to come back to the noble Lord on that particular issue. We have the break-downs for the different government departments but not for that particular area. However, I stand by my previous statement. In the wider measures that the Government are taking to support businesses—whether in the reduction of VAT, the car scrappage scheme or the encouragement of enterprises—we are doing everything we can to ensure the maximum success of companies and to reduce the number of failures. As I said in my previous statement, compared to previous recessions, we are doing much better than expected in the level of failures.

Lord Teverson: My Lords, clearly it is good that businesses do not go into liquidation. However, is not one of the problems at the moment pre-packs? Organisations which have often been less careful in

their management shed their debts, often get their capital equipment back for free and then undercut small and medium-sized businesses that have traded fairly and looked after their resources well.

Lord Young of Norwood Green: My Lords, our view of pre-packs is that they have a role to play. In some cases they have managed to preserve value in a business, thereby retaining jobs and economic activity which otherwise would have been lost. There is no perfect solution, but we believe that in certain circumstances they have benefited the business concerned and thus enabled people to retain their jobs.

Lord Barnett: My Lords, I declare a past interest as a former senior partner in Hacker Young in the Manchester branch. Will my noble friend have a word with HMRC about the interest charge it makes on small companies which delay payment of VAT or any other form of taxation? The rate it is charging seems to be even higher than that at which a company could borrow it from the bank.

Lord Young of Norwood Green: I think that my noble friend is aware of the Government's attitude to prompt payments. I will do my best to take his point into account and recognise its validity.

Lord Newby: Does the Minister accept that one of the reasons why there is such a high level of company failures is that the banks are refusing to roll over facilities on terms that even vaguely reflect the previous facilities and are charging a lot more? Will the Government keep pressure on the banks to make sure that, particularly in the manufacturing sector, when companies with a good order book need a facility, they can renegotiate it with a level of fees and rate of interest that are not significantly worse than those under which they previously operated?

Lord Young of Norwood Green: I can reassure the noble Lord that we will do everything we can. We have been working in this area. We have introduced a range of measures to help businesses survive the recession and come through it in a stronger shape, including action to ensure that businesses get the finance they need and securing legal commitments from RBS and Lloyds to lend an additional £27 billion to business between March 2009 and 2010.

Personal Care at Home Bill

First Reading

3.36 pm

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

Haiti: Earthquake

Statement

3.37 pm

Lord Brett: My Lords, with permission, I will repeat the Answer to an Urgent Question given in another place about supporting the people of Haiti in the aftermath of the earthquake.

"A series of major earthquakes struck Haiti last night in the area around the capital, Port-au-Prince. The strongest of these was reported at 7.2 on the Richter scale and up to 13 aftershocks have taken place. Information on the scale of damage and the number of people killed or injured is slowly emerging. We estimate that some 6 million people live in the affected area and 1 million people in the worst affected area. Early press reports and limited information from the United States Government and the United Nations describe numerous collapsed buildings, including a hospital, many houses and the presidential palace. By any measure this is an awful disaster.

My department has a four-person field assessment team en route to Port-au-Prince in order to determine the priorities for urgent assistance. We have mobilised a UK fire and rescue service search and rescue team of 64 people with dogs and heavy rescue equipment. The team and its 10 tonnes of equipment are at present assembling at Gatwick and are ready to deploy as soon as the airport reopens following heavy snow. We are urgently looking at all options to ensure that the search and rescue team can deploy as quickly as possible, including the possibility of an RAF flight.

I have been informed that the United States currently has two search and rescue teams mobilising and ready to depart from Miami. The Iceland search and rescue team is also mobilising. A further complication facing all teams is that the Port-au-Prince airport is believed to be unusable. We are urgently assessing alternatives. Haiti is one of the poorest countries in the world. The need in the aftermath of this tragedy is likely to be very great. The United Kingdom is ready to provide whatever humanitarian assistance is required".

My Lords, that concludes the Statement.

3.39 pm

Baroness Rawlings: My Lords, we are deeply grateful to the Minister for repeating the statement made by the Secretary of State in another place. Throughout the country there will be concern for the people of Haiti at this awful time. Haiti, as the Minister said, is one of the poorest countries in the western hemisphere and is the least well equipped to cope with this catastrophe. As all evidence shows, the actions that are taken in the immediate aftermath of this disaster are vital. In this case, the whole international community should make a swift and effective response, although clearly the US is in the key position to provide help. Can the Minister give further detail about the composition of the UK assessment team that has been dispatched to the region? When will it arrive and when will we know what further support the UK Government can offer?

After the earthquake and flooding in east Asia last year, there were worrying reports of problems with the co-ordination of the British response effort and difficulties in arranging transport to the region, not least in facilitating the arrival of British NGOs which had a contribution to make. What discussions has the Minister had with his counterpart at the DCLG, given that UK fire and rescue services now take the lead on international search and rescue? Can he assure the House that the whole Whitehall machinery, as well as just DfID, is firmly joined up at this point? Can the Minister provide

[Baroness Rawlings]
us with any information about the number of British nationals currently in Haiti, their situation, and steps that are being taken to look after them?

The United States will no doubt have the leading role in the international response. What recent conversations has the Minister had with his counterparts in the US to make certain that the international response is properly co-ordinated? Many members of the British public will want to do all they can to support the people of Haiti at this time. What guidance can the Minister give as to how their efforts should best be directed? Can the Minister update the House on how the neighbouring Dominican Republic has been affected?

In 2007 the shadow Minister for International Development became the first senior British politician for some time to visit Haiti and spent some time with the UN forces there. We hear that the UN forces have been severely hit by the earthquake. Can the Minister update the House on the impact of the earthquake on the UN mission in Haiti and what discussions he has had with colleagues at UNDPKO in New York about this? Our total focus at the moment must be on saving lives and getting help for those who need it. As the Chinese say, every crisis is an opportunity. Will the Minister accept that, in due course and when the time is right, we will need a full review of Britain's emergency response process?

3.43 pm

Baroness Northover: My Lords, I also thank the noble Lord for repeating this statement and I associate myself and these Benches with the condolences that have already been expressed for those who have suffered in this devastating earthquake.

The picture is not clear. For example, the noble Lord says that the airport is damaged, hampering relief, but the BBC reports that the Haiti ambassador in the US says that it is open. I wondered if he could clarify that. Our own team is going out of Gatwick, which, as I understand it, is closed because of snow until 4 pm this afternoon. What is being done to try to get our own teams out, given the pressure of time? This earthquake has hit the poorest country in the western hemisphere. It is very badly prepared for such an event. Its buildings are weak; many are made of concrete and are very vulnerable in such a situation because of dire poverty. Haiti was hit last year by hurricanes and other storms. It has a very fragile society and the earthquake struck in areas of dense population. We know that when hurricanes hit Haiti and Cuba recently there was much greater loss of life in Haiti, because of an inability to organise there, than in Cuba, where things were organised well. Does the noble Lord see this as a problem?

This earthquake was followed by two significant aftershocks. What tends to happen is that people run out of their homes after the first shake, only to have masonry fall on them in the aftershocks. Is that what seems to have happened here? There are numerous NGOs as well as the UN on the ground which may help in the coming days, but they themselves have been caught up in this, as we have heard. UN peacekeepers were in Haiti, and we have heard of casualties; for example, the head of the UN mission himself and Chinese peacekeepers. Can the Minister confirm these reports? Does he think that there are UK citizens among the casualties? The NGOs with which I have been in touch cannot yet account for all their people. I realise that Haiti has not been a priority for DfID, but could he spell out more precisely what DfID's own contribution will be? My noble friend Lord McNally points out that the Royal Navy is patrolling in the Caribbean as part of our operation to counter the drugs trade. Is it able to reach Haiti? Is there something that it can do to help?

What help is being accorded to the NGOs that are there? Many of them are moving in: I have heard from the Red Cross, Oxfam and UNICEF this morning and all are mobilising. Plan International, Save the Children and others have expressed extreme worry about children in this disaster, which is a very common problem. Children are extremely vulnerable. What can the noble Lord tell us about their protection? We heard in the Kashmiri earthquake, for example, not only of the death of children but also of their lack of protection and even their being abducted by people traffickers. What is being done internationally in the light of what happened in Kashmir to try to reduce this risk in this very vulnerable society?

We have already heard of looting, so it is clear that things are breaking down in Haiti more than they already were. Can the Minister tell us more about what is being done to try to establish order there? Oxfam has emphasised the need for emergency shelter, water supply and sanitation, which are absolutely critical in this next phase. What is being done multilaterally?

Given the international action in Haiti, what can be done to ensure that basic infrastructure such as hospitals, government buildings and schools is more earthquake-proof? I note that the hospital has been very badly damaged. It is surprising, given the risk of an earthquake in this part of the world, that those buildings were not more earthquake-proof. Earthquakes of a higher level in developed countries do not cause mass casualties because of the way in which the buildings are constructed. Surely buildings that were constructed after the hurricanes should at the very least have been more earthquake-proof, given that Haiti is on a fault line and that pressure on it meant a high likelihood of an earthquake? What can be said about Commonwealth countries in the region? Are they at further risk of earthquakes as a result of what has happened on that same fault line?

This is a terrible situation in a very poor country, and emergency and medical treatment must be got in as soon as possible and the situation stabilised. I hope that DfID will make a contribution to rebuilding based on the enormous knowledge that we have about how best to construct buildings so that they are earthquake-proof, and that one does not have the mass casualties that appear to be the case in this instance.

3.48 pm

Lord Brett: My Lords, I appreciate the comments of both noble Baronesses. I am sure that they speak not only for this House but for the whole of Britain in expressing their commiserations for the misery that has been visited on this poorest of western-hemisphere

countries. Both noble Baronesses asked a number of apposite questions, but they will not be amazed to find that not all the answers are available, which is in the main due to the fact that we are still at the point of not knowing what is happening in much of Port-au-Prince and the areas around it. I shall try to tell the noble Baronesses what we are doing. My colleague the Minister in the other place said in responding to the Urgent Question that there would be a further Statement to Parliament as knowledge of the scale of the disaster, and the assessment of what is needed and what part Britain can play, unfolded.

As we all agree, search and rescue is the first and most immediate requirement, followed by a whole series of actions to put right the difficulties and then a learning of lessons for the future. We set up the operations room in DfID immediately after becoming aware of the disaster. We have seen efficiency and effectiveness in the speed with which we have moved to put together the voluntary team of 64 firefighters, with some 10 tonnes of equipment and dogs, and got it to Gatwick Airport, with a chartered flight to take it out to Port-au-Prince. Unfortunately, as we know, the weather is holding us up. We have arranged priority for that flight to depart as soon as runway space and airspace are available and weather conditions allow. At present, this would still be the quickest way to get those firefighters out. It is crucial to get to those people who require rescue within 72 hours, so that is our first priority.

The assessment team is four people who are expert in this area, including a colleague based in the West Indies who is coming via Barbados and is aware of the region. They will begin reporting back as soon as they start to collect information. They are en route, flying via Santo Domingo where they will have a briefing with our ambassador and staff. This will start to give us a picture that will answer the noble Baroness's question about the impact within the other country on the island of Hispaniola, and will begin to give us a view on some of the problems that might be faced going into Haiti.

If I can jump towards the end of the noble Baroness's questions and answer on security, yes, there have been looting attempts in the UN compound, which has collapsed. There are 9,000 UN peacekeeping troops within Haiti—3,000 deployed and 6,000 not yet deployed—and the UN has offered their services to provide protection for rescue groups going in. That protection can be extended to buildings and food supplies and to assist the Haitian civil authorities.

The amount of information available to us, though, is very sparse and the news media updates us with information more quickly, although not necessarily accurately so we have to check. We know, for example, that two high-level officials within the UN team based there are missing but we cannot confirm their deaths or their identities. Those details will, unfortunately, emerge in time.

There is an international effort. There have been very generous offers of assistance made by the United States and Germany, and we will press our colleagues in the European Union to be as generous as possible. However, we know from previous experiences, as the noble Baroness referred to in terms of east Asia, that it is not only a question of generosity of spirit or money—it is a question of efficiency and co-ordination and we are anxious to ensure that we have the best co-ordination possible, hence our looking at the assessment of needs first. One need have no doubt that the UK is more than ready to play its part, as was made very clear by the Prime Minister at PMQs when he said that we stand ready to provide whatever humanitarian assistance is required. That information will start to flow back and action will flow from it across government in the next few days.

A very important part of rescue and rehabilitation during disasters, not only in this country but across the world, is carried out by British NGOs, British faith groups and British-based charities. They play a valuable part in raising funding and in helping countries. There are teams from British NGOs already in Haiti. My colleague the Minister Douglas Alexander is co-coordinating a meeting of British NGOs as soon as possible—this afternoon or more likely tomorrow—to look at precisely what problems they have, what they are doing to fundraise and how best we can together carry forward what has been, on previous occasions, a great generosity of spirit by the British people. We need to harness this to ensure we have the best response to help the people of Haiti.

We have no information from Santo Domingo of any serious effect on the Dominican Republic but this will be clarified when we have a more detailed report.

We are in touch with the Ministry of Defence about the possible use of Royal Naval vessels in the vicinity, and we will co-ordinate with the United States, which has a much more active presence in the country. Two years ago, when four hurricanes hit the country in one month, we were able to send four hospital ships to help, which would be vital on this occasion, when we know that there have been casualties in hospitals.

The information available to us will become available to our international colleagues, whether in the United Nations specialised agencies or other member states. It is the intention of the British Government to work closely in co-ordination with them, which I hope will give us the ability to move very quickly and effectively. There will be a further Statement to Parliament in the next few days to carry forward and answer more fully the apposite questions put by colleagues from the Conservative and Liberal Democrat Front Benches.

3.55 pm

Baroness Sharples: Can the noble Lord tell us whether the dogs involved in search and rescue will have to go into quarantine when they return?

Lord Brett: The noble Baroness will not be tremendously surprised to know that that has not been central to my thoughts in the past couple of hours on Haiti, and I do not have the answer to that question. However, I shall certainly check it and write to her.

Lord Morris of Handsworth: My Lords, we know that the airport at Gatwick is closed, which prohibits flights taking off, but I understood the Minister to say that RAF planes are on standby. What is stopping

[Lord Morris of Handsworth]
those RAF planes taking off from one of the military airports? Are there any plans for a high-level official to visit in due course to make an on-the-ground impact assessment and report back on the urgent and imminent needs?

Lord Brett: On the first part, it is a question of time and logistics. We have the personnel and 10 tonnes of equipment all ready to go, and we have the aircraft on the ground at Gatwick, waiting for clearance to depart. If the latest information is that the airport will open at 4 pm, departing then is by far the best option. If we knew it was to be delayed by 24 hours, the option of moving by road to another airport and using RAF bases and RAF aircraft is one that would have to be considered. But at the moment, the most effective way in which to move forward is to rely on the good offices of Gatwick Airport getting clearance with the snow and getting an aircraft in the air in the next couple of hours.

On the second part of the noble Lord's question, on whether a high-level representative should at some stage go to Haiti and make an on-the-ground assessment, that is a matter dependent on the reports that come back, the degree to which we co-ordinate with other bodies and whether such a visit would prove useful. At the moment, we are agnostic on that. We have not decided whether it is necessary but, as the evidence emerges, it will either support or confound the need for such a visit.

Baroness Howe of Idlicote: My Lords, I am sure that all noble Lords are appalled by the news that we have heard today and cheered by the steps under way. I wanted to follow up on the NGOs, especially those such as Plan, which has had experience in Haiti for more than 30 years and a great deal of influence as regards children. I hope that there will be sufficient co-ordination and involvement of the expertise of government and the NGOs together to do their very best for the country. Already there are tremendous responses to appeals that have been put out, all of which is good; but it is the practical help with the children and the possible exploitation that we have heard about that is so important. I seek reassurance on that and the combination of the medical supplies, which is very important.

Lord Brett: My Lords, I could not agree more with the noble Baroness. DfID has been conscious for its whole existence, with perhaps a greater emphasis in later years, of the essential role played by the voluntary community—NGOs, charities and faith groups—particularly in tragedies such as this. I offer the reassurance that she seeks; DfID will seek to use the expertise of all those who can help, because it recognises in these situations that the more one has the ability to co-ordinate urgent well funded and well directed assistance, the more likely we are to minimise the tragedy for families and get people out of the misery in which they find themselves, so that their health can be restored and they have again the normal, basic services of life. I offer the reassurance that the noble Baroness seeks. The fact that my ministerial colleague Mr Alexander is urgently meeting the NGO community this afternoon or tomorrow morning shows the good faith of that.

Lord Judd: I thank my noble friend for the Statement and the reassurance that the Government are going to do everything possible, but does he accept that, for any of us who have ever visited Haiti, the thought of what has happened is in every sense a nightmare? The extreme poverty and the marginal nature of existence for so many of the people in Haiti must mean that the punishment and the pain are particularly dreadful. Does my noble friend agree that while it will be important to mobilise large-scale assistance, obviously, as he has said, if such assistance is not well co-ordinated and without an effective context for delivery it could actually do harm, and that therefore it is essential to get that co-ordination right? Can he assure the House that in the consultations with NGOs, which he says are going to take place, particular care will be taken to use their knowledge and expertise in being close to the ground in shaping the programme and the co-ordination, and not simply playing a part within it?

Lord Brett: My Lords, I will not call it a privilege, but I have had the opportunity to visit Haiti. I can understand why in the press reports I read today that at least one voice was heard to say, "This is the end of the world". If you have lived in Haiti and you have put up with 20 years of everything from corruption to dictatorship, natural disasters, abject poverty and impunity for people who kill each other, then you can see why you might think you were the most benighted people in the most benighted country. I think that places a greater responsibility on us. I entirely agree with my noble friend that, in that context, assistance should be provided not just in the form of material aid or funding; it should also be well co-ordinated.

The United Nations itself, very much at the instigation of the UK Government, has been seeking to make its approach—speaking as someone who worked in that system, I confess that its approach has not always been the most co-ordinated—one where the resident co-ordinator, who is the head of the team, seeks to discuss with NGOs and everyone else how best to use the team effort available to rescue and then to rehabilitate. In that sense the NGOs have a part to play. On the other hand, one has to be absolutely clear that in the past not all the NGOs have been as co-ordinated as they might have been. This is a collective effort that requires both discipline and drive. On this occasion, given the goodwill that exists for the benighted people of Haiti, there is a responsibility to ensure that that drive and determination is carried through.

Lord Dholakia: My Lords, first, I endorse the comments made by the noble Baroness, Lady Howe. As one who is associated with Plan International, I can say that we have been working in the region for over 30 years. Today, it has released over £60,000 to be able to assist immediately.

My main concern is not only the co-ordination but the amount of financial resources that we collect. Could we ensure quick expedition, unlike during the tsunami when substantial funds were collected in this country and it took years and years to disperse them?

Lord Brett: The noble Lord makes a very good point. It seems to me that there are lessons which we have to learn and should have learnt; I have to say that

we appear not to have learnt them on all occasions. There is unfortunately sometimes a degree of competition, either between NGOs or between Governments, to prove their generosity but not necessarily to do it in the most efficient and effective way. The noble Lord makes the very good point that expedition is important, but co-ordination is equally important. DfID has that as a very central policy, and seeks to persuade others to that view. I hope that on this occasion the enormity of the problem will stop some of those vanities from getting in the way of effective assistance to the people of Haiti.

Viscount Montgomery of Alamein: My Lords, when the Minister's department starts to consider the longer-term solution and recovery of Haiti, will he try to ensure that the department considers maximising the amount of hardware and technical assistance and minimising the amount of direct cash, which often ends up in the wrong place? Technical assistance and hardware, when well thought out, produce the best results.

Lord Brett: The noble Viscount is absolutely right that there is always a danger, in providing assistance of the financial kind, that cunning and effective minds seek to divert it from its purpose to other purposes. DfID in particular looks to see that that is not the case and, if we do not feel that we can work through agencies of government because of those fears, we look to the NGO community and others whose reputation and history is one of effective and non-corrupt provision. It is right to take the noble Viscount's words on board, but in each case we have to assess which is the best form of assistance to be given, which is the best form of delivery, and who the best partners are to do that with.

Lord Hannay of Chiswick: Will the noble Lord give a commitment from the Government that if and when—I am sure that this will happen very shortly—the United Nations launches an appeal for Haiti, the Government will make a substantial contribution to that appeal? Will he recognise that in the case of Haiti—where there is a large UN peace operation, which is not only military but civilian, on the ground—the United Nations is probably quite well placed to help effectively with co-ordination, and that it is therefore important that we work closely with the UN Under-Secretary-General for Humanitarian Affairs?

Lord Brett: My Lords, among the immediate announcements made today of financial assistance, I believe that the Secretary-General of the United Nations has made a commitment to some $10 million. The noble Lord is a great expert and an old enough hand to know that I am not likely to make a commitment to a specific cause when the causes to which we are committed are the most effective way of dealing with the position of the poor people of Haiti. I am sure that he is right about the United Nations and its ability to do that. There will be many calls upon its funds. The important thing is to go back to the co-ordination of funding and how those funds are spent. I fall back with comfort on the words of the Prime Minister; whatever is required, we will do.

Baroness Howells of St Davids: My Lords, not so long ago during the hurricanes in the Caribbean there was only one ship at a time in the ocean there. Although the noble Lord, Lord West, did his best, that ship had to leave unfinished business in Grenada, where it first happened; it had to go on to other islands. We were promised then that there would always be more than one ship available should any disaster like this strike. Can my noble friend tell us how many ships are in the region at the moment?

Lord Brett: No, my Lords, I cannot directly answer my noble friend's question. I will seek to provide the answer, and I am sure that that and much more information will come forth in the statement to Parliament that my noble friend the Minister has promised in another place. I hope that that will be within the next few days.

Lord Jones of Cheltenham: My Lords, the Minister will know that the Turks and Caicos Islands, a British Overseas Territory, are near to Haiti. TCI has suffered in recent years from a fairly large number of illegal immigrants from Haiti. Will he ensure that Ministers talk to the Governor of TCI, where we have imposed direct rule, to give him the best advice possible in case there is another upsurge of illegal immigration from Haiti to TCI?

Lord Brett: I thank the noble Lord for that question. I shall certainly refer it to my colleagues in the Foreign and Commonwealth Office. I suppose this is probably the last question. One small bit of hope that arises—not hope, but the consolation that things could have been worse—is that there was no tsunami to accompany this particular earthquake because of its epicentre. Had there been so, then, yes, within the Caribbean there would have been a much greater impact on life. It may be a small mercy. There are not many mercies to be counted, but I suppose in that sense things could have been even worse.

Equality Bill

Committee (2nd Day)

4.10 pm

Clause 10: Religion or belief

Amendment 20

Moved by ***Baroness Warsi***

20: Clause 10, page 6, line 11, leave out "or philosophical"

Baroness Warsi: My Lords, this amendment effectively leaves out the words "or philosophical" from the definition of religion or belief. We have tabled this amendment in order to probe what exactly will be included in religion or belief as is used in this Bill. Part of the reason for the great welcome which this Bill received when it entered your Lordships' House was that it consolidates and helps to simplify a very complicated area of legislation.

[Baroness Warsi]

In keeping with this theme, it is therefore necessary to maintain the utmost clarity when defining the terms of what is included under a protected characteristic. The Explanatory Notes are very helpful in this area. They explain that this is a very

"broad definition in line with the freedom of thought, conscience and religion guaranteed by Article 9 of the European Convention on Human Rights".

This means that the "main limitation" is that

"the religion of belief must have a clear structure and belief system",

and that this will include denominations or sects within a particular religion, and those beliefs such as humanism or atheism.

This appears simple and to provide an adequate description for the purposes of the Bill. The examples show that while such belief systems as Rastafarianism, Sikhism, Christianity and atheism would all be included under the definition, adherence to a particular football team, for example, would not. However, fears have been expressed that there are unintended consequences stemming from this definition. It would be very useful if the Minister could inform the House whether this would be the case.

As the law stands, places of worship are eligible for complete exemption from business rates, and ministers of religion can get significant discounts or even possible exemptions from council tax. Sects such as scientology, which was defined as a philosophical belief rather than the worship of a deity, were, however, ruled not to be included in this bracket. This judgment was passed in the 1970 Court of Appeal case, where because of its definition as a philosophical rather than a religious belief, scientology was deemed not eligible for the same tax breaks.

Since that case there have been many Parliamentary Questions which have allowed this particular ruling to be stated again and again. On 28 October 2009 in another place, Robert Neill asked the Government about the application of non-domestic rates to religious buildings used for public religious faith worship. Barbara Follett, who answered for the Government, included in her reply that the exemption does not extend to organisations which practise a philosophy.

Perhaps the Minister can correct me if I am wrong, but it does appear at the moment that the Bill would undermine this court ruling, and set us in a situation whereby philosophical beliefs in fact would also be included under that exemption. The Bill and the Explanatory Notes state clearly that a philosophical belief is also included. Furthermore, the Bill imposes a duty on public authorities which prohibits discrimination, harassment or victimisation by people who supply services or perform public functions. The Explanatory Notes state that this also applies to revenue raising and collection. Can the Minister therefore clarify whether this will mean that those premises used for scientology meetings would undermine the 1970 definition so far that this would mean that the Church of England and the Church of Scientology would have to be treated in the same way for tax purposes? Does she agree that this sends out a difficult message to the public, because, at a time when families and local businesses are really struggling, as bills rocket, scientologists will soon be eligible for more tax breaks? Most people are in favour of freedom of expression, but it is difficult to maintain this when, at such a difficult time, it seems also to extend to tax breaks.

I look forward to the Minister's response and hope very much that we will receive greater clarity about exactly what the inclusion of "philosophical belief" will mean in practice. I beg to move.

4.15 pm

Baroness Turner of Camden: My Lords, I hope that my noble friend will not agree to this amendment. I am a member of the British Humanist Association. I gather that it believes that the exclusion of philosophy from the Bill would be damaging to it. The association thinks that it is necessary to protect its existence, in the same way that it is willing to agree to the protection of people from a number of religious beliefs. Does my noble friend accept that including "philosophical" would enable the Humanist Association to regard itself as protected? "Philosophical" would also protect people who have no belief at all. The association to which I belong has a certain set of beliefs, and believes that it would be protected by including "philosophy" in the Bill.

Baroness Thornton: The amendment concerns matters of religion or belief and would prevent beliefs of a philosophical nature being protected under domestic legislation. There are several reasons why we would resist this amendment, which, I realise was a probing amendment.

First, matters of philosophical belief have been protected under domestic legislation since the first definition of religion or belief introduced by the Employment Equality (Religion or Belief) Regulations 2003. Since its introduction, this form of protection has never been a cause for concern in either the extensive consultation leading up to the introduction of the Bill or its scrutiny. Since its parliamentary introduction, no opinion has been expressed that appropriate philosophical beliefs should not be protected.

Secondly, removing protection for philosophical beliefs would mean that acceptable and long-recognised belief systems such as humanism would no longer be protected under law. I am sure that many here in this House would not wish for that—not only those who have humanist beliefs, but those who recognise and appreciate the right of others to be protected for holding that belief. I declare an interest as a member of the All-Party Humanist Group.

It is true that our European legal obligations that relate to matters of religion or belief, such as the employment framework directive—Council Directive 2000/78/EC—do not attempt to define specifically what the terms religion or belief mean. However, European case law has determined that among the relevant factors that need to be taken into consideration as to whether something can be considered to be a valid religion or belief is that such beliefs must attain a certain level of cogency, seriousness, cohesion and importance, provided that the beliefs are worthy of respect in a democratic society, are not incompatible

with human dignity and do not conflict with the fundamental rights of others. They must also be beliefs as to a weighty and substantial aspect of human life and behaviour and not an opinion based on the present state of information available.

As regards the issue of scientology and the question about building ratings—the noble Baroness asked a legitimate question—the Bill does not change the current situation. There is a statutory authority exception in relation to public functions which would cover tax relief on religious buildings. I hope that that satisfies the noble Baroness on that particular question.

Ultimately, whether or not something can be considered to be a valid religion or belief for protection under domestic legislation is a matter for the courts. Therefore, irrespective of the immediate effects of the amendment, our domestic courts would be obliged to take European case law into account. This is likely to mean that philosophical beliefs such as humanism would almost inevitably be considered to be worthy of protection by the law and thus negate the effect of the amendment. I ask the noble Baroness to withdraw it.

Baroness Butler-Sloss: For the past 30 years at least, the Church of Scientology has not been accepted as a church. I did not understand from the Minister's answer whether the way in which Clause 10 is set out will change that situation.

Baroness Thornton: No. I thought I made it clear in my remarks to the noble and learned Baroness that this does not change the situation.

The Lord Bishop of Chichester: I, too, would like to resist this amendment. The inclusion of the word "philosophy" is really rather important—for religious people as well. The distinction between religion and philosophy could be too sharply drawn. In the Explanatory Notes, paragraph 71 talks about religion or belief having,

"a clear structure and belief system".

It then uses some rather general, catch-all descriptions like "Catholics" and "Protestants". Belief systems are much more complex than are reducible to simple denominational or institutional forms. "Philosophy" here introduces into the scope of the law that degree of freedom for recognising that people actually occupy a number of different positions in relation to the wider belief system in which they find themselves. I therefore wish to resist this amendment.

Baroness Warsi: I thank the Minister for her reply. I am heartened to hear the position in relation to exemptions for tax purposes and am thankful to the noble and learned Baroness, Lady Butler-Sloss, for requesting clarification on the Church of Scientology. With that, I beg leave to withdraw the amendment.

Amendment 20 withdrawn.

Clause 10 agreed.

Clauses 11 and 12 agreed.

Clause 13 : Direct discrimination

Amendment 21

Moved by ***Baroness Warsi***

21: Clause 13, page 7, line 5, leave out "because" and insert "on the grounds"

Baroness Warsi: In Amendment 21 we want to replace "because" with "on the grounds of", which we think is better because it is consistent with all existing and European equalities legislation. We want to keep this wording because if it is changes we fear that it will open the door to legal wrangling and debate. If something is changed which is well established, it may give rise to suspicion that the meaning has also changed, whatever the intention.

The Discrimination Law Association has stated that,

"the phrase 'on the grounds of' has, over time and with judicial interpretation, come to have a settled meaning understood by courts and tribunals, practitioners and the public".

It is nervous that a change in phraseology may mean that courts and others have been intended also to change the meaning. We have tabled Amendment 21 and welcome the rest of the amendments in this group tabled by the noble Lord, Lord Ouseley, which also address this issue.

The Explanatory Notes state that,

"this change in wording does not change the legal meaning of the definition, but rather is designed to make it more accessible to the ordinary user of the Bill".

This is commendable but is not where the helpful Explanatory Notes should come into play. We agree that clarity and understanding are important but surely the highest priority is precision of legal language so that lawyers can understand it. The meaning can then be conveyed to the lay user in the Explanatory Notes if it is not already clear from the Bill itself.

Furthermore, the DLA has cited a recent example whereby even if Parliament thinks it has not changed the meaning, that just the language has changed, this does not actually translate into the courts. For example, Parliament removed "similar" from the definition of "philosophical belief" in the Employment Equality (Religion or Belief) Regulations of 2003. It was clearly stated that the meaning would remain the same, yet that led to extensive amounts of litigation relating to the extended scope of philosophical belief. A statement of intent therefore may not be enough—it was not in that particular case.

There is a more obvious semantic concern. The word "because" sounds as though the person who discriminated had to make a conscious decision to treat someone less favourably because of one of the protected characteristics. As we are all aware, at the moment the legal position is that there is no need to prove intention. There is a real worry that this change in wording may not only confuse people by changing a well established legal phrase but that it may also cause damage by raising the bar for cases of discrimination.

The Minister in another place tried to assure the Committee that there was no such requirement and that, according to the *Oxford English Dictionary*, the meanings were synonymous. However, as the most

[Baroness Warsi]
important point for the Government appears to be to make this Bill easily accessible to the lay user, does the Minister not acknowledge that the definition in the *Oxford English Dictionary* is not as important as people's natural understanding of the word? The phrase "because of" is commonly understood by most people to imply deliberate and conscious intention or motivation. In this context, it looks as though proof will be required about the intention to discriminate. The phrase "on the grounds of" retains the idea that there could have been evil or good motives for discriminating.

Also, at the moment it is clear that any less favourable treatment—even something only partly attributable to the protected characteristic—would come under the heading of discrimination. So the Government are potentially altering the grounds of intent and how much the protective characteristic must be the sole cause. Therefore, we are concerned about the changes here, which we think may have the effect of creating confusion and narrowing the law where there is no intention to do so.

In another place, this amendment was supported by the Liberal Democrat Benches. The Government's response was that they wanted to write the Bill in "plain English" and that in everyday usage people would be more likely to say "because" than "on the grounds of". That may well be true but surely, while it is useful for people to be able to understand a legal document completely, the most necessary thing is that it functions legally. As we have said, the Explanatory Notes can set out the issues in "plain English". Furthermore, while "on the grounds of" may not be colloquial, most people will understand what the phrase means. Surely the Minister does not doubt that. The real difficulty lies not in the meaning of "on the grounds of" but in assessing what kind of evidence will be needed to prove direct discrimination. The change of phraseology does not help here.

The Government also argued that there was absolutely no change in the meaning and that the two terms were synonymous. They said that, even if it could be argued that the wording should be changed, its meaning would not alter for the purposes of the law because of the ruling of the noble and learned Lord, Lord Woolf, in 2005 in the case of Regina v Z in the House of Lords, Here, he said that,

"there is no reason to think that the difference in style means that it should be interpreted in any different way from its predecessor in the 1973 Act".

However, surely the point is that the Government are trying to introduce clarity but here they are bringing in confusion. They seem to admit this by saying that the terms are synonymous but they then back that up by saying that, even if they were not synonymous, the interpretation would not have to be different. Indeed, it might not be, but this would give rise to legal controversy, which is not what is wanted.

The Government claim that the two terms are synonymous, but they have very definitely changed the phrase that is used across legislation and have therefore removed the certainty that went with it. They think that the terms are synonymous, but what if those who have to interpret them agree with us that they are not? That would mean that the Government had changed the law, albeit inadvertently, and that they would do damage in narrowing the scope of the provisions relating to direct discrimination. I beg to move.

Lord Lester of Herne Hill: My Lords, the Opposition are perfectly right to raise this point, just as my colleagues in the Commons were perfectly right to do so. However, the fact that they were right does not mean that the issue that they raised needs to be dealt with in the way suggested.

I have a professional interest in all this because—I am not boasting; it is just a fact—I was in the cases that established that the words "on the grounds of" mean what they do. I refer to the Birmingham education case and the case of James v Eastleigh Borough Council. In the recent Jewish Free School case, in the main judgments led by the noble and learned Lords, Lord Phillips and Lord Mance, and the noble and learned Baroness, Lady Hale, those judgments were all affirmed, interpreting the words "on the grounds of", as the noble Baroness, Lady Warsi, has rightly indicated, to mean objective discrimination. You do not need to show that there is a discriminatory motive or a discriminatory intention. You need to show that the reason for the less favourable treatment complained of, whether it is gender or colour, or anything else, is a forbidden reason.

4.30 pm

Lawyers would say that the words "on the grounds of" are words of causation. They seek to answer the question, "But for his sex, would Anthony Lester have been paid as much as he has compared with Lindsay Northover?". The "but for" question is the question asked when you ask what are the grounds—what are the reasons? Exactly the same arises with the words "because of". It is not a question of motive or intent. The question is, "Was it just because of his sex that Anthony Lester was overpaid compared with his female counterpart?". There is no difficulty about this because the words "on the grounds of" themselves have been held to be ambiguous in the past. That has now been resolved.

I have sympathy with what the Government are doing because ordinary men and women should be able to understand the law as far as possible. I think that the words "because of" are easier for ordinary people to understand—not just lawyers—than "on the grounds of". I would have been perfectly happy if the language had been left as it was. However, provided that we get a very clear assurance from the Government that what I have just said is the case and there is no conceivable change—the objective test remains, and the fears of the Discrimination Law Association, of which I am a member, and the fears of my party colleagues in the Commons, are not well founded in terms of intent—I would treat that as a Pepper v Hart statement and not put the Government to the problem of having to re-amend the whole of this legislation at this stage in its history. If I am not given that assurance then I would of course support the Opposition in seeking to keep the old words as they were.

Lord Ouseley: I am putting forward the amendments to make what I consider to be a very simple amendment to replace the words "because" or "because of" wherever

they arise in Clauses 13 and 14 with the words "on the grounds of". I support the arguments of the noble Baroness, Lady Warsi, in moving Amendment 21. While accepting the logic that has been put forward by the noble Lord, Lord Lester of Herne Hill, that if the interpretation is to be in effect the same, I shall not spend a great deal of time in going over ground that has been covered already.

However, I certainly want to reaffirm the reasons for putting forward these amendments, especially in so far as the definition of direct discrimination—which includes the "on the grounds of" formulation—is common to all the domestic equality enactments. Having seen this introduced from 1965 with the first Race Relations Act, I know that it is a well established and understood concept. Indeed the relevant European directives, which domestic anti-discrimination law must implement, also use the phrase "on the grounds of".

I think that we are in danger of creating confusion by changing the wording at this stage. There is a well established and legally understood legislative wording. It should not be changed unless the intention is to introduce substantive change in the meaning. If the intention is, as here, to retain exactly the same meaning and effect, the risks of changing the wording vastly outweigh any benefit to be derived from the use of plain English.

In support of that I would refer to the conclusions of the Joint Committee on Human Rights in its legislative scrutiny of the Equality Bill during the 2008-09 Session. It stated:

"We consider that the previously used test in direct discrimination of 'on the grounds of' has acquired a clear and definite interpretation through case-law. The Government is to be applauded for its concern for attempting to ensure the definition of direct discrimination is phrased in accessible terms. However, little is gained by replacing 'on the grounds of' with 'because of'. 'On grounds of' is both readily comprehensible and has the advantage of being a well-established term of art. Replacing this phrase with 'because of' risks the emergence of alternative interpretations and may undermine a clear and well-established legal position which ensures rigorous and clear protection against direct discrimination. We consider that it is strongly arguable that the definition should be amended accordingly".

I would conclude that there is an array of decisions in which the courts have interpreted "because of" more narrowly than "on the grounds of".

Lord Lester of Herne Hill: Can the noble Lord give an example? I am not aware of any case in which the words "because of" have been given a narrower interpretation than "on the grounds of"? It is quite important, if that is the case.

Lord Ouseley: I do not have an example to hand but I shall certainly try to let the noble Lord have that before the conclusion of today's debate.

The Government have stated repeatedly that the term "because of" in the Bill has the same meaning as "on the grounds of" in existing law. If there is no evidence that the phrase "because of" will make the definition of direct discrimination or combined discrimination any clearer for an ordinary user of the Bill, then in consolidating the existing legislation there would appear to be little gain, and a risk of significant loss to protection, by introducing new words that carry the same meaning as words which are, after nearly 45 years, familiar and accessible.

Baroness Butler-Sloss: My Lords, I also support the amendment, and particularly the speech of the noble Lord, Lord Ouseley. It is sad that there appears to be change in the wording for the sake of change rather than for any good reason. The words "on the grounds of" are already well established, as has been said, and are perfectly easily understood. In my view "because of" is rather poor drafting.

Baroness Thornton: The amendments in this group share a common purpose. However, I shall begin with Amendment 21, which has been proposed by the noble Baroness, Lady Warsi, and is much the same as one tabled by the Conservatives and debated in Committee in the other place. That earlier amendment differed from Amendment 21 only in that it would have replaced "because of" in the definition of direct discrimination in Clause 13(1) with the words "on grounds of" rather than "on the grounds of".

The other amendments in this group—Amendments 23, 27, 28 and 31 to 33—are all proposed by the noble Lord, Lord Ouseley, and would also replace "because" where it appears elsewhere in Clause 13 and Clause 14, which introduces protection from what we describe as dual discrimination, with "on grounds" or "on grounds that", as the case may be. The Government resist these amendments for the same reason as we resisted the earlier one. We maintain that there is no difference in meaning between the two expressions but that the plain English formulation "because of" is a more natural and more frequently used means of achieving the same result. So I beg to differ with the noble and learned Baroness, Lady Butler-Sloss. It will therefore make the legislation more accessible, which I suggest to her is important and in keeping with a key objective of the Bill.

As the law stands, the basic question in a direct discrimination case is: what is or are the "ground" or "grounds" for the treatment complained of? That is the language of the separate definitions of direct discrimination in current legislation. It is also the terminology used in the underlying European directives, as ably described by the noble Lord, Lord Lester. There is, however, no difference between that formulation and asking for the reason why the act complained of was done. Some of the authorities, including the recent judgment of the Supreme Court in the Jewish Free School case, use the third formulation, asking whether the treatment in question was "because of" the protected characteristic. That is of course the formulation that we have adopted in the definition of direct discrimination in Clause 13 and dual discrimination in Clause 14. According to the president of the Employment Appeal Tribunal:

"There can be no objection to this as a synonym for the statutory language".

The president made that remark when giving the judgment of the EAT in the case of Amnesty International v Ahmed, handed down in August last year. We therefore agree with the noble Lord, Lord Lester, that "on grounds of", or "on the grounds of", and "because of" are indeed synonymous, as my right honourable friend the Solicitor-General said in the other place.

Lord Lester of Herne Hill: Can the Minister confirm one thing? It is really important. She mentioned European equality law. I realise that she is not a lawyer, but

[Lord Lester of Herne Hill]
would I be right in saying that if the words "because of" have the narrower meaning that the noble Baroness, Lady Warsi, is concerned about, it would violate EU equality legislation and therefore be invalid? In other words, the objective test, irrespective of motive or intent, is part of European equality law; and therefore the words "because of" must be interpreted, like the words "on the grounds of", in the way that they have been recently by our Supreme Court.

Baroness Thornton: I thank the noble Lord for that question, which is very helpful. I am assured that we have checked this and that he is completely correct.

Therefore, whatever formulation is used, the discriminator's motive is, of course, irrelevant. A benign motive does not excuse direct discrimination.

Some have expressed concern that the change of language may cause unnecessary confusion and undermine existing law. It has even been said that this could lead to more litigation. I sincerely hope that this will not be the case. As the Solicitor-General also said in another place, quoting from the judgment of the noble and learned Lord, Lord Woolf, in the 2005 case of R v Z, the courts are now rejecting suggestions that a change of language necessarily implies a change of meaning. We will be reinforcing this message in guidance and training for judges in the period leading up to commencement and beyond.

On the specific issue raised by the noble Baroness, Lady Warsi, which was that the statement of intent in the Explanatory Notes was not sufficient, given litigation over the removal of "similar" in the definition of religion or belief, here the change is between two synonymous expressions. In the other case, the word "similar" was removed. This therefore led to litigation being more likely; however, the courts concluded that the change made no difference, as the Government had indeed explained. I therefore hope that the noble Baroness will withdraw the amendment and that the Committee will support the use of plain English for these key concepts.

Lord Elton: Since we are considering the comprehension of the supposed reader of the Bill, if the person reading the Bill does not know the meaning of the words "on the grounds of", I do not think he has the slightest hope of understanding most of the rest of the Bill.

Baroness Thornton: I was not sure whether I was being asked a question or told something—I beg the pardon of the noble Lord. I think that the point is that of my last remark, which is that we are seeking to make the important parts of the Bill accessible and we believe that this is one of the ways in which we can do that.

Baroness Warsi: I am still concerned, my Lords. I hear the Minister's detailed explanation and I appreciate her detail. Some of the issues she raised, I raised in my own concerns, and I hear what was said in the other place. It still worries me that, in the interests of plain English, we may be causing more confusion. But at this stage, I am content and beg leave to withdraw the amendment.

Amendment 21 withdrawn.

Amendment 22

Moved by ***Baroness Warsi***

22: Clause 13, page 7, line 6, at end insert—

"( ) Discrimination does not include marketing or promoting activities targeted at a particular group of people whether or not they share a protected characteristic."

4.45 pm

Baroness Warsi: I shall speak also to the other amendments tabled in my name in this group. We have tabled these amendments to question the Government about their policies regarding exceptions to the provisions surrounding age discrimination. I shall begin with a short description of the amendments.

Amendment 22 prevents marketing or promotions targeted at a particular group of people being defined as direct discrimination. In the same vein, Amendment 57ZA means that age discrimination would be included under the provisions for a "defence of material factor" as long as the differences on the grounds of sex or age in the provision of goods or services was,

"because of a material factor which is a proportionate means of achieving a legitimate aim".

Amendment 126 is similar to Amendment 129, which was tabled by the noble Baroness, Lady Knight, and inserts a new clause stating that it is not a breach of the Equality Bill for holiday companies to place age limits on holidays, for financial products to be qualified by special age brackets or for insurance programmes to be based on age factors. We have also given notice that we intend to debate whether Clause 195 should stand part of the Bill in order to question the Minister more fully on this area.

We fully appreciate that this issue has been debated extensively in another place and at Second Reading, where many concerns were raised. In all these areas, the Government have been more than helpful and, indeed, have tried to be very reassuring, and for that, I am thankful.

The Solicitor-General assured the Committee in another place that there would be extensive consultation in this area and that there would be regulations to protect certain goods and services, such as those provided by Saga. She said that,

"we shall exercise the power so that exemptions from age discrimination are in place from the moment that the ban is in place".—[*Official Report*, Commons, Equality Bill Committee, 2/7/09; col. 675.]

We welcome that reassurance. However, on Report, she seemed to renege on that promise by stating that there would be secondary legislation or guidance. At Second Reading in your Lordships' House, the Minister, in response to concerns raised by my noble friend Lord Ferrers, was clear that,

"there will be a specific exception for age-related holidays, such as those offered by Saga".—[*Official Report*, 15/12/09; col. 1510.]

She then confirmed that the exception would definitely be in regulations, not guidance.

We welcome the Government's response to our worries in this area. It is most reassuring to see that the Government have taken on board our concerns and those of many noble Lords and have agreed to put

the exception into regulations rather than guidance. I hope the Minister will be able once again to confirm that that is the case. That will be appreciated by businesses such as Saga, which is grateful to learn that its holiday business, which caters to the over-50s, will be allowed to continue. I do not need to declare an interest, as I have not, as yet, taken advantage of that holiday company. Nevertheless, when can we hope to see the draft regulations for this section? The Minister in another place stated that regulations would be in place as soon as the Bill is passed to allow these age-defined holidays to continue so that,

"things that are good can carry on happening without interruption".—[*Official Report*, Commons, Equality Bill Committee, 2/9/09; col. 675.]

It is important that businesses are made aware of these regulations as soon as they are available. Businesses cannot and should not be asked to operate in a climate of uncertainty, where it appears that a statutory provision will prohibit their entire market model. This is true at all times, but is even more true given the current economic climate.

Saga is grateful for the assurances given by the Government in response to concerns expressed by many on these Benches. However, it remains concerned about the possible restrictions on financial services that it supplies to the over-50s. Amendment 129A was suggested by the Association of British Insurers in order to address this issue. The amendment would mean that insurance companies would use age as a factor of differentiation, as long as there was no demonstration of,

"significant detriment to the elderly or another age group",

and that if differentiation were not allowed there would be an adverse impact on other age groups. We have raised this concern because many insurance companies are worried that they have not had the same reassurance as the holiday sector. That is despite the fact that, when the Government released their Green Paper on discrimination, they said that they "probably" wanted to allow insurance companies to,

"continue to design and provide products for specific market segments".

Is this still the Government's intention, and will insurance companies expect to see similar regulations relating to them too?

Insurance companies are worried because they fear that, if they are forced to offer premiums to all age groups, they will become much less competitive in the specific age sector in which they are currently operating. Saga, for example, would not be able to offer its favourable rates to over-50s because it would also have to design packages for those under 50. These would have to reflect different needs and desires, so Saga would risk losing its reputation for specialism and expertise in the older market.

Furthermore, much research has been undertaken to show that, even though many insurance companies may specialise in a particular gender or age bracket,

"there are no significant age-related segments of the market that are currently unserved".

Moreover, the ABI is developing a signposting system, which would mean that older people would be directed toward travel and motor insurance products that are suitable for their group. Saga has spoken very much in favour of this system as it would mean that companies that were unable to provide insurance for a particular set of people would be able to refer them on to an independently accredited service, which would be able to provide them with a list of companies that would be able to serve their particular needs.

Will regulations also be brought forward to exclude insurance companies and other related services from breaching this Act? If so, when might companies reasonably expect to see these regulations? I also look forward to hearing the Minister's comments on Amendment 128, which was tabled by the noble Baroness, Lady Coussins. This is just one example of many where there will be an appropriate case for making regulations to provide an exemption to this Act. How many regulations does the Government estimate will be needed to allow legitimate differentiation to continue? Do they expect to have all those in place for the moment the Bill becomes law? We argue that this is necessary for the stability of business and security of the many market models.

I hope that the Minister will be able to provide some reassurance on all these matters. I beg to move.

Lord Davies of Coity: My Lords, I wish to make a contribution on this amendment. However, I will not say what my stance will be until I have had a response from the Minister. During Second Reading, I made two points. One was my concern about the marginalisation of the Christian church. The second was on the provision for the elderly. Unlike the noble Baroness, Lady Warsi, I take advantage of Saga holidays because I like going on holidays with people of a similar age.

On Second Reading, I argued for the holiday sector provided by Saga. The Leader of the House responded and said that the exemption would be provided for them in the Bill on the same day that the Bill was passed. What we did not do at that time—at least, I did not—was to address the financial services that Saga also provides. As the noble Baroness, Lady Warsi, has said, Saga is quite concerned about this and quite rightly so. I would like to hear a response to this amendment that the Government will put in regulations, not in guidance, the provision of financial services for the elderly by Saga. If it is in regulations, it would only confirm what the Government currently do in respect of providing the elderly with winter fuel allowance and a free television licence, with which later this year I will be provided, as is any 75-year-old. Consequently, I support the spirit of this group of amendments. At Second Reading, I was told clearly that this measure would not be in the Bill, but that it would be in regulations. Saga makes a legitimate provision for the over-50s. I would like it to have an exemption for financial services, as we have been told that it will have for its holiday provision.

Lord Lester of Herne Hill: My Lords, I hope that it is appropriate for me to make a declaration of interest on behalf of all Members of this House who are over the age of 60 so that we do not have to do it one by one. Of course, for that reason, all of us support allowing Saga to discriminate in our favour and we very much hope that the regulations will continue to benefit old people like myself in perpetuity until the reaper comes.

[Lord Lester of Herne Hill]

However, the problem with this amendment, and those related to it, is that it is far too broad. Some time ago, I was lobbied by the insurance industry and I pointed out the danger of its seeking to water down the position that the Government have now got themselves into on the Bill, which is the right position. When I began at the Bar, I used to teach insurance law at night school. One day, a person came to me having stolen the underwriting guide for a major insurance company. It said that the underwriters recommended in the motor insurance industry charging more for black people than for white. So, in 1974 to 1976, when I was doing the Race Relations Bill and the Board of Trade and the insurance industry tried to adopt a hands-off approach to discrimination law, I argued extremely strongly that that should not be the case. We gave in to some extent, but not in the way in which they wanted.

It is extremely important that we do not take out of the Bill in the key definition sections an escape clause that would allow the insurance industry in general to discriminate on the basis of race or any other protected ground. I know that that is something with which the noble Baroness, Lady Warsi, would agree. Therefore, I hope that the Minister will confirm that the Government will be rock-like and steadfast in standing up to any pressure from the insurance industry that would allow widespread discrimination to leak into these other areas, for whatever reason. I agree with the noble Lord, Lord Davies, that I am as self-interested as he is.

Baroness Knight of Collingtree: My Lords, the Government made a rod for their own back by having such an immensely complicated Bill face such a short amount of possible debate in the other place. To have a Bill of this length would have been bad enough, but, bearing in the mind the effect it could have on so many groups of people, it is even worse that the House of Commons was not permitted because of the guillotine to debate all these matters in sufficient depth. There are many points, apart from the amendments in this group, which should have been investigated very thoroughly.

I quite understand why my noble friend Lady Warsi has not so far sampled the joys and delights of a Saga holiday, but I am delighted that the noble Lord, Lord Davies of Coity, has done so, and I look forward with unbridled delight at the thought that I may meet him on some future joint cruise. I should say that I have some interest in Saga, albeit that I have no pecuniary interest of any kind, but there was a time when I did some lecturing aboard Saga ships. Having learnt what a good job it does, since then I have been on several of those cruises, which have been self-fund.

5 pm

The trouble with what we are discussing is that we are asked to take so much on trust. Those of us who have experienced Saga will know that it does an exceptionally good job for the over-50s. The cruises are extremely well organised and I have never met anyone yet who has not enjoyed them. I draw the House's attention to the last words said by Mr Michael Howard when the matter was debated in the House of Commons. He had also been pleading to have it made absolutely clear that these concessions would be allowed to continue. He said:

> "The Solicitor-General says that she understands the problem, but the problem will not be met by guidance. The law in this land is not determined by the Government's guidance; it is determined by legislation".—[*Official Report*, Commons, 2/12/09; col. 1203.]

That is exactly the problem we face now. We would be failing in our duty if we did not press the Government on precisely what they mean by the kind words and gentle attitude they have expressed. Saga says that it is pleased that the Government probably—it underlines the word probably—want to be allowed to continue aged-based concessions and age limits on group holidays. I wish I could join Saga in the happy notion that this is actually what is going to happen.

I was interested to see the introductory speaking note on these amendments. Hearing that it was from the noble Baroness, Lady Royall, I immediately became very drawn to it because I trust her utterly in what she says, as I think we all do because we all share a great regard for her. I read the note very carefully and I cannot say that it gave me the assurance I am sure she means me to have. She means to make a positive, written-in and clarified point about this very complicated Bill. The note says:

> "I am happy to confirm that marketing goods, facilities or services specifically to people who share a protected characteristic is lawful now and nothing in the Bill will prevent service providers from continuing to do it".

Three cheers, although as I go along I am bound to feel that perhaps only one and a half can be accorded.

I cannot see any firm and clear statement that the law is going to say what will protect these holidays, and that is the crux of the matter. I trust the noble Baroness to the end. Perhaps she is not totally able to influence precisely the wording of the Bill, but I do not think businesses can function if there is a doubt. If there is a possibility that what they propose to do is not going to be within the law, they cannot make those offers. They can act only in accordance with the law, and what the law will say, if we pass it as it is clearly written before us, is that there is going to be a doubt as to whether these services will be able to continue.

Apparently, consultation is still going on and the Government do not doubt that the case is a good one. If so, why not make it clear beyond peradventure that these holidays and services will still be available when the legislation goes through? It is that which moves me to get to my feet. I do not want to prolong my speech because much of what I would have said, particularly about insurance, has already been said by my noble friend Lady Warsi. However, it is extremely important for us to give clear assurance to these people that their services may continue.

Baroness Coussins: My Lords, as the noble Baroness, Lady Warsi, referred a couple of times to an amendment in my name, I should tell noble Lords that I have informed the Public Bill Office of my wish to withdraw it. However, it is clear that that information did not make it to the Marshalled List.

Baroness Greengross: My Lords, I declare an interest in that the founder of Saga and his son were both very good friends of mine and I worked closely with them. Having run Age Concern's insurance and travel services, I am jealous of the advertising that Saga has had this afternoon in your Lordships' House. We, too, had specialist services for people over 50, which still go on.

The purpose of the Bill is to make it illegal to discriminate in a harmful way against people in the protected categories or because of protected characteristics; it is not to get rid of the benefits. It we took the Bill to its logical conclusion, we could not have boy scouts, girl guides or youth holidays. We could not do all sorts of things that we take for granted and that are of benefit to our society, and bring together groups of people who have common interests. I think not only of state benefits but of all sorts of other activities which people enjoy and which are beneficial to society. The Bill is obviously not just about older people, although we all have a tremendous interest in making sure that older people do not lose out because of it. However, I feel strongly that that is not its intention. As a member of the Equality and Human Rights Commission, I would be very worried if it was going to try to enforce something which harmed older or younger people.

We have to distinguish between legitimate exceptions. An exception is legitimate if there are higher actuarial risks in a form of insurance. For example, if you are over 80 and go on holiday to the United States for over a month, the actuarial risks are demonstrated to be greater for certain categories of people than for others, and it is quite justifiable to charge more because of them. That is not the same as saying, "We will not insure you at all, because you have had a certain number of birthdays", or, "We will not allow you to have credit from a bank", or "We will not allow you, however good a driver you are, to hire a car". That is harmful discrimination. We are talking here about getting rid of that but keeping legitimate exceptions which mean that risk has to be paid for. Insurance and holiday companies are not charities but businesses, and they are legitimately able to charge to recover their costs and to cover their risks. We have to get that absolutely right in our minds, but make sure that benefits such as the Freedom Pass, cheaper hairdressing for older people on a certain day and TV licence benefits are not caught by the Bill.

I am really worried that people will need to be reassured, and I hope the Minister will reassure me that the guidance and the regulations will clarify the position so that we will not worry that older people, or indeed younger people, are to be less well catered for because of this Bill and that we will be certain that this Bill will improve their quality of life, because that is what we all want. I hope very much the Minister can reassure us completely so that the noble Baroness, Lady Knight, who always makes such a good case for older people, can be as reassured as I am that this Bill is going to do good things, not harmful things, to older people.

Baroness Howe of Idlicote: My Lords, I support the amendment in the name of the noble Baroness, Lady Knight, for very many of the reasons that she and the noble Baronesses, Lady Warsi, spelled out. I am sorry but I have to declare an interest, not just because I have been on a Saga holiday but because I went there as a complete parasite, as the wife of a lecturer. I thoroughly enjoyed it and was able fully to appreciate just how superb the facilities are. I spoke about it a lot afterwards and was quite a good advertising agent for it.

It is very important that we get this clear in the right places. As my noble friend has said, the intentions of the Bill are one thing, but we need to make clear what is to happen. Club 18-30, Saga Holidays and others are concerned about this, and insurance companies do not want to have to quote for particular ages when other companies are more than happy to do so. Only a very few people experience any form of trouble in getting insurance cover, as we know from research that Oxera has done. If you are of a certain age and you apply for car insurance, you may be charged rather more not just if you are 18 but if you have got into trouble because of your driving. There are all sorts of areas such as this.

It is very important, however we make this clear—this is very much the point that has come out in speeches—that it is in regulations, and it must be somewhere where you can see quite clearly that it is possible to find the sort of insurance that is needed. I was talking to somebody of a very elderly age, way beyond even my ancient age, who told me they had been covered to drive to the particular place by Saga Holidays itself—by package insurance. When you think that it is possible to do that, no doubt on the basis of a good clean driving record, it shows how well this area is covered. But it must be made clear in regulations. I would prefer to have it in the Bill—if that cannot happen, it must be covered in regulations—that this is not just what is intended, but what will happen.

Baroness Butler-Sloss: My Lords, perhaps to address the balance and to comfort the noble Baroness, Lady Warsi, I should say that there are all these holidays for people between 18 and 30 and between 18 and possibly slightly older, and that not only Saga and Age Concern offer this. But that is not why I got to my feet. If one reads Clause 13(1) with more care, as I did earlier, I think almost everything is potentially illegal.

The clause says:

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others".

Technically, that would include the Boy Scouts, for instance. What worries me about the suggestion of regulations, which is clearly infinitely preferable to guidance, is whether the regulation will derogate from the primary legislation. Would the regulation be ultra vires the Act? Does one have to have some degree of exceptions in the primary legislation? I do not know the answer to this, and I am not sure that the noble Lord, Lord Lester, necessarily has the answer either—even if he thinks that he has.

5.15 pm

Lord Lester of Herne Hill: I am sure that I do not have the answer to satisfy the noble Baroness. The problem is that if she reads only Clause 13, she does not read what is really important here—the detailed

[Lord Lester of Herne Hill]
exceptions that come within the schedules and which are ample, dealing with legitimate concerns. Providing that there is a power in the Bill to do this by regulations, even the most narrow-minded and legalistic court would not find that beyond the powers of Parliament or Ministers.

Baroness Butler-Sloss: I have not yet found the power to do this by regulation in the Bill, although I am sure that it is there. The trouble is that it is such a long Bill that I have not found it. However, if it does require, among other things, to have the power to make regulations, I should be a great deal comforted about the ultra vires issue.

Baroness Warsi: Perhaps before the Minister speaks, I should clarify that I referred to Amendment 80 in my notes, which now appears as Amendment 57ZA.

Baroness Thornton: I thank the noble Baroness—that is very helpful. I am sure that the whole House is looking forward to the holiday snaps of the noble Baroness, Lady Knight, and my noble friend Lord Davies, as a result of this debate. In responding to Amendment 22, I shall also respond to Amendments 126, 129 and 129A. I shall refer to Clause 195, but I know that we will discuss the powers in it when we reach that point in the Bill. I hope that I can also reassure all noble Lords who have spoken in this debate about the Government's intention and that the Bill gives us the powers and exceptions to do what I think will make everybody content.

Amendment 22 is about targeted marketing. I am happy to confirm that marketing goods, facilities or services specifically to people who share a protected characteristic is lawful now, and nothing in the Bill will prevent service providers from continuing to do it. Amendment 126, in the name of the noble Baronesses, Lady Warsi and Lady Morris, would write into the Bill exceptions from the ban on age discrimination for age-based holidays, financial services products for particular age groups and, where evidence-based, insurance. This issue was raised by the noble Earl, Lord Ferrers, and my noble friend Lord Davies, and I know that the noble Baroness, Lady Knight, is concerned about it too. My noble friend Lady Royall was then able to offer some reassurance, including saying that the future of Saga holidays was secure. I am grateful for the opportunity to expand on that here today. I hope that sharing some of my thoughts with the noble Baroness, Lady Knight, will reassure her. I am adding to my note so I hope that I can give her further reassurance that we are absolutely clear that we will deal with her concerns and with others that have been expressed.

Outlawing age discrimination has always been about eliminating inferior treatment and exclusion from services open to the majority, simply because age. The legitimate use of age for the provision of benefits and activities for particular age groups is not the target. I pay tribute here to the noble Baroness, Lady Greengross; there is no doubt that she is responsible, through her work over many years, for the progress that has been made against age discrimination. I welcome her remarks. We have consulted on the issue of the legitimate use of age for the provision of benefits and activities. I am pleased to inform noble Lords that respondents generally supported both our aims and our proposals, and to confirm that we are in general strongly minded to proceed on the lines of what respondents told us.

On a start date, this would mean that the ban on age discrimination outside the workplace would come into force in 2012 across the board. It is our intention that the exceptions—which will be in an order, which I will come back to—will come into force on the same date. I will expand on that in a moment. We proposed this for financial and other services and were waiting for the National Review of Age Discrimination in Health and Social Care to report on a sensible implementation date for those sectors. The report of that review recommended 2012 for those services too, and in launching it my right honourable friend Andy Burnham indicated that he was minded to accept our recommendation on this.

On exceptions, too, the responses favoured proceeding along the lines set out in the consultation paper. On financial services, people accepted that age was a legitimate factor that influenced risks and costs and agreed that access was a problem for some groups. People generally favoured a tailored exception allowing age to be used in financial services where it is fair and reasonable. This would mean that financial services should not be excluded wholesale from the ban on age discrimination on the one hand, and, on the other, that firms should not have to objectively justify every of use of age.

There was also a lot of support for two other measures: first, requiring firms to help consumers find a quote through signposting or referring them to another provider; and, secondly, as happens already for gender, requiring publication of some data about how age is used in some products in a form that the non-expert can understand.

People also told us clearly that banning age discrimination should not affect services, benefits and activities enjoyed by particular age groups. This means exceptions to cover concessions, benefits and holidays for specific age groups. I appreciate why there is an appetite for these exceptions to be written into the Bill. We have consulted and we will consult again later this year on the draft secondary legislation itself. It is vital that we create exceptions for the right practices and that we frame them carefully and precisely to avoid unintended consequences for valuable services or inadvertently allowing unjustified discrimination to go on. This consultation will also include Saga and all the other organisations involved in providing these services.

With Amendment 129, in the name of the noble Baroness, Lady Knight, we return to the exceptions from the ban on age discrimination on the face of the Bill. As well as the matters covered earlier, it would cater for financial products for people over 50 at preferential or concessionary rates and make the same provision for goods and services for the over-50s. There is certainly nothing between us on the principle here. Most public sector age-based concessions will be lawful under statutory authority exception or positive action provisions, as referred to by the noble Lord, Lord Lester, in other parts of the Bill. For private

sector concessions, including preferential rates, a specific exception is likely to be needed, which would potentially cover all types of goods and services. I say again that we are strongly minded to proceed along the lines set out in the consultation paper with the development of exceptions allowing these activities to continue.

Amendment 129A, in the name of the noble Baronesses, Lady Warsi and Lady Morris, is also intended to put an exception from the ban on age discrimination for insurance on the face of the Bill. Our approach to the use of age in financial services will allow legitimate use of age and improve access and transparency.

I turn to the particular issues raised by the noble and learned Baroness, Lady Butler-Sloss. She asked whether secondary legislation would be ultra vires. The answer is no, because Clause 195, which we will discuss later, expressly provides powers to make exceptions in secondary legislation. The noble Baronesses, Lady Knight and Lady Howe, and the noble and learned Baroness, Lady Butler-Sloss, asked about guidance. I would like to make it absolutely clear that exceptions for Saga holidays and other practices will be made in an order under the power in Clause 195. Businesses will have that certainty.

In reply to the noble Baroness, Lady Warsi, there will be only one order covering all exceptions for holidays, financial services et cetera. We have made it clear that the order will come into force on the same day as the ban itself in 2012. To be absolutely clear: the ban on age discrimination in services will be commenced on the same day as the exceptions from it come into effect. As for whether Saga will have to sell financial services to the under-50s, our proposals would indeed allow financial services companies to design and supply products especially for the over-50s. That is because the exception we propose would not rule out the use of maximum/minimum age limits. We see signposting and referral as the way to improve access to financial services.

I turn to what is now Amendment 57ZA. Briefly, we believe that its intention is to probe the circumstances in which the provision of services or goods targeted at, or specifically intended for, particular age groups or people of a particular sex can be justified. The amendment seeks to provide a material factor defence for the case of discrimination,

"on the grounds of sex or age in the provision of goods or services".

So, for example, where a business seeks to offer services only to people over 50, the amendment says that it would be able to do so if that was due to,

"a material factor which is a proportionate means of meeting a legitimate aim".

We do not think that a material factor defence is needed on sex because specific exceptions already allow for the provision of separate and single services for different sexes. Those may be needed due to practicality or for reasons of privacy—for example, separate changing rooms in swimming pools. These exceptions ensure that this continues to be lawful.

When we commence the provisions in respect of age, Clause 13(2) will provide an objective justification test. In addition, specific exceptions will be provided to ensure that beneficial and justifiable age-based practices, products and services can continue—for example, free bus passes for the over-65s, targeted holidays and, indeed, my noble friend's television licence. I therefore ask the noble Baroness to withdraw the amendment.

Baroness Knight of Collingtree: My Lords, I express my thanks for what has just been said. It will be read outside this House, as well as inside it, with enormous care because it will be a matter of reassurance. I hope that all will go as the noble Baroness clearly wishes it to and that the happy situation which has faced us in the past will continue.

Lord Elton: My Lords, the noble Baroness has given many examples from the commercial world. Declaring an interest as somebody who has been a member of a particular club since 1953, and is therefore exempt from paying any but a minimal subscription, will this law touch that sort of activity, and will that sort of discrimination be protected in the same way as the Saga-type discrimination?

Baroness Thornton: I am getting a nod from the Box, so I think that the answer is yes.

Baroness Warsi: My Lords, I thank the Minister for her very detailed response. She has clearly provided the Committee with much clarity, and the security and stability that her words will give to business will also be gratefully received. I thank all noble Lords who have supported this amendment. The noble and learned Baroness, Lady Butler-Sloss, referred specifically to the 18 to 30 holiday. I declare that I have not been on one of those either—I seem to be falling between the gaps at the moment. The noble Baroness, Lady Howe of Idlicote, also referred to a Saga holiday that she was apparently attending as the wife of a lecturer. Saga has had much publicity in your Lordships' House this afternoon. I am interested in whether, if I cannot attend a Saga holiday, I might attend as a lecturer and take advantage of those great facilities. I thank the noble Lord, Lord Davies of Coity, for his support on this amendment. I also add that he does not look 75. In the light of the comments and reassurances made by the Minister, I beg leave to withdraw the amendment.

Amendment 22 withdrawn.

Amendments 23 to 27 not moved.

Clause 13 agreed.

5.30 pm

Clause 14 : Combined discrimination: dual characteristics

Amendments 28 to 33 not moved.

Amendment 34

Moved by ***Baroness Warsi***

34: Clause 14, page 8, line 9, leave out subsection (6)

Baroness Warsi: My Lords, this amendment is designed to probe further the nature of the dual discrimination provisions. We have tabled it in order to discuss our concerns about the clarity regarding the dual discrimination provisions in the Bill. The Government produced a document entitled *Equality Bill: Assessing*

[Baroness Warsi]

the Impact of a Multiple Discrimination Provision. This document shows that there was a clear need for a "multiple discrimination provision" of some form as there was evidence of a real problem which needed addressing. The approach to this seems very sensible. The Government expressed a desire to assess how they could allow multiple discrimination cases to be brought forward without making the law overly complex and therefore placing undue burden on those responsibilities under the law.

At the end of their consultation they found that such a provision was indeed necessary and so the new clause has been added which appears to comply with these principles. Citizens Advice recently carried out some qualitative research into clients' experiences of combined discrimination and gaps in protection. It discovered that there was strong evidence of combined discrimination such as, for example, an older and disabled worker experiencing unfair and unjustified scrutiny of their capability. Citizens Advice gave evidence to the Government Equalities Office which showed that out of 13,000 clients who visited it between April and December 2008, 8 per cent presented with two grounds of discrimination—that was more than 1,000 individuals, of which 119 presented with more than two grounds. This demonstrates that there is a real and relevant problem, albeit on a rather limited scale. We therefore welcome this new clause.

The Government have also taken the concerns of businesses on board, and as the figures mentioned before show, this new clause should be able to close the gap in the law but also will not place too much of a burden on businesses. The Government have further underlined this in their impact assessment. They have stated firmly that to increase to more than two characteristics would be unnecessarily burdensome and would add too much complexity for business. They estimate that in the first year around 7.5 per cent of discrimination cases will come under this provision. They anticipate that awareness of the provision will also mean that the next year the number of cases will fall to 6 per cent and then settle at about 4 per cent thereafter. This is when they expect the success rate to remain at about 2 per cent.

It would appear that this is a sensible way of making sure that the gap is closed and that the burden on business remains low. However we do have one major concern which has been raised by the British Chamber of Commerce. Here we would be very interested to hear the Minister's response and to gain some clarity on how this provision will work in practice. The costs as laid out in the impact assessment seem manageable. However this is dependent on businesses being absolutely clear about exactly what their responsibilities are and their status as regard complaints. If not, there is a risk that they will spend a great deal more money on how to ensure that they do not suffer from a large number of new complaints. This would mean that, despite the assurances of the impact assessment, the burden on businesses would be much greater. The British Chamber of Commerce is very worried about the impact on businesses and the fact that this will be disproportionate to the number of successful claims per year. Can the Minister therefore offer any reassurances here?

In another place it was mentioned that the guidance produced by the Equality and Human Rights Commission would be sufficient to ward off any potential gold-plating. Can the Minister give us any further reassurances to this end, and is there any greater detail as to what will be contained in this guidance? When can we expect to see some draft guidance on this provision? Furthermore, what will be the status of putting forward a single-strand discrimination claim at the same time as a dual discrimination claim, and can she inform the Committee as to how this will work?

I look forward to hearing the Minister's response to the amendments tabled by the noble Baroness, Lady Howe. They raise an interesting point. Evidence has shown that there was some case for an extension to a provision for dual discrimination in terms of direct discrimination, albeit on a limited scale. The evidence, however, shows that there would be very little need, if any at all, to extend this further to indirect discrimination and harassment. It would also risk increasing complications for business.

The *Equality Bill: Assessing the Impact of a Multiple Discrimination Provision* stated:

"Extending the provision to include indirect discrimination or harassment could be unwieldy for businesses and organisations trying to ensure they comply with a multiple discrimination provision".

It also stated,

"there was little evidence presented through the consultation that there was a need for such protection".

We, too, would be concerned to ensure that the burden on business was not unduly onerous and that the potential complexities of protection on the basis of dual characteristics should not be extended unnecessarily. Can the Minister inform the Committee about some of the research undertaken which illustrated that there was little need to extend this provision? I beg to move.

Baroness Howe of Idlicote: My Lords, I shall speak to Amendments 42 and 46 in my name and that of my noble friend Lord Ouseley. I support the Government's provision to address combined direct discrimination—a provision which, as I understand it, was introduced towards the end of the Committee stage in the other place. As the Solicitor-General noted during the Bill's Report stage, the provision enjoys cross-party—indeed, non-party—support and, as many colleagues will know, introduces protection against direct discrimination relating to any two protected characteristics.

Substantial evidence of the need for such a provision has been gathered by organisations such as Citizens Advice, the Equality and Diversity Forum and the Discrimination Law Association. There is also as strong support from this House, as stated in several contributions at Second Reading. I echo the point made by my noble friend Lord Adebowale at Second Reading that the combined discrimination provision is important in order to recognise and accept the many facets of an individual's identity. The current proposal offers protection to, for example, older disabled employees experiencing increased and unfair scrutiny of their capabilities or being singled out for redundancy, or to black men being subjected to specific stereotypes of prejudices relating, for example, to sexual prowess or aggression—again resulting in discrimination.

However, unlike the noble Baroness, Lady Warsi, I would argue that the provision as it stands does not go far enough. I should say that my briefing is very much based on evidence from the CAB, which has, as everyone knows, played an enormously important part in advising citizens throughout the UK. If ever there was experience to go on, we would find it there—we may have to question the CAB in more detail later.

The provision as it stands does not go far enough. Not including combined indirect discrimination and combined harassment leaves a significant gap in the law—I have always been in favour of including indirect discrimination because it played such an important part in the Sex Discrimination Act, albeit in limited areas. This would also make it harder for some people to seek the justice they deserve and would make the law more complicated.

While the Government's provision would mean that a claimant could in future bring one case with just one claim relating to a combination of two characteristics if they had experienced direct discrimination, this will not apply if they have experienced indirect discrimination or harassment. Instead, they will have to bring any indirect discrimination or harassment as separate claims relating to the single characteristics. This can prove impossible. For example, a Pakistani Muslim client of a citizens advice bureau was harassed by a colleague saying, "I hate you and your people". At tribunal she would have had to prove whether the hated "you and your people" were either Pakistanis or Muslims, which in her case could not be done. As one CAB case worker put it,

> "In trying to separate out the grounds to prove the treatment … you dilute both the issues … with the consequence that you may end up presenting two weak cases and losing both".

Consequently, solely on technical grounds, it can be impossible to prove that indirect discrimination or harassment has taken place.

This is made worse by the requirement to use comparators under the separate characteristics, which enable an employer to deny indirect discrimination or harassment irrespective of how badly they may have treated their employee. Organisations such as Citizens Advice and the Discrimination Law Association have provided significant evidence to show that this is a real problem in people's lives and needs to be addressed, not least because many people who experience direct discrimination also experience harassment or indirect discrimination within the ill-treatment they face.

For example, on combined indirect discrimination as in Amendment 42, Citizens Advice evidence indicates that not being able to bring a combined indirect discrimination claim may be a particular issue for women. In one case, a CAB client, a disabled woman, requested flexible working due to both her disability and her childcare responsibility. Her employer refused. The less favourable treatment she received was due to a combination of indirect discrimination on the grounds of her sex and direct discrimination on the grounds of her disability.

That is also an issue that specifically impacts on migrant women and is linked to gender concentration in certain occupations. For example, Citizens Advice has dealt with a case regarding the discriminatory working conditions women from certain countries face when recruited to the UK to undertake nursing jobs. I emphasis that this is only in specific circumstances, it is not everybody recruited to come over here to undertake nursing.

On combined harassment in Amendment 56, Citizens Advice conducted in-depth investigation of 15 cases that meet the Government's definition of direct discrimination. Some 13 of those—86 per cent—involved incidents of harassment as well as direct discrimination. While a small sample, Citizens Advice is convinced that it is a representative one, with its case workers reporting that many direct discrimination cases begin with or include some form of harassment, in particular verbal abuse and bullying which is often the precursor of less favourable treatment.

These amendments will improve protection to reflect the reality of people's lives and avoid claimants needing to bring complicated multiple claims.

It simply does not make sense to consider some acts on a combined basis and to have to separate out others into single characteristics. There is clear evidence of the need to address combined indirect discrimination and combined harassment, and I argue that adopting these two amendments would make it simpler for individuals to bring claims and for employers and advice agencies to ensure that their staff were trained adequately in the law.

5.45 pm

Lord Lester of Herne Hill: My Lords, it causes me personal pain ever to disagree with the noble Baroness, Lady Howe of Idlicote, as she knows. She and I have been working together in this area for more decades than we probably want to admit. However, I have to disagree here.

The starting point is to secure a fair balance between the right of alleged victims and the right of those who are alleged to have discriminated against or harassed them. There is a need for law which is capable of being understood not by ordinary men and women—that would be too much—but at least by the employment tribunals that have to deal with these matters and by specialists in this area.

When I began to look at the Bill, like the noble Baronesses, Lady Warsi and Lady Howe, I was tempted to push the Government to go further. However, Ministers allowed me to have a lengthy meeting with members of the Bill team, who convinced me, after detailed arguments, that I was wrong. It is always very desirable to recognise that that is likely to be the case.

At the moment, there is nothing to stop a woman or a man bringing a case on several different grounds of alleged discrimination or harassment, and nothing in the Bill will make that more difficult. Therefore if, for example, a woman wishes to say that she has been discriminated against because she is a woman or because she is black, there is nothing to stop her doing that. The Bill makes it easier for a person in that situation to say, "Well, I'm not sure whether it was because I was a woman or because I was black, or to what extent it was a bit of both, so I am putting in a combined grounds claim in that area". I hope that what I have said is intelligible—it is to me, at any rate—and workable. It means that the tribunal will look at the reasons for the less favourable treatment to see whether it is "because

[Lord Lester of Herne Hill]

of", to use that admirable phrase, gender or race or a bit of both. Regardless of whether it is one, the other or a bit of both, it will be unlawful.

The argument is that if that can be done on two grounds, why cannot it be done on three or four grounds? I think the answer is that it would be excessively burdensome for employers and it would complicate litigation in employment tribunals. If two grounds are not enough, there is nothing to stop you adding others, as is the case at the moment. Therefore, I became convinced that pushing the matter further would be counterproductive.

Leaving that to one side, the next question is: what about harassment? Again, I do not think that there is a need for combined grounds in relation to harassment, which is a different concept. The question is whether the alleged conduct, on one or more grounds, essentially involves bullying, insulting people's dignity and so on.

The next question is: can one not go further in relation to indirect indiscrimination? Like the noble Baroness, Lady Howe, I am totally wedded to the idea that discrimination is not just about less favourable treatment but about equal treatment with unequal impact. The problem is that most people do not understand what indirect discrimination means in the first place. It is a difficult concept, as we have discovered. If you have lots of different grounds which you can combine in a single indirect discrimination case, it will become completely unmanageable. First, you have to define which group, of which the claimant is a member, is suffering an adverse disparate impact. If the group is, say, women, black people or the disabled, that must be intelligible. Then you measure whether there is disparate impact or not. Then you measure whether there is a lack of objective justification for having an equal rule with an unequal effect—something of that kind. But if you start adding more than one category to indirect discrimination, you have to start looking at the statistics, not just for the one ground, but for more than one ground, and the thing becomes unworkable.

There is nothing to stop somebody, if they have that kind of lawyer, having multiple grounds on indirect discrimination as it is. Those Ministers who took the step of having combined discrimination, dual characteristics, in Clause 14 did really well to persuade the business Ministers to allow that to happen, given that the CBI and other employers' organisations do not want any of this.

I conclude on a pathetically pragmatic political note, which is that I do not think we could get any more and we are jolly lucky to have what we have now. I would stick by that.

Lord Low of Dalston: My Lords, I welcome very much the Government's initiative to provide for claims of combined discrimination. Indeed, it has been welcomed by organisations representing disabled people. The organisations would also welcome some clarification that disability will always count as one single, protected characteristic with respect to claims of combined discrimination, in line with the Minister's Answer to the Written Question asked by the noble Lord, Lord Lester, on 19 October 2009. He asked whether,

"a person disabled by both physical and mental impairment should be treated as having one relevant protected characteristic if he alleges that he has been discriminated against because of a combination of those forms of impairment".

The noble Baroness, Lady Royall, replied:

"If a person is disabled by both physical and mental impairments, these impairments should be treated as the protected characteristic of disability with respect to any claims for discrimination that they may wish to make".

There is an element of uncertainty in this answer in that it begs the question whether the compositing of claims in respect of disability, which it envisages, is limited to the case where claims based on both physical and mental impairment are combined. The Minister concluded in more general terms by saying:

"Even though a single claim may involve a number of impairments, provided that the person met the definition of a disabled person … this would be treated as disability discrimination".—[*Official Report*, 19/10/09; cols. *WA 38-39*.]

This speaks in quite general terms of a number of impairments, without reference to whether they are physical or mental. I would be grateful if the Minister could confirm on the record, when she replies, that all impairments or any combination of them, whether physical or mental, will be treated as the single protected characteristic of disability in claims for discrimination.

The Lord Bishop of Winchester: My Lords, I want to take the opportunity that Amendment 56 provides of probing a line in this legislation about harassment that risks exacerbating an existing concern of very many in the churches. Subsections (2)(a) and (b) of the new clause proposed in Amendment 56 copy exactly the wording in Clause 26(1)(b)(i) and (ii). My concern with the first of those—that B's dignity may be violated—is the chain of cases we have seen in recent months where Christians, but it could be people of other faiths too, in the context of their work have said "God bless you" or offered to pray for somebody or whatever it may be, not as I understand it insistently or in any normal sense of the word harassingly, but much more because that is to them the most natural outworking of being Christian.

There have been a number of cases when their employer—a local authority, or whoever—has jumped on that, hauled them up and in some cases threatened them with suspension or dismissal. In some cases they have been suspended or dismissed. If such insensitive behaviour is repeated again and again against people's manifest wishes, that could be harassment, but this action by local authorities and other employers is a sign of something that occurs in a number of amendments to the Bill, that is sometimes there in the activities of the Government, and that is certainly in some of the work of the Joint Committee on Human Rights: that if one is a person of faith one can switch on and switch off one's whole mindset and behaviour. But people of faith who are worth their salt—I guess this is true of Jews, Muslims and many others, as well as Christians—are what they are through and through, like the lettering in a stick of rock.

I am concerned that the form of words in subsection (2)(a) of the proposed new clause, which is the same as in Clause 26(1)(b)(i), may exacerbate that set of problems. It is an irrational and ignorant way of behaving by authorities and others. I have an analogous and different anxiety on subsection (2)(b) of the proposed new clause, which reproduces Clause 26(1)(b)(ii). That

anxiety is based not in imagination but in situations that I understand have occurred. In a Christian or Jewish care home, for instance, there is a fear that a worker who is not part of the faith of the home could complain. The same applies to a Salvation Army night shelter, for instance, or there might be a cross on the wall in a Roman Catholic care home, or a Jewish symbol in a Jewish care home. There have been instances when a worker has raised the question, as happened recently in Italy in relation to church schools, of whether the fact of—

Lord Lester of Herne Hill: I am sorry to interrupt, but we will have a full debate on harassment when we come to a later group of amendments. All these points, many of which I am sympathetic to, will arise in that context. We are dealing with combined characteristics only at the moment. Harassment is just a bit of it. I thought that I would mention that as we need to go into harassment in some detail. I apologise for even mentioning it.

The Lord Bishop of Winchester: The noble Lord has said it very graciously. If I am speaking at the wrong time, I shall stop. What I have said is on the record so it may be useful later.

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): Amendments 34, 42 and 56 relate to Clause 14, which provides protection from what we call dual discrimination and enables someone to bring a claim of direct discrimination because of the combination of two relevant characteristics. I am grateful for the support for this clause from all around the Committee.

The law as it stands requires that people must separate the different characteristics and bring separate claims, which means that it can be hard for those who experience this kind of discrimination to secure a remedy. For example, a black woman discriminated against when she is passed over for promotion who has to bring separate claims for race discrimination and sex discrimination may not succeed in either claim if her employer can show that black men and white women are not treated in the same, less favourable manner. The clause provides proportionate and effective remedies for this gap in the law, based on careful consideration of the evidence available through consultation and discussions with all interested parties.

6.00 pm

I have shared with interested Peers a factsheet on dual discrimination, produced by the Government Equalities Office, which explains this clause in some detail, and I will today place a copy with the Library of the House.

The noble Baroness, Lady Warsi, spoke quite properly of the impact on business. Our discussions with business and other organisations made the clear point that good guidance, issued early, will help businesses to ensure that they do not over-comply, as it were. The EHRC has today issued its first draft of the codes of practice, which includes combined discrimination and is available on its website. We understand that the commission will publish its draft guidance for consultation on 25 January, and I will ensure that it is circulated to all noble Lords participating in this debate.

Amendments 42 and 56 concern intersectional discrimination and harassment respectively. Before I address the proposed new clauses in the amendments, I should say to the right reverend Prelate that I have heard his concerns, which will be dealt with in a later debate. On the harassment protection in the Bill, the question was whether the Bill could prevent Christians or people of other religions expressing their faiths at work. I should make it clear that the test for harassment has an objective element; the test is whether it is reasonable for the treatment to have the effect complained of. I hear the concerns expressed by the right reverend Prelate and I have sympathy with what he says, but we will come to that later on.

When debating this clause in the other place, my honourable friend the Solicitor-General made it clear that this provision was being introduced, following careful consideration of the evidence, to ensure that there was a proportionate response to a gap in the law. There is general agreement that there is a gap in the law in respect of direct discrimination, and the evidence shows that extending protection to direct discrimination addresses the vast majority of intersectional discrimination cases. For businesses and organisations that are complying with existing discrimination law, this new provision will not require them to do anything more.

We have not, however, been persuaded that the same provision should be made for indirect discrimination or harassment. There is simply no indication that the existing law is failing to provide the necessary protection. Although we are very grateful to the citizens advice bureaux for their assistance in this matter, the scenarios that they raise—the noble Baroness, Lady Howe of Idlicote, referred to these—do not suggest otherwise, and to extend the provision to these areas would place a significant additional burden on businesses.

Amendment 42 would extend the law by introducing indirect dual discrimination. This would mean that all businesses and organisations would need actively to consider the impact of their provisions, criteria and practices on all 21 combinations of characteristics. In addition, the amendment would include marriage and civil partnership, a protected characteristic where there is no evidence that the existing protection is inadequate. This would mean that the coverage of indirect and direct dual discrimination would differ and would increase to 28 the number of possible combinations upon which employers and businesses would have to assess the effect of their policies and practices. The result would be contrary to the goals of simplification and harmonisation and would impose a disproportionate burden, given that there is no evidence of need.

Amendment 56 seeks to include protection from intersectional harassment in the Bill. As with indirect discrimination, there is no evidence that a remedy is lacking and therefore no basis to extend the law to include a provision for intersectional harassment. Unlike the prohibition of direct discrimination, the prohibition of harassment is not expressly comparative, and conduct involving a combination of protected characteristics is more likely to satisfy the standard of being "related to" each characteristic, even when considered separately. Moreover, because the associative definition of harassment used in the Bill eliminates any element of causation,

[Baroness Royall of Blaisdon]
harassment is not susceptible to the same problems of proof as direct discrimination. As with indirect discrimination, there is simply no problem necessitating further legislation.

Finally, the harassment provision that is proposed permits unlimited combinations of protected characteristics and therefore also goes significantly further than the approach adopted in Clause 14, imposing costly burdens and resulting in confusing discrepancies, again contrary to the Bill's aim of simplification and harmonisation. I recognise that indirect discrimination and harassment could occur on an intersectional basis, as some noble Lords have said, but there is no equivalent gap in the law, no evidence of a problem in practice and therefore no justification for new legislation. Based on consideration of the evidence available, Clause 14 is a proportionate response to a specific gap in the law, providing the necessary remedy without placing an undue burden on businesses and organisations. If there is any uncertainty as to the type of conduct or protected characteristics involved, nothing in the Bill would stop someone bringing more than one claim—as the noble Lord, Lord Lester, said—as is currently the case. However, extending the law further to include indirect discrimination and harassment would result in an unnecessary and disproportionate increase in the cost and complexity of the law.

Amendment 34 seeks to remove Clause 14(6), which empowers Ministers to specify further what a claimant does or does not need to show to prove dual discrimination, or to prescribe additional circumstances where this clause would not apply. It is necessary to include this power because dual discrimination is a new and untested provision. It is therefore prudent to provide flexibility to ensure that it is effective and to accommodate future changes in procedure. For example, Ministers might use the power if, in practice, it is thought necessary or appropriate to require claimants to adduce evidence relating to each protected characteristic in the combination, or if exclusive jurisdiction regimes were created for other types of discrimination in addition to that which is excluded by subsection (5). As the exercise of this power results in amending the Bill itself, any use of it is subject, under Clause 197(2), to the affirmative procedure. Prohibiting dual discrimination is a forward-thinking step on which we can all agree, and it preserves our place as a world leader in the fight against discrimination.

The noble Lord, Lord Low, asked me a specific question relating to disability. However you satisfy the definition of disability, it will only ever constitute a single protected characteristic for purposes of dual discrimination. I hope that that is clear.

I ask the noble Baroness to withdraw the amendment.

Lord Lester of Herne Hill: I am sorry to mention this now, but I do so so that one can think about it later. Going back to the point which the right reverend Prelate rightly raised, the real problem arises in Clause 26(1)(b) with the word "or". The problem is that when the Government implemented EU law, their gold-plating was such that, whereas EU law allowed them to say "and" in the employment field, they said "or". The problem with saying "or" is that it means that there is harassment if,

"the conduct has the purpose or effect of … violating B's dignity, or",

rather than "violating B's dignity, and" creating an intimidating, et cetera, environment.

The result of "violating B's dignity" alone giving rise to harassment is that it gives rise to all the problems, to which the right reverend Prelate referred, of zealots who are unduly sensitive, and so on. I would wish to turn the clock back, if one can, and put in "and", both in employment and beyond. I know that officials know that that is my position, but I have not tabled an amendment.

Baroness Royall of Blaisdon: That has certainly given us food for thought for a debate on a later set of amendments, and we will return to that in due course.

The Lord Bishop of Winchester: Perhaps the noble Lord and I can make that amendment together at a later stage.

Baroness Howe of Idlicote: Would this be an appropriate moment, first of all, to thank the noble Baroness the Leader of the House for her very clear guidance on this? I will need to think about and discuss this, because I have to say that the evidence that the CABs have gone into—they are the practitioners on the ground, as it were—does need to be considered carefully and, I think, has been. I am also grateful to my noble friend Lord Lester—I call him that even though he is sitting on another Bench—for explaining how he initially reached the same view but was persuaded down another path. I now have a great wall to get over if I wish to take my amendments any further.

I am also grateful to the noble Baroness, Lady Warsi, who made some clear points. The noble Lord, Lord Lester, seemed to indicate that it is perfectly possible to bring a claim on any of the points, making it certain that the lawyers will bear them in mind and reach a conclusion on a combination of all of them. It has not always happened that way, but it may well be that if combined direct discrimination becomes part of the law, that will encourage lawyers to take a rather broader view of all the other points raised. I am very grateful.

Baroness Royall of Blaisdon: I suggest that I organise a meeting with officials on this issue before Report for the noble Baroness and the noble Lord, Lord Lester.

Baroness Warsi: I thank noble Lords, particularly the noble Baroness, Lady Howe, for taking part in this debate. The amendments that she tabled sought clarification from the Minister. I am grateful for the Minister's response and clarification and for some of the reassurances that I sought in tabling my amendment. I look forward to reading the codes of conduct which have now been published by the Equality and Human Rights Commission. I beg leave to withdraw this probing amendment.

Amendment 34 withdrawn.

Clause 14 agreed.

Clause 15 : Discrimination arising from disability

Amendment 35

Moved by ***Baroness Warsi***

35: Clause 15, page 8, line 22, leave out subsection (2)

Baroness Warsi: This amendment is designed to probe the balance of responsibility between an employer and an employee when dealing with disability. The Government have brought in Clause 15 to try to restore disability law to its status before the judgment in the case of the London Borough of Lewisham v Malcolm in 2008. By now we are all familiar with the details of this case, so I will not cover it in much detail now.

Suffice it to say that, famously, the judgment in that case reversed the definition of disability-related discrimination decided by Clark v Novacold Ltd. That judgment stated that a like-for-like comparison could not be made because such a comparison may not be appropriate in a disability case. However, in the Malcolm case it was decided that Mr Malcolm, who had schizophrenia, should be treated in the same way as any other tenant who had sublet his home, despite the fact that his lawyers argued that the subletting was caused by his schizophrenia.

There was general agreement that this judgment must be reversed in order to return disability law to its status before the judgment, and to how it was understood to operate before the judgment. We welcome the fact that the Government have attempted to address the issue with this clause and so to provide the degree of protection for disabled people that was originally intended. However, we would like to raise certain concerns, as we have seen that the Disability Charities Consortium is still doubtful about whether this goes the whole way to addressing its concerns.

For this reason, we have tabled Amendment 35. It removes Clause 15(2), which states that person A does not discriminate against disabled person B,

"if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability".

The Disability Charities Consortium is very concerned by this because it argues that the Equality Bill inserts a knowledge requirement that was not present in the Disability Discrimination Act 1995. It is concerned by this because the feeling is that the balance will be very difficult to create and maintain. It is obviously the case that employers cannot be expected to know everything about their employees, and nor would it be right for them to ask. However, there is also the risk, as raised by the Disability Charities Consortium, that employers may use this requirement to create a culture of ignorance in which they can be less than proactive in asking questions and finding out details about their employees in order to provide themselves with a defence.

6.15 pm

As the Minister said, this clause was redrafted on Report in another place,

"to provide greater clarity that the provision is intended to cover discrimination that arises from matters connected with a disabled person's disability".—[*Official Report*, Commons, Equality Bill Committee, 16/6/09; col. 275.]

We welcome many of the changes that have been made to the clause. These were in response to pressure from the Official Opposition and the Liberal Democrats in another place. However, the knowledge requirement remains. Can the Minister clarify that it is indeed a new provision, not a clarification? Can she inform the Committee how the best balance will be achieved and maintained so that employers and employees are aware of precisely where they stand in relation to the law? I beg to move.

Lord Lester of Herne Hill: It is extremely useful that the noble Baroness, Lady Warsi, has gone to such trouble to explain the amendment. The knowledge that she has given the Committee is most valuable. However I do not think that, on reflection, she would be in favour of her own amendment. The consequence of leaving out Clause 15(2) would be that even if an employer did not know, and could not reasonably have been expected to know, that the alleged victim had a disability, there would nevertheless be liability. That would be wholly unreasonable.

I am all in favour of very strong disability discrimination protection, but if there is absolutely no knowledge that a person is disabled, and if someone could not reasonably be expected to know, I cannot understand how on earth there could be liability. Although I am grateful for the introduction, the Malcolm case has been effectively reversed by these amendments, and I would be very interested to know whether other noble Lords who specialise in this area—for example the noble Lord, Lord Low, or the noble Baroness, Lady Campbell—would think it unreasonable to keep Clause 15(2) in the Bill.

Baroness Deech: This clause is not confined to employment. I have some experience of this in handling student complaints. In my time, discrimination against students who had dyslexia was a major issue. Dyslexia is not visible, and universities, quite reasonably, could not be expected to make allowances in relation to time and marks if they did not know that a student had dyslexia. In the written decisions that the Office of the Independent Adjudicator for Higher Education gave, and based on counsel's opinion, we would say that the university had not acted unreasonably if it could not have known that the student had the disability of dyslexia. That seems to be a perfectly reasonable outcome. I therefore support the noble Lord, Lord Lester, in not wishing to place too heavy a burden on employers and others, such as universities, who cannot be expected to know every detail about employees and students. Indeed I believe that we should encourage employees and students not to be ashamed of having a disability and to come forward so that the organisation can cater for it, rather than waiting until something has gone wrong and then saying that they have been discriminated against. I think that this is a good subsection.

Lord Low of Dalston: My Lords, in response to the noble Lord, Lord Lester, perhaps I may say that I was not pressing for the knowledge requirement to be removed from Clause 15.

Baroness Meacher: My Lords, people with mental health disorders are often very concerned that others do not know of their disorder. It would be unfair to allege discrimination in such cases. Therefore, I, too, support the subsection as it stands.

Baroness Royall of Blaisdon: My Lords, Clause 15 provides that an employer or service provider, such as the universities cited by the noble Baroness, Lady Deech, cannot be liable for discrimination arising from disability if he or she does not know, and could not reasonably be expected to know, that the person is disabled. This is sometimes referred to as the "knowledge requirement". This amendment seeks to remove it from the Bill.

The judgment in the House of Lords in the Malcolm case was unanimous that actual or imputed knowledge of the disability must be a factor in determining whether there has been disability-related discrimination. It is right to reflect this in the legislation, rather than rely on case law.

An example is a pub landlady who refuses to serve a man who has had a stroke as she thinks that the man is drunk because of the way that he speaks. He is not refused service because he has had a stroke but because he has slurred speech, which is something that is connected with the disability. If any of the facts of the case, such as the other symptoms connected with a stroke or information given to the landlady by the customer himself, or by someone else, should have led the landlady to believe that the slurred speech was the result of the stroke rather than the drunkenness, the knowledge provision will be satisfied. This is the case even if the landlady herself did not believe that this was the case.

The legislation, therefore, achieves a balance between the rights of disabled people and the interests of those with duties. The Bill sets out that a person is still under a duty not to discriminate where they could reasonably be expected to know that the person was disabled; and that, once a prima facie case has been established, the burden of proof falls on the duty-holder to show that they have not discriminated.

The noble Baroness, Lady Warsi, asked how businesses or service providers would know what to do. There will be codes of practice that will be used alongside the legislation. These codes of practice will set out examples to show, where the treatment is unfavourable, how it should be determined. I am not sure when these codes of practice will be forthcoming but I will certainly let the noble Baroness and other noble Lords know. I would therefore respectfully request that the noble Baroness withdraw the amendment.

Baroness Warsi: My Lords, I thank the Minister for her response, specifically in relation to the assurances that more-detailed codes of practice will be published to provide further clarification. I thank the noble Lord, Lord Low of Dalston, and the noble Baronesses, Lady Meacher and Lady Deech, for bringing forward their experience and direct contact with individuals and organisations that may be affected by this. I am grateful for this experience. I beg leave to withdraw the amendment.

Amendment 35 withdrawn.

Clause 15 agreed.

Clause 16 agreed.

Clause 17 : Pregnancy and maternity discrimination: non-work cases

Amendment 37

Moved by ***Baroness Thornton***

37: Clause 17, page 8, line 41, leave out "Chapter 2 of"

Baroness Thornton: My Lords, I speak to the amendment in the name of my noble friend Lady Royall. For brevity's sake, I refer to that of the noble Lord, Lord Lester, and thank him for tabling his amendment, which mirrors the Government's thinking on this sensitive issue.

Nobody is happy to see someone who is barely more than a child becoming pregnant while still at school. We want to reduce the incidence of this happening; the Government's Teenage Pregnancy Strategy is focused on this. However, once a pupil has become pregnant, and, if she decides to go ahead and have the baby, the important thing for both her and her baby's future prospect is that we try to ensure that she is able to complete her education. This is the best possible outcome for all concerned.

Initially, our view was that other measures already in place were sufficient to tackle this without extending discrimination law into this area. However, we have considered this issue very carefully and listened to the concerns raised during the passage of the Bill. We now accept that the best interests of pregnant schoolgirls will be served by their being protected from discrimination in schools. I am therefore happy to table this amendment, which will remove the exemption in schools from Clause 17 of the Bill. I am also at this point happy to accept the amendment of the noble Lord, Lord Lester, which will do the same in Clause 84.

Through their Teenage Pregnancy Strategy, the Government will continue to try to ensure that school-age mothers receive the support and tuition they need to complete their education. This new protection in law should help to clarify the position for very young mothers and ease their way back into an educational setting. I beg to move.

Lord Lester of Herne Hill: My Lords, I am very grateful to the Minister. I strongly support Amendment 37. I am grateful to the Government for indicating that they will support my Amendment 105. If we do not bring our domestic law into line in this way, there will be a very strong argument for saying that not ensuring teenage pupils who become pregnant in schools are not discriminated against violates the European Convention on Human Rights; that is to say, not only the right to education but the right to private life without discrimination. It is one of the reasons why this is beneficial.

Of course, no one is saying that they regard teenage pregnancy in schools as a desirable matter. That is a different matter altogether from whether the fact that a girl becomes pregnant in school should mean that she will be subjected to less favourable treatment. I am extremely grateful and support this amendment.

Baroness Gould of Potternewton: My Lords, I, too, thank the Government for tabling this amendment after the concerns that were raised at Second Reading by the noble Lord, Lord Lester, and myself about pregnant girls facing discrimination in schools. The Government amendment and the amendment put down by the noble Lord, Lord Lester, are important. I give you three incidents.

It will benefit, for instance, a young woman who was asked by her school to leave when she got pregnant; a young woman who was 25-weeks pregnant and was told that she was not allowed to sit an examination because she could not wear her school uniform; and the girl who was told by her teacher that there was no need to carry on her education because she had ruined her life by becoming pregnant. Those are just three very quick examples that I put on record to show the importance of the amendment that we have before us.

Not to have this amendment would completely contradict the policy of the Government in respect of teenage pregnancy and the work that is being done to encourage girls to continue with their education and their future development. Therefore, I fully support this amendment.

Baroness Warsi: My Lords, these two amendments will effectively extend the protection against pregnancy and maternity discrimination to schools. The Explanatory Notes, as they stand, state that this chapter will not apply to people in schools with regard to their protected characteristics of age, marriage, civil partnership or pregnancy and maternity. In light of the Minister's assurance at Committee in another place that she did,

"not think that there is an issue here",

as there,

"is plenty of law that covers this matter, as well as policies and guidance",—[*Official Report*, Commons, Equality Bill Committee, 24/06/09; cols. 466-67.]

can the Minister set out what research has been undertaken, and what results have been shown that prove that, since this matter has been in the other place, there is now an issue?

I listened to the examples laid out by the noble Baroness, Lady Gould. It is important that we extend legislation and protection to those who need it. However, it is also important that we ensure that this will work in practice. Therefore, can the Minister set out a couple of examples to inform the House of a situation where this new protection would come into place and how the school would ensure that that protection was in place? Have the Government, for example, done any research on the scope of this amendment? How many people does she envisage it will protect?

Furthermore, what analysis has been done of the impact of this provision on schools? Will guidance be provided to schools to demonstrate how these provisions will work and how they would be expected to operate within the bounds of the change of law? Will the Minister set out the changes she imagines will take place within schools in light of this change? In another place, this amendment was dismissed as unnecessary. We now see that the Government are putting it forward as necessary. Are they considering similar changes in other areas throughout the Bill?

6.30 pm

Baroness Thornton: My Lords, the noble Baroness has raised a variety of questions which I hope that I will be able to cover. Yes, guidance will be issued to schools. Yes, that was done on the basis of discussion with the DCSF. I do not have in front of me the figure for the number of schoolgirls who have become pregnant. I have dealt with this question wearing my hat as a health Minister, so I should be able to remember, but I am afraid that I cannot. However, we are happy that the number is falling, which is how we like it.

We have listened to a number of organisations about this issue. They have made representations to us and have given examples very like those given by my noble friend Lady Gould, plus others. We hope that this will not be a much-used addition to the protection that this Bill offers. We certainly do not envisage lawyers and legislation to be used except in extreme cases. However, it is very important that schools treat these cases with sensitivity, on a case-by-case basis and look at the best interests of the child who is in their care. This addition to this part of the Bill will help us to do that. We have listened to the representations that have been made. We are a listening Government, which is why we wish to make this change.

Lord Lester of Herne Hill: Perhaps I may ask a question, which will save me having to speak on Amendment 105. Is it not the case that at the moment sex discrimination against a pupil in a school is covered by the law? Therefore, in the old days one would have regarded pregnancy discrimination as part of sex discrimination. All that is now happening in order to make sure that it is covered is that there will be a separate provision to protect pregnant teenage girls and women.

Baroness Thornton: As ever, the noble Lord is correct.

Baroness O'Cathain: Perhaps the noble Baroness could give me some clarification. I am wondering how this measure will be implemented, although I probably have some comfort from the noble Lord, Lord Lester, who has said that already there is list. Will it be part of the order on schools that they include this measure? If so, when will it happen?

Baroness Thornton: The DCSF already produces guidelines to schools which give specific responsibilities that they have for pupils in their care who fall pregnant. This guidance will make it clear that a school cannot exclude a pupil simply on the grounds of becoming pregnant, or refuse to educate young mothers. This is being revised and will reflect this amendment if it is accepted and becomes law. The DCSF and the Department of Health issue joint guidance to local authorities and PCTs on what works with regard to the care of these children. We would expect this amendment, if it is accepted and becomes law, to become part of that system, which is already in existence.

Baroness O'Cathain: I accept the Minister's point, but I should like one further clarification. I listened intently to the examples given by the noble Baroness, Lady Gould, one of which was a complete disruption

[Baroness O'Cathain]
of a girl's education because she was not able to wear a uniform. However, why even under the current situation was that allowed to happen without sanctions being taken?

Baroness Thornton: I assume that legal action was not taken in that case. We are putting this beyond doubt.

Amendment 37 agreed.

Clause 17, as amended, agreed.

Clause 18 agreed.

Clause 19 : Indirect discrimination

Amendments 38 to 41 not moved.

Clause 19 agreed.

Amendment 42 not moved.

Clause 20 : Duty to make adjustments

Amendment 42A

Moved by ***Lord Low of Dalston***

42A: Clause 20, page 10, line 29, leave out "three" and insert "four"

Lord Low of Dalston: The substantive amendment in this group is Amendment 45A and the other 29 consequential—except Amendments 43 to 45, to which the noble Baroness, Lady Warsi, will speak. I am aware that further amendments may still need to be made which are consequential on Amendment 45A, but I hope that they can be taken care of on Report. Clause 20 imposes a duty on a wide range of persons to make "reasonable adjustments" for disabled people by complying with one or other of three requirements to take reasonable steps to avoid a "substantial disadvantage" at which a disabled person may be placed as a result of a "provision, criterion or practice"; or a "physical feature"; or the absence of an "auxiliary aid" or service. Amendment 45A adds a fourth requirement—to avoid a "substantial disadvantage" caused by the provision of information in an inaccessible form.

I once had a colleague who always began by saying, "I feel very strongly about this". One got the impression that he was starting at about 7 or 8 on the Richter scale. Although I feel very strongly about this matter, I hope I will be able to make my presentation slightly lower down the Richter scale. It will immediately be clear that I have a direct personal interest in this amendment. Perhaps that is why I feel so strongly about it. I should also declare my interest as a vice-present of RNIB, the leading charity representing the interests of blind and partially sighted people for whom improving access to information is a major objective of policy and campaigning.

No one can be in any doubt that we live today in the information society—if by that is meant an age in which we are bombarded by information from all sides as never before. The ability to handle that information effectively is critical to being able to participate effectively in society, avail oneself of its opportunities, fulfil one's aspirations and responsibilities, and negotiate one's way around the various institutions of society and the services that it offers. Yet, for blind and partially sighted people, or those who are print disabled in any way, the ability to do that is largely denied by the fact that the great bulk of that information is completely inaccessible to them. That is why we need provision for the removal of barriers created by the provision of information in an inaccessible form. This is as important to the inclusion of those with print disabilities as the removal of the barriers created by physical features is to those with physical disabilities.

There are a number of points I would like to make about the amendment. First and foremost, without it the Bill will represent a regression from what we have at the moment and that, as we know, is something that the Government have pledged to avoid. At the moment, Section 21(4) of the DDA provides:

> "Where an auxiliary aid or service (for example, the provision of information on audio tape or of a sign language interpreter) would—
>
> (a) enable disabled persons to make use of a service which a provider of services provides, or is prepared to provide, to members of the public, or
>
> (b) facilitate the use by disabled persons of such a service,
>
> it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to provide that auxiliary aid or service".

That is a plain duty in the Act with the provision of information clearly instanced as an example of the kind of services the duty refers to. There is nothing of that in the Equality Bill.

Secondly, it does not impose an undue burden on those providing services. Since it is an example of the duty to make reasonable adjustments, it only requires providers to do what is reasonable and is not mandatory. It is relatively cheap and easy to produce large print on a computer these days and not much harder to produce other formats. It might be thought—and I am sure the Government will say—this is not necessary because avoidance of the disadvantage caused by the provision of information in an inaccessible form is already covered by the first requirement to avoid the disadvantage created by a provision, criterion or practice, or the third requirement to provide an auxiliary aid or service. But these requirements effectively reproduce the current DDA duty to make a reasonable adjustment where a practice, policy or procedure, or the absence of an auxiliary aid or service, makes it impossible or unreasonably difficult to use a service. This has patently not worked. So we already have the obligation, in so far as it is comprehended by the equivalent of the first or third requirement, but it has not served our purpose.

Article 21 of the recently adopted UN Convention on the Rights of Persons with Disabilities on freedom of expression and opinion and access to information, which the UK has ratified, says that states parties should provide information intended for the general public to persons with disabilities in accessible formats

and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost. Yet research recently carried out by Dr Foster for RNIB showed that as many as 72 per cent—nearly three quarters—of patients were given information by their GP which they could not read. Similar, even higher figures were uncovered in relation to the rest of the NHS and other surveys have yielded even higher percentages. This information ranged from appointment letters to confidential test results—not the sort of thing you necessarily want someone else to read to you. Even Moorfields, the UK's largest eye hospital, fails to provide appointment letters in large print, let alone Braille.

RNIB has also provided a snapshot of the situation in local authorities based on a range of 22 local authorities from all round the country. The survey asked whether the authorities could provide information such as council tax bills in accessible formats for blind and partially sighted people. It showed that just two of the 22 authorities surveyed—just 9 per cent—had front-line staff answering the query. In most cases the caller was directed to a variety of departments before they even reached someone who knew what the policy on accessible formats was. Over a third said they could not offer Braille or audio for people who could not read print. How are people expected to fulfil their responsibilities as citizens in those circumstances?

6.45 pm

The Benefits Agency sends out benefit letters to blind people in standard print. A DWP survey of public bodies, including government, education, health and emergency services, found that only a quarter of organisations offered information in large print, only 8 per cent offered it on disk or CD, and as few as 4 per cent advertised the availability of Braille. Although some of these materials were available on request, the survey found that approximately 40 per cent did not provide information in an accessible format at all.

This is the daily experience of 2 million blind and partially sighted people, and the problem of the unavailability of large print is a growing one as the population ages. It is my contention that, if we are to tackle this in a manner which shows that we mean business, we need to have this amendment in the Bill no less than the requirement to remove physical features which prevent access. I have raised this issue regularly, with Cross-Bench support, in debates on the Health Bill, the Local Democracy Bill, the Local Transport Bill, the Apprenticeships Bill, and others. Ministers have invariably been sympathetic and recognised that the Equality Bill was an appropriate place to try to solve the problem once and for all with a generic solution. This amendment gives us that opportunity. I do not delude myself that it is a panacea, but it takes us a long way further than the guidance we have at the moment which is not working and it will give the enforcement authorities—the EHRC—something much more substantial to go on. I beg to move.

Baroness Campbell of Surbiton: My Lords, I support the amendment tabled by the noble Lord, Lord Low, as does the noble Baroness, Lady Wilkins. Unfortunately she could not dig her way out of the snow. I was lucky; I had two PAs who decided that I should go to work whether I liked it or not.

The noble Lord is absolutely right about accessible information. It is as important to blind and deaf people as a ramp is to me, a wheelchair user. Since 1996 I have witnessed a monumental change in the environment in terms of access. Where once steps said "No entry" to disabled people, there are now, in most instances, ramps and automatic doors. I wish I could say the same for my blind friends who still have to ask, and at times beg, for information in a suitable, accessible format. In today's society, information is power. The only way to empower my blind and deaf colleagues so that they feel equally informed is to make sure that accessible information is on everybody's radar. This amendment could do exactly that.

Lord Lester of Herne Hill: My Lords, no one who has listened to the two speeches that we have just heard could be other than overwhelmingly in favour of this amendment and the related ones. I have heard many speeches in my 15 years in this House, but I have never heard one better put than that by the noble Lord, Lord Low, with the backing of the noble Baroness, Lady Campbell. If I were the Minister, how would I reply other than to accept the amendment? I would probably say, "It's not working in practice, but we'll get the Equality and Human Rights Commission to do this, that and the other in the future". I can only say that if that is the response, it will not be good enough. The noble Lord, Lord Low, is right to feel indignant after all the attempts that he has made in the past. I very much hope that, in our consensual approach to the Bill, it will not be necessary at any stage to divide on this matter. However, if it becomes necessary to divide in the future, I shall ask my party unequivocally to support the amendment and the related ones.

Baroness Butler-Sloss: My Lords, I, too, have listened to the very moving speeches. I agree entirely with the noble Lord, Lord Lester of Herne Hill.

Baroness Howe of Idlicote: My Lords, I add my name to those who would support the amendment, including voting in favour of it if that were necessary.

Lord Elton: I am equally moved by the two admirably succinct and lucid speeches that we have heard and the way in which they demonstrated the effects of these disadvantages on the lives of those who suffer from them. I share the enthusiasm of the noble Lord, Lord Lester, for the object of the amendments, but I would think that the Committee needs to be reassured on a single point. The noble Lord, Lord Low, has made it clear that provisions already exist for the remedy of these situations. The Committee needs to know how adding the same obligation to this statute will remedy the failure of similar provisions in earlier statutes. Is not some stronger measure or different approach needed to relieve this intolerable situation?

Baroness Warsi: My Lords, we have heard a very persuasive case, made by the noble Lord, Lord Low, about the importance of, and the need for, this amendment, supported by the noble Baroness, Lady Campbell of

[Baroness Warsi]
Surbiton. However, the points that have just been raised by my noble friend Lord Elton need, too, to be borne in mind.

As I understand it, the noble Lord, Lord Low, is asking for no change to be made to the scope or extent of the Bill; he has argued that the intention of the "fourth requirement" is merely to place in a more obvious position the need for A to provide more accessible information. Will the Minister confirm that the amendment would achieve what the noble Lord seeks and would go no further than the current law as it stands? If it does not, the argument would appear to rest on whether it would be more beneficial to state the need for accessible information in the Bill, which in turn would depend on whether the more visible position of the requirement would mean that more people would be likely to follow it.

The Bill must be about achieving real change. The duty to provide accessible information for disabled people has been in force from 1995 and guidance around the issue has been available since then. However, as was clear from the speech of the noble Lord, Lord Low, there is still a considerable lack of compliance with it. Does the Minister think that if the requirement were placed more clearly in the Bill, it would increase compliance with the duty? Or perhaps she can inform the Committee whether there are deeper issues here which we need to look into in more detail. Are there other reasons for this duty not being complied with? If so, are there other ways in which the problem needs to be addressed?

I have considerable sympathy with the concerns raised by the noble Lord, Lord Low. I would be interested to hear the Minister's response, particularly as to whether this is a cosmetic change to the Bill and the best way to ensure compliance with the DDA guidelines on accessible information to which the noble Lord referred.

Research from the RNIB submitted to the Conservative Party's working group on health information has shown that only 9 per cent of local authorities could even say whether they could provide accessible information, and that 72 per cent of patients have been given information by their GPs which they could not read. Lack of access to information can range from the annoying, such as not being able to read the day on which your rubbish will be collected, to the downright dangerous—for example, 81 per cent of people surveyed by the RNIB said that they did not get information about prescribed medicines in a format they could read.

In the age of computers where the touch of a button can provide information in a large format, it seems ridiculous that this should be such a hard provision to comply with. According to figures from the RNIB, there are currently 2 million people in the UK with sight loss. We have tabled Amendments 43, 44 and 45 to probe the Government's intentions regarding the possibility of the need for the asymmetric treatment of disabled people.

As the Bill stands, Clause 20 appears to concentrate more heavily on helping disabled people to "overcome" the disadvantage that may be put in their way. This can be seen from the examples in the Explanatory Notes. The first example is a utility company that knows that many of its customers have sight impairment—making it difficult to read invoices and other customer communications—thinking about how to make the correspondence more accessible. This may involve making some letters available in large print.

However, the Disability Charities Consortium is worried that this does not comply with the spirit of the Disability Discrimination Act, which was designed to ensure that disabled people have the same level of access as non-disabled people. Lord Justice Sedley in the case of Roads v Central Trains Ltd in 2004 stated that,

"the policy of the [Act] is not a minimalist policy of simply ensuring that some access is available to the disabled; it is, so far as reasonably practicable, to approximate the access enjoyed by disabled persons to that enjoyed by the rest of the public".

The Disability Charities Consortium is concerned that the Bill as it stands does not replicate this duty. It therefore considers it necessary to make clear the anticipatory nature of disability discrimination law. The emphasis should be on removing the barrier before it has even become a hindrance. Only where this is not reasonable should there be a requirement to provide an alternative means. There may therefore be a need to treat disabled people more favourably than those who are not disabled in order to take these factors into account and address these issues properly.

We have therefore tabled the amendments to question the Minister as to how far these concerns are addressed in the Bill. Do the provisions contain an anticipatory duty? The Explanatory Notes state that this clause and those following it simply replace similar provisions in the Disability Discrimination Act, but does the Minister consider that they retain the principle encapsulated in that Act? Can she give any reassurance to the Disability Charities Consortium on this point?

Lord Elton: My Lords, my noble friend reminds me of a practical point of some importance. I receive, as do all your Lordships, a steady stream of communications through my letterbox from local authorities. At the end of a great many of them is a little line which says, "If you need this in large print, then ring up the following number". The print is the same size as the rest of the document or smaller. That ought to be illegal.

The Lord Bishop of Chichester: It is a counsel of despair to say that some existing legislation is not working and, therefore, something should not be included in this Bill. If one takes the strict logic of the case, one could argue that Clause 20(4) is scarcely necessary. A physical obstacle is clearly excluded by the first subsection, but we draw specific attention to the need to remove physical obstacles. As the noble Baroness, Lady Campbell, said, knowledge is power. There are very few things more important than the free exchange of and access to information in our world.

I am very conscious of a particular area of disability that has not been mentioned today: people with learning difficulties, who often have a much higher capacity for understanding simply given information than they are often given credit for. Much public information and

many publications of public bodies are confusing, obtuse and arcane in a way that they do not need to be. Accepting the amendment and including in the Bill the addition which the noble Lord, Lord Low, is proposing would give a clear signal that we have an obligation to make information accessible to everybody regardless of disability.

7.00 pm

Baroness Thornton: My Lords, the duty to make reasonable adjustments for disabled people is unique to the provisions of current disability discrimination legislation and is the cornerstone of protection which the Bill provides for disabled people. It is important therefore that we ensure the new provisions in the Bill work and I welcome the opportunity to discuss this group of amendments.

Amendments 43 and 44 in the name of the noble Baroness, Lady Warsi, would remove the comparative from the first two requirements of the reasonable adjustment in Clause 20. The reasonable adjustment duty is triggered when the disabled person is at a substantial disadvantage,

"in comparison with persons who are not disabled".

It may also be worth reminding noble Lords that we have introduced a common threshold in this Bill for the duty in substantial disadvantage: the threshold that currently applies in the Disability Discrimination Act's employment provision. The service's trigger in that Act is impossible and unreasonably difficult. This change in the threshold is beneficial to disabled people as a substantial disadvantage test is an easier one to meet. The employment provisions in the DDA contain an equivalent comparator for the reasonable adjustment duty. We have no evidence that the use of the comparator has led to any difficulty in disabled people obtaining the reasonable adjustments they require.

Furthermore, we believe that removing the comparison with persons who are not disabled would confuse duty holders and therefore hinder, rather than help, disabled people who might require an adjustment. The courts may feel obliged to reintroduce a comparator in order to make the provision work effectively, and this would create a climate of uncertainty. On that basis, I respectfully request that the noble Baroness withdraws her amendment.

Amendment 45 deals with the duty's third requirement. It would alter the dynamics of the way the reasonable adjustment duty is designed to work in the Bill, and would increase the circumstances in which the service provider would be required to make a reasonable adjustment by way of providing an auxiliary aid or service by removing the threshold of substantial disadvantage and replacing it with a much more general concept of enabling and facilitating use of the service by the disabled person.

In framing disability discrimination legislation, we are always careful to try to balance the rights of the disabled persons and the duties we place on businesses and public bodies. Indeed, the noble Lord, Lord Low, and the noble Baroness, Lady Warsi, referred to this. In that context, this amendment is unhelpful because it would remove the clarity that the substantial disadvantage threshold provides and might place a rather too onerous burden on the service provider.

This amendment would also make this particular requirement inconsistent with the first and second requirements of the reasonable adjustment duty. In addition, it does not provide a link between the disability and enabling or facilitating, which should be the basis of any reasonable adjustment duty.

All the evidence we have is that the reasonable adjustment duty has greatly increased disabled persons' access to services, and we are widening its application by introducing the common threshold, as we have discussed, to create a simpler law. I suggest that these are reasonable and proportionate steps to take and that this amendment might go too far. I therefore again request that the noble Baroness withdraws this amendment.

On the group of 30 amendments submitted by the noble Lord, Lord Low of Dalston, I will not go through all the numbers and read them into the record; they will be there. They have a single objective, so it is sensible for us to consider them together. That single objective is to introduce into the reasonable adjustment duty an explicit fourth requirement. This would require those bound by the duty to consider taking reasonable steps to avoid the substantial disadvantage that disabled people would face if the manner in which they are offered information would otherwise result in them being so disadvantaged. I listened to the remarks of the noble Lord with great interest. Indeed, I felt humbled by them and ashamed that our Government and other public bodies are still struggling to meet this requirement.

At Second Reading in this House, the noble Lord, Lord Low, said:

"What ramps are to wheelchair users, large print and other forms of accessible information are to blind and partially sighted people".—[*Official Report,* 15/12/09; col. 1469.]

He told us that despite large print being easy to produce now, even eye hospitals fail to provide it. None of us would doubt or challenge the necessity for ready access to information so that we can participate in the workplace, exercise informed choice when accessing services and play a full part in society. The noble Lord has championed this cause during the passage of other legislation, so I have found myself on my feet having to answer similar points and arguments in the past. I acknowledge that to be exemplars of good practice in this area, government and the public sector can and should do more—a great deal more. I am sure the noble Lord would say "Hear, hear" to that. It is important that we continue a dialogue with him about how we can best achieve this in your Lordships' House.

There is already a provision in the Bill that is designed to deliver the outcomes that the noble Lord's amendments would make explicit. The Disability Rights Commission's highly regarded code of practice, *Rights of Access: Services to the Public, Public Authority Functions, Private Clubs and Premises*, has a good number of examples of the types of auxiliary aids and services that might be appropriate by way of reasonable adjustments for people with sensory impairments, including visual impairments, to help them access information, auxiliary aids and services which we believe are captured by the third duty in this Bill.

The noble Lord spoke of his concerns at Second Reading and, if I correctly understood his remarks and those from others around the House, they relate

[Baroness Thornton]
to compliance with this duty. As I have indicated, our attention should be focused on compliance and good practice and, for example, on ensuring that the Equality and Human Rights Commission delivers on its statutory duties to raise awareness of the new legislation through codes of practice and non-statutory guidance. Anticipating the remarks of the noble Lord, Lord Lester, it has recently launched a consultation on the draft codes of practice. To use the full range of its enforcement powers, including inquiry powers to drive up compliance and ensure good practice, an inquiry by the EHRC into the provision of accessible information would be entirely relevant and a worthwhile initiative to take.

If I can turn to one point before I conclude—

Lord Lester of Herne Hill: My Lords, having listened to the noble Baroness so far—

Baroness Thornton: If the noble Lord lets me finish, he may be pleased with what I have to say. Before I complete my remarks, I want to clarify a point raised by the noble Lord, Lord Low, about the reasonable adjustments duty in the Bill not being as strong as the duty in the Disability Discrimination Act. We do not think this is true. We believe the Bill provides better protection for disabled people, and three elements of the duty and requirements do what is reasonable, as is required by the DDA.

The noble Baroness, Lady Warsi, asked whether the duty for service providers is still anticipatory. As with the DDA currently, the duty of reasonable adjustment as it applies to those who provide services or public functions remains owed to disabled people at large.

In conclusion, I hope that what I have said goes some way to reassuring the noble Lord, Lord Low. The Government share his objective for the reasonable duty to deliver access to information to people with sensory impairments. However, we need to take these amendments away and look at them again. It would appear that the point is being made by every noble Lord around the House that the problem we have is one of implementation. We are not sure whether these amendments would improve that situation, but we will look at them again to see whether we can come up with something that could.

Lord Lester of Herne Hill: I am grateful to the Minister for asking me to be patient because what she has just said is obviously very important.

The great Archbishop of Canterbury William Temple once said: "Whenever I travel on the Underground, I always intend to buy a ticket, but the fact there is a ticket collector at the other end just clinches it". Of course, we no longer have ticket collectors at the other end. I have not heard in the Minister's reply any good reason why the amendment of the noble Lord, Lord Low, which would add a fourth requirement, would do the slightest harm or impose an unreasonable duty. Since we all agree that the present situation is intolerable, I asked myself why one should not accept these words, or something like it, and I have not heard the answer. Perhaps the Minister is saying that she will think about it and come back; I see two Ministers nodding. Of course, the noble Lord, Lord Low, cannot see that, but he should know that they are nodding. That gives me some reassurance, but I tend to be a William Temple person.

Baroness Thornton: I shall take this away and look at it with a view to returning to it.

Lord Low of Dalston: I am very grateful to Minister. I was initially a little dismayed that the Minister placed so much weight on greater efforts to achieve compliance, because it is my view, and my reason for moving the amendment, that we should do a bit more in the legislation to motivate that compliance and give the enforcement agency more to secure compliance. However, I too was glad that I waited until the end of the Minister's remarks, when she indicated that she would be happy to take the matter away and look further at the amendment.

I am very grateful to all noble Lords who have spoken and for the degree of support that there has been for the amendment round the House. One or two points have been asked of me. The noble Lord, Lord Elton, and to some extent the noble Baroness, Lady Warsi, asked what the point was of reinstating something that was not working. Before we go any further, we need to get something back in the Bill about this matter but if possible to improve on it and give it greater visibility. I thought that we had done this by putting it back in the language used by the drafters of the Bill for these requirements. It seemed to me that the correct way in which to do it was by adding another requirement. However, if the Minister feels that that does not do the job properly and would like to discuss other ways in which to achieve the objective, of course I would be extremely happy to engage in those discussions.

The right reverend Prelate mentioned the case of people with learning difficulties. I am very mindful of them, too. Making information accessible means not only putting it into Braille or large print but making it available in an Easyread format such as he was talking about. My objective would be to ensure that the needs of people with learning difficulties were encompassed just as much as blind or partially sighted people. People may feel that putting everything into an Easyread format would impose an intolerable burden but, as with all the applications of this amendment, it would only mean seeking on demand the rendering of information accessible; it would not have to be done automatically, for every piece of information that was produced.

I am a little sceptical about guidance, which is why I want to see something in the Bill. I think back to when we talked about the apprenticeships Bill. I was told that there were accessible information guidelines in the Cabinet Office but, unfortunately, nobody could find them. So noble Lords will understand why I entertain a measure of scepticism about the efficacy of guidance—certainly the efficacy of guidance that nobody can find.

I appreciate the fact that we have had a very good debate and am very grateful for the support that has been evinced around the House. I look forward to discussing the matter further with the Minister, in the hope that we will be able to find a consensual way

forward, as the noble Lord, Lord Lester, says, and will not have to bring it back and divide the House at a later stage. I beg leave to withdraw the amendment.

Amendment 42A withdrawn.

Amendments 43 to 45 not moved.

7.15 pm

Amendment 45ZA

Moved by ***Baroness Royall of Blaisdon***

45ZA: Clause 20, page 10, line 41, at end insert—

"( ) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty."

Baroness Royall of Blaisdon: The purpose of this amendment is to make explicit that the costs of a reasonable adjustment should not be passed on to an individual disabled person. The policy intention that we have sought to capture in the drafting of the Bill is that the costs of reasonable adjustments should not be passed on to individual disabled people, and that approach should apply in the employment context as well as in the areas addressed by Amendments 57C and 108P, which I understand will not be moved. The issue was not raised in the Commons at all, but in meetings with the disability lobby in the past couple of months we have become aware of the lobby's concerns. Indeed, the noble Baroness, Lady Campbell, made a very persuasive speech on Second Reading. On further reflection, the Government have decided to act to leave the matter beyond doubt. We believe that that is what the amendment achieves. I hope that noble Lords will be satisfied with the development and I beg to move.

Baroness Campbell of Surbiton: I would just like to say how thrilled I am at this amendment, for two reasons. First, I feel that it is my amendment, as it reflects so admirably the amendment that I was going to table. Secondly, it means that I do not have to read out a four-page speaking note for another persuasive amendment. I thank the Minister very much.

Lord Low of Dalston: I had my name on the amendment tabled by the noble Baroness, Lady Campbell, so it seems appropriate that I should also welcome the Government's amendment. Given the wonderful support that the noble Baroness, Lady Campbell, gave to my amendment, it would be churlish if I did not join her in welcoming the Government's change of heart and their habit of listening and reflecting, which I hope will set a pattern that they will be willing to continue in the period before Report.

Baroness Warsi: My Lords, we welcome the Government's decision to make explicit on the face of the Bill their intention on costs incurred by a duty holder making "reasonable adjustments" under Clause 20. A very helpful letter from the Minister stated that,

"in the existing legislation there is reference to not passing on costs of making reasonable adjustments in services and functions in the context of a different justification regime than applies in the Bill".

Can the Minister clarify this statement a little for the House? Clause 20, as I understand it, replaces similar provisions in the Disability Discrimination Act, with only a few changes. It introduces "substantial disadvantage" as a single threshold, applies the current practice by explicitly applying the third requirement to employment, and alters some of the language. These are only small changes from the Disability Discrimination Act. Why was the provision stating the cost of making a reasonable adjustment not also therefore transferred over? According to the Disability Charities Consortium, the Government had argued that they had included,

"sufficient safeguards that the costs of adjustments should not be passed on to disabled people".

If this was the intention, and the policy had been made explicit on the face of the Disability Discrimination Act, why did it take so long for it to be transferred over?

Lord Lester of Herne Hill: We on these Benches add to the consensus, and we are delighted that the Government have changed their mind. We look forward to further changes.

Baroness Royall of Blaisdon: My Lords, in the first instance when we were drafting the Bill we did not consider that such a provision was needed, as the very fact that the DDA and the Bill impose a duty on an individual implies that the individual should bear the costs of complying with the reasonable adjustment duty. If the duty could be read as meaning that it only had to be complied with if costs were met by someone else, the legislation would have made that clear. This is the case in relation to the duty to make alterations to the common parts, as paragraph 7(3) of Schedule 4 provides that it is reasonable to expect that the costs be paid by a disabled person. In addition, as far as we know, there have not been any reported cases of attempts to pass on the costs of the reasonable adjustments.

However, while our position was absolutely clear, the disability lobby felt that there was still some confusion or that this was misleading, and questioned whether the subsection about disability-related discrimination could be justified. This is a sort of belt-and-braces thing to clarify the position, and to ensure and to make explicit that the costs of a reasonable adjustment should not be passed on to an individual disabled person. We wanted to make it absolutely clear that we wanted disabled people themselves to feel secure that they were not going to have any additional burdens. That is the reason for this amendment.

Amendment 45ZA agreed.

Amendments 45A and 45B not moved.

Clause 20 agreed.

House resumed. Committee to begin again not before 8.22 pm.

Church of England (Miscellaneous Provisions) Measure

Motion to Present for Royal Assent

7.23 pm

That this House do direct that, in accordance with the Church of England Assembly (Powers) Act 1919, the Church of England (Miscellaneous Provisions) Measure be presented to Her Majesty for the Royal Assent.

The Lord Bishop of Chichester: My Lords, and now for something quite different. The body of law regulating the Church of England is complex—believe me. As time passes, it needs, like all other law, to be corrected, brought up to date and sometimes allowed appropriate development. Miscellaneous provisions Measures are a means whereby the General Synod of the Church of England from time to time seeks to amend matters of church legislation that do not merit free-standing legislation. That is the context of this modest Measure, which aims to make a number of uncontentious changes to various aspects of ecclesiastical law which have passed their sell-by date.

By the nature of the case, Measures like this usually contain an amorphous mixture of technical material, united by the common characteristic of being uncontroversial. There are however, as is also usual, some common themes, as the Measure seeks to clarify some problematic provisions, improve various processes, give greater flexibility and confer new powers to benefit the Church of England and those it serves.

A number of the changes made in the present Measure are designed to promote or clarify the governance of the church's national institutions. Thus, for example, Sections 1 and 11 devolve responsibilities relating to land acquired or held for the purposes of the local church from the Church Commissioners to the diocesan board of finance for the diocese concerned. At this stage I suppose I ought to record a particular personal, non-financial interest as a president and director of a diocesan board of finance. Other provisions make technical changes relating to the provisions for the governance of the Archbishops' Council, the Church Commissioners and the Church of England Pensions Board.

The Measure will then bring a number of provisions up to date. For example, Section 5 does that in relation to the retirement age of diocesan chancellors in the light of changes to the law relating to judicial appointments to which church provisions are linked.

In a more local context, Section 10(2) brings the provisions governing Christ Church, Oxford, more into line with those applicable to other cathedrals under the Cathedrals Measure 1999, which does not apply to Christ Church. It does so by increasing the number of non-residentiary canons, allowing the appointment of lay and ecumenical canons and creating a college of canons with specified functions.

Finally, the Measure will make certain changes to benefit the life of the church at different levels. Notably, Section 9, which has been included with the agreement of the Charity Commissioners, provides for gifts to or for the benefit of the Church of England to take effect as gifts to the Archbishops' Council, thereby avoiding the time and trouble involved in obtaining directions under the Royal Sign Manual or a scheme made by the court or the Charity Commission. Oddly, the Church of England does not exist as a corporate entity able to receive gifts.

By way of further example, Section 10(3) amends the Care of Cathedrals Measure 1990 so as to bring proposals for works which would affect human remains in cathedral precincts, which are currently subject to secular control, within the controls contained in that Measure, in the same way that human remains in churchyards are already subject to the faculty jurisdiction. If the Measure is enacted, the intention would be to ask the Ministry of Justice, whose coroners' department has already been consulted on the matter, to amend secular legislation, disapplying it in all cases where ecclesiastical controls apply, and thus avoiding dual control over human remains in cathedral precincts.

I hope that these necessarily brief and selective examples of what the Measure seeks to do will show that, beneath a somewhat dry and technical complexity on the outside, there lies the rather commonsensical aim of making the legal processes of the Church of England more effective at every level. Your Lordships might like to know that when this Measure was presented at the final approval stage in the General Synod, it was approved by 185 votes to one, with one abstention.

The Measure has been found expedient by the Ecclesiastical Committee and now comes to your Lordships' House for approval. I hope that approval will be readily forthcoming, and I commend the Measure to your Lordships' House.

Motion agreed.

Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure

Motion to Present for Royal Assent

7.28 pm

That this House do direct that, in accordance with the Church of England Assembly (Powers) Act 1919, the Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure be presented to Her Majesty for the Royal Assent.

Lord Bassam of Brighton: My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure, has consented to place her prerogative and interest, so far as they are affected by the Measure, at the disposal of Parliament for the purposes of the Measure.

The Lord Bishop of Chichester: My Lords, I beg to move that this House do direct that, in accordance with the Church of England Assembly (Powers) Act 1919, the Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure be presented to Her Majesty for the Royal Assent. This Measure, like the next I shall be moving, is concerned with certain appointments in the

Church of England made by the Crown and, as we have heard, the Crown's consent has been given for us to consider this matter. Neither this Measure nor the next was contentious in the General Synod and both have been found expedient by the Ecclesiastical Committee, as its report shows.

Both Measures touch on the relationship between church and state, but are deliberately limited in the effect that they have on that relationship. This is very much a matter of evolution, not revolution. The wider context of this legislation is the long-term trend of allowing the church to have the decisive voice in the full range of its appointments, rather than decision-making being managed from Downing Street by those who support the Prime Minister in his role of advising the Crown. The more immediate context is a church initiative—the Pilling report on senior church appointments—and Her Majesty's Government's initiative, set out in a Green Paper in July 2007, to reduce the role of the royal prerogative not just in church appointments but more generally.

The most significant change to come from the Government's Green Paper was the Prime Minister's decision that he would not take an active part in choosing diocesan bishops and that he would simply recommend to Her Majesty the candidate identified by the church. That change did not require legislation, and in any case this Measure is not concerned with the appointment of diocesan bishops but suffragans. That change did, however, create a new context in which these smaller reforms, which do require legislation, seemed desirable.

Section 1 of the Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure concerns the procedure for the appointment of suffragan bishops; that is, bishops who assist the diocesan bishop in exercising ministry in a diocese. Their appointment is governed by the Suffragan Bishops Act 1534. A number of suffragan bishops were appointed in the 16th and early 17th centuries, but after that no further appointments were made until the revival of the Act under Gladstone in 1870. Since then, and much more so recently, suffragan bishops have played increasingly important parts in the provision of episcopal care in England.

The 1534 Act requires the names of two candidates to be presented to the Crown, leaving the choice between the two to the sovereign. Almost from the moment of the revival of suffragan bishoprics at the end of the 19th century, in other words for over a century now, it has been the convention that the Prime Minister advises the sovereign to appoint the first of the two names that are submitted. There have not been exceptions to that convention. The present Measure simply gives statutory recognition to that convention and removes the need to identify a second candidate who, in reality, is never appointed and usually has not even known that his name was on the list.

Change is all the more important in the context of the more transparent procedures for the selection of suffragan bishops that have been developing in recent years. The selection process now involves much wider consultation and accountability. In some cases, attention is drawn to vacancies with the invitation of comments and suggestions by way of announcements in the press. Candidates are interviewed, feedback is sought and a greater degree of openness characterises the whole process.

It has therefore become increasingly artificial to have to forward two names, one of whom it is not intended to appoint, to the Prime Minister. Having fairly recently been through this process myself, there is also something invidious and pastorally insensitive about a practice that encourages telling somebody that they will be the makeweight number two on a list, but that they will not be appointed. Think of the pastoral effects of trying to do that.

Sections 2 and 3 address a different matter. The Pilling report also made recommendations concerning the legal position whereby the Crown in certain circumstances exercises patronage not normally in its gift. One such situation is during a vacancy in a diocesan see following the translation, death or retirement of the bishop. As guardian of the temporalities of the vacant see, the Crown exercises the parochial and other patronage that normally belongs to the diocesan bishop. For some time now, however, the Crown's involvement has in most cases of this sort been largely formal, in that the suffragan or assistant bishop looking after the diocese has been treated as if he were the diocesan bishop, and has been asked by the Crown to identify the person who should be appointed to a particular parish.

Once the candidate for appointment has been identified, the Cabinet Office and the Crown Office produce the necessary paperwork, but the Crown's role does not in reality go beyond that. Section 2 will thus make that paper exercise unnecessary. The suffragan or assistant bishop caring for the diocese during the vacancy in see will be able to act directly—under statutory delegated authority from the Crown—to make appointments that are ordinarily made by the diocesan bishop or that would have been, were there one. This will not touch the Crown's position as guardian of the temporalities, but administrative time and expense will be saved and vacancies should take less time to fill. The change will also make it more apparent where decisions of this sort are actually made.

Section 3 deals with a situation which is not always very well understood: the position that arises when the holder of an office—or the holder of the office to whom patronage belongs—has been appointed as a diocesan bishop. Typically, this would be a parish priest or an archdeacon. Sometimes characterised as,

"the Crown taketh away, the Crown giveth",

it means that the Crown itself has the right to fill the ensuing vacancy regardless of who normally holds the patronage of it. This section abolishes the Crown's right to exercise patronage in these circumstances. The change was in fact recommended as long ago as 1964, so it can hardly be described as a rushed process. It is, as we have heard, a change with which the Crown as well as the church is content. Indeed, all of the changes in the Measure were worked out in consultation with the Crown and with those who support the Prime Minister in relation to Crown appointments. I commend the Measure to your Lordships' House.

Baroness Wilcox: My Lords, as a member of the Ecclesiastical Committee I am delighted to be standing at the Dispatch Box tonight, and I am happy indeed to be here with two other members of that committee, my noble friend Lord Elton and the noble Lord, Lord Wallace of Saltaire, who will speak next. I shall say a few words about our consideration of the two remaining Measures before the House. The right reverend Prelate the Bishop of Chichester has well described the Motions thus far and, as he has said, the committee found that both Measures were expedient. We also found expedient the Measure on miscellaneous provisions that the House has just approved.

The Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure gave rise to some discussion between the committee and the representatives of the General Synod. As the right reverend Prelate the Bishop of Southwark told the committee, the Measure amends an Act of Parliament of 1534. It regularises a practice which has been current for some time—indeed, since the 19th century. When a suffragan bishop is appointed a shortlist of two candidates must, as we have heard, be forwarded to the Prime Minister, who makes a recommendation to the Crown. Yet in practice, as the right reverend Prelate has said, for more than a century the first candidate has invariably been appointed. The Government indicated in 2007 that they wished only one name to be submitted for appointments to archbishoprics and other diocesan sees. It therefore seemed to the Ecclesiastical Committee that the proposed amendment of the law relating to suffragan bishops is logical and desirable, not to say possibly slightly overdue.

The final Measure, on Crown benefices, gave rise to almost no discussion. It seemed to the committee to be an uncontroversial improvement to existing arrangements for appointment to the Crown benefices. It provides for the appointment of lay representatives to approve the selection of incumbents. The Synod provided a full explanation of the background to this Measure, and the committee found the Measure to be expedient. Finally, I speak this evening for these Conservative Benches, and confirm that we, too, find the Measures to be expedient and wish them well.

Lord Wallace of Saltaire: My Lords, it is unusual to have the opportunity to speak on a proposed amendment to a law of 1534. It is therefore irresistible and I am sorry that the noble Baroness, Lady Wilcox, has disappointed me. I recall last July speaking from these Benches on a proposal which had passed through both Houses in 1873 to move the Law Lords across the road. The Conservatives had it reversed, the noble Lord, Lord Strathclyde, from the Conservative Benches suggesting that was a little too early to move. I had rather hoped the noble Baroness, Lady Wilcox, would say perhaps it is a little too early to amend this Measure.

However, the clear consensus in the Ecclesiastical Committee was of course that we should accept it. I do however want to mention the controversy which we had in the Ecclesiastical Committee about the question of the Crown prerogative and ecclesiastical appointments. I remember as a boy meeting a number of ecclesiastics who had been appointed by the Labour Government in the 1930s. Canon Donaldson in Westminster Abbey was known as the "red" canon having been appointed by Ramsay MacDonald before 1931 when he was still considered a left-winger. There was indeed a bishop of Birmingham appointed in the same way and there have been some more recent occasions when diocesan or indeed arch-diocesan appointments have been areas in which the Prime Minister has wished to be involved. I went back to look at the 2008 White Paper *Governance of Britain* in which it clearly states that after full consultations, it was decided that the Prime Minister, who for these purposes, exercises the royal prerogative, will in future,

"ask for only one name which he will then forward to Her Majesty The Queen".

It goes on to say at paragraph 256, and in this I think we were slightly misled in the evidence we were given at the Ecclesiastical Committee, that:

"The changes to the appointments processes for Diocesan Bishops and Cathedral Deans are internal Church procedures and require no legislation."

The reason why we are discussing this here is that for suffragan bishops, it does require legislation.

So the suggestions which were made by two members of the Ecclesiastical Committee that this was not necessarily an accepted change, and that a future Government might wish to reinstate political appointment for diocesan and arch-diocesan appointments, would, I think, be rather controversial and should not pass without mention. I would not wish the Church of England to become again in any way the Tory party of prayer, or to be the representation of the Christian Socialist Fellowship, or any other body. While I support the continuation of the established church, I think it is highly desirable that the church should be outside and above party politics. I therefore entirely accept and strongly agree with the statements in the 2008 White Paper, as did indeed the clear and overwhelming majority of the members of the Ecclesiastical Committee present at our last meeting. I just wish to mark this occasion that this is not entirely without a degree of controversy and I very much welcome the acceptance by the noble Baroness, Lady Wilcox, of the proposals.

Lord Elton: Your Lordships should not have an exaggerated idea of the ferocity of the controversy which took place in the Ecclesiastical Committee. I rise merely to support this Measure with enthusiasm, particularly as regards the discarding of the most unfortunate practice of appointing people to lose a race, which seems to be what we were doing over the last few centuries.

Lord Judd: As a member of the Ecclesiastical Committee as well, I would like warmly to support what is being recommended and simply say, as an Anglican, that I found it quite reprehensible that we were going through a charade in which two names were being put forward with no intention that the second should be considered. It seemed to me an utterly humiliating exercise for the second person concerned and I am very glad that we are being asked to put things right.

The Lord Bishop of Winchester: My Lords, perhaps I can reassure the noble Lord, Lord Judd. Although the law and practice has been as described, there was a hint in the description given by my noble friend the right reverend Prelate the Bishop of Chichester that,

while a minority of bishops have followed the directions to the letter in this particular matter—of going through a selection process for a second name who knows nothing about it—there are other diocesan bishops who thought that was frankly too silly for words and who have not done so. So we are not as reprehensible as the noble Lord behind me has been suggesting, though we are presumably in another way, because we have not been following the precise letter of the law.

Baroness Wilcox: Perhaps I may apologise to the noble Lord, Lord Judd. I said that there were three members of the Ecclesiastical Committee present, and of course there are indeed four. I would ask that *Hansard* corrects the mistake that I made.

Motion agreed.

Crown Benefices (Parish Representatives) Measure

Motion to Present for Royal Assent

7.45 pm

That this House do direct that, in accordance with the Church of England Assembly (Powers) Act 1919, the Crown Benefices (Parish Representatives) Measure be presented to Her Majesty for the Royal Assent.

Lord Bassam of Brighton: My Lords, I have it in command from Her Majesty the Queen and His Royal Highness the Prince of Wales to acquaint the House that they, having been informed of the purport of the Crown Benefices (Parish Representatives) Measure, have consented to place their prerogative and interests, so far as they are affected by the Measure, at the disposal of Parliament for the purposes of the Measure.

The Lord Bishop of Chichester: My Lords, I apologise for slightly jumping the gun a moment ago, I was wrong-footed by the noble Baroness having spoken to this Measure as well under the previous one.

This is the second of the two Measures before your Lordships' House this evening that concern ecclesiastical appointments made by the Crown, in this case parochial appointments. As we have heard, the consent of the Queen and of the Prince of Wales as Duke of Cornwall have been given.

As things stand a present, when a benefice is vacant, the parochial church council of a vacant benefice appoints two lay representatives whose approval is required before a patron can present or a bishop can institute a particular priest to the living. This gives the laity of the parish, through their representatives, an important, even a decisive, role in the appointment of a new incumbent.

This right does not however currently apply to livings in the gift either of the Crown, including the Lord Chancellors' department, or of the two Royal Duchies of Lancaster and Cornwall. These so-called "Crown benefices" constitute about 8 per cent of the total number of the 7,633 parochial benefices in English dioceses—quite a sizeable minority.

The policy background to this short Measure is again the Government's Green Paper of July 2007 and the recommendations put before the Synod by the Archbishops in response. In the light of the Government's policy that the Prime Minister should no longer make the final choice in ecclesiastical appointments, it made sense that the exercise of parochial patronage by the Crown and the two Royal Duchies should become more closely aligned to the exercise of patronage in the gift of other patrons which might be institutions such as cathedrals and colleges or private individuals, or indeed of diocesan bishops themselves. This would involve giving parochial church councils of Crown benefices the same right to appoint representatives with the power to give or withhold approval of the patron's choice of priest to fill a vacant living.

This Measure makes the necessary amendments to existing legislation to achieve just that. It gives parochial church councils of Crown benefices the same right to be formally involved—by way of approving the patron's choice—in the appointment of their new incumbent. This neatly achieves the removal of the final decision from Ministers without abandoning the principle of a mixed-economy in parochial appointments where patronage is exercised by a variety of people and corporate bodies, including the Crown. It's really as simple as that. I commend this Measure to your Lordships' House.

Motion agreed.

7.50 pm

Sitting suspended.

Equality Bill

Committee (Continued) (2nd Day)

8.22 pm

Clause 21 : Failure to comply with duty

Amendments 45C and 45D not moved.

Clause 21 agreed.

Clause 22 : Regulations

Amendment 45E not moved.

Clause 22 agreed.

Clauses 23 and 24 agreed.

Clause 25 : References to particular strands of discrimination

Amendments 46 to 50 not moved.

Clause 25 agreed.

Clause 26 : Harassment

Amendment 51

Moved by ***Lord Ouseley***

51: Clause 26, page 13, line 42, leave out "gender reassignment or sex" and insert "a relevant protected characteristic"

Lord Ouseley: My Lords, in moving the amendment, I shall speak also to Amendment 106, which is coupled with it. The amendment makes it a form of harassment for person A to treat another person B less favourably because B is either rejected or submitted to sexual harassment, or harassment related to gender reassignment or sex.

The amendment would simply extend the protection to apply if B is rejected or submitted to harassment related to any relevant protected characteristic, not limited to gender reassignment or sex. I shall provide an appropriate example of harassment from which the amendment would ensure protection. A Bangladeshi worker is subjected to racial harassment by his fellow workers. He finds their remarks and gestures demeaning and offensive. He does his best to ignore what he hears and sees in order not to put his job at risk. His line manager is aware of this campaign of harassment, but takes no action to prevent it. Instead, when the Bangladeshi worker persistently rejects the taunts and insults, his line manager excludes him from the overtime rota.

Under the Bill as drafted, that Bangladeshi worker would not be able to complain of less favourable treatment by the line manager. The Bill limits such protection to cases in which the harassment is related to sex or gender reassignment only. No explanation has been offered as to why other characteristics—for example, race, disability or sexual orientation—are not equally protected. The amendment would enable that protection.

With regard to harassment in schools, Amendment 106 to Clause 85 would place the same obligation on school governors, local authorities, education authorities and proprietors of independent schools in relation to their pupils as the Bill places on employers in relation to their employees. There is widespread concern about harassment and bullying in schools. In many instances, this is done by other pupils, not by the school or its staff. The purpose of this amendment is to make the body responsible for the school liable for harassment of pupils, regardless of who the harasser is, including other pupils.

Clause 85 already prohibits harassment of pupils by the responsible body—the governing body, the local authority, the education authority or the proprietor of an independent school. This would include harassment by any employee of the responsible body. While the general responsibility of governors and local education authorities for the health and safety of pupils under common law should involve protecting pupils from the harm of harassment by any person, it is not clear whether this would cover pupil-to-pupil harassment, which is recognised as a problem in many schools. There are frequent tragic reports of school pupils self-harming or committing suicide because of harassment and bullying by other pupils.

Amendment 106 would provide a clear statutory obligation to prevent harassment of pupils by any person. Therefore, the purpose of this amendment is to give the body responsible for a school an obligation, in relation to harassment of pupils, equivalent to that which the body already has as an employer in relation to harassment of its employees.

Under Clause 40(2) teachers and other staff are already protected against third-party harassment, including harassment by pupils. My amendment reflects the language in Clause 40, which places a liability on employers for third-party harassment of their employees. I do not agree with the need for the individual to have been harassed on two previous occasions before the responsible body has liability, as set out in Clause 40—although Amendment 62 of the noble Lord, Lord Lester, which I welcome, would modify that. The main purpose of Amendment 106 is to bring schools into alignment with workplaces in terms of protection against third-party harassment. I beg to move.

Lord Lester of Herne Hill: I will also speak to the various amendments in the group in my name—Amendments 56A and 56B, Amendments 61 to 63, and Amendments 106ZA and 106ZB. They have been grouped together and this is a complicated and difficult subject. To speed the passage of the Bill, I will deal with it briefly—I hope—and in a way that enables the Minister to go on the record with a full explanation of these matters.

I preface that with something on harassment as defined in Clause 26. I have already made the point but will make it a bit clearer. During the passage of the Equality Act, when the noble Baroness, Lady Ashton of Upholland, had responsibility for it, we had a problem in extending the definition of harassment as it is now in Clause 26 to goods and services, and in particular to housing and education. The problem was in a sense that raised by the right reverend Prelate about free speech and the interaction between religion and sexuality, for example, and one religion and another.

8.30 pm

The basic problem, taking it stage by stage, was when the Government implemented the EU equality regulations. These would have allowed the Government in Clause 26(1)(b)(i) to put in the word "and"—that is, to have made the wrong of harassment only where you both violate a person's dignity and create,

"an intimidating, hostile, degrading, humiliating or offensive environment",

for the alleged victim. However, the Government instead put in the word "or" to make it stronger than EU law strictly required. Having done that, it is part of what is already there. Some would say that what I am now going to say would represent regression.

The problem in the Equality Act is that there is no filter to prevent an individual bringing proceedings in an employment tribunal or county court for harassment. There is no body there like the commission to say, "That is ridiculous". Somebody can bring a claim in employment or beyond saying that their dignity has been violated and that is enough. It was evident to the Government at the time that this created real problems for religion and sexuality, the churches and free speech.

One example in our minds was, say, a Christian landlord who wanted Jews to convert and who had a poster in the hall that said "Belong to the Jews for Jesus" organisation, which would offend the Jewish tenant. The Jewish tenant could bring a claim for violating dignity. There were various other examples of that kind, where thin-skinned people whose dignity was being violated could bring a claim. The Government wisely decided to take out the notion of harassment as far as it affected religion or sexual orientation beyond employment for another day. I hope I am accurately summarising the history.

It is still unfortunate that we are wedded to "or" instead of "and" because I worry that frivolous or crazy claims could be brought under harassment. Even if they fail—as they probably would—they would bring the law into disrepute. I am keen to discourage stupid cases because the bringing of the case is almost as bad as the winning or losing of it. I wish one could replace "or" with "and". It would be more reasonable if the claimant had to show both that dignity was violated and that it created an offence of such-and-such an environment. It would certainly not be inconsistent with EU employment equality law.

That is all tedious background but it is important to understand. I will try to summarise my own amendments in this group as clearly as I can—not, as I said, to argue the points but simply to give the Minister the chance to go on the record to give me reassurance on whether there is any gap in the law. I can then reflect on that before we come back on Report.

Amendment 56A seeks to outlaw harassment on the basis of sexual orientation in schools, as well as in services and public functions. If bullying pupils because of their sexual orientation constitutes harassment, it is very important that that should be covered. Harassing a child because they are gay is obviously one of the most serious forms of harassment. It is the classic example.

Amendment 56B seeks to outlaw harassment in schools on the basis of what the Bill calls "gender reassignment", although we would prefer "gender identity". Harassing a pupil because of their gender identity or because they are "trans" or in the process of gender reassignment is, again, surely unacceptable.

At present, the Bill contains no protection against harassment relating to sexual orientation outside the workplace and in schools, and no protection against harassment relating to gender reassignment in schools. Therefore, these amendments seek to bring in protection for schoolchildren and public service users against harassment on the basis of sexual orientation and school pupils on the basis of gender reassignment. Because of potential freedom of speech concerns, both the proposed new clauses in my amendments use the conjunctive definition—"and"—so that you have to show not only the violation of dignity but also an,

"intimidating, hostile, degrading, humiliating or offensive environment".

Amendments 61 to 63 seek to amend Clause 40 on a different matter—that is, third-party harassment. As it stands, the clause makes an employer liable for failing to take steps to prevent harassment by third parties against employees—for example, where someone is sent by an employment agency. However, subsection (3) says that this applies only where the employer, A, knows that the same employee, B, has been harassed on two prior occasions. That means that where a client of A—say, an employer who is an employment agency's client—harasses a number of A's employees on numerous occasions, so long as the same employee has not been harassed twice, A is not liable for failing to take preventive measures to stop the harassing behaviour. Therefore, these amendments broaden the protection covering third-party harassment of employees by ensuring that an employer cannot avoid liability by exposing a different employee to third-party harassment on the same grounds. They also ensure that third-party harassment extends to a person who has applied for employment.

Obviously we need to listen very carefully to what the Government say on Amendment 106 in the name of the noble Lord, Lord Ouseley. I am not sure that he has spoken to it yet; if he has I apologise.

Amendments 106ZA and 106ZB would make it unlawful for the responsible bodies of schools to harass pupils on the basis of sexual orientation or gender reassignment. Clause 85(10) currently allows the responsible body of a school to harass current or potential pupils on the grounds of sexual orientation, as well as gender reassignment and religion or belief. There is evidence that harassment on these grounds within schools is a serious problem. Therefore, deleting Clause 85(10)(a) and (c) would remove sexual orientation and gender reassignment as exemptions. The amendments would mean that teachers and school bodies could not harass students because of their sexual orientation.

I am sorry to have gone through all that in so much detail, and I am perfectly sure that it will make sense only when we have heard the Minister reply in full, but I hope that that is a convenient and fairly speedy way of dealing with the issue.

Baroness Gould of Potternewton: My Lords, I rise to take part in this debate principally to deal with the last point that the noble Lord, Lord Lester, raised about harassment in schools. First, however, it is important to make it clear that while evidence of harassment from a range of sources has been raised, it is suggested that in most of those cases, the victim could potentially have brought a direct discrimination case. To the Government, that means that there is no reason to extend any of these harassment provisions. In practice, not all harassment incidents will be covered by the Bill as it stands. Direct discrimination will not cover harassment where there is no actual or hypothetical comparator or, in instances, where others are treated equally badly.

I return to harassment in schools and the exclusion of a school's liability for children who suffer harassment on the grounds of gender reassignment, religion and belief or sexual orientation—harassment by teachers or other school staff as opposed to pupils, serious as that is. Many people find it hard to understand why harassment of school pupils is prohibited on grounds of race, gender and disability, while sexual orientation, religion or belief, and gender assignment should be explicitly excluded. There is no reason for this exclusion

[Baroness Gould of Potternewton]
as there is clear evidence of harassment in schools on the grounds of sexual orientation, gender assignment and, to a lesser extent, religion and belief.

Occurrences of gender reassignment issues are rare at school age but are not unknown and when they occur there is significant risk of serious harassment. The 2007 Stonewall report, *The School Report*, concluded that 65 per cent of lesbian and gay secondary school pupils in Great Britain had experienced homophobic bullying; 41 per cent of those had been physically bullied and 17 per cent had experienced death threats. The noble Lord, Lord Lester, made the point about bullying and harassment. To me they are indivisible. Therefore, if I use the word "bullying", I am also using the word "harassment". To continue with the Stonewall report, 30 per cent of lesbian and gay pupils report that adults have been responsible for incidents of homophobic bullying in their schools.

The UK charity Beatbullying has just reported that of more than 800 children between the ages of 11 and 16, 23 per cent had been harassed because of their religion or belief. The young transgender person forming their identity in school faces bullying and harassment. Some 64 per cent of young trans-men and 44 per cent of young trans-women will experience harassment and bullying in school, not just from their fellow pupils but also from staff and teachers. A provision that protects school pupils from harassment on the grounds of gender, race and disability, but not on other grounds, carries the clear public message that harassment on grounds of gender reassignment, sexual orientation or religion or belief is permissible.

It is often said, and has been said by Stonewall, that the Bill as it stands actually covers all those cases. I have yet to have anyone actually come to me and illustrate that. It is said, but I want to know. If such a case of indirect discrimination in which a school pupil was harassed was actually found and identified, could someone show me where in the Bill that person would be protected?

Having said all that, I appreciate that the Government have sought to address this particular problem in government Amendments 138 and 139, which I welcome and which give me some little comfort. As I read them, these amendments strengthen the case of it being discriminatory for a teacher or anyone else working at a school to harass or bully a pupil because of their sexual orientation or gender identity. I really hope that that is the case. I wait with interest to hear my noble friend's reply to the debate so that she can show me that that is so.

8.45 pm

Lord Elton: In equating harassment with bullying, I align myself with the noble Baroness. I also wish to express a wider concern. Bullying in any form on any grounds is unacceptable and every school ought to have a duty to protect every child from it. That is difficult to do, and it is not always possible to identify what is going on. One can only identify the person to whom it is happening. The child involved is often reluctant, for reasons of fear, retribution or amour propre, to accept that it is happening. Bullying can take many forms; it can be verbal as well as physical. The concern that I am trying to express is that by picking off particular sorts of bullying, we may somehow reduce the importance of protecting children from all other sorts of bullying, which can be just as harmful or miserable. I hope that the noble Baroness will bear that in mind and reflect on it between now and Report; or if she can say something now, I would be glad to hear it. I am reluctant to subscribe to something that focuses interest on one particular area of bullying which might reduce it on bullying as a whole.

Lord Lester of Herne Hill: The problem is that the Bill already singles out certain forms of harassment and bullying. We are trying to fill the gap. If it is on one of the protected grounds it is a particularly invidious form of bullying which belongs in the Equality Bill, but I quite agree that other forms of bullying are equally objectionable. This Bill cannot deal with those, so we are concerned with filling the gap.

Lord Elton: I accept that, but it is rather like filling the gaps in a sieve, as it is unlikely to have sufficient effect. I do not want to detain the Committee unnecessarily now, but we need to give our minds to it. I regard it as a weakness of the Bill as a whole, not just something to be considered in this amendment.

Baroness Howe of Idlicote: I was very taken with what the noble Baroness, Lady Gould, said. Indeed, I rather wondered why she had not spoken in favour of some of the direct discrimination, indirect discrimination and harassment points that I was trying to make. The noble Lord, Lord Lester, is right that if we leave these groups out we will be creating a division with the rest of the bullying that we are attempting to tackle.

I fear that the business of bullying in school reflects to some extent the parental attitudes—it clearly must do. It also indicates that we have not taken seriously enough or attempted to deal with some of the ways in which this could be combated much earlier. I remember referring previously to a group of schools that literally make it their business to ensure that someone who is a tiny bit older than every new child entering the school has a duty to see that the child settles in. If anything goes wrong the responsibility lies with the one who is meant to be mentoring that child. We could make it a positive duty in every primary and nursery school that whoever is new to the set-up is integrated and taken for what they are, warts and all, and sees themselves as part of the community. That is what we are all about. We are an extremely varied community and it is crucial that that begins early.

Lord Elton: It is indeed crucial, but there is a limit to how much we can legislate for the proper care of children. The noble Baroness is speaking of proper pastoral care in school, but if we were to start making laws about all pastoral care it would, first, take up an enormous amount of parliamentary time and, secondly, kill the school.

Baroness Warsi: I thank the noble Lord, Lord Ouseley, for his very interesting speech on Amendments 51 and 106. I want to make a few short points on Amendments 56A, 56B and 106. The first is that we on these Benches would of course like to reduce bullying

in schools and make sure that no child is made to feel unhappy or treated badly for any reason, whether it be for their colour of skin, gender, religion, sexual orientation or any other characteristic, protected or not protected. Nevertheless, as my noble friend Lord Elton said, we believe that in situations where bullying is happening between children—the most obvious third party in this case—the law is not the right place for it to be addressed. There is already clear guidance on this from the Department for Children, Schools and Families. This is an issue which should be dealt with by the school and the appropriate school authorities. The intention behind the amendment is truly laudable but, unfortunately, I am not sure that this is the right way to find a solution to the problem.

Baroness Thornton: This group of amendments seeks to extend and clarify the protections against harassment in the Bill. I will address all the amendments in the group and speak to government Amendments 138 and 139 at the same time. We are confident that there is no gap in the Bill in the protection against conduct which amounts to harassment. In some areas such as employment there is specific protection, and where this is not the case, a remedy is provided by way of detriment. I hope that these remarks will show that that is the case.

In Amendment 51, the noble Lord, Lord Ouseley, seeks to extend the third limb of harassment provisions to all relevant protected characteristics. Currently, the third limb of harassment covers the situation where, for example, a woman is dismissed and believes that the real reason why this has happened is that she refused to sleep with her boss. This protection only applies to sexual harassment and harassment related to sex and gender reassignment. Amendment 51 seeks to extend this protection to all relevant protected characteristics. However, we do not have any evidence that this form of harassment is a problem in the workplace; and where this protection applies now, it is to comply with our European legal obligations.

I now turn to a number of amendments which have to do with harassment in schools. I recognise that there has been some concern about the fact that the Bill does not explicitly apply harassment protections on the grounds of sexual orientation and gender reassignment to schools. The fear is that this might leave schools free to harass pupils on these grounds. Amendments 106ZA and 106ZB, tabled by the noble Lord, Lord Lester, would put right this supposed deficit while applying a rather higher test of harassment than exists elsewhere in the Bill, for reasons which he has explained and which I understand. However, we are confident that this is not necessary and I hope I can persuade him that that is the case.

The Government are very clear that school children should not be subject to detrimental behaviour because of sexual orientation or gender reassignment and that the Bill should support this policy. We have examined all the examples that have been put to us of behaviour which anyone would understand to be harassment and we are confident that there is not a gap where there is unacceptable treatment of a child by a school. Situations such as a teacher ridiculing a child because of his sexual orientation or a teacher encouraging other pupils to mock a pupil because he was undergoing gender reassignment would be considered less favourable treatment and therefore amount to direct discrimination. In fact, in any situation we can envisage, it would be unlawful discrimination for anyone working in a school to bully a pupil because of his sexual orientation or gender reassignment. That is the position that we intend to make absolutely clear in Amendments 138 and 139, to which I now turn.

Clause 204 provides general interpretation for the purposes of the Bill. This clause makes it clear that detriment does not include unlawful harassment as defined in Clause 26. Through the Explanatory Notes to the Bill, we have sought to explain two things. First, this means that where the Bill provides harassment protection explicitly, it is not possible to bring a claim for direct discrimination by way of detriment on the same facts. Secondly, it means that where harassment is not prohibited explicitly—for example, in the case of sexual orientation and gender reassignment in education in schools—detriment includes unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person. Therefore if a pupil was subjected to unwanted conduct by his school that satisfied the definition of harassment in Clause 26 and he believed that it happened just because he was gay, he would be able to seek a legal remedy under Clause 85. Depending on the facts, this might be direct discrimination by way of detriment.

However, a number of organisations and Members in another place have expressed concerns that it is not clear that this provision in its current form can be read in the way we intend. These amendments are therefore essential to remove those doubts and clarify exactly how the provisions will work. I hope that many of those who have expressed concerns will be reassured by this clear statement that behaviour that amounts to harassment will be caught by the discrimination provisions where explicit harassment provisions do not apply.

Amendment 106 was tabled by the noble Lord, Lord Ouseley. I understand his concerns over a sensitive and important issue. I assure him that I fully understand that bullying is a terrible problem that can ruin the lives of young people. The Government take it very seriously and are doing everything we can to tackle it. The relationship between one pupil and another is not covered by discrimination law and we do not think it appropriate that it should be. It is obvious that the relationship between a school and its pupils is covered, and I assure the noble Lord that there are already statutory duties on schools to deal with bullying. Head teachers in England and Wales are under a duty to put measures in place to prevent all forms of bullying and the Department for Children, Schools and Families has provided guidance for schools on dealing with racist, sexist, religious, homophobic and transphobic bullying, as mentioned by the noble Baroness, Lady Warsi. The guidance makes it very clear that a school must take all these forms of bullying seriously and that a failure to do so would mean that it would be vulnerable to discrimination claims.

The equality duty in the Bill will also have a part to play in ensuring that schools address issues around the treatment of gay and transgendered children in schools.

[Baroness Thornton]
For example, it should encourage schools to develop and improve their anti-bullying strategies to deal effectively with the issues that arise in individual schools. We think that making schools liable to face charges of harassment because of bullying by pupils or third parties is a potentially divisive measure that could lead to unforeseen outcomes, such as schools' bullying policies being driven by the fear of litigation, or even money intended for education being used for the payment of legal fees and damages. I believe that we already have measures in place for schools to protect pupils and to deal with bullying in all forms, including bullying because of a protected characteristic.

Amendment 56A, tabled by the noble Lord, Lord Lester, also concerns harassment in the provision of public services and public functions. The noble Lord is seeking to ensure that users of public services are not subjected to harassment related to sexual orientation. It is true that people using public services do not have the same degree of choice about using them as those who are seeking commercial services where—if they do not like the way they are treated in a shop, for example—they can go elsewhere. Nevertheless, despite public consultation and active engagement by government officials with individuals and organisations who say that the type of conduct to which these amendments would apply goes on, these groups have provided us with no evidence to support that view. We are confident that the direct or indirect discrimination provisions would cover any unwanted conduct that service users may encounter. We should not forget that the equality duty has a role in ensuring that public authorities, in their capacity as service providers and in the provision of their public functions, will now have to give due regard to the need to foster good relations in respect of all protected characteristics, including those in respect of which no equality duty yet applies.

Amendments 61 and 63 extend liability for third party harassment to cover applicants for employment, but it is difficult to envisage a situation in which this protection would be necessary. It is unlikely that a customer or client would be in a position to harass an applicant for a job, much less repeatedly, and no evidence has been presented to indicate that harassment of applicants is a problem. The proposal would impose significant burdens on employers, and we believe it would be a disproportionate extension of the law.

In Amendment 62, the noble Lord, Lord Lester, seeks to extend employer liability for third-party harassment. This would cover the scenario, for example, where an employer would be liable for sexual harassment of a female by a client when he knows that that or another client has previously subject other female employers to sexual harassment. Only in these flagrant cases is it appropriate to go beyond the normal protections afforded under discrimination law by making an employer liable for failing to prevent the actions of third parties over whom he has little or no control. This is what Clause 40 now does.

This extension would go much further and impose a costly liability. We are aware of the concerns that the noble Lord, Lord Lester, raised. Under the harassment provision of British discrimination law a person needs to show either an intimidating, hostile, degrading or offensive environment, or that their dignity was violated, whereas the definition in the related European directive required both these limbs to be satisfied. However, the two limbs largely overlap, so if there is any extension to the European approach it is of limited effect.

Conduct that violates a person's dignity almost invariably also creates an offensive, degrading or humiliating environment for that person and vice versa. Where the harassment is unintended the reasonableness test, as I shall call it, that a court or tribunal must apply ensures that, along with the complainant's perception, all the circumstances of the case and the reasonableness of that perception are taken into account in deciding whether the conduct can constitute harassment. For these reasons, I ask the noble Lord to withdraw his amendment.

9 pm

Lord Lester of Herne Hill: My Lords, I will explain where I strongly disagree, not where I agree, so that I save time later and do not have to speak to any other amendments in this area.

First, it is not correct to say that without that word "and" one is not creating a very dangerous concept. "Dignity" is not a legal rule. It is a value. To allow someone to bring a claim on the basis of their dignity is a dangerous thing to do. It is not saved by the requirement of reasonableness because it still allows the claim to be brought. Like the right reverend Prelate, I suspect that we will seek to deal with that on Report.

Secondly, I hope noble Lords will forgive my saying that this is the most convoluted and complex way of dealing with a problem that the noble Baroness, Lady Gould, has drawn very clear attention to. Instead of doing the simple thing, which is to make clear in the Bill that homophobic bullying on the basis, for example, of sexual orientation, is to be included, we are told that Clause 204, which is an interpretation clause, is to have the following language to tell the public what the law is. I shall read it out because it is hilarious to think that anyone should come to the conclusion that this is the right way of dealing with an important problem. The amendment states:

"Where this Act disapplies a prohibition on harassment in relation to a specified protected characteristic, the disapplication"—

notice the double negatives piling up—

"does not prevent conduct relating to that characteristic from amounting to a detriment for the purposes of discrimination within section 13 because of that characteristic".

I expect Ministers have had that explained to them and understand what it means. What it actually means is that you still have to show discrimination and not harassment, even though the concepts are quite different in the Act. Harassment is one thing and discrimination another. The question raised by the noble Baroness, Lady Gould—why we do not do the simple thing and deal with this problem in the Bill—has not been answered.

I made it clear to the Government that this is one of several things that my party attaches an enormous importance to; there are about four of those core major things. I am sorry to say that I am not satisfied by the answer. We will have to come back to this at a later stage.

Lord Elton: I want to pursue what I was saying a little further. The noble Lord, Lord Lester, said that it was not possible within this Act to address all aspects of bullying and that we could only fill the gaps between those which had already been specified. I suspect that the Long Title would enable us to do something quite simple and would please the noble Lord, Lord Ouseley. A very nice obligation would be placed on schools if we just tweaked a little his Amendment 106 to make it read:

"The circumstances in which the responsible body of … a school"—

rather than stating "such a school"—

"is to be treated as harassing a pupil … include those where",

leaving out "under subsection (3)(a)", and then take it out of the limitations of Part 2. On the occurrence of a second occasion of the bullying of an individual, there would be a legal duty to intervene.

I do not like imposing legal duties on common-room staff, but when this problem cannot be solved in any other way, which it has not been, I would not object to trying this. It seems to me that that would be possible and would be within the Long Title.

Baroness Thornton: As ever, the noble Lord comes up with solutions that no one else has thought of. I know that he wants to determine what the proposers of these amendments think.

Lord Elton: I was seeking the opportunity to get the opinion of the noble Lord, Lord Lester, on the pronunciation of the principle at stake. I think that principle is expressed as inclusio unius, exclusio alterius—if you put some things in, you imply that everything else is left out. We are putting things in which I do not think that we should.

Lord Lester of Herne Hill: I am delighted to hear the noble Lord, Lord Elton, using Latin because he may not know that since the reforms of the noble and learned Lord, Lord Woolf, I am not allowed to use Latin in court any more. I am not even allowed to use "writ" because that is considered to be not user-friendly, so I have to say "claim form". I continue to say "writ" and I continue to use Latin, and I am very glad that he has done so as well.

Of course, I am sympathetic to the idea that we should legislate to deal with all forms of bullying, but in this Bill we are dealing with equality of treatment without discrimination on specified grounds. What I seek to do is more modest; that is, to make sure that bullying harassment on those grounds covers all the grounds and not only some of them. The expression noscitur a sociis—if one is showing off—might just as well apply, in the sense that in looking at the whole of what one is talking about, it is completely irrational to give the message, except through this convoluted stuff, that homophobic bullying in a school is not to be treated in the same way as racial bullying. That is the rather modest thing we are trying to do.

Lord Ouseley: My Lords, I have heard the explanation from the Minister on both my amendments on third-party harassment in schools and trying to extend the harassments application in Clause 26. I am not convinced by the answer I was given with regard to Amendment 51. I certainly would like to come back to that on another occasion. Equally, from what has been said by others who are not happy with the explanation on Amendment 106, I hope that we can get an assurance about looking at this again. I do not wish to detain the House, and on that basis, I seek leave to withdraw the amendment.

Amendment 51 withdrawn.

Amendments 52 to 54 not moved.

Clause 26 agreed.

Amendments 55 to 56B not moved.

Clause 27 agreed.

Clause 28 : Application of this Part

Amendment 57

Moved by ***Baroness Warsi***

57: Clause 28, page 15, line 6, leave out paragraph (a)

Baroness Warsi: Amendment 57 is to probe the application of age as a protected characteristic. The purpose is to ascertain from the Government the exact reasons for excluding those who are under 18 from the protected characteristic of age. In another place the Minister said that this was not the best way to protect children with regard to public services. We fully take on board the points she made about the importance of addressing deeper problems, such as resource allocation or finding better and more efficient ways of using existing resources.

Nevertheless, Young Equals, a group of charities and children campaigning to stop age discrimination, is still concerned about the prevalence of discrimination facing those under the age of 18. It quotes a Department for Children, Schools and Families survey which states that 43 per cent of under-18 year-olds reported that they had been treated unfairly because of their age. Moreover, nearly two-thirds of teenagers felt that they had experienced age discrimination in some form or another. In this survey, age discrimination was the biggest example of discrimination cited. There does, therefore, seem to be a problem. Could the Minister inform the House whether the Government have any plans to address this problem within this Bill? The suggestion in Committee in another place appeared to be that other solutions to this problem were being considered, but the Solicitor-General set out clearly that discrimination law was not the best place to sort this problem out. Will the Minister set out some of the alternative solutions and different ways in which the problem might be addressed if the Bill is not the place to do it? We accept that the Bill may not provide the best vehicle, but can the Government offer any assurances to Young Equals on this count?

In another place, the Minister stated that it might be difficult to include children under the age of 18 in the section on provision of services and public functions because different ages would have to be treated differently. The Solicitor-General cited that there was a great difference, for example, between the needs of a two

[Baroness Warsi]

year-old and a seven year-old, and those of a 72 year-old and a 77 year-old. This, of course, is true and this thinking is used to define the fact that there are rules stating that young people can and cannot do things at certain ages. This may be for their own protection, such as the age for legally purchasing alcohol, or it may be for the benefit or others, with specific services that cater for an older clientele. This is a sensible approach and differential treatment must be maintained.

The Government Equalities Office consultation recognises that equality does not mean uniformity of provision. Indeed, the reforms are all about treating people as individuals, whatever their age, circumstances or lifestyle. Could the Minister, therefore, set out why service providers would have to treat children of different ages in the same way as adults? This would be useful to aid our understanding of the operation of these clauses. I look forward to the Minister's response to this probing amendment. I fully expect to agree with her, but it would be useful to have some of our questions answered and explanations laid out on the record. I beg to move.

Lord Morris of Handsworth: My Lords, the substantive argument supporting the amendment has been ably put by the noble Baroness, Lady Warsi. I want to reinforce my support for the amendment, based on the anti-discrimination provisions contained in the Bill, which include age. Measured by the protected characteristics in Part 2, age discrimination is less protected than any other grounds. On this basis, Clause 28(1)(a) gives no protection against age discrimination in the provision of goods and services for those under 18. Put another way, this clause makes discrimination against those under 18 a permissive act, and it is that which the amendment seeks to remedy.

9.15 pm

I find it strange that somebody who is 18 or under can take matrimonial responsibilities or die for their country, but the state reserves the right, under the relevant clause of the Bill, to allow practices that discriminate against them for the provision of some goods and services.

I am aware that my noble friend the Leader of the House disagreed with my comments at Second Reading, but I thank her nevertheless for her letter of explanation which subsequently followed. In support of my contention, I believe I need look no further than the report of the Joint Committee on Human Rights, published in November last year following its scrutiny of the Bill. The Joint Committee records:

"The total absence of protection against age discrimination for those under 18 in service provision and the limited protection in relation to the performance of public functions means that children who are subject to unjustified discrimination are left with little or no legal protection. This may prevent children enjoying full protection of their rights as set out in the UN Convention on the Rights of the Child … We consider that the situation of children is no different and that exceptions to the general prohibition on age discrimination could also be made as required to cover age distinctions where children are involved".

The committee concludes:

"Age discrimination constitutes an unjustified denial of the right to equality and remains a serious problem in British society. The prohibition of age discrimination in service provision and the performance of public functions will help ensure that all age groups enjoy equality",

and are treated fairly and justly in the provision of services.

Eighteen year-olds have a right and an aspiration not to be discriminated against in respect of goods and services and public provision. I say this not only because it is morally right but also because international experience supports that view. The Australian Age Discrimination Act 2004, covering among other things goods and services, explicitly includes children. This amendment provides an opportunity to strike a blow on behalf of children and young people against permissive discrimination. Like the noble Baroness opposite, I look forward to the assurances that the Minister is able to provide in respect of the principles contained in the amendment.

Lord Lester of Herne Hill: My Lords, contrary to some, I am not like WC Fields; I do not hate kids. However, the amendment reminds me of what happened when I introduced the infamous amendment that allowed light parental smacking. I won the support of all the violent Members of this House, who thought that I was a real man for doing it, and the opprobrium of all those who were part of the children's rights movement. It was like that because we were debating whether it was right to allow a parent to smack a child lightly when they could not smack their husband or wife lightly, because it would be common assault. The reason why both Houses came to the conclusion that there should be a difference of treatment between children and adults was that, in some respects, children are not adults. While that debate was going on, my late lamented friend Earl Russell whispered to me the following wisdom. He said: "Why don't you tell the House what John Locke, the great philosopher, said?". This was that children are not born equal; they are born to become equal. I believe this is true. The reason why one allows differences to occur is because children are not adults and one has therefore to allow differences in some contexts.

I was a member of the Joint Committee on Human Rights and have had a continuing disagreement with them as the noble Lord, Lord Morris, may know, going right back to the earlier issue. I fully appreciate the argument and I am totally opposed to some of the kinds of discrimination to which he refers, but I do not think one can ignore the fact, when legislating, that there are contexts in which children are not the same as adults. They are entitled to equal treatment and not to be discriminated against unfairly, but there have to be a range of situations in which differences of treatment on the basis of age are allowed for children and young people.

Baroness Royall of Blaisdon: My Lords, I am grateful to the noble Lords for tabling this amendment, because it is helpful for the Government to have an opportunity to put on record why we have limited the protection from age discrimination in services and public functions to adults. I rather like the quotation from the noble Lord about Lord Russell.

First I should make clear that children and young people do have extensive protection under the Equality Bill. Like adults, they are protected from discrimination because of race, disability, gender, religion and belief, sexual orientation and gender reassignment and, like adults, from harassment because of disability, race and sex. Amendment 57 seeks to extend the ban on age discrimination in the provision of goods and services and the exercise of public functions to people under the age of 18. The Government have been clear from the outset that we are not minded to do this, and the decision not to has been taken only after very careful thought.

For adults we can identify only a very few situations where it is appropriate to differentiate services—as we did earlier this evening—according to age. The situation for children, however, is very different. It is almost always right to treat people under the age of 18 in a way that is appropriate to their age and particular stage of development, and it is often appropriate to treat them differently from adults. This is because age is a good indicator of a young person's level of development and their need for support or protection. It significantly influences how they need to be engaged, the services they require and the levels of personal responsibility and freedoms they should be afforded.

For example, three year-olds are very different from 10 year-olds, who in turn are very different from 15 year-olds. It would be nonsensical to require service providers to be age-blind when addressing the needs of children and providing services. There is no easy or sensible way to set arbitrary age limits on what should be appropriate treatment of children of different ages for every type of service that may be provided. Even 16 and 17 year-olds often need to be treated differently from adults. For example, they are restricted from purchasing tobacco products, alcohol, offensive weapons and knives, fireworks and sparklers and so on. The law also limits a child's responsibility in areas of contract and tort, including their liability for damages and their capacity to enter into contracts for goods and services.

We asked for examples of age discrimination to inform the development of policy on several occasions, but most of the examples of poor treatment of young people presented to us—the sort of examples cited by Young Equals—come from negative attitudes towards children, a general low opinion and mistrust of young people, and a lack of age-appropriate services for various age groups.

I have had a note passed to me about the various problems mentioned by Young Equals. The Government's Aiming High for Young People strategy aims to increase young people's influence over services, improve access to positive activities and counteract the way young people are often seen negatively. We are providing funding for local authorities to improve and involve young people in developing facilities and the Every Child Matters strategy and the Children's Plan put children at the heart of government policy. We are dealing in different ways with many of the things that Young Equals raise.

Outside the various age limits specified in law, there are many age-appropriate and age-restricted services that exist to help young people in their transition to adulthood. These include sexual health screening, teenage pregnancy services, relationship counselling, substance misuse advisory groups, young people's mental health and wellbeing support services, youth offending schemes and many others. Of course, these are in addition to more general age-related services such as crèches, childminding, play areas and activity centres. By not extending the age discrimination provisions to under-18s, our main concern has never been with the various age limits set out in statute, but with the need to protect the widespread, numerous age-appropriate and age-restricted services provided for young people to support them in their transition to adulthood and to assist them in taking on increasing responsibility for their own lives.

It would be extremely complex to provide exceptions in law to protect all such treatment. However, even if we were able to provide such exceptions and an objective justification defence, many service providers would simply standardise services across all age groups or withdraw from providing age-appropriate services altogether out of fear of being tied up in complaints that could end up in court. There would also be a reluctance to commit the management and other resources necessary to ensure that their services are always delivered in an age-blind way, or that the objective justification assessments have been properly carried out to prevent challenge in the first place. It is just not worth the significant risk of compromising children's services and the widespread, legitimate, common-sense uses of age in this way, in a fruitless attempt to address young people's general sense that older people do not treat them with enough respect in circumstances that would not fall within the scope of discrimination law anyway.

We take such issues seriously, and the view that young people deserve more dignity and respect is one with which I have great sympathy. But there are better ways to tackle the problems that children face, including specific, tailored non-legislative measures for children and young people, existing legislation such as the Human Rights Act and the new equality duty, which is included in the Equality Bill. For this reason, the amendment is unnecessary and therefore I ask that it be withdrawn.

Baroness Warsi: I thank the Minister for her response, which was interesting in how the Government seek to engage with young people to ensure that their voices are heard. As I said, this was very much a probing amendment to try to address some of the concerns raised by the various children's charities. At this stage, I beg leave to withdraw the amendment.

Amendment 57 withdrawn.

Clause 28 agreed.

Clause 29 : Provision of services, etc.

Amendment 57ZA not moved.

Clause 29 agreed.

Clauses 30 and 31 agreed.

Amendment 57A

Moved by ***Lord Mackay of Clashfern***

57A: After Clause 31, insert the following new Clause—

"Conscientious objection

Nothing in this Act shall have the effect of requiring a person (A) to provide a good or service to a person (B) when doing so has the effect of making A complicit with an action to which A has a genuine conscientious objection."

Lord Mackay of Clashfern: My Lords, I believe that there is a real sense in which the extent to which a society or country demonstrates its respect for conscience is a crucial criterion of the extent to which it has attained a civilised status. This is made very plain in the Universal Declaration of Human Rights, whose very first article says:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"—

the last part being already pronounced by Robert Burns.

Respecting conscience is not merely a matter of human rights; it is also a matter of prudence. One of the earliest speeches that I heard in this House was given by the former Lord Chief Justice, the late Lord Lane. He was a man of great experience in the law, and the criminal law in particular. In it, he spoke of the need to ensure that we should not denigrate conscience, because he recognised, rightly, that conscience plays a very important role in upholding the criminal law. As Edmund Burke once said, the less you restrain a man from within, the more you are required to restrain him from without. Failure to respect conscience is a fundamental mistake on the part of any state that aspires to be Liberal Democratic in relation to human dignity and the maintenance of law and order.

Over the many years during which I have been involved in the law and the political process, people have often grumbled to me about aspects of our legal system. Until very recently I have always responded that in Britain, while there are undoubtedly matters about which people could be legitimately anxious, one could always be assured that the law would not require you to violate your conscience. In recent years, however, and certainly since 2006, this has been brought into question. I will give an example or two.

9.30 pm

At the moment, the goods and services legislation with respect to religion and belief which was introduced by the Equality Act 2006 and is recounted in the Bill before us today, puts a gay printer in a very difficult position in the event that he is approached by an evangelical or Catholic theologian who wants him to print a theology book outlining the belief that same-sex sexual practice is a sin. He cannot print the book without becoming complicit in promoting a view with which he strongly disagrees and which he may feel violates his own identity. However, under the terms of the goods and services legislation it is not clear that he could refer the theologian on to another printer.

Similarly, the goods and services legislation with respect to sexual orientation introduced by regulations mandated by the 2006 Act and again referred to into the Bill—although now, I am glad to say, in amendable primary legislation—puts an evangelical or Catholic printer in a very difficult position if they are approached by a gay rights organisation and asked to print material that promotes same-sex sexual relations. Once again, the printer cannot print this material without becoming complicit in promoting something that he regards as sinful, violating his identity.

The conflict between religion and belief and sexual orientation is a recurrent challenge, but we must remember that there is actually no conflict between sexual orientation and religion. There are no mainstream religious groups, certainly within the Christian tradition, that object to a person's sexual orientation. The objection is narrowly to the practice of sex outside marriage.

This matter was mentioned in a judgment of the court in Northern Ireland in connection with an application for judicial review. Mr Justice Weatherup noted that the view that same-sex sexual activity is sinful is an orthodox religious belief which is worthy of recognition in a modern democratic society. In the original proposal for a council directive in the European Community on equal treatment there is an explanatory memorandum which sets out views about the provisions in the proposal. It states:

"The discriminatory grounds referred to in paragraph 1 coincide with those laid down by Article 13 of the Treaty, with the exception of the ground of sex. With regard to sexual orientation, a clear dividing line should be drawn between sexual orientation, which is covered by this proposal, and sexual behaviour, which is not. Furthermore, it should be underlined that this proposal does not affect marital status and therefore it does not impinge upon entitlements to benefits for married couples".

The important thing is that, according to that memorandum, sexual orientation is distinct from sexual practice.

The problem is around goods and services. The difficulty arises because people who have these views object to the practice, for example in their homes, of sexual relations outside marriage. That is the view which they take and, as I have just quoted, it is a fairly orthodox view which requires to be recognised in a liberal democracy nowadays.

When this was discussed before, it was suggested that the person who, for example, provides bed and breakfast could not make arrangements which required non-married couples, whether same-sex or heterosexual, to use different rooms in their establishment. I am certainly very much aware of that as a difficulty in, for example, the Scottish highlands, where quite a number of people go in for bed and breakfast. They are people who really are dependent on that type of living, because not too many opportunities for alternative employment are open to them in the remoter glens of the Scottish highlands. On this particular question, if a boarding-house keeper has the arrangement that unmarried couples—whether homosexual or heterosexual—are to be accommodated in their establishment in separate rooms, is that a breach of the regulations? It is a simple question, to which I would be glad of an answer.

The idea that conscience should rule in circumstances such as we are familiar with is, for example, referred to in the abortion legislation. A doctor who has a conscientious objection to performing an abortion is not obliged to do so. Even if he is with the National

Health Service, he can on conscientious grounds object and refrain from doing so. I particularly stress the fact that when our nation was in great straits, conscientious objection was allowed to people who, on that ground, sought exemption from military service. That was recognised at a time of acute national distress when it meant that if one person did not go to be a combatant, somebody else would be exposed to the risks that that person escaped. That was the kind of situation, yet our country made it perfectly plain then that genuine conscientious objection was allowed.

This Bill is in a unique position to deal with that problem, because the previous introductions in relation to sexual orientation, for example, were done by means of delegated or subordinate legislation and were unamendable. I welcome this Bill very much and certainly hope that it will, suitably improved, reach the statute book in good time. Yet I certainly think it right that it should be improved in this respect, by allowing individual conscience when it comes into play as a genuine conscientious conviction. It is possible to have lots of things that are not genuine, but I am talking of a genuine conscientious objection which should be allowed. That would promote the brotherhood of which Robbie Burns spoke and of which Article 1 of the human rights declaration speaks. I should probably declare a number of interests. I am an office-bearer in various Christian societies and a member of some others. I beg to move.

Lord Lester of Herne Hill: My Lords, nobody could reply to the noble and learned Lord properly after such a wide-ranging speech, and at this hour, and I will not attempt to do so. However, perhaps I could just explain extremely briefly why I respectfully disagree with him about his entire approach. It is an approach which I believe will be contrary both to European Union and European Human Rights Convention law on equality.

It is of course the case that freedom of conscience, religion and belief are as important as human rights as the principle of equal treatment without discrimination, and that both have to be accommodated within our legislation. That is entirely the case and therefore when we come later on to consider the position of the churches I am sympathetic to recognising that we should render unto Caesar only those things which should be rendered unto Caesar, and unto God those that should be rendered unto God. Therefore we should do nothing which would violate the basic tenets of the Christian or other churches in this area, provided that they are shown to be really necessary for their purpose. So we can leave that entirely on one side.

However the amendment which the noble and learned Lord puts forward is a blanket exception which, if it were to be accepted, would create a huge loophole in the whole of our discrimination law. It would mean presumably, for example, that a person could refuse to serve a gay person or a Muslim because they had a conscientious objection to doing so. I know that is not what is intended—

Lord Mackay of Clashfern: That is not what the amendment says.

Lord Lester of Herne Hill: Pardon?

Lord Mackay of Clashfern: That is not exactly what the amendment says.

Lord Lester of Herne Hill: No, it is not exactly what the amendment says but I am pointing out its implications. What it says is:

"Nothing in this Act"—

that is to say, the whole of the Act—

"shall have the effect of requiring a person (A) to provide a good or service"—

so that could be service in a shop—

"to a person (B) when doing so has the effect of making A complicit with an action to which A has a genuine conscientious objection".

So therefore it is a blanket exception in those areas.

Baroness Warsi: I am sorry to interrupt the noble Lord, Lord Lester, when he is in full flow, but I would be interested in an example where somebody could potentially have a conscientious objection to serving, for example, a Muslim.

Lord Lester of Herne Hill: The question would be whether it was a conscientious objection, for example a genuinely held homophobic belief. Let me give an actual example rather than a hypothetical one. Take the Ladele case. In Ladele, a public officer, a registrar of births and marriages, had a conscientious objection to carrying out a civil partnership ceremony. There is no doubt that it was a deeply held aversion to the idea of homosexuality, not just because of homosexuality as practised as the noble Lord would suggest, but because of the very idea that gay people should be entitled to be treated, for this purpose, in a similar way to married people. This person, who had a conscientious objection, refused to perform a state-funded, important function on conscientious grounds. The court, in a carefully reasoned judgment, explained why that was wholly unacceptable, contrary both to European and our domestic law. It is a good example because there is no doubt that the objection was conscientious but there is also no doubt that it would be completely intolerable if you allowed public officials in providing a service to decide on the basis of their own deeply held convictions that they were not prepared to carry out the service.

I shall not continue but I have no doubt that if this exception were there, we would immediately find ourselves in direct conflict with EU and ECHR law. They accommodate freedom of conscience, religion and belief rightly, but they do not do so in this way. I entirely respect where the noble and learned Lord is coming from. I respect his religious beliefs entirely. I understand the argument, but I do not agree with it.

9.45 pm

The Lord Bishop of Winchester: My Lords, I, too, when I read this amendment recently, was fascinated to see in which direction the noble and learned Lord, Lord Mackay, was going. I saw, on the one hand, the kinds of things that the noble Lord, Lord Lester, was saying, but, on the other, saw the fundamental importance of what the noble and learned Lord has put in the amendment.

[The Lord Bishop of Winchester]

However, before saying any more, I want to appreciate what the noble Lord, Lord Lester, said about the churches and the efforts that together we shall be making later in this Bill. I have a strong sense that the Government are now engaging to find a way through those elements that we shall perhaps come to the time after next. The question, as I hear it, that the noble and learned Lord, Lord Mackay, is putting runs somewhere in between the two noble Lords. As I heard him, I, too, believe in this question of the primacy of conscience, as I know the noble Lord, Lord Lester, does. However, the question that the noble and learned Lord is putting is: how hard will we work in this whole area of discrimination and equality to accommodate with the maximum fairness as many of the points at which a range of rights are intentioned.

That seems to be the question that the noble and learned Lord is asking your Lordships from a series of standpoints—if this is, as it were, a probing as well as a principled amendment, although I am not going to put words into the mouth of the noble and learned Lord, Lord Mackay, of all people. How hard will we work to try to accommodate elements of where we are in abrupt tension in all this very important and complex scene of rights, discrimination and equality.

He has just referred to the registrar and civil partnerships. He will remember that we had a spirited set of exchanges during the passage of the Civil Partnership Bill through your Lordships' House. Some of us then said—and the noble and learned Lord drew the analogy—that this was rather like medical doctors and abortion, where there is conscientious objection. Some of us were disturbed, as well as full of regret, that your Lordships' House did not accept that point in relation to civil registrars and civil partnerships and that something fresh was being brought into the registration service. It seemed to us that that point of view was legitimate.

We have been around the same course as regard the sexual orientation regulations and Roman Catholic adoption agencies. Many of us thought that there are plenty of other adoption agencies, so why keep pressing that point? That would be a good example of what I am suggesting. The implication of the amendment of the noble and learned Lord, Lord Mackay, is that each of us—if I can personalise it in this way; I just as much as you, you just as much as me—is bound to work as hard as we can to hold the whole range of different people's rights, because there is a sense around that some rights are better than others. Your Lordships' House must take extreme care that we do not affirm that.

Baroness Thornton: My Lords, it will not surprise the noble and learned Lord that I will speak against his proposed new clause. It would mean that any service provider could refuse to provide goods or services if doing so would make them complicit in an action to which they have a conscientious objection.

It is our view that no one offering goods or services to the public on a commercial basis should be able to discriminate on any grounds. However, neither the current law nor the Bill requires service providers to provide a service that they would not normally provide. In the noble and learned Lord's bed and breakfast example, as long as the bed and breakfast applies the same rule to unmarried couples and couples not in civil partnerships, that would not be discrimination; making a couple in a civil partnership stay in separate rooms while allowing a married couple to share rooms would be discrimination. The bed and breakfast in question is okay as long as it treats homosexuals and heterosexual people in the same way. They can make everybody sleep in separate rooms but it would probably not be good for business.

We are talking here about everyday activities—such as shopping, going to the bank, eating in a restaurant, seeking assistance from the police, applying for planning permission or visiting a health clinic—which could for some people be made extremely difficult and unpleasant by discrimination. People are entitled to expect fair and unbiased treatment from commercial and publicly funded organisations, regardless of their protected characteristics. This Bill is designed to ensure they receive that.

For example, both local authority and privately run care homes offer a great deal of comfort to people in their later years. This is a privilege that should be available to everyone, not dependent on characteristics such as sexual orientation. People of all sexual orientations have the right to good quality care throughout their later years of life.

To achieve this, we understand that people working in both the public and private sectors may occasionally be required to undertake duties that they may not always agree with privately. However, as an employer, a service provider can when reasonably able take practical measures to respect the private views of staff. For example, if an individual registrar does not want to conduct civil partnership ceremonies because of their religious beliefs, a local authority could arrange for a different registrar to conduct the ceremony if there is one available. However, if—

The Lord Bishop of Winchester: I am grateful to the noble Baroness for breaking off. Surely in that case the precise the point was that the local authority was not prepared to work in the way she has just described. Had it been so prepared, there would be no example.

Baroness Thornton: However, continuing this particular point, if there is no other registrar available, the local authority can and should require the registrar to carry out the ceremony.

The law therefore already allows for a measure of flexibility, although ultimately it is right that a service provider can require staff to perform certain perfectly lawful and legitimate functions if necessary. Allowing service providers a measure of flexibility helps them achieve a balance between ensuring that the end-user of the service receives a service without discrimination but that as an employer they can respect the private beliefs of their staff. This does not mean that a service provider needs to provide a service in a way that they would not normally provide it. For example, a Christian bookshop would not suddenly be required to stock a copy of the Koran. However, if a Muslim person wanted to buy a copy of the Bible, the bookshop could not refuse to sell him one.

The Government are determined to tackle discrimination or disadvantage because of any protected characteristic and there is no hierarchy of rights. We believe the Bill strikes a balance between potentially conflicting rights, for example by providing some specific exceptions for religious bodies on grounds of their doctrine. While the Equality Bill maintains everyone's right to express in a legitimate manner both religious and non-religious beliefs, it is only right that people employed by commercial and publicly funded organisations are not allowed to discriminate on any grounds, no matter what their private belief.

On the issue raised by the right reverend Prelate about abortion, the Human Fertilisation and Embryology Act 1990, as well as the Abortion Act 1967, contained provision that makes it clear that no person who has a conscientious objection to participating in any activity governed by these Acts shall be under any duty to do so. The law therefore explicitly protects those who have a conscientious objection from taking part in abortion treatment. That is where Parliament struck the balance between conflicting rights.

Lord Lester of Herne Hill: Is it not also the case that, quite properly, Parliament has required that if a particular doctor has a conscientious objection to carrying out the abortion but the termination of pregnancy is lawful and needed, the health authority has a duty to ensure that it is carried out, not by coercing that person in that context but by making sure the service is provided?

Lord Elton: Could one not apply the same practice to the case that the noble Baroness raised in her substantive remarks, which the right reverend Prelate then intervened upon? Surely the Bill would be more effective if there were a duty on an authority to take reasonable steps to accommodate the conscientious positions of its employees.

Baroness Thornton: I think I expressly said that we recognise that flexibility is built in—that an employer and service provider can, when reasonably able, take practical measures to respect the private views of staff. That is the case.

Lord Elton: That is exactly the point. The word is "can", not "must" or "should". It should be either "must" or "should".

Lord Lester of Herne Hill: This is not a very satisfactory way of proceeding because we are dealing with the issue in bits and pieces. However, under the European human rights convention and the Human Rights Act, is it not the case that if one were to act disproportionately and coerce someone against their conscience, that would violate their right to freedom of conscience, so in the end there would be a question of proportionality on the facts? It is not a question of black or white; under the Human Rights Act and the European convention the law sensibly allows a fair balance to be struck and maintained.

Lord Mackay of Clashfern: Has the Minister completed her submission?

Baroness Thornton: I do not think that there is anything more that I can add to my remarks.

Lord Mackay of Clashfern: First, I thank the noble Lord, Lord Lester of Herne Hill, for saying that the amendment would produce a very large loophole. That is an immediate recognition that a lot of people are in this position. The noble Baroness shakes her head but I do not understand how she can get round the idea that it will cause a large problem if the amendment is accepted and, at the same time, suggest that that will not be the case. However, that is perhaps not the most central point that I want to make.

My central point is that if you take account, as I have sought to do, of the distinction between sexual orientation on the one hand and, on the other, practice arising from that, as well as sexual practice arising in the case of heterosexual people, then I do not believe that European law—or, indeed, domestic law if it were modified—would in any way be inconsistent with the general law of the European Union.

The Government's response is that there is a flexibility that enables private views to be accommodated to a great extent. If there were, I would not be moving this amendment. However, the fact is that the legislation has been built up in an extremely rigid way, as the case of the registrar shows. It is very often the case that those with strong conscientious objections are also very loyal and trustworthy—

Baroness Thornton: Will the noble and learned Lord allow me to ask a question? Would he for a moment substitute "ethnic minority" and "black" for "sexual orientation"? If he did that, he might see the problem that the noble Lord, Lord Lester, and I are having with his amendment.

Lord Mackay of Clashfern: The situation is rather different. I do not know many mainline Christian organisations that have a conscientious objection to some form of interaction with black people. That makes a difference. I know that there was a regime that sought to establish itself on that basis, but that is not the situation with which I am dealing. I am dealing with the situation relating to the organisations that exist in this country and the sorts of views that they have. As the judge in Ireland said, it is an orthodox religious view with a pretty long history. It is a history that existed before I was born, which was quite a long time ago, and it is much older than that.

10 pm

Lord Lester of Herne Hill: My Lords, I think I have an experience that the noble and learned Lord does not have. My elder child is gay and came out many years ago. I do not think he would agree that the prejudice that gay people feel from homophobic people is the careful distinction between being gay and practising homosexuality in the bedroom. The problem is that homophobic discrimination is not so sophisticated. The mere fact that you are known to be gay gives rise to a lot of discriminatory treatment. When the noble and learned Lord says his remark about this being a very wide loophole shows that there are terrible cases,

[Lord Lester of Herne Hill]
many of them about conscientious objection, that is not what I said. If this were to be in statute, it would create a gaping loophole that would authorise a form of discrimination that we would all deplore.

Lord Mackay of Clashfern: My Lords, as I said, it is not the best point I wanted to make but it does acknowledge the fact, as the noble Lord said a moment ago, that it is a big situation. I am not for one moment seeking to say that discrimination on the ground of sexual orientation could be justified on the basis of conscience—not at all. I am saying that if doing what this requires in a particular case means that the person who is doing it is complicit in an action that is against his conscience, then he should not be compelled to do it under our law. That is nothing whatever to do with the example that the noble Lord has given, where there is no question of complicity in any action. Discriminating against, harassing or bullying people on the grounds of their sexual orientation is absolutely anathema to me. It has always been so. I have had experience in government office in relation to that. I am absolutely clear about that. I am also clear that there are situations in which this law is apt to require somebody to take action which results in something that is contrary to his conscientious view and therefore is in breach of his conscientious objection. If there is a real conscientious objection, I cannot see why the law cannot recognise that. The number is not large—the amendment is narrowly drawn. Although, according to the noble Lord, Lord Lester of Herne Hill, it is a big problem, I do not believe that this, in the way I would phrase the amendment, is a big point.

It is time we stopped, and it is certainly time I stopped.

The Lord Bishop of Chichester: Before the noble and learned Lord stops, despite the hour, I should say that I am grateful that he is pressing the point about the distinction between orientation and practice. It seems to be fundamental. We will not agree about that, but it is one of the underlying questions that has bedevilled this discussion. There is another that the noble Baroness highlighted a moment ago, which we need to take note of before we finish. She repeated several times an expression about the need to respect people's private beliefs. One reason why I opposed the amendment trying to get rid of "philosophical" this afternoon alongside "religious" was precisely because our beliefs, whether religious or philosophical, inform our public attitudes and behaviour as citizens. The attempt to privatise belief, whether philosophical or religious, is a profoundly dangerous tendency and one that we need to address as we consider not only this but later amendments.

Lord Lester of Herne Hill: We are not privatising beliefs; we are dealing with conduct.

Lord Mackay of Clashfern: We are seeking to privatise the practice that should arise from the belief. If you do not act according to your beliefs, they are not worth very much. Belief is normally demonstrated as genuine by the way in which the person lives.

We have spent as long as we ought—or maybe longer—on this amendment, so I beg leave to withdraw it.

Amendment 57A withdrawn.

House resumed.

House adjourned at 10.05 pm.

Grand Committee

Wednesday, 13 January 2010.

Bribery Bill [HL]

Committee (2nd Day)

3.45 pm

The Deputy Chairman of Committees (Lord Geddes): My Lords, it is striking 3.45 pm and the monitor says that it is 3.45 pm. As is usual on these occasions, I advise the Grand Committee that, if there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division bells are rung and resume after 10 minutes.

Clauses 10 and 11 agreed.

Clause 12 : Defence for certain bribery offences: legitimate purposes

Amendment 21

Moved by ***Lord Henley***

21: Clause 12, page 8, line 6, leave out paragraph (a)

Lord Henley: My Lords, Amendment 21 is also in the names of the noble Lords, Lord Goodhart and Lord Thomas of Gresford. I shall speak also to Amendment 32, which is in my name and those of the same noble Lords. Amendments 29 and 33, in the names of the noble Lords, Lord Goodhart and Lord Thomas, are also in this group.

Clause 12 offers a defence to certain charges of bribery if the person charged with a bribery offence can show that he was acting for a legitimate purpose. The defence is not intended to be widely available. Clause 12(1) details who may avail themselves of the defence. My amendment relates only to Clause 12(1)(a), which deals with law enforcement agencies, security agencies and the Armed Forces. Notwithstanding the limits in the Bill, noble Lords will be aware that the Select Committee on the Constitution considers that it may still be drawn too widely. The committee's first report of the Session deals exclusively with Clause 12. I have tabled these probing amendments to give the Minister the opportunity to explain and defend the drafting chosen by the Government. I would also be grateful if he would say when the Government will formally respond to the Select Committee's report, which came out on 4 December.

We now have a date—2 February—pencilled in for Report. The Minister is nodding, so I expect that that date is right. The committee would find it useful to see the Government's response in good time before 2 February, in case that influences how we respond, particularly in the light of what the Minister will say this afternoon, and whether we table any further amendments.

Amendment 21 and Amendment 32, which is consequential, deal with the first of the three categories where the defence may be raised—the situation that a person's conduct was necessary for,

"the prevention, detection or investigation by, or on behalf of, a law enforcement agency".

The Liberal Democrat Benches will deal with their two amendments in due course. I stress again that my amendment is probing. It deletes that paragraph, which is—

Lord Goodhart: Just to save time, perhaps I could point out that our Amendments 29 and 33 are purely consequential, like the noble Lord's Amendment 32. Therefore it will not be necessary for me to speak to them.

Lord Henley: I am very grateful to the noble Lord for that explanation. My Amendments 21 and 32 are designed to remove Clause 12(1)(a), which refers to,

"the prevention, detection or investigation by, or on behalf of, a law enforcement agency of serious crime".

Clause 12(1)(a) casts a wide net. It includes not just the police but all law enforcement agencies and those acting on their behalf. The Select Committee on the Constitution notes that other organisations covered would include HM Revenue and Customs, the United Kingdom Border Agency, local authority trading standards, environmental health officers and others. It would be helpful if the Minister could give the committee a full and comprehensive list of all the agencies that will be covered, which under Clause 12 will be able to engage in bribery and get away with it if their actions are in pursuit of, or necessary for preventing, detecting or investigating serious crime, as defined by Sections 81(2) and (3) of RIPA, which is itself a wide definition.

The most striking remark made in the Constitution Committee's report is:

"Drawing the defence in terms as wide as this jeopardises the constitutional principle of the rule of law".

Those are very strong words from a highly respected committee of your Lordships' House. I am sure that noble Lords will agree that there are good reasons, which we will debate shortly, why organisations involved in protecting national security have that defence under Clause 12, but there seems to be a less strong case for myriad domestic organisations to be given the go-ahead to commit bribery.

The report recommends in paragraph 12 that:

"Unless compelling evidence is produced as to why clause 12(1)(a) is necessary in respect of each of the law enforcement agencies to which it may apply, it should be omitted".

I have tabled this as a probing amendment, and it is now up to the Government to do what they can to justify Clause 12(1)(a). No doubt other noble Lords will have comments that they wish to make, but I look forward to hearing the Government's views on why the subsection is necessary. I beg to move.

Lord Goodhart: My Lords, my noble friend Lord Thomas of Gresford and I have put our names to Amendment 21. In doing so, I make it clear that we regard the terms of the amendment as more than a probing amendment. As we now stand, it will be

[LORD GOODHART]
almost certainly be our intention to ensure that the amendment is brought back on Report when it can be properly voted on.

The draft Bill, which we studied at the time of the Joint Committee, provides in Clause 13 that bribery would not be an offence if it was authorised by the Secretary of State. The Secretary of State could authorise bribery only if and in so far as it was necessary to the proper discharge of the functions of MI5, MI6 or GCHQ. The Joint Committee was not satisfied that bribery should be legitimated, even on the basis of there being an authorisation from the Secretary of State. I shall read what the Joint Committee said about that in paragraph 203 on page 68 of Volume 1 of the report on the draft Bribery Bill, and I should repeat, as I have said several times before, that the report of the Joint Committee was unanimous:

"We heard no persuasive evidence of a need for the domestic intelligence agencies to be granted an authorisation to bribe. Neither are we persuaded that this draft Bill is the appropriate vehicle to extend the security services' powers to contravene the criminal law. Finally, we note continuing doubt about whether clause 13 complies with the United Kingdom's international obligations, despite the fact that this issue was raised as long ago as 2003. For all these reasons we recommend that the Government remove clauses 13 and 14".

The Government did not accept that recommendation by the Joint Committee. Not only did they not accept it, they came back with a new clause, Clause 12 of the present version of the Bill, which extended the power to bribe legally. Under Clause 12, not only are the security services exempted from liability for bribery if it is in the proper exercise of their functions, but Clause 12 also extends the exemption to law enforcement agencies and the Armed Forces when on active service. I regard this as extraordinary.

My noble friend and I will object to the inclusion of any part of Clause 12 when we come to the debate that Clause 12 should stand part; of course, we recognise that we cannot vote on that here. If Clause 12 is removed, that would get us back to the recommendation of the Joint Committee that the Bill should not contain legal exemption from bribery for anyone.

Our amendments in this group and the two groups that follow would exclude the exemption of the law enforcement agencies and the armed services. The amendments in this group, starting with Amendment 21, apply to the law enforcement agencies and remove them from the scope of Clause 12. That is plainly appropriate. The Serious Fraud Office and a senior representative of the police both said, in written evidence to the Joint Committee, that the exemption should not apply to them; I refer to paragraphs 191 and 321 of the evidence volume of our report.

The exemption from the bribery law is anyway unnecessary for the law enforcement agencies. It cannot be improper for someone with information that may lead to the conviction of criminals to disclose that information to the police, so neither the police nor the person who makes a disclosure can be prosecuted for the offence of bribery even if the police offer rewards for the information that they have received. There is absolute no need to retain Clause 12(1)(a).

I strongly agree with the views here expressed by the Constitution Committee. I repeat, slightly more fully than the noble Lord, Lord Henley:

"Drawing the defence in terms as wide as this jeopardises the constitutional principle of the rule of law. Unless compelling evidence is produced as to why clause 12(1)(a) is necessary in respect of each of the law enforcement agencies to which it may apply, it should be omitted".

The other amendments in this group—29, 32 and 33—are purely consequential, and would remove parts of Clause 12 that would become irrelevant if Clause 12(1)(a) were removed.

Lord Pannick: My Lords, I support these amendments and agree with the noble Lords, Lord Henley and Lord Goodhart. One of the matters that influenced the Constitution Committee, of which I am a member, is that the Joint Committee noted at paragraph 195 of its report that the evidence that it had received from the police and the Serious Fraud Office on the defence for the intelligence services did not suggest that the police and the SFO themselves believe that they need any such defence for their own activities. It is therefore surprising, to put it mildly, that the Government have come forward with an amendment to the draft Bill which confers such a broad power on law enforcement agencies, themselves so broadly defined in Clause 12. Can the Minister tell us whether there is evidence to suggest that the absence to date of a power as would be contained in Clause 12(1)(a), were it to be enacted, has hindered in any way the effective performance of law enforcement functions to date?

4 pm

Viscount Colville of Culross: My Lords, following on what has just been said by the noble Lord, Lord Pannick, and others, this is a remarkably big extension of what was set out in the draft Bill, and I hope that the Government will now give us an explanation of why this has happened. The intelligence services and GCHQ were included in the draft legislation we considered in the Joint Committee. Now we have a large range of law enforcement agencies—and it is a large range—as well as the security services and the Armed Forces, and it has never been explained. There is nothing about it in the Explanatory Notes whatever, and nothing in the Government's response to the Joint Committee.

I am concerned about this because the Government's defence of the original proposals in the draft Bill was that it was perfectly all right for the intelligence services and GCHQ because under the Intelligence Services Act 1994, first, you have to have a warrant from the Secretary of State issued in person or by a very senior official, and it lasts for only six months; secondly, that this is a special matter and it has been dealt with specifically by Parliament; and thirdly, there would be a review of everything that had been done by a parliamentary committee. Added to this Bill are the enforcement agencies, the security services and the Armed Forces for whom no provision is made for obtaining a warrant, no time limit on any authorisation that may be obtained, and no subsequent scrutiny of what they have done. That knocks all the chocks out from underneath the defence given by the Government to the original proposition because it is not now on all fours with what the Government originally proposed.

What is the process of authorisation going to be for this? Who is going to give it, and how long will it last? What scrutiny procedure will take place? Enforcement agencies are to some extent governed under RIPA and there is in place a procedure, of which I declare that I am a part, in that it is looked at by the commissioner in charge of RIPA affairs, but that is not the same as granting an authorisation in the first place, nor is there any time limit on it. Frankly, I do not understand why this large extension of these powers has been introduced without either any explanation or safeguards. Parliament is due an explanation from the Government of why this has been done.

Lord Williamson of Horton: My Lords, like others, I am struck by the difference between the draft Bill and the Bill now before us. The draft legislation was rather aptly headed,

"Authorisations for intelligence services".

It is true, as the noble Lord, Lord Thomas of Gresford, has said, that the Joint Committee was opposed to this, but the Government have taken a consistent view on the issue of the intelligence services. They maintained at the time that it was necessary, they maintained it in their response to the Joint Committee, and they have maintained it again today. Although of course I subscribed to the Joint Committee report, I must say that I understand the Government's concern about the intelligence services. We will see about that when we come on to that, but this amendment does not deal strictly with that, it deals with the law enforcement agencies—words which did not appear anywhere in the draft Bill examined earlier.

Like my noble friend Lord Colville, I think that we need to know why the Government have extended the defence in this new form—in a completely different form from that in the draft Bill—to this further category. It certainly requires a considerable effort of will to understand why that is necessary. I stand by the position I took on the draft Bill, but I have sympathy with the Government on the broad point about protecting the public interest in relation to the functions of the Security Service. However, I am not too sure why it is necessary to introduce all these other people into the defence for bribery offences. We definitely need an explanation of that.

Lord Mayhew of Twysden: My Lords, I agree. I do not want to delay more than I hope is necessary the Minister's reply to these pressing invitations to explain what exactly has happened. Here we have this excellent procedure for scrutiny of a draft Bill, a draft Bill as put forward by a Government, who say to themselves, "Let us see what these people say about this". Well, we know what these people said about it. Paragraph 203 of the report, which has already been read out, states:

"We heard no persuasive evidence of a need for the domestic intelligence agencies … Neither are we persuaded that this draft Bill is the appropriate vehicle to extend the security services' powers to contravene the criminal law".

Lo and behold, back come the Government, having seen what these people say about it, with an extension of these provisions. I should like to know quite what it is in the way of an urgent request for an extension of this Bill's ambit. I should like to know what has led to this rather remarkable change of mind on the part of Ministers. Will the Minister explain, or give an example of, the extent of "law enforcement agency"? One reads at line 29 on page 8 of the Bill that "law enforcement agency" means,

"a public authority acting in pursuance of a duty of a public nature under the law of any part of the United Kingdom to prevent, detect or investigate crime".

I want to know, if the Minister will oblige me, whether that would extend, for example, to the local weights and measures inspectorate, and if it does not, why not?

Lord Lyell of Markyate: I shall speak briefly because almost everything has been said. I support these amendments certainly as strong probing amendments and await the Minister's reply to the questions that have been put. Like the noble Lord, Lord Pannick, I sit on your Lordships' Select Committee on the Constitution and I was on the Joint Committee on the draft Bill. The Minister will be aware that the Select Committee on the Constitution raised a number of questions, one of which was why the safeguard of there being a Minister responsible for overseeing the use of these powers had been removed. To quote it, the removal in the Bill of the safeguard of there being a Minister responsible is of itself a matter of constitutional concern. I see that the Minister is looking at me quizzically, but I await his reply. No doubt, it will be a very good one if he has grounds for being quizzical on this. The report of the Constitution Committee goes on to say that,

"it is not self-evident that such a defence should extend also to the Services' statutory function 'to safeguard the economic well-being of the United Kingdom'".

There may be an answer to that; it seems a proper question to raise. Likewise,

"it is not self-evident that GCHQ requires the same statutory protection",

as other parts of the security services.

There are important questions to be raised. We do not want the law enforcement authorities to bribe unless there is a powerful reason for doing so. I support what my noble and learned friend Lord Mayhew indicated in this respect.

Lord Mackay of Clashfern: My Lords, I agree with what has been said. I have two short questions. First, if this was necessary, why was it not in the draft Bill? Did something happen in the consideration of these matters? Secondly, can the Minister give us some idea of the circumstances in which it is envisaged that this clause might be appropriate? Can he give an example of a situation in which the enforcement agencies would require to bribe people?

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, these amendments concern Clause 12, which provides a defence for law enforcement agencies, the intelligence services and the Armed Forces. These amendments would have the effect of removing from the scope of the defence the activities of law enforcement agencies in the prevention, detection or investigation of serious crime.

[LORD BACH]

Obviously Clause 12 has attracted significant comment, both at Second Reading and today, and the Constitution Select Committee of the House has expressed a number of concerns about the scope of the defence. Before I get into the details of the amendment, I must emphasise in the strongest possible terms the importance that the Government attach to Clause 12. It is important on a practical level because, for reasons that I shall set out, there is an operational need for the defence. We do not seek to hide the fact that certain arms of the state may need to offer financial or other inducements that may amount to a bribe in order that they can effectively carry out their difficult functions. Clause 12 makes the position entirely transparent. However, it is also important as a matter of principle that we should deal with the issues highlighted by the clause in an open and transparent manner.

The police and other law enforcement agencies have an important role to play in protecting and defending the public from the threat caused by serious crime. Our objective is to ensure that these law enforcement agencies are not hindered in tackling serious crime. Often financial or other inducements may be the only way to obtain vital information. I am surprised that noble Lords think that that is not so, but that is what happens from time to time.

In the normal course of events a payment for assisting in the investigation of crime is unlikely to amount to bribery, but there are occasions in which such conduct could amount to an offence.

Lord Thomas of Gresford: Can the Minister say whether in the past 100 years there have been investigations or proceedings brought against a police officer for offering money for information?

Lord Bach: Not money for information in the sense that the noble Lord means, but I was just going on to say that where, for example, the provision of information involves inducing someone to breach an expectation of trust, it is not inconceivable that a prosecution could then follow. While this concerns an activity covered by the Bill—for example, in the course of a person's business or employment—the use of an inducement could constitute an offence. All prosecuting authorities will apply the public interest test in deciding whether to prosecute any case submitted to them. We do not consider it satisfactory to leave law enforcement officers in doubt about the circumstances in which such conduct will be considered legitimate.

4.15 pm

Lord Goodhart: Can the Minister explain why, if this matter is so obvious, it did not appear in the Government's original draft of the Bill?

Lord Bach: There is nothing secret about that. A lot of work had gone on behind the scenes to work out clauses that would relate to law enforcement agencies, particularly the police. However, time was against us, the matter went to the Joint Committee and these clauses were not put into the draft Bill that the Joint Committee looked at. I am extremely sorry that that did not happen—it would have been much preferable. I am talking particularly here to the noble Viscount who chaired the Joint Committee so well. That is the reason: there is no secret about it. We were not ready to put such a proposal to the Joint Committee. However, we are ready in the Bill that is before the Committee today.

Lord Lyell of Markyate: Perhaps I may pick up on the Minister's statement that it might be necessary for agencies to bribe someone to breach what might be regarded as—in his words—"an expectation of trust". That has a hint of the Bill, but is not the idea of breach of trust in the drafting of the Bill. Will he give an example? My impression is that it would not catch the payment of an informant. The informant would probably not be in breach of trust. He might be a wicked individual, but he would not breach any of the ingredients of the offence. A hypothetical example would be very helpful.

Lord Bach: This example will be hypothetical. An advantage given to an employee of the company in order to induce that employee to divulge information could amount to a bribe if the passing on of the information would amount to a breach of the expectation that the employee would act in accordance with the position of trust that he or she holds vis-à-vis their employer. It would ordinarily be the case that an employee cannot pass on information that the company would regard as confidential without breaching such an expectation. The fact that the information that he or she is not permitted to divulge is of assistance to the authorities would hardly be irrelevant for these purposes. The police might check up with an employee in relation to good or bad behaviour. It may just be in order to exclude a particular employer from investigation. They may pay money to an employee in order to get an answer to that question. That is a theoretical example of where it is possible that a policeman, by paying money, might make himself guilty of the offence in Clause 1.

Viscount Colville of Culross: My Lords, this is a very obscure. The Minister is talking about what is called, in the Regulation of Investigatory Powers Act, a covert human intelligence source. These people come in many shapes and sizes. They are sometimes paid and used to be known as informers. They are sometimes paid by the law enforcement agency to produce information which may or may not fall within the definitions of the Bill. I have never heard it suggested that what is done by way of paying them for that information and undercover work constitutes a bribe. The Minister is now saying that it does. If that is the case, the whole thing is subsumed into the machinery of RIPA, whereby there would have to be an authorisation for this, which would be given to the police or other law enforcement agency that is asking someone to carry out the job. Is it intended that this should be the authority that gives rise to the defence in the clause? If so, that is a complete novelty.

Lord Bach: I am not saying, as the noble Viscount suggested I was, that it would necessarily mean that there was an offence of bribery committed under the provisions of the Bill; but it might. The noble Viscount

has picked up on my example of a police officer working in a particular way. Police officers, in the same way as intelligence service officers, have to behave in a particular way sometimes to get the information that they require to do their extremely difficult job, and to preclude the fact that police officers might have to do that seems to me not to be a valid argument. I have tried to explain why we did not put this before the Joint Committee. The noble and learned Lord, Lord Mayhew, specifically asked me about that. Other departments were obviously in discussion with my department at that time and we were unable to conclude in time for inclusion in the draft Bill—

Lord Pannick: May I test the Minister's patience? As I understand what he is saying, he is telling the Committee that the company, the employer, may have an expectation that the employee will behave with trust and will not reveal information to the police. I think that is his argument. I suggest to him that no company could reasonably have an expectation that an employee will not disclose to the law enforcement authorities information about a crime. If that is right, there would be no offence here of paying the employee to disclose to the police information about a crime.

Lord Bach: The noble Lord is very clear about that. What if the inquiry that the police officer was making was to exclude the employer from being criminally involved in whatever was going on? What if that was the position? Money had been paid over, the employer would say, "I am completely innocent; I do not want my employee talking to the police and being paid money by the police to give information, whether good or bad, about me". Are we saying that the police officer who paid the bribe would not in those circumstances be theoretically liable under Clause 1?

Lord Thomas of Gresford: I wonder whether I could give a concrete example from my experience of a few years ago. I think it was police officers, but it may have been officers of the security services, who paid £20,000 to a lorry driver for information relating to millions of pounds' worth of heroin that he was carrying on his lorry. Is that in any sense to be regarded as a criminal act on the part of the person who paid? To me, it is inconceivable. Secondly, do policemen go around worrying about paying over money to informers and asking themselves whether they are committing a criminal offence? It has been done for centuries. In this Bill, we are not suddenly criminalising some absolutely day-to-day activity of the police in paying for information. Are we?

Lord Bach: I have given the example. Regarding information, which might be information about a crime on the part of the employer, if the employee gives information about an investigation of some other company or other person, it might be that the employer took the view that he did not want his employee to breach the position of trust that the employee was in vis-à-vis him. If that was so, why should it be any different from the position of the intelligence agencies, who might find themselves in the same position? I do not think it is enough for the noble Lord to say that this has gone on for hundreds of years and it therefore is completely impossible for there to be any allegation of bribery made against a police officer in certain circumstances.

Viscount Colville of Culross: I am sorry to interrupt the Minister but this is not at all realistic. The employer has nothing to do with this. The employer may be the subject of a police investigation. The only way in which the law enforcement agency—of one sort or another—can get the necessary evidence is to ask one of the employees to provide it. The employer does not know anything about this. The whole point is that it is done undercover. The informer certainly does not tell the employer, "I am in the pay of the police to tell them what is going on in our company". This is simply not how it works. I hope the Minister will think again about this.

Lord Bach: I have heard the strong views of the Committee; of course we will think again. That is why we have Committee proceedings: to consider the position. In due course I will make a concession on the width of the law enforcement agency panel that might be covered by Clause 12(1)(a).

We have tried to explain why the law enforcement agencies have now been brought into the Bill that is before Parliament, but were not in the draft Bill. We recognise that the creation of any defence in the Bill has to be proportionate and we have drafted Clause 12 in a way that ensures that this is the case. We have restricted the application of the defence to serious crime. In the interests of consistency, the clause, as it stands, adopts the definition of serious crime in RIPA 2000. The definition covers offences attracting, as the Committee will know, a penalty of three years or more, or which involve the use of violence, result in substantial financial gain or are conducted by a larger number of persons in pursuit of a common purpose. The limitation is an attempt to mitigate the risk of the defence being applied in respect of lower-level offences, preserving the ability of both the police and other relevant agencies to tackle the full range of serious criminal activity.

The second point that I put to the Committee is that it will fall to the person wishing to rely on the defence to demonstrate that his or her conduct was necessary to prevent, detect or investigate serious crime, should a prosecution be brought. Each case will be considered on its merits, and those concerned cannot take reliance on the defence for granted.

The Constitution Committee noted that the definition of "law enforcement agency" extended beyond the police to other law enforcement agencies, namely Her Majesty's Revenue and Customs, the UK Border Agency and, perhaps more significantly, local authorities' trading standards and environmental health officers. Although the police and the Serious Organised Crime Agency—SOCA—carry the most significant responsibility for combating serious crime, there are other agencies operating in this sphere that we should not lose sight of. The UK Border Agency has a key role in combating people smuggling. One way or another, the clause needs to capture all the relevant law enforcement agencies, but I accept that our approach may have cast the net too widely.

[LORD BACH]

I have heard the concerns expressed in Committee today and at Second Reading, and the Constitution Committee's opinion on this matter. I invite the noble Lord, Lord Henley, in deciding what to do with his amendment, at least to withdraw it today. I promise to reflect carefully between now and Report on what has been said generally as well as on whether this is too wide. I cannot at this stage commit to tabling on Report a government amendment to narrow the definition, but the concerns that have been raised in Committee have been noted. We will look at the matter at least as far as the width of "law enforcement agencies" is concerned; we will look with sympathy at attempting to amend that.

4.30 pm

A number of different points were made by noble Lords in the course of the debate. This point is worth making. We obviously live in very different times from when the current corruption laws were written back at the end of the 19th and early 20th century. Since the middle of the 1990s, for example, the intelligence service has been placed on a statutory footing, as, I believe, have the police, thus emphasising the importance of transparency and accountability. Against that background, there have been a number of examples of specific statutory provisions relating to conduct particularly by the intelligence services—for example, the defence relating to making indecent images of children inserted into the Protection of Children Act 1978 by the Sexual Offences Act 2003 and widened by the Criminal Justice and Immigration Act 2008. As with Clause 12, a defence exists there and prosecutorial discretion is not solely relied on.

The noble Viscount, Lord Colville, asked me how the police will authorise the use of bribery. Where the police consider it necessary to engage in conduct which would constitute an offence under Clause 1 in pursuit of their functions in respect of serious crime—there is perhaps a disagreement between us as to whether that is ever likely to happen—we would expect the police to have in place appropriate internal authorisation procedures. The police are used to having such internal controls and procedures in place, as is the case under RIPA. I assure the Committee that such controls will be in place in this context.

The noble Lord, Lord Pannick, asked me for examples. It was a fair question, but I am not able to provide specific examples. In recasting our law on bribery, which is the exercise in which we are involved at present, we are attempting to make the law on bribery both up-to-date and, even more importantly, transparent. It is right that we are open and clear about when payments that would otherwise be offences under the Bill should be permitted as legitimate. As I have argued, references of this sort are by no means unprecedented; I have already referred to the Protection of Children Act.

The noble Lord, Lord Henley, asked me at the start of our debate when we will be responding to the Constitution Committee report. We want to reflect on today's debate before responding to the report—I think that that is a fair decision to make. We certainly hope to respond to the report in advance of Report, which, as the noble Lord rightly says, is pencilled in for 2 February.

As for the evidence given to the noble Viscount's Joint Committee about the police and the SFO, our understanding is that in giving evidence to the Joint Committee, the City of London Police and the SFO were commenting on the authorisation scheme contained in the draft Bill. Clause 12 proposes something different. In any event, it is not our understanding that Detective Chief Superintendent Head, who, I believe, was the officer who gave evidence, was setting out a considered ACPO view on the issue.

I have tried to deal with the various questions asked me by noble Lords. We believe that we are justified in extending the provisions to include law enforcement agencies. The argument for us is how widely we should extend them. I know that we will come back to this issue in due course. I give way to the noble and learned Lord.

Lord Mayhew of Twysden: The noble Lord is extremely generous in giving way and he has been very fair, as he has always been. He said that the Government will consider whether they have cast the net too widely in the clause. I wonder whether he can answer my question, which was whether, as drafted, it extends to catching the local weights and measures inspectorate and, if it does, whether that was and remains the intention of the Government. Can he help us with that in advance of the review that he has promised?

Lord Bach: There is no doubt that the clause is widely drafted. The Constitution Committee had it right when it argued that it could cover environmental health officers and trading standards officers of local authorities. The noble and learned Lord is right about that. The matter will be in the front of our minds when we consider whether we have drafted this part of the clause too widely. It covers public authorities that investigate "serious crime", and I have been through that definition already.

Lord Lyell of Markyate: The Minister mentioned the word "authorisation" but said nothing about ministerial authorisation, a point raised by the Constitution Committee. In the example given by the noble Lord, Lord Thomas, about the practice over a long period, a conviction for bribery or corruption required one to do something corruptly. In the Bill, it has been decided not to require corruption as part of the offence of bribery. It would be in strange circumstances that law enforcement authorities bribed someone corruptly but if that did happen—and one can see that it could—it would be very corrupt indeed. However, we are not talking about that. We are talking about payments to informants for good reason, and perhaps the Minister will reflect on that more fully when he considers the broad width of the present definition of "bribery".

Lord Henley: My Lords, the Minister asked me what I intend to do with the amendment. He knows the answer because, first, it is a probing amendment and, secondly, all amendments in this peculiar procedure are probing amendments. I shall withdraw it in due course but I wish to make one or two points before I do so.

My noble and learned friend Lord Lyell of Markyate said that no doubt the Government's reply will be a very good one. The Government did not seem to have much support before the Minister made his reply, and every speech before that seemed to show that noble Lords had considerable difficulty with the inclusion of Clause 12(1)(a), particularly as there had not been anything like it in the draft Bill. Several Peers questioned why it was not in the draft Bill, particularly the noble Viscount, Lord Colville of Culross, who chaired the Committee, and the noble Lord, Lord Goodhart, also intervened to make that point.

The Minister replied that time was against us. However, the Government have had 10 or 12 years to think through the Bill and I cannot see why time is against us. It seemed more of a "Homer nods" defence—except that in this case it was not Homer the poet but more Homer Simpson who was nodding.

Lord Bach: At this juncture in the Parliament, the noble Lord should be careful about having too much fun at our expense in terms of the reason why this was not in the draft Bill. I advise him to be slightly cautious of certain eventualities. He will know from his time in government—it is a long time ago but he may just remember it—that matters of this importance are not discussed at all times. However, when they do come up for discussion, and when there is an intention to legislate, all relevant government departments need to be consulted and all the issues need to be considered. Let the noble Lord enjoy himself, of course, but I warn him to be slightly cautious about blaming us too much for the fact that we put before the Joint Committee a Bill that was not complete in every way. The Joint Committee is powerful enough, but your Lordships' Committee is a good deal more powerful.

Lord Thomas of Gresford: Is the Minister warning the noble Lord, Lord Henley, on the premise that he may be in the Minister's place in a few months' time? Is that what is behind his words, and is that an appropriate reason for the noble Lord to withdraw his amendment?

Lord Bach: The noble Lord misunderstands me completely.

Lord Henley: I will accept the advice of the Minister but I will remind him that a large number of those who have spoken also have some ministerial experience and, through our addled brains, can remember the difficulties of these matters. Even so, I repeat the fact, as was made clear at Second Reading, that the Government have had this Bill for some 10 to 12 years and so have had a chance to consider these points. Nevertheless, we have had a sort of concession from the Government. When I first listened to the noble Lord, I thought that we were going to get one during the course of this debate, but it amounts to the Government saying, through the Minister, that they will reflect on the issue. We look forward to the Government's reflections and no doubt a letter will come from the noble Lord in due course. We will look at it and possibly bring forward further amendments at Report stage. I think it is clear to the noble Lord, from what the noble Lord, Lord Goodhart, said in his remarks, that there will be amendments, but it is quite likely that we may either join them or consider that in due course.

Perhaps I may also say that we noted the Government's words—I hope that I am quoting the Minister correctly—that they,

"hope to respond to the Select Committee's report before Report stage".

I hope that the Government will reconsider the word "hope" and make a firm commitment to respond to the Joint Committee's report before the Report stage because it is important that we have the Government's full and considered response before continuing.

Lord Bach: We will do that.

Lord Henley: I thank the noble Lord for amending his words and thus, as it were, deleting "hope" from his previous remarks.

All I can say at this stage is that we have had a pretty full debate on the matter with a large number of eminent speakers, many of whom have considerable experience both of government and of the law. It is certainly something that we will want to come back to in the brighter light of the Chamber, if I may put it that way, rather than the gloom and obscurity of the Moses Room. No doubt we will have a fuller debate on this matter at that stage. In the mean time, I beg leave to withdraw the amendment.

Amendment 21 withdrawn.

Amendment 22

Moved by ***Lord Goodhart***

22: Clause 12, page 8, line 8, leave out "any function of" and insert "functions relating to national security by"

Lord Goodhart: My Lords, Amendment 22 has been tabled in my name and that of my noble friend Lord Thomas of Gresford. The other amendments in the group are all in the name of the noble Lord, Lord Henley. As I have already said, we would prefer to knock out Clause 12 altogether, and that will be argued when we come to debate whether the clause should stand part. If the clause is not removed, however, we would at least want to narrow the circumstances in which the security services can legitimately pay bribes.

The Security Service Act 1989, which is not amended in any way by this Bill, refers to the functions of these bodies as including the safeguarding of,

"the economic well-being of the United Kingdom",

and supporting the activities of law enforcement agencies. But we believe that for functions other than national security, it is inappropriate to permit or legitimate bribery by the security service organisations.

It is clear from the OECD convention, which this country has signed up to, that the protection of the economy of the United Kingdom does not justify bribery, and indeed that was the issue at the root of the objections to the alleged activities of BAe. It is clear that bribery cannot legitimately be used by any

[LORD GOODHART]
organisation simply to obtain information that may safeguard the economy of the United Kingdom or which might lead to the retention of a valuable contract for the making of aeroplanes. That is clear from Article 5 of the OECD convention, and that was considered by the Joint Committee.

The same broadly applies to the assistance of the prevention and detection of crime. In the case of crime, disclosure of criminal acts to a police force is most unlikely to be the improper behaviour of the person who makes a disclosure, as has already been said. A court could not possibly regard this as being an improper act by an employee or an associate of the company if they were simply informing a police organisation or any other similar body of what is itself wholly improper behaviour by the employer or the company. We simply do not think that there is any serious possibility—any possibility at all, really—of this being necessary to be included in Clause 12. In those circumstances, we believe that it is desirable to restrict the power to the narrow issue of national security, whether something is authorised or not. We do not think that it is appropriate to include any of these provisions other than those relating to national security in the powers of the security organisations under Clause 12(1)(b).

Lord Henley: My Lords, I also have amendments in this group. I shall speak to Amendments 23, 24, 25, 27 and 31, which were designed to explore as precisely as possible how the defence in Clause 12 might be used by the security and intelligence services and by whom. Amendment 23 would obviously have a similar effect to the amendment that the noble Lord, Lord Goodhart, has just moved. As the noble Lord explained in his introduction, they are reflections of the observation by the Select Committee on the Constitution that it is not self-evident that the Clause 12 defence,

"should extend also to the Services' statutory function 'to safeguard the economic well-being of the United Kingdom'".

The point that the committee was trying to make, and which I would like the Minister to address, is that there may be a valid reason for allowing the defence to bribery to apply in circumstances beyond those where the security of the country is involved, and where other considerations, in this case economic ones, are at play. Once again, this is a good opportunity for the Minister to set out to the Committee his case for Clause 12(1)(b). We will listen carefully to what he has to say.

The other amendments in my group are also probing in nature. Amendments 24 and 25, on which Amendment 31 is consequential, would remove GCHQ from the lists of bodies in paragraph 12(1)(b) that may use that defence. The report of the Constitution Committee queries why GCHQ might need to be able to bribe for a legitimate purpose. While I do not think I would expect the noble Lord to go into the minutiae of Security Service operations, could he say something here to justify the scope of Clause 12?

Amendment 27 is more concerned with the mechanics of the defence, by which I mean the practicalities of raising it. In paragraph 13 of the Constitution Committee's report, it is recommended that the use of the defence should require prior authorisation from—in the case of the intelligence services—the Secretary of State. I hope the Minister can explain how any officers who have been required to bribe others received their authorisation. If officers for agencies of the state have acted legitimately, why do they require the defence in Clause 12? Is it not the case that the relevant Secretary of State should know what is being done on his instruction? If that is so, why would charges be brought? At what point in the process does ministerial responsibility take hold? I hope the Minister can address those points. Again, as I stressed in speaking to earlier amendments, these are probing amendments and we hope to hear what the Minister has to say.

Lord Williamson of Horton: My Lords, I am well aware that the noble Lords, Lord Thomas of Gresford and Lord Goodhart, take the view that we do not need the clause at all. That will still be tested because the question of whether Clause 12 should stand part has not yet been reached. I understand that. I will concentrate on the key point in Amendment 22—that is, how we define, if we so decide, the extent to which the defence is available to the intelligence services. In the draft Bill, the definition was much tighter than what we have now for two reasons. First, there was an authorisation. Secondly, you cannot find in the draft Bill the phrase "any function". It is not there at all. In the draft Bill it depends on what is authorised by the Secretary of State. That is relatively restrictive.

In the text that we now have, it is relatively unrestrictive—if the word exists in English. It is almost challenging to say "any function". It means that whatever you come across is covered by the defence. That has, of course, been challenged by the Constitution Committee. I think it is a mistake to extend it so widely. Like other noble Lords, I would like to hear what the Minister has to say about ministerial authorisation, and whether he would be prepared to think again about the reference to "any function". There are various ways in which that could be corrected; some were mentioned in the Constitution Committee report and some in the amendments before us. As it stands, before any of these amendments are decided, the definition is extraordinarily wide and we need to query whether that is justified.

Lord Thomas of Gresford: My Lords, the use of the expression,

"proper exercise of any function",

may well introduce some form of restriction. I would like the Minister to focus on the word "proper"; I have a simple question for him. My noble friend Lord Goodhart has pointed out that, under the OECD convention, protection of the economy of Great Britain is not an excuse for bribery. Could the performance of a function by a member of the Security Service for the protection of the economy of Great Britain—for the safeguarding of the economic well-being of this country, which is one of the Security Service's functions—ever be a proper exercise when it would contravene the convention to which we are signatories? In other words, are we not, by using the words "proper exercise", confining ourselves to precisely the wording that my noble friend has put forward?

Viscount Colville of Culross: My Lords, I will look at Amendment 27 in the group. Does the Minister really know how this works? Let us suppose that we are talking about a paid informer who will give information to an enforcement agency—it does not matter which—about what is going on in his workplace. That is done at the moment under RIPA. Authorisation is obtained for a person to act as a CHIS—a covert human intelligence source—to find out what is going on and to be paid for it. The authorisation does not come from the Secretary of State, but from an authorising officer in the law enforcement agency. The officer will probably be of some seniority, but not necessarily at government level. It is just not practicable to put the burden of that authorisation on the Secretary of State. There are hundreds of informers and it simply could not be done that way: one must be able to rely on the provisions of RIPA, or the Scottish equivalent, in order to provide the defence. If that is what is intended, it is a very different matter from the warrant that is available to GCHQ or the intelligence services. That is carefully looked at by the Secretary of State and signed by him, or by a senior official in his absence. We are talking about two entirely different things. The scale is completely diverse. I hope that the Minister realises that this is not the same sort of situation as the one dealt with under the 1994 Act.

Lord Pannick: My Lords, I, too, will comment on Amendment 27 in the name of the noble Lord, Lord Henley. It raises an issue of fundamental importance about the need, as the Constitution Committee saw it, for a prior authorisation procedure, which was the safeguard contained in the draft Bill. A prior authorisation procedure would provide much greater certainty and place responsibility where it properly belongs—with the Secretary of State and his or her senior officials. It is unacceptable that any intelligence officer should decide for themselves to carry out an act of bribery subject only to the risk of a criminal prosecution. Cases of bribery by public officials in order to achieve an intelligence or security result would—I hope we can all agree—be very rare exceptions. Any such official act should be carefully considered in advance by very senior officers of state, not least to ensure that there can be no later dispute about whether the officer was genuinely acting for official purposes. I have very good authority for the proposition that it is an important safeguard that authorisation should be given by the Secretary of State or by a senior official. The authority is the noble and learned Baroness the Attorney-General, who I am delighted to see here. Paragraph 200 of the Joint Committee report refers to her evidence in which she told the Joint Committee that the prior authorisation procedure was "an important safeguard". I respectfully agree with her.

5 pm

Baroness Whitaker: My Lords, my noble friend himself said that Clause 12 casts the net too widely. The net is very overstretched here. I strongly support all the amendments. I will not repeat what I said at Second Reading—the noble Lord, Lord Goodhart, set out the case impeccably, and the reference to the OECD convention and the Constitution Committee echo the amendment of the noble Lord, Lord Henley, on authorisation. I simply deduce from the proceedings so far that the government text has been assailed on all sides. I do not see how it can survive Report. My noble friend also referred to a concession about width. I urge him that the concession should cover the subject of these amendments and thus make a good Bill an excellent Bill.

Lord Mackay of Clashfern: My Lords, I am glad that the noble Baroness, Lady Whitaker, spoke first, because what I shall say is on the same line. First, I want to comment on the situation that the Minister developed in discussion of the previous amendment on the possible need for bribery. My understanding of the law of confidentiality, as it is also part of employment law, is that confidentiality does not protect someone in respect of crime. In other words, if someone who is bound by the obligation of confidentiality reports a crime, that is not a breach of the confidentiality requirement. Therefore, the Minister's description or analysis is more likely to apply to a case where information is being sought without any real knowledge of whether or not a crime has been committed by someone who is employing a person to whom the advantage is given. It is that situation, against the definition used in the Bill, which could give rise to a question of bribery.

A little more than 20 years ago, I was given the responsibility of introducing the Security Services Bill to the House of Lords, which acknowledged the security services for the first time. Among its provisions, as your Lordships know, was the provision about interfering with property rights, which, I suppose, was at least part of the motivation for the Bill. The authorisation procedure was introduced for that purpose. I suggest to the Minister that if there is any risk of a crime being committed on behalf of the agencies—if that is likely or possible—the best protection for the rule of law is a prior authorisation either under RIPA, for cases that are sufficiently ordinary, or by the Secretary of State.

I would hope that the occasions on which such a thing would be allowed would be very few indeed, so it would be right for it to be the Secretary of State, on the whole—as noble Lords know, there are exceptions when the Secretary of State is not available. But certainly in relation to the security services, the authorisation should be at the level of the Secretary of State, in accordance with the general provisions of the Security Services Act. In any case, if there is a real risk of bribery being committed within the definition of Clause 1 or the other clauses, that should be subject to prior authorisation at the appropriate level.

Lord Bach: My Lords, these amendments are all concerned with the Clause 12 defence as it applies to the functions of the three intelligence services. They reflect the concerns of the Constitution Committee and seek to limit the operation of the defence in various ways: first, by excluding bribery in pursuit of certain of the intelligence services' functions from the ambit of the defence; secondly, by removing GCHQ from the scope of the defence—I know that is the subject of a probing amendment—and, thirdly, by

[LORD BACH]
providing that the defence can be deployed in proceedings only with the prior authorisation of the Secretary of State, which is likewise the subject of a probing amendment today.

Let me deal with these three aspects in turn. Amendment 22 seeks to restrict the application of the defence to conduct required in the exercise of the intelligence services' national security function only. Amendment 23 is not as restrictive as it would enable the defence to be deployed in cases engaging the intelligence services' national security and crime prevention and detection functions.

The purpose of subsection (1)(b) of Clause 12 is to provide a defence in circumstances where the Security Service, the Secret Intelligence Service and GCHQ may have to use financial inducements or rewards to carry out their relevant functions. As we have just been reminded, those functions are set out in statute. It is right that the Bill should mirror them and not take a selective approach which would undermine the ability of the services to discharge their legitimate purposes as previously endorsed by Parliament.

Moreover, in order to be effective, the defence cannot be focused on only part of the intelligence services' statutory functions. All of the statutory provisions under which each of the services fulfil their respective roles refer to the three purposes on which their work focuses. These are national security, the economic well-being of the nation, and the prevention or detection of serious crime. Each of the relevant statutes deals with how the services exercise their functions in slightly different ways. The position of the Security Service is slightly different, but certainly the Secret Intelligence Service and GCHQ need to exercise their statutory functions across the entire range of the three purposes. That range is intended to cover matters that are of significant national importance but not necessarily matters that relate simply to national security. There is—this is the point I am trying to make—considerable overlap between the three purposes. They are not neat silos and it is not practicable to seek to distinguish one as being more important than another. It is true that the national security category is quite broad and would cover many operational needs.

The noble Lord, Lord Williamson, for whose general support I am more grateful than he knows, issued a gentle word of criticism about the expression "any function", and said that there was no such reference in the draft Bill. However, the expression "a function" appears in Clause 13(4) of the draft Bill. I argue that it has effectively the same meaning as "any function" in the context of this Bill. What we are referring to here are the statutory functions contained in the Security Service Act and the Intelligence Services Act.

I shall give an example of the response of the services to a planned terrorist outrage. It is obvious from this that it could fall within two or three of the statutory functions that I have just outlined. If there were a planned attack on a power station, the response might amount to action to protect national security and to protect, quite legitimately, the economic well-being of the nation. Other operations might fall entirely under one or other headings.

Similarly, information-gathering on the part of GCHQ or the Secret Intelligence Service, in support of a number of linked investigations into large-scale fraud or other financial irregularities that are of significant relevance to the economic well-being of the UK, may not naturally fall within the scope of the national security category. Perhaps of even more significance is the fact that a single operation may comprise a number of parts, each of which may fall to different categories.

The point is that it will not always be clear, at least not always initially, what precise function the conduct in question related to. Moreover, it would be wrong to deny the defence where the conduct occurred in the pursuit of one of the functions that Parliament had actually conferred on the services because it appeared, on a later analysis, that the case did not fall within the scope of one specific function. Our proposition is that reliance on the national security category alone would be inflexible and, frankly, operationally ineffective.

I know that some noble Lords will be particularly concerned about the inclusion within the scope of the defence of conduct on the part of the services in order to protect the economic well-being of the nation. There is nothing particularly mysterious about this category of work by the services. Under this heading, the services might act to safeguard and/or obtain intelligence in the interests of the national economic interest. Clause 12 expressly excludes any offence involving bribery of a foreign public official, thereby complying, we would argue, with the OECD convention.

To go back to economic well-being, the services may, for example, employ conduct that amounts to bribery under the Bill in order to monitor events and trends that might have a serious effect on the UK economy as a whole. That would include intelligence on instability in a part of the world where substantial British economic interests were at stake or where the economic well-being of the UK was threatened by hostile states seeking to undermine this country's economy or to use economic levers as hostile policy tools. The services may exercise their functions in support of UK foreign policy where adverse economic or political developments overseas pose a serious risk to UK or global economic security.

Another example would be to provide warnings of threats to the supply of energy, commodities or raw materials on which the UK is especially dependent, or perhaps to identify external attempts to manipulate commercial markets, especially when such actions could undermine confidence in the City of London or affect the stability of other financial markets.

I hope that the Committee—especially those who have been Ministers; the noble Lord, Lord Henley, reminded me that many noble Lords here have been very senior Ministers in the past—will appreciate that I cannot give examples of actual operations. I hope that noble Lords can surmise that the UK intelligence and security services may seek to identify, recruit and run sources in a manner that may sometimes involve the use of conduct that would amount to bribery under the Bill in order to allow reporting on these intelligence requirements. This would be done only where such conduct was assessed as necessary and

proportionate in accordance with the services' respective statutory functions. Further, in all cases the matter must be one of national significance, and the aim of operations conducted under that heading is to allow the Government to take actions appropriate and consistent with obligations under national, EU and international law.

Amendments 24, 25 and 31 would exclude GCHQ from the operation of the defence. GCHQ can exercise its intelligence function only in relation to national security, the economic well-being of the UK and the prevention and detection of serious crime. In other words, the exercise of this function is exactly limited in the same way as those of the Secret Intelligence Service and the Security Service.

Despite GCHQ's focus and expertise on all matters relating to communications monitoring, it would be wrong to assume that the organisation does not also fulfil a more active operational role. It is true that, compared to the other intelligence and security services, there are far fewer circumstances in which GCHQ would need to do things that would be an offence under the Bill; in particular, the scenario of rewarding an agent for information of intelligence value would seldom arise. However, I emphasise that that does not mean that there are no relevant circumstances that could apply to GCHQ.

In order to maintain a strategic interception capability and to continue to provide intelligence on certain targets critical to our national security, GCHQ may need to provide equipment or assistance to individuals who are in a position to support its interception mission in challenging environments. The Committee will of course understand that it would be potentially damaging to intelligence capability to provide particular examples. However, I can indicate that, in some cases, the provision of equipment or other assistance would be likely to constitute the conferring of an advantage as an inducement to undertake, or reward for, conduct that would amount to a breach of an expectation that the person will act in accordance with the position of trust owed to their employers; in other words, it would be an offence under the Bill.

To avoid doubt, and in order to allow GCHQ to reassure its staff that any such activity that is a proper exercise of its functions is within the law, the Government believe that the defence in the Bill should be available to GCHQ on the same basis as the other services. Moreover, this role may of course be fulfilled in partnership with the other services. The inability of GCHQ to deploy inducements where it is necessary in order to fulfil its operational role could obviously potentially compromise operational effectiveness of all three intelligence services. It would therefore clearly be wrong to exclude GCHQ from the scope of the defence,

Finally, Amendment 27 would limit the use of the defence by requiring the Secretary of State to authorise its use in proceedings. A similar proposition has been put forward by the Constitution Committee, which argued that,

"the use of these defences should be made dependent upon prior authorisation",

by the Attorney-General or Secretary of State. As the Committee will recall, the Government put forward an authorisation scheme in the draft Bill. However, it did not find favour with the Joint Committee when it examined the Bill; we have already had that paragraph read to us. That authorisation scheme provided for a system of authorisations prior to the conduct in question. A different approach would be to require authorisation after the conduct had occurred but before the defence was deployed.

Having reflected on our original proposals in the draft Bill and the Joint Committee's response to that Bill, our view is now that the defence in Clause 12 is preferable to an authorisation scheme, whichever of the two models, prior or post, is adopted. In contrast to the authorisation scheme in the draft Bill, the Clause 12 defence is case-specific and ensures that the necessity or otherwise of the conduct is tested by reference to the roles of individual people and the particular circumstances of individual cases. Ultimately, whether the defence is made out could be a matter for the court or jury to determine.

Noble Lords will remember that the draft clause referred to class authorisations and authorisations that lasted for a long time; it was unspecific and wide. The proposals here are preferred. We are not persuaded that the defence should be augmented by an authorisation scheme of the kind provided for in Amendment 27. That would require the Secretary of State to authorise the use of the defence in a particular case. Such a scheme would have some of the same drawbacks as a reliance on prosecutorial discretion; there would be no certainty at the point at which an offence was committed that the defence would be available. It would be an unwelcome and ill-advised development in our criminal process for a Minister of the Crown to decide whether a statutory defence should be available to an individual charged with an offence in a particular case.

Such an arrangement would be all the more objectionable if prior authorisation had to be given by the Attorney-General. The Attorney-General would have an overall responsibility for the prosecuting authorities who would be bringing the case and would be put in an invidious position if she were also to have the role of deciding whether a person being prosecuted could or could not rely upon a defence. In any event, we are not aware of any other example where a law officer or a Minister is given a power to decide whether or not an individual who is being prosecuted for an offence can rely on a defence to a charge. Moreover, we consider that to combine the defence with an authorisation scheme would introduce unnecessary duplication into the Bill. A prior authorisation would negate the need for the defence and vice versa. The scheme proposed in the Bill represents the most appropriate response to this issue.

I hope that the noble Lord, Lord Goodhart, having heard the arguments I have employed, is persuaded to some extent. Under the rules, he will have to withdraw his amendment today but I hope I have persuaded him to do a little more than just that.

Lord Mackay of Clashfern: My Lords, how does the Minister anticipate that the system he is advocating in the Bill will operate in relation to the security

[Lord Mackay of Clashfern]
services? Is it feasible that security services' operations should be considered in detail in a criminal trial? It is like the situation with intercept evidence. How will it work? I know there is a possibility of closing the court in certain situations, but details coming into an open court, whether in private or in public, involves a degree of difficulty at the least.

Lord Bach: The noble and learned Lord makes a good point. We should not forget that prosecutorial discretion always exists under the law. When considering the case in or his or her independent way, the prosecutor will obviously have to have in mind the defence in the Act in deciding whether or not a prosecution is appropriate in the circumstances. Given that the defence will be on the statute book—I am being frank with the Committee—we expect that many cases might end there. However, it would not preclude a trial if the prosecutor decided that a prosecution was appropriate, in which case the issues raised by the noble and learned Lord would come about and the court would have to find a way of dealing with extraordinarily sensitive evidence. However, we do not anticipate that that would happen very often.

Lord Goodhart: My Lords, once again we have had an interesting debate in which there has been no support for the Government. There is criticism of what the Government are proposing in Clause 12 in the powers covered by Amendment 22. I have made my arguments on that and I do not want to resume them, but I want to mention some of the other amendments in the group.

Amendment 23 is more limited than our Amendment 22, because it does not eliminate the right to legitimate bribes in cases involving serious crime. However, it strikes out the provisions of Clause 12 that extend to cases where there is potential bribery for the purpose not of preventing damage to national security or of preventing crime, but of preventing something that will damage the British economy. Both my Amendment 22 and Amendment 23 of the noble Lord, Lord Henley, remove the possibility of legitimating bribery for economic reasons. I believe that that is required by the OECD convention, which we should plainly stick to.

I understand that there may be an overlap between the three different purposes here, but it is absolutely clear that bribery to protect our economic well-being is not, on its own, a ground for bribery. If the damage to the British economy comes through a fear of a terrorist programme to blow up some of our leading industrial works, it is obvious that that would fall within the national security exemption, and it would not matter that it was also causing damage to the economy. The fact that it causes damage to the economy is not an automatic bar if there are threats to national security. That argument is wholly irrelevant. I have already said why I think that we should also omit the provision for crime, as well as damage to the economy. Damage to the economy may perfectly well be a matter for the security services to investigate and try to obtain information about. Nothing that I have said would alter that. That remains a power, but to use that power by means of bribery is wholly inappropriate.

The other matter that raised debate is Amendment 27, which requires the authorisation. I think something has gone a bit wrong with this amendment because it appears to require an authorisation before the defence can be raised. It seems to me, and most of those who have spoken on this issue have assumed this, that the authorisation would be required before the bribery took place. That is an entirely different situation, and while I can certainly see objections to authorisation acting purely as a pre-requirement to the prosecution, which is what was done with Clause 13 and the provisions in our report, I am persuaded that there are justifiable reasons—

5.30 pm

Lord Bach: I am sorry for interrupting the noble Lord, but the reason why I have made the argument about an authorisation after the bribery is to be found in paragraph 13 of the Constitution Committee's report:

"Even in the event that compelling evidence is brought forward demonstrating a clear need for the defences in clause 12(1)(a) and clause 12(1)(b), the use of these defences should be made dependent upon prior authorisation".

Lord Goodhart: That refers to Clause 12(1)(a).

Lord Bach: Clause 12(1)(b).

Lord Goodhart: It goes on to say:

"For the defence in clause 12(1)(b) such authorisation should be the responsibility of the Secretary of State".

The report says at paragraph 198 on page 67:

"The 2003 Joint Committee called for the Government to reconsider its options, including the potential for narrowing the power of authorisation so that it excluded any act of bribery in pursuance of the UK's economic interests".

It is clear that that means that what is authorised is the act of bribery; it is not authorising the use. Nor would it make much sense to say that what has to be authorised is the use of this for defence.

Lord Bach: I agree with the noble Lord; that is what the 2003 document says. I am referring to the Constitution Committee's document. Perhaps that is what it means, but it does not make that abundantly clear.

Lord Goodhart: It certainly does not make that clear. I have no doubt that the Joint Committee was acting on the assumption that the "authorisation" was the authorisation of the act of bribery, which puts an entirely different picture around it. While I am not in a position to say whether the noble Lord, Lord Henley, considered this point when the amendment was being drafted, there are real grounds for saying that if bribery is to remain within the power of the security services, there must be authorisation before the act of bribery. That would of course eliminate any need for a trial. It might get the Secretary of State into trouble if the Secretary of State had authorised something that was regarded as improper, but it would mean that the individual who was responsible for the payment of the bribe was not facing a prosecution.

It seems to me that that is a much better system. It is not right to leave this decision to someone in the front line, so to speak, of the security services, who

may not, for example, be in a position to get legal advice. This is something that I hope the Government will reconsider.

Lord Pannick: Will the noble Lord accept from me, as the only member of the Constitution Committee here today, that it certainly intended to address the question of prior authorisation for the act of bribery, which, as I think the Minister suggested, must be the logical position? Whether it is the appropriate policy is a different matter. I hope it is in order to ask whether the noble Lord, Lord Goodhart, could confirm my understanding that the Joint Committee did not reject, as a matter of procedure, prior authorisation. I think the Minister suggested that this was the case. I understood the Joint Committee simply to reject in paragraph 203 the substance of the suggestion in the draft Bill that there should be, for domestic intelligence services, an authorisation to bribe. There was no rejection, as I understand it, of the desirability of a prior authorisation procedure if it were appropriate to have a defence for acts of bribery in this context. Have I misunderstood this?

Lord Thomas of Gresford: Paragraph 13 of the Select Committee's report states:

"Even in the event that compelling evidence is brought forward demonstrating a clear need for the defences in clause 12(1)(a) and clause 12(1)(b), the use of these defences should be made dependent upon prior authorisation".

It is ambiguous. It could mean that you could not use the defence unless you had authorisation for it, but I do not think that was the intention. The other plain meaning is that you cannot use the defence unless there has been prior authorisation for the act of giving that is the subject of the particular offences. That is an ambiguous statement, but I think the meaning of the Select Committee is clear.

Lord Goodhart: The Joint Committee said that it,

"heard no persuasive evidence of a need for the domestic intelligence agencies to be granted an authorisation to bribe".

There are, of course, several Members here who may take a different view. I understood that to mean that it was on the assumption that if there was a bribe it would have to be authorised, but there was no need for the domestic intelligence agencies to be granted an authorisation to bribe. So, the position would be that there would be no bribery.

That brings my contribution to an end. I beg leave to withdraw Amendment 22.

Amendment 22 withdrawn.

Amendments 23 to 25 not moved.

Amendment 26

Moved by ***Lord Goodhart***

26: Clause 12, page 8, line 10, leave out paragraph (c)

Lord Goodhart: My Lords, I move Amendment 26 and speak to Amendments 28 and 30, which are in my name and that of my noble friend Lord Thomas of Gresford. These amendments would remove paragraph (c) from Clause 12(1). It exempts the Armed Forces on active service from liability for bribery.

This is an entirely new proposal. It was never put to the Joint Committee. Of course, the Joint Committee considered whether the power should be extended to the police and other similar organisations. It was never put to the Joint Committee and no evidence was presented to justify it. Why have the Government decided that the Armed Forces need the protection of the right to bribe under Clause 12? Do the Armed Forces go around bribing people in the way that bribery is defined in Clauses 1 to 6? Can we imagine any circumstances in which any member of the Armed Forces, acting in the proper exercise of their functions, is at risk of prosecution in the United Kingdom? I wait with interest the Minister's explanation of why Clause 12(1)(c) is thought to be necessary now but was not thought to be necessary when the predecessor of the Bill was presented to the Joint Committee. The provision is entirely pointless and Clause 12 would be better without it. I await the Minister's explanation.

Lord Thomas of Gresford: My Lords, there is a further curiosity about paragraph (c) in that it is a defence only if the member of the Armed Forces is engaged in,

"an action or operation against an enemy … outside the British Islands … or the military occupation of a foreign country".

So the basic concept is that we are dealing with the Army abroad.

However, it is a defence only to a relevant bribery offence that is defined as,

"an offence under section 1 which would not also be an offence under section 6".

Under Clause 6, which refers to the bribery of foreign public officials, a member of the Armed Forces would not have this defence if he went along to the head of a village in Afghanistan, shall we say, who was holding a legislative, administrative or judicial position, or exercising a public function, and sought to bribe him.

Lord Bach: Before the noble Lord pursues this point, perhaps he will look at the definitions in Clause 6. He is right about Clause 6(1), which states:

"A person … who bribes a foreign public official … is guilty of an offence if P's intention is to influence F in F's capacity as a foreign public official".

However, Clause 6(2) states:

"P must also intend to obtain or retain (a) business, or (b) an advantage in the conduct of business".

Clause 6 is defined by business as opposed to any other consideration.

Lord Thomas of Gresford: What is "business"? Let us suppose, for example, that an Army officer wants to obtain something for his forces—food or whatever—and he goes to the head man of the village and gives him a bribe in order to obtain that particular item. That is business but he has no defence. He would have a defence if he was talking to a shopkeeper but not if he is talking to the head man of the village. It is an absolute nonsense and that is why I support the amendment.

Lord Bach: The question that the noble Lord, Lord Goodhart, is really asking is why a provision for the Armed Forces was not included in the authorisation scheme of the draft Bribery Bill. It is a good question and I shall try to answer it. We intended to include a provision in relation to the functions of the Armed Forces, as I think our response to the Joint Committee's report makes clear. However, there were challenging timescales and, because of our wish to afford the Joint Committee as much time as possible to consider the Bill and our discussions with other government departments, we were unable to complete the necessary consultations in time. That is the reason why it was not included in the draft Bill. I regret that it was not, of course; it would have been much better if the draft Bill could have included what is in this Bill. However, the noble Lord asked for an explanation and that is the explanation I give.

I shall now deal with the arguments that the noble Lord, Lord Goodhart, has put forward.

5.45 pm

The functions of the Armed Forces are perhaps the most visible of the three categories listed in subsection (1) because of the ongoing operations in Afghanistan. All noble Lords will of course be very impressed by the way in which our Armed Forces are acting there. The purpose of the defence in relation to the Armed Forces is, we hope, clear. It is intended to avoid criminalising conduct which would amount to bribery by military personnel where it is necessary during active service—for example, when fighting an enemy, protecting life or property outside the British Isles, or in a military occupation of a country or territory overseas. We believe that it would be wrong to criminalise conduct undertaken, for example, to obtain information on the performance of an act that might be vital to the protection of life or property. We obviously owe a considerable debt to members of our Armed Forces on active service. We should not make their job more difficult than it is already by removing Clause 12(1)(c), which is what the amendment does.

Although the Constitution Committee clearly had other concerns, which we have debated this afternoon, it appeared readily to accept the need for the defence in respect of the Armed Forces, by stating:

"We raise no objection to the defence in clause 12(1)(c)".

Perhaps the noble Lord, Lord Pannick, can confirm that that is what the Constitution Committee meant by that phrase. I hope that the Committee will take a similar view, and believe that the Armed Forces are appropriately referred to in the Bill.

Lord Pannick: Can the Minister tell us whether there are any examples in recent years of prosecution authorities being asked to consider prosecution of a member of the Armed Forces for alleged bribery in the course of the performance of Armed Forces functions?

Lord Bach: I am not in a position to answer the noble Lord. There may or may not be examples, but I do not think that that takes away from the force of giving the Armed Forces the protection of this defence in the Bill.

Lord Goodhart: This has been a very short debate, unlike our previous ones. I am not sure that it has enlightened much further what is a rather difficult and unclear situation. That is something which we will consider further, but, for the time being, I ask leave to withdraw the amendment.

Amendment 26 withdrawn.

Amendments 27 to 33 not moved.

Debate on whether Clause 12 should stand part of the Bill.

Lord Thomas of Gresford: My Lords, I have given notice of my intention to oppose the clause. I shall not go over all the areas that we have helpfully discussed this afternoon, but this is a very curious clause as a whole. I start by referring your Lordships to what the noble and learned Lord, Lord Woolf, said at Second Reading. He suggested that,

"the defence is put there no doubt to give reassurance to those who are referred to".

I think that these are just nods in the direction of the police, the Security Service and the Armed Forces without any particular utility. The learned Lord said:

"It seems to me that if it was clear that what was done was necessary in the public interest, then that is not a situation when prosecutions should occur. It should be no problem for the agencies referred to to be able to inform the law officer or director concerned that that is the position. —[*Official Report*, 9/1/09; col. 1100.]

At Second Reading I followed that point up.

The burden of proving this defence is on the person charged. This is not an evidential burden; he actually has to prove his innocence. That is not a very easy thing to do. He has to deal with the point that was raised by the noble and learned Lord, Lord Mackay, in relation, for example, to subsection (1)(b). He has to prove that he has properly exercised his function as a member of the Security Service, the Secret Intelligence Service or GCHQ. How does he do that? How can he, and those who are acting on his behalf, have access to the documentation that would be necessary for him to give that proof? How could he go into court and raise these issues in front of a jury except in the most exceptional circumstances of secret hearings? It is extremely difficult for him to prove these matters.

I have just referred to the nonsense in paragraph (c). It refers to,

"the proper exercise of any function of the armed forces".

However, the defence is not available to them if the bribe has been paid to anybody in any administrative position, so it is quite unnecessary. If there are, for example, secret matters to be conveyed, they should not be conveyed to the court or to the defence team but to the person who takes the decision whether or not to prosecute; in other words, the Director of Public Prosecutions, the director of the Serious Fraud Office or the director of HMRC. As the noble and learned Lord, Lord Woolf, said, these are the people to whom the representations can be made before the decision to prosecute is brought forward. That is the protection for individuals who are part of a law agency, the security services or the Armed Forces. That is where it should cut in, not in charging somebody—with all the publicity that that involves and all the trauma

of a trial—who has in effect just been doing his job, and on whom all the burden of defending himself will be placed.

The noble Lord has told us that he will consider the result of what we have discussed this afternoon. When he does so, will he ask himself whether this provision is necessary? That is the first question. If it is necessary, will he tell us on Report why it is necessary to go through the whole procedure of a trial for a defence to be raised with the burden of proof on the defendant? Why is that necessary? Secondly, will he deal with the points that have been raised this afternoon not merely in relation to the police but the other parties referred to in paragraphs (b) and (c)? This measure is just a nod towards those institutions and should be withdrawn. I hope that the Minister will do so without any further delay.

Lord Mackay of Clashfern: My Lords, I wonder whether the idea that nods should be outlawed is necessarily all that bad in the circumstances. In 1989, when the security services were first acknowledged, the view was taken that where the law was being breached in relation to property the Secretary of State should give an authorisation. There is not much doubt that, apart from that, the prosecutor would be informed of the situation and it would be unlikely to give rise to a prosecution. However, it was thought right as a matter of policy that the Secretary of State should be involved. Then there would be no question of prosecution at all, and the person in question would not have breached the criminal law.

I wonder whether it would not be wise to think about that for this clause because there is no doubt that if the security services or the Armed Forces are in danger of breaching, for example, the provisions of Clause 1, they should be protected by a system that takes responsibility for that at an appropriate level—either through RIPA or the Secretary of State.

The idea of simply blotting this out altogether is not in accordance with such thinking as there was in 1989. It was right to acknowledge that things of this kind could happen, but that the Secretary of State had to authorise them. That was the safeguard and ensured that what happened was properly in the national interest. It was not a question of leaving it to the prosecution. The question of whether there had been interference with property rights could have been addressed in 1989; Section 4 of the 1989 Act has that particular provision in it. Certainly the view taken at the time was that it was not right for the person in question to be treated as potentially a criminal, subject to the prosecution not going ahead for reasons of public policy. So far as these provisions are necessary, and that is what the Minister has been justifying to us this afternoon, it is right that they should not be offences at all. They should be taken out of that category by the relevant authority at the highest level—depending on the nature of the situation, either through the RIPA system or the Secretary of State.

From what I have heard from the Minister, this is something to be justified. I am not dealing with the detail of which authorities or services should be included, but insofar as it is right to include the services, I believe that the 1989 wisdom should prevail.

Lord Pannick: I agree respectfully with the noble and learned Lord that insofar as there is a need for any of these subsections, prior authorisation is the route forward. I say that because the Minister emphasised earlier in our discussions that the Government are anxious to ensure transparency and certainty. I would suggest that a prior authorisation procedure through the Minister, or if he is unavailable a very senior official, would achieve those objectives. Such a procedure would do so far better in this context than leaving matters to assessment by a prosecutor, who will consider necessity after the event.

Lord Henley: My Lords, perhaps I may intervene briefly. We can put it simply if we say that during the course of our various debates today some concerns, to say the least, have been expressed about Clause 12. We are grateful for the fact that the noble Lord has promised in particular to reflect on Clause 12(1)(a), the paragraph about which we have the most concern. In my view, there are slightly fewer concerns about subsections (1)(b) and (1)(c). We are glad that the Minister will consider bringing forward something before Report stage, which is now just under three weeks away, so he has a certain amount of time to consult colleagues in the rest of the Government.

He also gave a firm promise to produce the Government's response to the Select Committee's report, which will in effect be part of the Government's reflection on the general concerns about Clause 12. Again, we are grateful that we now have a firm promise that we will have that before Report. At that stage, we would want to consider what was appropriate about that clause. On this side, our concerns were more about Clause 12(1)(a) than about 12(1)(b) or 12(1)(c).

6 pm

Lord Bach: My Lords, before I try to answer the Motion that the clause not stand part, I thank all noble Lords for their part in today's discussions on this difficult clause. They have been helpful for the Government, and we will go away and consider what has been said. I will try to keep my remarks fairly brief.

We argue that the offences created by the Bill will capture instances where members of the three services recruit and reward agents and contacts both in the UK and overseas. In the absence of the defence in Clause 12, service staff and those acting on the services' behalf will be exposed to potential liability for carrying out functions bestowed on them by Parliament in pursuit of requirements set by the Government.

All three services make use of agents and confidential contacts to assist them in carrying out their statutory functions. That can range from the long-term deployment of agents in highly sensitive positions to engaging a member of the public to provide one-off assistance to a terrorism or other investigation or operation, within the services' statutory functions.

The services—I choose my words here with care—will often need to offer financial or other inducements to secure such assistance, or will wish to reward individuals in recognition of the value of the assistance they have provided. If, for example, an individual acting in the

[LORD BACH]
course of their employment agreed to a particular action that would put them in breach of their duty of trust to their employer because they were asked to do so by one of the services in the interests of national security, perhaps even at some personal risk, it would not be considered untoward for the service concerned to make a gift or payment to that individual to reflect the service's appreciation for their support and assistance. I hope and think that it is agreed that such individuals should certainly not face criminal liability as a result of their willingness to assist.

We have to strike the balance between exemptions from the criminal law on the one side and catering for the needs of those who undertake very important functions on behalf of the public on the other. We believe that the balance is struck by Clause 12.

I take comfort from the fact that noble Lords have questioned the need for Clause 12 on the grounds that this issue can adequately be dealt with through the exercise of prosecutorial discretion. That makes the point that it is recognised that there will be occasions when the fight against serious crime, the protection of national security or the safety of our Armed Forces justify certain organs of the state committing acts of bribery. However, that approach fails to recognise that it is clearly in the public interest for the services to operate on the basis of a secure legal footing. Members of the services should not be placed in a position where the proper performance of their duties puts them in breach of the criminal law. That would place officers in an invidious and unacceptable position. We think that the Bill provides an opportunity to regularise the position by providing an appropriate mechanism for removing criminality from this kind of conduct.

I ask those noble Lords who might advocate reliance solely on prosecutorial discretion to put themselves in the place of the police officer, the intelligence service operative or the Army officer engaged on active service, all of whom are exercising important functions on behalf of the public. Such a person may be faced with a situation where offering a bribe is necessary in the circumstances, at the same time as knowing or believing that to do so would be a criminal offence. Relying on prosecutorial discretion not to bring criminal charges against individuals for actions done as part of their statutory functions does not provide sufficient certainty for staff, agents or members of the public who may be concerned about liability.

There is also the risk for operational security that, in the absence of a defence, an in-depth investigation by the police would entail. This would be an invidious position for a person acting in accordance with statutory functions and in the public interest. To say to such a person, "Don't worry. Should it come to it, I'm sure the prosecutor can be relied on to exercise their discretion not to prosecute", does not sound, frankly, as though it provides sufficient assurance. Nor does it address the fact that the conduct would ostensibly remain criminal despite no prosecution proceeding. There may be cases of insufficient evidence, or it may not be in the public interest to proceed. The important point is that the approach provides insufficient comfort. The impact on morale would affect not only service staff but those on whom they rely to assist them in carrying out their statutory functions.

The recruitment of agents in highly sensitive positions is not assisted when there is no assurance that they will not face independent investigation and prosecutorial scrutiny by doing what they are asked to do. Equally, criminalising their behaviour would act as a sufficient disincentive for the majority of members of the public who would instinctively want to respond positively to a request for assistance from one of the services. This would risk significantly undermining the good will and support of the public, on which the services rely. Such individuals, who are exercising important functions on our behalf, have the right to expect greater certainty about where they stand in the event that the effective discharge of their duties necessitated conduct which would amount to an offence under the Bill. The defence in Clause 12 will make clear that should a person exercising such functions ever find himself or herself charged with an offence, he or she would have a defence that could be put before the court.

Crucially, too, Clause 12 will assist independent prosecutors in deciding whether proceedings should be brought. It contains a clear statement as to the factors and conduct which would be subject to the criminal law. We do not seek to hide the fact that certain arms of the state may need to offer financial or other inducements that would amount to a bribe to carry out their functions effectively. Clause 12 makes the position entirely transparent.

The alternative suggestion, put forward with great clarity by the noble and learned Lord, Lord Mackay of Clashfern, is that we might have an authorisation scheme to deal with this issue. When the Government proposed an authorisation scheme in the draft Bill, the committee chaired by the noble Viscount basically threw it out. It did not agree with it. It is not for me to say whether it did not agree with the principle or with the authorisation scheme that was proposed; I can only read what is in the document. There are problems with an authorisation scheme, but the proposal in draft Clause 13 was that an authorisation might, in particular, relate to one or more specified acts or omissions; be limited to one or more specified persons; be subject to specified conditions; and would cease to have effect at the end of a period of six months, starting on the day on which it was given. In other words, the authorisation would be extremely wide, would cover a whole class of persons and activities, and would, in our view, be much too broad.

The alternative to that would be to have specific authorisation under the Bill for every potential act of bribery by a member of the security services. In practice, that is not a very sensible thing to have to put before Secretaries of State. It would have to be done a huge amount and very regularly, and would take up a lot of the time of a conscientious Secretary of State.

Baroness Whitaker: My recollection is that the first Joint Committee on the draft Corruption Bill threw out the authorisation idea, not on the grounds of authorisation per se but because the way it was presented was too broad and included the national economic

interest. I do not think there was an explicit rejection of the concept of authorisation for the actions of the security services in the interests of national security.

Lord Bach: I am grateful. I cannot argue with those who served on the Committee. I can refer only to the first line of paragraph 203 which states:

"We heard no persuasive evidence of a need for the domestic intelligence agencies to be granted an authorisation to bribe.

On the face of it, that seems a clear-cut view of the committee.

Lord Mackay of Clashfern: The passage the noble Lord has just read out shows that the noble Baroness, Lady Whitaker, is correct. The basis upon which authorisation was sought was too broad in the opinion of the Joint Committee. The passage the noble Lord has just read—I do not have the report in front of me at the moment—suggests that it thought the basis upon which authorisation was sought in the draft Bill was too wide. Authorisations are well-established in statute and in statutory provisions relating, for example, to the security services. I would have thought them to be the best way forward in this difficult area—assuming, of course, that there is a need for exemptions from the bribery provisions in respect of such services.

Lord Bach: I wonder whether there is some confusion between the 2003 Joint Committee, which thought that the authorisations requested were too wide, and the—

Baroness Whitaker: That is the one I was referring to.

Lord Bach: That is the one to which my noble friend Lady Whitaker referred whereas I am looking at the Joint Committee that reported last year. It is from that committee's report that I quoted paragraph 203.

Of course we have to consider the authorisation path but we think that it would too burdensome, in the best sense of that word, for a busy Secretary of State if they are to do the job properly. It would take up too much of his or her time to have to make decisions on every possible case of bribery under Clause 1. A better, more transparent way is to put the offence in the way we have and to have the defence in Clause 12. When a prosecutor looks to see whether a prosecution should or should not go ahead, he will consider the defence in Clause 12 and then make his or her decision. Those are the grounds on which we, on balance, have come to the view that our Clause 12 is to be preferred.

I know that its existence has tempered what has otherwise been a warm welcome for the rest of the Bill. I have to remind myself that the Bill has received a warm welcome generally. Indeed, I think the noble Lord, Lord Williamson, described it as a "love fest" or something like that, at Second Reading. Today has been a strange love fest but it is perhaps good for the soul. However—this is a serious point—in relation to the Bill as a whole, the Committee should be in no doubt about the importance that the Government attach to this clause. We acknowledge that the definition of a law enforcement agency is potentially too wide and I have already undertaken—I do so again—to look at that aspect of the Bill. We remain firmly of the view that the defence is needed and fully justified. Today, inevitably, the clause will be agreed, but I hope I have made noble Lords more content about the existence of Clause 12.

6.15 pm

Lord Thomas of Gresford: The Minister talked about there being a mechanism in the Bill that would prevent there being a criminal offence. I would like him to go away and think of this, if he would be so good: there are two people in the dock; one of them is a police officer who has paid money to the other person in the dock. When it comes to trial, the police officer produces his defence that he was exercising a proper purpose and is acquitted. The second person does not have that defence. I am sure that the Minister would agree that the second man would not automatically become not guilty simply because the police officer had succeeded in proving his personal defence. The existence of bribery therefore continues and the second man is convicted. That is why I want the Minister and his team to think about this.

Lord Bach: We have thought about this issue. Our view is that the co-accused standing in the dock, the person who received the bribe, has the defence in the same way as the person who offered the bribe.

Lord Thomas of Gresford: It does not say that in the Bill at all. He is not a member of the security services or any other agency. If that is the case, surely the Minister ought to make it absolutely explicit in the Bill that the co-accused, the person who receives the money, is not guilty if the police officer, for example, succeeds in his defence.

Lord Bach: If the noble Lord would be good enough to look at Clause 12(1), it is a defence for a person charged with a relevant bribery offence to prove that the person's conduct was necessary for paragraphs (a), (b) and (c). That can apply both to the person who gives the bribe and the person who receives it. Indeed, there is reference in the Bill—I am grateful to those behind me—which defines a "relevant bribery offence". It means:

"(a) an offence under section 1 which would not also be an offence under section 6,

(b) an offence under section 2",

which refers to the receiver of the bribe.

Lord Thomas of Gresford: My Lords, I am surprised that the person standing in the dock has to prove that his conduct in receiving the money was necessary for the proper exercise of any function of the security service. That seems an extremely difficult way of putting it. No doubt the Minister would like to think about the wording of that; it should be made a lot more explicit than it actually is. I had assumed throughout our discussions this afternoon that this defence was open to a member of the particular organisation referred to. If I am wrong in that, I am delighted to hear it.

Lord Bach: Why, in that case, would Section 2 be mentioned at all?

Lord Thomas of Gresford: Because the bribery might be made to the police officer for the performance of his functions. I do not know; it clearly needs to be looked at carefully.

We will no doubt welcome a discussion with the Minister to make what we have always said is a good Bill better through the clarification of this. The noble and learned Lord, Lord Mackay, has pointed out that it is far better for there not to be a bribery offence committed in particular circumstances. If a person has authority to do what he does, he has not committed a criminal offence. That has a knock-on effect for the person who is standing in the dock with him when the trial takes place. No bribery offence is committed.

Let us take the situation where the first police officer successfully runs the defence and the person standing alongside him does not persuade the jury—and remember that the burden is on the defendant—that that defence is open to him. All kinds of problems can arise out of the wording of this clause and I will no doubt return at Report to say that we should do without it.

Clause 12 agreed.

Clauses 13 to 16 agreed.

Schedules 1 and 2 agreed.

Clauses 17 to 19 agreed.

Bill reported without amendment.

Committee adjourned at 6.21 pm.

Written Statement

Wednesday 13 January 2010

Retail: Grocery
Statement

The Minister for Trade and Investment (Lord Davies of Abersoch): My honourable friend the Minister for Further Education, Skills, Apprentices and Consumer Affairs (Kevin Brennan) has today made the following Statement.

Today the Government are publishing the government response accepting the Competition Commission's recommendation to establish an enforcer to monitor and enforce the Groceries Supply Code of Practice (GSCOP).

The Government want to ensure that the GSCOP can be independently enforced and have the important power to hear anonymous complaints. However, the Government are mindful of placing unnecessary costs on to business especially in a period of economic difficulty, which is why we plan to issue a consultation on how best to take matters forward.

We have also taken the decision to revoke the Land Agreements Exclusion Order following a recent public consultation resulting from a related Competition Commission recommendation. We will proceed to make the revocation order at the earliest opportunity but give businesses a transitional period to ensure that their agreements are compatible with competition rules.

Copies of the responses have been deposited in the Libraries of the House and will be available on the BIS website at www.berr.gov.uk/files/file54194.pdf

Written Answers

Wednesday 13 January 2010

Aerospace: Research and Development

Question

Asked by ***Lord Jones***

To ask Her Majesty's Government what was the value of the grants for research and development they provided to the United Kingdom aerospace industry in each of the financial years 1997–98 to 2007–08. [HL1069]

The Minister for Trade and Investment (Lord Davies of Abersoch): The value of aerospace grants for research and development (R&D) to the UK civil aerospace industry in each of the financial years 1997-98 to 2007-08 is as follows:

Year	*Research Grants Commitments*
1997-98	£20.0 million
1998-99	£20.0 million
1999-00	£20.0 million
2000-01	£20.0 million
2001-02	£20.0 million
2002-03	£20.0 million
2003-04	£20.0 million
2004-05	£56.8 million
2005-06	£79.1 million
2006-07	£16.2 million
2007-08	£84.7 million

These figures do not include the value of contracted research work, for example within the defence programme, which is not funded through grants.

Aviation: Aircraft

Question

Asked by ***Lord Jones***

To ask Her Majesty's Government what was the total value of financial assistance, grants and launch aid they provided for the development of the Airbus A380. [HL1070]

The Minister for Trade and Investment (Lord Davies of Abersoch): The Government provided £530 million in a repayable launch investment for the Airbus A380 for the design and development of the wings by Airbus UK. No other financial assistance was provided for the development of the programme.

Banking: Iceland

Questions

Asked by ***Lord Campbell-Savours***

To ask Her Majesty's Government what are the terms of the original proposed agreement between the United Kingdom and Iceland for the reimbursement of Icesave losses. [HL1083]

To ask Her Majesty's Government with which proposals in the agreement for reimbursement of Icesave losses approved by the parliament of Iceland in August 2009 they disagree. [HL1084]

To ask Her Majesty's Government what is the annual cost to Iceland of the original proposed agreement between the United Kingdom and Iceland for the reimbursement of Icesave losses; in what currency that amount is calculated; what interest rate is applied; and over what duration the amount is spread. [HL1085]

To ask Her Majesty's Government what would be the cost to Iceland of the agreement as approved by the parliament of Iceland for the reimbursement of Icesave losses; in what currency that amount is calculated; what interest rate is applied; and over what duration the amount is spread. [HL1086]

The Financial Services Secretary to the Treasury (Lord Myners): The EC Deposit Guarantee Scheme Directive (94/19/EC) sets the minimum terms on which depositors are protected throughout the European Union and European Economic Area (EEA). All EEA member states are required to ensure that the deposit guarantee scheme directive is adequately implemented in their territories.

Under the directive, depositors at branches in a host state are covered by the guarantee scheme of the home state. Depositors with the UK branch of Landsbanki were therefore eligible for compensation (for deposits up to €20,887) from Iceland's Depositor and Investors' Guarantee Fund (DIGF).

On 8 October 2008 the FSA announced that the UK branch of Landsbanki was in default for the purposes of the FSCS. To maintain financial stability and protect retail depositors, the UK Government committed that all Icesave retail depositors with the UK branch of Landsbanki would receive their money in full. In total, around £4.5 billion has been paid. This includes £2.35 billion compensation that the UK Government paid out to depositors on behalf of the DIGF.

On 5 June 2009, the UK Government reached agreement with the Icelandic authorities on a process to ensure the UK is refunded for the compensation that had been provided on behalf of the DIGF. This will be achieved by recognising the assistance provided by the UK Government as a £2.35 billion loan from HM Treasury to the DIGF.

The loan agreement was made with the DIGF, and the original terms included an interest rate of 5.55 per cent payable over 15 years. The loan agreement provided for an initial seven-year period during which interest will be capitalised and the DIGF will have no principal repayment obligations other than to pass on to the FSCS all recoveries made by the DIGF in the winding up of Landsbanki. After the expiration of the seven-year period, interest and principal amounts are payable quarterly over a period of eight years during which period the loan will be guaranteed by Iceland.

Under Icelandic law, the Icelandic parliament is required to authorise the guarantee. A Bill was passed in August to this effect but with a number of conditions introduced by the Icelandic parliament.

Following further negotiations, the loan agreement was amended to take account of these conditions. The amendments include a cap on repayments from years eight to 15 of the loan period to 4 per cent of Iceland's GDP growth relative to 2008, an extension of the maturity from 2024 to 2030; and confirmation that the guarantee will continue until the loan has been repaid in full.

Throughout this process, the UK Government have sought to ensure that repayment would not damage economic recovery in Iceland. The recoveries that the DIGF will make from the Landsbanki estate, and which will be used to repay the loan, are expected to be significant. This should substantially reduce the repayments required from the DIGF and, as a result, substantially reduce the value of the state guarantee for the DIGF repayment obligations. Any outstanding principal and interest will then be repaid in the following years subject to those payments not exceeding the economic parameters that have been determined by the Iceland parliament. The parliament in Iceland has endorsed the loan arrangement and agreed a state guarantee.

Census

Questions

Asked by ***Lord Laird***

To ask Her Majesty's Government what percentage of respondents selected Irish as their ethnic group in the 2001 census; why Irish is the only white ethnic group specifically named on the proposed 2011 census form other than those of the home countries/British and Gypsies or Irish travellers; and whether they will change the proposed form to allow ethnic Irish respondents to inscribe "Irish" in "Any other White background" like other European Union nationals. [HL743]

Baroness Crawley: The information requested falls within the responsibility of the UK Statistics Authority. I have asked the authority to reply.

Letter from Stephen Penneck, Director General for Office for National Statistics, to Lord Laird, dated 2010.

As Director General for the Office for National Statistics, I have been asked to reply to your recent questions asking (a) what percentage of respondents selected Irish as their ethnic group in the 2001 census; (b) why Irish is the only white ethnic group specifically named on the proposed 2011 census form other than those of the home countries/British and Gypsies or Irish travellers; and (c) whether there will be a change to the proposed form to allow ethnic Irish respondents to inscribe "Irish" in "Any other White background" like other European Union nationals. (HL743)

(a) The percentage of all respondents who selected Irish as their ethnic group in the 2001 census in England and Wales was 1.23 per cent.

(b) Consultation on the 2011 census content identified a strong need for comparison of ethnic group statistics with the 2001 census. Consultation also showed that statistics users were happy with the ethnic populations measured in the 2001 census. The Office for National Statistics therefore recommended that the 2001 categories should all be retained in the 2011 census. A particular case had been made for the inclusion of an Irish category in the 2001 census by representatives of the Irish community in Britain, and others, and thus this response category has been retained. However, in a prioritisation exercise carried out to decide if any additional categories should be included in the 2011 census, of the several considered no other category within the "White" ethnic group except "Gypsy or Irish Traveller" scored sufficiently high enough. Where it has been possible the existing categories have been cognitively tested to ensure that the question is still acceptable.

(c) The Census Order, which details the questions to be asked in the census, was debated in the House of Lords on 3 December, and Parliament has now approved the order. However, if for any reason, respondents prefer not to tick the "Irish" box but to write in "Irish" under "Any other ethnic White background", they can do so.

Asked by ***Lord Laird***

To ask Her Majesty's Government further to the Written Answer by Baroness Crawley on 16 December 2009 (*WA 231*), why the term "mixed British" was not considered for use in the "mixed/multiple ethnic groups" category in the ethnic group census question; and what percentage of responses to national identity or ethnic group questions where "tick one" or "choose all" options were provided in the 2007 test census were incorrect or inadequate. [HL1060]

Baroness Crawley: The information requested falls within the responsibility of the UK Statistics Authority. I have asked the authority to reply.

Letter from Stephen Penneck, Director General for Office for National Statistics, to Lord Laird, dated January 2010.

As Director General for the Office for National Statistics, I have been asked to reply to your recent questions asking (a) why the term "mixed British" was not considered for use in the mixed/multiple ethnic groups' category in the ethnic group census question; and (b) what percentage of responses to national identity or ethnic group questions where "tick one" or "choose all" options were provided in the 2007 test census were incorrect or inadequate. (HL1060)

(a) Research prior to the 2001 census showed that people who were not from "White" ethnic backgrounds but who were born and have been living in the UK for two or more generations want to acknowledge a British identity along with their ethnic group. Thus the "Black" and "Asian" groups incorporate "British" in their titles. However, it was not considered helpful to introduce the term "British" in the "Mixed/multiple" group as the category "Mixed British" could be interpreted as referring to a mix of White British identities, such as English/Scottish.

(b) The instruction in the 2007 test ethnic group question was to "Choose one section from A to E, then tick the box to show your ethnic group". The percentage of responses that were incorrectly "multi-ticked" was 0.7 per cent. Following the evaluation of the 2007 test, the ethnic group instruction has been

changed to "Choose one section from A to E, then tick one box to best describe your ethnic group or background". In the national identity question where the instruction was to "Tick all boxes that apply" the percentage of those who multi-ticked was 9.9 per cent.

Both the national identity and ethnic group questions are relatively subjective and, as such, there is no measure of "incorrect" response to the 2007 test. The proportions of respondents who did not answer these questions in the 2007 test were 1.8 per cent and 3.6 per cent respectively.

Further information on the evaluation of the 2007 test is available on the website http://www.ons.gov.uk/census/2011-census/2011-census-project/2007-test/index.html.

Democratic Republic of the Congo

Questions

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what action they are taking to encourage the government of the Democratic Republic of the Congo to extradite Bosco Ntaganda, for whom there is an International Criminal Court warrant outstanding. [HL973]

Lord Brett: We, along with our European counterparts, continue to press for Bosco Ntaganda to be handed over for trial by the International Criminal Court (ICC). The UK strongly supports the ICC and we welcome the court's investigations into events in the Democratic Republic of Congo (DRC). Conflict in the region has been marked by atrocities, and those responsible for them should be held to account.

Our ambassador in Kinshasa discussed the arrest warrant with the UN Secretary General's Special Representative for the DRC Alan Doss. He received assurances that the UN mission would support the DRC Government in carrying out the warrant. He has also raised the question of Bosco's position in meetings with the Foreign Minister. He has sought reassurances that Bosco will be handed over to the ICC at the earliest possible opportunity.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what assessment they have made of the purchase by United Kingdom companies of metals derived from allegedly inhumanely mined minerals in the Congo; and what steps they are taking to ensure that the proceeds from British purchases in the Congo are not used to finance armed groups operating in the Democratic Republic of Congo and the Great Lakes region. [HL1011]

Lord Brett: The UK fully supports the work of the UN Group of Experts who have led investigations into the companies and individuals benefiting from the illicit trade in natural resources. We have stayed in touch with the Group of Experts and have offered as much support to them as possible. But we take our obligations under sanctions very seriously and will not hesitate to support sanctions against any person or company against whom there is sufficient evidence, including UK-based companies or individuals.

We continue to encourage British companies trading in natural resources from the Democratic Republic of Congo (DRC) to do so in a way which is socially, economically and environmentally responsible, and to adhere to the voluntary guidelines set out by the Organisation for Economic Co-operation and Development. Our strategy for DRC places a strong emphasis on greater transparency and better management of the minerals sector, including in Eastern DRC. We are strong supporters of DRC efforts to fully implement the extractive industry transparency initiative. Together with the World Bank and the DRC Ministry of Mines we are currently developing a multi-year mining sector reform programme which aims to transform the way the sector is managed and ensure that the Government extend their control over all mining activities in DRC. And our regional Trading for Peace programme is coming up with innovative mechanisms for transforming the mineral wealth in the Great Lakes region from a source of conflict to an engine for growth and stability.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what encouragement they are giving to the government of Congo to ensure that the FARDC, the army of the Democratic Republic of Congo, has sufficient capacity to protect civilians, especially women vulnerable to violent sexual attacks. [HL1013]

Lord Brett: We strongly support the capacity building efforts of the UN peacekeeping mission (MONUC), the EU Mission to provide advice on and assistance with security reform in the Democratic Republic of Congo (EUSEC DRC), and the security sector reform measures of other international partners. We welcome MONUC mandate 1906, which has placed civilian protection as its highest priority and the fact that MONUC has developed a conditionality policy as a means of withdrawing support from the Armed Forces of the Democratic Republic of Congo (FARDC) units implicated in serious human rights abuses including violence against women.

We are also currently working on projects to promote better accountability and discipline among the Democratic Republic of Congo's (DRC) security forces, which are responsible for many of the abuses the population suffers. We are providing about £80 million over five years to increase accountability of the defence, police and justice sectors through strengthened oversight mechanisms, technical assistance and training.

We remain concerned at the prevalence of violence against women and we successfully pressed for sexual and gender-based violence to be a new focus in the work of EUSEC. We continue to support and strongly lobby the DRC Government to implement their policy of zero tolerance against those responsible for sexual and gender based violence atrocities.

We have repeatedly called for members of the armed forces guilty of human rights violations to be brought to justice. The UN Security Council, including the UK Permanent Representative, raised this issue with DRC President Kabila and DRC Prime Minister Muzito. We continue to push for legal action against five senior FARDC commanders accused of committing sexual violence, who were named by the UN Security Council during their visit.

Since April 2009 we have provided over a thousand FARDC officers with training on a huge range of subjects, including logistics, communications, and leadership,. with further courses planned until spring 2010. We have also developed an administration school for the FARDC and refurbished their catering and logistics schools.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what recent discussions they have had with heads of states and governments in the Great Lakes region about creating and maintaining a permanent and effectively monitored ceasefire in the Kivus and across the Great Lakes region. [HL1016]

Lord Brett: Any permanent ceasefire in the Kivus will require close co-operation between the Governments of the Democratic Republic of Congo (DRC) and Rwanda. We welcome the recent rapprochement between Rwanda and DRC—including the recent exchange of ambassadors—which has lead to greater co-operation and stability in the region. Our ambassador in Kinshasa and High Commissioner in Kigali are in close contact with their respective host Governments and continue to engage on this issue.

EU: Budget

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government whether they opposed the 6 per cent increase in the European Union budget for 2010 when the amended draft budget was discussed in the Council of the European Union. [HL1078]

The Financial Services Secretary to the Treasury (Lord Myners): Through tough negotiation the Government secured an EU budget for 2010 that was below the level of the Commission's proposals and almost €5 billion (4 per cent) lower than that proposed by the European Parliament, saving the UK taxpayer almost half a billion pounds. The budget included reductions in spending that represents relatively poor value for money, such as administration, and appropriate allocations for areas of better value for money such as external aid.

A key driver for the size of the 2010 budget is the financing of the European economic recovery plan, as well as additional support for structural and cohesion funds for the new member states, many of whom have been hit hardest by the economic downturn. The overall budget increase is also partially driven by the expected acceleration in the delivery of those funds across the EU.

Government: Office Equipment

Question

Asked by ***Lord Bates***

To ask Her Majesty's Government further to the Written Answer by the Parliamentary Under-Secretary of State for Communities and Local Government, Barbara Follett, on 9 December 2009 (*Official Report*, House of Commons, col. 390W), what was the average purchase price, excluding value added tax, of a 500 sheet ream of white A4 80 gsm photocopier paper paid by the Department for Culture, Media and Sport in the latest period for which figures are available. [HL994]

Lord Davies of Oldham: The average purchase price in 2009 of a ream of A4 80gsm photocopier paper was £2.09.

House of Lords: Members' Expenses

Question

Asked by ***Lord Marlesford***

To ask the Chairman of Committees how many peers who attended the House of Lords between April 2008 and March 2009 claimed no expenses. [HL1153]

The Chairman of Committees (Lord Brabazon of Tara): Between April 2008 and March 2009 there were 79 Members who attended the House but claimed no expenses. This includes Ministers, office-holders and Members who attended but died during the year. Full details of claims made in this time period are available on the Parliament website at http://www.parliament.uk/documents/upload/HoLallowances0809.pdf.

India: Religion

Question

Asked by ***Lord Patten***

To ask Her Majesty's Government whether they will make representations to the Government of India about anti-conversion laws that affect the ability to leave Hinduism for another religion. [HL1040]

Lord Brett: Anti-conversion laws have been introduced by some Indian states. Alongside EU partners we have raised the subject at meetings with Indian officials in the context of the EU-India human rights dialogue. We maintain a constructive dialogue with the Indian authorities about human rights and minority rights issues more generally in India.

Iraq: Camp Ashraf

Question

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government further to the Written Answer by Baroness Kinnock of Holyhead on 16 December 2009 (*WA 246*), whether their position on alleged injustices against residents at Camp Ashraf by the Iraqi authorities takes account of their representations to the Government of China in the case of Akmal Shaikh. [HL1054]

Lord Brett: The UK opposes the death penalty and takes action in all cases to try to prevent UK nationals being executed. Akmal Shaikh was the first EU/British national to be executed in China in 50 years. Twenty-seven high level representations were made to the Chinese authorities dating back to November 2008 by my right honourable friends the Prime Minister, the Foreign

Secretary and other Ministers. The basis for these representations mainly centred on Mr Shaikh's mental health. Mr Shaikh's mental health was a crucial aspect of evidence that the Government believed the courts should have considered before they delivered the sentence.

Camp Ashraf is part of a sovereign and democratic Iraq and the situation there is a matter for the Government of Iraq. We regularly discuss Camp Ashraf with the Iraqi Government, including with the Iraqi Prime Minister and Ministers for Human Rights, Internal Affairs and Foreign Affairs. We continue to underline the need for the Iraqi authorities to deal with the residents of Camp Ashraf in a way that meets international standards.

There is no link between the two issues.

Pakistan: Religion

Question

Asked by ***Lord Patten***

To ask Her Majesty's Government what are their intentions in relation to the promotion of religious tolerance in Pakistan this year. [HL1039]

Lord Brett: The Foreign and Commonwealth Office continues to strongly support the right to freedom of religion or belief, including the full implementation of those norms laid out in the 1981 UN Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.

The UK will continue to urge Pakistan to uphold the rights of all its citizens, including religious and other minorities. The UK will continue to work with our partners in the EU to highlight the issue of human rights with the Government of Pakistan. In 2009 the EU issued two demarches, most recently in December 2009, both of which specifically pressed the Government for immediate progress on minority rights. The Government of Pakistan announced in December 2009 a series of measures designed to improve inclusion and tolerance towards religious and other minorities, including local-level committees to resolve disputes and a national minorities day. These issues will remain a focus of our bilateral lobbying and multilateral work in 2010.

In 2010, UK-funded projects will be focusing on areas including addressing the misuse of the blasphemy laws, improving women's rights, education, governance and justice reform and urging Pakistan to ratify and effectively implement the remaining two international treaties focusing on Human Rights (the International Covenant on Civil and Political Rights, and the UN Convention Against Torture and other cruel, inhuman or degrading treatment).

Pensions

Question

Asked by ***Lord Oakeshott of Seagrove Bay***

To ask Her Majesty's Government what is the estimated cost of uprating the basic state pension on the basis of the higher of average earnings or retail prices index from (a) 2010, (b) 2011, (c) 2012, and (d) 2015. [HL149]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): Baseline projections of expenditure on pensioner benefits used for these costings assume that the basic state pension is increased by earnings from 2012. Prior to 2012, projections assume that the basic state pension is uprated by the greater of RPI or 2.5 per cent.

If the basic state pension were to be uprated by the higher of earnings or prices in 2010, the weekly value of the basic state pension to pensioners would be below the 2.5 per cent increase committed to by the Chancellor at Budget 09.

A policy of uprating the basic state pension on the basis of the higher of average earnings or the retail prices index from 2015 is equivalent to the baseline. Therefore there would be no additional cost compared to the baseline projections for part (d).

The information requested in relation to parts (a), (b) and (c) is given in the table below:

Additional basic state pension spend from uprating the basic state pension by the higher of earnings or retail prices index, £ billion 2009-10 price terms, net of income related benefits, UK and overseas

	(a) From April 2010	*(b) From April 2011*	*(c) From April 2012*
2010-11	-0.3	0.0	0.0
2011-12	-0.3	0.0	0.0
2012-13	0.0	0.3	0.3
2013-14	0.0	0.3	0.3
2014-15	0.0	0.3	0.3
2015-16	-0.1	0.3	0.3

Source:
DWP calculations

Notes:

1. Estimates given are net to baseline, they do not include the gross additional basic state pension spend from implementing the 2007 Pensions Act reforms to the basic state pension from April 2010.

2. During the next Parliament, we will re-link the uprating of the basic state pension to average earnings. Our objective, subject to affordability and the fiscal position, is to do this in 2012, but in any event by the end of the next Parliament at the latest. We will make a statement on the precise date at the beginning of the next Parliament.

3. In the financial years up to and including 2014-15 Treasury economic assumptions consistent with table B1 of the Pre-Budget Report 2009 have been used in the above modelling.

4. The costs and savings estimates provided are based on future projections of earnings and price inflation - which are inherently uncertain and subject to change particularly in light of the current economic uncertainty. This is underlined by the fact that the estimated cost of earnings uprating has changed from estimates based on Treasury economic assumptions consistent with table C1 of the Budget 2009.

5. Estimates are in 2009-10 prices, have been rounded to the nearest £100 million and include UK and overseas claimants.

Railways: Crossrail

Question

Asked by ***Lord Berkeley***

To ask Her Majesty's Government further to the Written Answer by Lord Adonis on 15 December 2009 (*WA 215*), what are the estimated peak volume and peak number of lorries per day required to remove the excavated material from the central stations and shafts for the Crossrail project. [HL935]

The Secretary of State for Transport (Lord Adonis): The estimated total bulk volume of excavated material from the central stations and shafts is 3.1 million cubic metres. Detailed estimates as to the peak volume and peak number of lorries per day required to remove this material have not yet been completed by Crossrail Limited.

Railways: East Coast

Questions

Asked by ***Lord Moonie***

To ask Her Majesty's Government what are the targets for timekeeping performance for East Coast main line services for this year; and what levels of timekeeping were achieved by Great North Eastern Railways and National Express in each of the past five years. [HL1161]

The Secretary of State for Transport (Lord Adonis): Targets for timekeeping performance are an operational matter for East Coast, and I suggest that the noble Lord contacts Elaine Holt, Chair of East Coast with his question at: Elaine Holt, Chair, East Coast, 1/18 Great Minster House, 76 Marsham Street, London SW1P 4DR.

The public performance level moving annual average achieved each year on the Intercity East Coast franchise from January 2001 to January 2010 is shown below together with the name of the train operator.

Year Ending	*Public Performance Level Moving Annual Average (percentage)*	*Train Operator*
06 Jan 2001	79.0	GNER
05 Jan 2002	70.5	GNER
04 Jan 2003	68.5	GNER
03 Jan 2004	73.6	GNER
08 Jan 2005	76.4	GNER
04 Jan 2006	81.2	GNER
06 Jan 2007	84.4	GNER
05 Jan 2008	81.9	NXEC
03 Jan 2009	85.5	NXEC
09 Jan 2010	88.9	East Coast

Asked by ***Lord Moonie***

To ask Her Majesty's Government what bonus agreements are in place for senior staff of East Coast; and what targets they have to achieve to receive bonuses. [HL1163]

Lord Adonis: I understand that there is no bonus scheme in place for the senior staff of East Coast in this financial year.

Railways: High Speed Lines

Question

Asked by ***Lord Greaves***

To ask Her Majesty's Government whether their proposals for a new high speed railway line or lines between London and the West Midlands or the north of England and Scotland will be pursued by a bill or by application for development consent to the Infrastructure Planning Commission; and what are the reasons for their choice of procedure. [HL1046]

The Secretary of State for Transport (Lord Adonis): I refer the noble Lord to my Written Statement of 14 December 2009 (*Official Report*, cols. *WS 213-4*), which sets out the Government's plans for high speed rail in the UK.

The Government believe that a hybrid Bill is likely to be the only way to secure the full range of statutory powers and authorisations needed to implement a completely new heavy rail scheme such as HS2, which goes beyond the scope of a development consent order under the Planning Act 2008. We will set out our considerations in further detail in the response to High Speed 2's report.

Railways: National Rail

Question

Asked by ***Lord Moonie***

To ask Her Majesty's Government what measures are in place for the real time updating of the National Rail website to reflect weather and service conditions. [HL1165]

The Secretary of State for Transport (Lord Adonis): The National Rail Enquiry Service is managed by the Association of Train Operating Companies, on behalf of the passenger rail operators.

The National Rail website is part of this service, and measures are in place to maintain and update data currently throughout the day, to reflect emerging conditions.

My noble friend may wish to contact the association at the address below for more detailed information: the Association of Train Operating Companies, 3rd Floor, 40 Bernard Street, London, WC1 1BY.

Railways: Timetables

Question

Asked by ***Lord Moonie***

To ask Her Majesty's Government why the rail journey times between London and Newcastle are longer for late evening services than earlier in the day, in particular for the Durham to Newcastle stretch. [HL1162]

The Secretary of State for Transport (Lord Adonis): Network Rail undertakes much of its maintenance of the national rail network overnight and at weekends. At these times, parts of the network may be closed or only open to services travelling at reduced speeds, depending on the nature of maintenance work taking place.

If a service has to travel via a different route or at a reduced speed, this will affect the time which a train takes to complete its journey.

Detail relating to the specific services in question can be obtained from East Coast or Network Rail as follows:

Elaine Holt, Chair, East Coast, 1/18 Great Minster House, 76 Marsham Street, London SW1P 4DR; and

Iain Coucher, Network Rail, Kings Place, 90 York Way, London, N1 9AG.

Roads: Advertising Hoardings

Question

Asked by ***Lord Lloyd-Webber***

To ask Her Majesty's Government how many road accidents are attributed each year to distractions caused by advertising beside major roads. [HL1066]

The Secretary of State for Transport (Lord Adonis): The information requested is not collected by the Department for Transport.

Rwanda

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what encouragement they and the Commonwealth are giving the Government of Rwanda to further political dialogue with the Rwandan Hutus living in eastern Congo. [HL1015]

Lord Brett: We strongly support UN Security Council Resolution 1804 of 13 March 2008 which demands that all members of Rwandan armed groups operating in the eastern Democratic Republic of the Congo (DRC) immediately lay down their arms and present themselves without any further delay or preconditions to Congolese authorities and MONUC for their disarmament, demobilization, repatriation to Rwanda, resettlement and reintegration into Rwandan society. Rwandans living outside the country are encouraged by the Government of Rwanda to return to participate in Rwanda's political processes. DfID has provided extensive financial support for the efforts of the Rwandan Demobilisation and Reintegration Commission, which has successfully reintegrated over 6,000 former rebel militiamen, and we have provided the UN force in the DRC (MONUC) with transmitters enabling them to contact rebel units wishing to disarm and demobilise.

Shipping: Light Dues

Questions

Asked by ***Lord Berkeley***

To ask Her Majesty's Government, regarding the report they commissioned on behalf of the General Lighthouse Authorities from Raven Trading reviewing the impact of light dues increases, whether any assessment has been made of a potential conflict of interest involving a partner of Strategic Transport Solutions International, which was used in the production of the report, who is also a board member of the Commissioners of Irish Lights. [HL1158]

To ask Her Majesty's Government what assessment they have made of the independence of the authorship of the report they commissioned on behalf of the General Lighthouse Authorities from Raven Trading reviewing the impact of light dues increases; and, if any assessment has been made, what action will follow from their conclusion. [HL1160]

The Secretary of State for Transport (Lord Adonis): No conflict of interest exists, as no board member of the Commissioners of Irish Lights was involved in the production of either of the Raven Trading reports. There is no basis on which to question the independence of the report's authorship.

We revised the level of light dues only after taking account of industry views expressed in a full consultation on the subject matter last year.

Asked by ***Lord Berkeley***

To ask Her Majesty's Government whether they approved the use of Strategic Transport Solutions International as a contributor to the report they commissioned on behalf of the General Lighthouse Authorities from Raven Trading reviewing the impact of light dues increases; and whether they approved the involvement of a board member of the Commissioners of Irish Lights. [HL1159]

Lord Adonis: There was no requirement for my department to approve the use of any subcontractor for this work. No board member of the Commissioners of Irish Lights was involved in the production of either Raven Trading report.

Taxation: Kyrgystan and Tajikistan

Question

Asked by ***Viscount Waverley***

To ask Her Majesty's Government what is the status of double taxation treaties with (a) Kyrgystan, and (b) Tajikistan; and, if they are not in place, what steps they are taking to implement such treaties; and what is the anticipated timetable for agreement. [HL1068]

The Financial Services Secretary to the Treasury (Lord Myners): The United Kingdom and Tajikistan have agreed to continue to apply the provisions of the UK/USSR double taxation agreement until such time as a new bilateral treaty is signed between our two countries. There is no such understanding with Kyrgyzstan and hence no double taxation agreement.

The Government have no immediate plans to negotiate a new double taxation agreement with either country.

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