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House of Lords

Tuesday, 19 January 2010.

2.30 pm

Prayers—read by the Lord Bishop of Southwark.

Israeli Officials: Arrest Warrants

Question

2.36 pm

Asked By ***Lord Anderson of Swansea***

To ask Her Majesty's Government what was the outcome of their consideration on preventing the issuing of arrest warrants for senior Israelis visiting the United Kingdom.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, Her Majesty's Government are looking at this issue urgently. No decisions have yet been made.

Lord Anderson of Swansea: My Lords, Hamas is an Islamist organisation which does not deal gently with its rivals, the opposition in Gaza. Is it not therefore absurd that it can work with friendly lawyers to obtain an ex parte arrest warrant, in effect preventing the visit to the UK of the leader of the opposition of a friendly and democratic ally? The Government have said for some time that they are looking urgently at this matter. Is it true, as reported, that the Government will give the Attorney-General the power to veto similar applications which harm our diplomatic relations? If so, would that need primary legislation?

Lord Bach: My Lords, as I said a moment ago, no decisions have yet been made on this matter. As for any proposal to limit universal jurisdiction, as a party to certain international conventions, the United Kingdom has legislated to give the courts jurisdiction over some grave offences whether they were committed in the UK or elsewhere, or whether by UK nationals or otherwise. We have no intention of restricting what is called universal jurisdiction. Israel is a strategic partner and a close friend of the United Kingdom. We are determined to protect and develop these ties. Israeli leaders, like leaders from other countries, must be able to visit and have a proper dialogue with the British Government.

Lord Lamont of Lerwick: My Lords, is this farcical legal situation, which has implications for the travel plans, I suggest, also of Mr Blair, not partly of the Government's own making? Were the Government not repeatedly warned during proceedings on the International Criminal Court Bill that the imposition of universal jurisdiction had profound implications for diplomacy and would make conflict resolution in certain parts of the world more difficult? Some people in the UN are arguing that that is happening with Sudan. If we are determined to have these laws, surely it must be a principle that they are enforced not by the Foreign Secretary or politicians, but by the courts and the courts alone.

Lord Bach: My Lords, the problem arises because some offences, including war crimes under the Geneva Conventions Act 1957, can be tried in English courts even where the offence was committed outside the United Kingdom by a person who is not a UK national. It is open to anyone to apply to a magistrate for an arrest warrant in respect of such an offence against a person who is present in the country. While prosecution of these offences requires the consent of the Attorney-General, consent need not have been given before an arrest warrant is issued. All that is necessary is that there is prima facie evidence, which is much less than would be essential for the Attorney-General to instigate a prosecution.

Baroness Northover: My Lords, is this not about the separation of legal and political powers? Yet the Foreign Secretary and the Attorney-General apologised to the Israelis and said that they will seek to change our law on war crimes. Political pressure has had an effect on Attorneys-General in the past, with the Iraq invasion and the BAE prosecution. Will the Minister therefore guarantee that no change will be made to this law because of political pressure?

Lord Bach: This is a difficult issue, as it would be for any Government. It arises because, if one is to arrest on warrant, that does not require the Attorney's consent; if one is to arrest on summons, it does. It is a problem. There are various arguments on both sides; those have already been put in the couple of minutes that we have been debating the matter this afternoon. Of course political pressure will not play a part in our decision. What matters is getting this difficult issue sorted out properly.

Lord Pannick: Does the Minister accept that it is anomalous that a prosecution may be brought in this context only with the consent of the Attorney-General yet an arrest warrant may be issued without the consent of the Attorney-General? That will inevitably have the effect of deterring people from coming here who will not be prosecuted because the Attorney will not give her consent, which will damage the ability of politicians to come to this country for the purpose of discussing the peace process, and it will prevent other persons—military officials and security officials—coming here to aid this country in the fight against terrorism.

Lord Bach: It is an anomaly set up by Section 25(2) of the Prosecution of Offences Act 1985. It is an anomaly, but it is also, as the law stands, the right of a citizen to bring prima facie evidence before a magistrate in order to effect an arrest. That is the law of the land. What we must consider is whether it ought to be altered.

Lord Clinton-Davis: Does my noble friend agree that this delay is unconscionable and intensely damaging to the interests of this country and Israel? Is he aware that Israeli leaders past and present are deterred from coming to this country?

Lord Bach: My Lords, of course it does not affect those currently in the Israeli Government, although it did affect Mrs Livni, who, as has already been said, is a most distinguished leader of the opposition in Israel. I repeat that we have close relations with Israel and intend to continue to do so. The Israelis of course understand that we have a difficulty with our law here. We must get it right. It is more important to take time getting it right than to get it wrong.

Lord Elystan-Morgan: My Lords—

Lord Dykes: Notwithstanding this putative legislation, can the Minister—

Noble Lords: Cross Bench!

Lord Dykes: I do not get up every day. Can the Minister say what the Government's reaction was to the striking full-page advert in the *Times* at the beginning of December from respected members of the international Jewish community in Britain and elsewhere saying that Israel should submit to war crimes trials?

Lord Bach: I am sure that the Government as a whole looked carefully and saw the advertisement; I certainly did. However, I am sure that there was no general reaction to it.

Lord Elystan-Morgan: Does the Minister not agree that the sweet words of Hamas are not entirely balanced by its deeds in this matter? Is he aware that, since the fighting ended in Gaza some 11 months ago, 284 rockets and mortar bombs have been fired at the towns and cities of southern Israel, each with the malicious desire and expectation that it would bring about death and destruction?

Lord Bach: I have read about what happened last year in Gaza and what happened to citizens both of Israel and in Gaza. It is certainly not my job to comment on that at this Dispatch Box this afternoon.

Iraq: Visas

Question

2.45 pm

Asked By ***Lord Clement-Jones***

To ask Her Majesty's Government whether they plan to provide in Iraq application and issuing facilities for visas for business visitors to the United Kingdom.

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): My Lords, the UK Border Agency continues to keep the provision of visa services to Iraqi nationals, including for business visitors, under review, taking into account ongoing security, logistical and financial considerations. A joint visit by the Foreign and Commonwealth Office and the UK Border Agency in March will review the possible extension of the limited visa service that is already available in Iraq for certain business and student categories. Iraqi nationals can lodge all categories of visa applications at designated posts in Damascus, Amman and Beirut.

Lord Clement-Jones: My Lords, I cannot fault the Minister for consistency, but is this not the same old story that he has been dishing out since 2008? Is it not high time that we adopted the same business visa facilities as the Schengen countries do? Is he not aware of the damage being done to British business in Iraq as a result of this failure to issue these visas?

At the recent Erbil trade fair, there were 71 German companies. How many British companies were there? One.

Lord West of Spithead: My Lords, the Government's consistency in response is matched only by the noble Lord's consistency in asking the same question, and I am delighted to respond to that. The Government accept that there are huge opportunities in Iraq. One of the great joys about Iraq is that there is a relatively well educated population and there is actually money there, once it has sorted out oil production and that sort of thing. We understand that and indeed, we sent a team over there last March, and that is why we opened the facility in Erbil. We cleared a number of people to go to a UKTI meeting there to talk to people. We are looking again in March to try and expand this, but there are very real issues of security and cost. It is extremely expensive and we use a hub-and-spoke method elsewhere. We understand this and we are pushing to try to achieve as much as we can. There are huge opportunities for our businesspeople and those are being encouraged by UKTI.

Lord Hylton: My Lords, I have just returned from Baghdad. Is it not the case that we have a brand new embassy there and that security within Baghdad has improved considerably, even compared with last year? Is it not therefore high time that visas could be issued there to Iraqis who want to come to this country for business purposes?

Lord West of Spithead: My Lords, I agree that security has improved there. It is constantly under review. At the moment, because of security and other things, particularly for example in Erbil, it makes it extremely expensive to issue visas—probably in excess of £600 per visa given the work that has to go into them. It is under constant review, there are opportunities, and we want to push these. Yes, we see our competitors are being a little bit freer in this and that is why we have to move and will do so.

Lord Avebury: My Lords, BP has secured a contract to develop the super-giant Rumaila oilfield over the next 20 years at a cost of $15 billion. For that purpose it will need to bring dozens, if not hundreds of workers to the UK for training. Others, such as the British Council, are also bringing many Iraqi workers here for training. If the Minister cannot provide the facilities at the British embassy, why not sub-contract the provisions for the fingerprints and photographs which are needed for applications to one of the other embassies that are already doing it?

Lord West of Spithead: My Lords, the noble Lord highlights something that is a very positive move in Iraq. We are reviewing this all the time. I have no reason to believe that we will not be able to facilitate that movement of staff to enable those things to happen and to allow that flood of oil hopefully to come out through the facilities in the northern Gulf which the Royal Navy helps to look after.

Baroness Afshar: My Lords, I thank the noble Lord for mentioning education. Given the devastation of universities in Iraq, is it possible to help students to get here quicker? I declare an interest. We admitted a student to a master's degree last October, and after travelling in various countries in the Middle East, she has finally arrived, having missed one term of a course that is one academic year long. Is there any way that we could possibly help students to continue the great standard of education by coming here?

Lord West of Spithead: My Lords, the noble Baroness touches on an important issue. Education in this country is a gem and is seen as such around the world. It is very important for us in terms of influencing people and giving them the same perceptions of rights and all kinds of other things. We had a team in Iraq after Prime Minister Maliki's visit and we came to an agreement to expedite and push through a raft of scholarship people into this country. Sadly, the administrative arrangements within Iraq did not quite match it and we are still waiting for that to happen. We will make more opportunities available as and when we can.

Lord Skelmersdale: My Lords, given that Baghdad and Erbil operate a limited biometric capture facility for specified categories of applicant, are the Government able to collect biometric information for visas for Iraqi businessmen? Surely this would speed things up dramatically.

Lord West of Spithead: My Lords, I think I understand the question, which is that we should not take biometrics of businessmen. No, we make sure that we take the biometrics of people visiting this country. That is done and we make sure that it is done. It is one of the securities for our country.

Baroness Symons of Vernham Dean: My Lords—

Baroness Nicholson of Winterbourne: My Lords—

Lord Hunt of Kings Heath: My Lords, we have not heard from the Labour Benches.

Baroness Symons of Vernham Dean: My Lords, the Minister made a point about the expense involved in the issue of visas. Does he not also accept that, unless we get this right, the Exchequer will lose out considerably through loss of trade if we block or do not properly facilitate visas for business travellers?

Lord West of Spithead: My Lords, the noble Baroness is absolutely right—I hoped that I had touched on this earlier—and that is why the situation is being reviewed in March. I agree that we need to open this up. We need to expand our links with Iraq because there are many opportunities there. As its oil comes online, it will have the money to implement these things and so it is in our interests to do that. However, there are issues of security and cost at the moment and that is why we are going to look at the situation again to try to advance it.

Elections: Postal Voting

Question

2.51 pm

Asked By ***Lord Roberts of Llandudno***

To ask Her Majesty's Government whether they will increase the time between close of nominations and polling day for parliamentary elections in order to allow for the return of postal votes.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, increasing the time between close of nominations and polling day would require considerable consultation followed by primary legislation. We have no plans to make such a change at this stage. In any event, it would not resolve the issue raised by the noble Lord. Postal voting has been successful and is popular with electors. The turnout of postal voters across Britain at the 2005 UK parliamentary election was 76.6 per cent compared to 59.4 per cent in polling stations.

Lord Roberts of Llandudno: My Lords, I am grateful to the Minister for his answer to this Question and others on postal voting. However, he does not seem to be aware of the massive increase in the number of postal voters. It was 11 days between nominations and polling when we had fewer than 1 million postal voters; in the European election we had 6,300,000; and in a May general election we could have 8 million. Surely we need a new timetable. The Electoral Commission is urging this. As for primary legislation, last night the Video Recording Bill went through this House; it was introduced into Parliament on 6 January and will receive Royal Assent this week. Were the Government really determined, would it not be possible to get the necessary legislation through?

Lord Bach: My Lords, what really matters is the registration and postal vote deadline; that is key for all elections. Whether general or local elections, the deadline for registration and for new or changed postal vote applications is 11 working days—it is important that they are working days—before polling day. Returning officers send out ballot papers only once this deadline has passed because, until the deadline, electors may change their address or cancel their postal vote. Clearly we do not want a large number of duplicate ballot papers distributed. If a close of nominations for parliamentary elections were moved to 19 working days before polling day—the same as for local elections—postal ballot papers would not be sent out any earlier because of the 11 working days registration deadline.

Lord Henley: My Lords, what is the point of having 76.6 per cent turnout if a vast proportion of that percentage is fraudulently voting?

Lord Bach: My Lords, I am slightly gobsmacked by the noble Lord. Is he really suggesting that a large proportion of those who vote by post are voting fraudulently? If that is the official view of the Opposition, I am deeply shocked. Of course there are examples of fraud in postal voting, just as there is sometimes personation at polling stations. We are going to be dealing with that in a few minutes. We are delighted that turnout is increased by the fact that postal voting is now much easier than it was when the noble Lord's Government were in power.

Lord Tyler: My Lords—

Lord Rogan: My Lords—

Lord Hunt of Kings Heath: My Lords, this system only works if noble Lords are prepared to give way. Shall we hear first from the noble Lord, Lord Tyler?

Lord Tyler: My Lords, at Questions in your Lordships' House on 9 December 2009, the Minister was kind enough to agree to a suggestion from me that he should look again at the 2003 report by the Electoral Commission on election timetables to try to get more consistency in all elections. Has he had time to review that report? What is the Government's reaction to its recommendations?

Lord Bach: I am afraid that I have not had time to review that report but we are now so close to the general election of this year—

Noble Lords: Oh!

Lord Bach: I have in my briefing examples of various dates and how long it will be before nominations close. As we are so close, it is frankly not realistic, using common sense, to suggest that we can change the law before then.

Lord Rogan: My Lords, a special section of the electorate, namely our Armed Forces personnel serving overseas, are in many cases disfranchised by the short time between nomination and polling day. Will the Government at least consider some special arrangement whereby these personnel will no longer be disfranchised by their postal votes?

Lord Bach: I am grateful to the noble Lord. A lot of work has been going on and there have been debates in this House. We are still actively attempting to make sure that our soldiers and personnel from other services who are serving in Afghanistan have the chance to vote by post. Each of them can vote by proxy if they want to, but it is thought that many would rather vote by post. There is a scheme which will work within the existing electoral timetable and legislative framework, subject of course to operational priorities, because of the time saved by using the regular military supply flights to Afghanistan. A great deal of work is going on to make sure that our troops in Afghanistan will be able to vote.

Lord Campbell of Alloway: My Lords—

General Election: Electoral Malpractice

Question

2.58 pm

Asked By ***Lord Greaves***

To ask Her Majesty's Government what is their response to the comments by the Electoral Commission about the risk of possible incidents of electoral malpractice at the forthcoming general election.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, we welcome the recent report by the Electoral Commission and the Association of Chief Police Officers which confirms that the recent downward trend in the scale and volume of allegations of electoral malpractice continued at the June 2009 elections. However, the Government strongly agree with the commission that all those involved in the conduct of elections must remain vigilant at the forthcoming general election.

Lord Greaves: My Lords, I thank the Minister for that reply. I declare a couple of interests. I have been asked to be an agent for a parliamentary candidate in the forthcoming general election and I have accepted. Also, on page 52 of the report there is a table of outstanding cases, including one with the Crown Prosecution Service which I instigated.

Page 41 of the report points out that this coming year will be a particular challenge because there are local elections in the main cities and in London, which are the places,

"where the most significant allegations and cases of electoral malpractice have originated".

There will also be a general election and the report refers to,

"the unique logistical issues associated with a UK Parliamentary general election".

It is highly likely that these elections will be on the same day. Does the Minister understand that it is vital that there are not significant allegations of malpractice in marginal constituencies in some of these cities which could put the result of a close general election at risk?

Lord Bach: I cannot possibly comment on whether the elections might be on the same day, as the noble Lord will know. I have already said that we and all those involved with the elections this year need to be vigilant. However, it is important that the report brought out by the Electoral Commission and ACPO last week made it clear that we in Great Britain are free from major allegations of electoral fraud and it saw a recent downward trend in the scale and volume of allegations of fraud. The noble Lord knows that many measures have been taken during the past few years to try to make sure that fraud is lessened.

Lord Henley: My Lords, in an earlier answer, the noble Lord told us that personation was a major problem in electoral fraud. Is he really saying that it is a worse problem than the fraud that we have in postal voting?

Lord Bach: The number of cases where fraud is alleged in elections is incredibly small, and was even smaller in 2009 than in previous years. Of that very small number of complaints made, a considerable proportion was about personation.

Lord Baker of Dorking: My Lords—

Lord Campbell of Alloway: I was going to make the same point during the previous Question, having spoken on it on many occasions in your Lordships' House. As we approach a general election, is there any hope of reasoned consideration, and should not the altering of electoral arrangements be left until another Government —or the same Government—are in charge of the country? It is a very important question which is not to be trivialised.

Lord Bach: I think that I agree with the noble Lord. I argue strongly that this would be the wrong time to start mucking around with our electoral arrangements and timetable. I would argue that it is common sense; I am delighted that the noble Lord agrees.

Lord Tyler: My Lords, the Minister will be aware that Nick Brown, the government Chief Whip in the other House, has apparently expressed a view that he is against next-day counts at the general election on the grounds that he does not trust the local returning officer, his staff and the police to provide sufficient security to prevent tampering at the ballot box. Is that government policy?

Lord Bach: My Lords, I think that it has been said on many occasions that it is much more exciting and much more in our traditions to have counts on the Thursday night of a general election if that can possibly be arranged.

Lord Maxton: My Lords, I have listened to the exchanges so far and am aware that change cannot happen before the general election this year. However, does my noble friend not agree that it really is time that we investigated secure electronic voting in this country before the following general election takes place?

Lord Bach: Significant work has been done on e-voting, and the change to electoral arrangements that that would entail would be considerable. It would obviously require very careful consideration as well as primary legislation. We certainly cannot consider it for now, but it is obvious that we shall have to consider it for the election after next and the one after that.

Lord Baker of Dorking: My Lords, is the Minister not being complacent about the recent report from the Electoral Commission and the Association of Chief Police Officers, which showed many cases of electoral fraud through postal voting in the elections last year? As it is the duty of returning officers to verify 20 per cent of postal voters, why should that percentage not be increased before the next election to 50 per cent or 75 per cent?

Lord Bach: I do not think I was being complacent. As I understand it, the number of cases and allegations of electoral malpractice recorded by police forces in Great Britain for last year's elections were 48 cases involving 107 allegations. This compares with the scale of participation in those elections with 22 million votes cast across the United Kingdom. The noble Lord asked a very interesting question about the checking of return postal votes. We support the principles that 100 per cent of return postal votes should be checked and funding has been provided to allow this to take place in practice. We will look to mandate to 100 per cent checking when it is appropriate and safe to do so, in particular when all local authorities and parliamentary constituencies are able to fully comply with that requirement.

Lord Campbell-Savours: When my noble friend says "when it is appropriate to do so", does he mean that certain seats will then be targeted for that level of checking?

Lord Bach: No, I do not believe that that is what I meant. I am attempting to say that although 100 per cent of return postal votes ought to be checked, there may be constituencies and local authorities which, because of their administration, are unable to do that for this year's elections.

Lord Campbell-Savours: But why should they not be targeted if there is a higher level of risk?

Lord Bach: It seems to me that all constituencies and local authorities should be treated the same as far as this is concerned. We are looking for 100 per cent of return postal votes to be checked where possible.

Equality Bill

Committee (3rd Day)

3.06 pm

Schedule 2: Services and public functions: reasonable adjustments

Amendment 57B

Moved by ***Baroness Warsi***

57B: Schedule 2, page 132, leave out lines 25 to 27 and insert—

"( ) to remove the feature, or

( ) to alter the feature, or

( ) to provide a reasonable means of avoiding the feature, or

( ) to provide a reasonable method of providing the service or exercising the function."

Baroness Warsi: My Lords, Amendment 57B makes more active the requirement to make reasonable adjustments for those with disabilities. We have tabled this amendment to probe the issue of reasonable adjustments for those people with disabilities. Amendment 57B increases the strength of the duty in Schedule 2. As the Bill stands, the duty states that where,

"a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled",

then reasonable steps should be taken to avoid that disadvantage. In paragraph 2(3) of Schedule 2, this is then defined as,

"(a) to avoid the disadvantage, or

(b) to adopt a reasonable alternative method of providing the service or exercising the function".

Our amendment would alter this provision so that reasonable adjustments such as,

"to remove the feature, or … to alter the feature, or … to provide a reasonable means of avoiding the feature",

would also be options that would have to be taken into account.

We have tabled these amendments to probe the area of reasonable adjustments and auxiliary aids. We are just looking for some clarity. The Bill as it stands shows that the Government are clearly concerned that some reasonable adjustments should be made, and we welcome this provision. However, can the Minister tell the Committee whether any assessment has been made of the cost of such a provision? Furthermore, can she give us an example of an adjustment that would pass the reasonable test and an adjustment that would be considered as going beyond the call of legislation? Does the Minister think that there is the possibility that these provisions could be interpreted as too passive? They ask only that there should be a way of getting around the disadvantage or an alternative method to provide the service. As they stand, therefore, reasonable adjustments here may mean that disabled persons are only accommodated rather than actively welcomed. Will there be guidance on how the schedule should be interpreted? What might the impact be on a small shopkeeper who has a shop with a narrow entrance and several stairs? How far would the duty extend? I beg to move.

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, we considered this same amendment in Committee in the other place, and I welcome the opportunity to discuss it again. The reasonable adjustment duty is an essential cornerstone of the protection for disabled people contained in the Bill. This amendment would import into the Bill similar language to that used in the Disability Discrimination Act, where a physical feature puts a disabled person at a substantial disadvantage. We heard evidence in Committee in the other place suggesting that the absence of a reference to removing the feature as an option had been interpreted as weakening the provision, but that is certainly not the intention and is certainly not the case.

The emphasis in the Bill is on taking such steps as it is reasonable to take to "avoid the disadvantage", which is to say that we are legislating to ensure the outcome which will increase access for disabled people and not the means of achieving that outcome. That means may well, of course, result in removing the feature which is causing the disadvantage. That is what I wish to stress—that this is about the outcome rather than the means of achieving the outcome. In addition, one of the Bill's benefits is that it simplifies and harmonises the legislation; and this amendment, which applies only to services and public functions, does not achieve that result.

We consider that exemplifying how the duty might be delivered in different circumstances is best done through an authoritative code of practice and other guidance which can be informed by good practical, real-life examples. When the noble Baroness asks me for examples, I must refer her to the forthcoming guidance.

For information, the Disability Charities Consortium has identified this in its briefing on the Bill as a key area for strengthening or clarification. However, we have already strengthened the duty by introducing the single, substantial disadvantage threshold, and we should and must acknowledge that. We will provide any necessary clarification in the codes and guidance.

The noble Baroness asked whether we were being too passive with this clause. I do not believe that we are being passive, as we are actively asking people to ensure that they achieve the best outcomes for disabled people. I respectfully ask her to withdraw the amendment.

Baroness Warsi: My Lords, I thank the Minister for her reply. There has been some clarification, but I note with concern that the authoritative code to which the noble Baroness refers and the guidance are still to be forthcoming. That appears to be a feature of this Bill, which has been a long time coming—the fact that we are debating it in this place, when it has already been debated in another place, and are still waiting for guidance.

Baroness Royall of Blaisdon: Many of the draft codes of practice are now on the internet for consultation, so I refer noble Lords there. I am not absolutely certain that the specific code to which this clause refers is on the internet, but I shall verify that and come back to the noble Baroness.

Baroness Warsi: My Lords, I am not sure whether this is on the internet, so I look forward to the reply from the Minister. However, I would still raise the issue that I am raising. It concerns me that these matters are still out for consultation. Surely it would have been more appropriate if we had had responses on the guidance to these clauses, which is clearly interpreting the legislation. It is clearly not clear, which is why we have to table so many probing amendments. However, at this stage, I beg leave to withdraw the amendment.

Amendment 57B withdrawn.

Amendments 57C and 57D not moved.

Schedule 2 agreed.

3.15 pm

Schedule 3 : Services and public functions: exceptions

Amendment 58

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

58: Schedule 3, page 137, line 27, leave out paragraph (b)

Baroness Royall of Blaisdon: My Lords, I wish to speak to Amendments 58, 107, 108 and 108EA.

Currently, local authorities and schools are not under the DDA duty to consider auxiliary aids in relation to disabled school pupils, and that position is mirrored in the Equality Bill. This group of amendments will reverse that position. Amendment 58 will place a duty on local authorities in relation to their education functions, as set out in Schedule 3, to comply with the third reasonable adjustment requirement, as set out in Clause 20, to consider auxiliary aids. Amendments 107, 108 and 108EA will do the same for schools in Schedule 13. Such aids could include adaptive keyboards, voice output and communication equipment for pupils with hearing and speech difficulties, and computer technology to help pupils with visual impairments. I am sure that we would all agree that disabled pupils need all the help they can be given to ensure they get the education they deserve.

However, the disability lobbies have long argued that the position of local authorities and schools not having to consider auxiliary aids is a barrier to some disabled pupils getting their education. Our view has been that many disabled pupils also have a statement of special educational needs, and so will get any auxiliary aids provided as part of that regime. In addition, schools and local authorities are under planning duties and strategies to consider the needs of disabled pupils more widely, so auxiliary aids will be considered in a more strategic and planned way. However, we have listened carefully to the lobby arguments and views on this and other disability issues in schools, and recognise that the whole approach to disability and special educational needs in schools needs to be reviewed. That is exactly what we have been doing. Following a Select Committee report on special educational needs in 2006, we asked Ofsted to conduct a review in 2009-10. It will look at how well the existing policy and statutory arrangements are meeting the needs of disabled pupils and those with special educational needs to determine if any changes and improvements need to be made.

It would have been logical to tackle the issue of auxiliary aids following that review. However, as noble Lords may be aware, an inquiry into parental confidence in the special educational needs systems was conducted by Brian Lamb, the chair of the Special Educational Consortium, in 2008 and 2009. His recommendations were published in December. One of the recommendations was that schools should be under the duty to consider auxiliary aids. We have therefore reconsidered the matter and we are keen to ensure that no disabled child who needs an auxiliary aid misses out. It would be wrong if even a single disabled child misses out through a gap in provision. We have therefore decided that it would be appropriate to introduce such provisions now, in this Bill, to ensure that auxiliary aids are considered in relation to all disabled school pupils.

We have gone further than the amendment which was originally tabled by the noble Baronesses, Lady Warsi and Lady Morris, and we have tabled Amendments 107, 108 and 108EA, which will amend Schedule 13 and place the same duty on schools themselves when offering all types of education. This group of amendments will ensure that there are no gaps in provision and that all disabled pupils will get the help they need to get the education they deserve. This can only be of benefit to disabled pupils, and I therefore hope that noble Lords will accept the amendments. I beg to move.

Baroness Wilkins: My Lords, I strongly welcome these amendments, which implement a key recommendation of the Lamb review, and the Disability Rights Commission review of Part 4 of the DDA which was back in 2007. Too many disabled children face barriers to participation in learning and school life, because if they do not have a statement of special educational needs, they have no enforceable entitlement to extra support. The Equality Bill provides the perfect vehicle to remedy this injustice, and I am delighted that the Government have seized it.

The effect of the amendments will be to provide many thousands of disabled pupils, and their parents, with the confidence to get the practical support they need to take part in school life. For example, I have been contacted by a parent of a child with chronic fatigue syndrome, who says that a right to auxiliary aids and services will greatly assist her and her son negotiating arrangements with the school—things like proper rest facilities, a mentor so that he can maintain contact with school life, and provision of forward programmes of work. None of these things involves any great financial outlay, but they would make a huge practical difference to his participation.

I congratulate the Government on bringing forward these amendments, which contribute to the goal of an inclusive education system, and wish them a speedy passage on to the statute book. However, I sound a note of concern about the absence of any explicit provision in the Bill for an anticipatory duty to make reasonable adjustments in relation to schools and education for disabled pupils. Disability discrimination lawyers are clear that the Bill does not provide for this and that there is a real risk of regression here. They are clear that it is not enough to refer to an anticipatory duty in the Explanatory Notes when the Bill itself provides otherwise. Can the Minister give me an undertaking that urgent discussions will be held to iron out this issue? I am afraid it will require a substantive amendment to the Bill.

Lord Low of Dalston: My Lords, this is something for which I called at Second Reading, so I naturally very much welcome the Government bringing forward these amendments today. Indeed, I could hardly do otherwise, since I see that my name has been added to the government amendment. It got there by a rather roundabout route, I think. The Government, as the Minister has explained, tabled their first amendment, which covered half the ground, and the noble Baroness,

[LORD LOW OF DALSTON]
Lady Warsi, put down another amendment for the Opposition, covering the rest of the ground, and which I supported. When the Government took over the amendment of the noble Baroness, Lady Warsi, and, as the Minister has explained, went a little further, the noble Baroness, Lady Warsi, withdrew her name but I did not. That is why my name has been added to the amendment, but I am happy for it to be so. Having asked the Government to make these changes at Second Reading, I am obviously delighted that they have done so.

Lord Lester of Herne Hill: We strongly support the government amendments. I just add that when the noble Lord, Lord Low, sounds the trumpet, we all follow him in this area. I am delighted that the Government have done so.

Baroness Warsi: We welcome these amendments from the Government and thank the Minister for her introduction to them. Effectively, these amendments are about auxiliary aids and services in schools. The combined effect would be to remove the existing exception in the Bill, whereby a local authority or school is not required to consider the provision of auxiliary aids.

We have heard from the Disability Charities Consortium that there is a gap in provision where disabled children have suffered because they have not received a statement of special educational needs—which would then have placed a duty on the local authority to provide for those needs—or where accessibility plans have not been met for individuals. This may mean that there are children with disabilities who are yet outside the scope of either the SEN provisions or those of the Disability Discrimination Act and so no single authority is held responsible for their support. These amendments therefore address a gap in provision which it is very important to fix. We want to ensure that no child could be let down by falling between the two and so being helped by neither Act.

Can the Minister inform the Committee of the results of the cost assessment which the Government performed to analyse whether such provisions would be possible? Can she also inform us of how much it might cost a local authority if it had to provide auxiliary aids and services in this area? Nobody would deny the worthiness of these amendments. Indeed, we supported them at Second Reading for the help that they would provide for individual children. At a time of economic difficulty, however important these beneficial provisions are, and however much they are placed in the Bill, I am concerned about whether they will be delivered. I look forward to the Minister's response.

Baroness Royall of Blaisdon: My Lords, I am grateful for the broad support from all Benches for the government amendments. My noble friend Lady Wilkins expressed a fear that the Bill does not provide an anticipatory duty to make reasonable adjustments for disabled people in schools. I assure her that our intention has always been for there to be such a duty, and we are confident that the Bill as drafted achieves this. I will not go into the complexity of the drafting here, but I will write to her and place a copy of that letter in the Library, circulating it to all noble Lords who have taken part in debates on the Equality Bill.

The noble Baroness, Lady Warsi, made a very important point about the economics and asked about the costings. I have to confess that the exact costings have not yet been investigated, but I will come back to the Committee with the figures when they are available. However, notwithstanding the fact that we are in recessionary times and there are economic difficulties and, therefore, great challenges for local authorities, it is right and proper that all members of our society, disabled and able-bodied, have access to education and the educational aids they need in order to thrive as individuals and to participate as full members of our society. That is why we have put down these amendments, notwithstanding the fact that we do not have all the costings available.

Amendment A58 agreed.

Amendment 58ZA

Moved by ***Lord Alton of Liverpool***

58ZA: Schedule 3, page 137, line 42, at end insert—

"(g) the celebration or marking of any religious festival;

(h) the display or presentation of any holy book, religious symbol or religious object;

(i) the saying of prayers;

(j) the arrangements for funding, or contracting with, a religious organisation."

Lord Alton of Liverpool: I tabled Amendment 58ZA as a practical response to a real and growing problem. Although I attended much of the Second Reading debate on the Bill, I was unable to remain until the end and observed the convention not to speak at that time. Having followed the Committee proceedings with great interest, I recognise that there is a great deal in the Bill which ought to commend itself to the House. The noble Baroness the Leader of the House—as she has demonstrated again today—and others in the team who have been dealing with this Bill have shown great sensitivity and reasonableness in dealing with some of the issues that noble Lords have raised.

I am sure that the Government realise that there is growing apprehension in the churches and among religious believers of all faiths about how parts of the legislation may impact on them—concerns which are reflected beyond the faith communities. I commend to the Committee today's article in the *Times* by the director of Liberty, Shami Chakrabarti, which looks at this question from the point of view of personal liberties rather than that of religious faith.

My amendment seeks to address a key question on the balance that always has to be struck between religious freedom on the one hand and how the exercise of that freedom impacts on the wider community. In moving this amendment to Schedule 3 which provides a list of exemptions related to education—I should declare that I am a governor of a Catholic school and that I have children in Catholic schools—I am advised by the Public Bill Office that this is the appropriate place to include these further exemptions, which have application both in schools and beyond.

The amendment adds to the list of exceptions which has been created in Clause 29 relating to religious discrimination in the provision of goods and services.

There is much in that list of exemptions—relating to curriculum, acts of worship and admission—that will be welcome by those involved in almost 7,000 voluntary-aided schools with a religious character in Britain, as well as those in the independent sector. The Committee will be aware that religious discrimination in goods and services was first outlawed in Part 2 of the Equality Act 2006; so this is not a new concept. Along with the exemptions is a consolidation of existing provision. Clause 29 makes discrimination on the grounds of religion or belief unlawful, but with the law of unintended consequences in mind, I would like the Committee to consider what has become recognised as unlawful discrimination.

My concern is that these provisions may be used, and indeed are already being used, by those whose intentions are hostile to Britain's Christian heritage. Others, who are more well meaning, may simply be labouring under the mistaken belief that stamping out religious discrimination means stamping out religion. Under the nomenclature and language of equality, this has led to countless, ludicrous examples of risible things which public and private bodies have done in recent years, all under the guise of equality. In 2008, two years after we first outlawed religious discrimination in goods and services, under the pretext of not causing offence, Oxford Council officials dropped "Christmas" from the title of the city centre celebrations. Instead of "Christmas", they substituted "Winter Light Festival". The banning or dilution of Christian festivals has been criticised not only by Christian leaders but also by Muslim and Jewish religious leaders. I enjoy the celebration of Hanukkah or Diwali, and I know of no Rabbi or Hindu leader who feels offended by my enjoyment of Christmas or Easter. Their complaint is usually about aggressive ideological secularisation.

3.30 pm

In 2008, it was reported that a Yorkshire college had removed Christmas and Easter from its staff calendar in case they offended people. Instead, senior managers at Yorkshire Coast College in Scarborough in north Yorkshire said that the holidays would be referred to as "end-of-term breaks" in order to "increase inclusion and diversity". What next? Must we refer to the Sabbath as "the day that dare not speak its name" or the parish as "the collective"? Will we have to remove the names of saints from all the streets, towns or colleges that bear them? Before a public outcry, Perth Royal Infirmary was told to remove the communion table from its chapel after the NHS trust warned that it could offend non-Christians. However, it is not people of other faiths who are driving this agenda, and perhaps I may give the Committee an example.

Last October, a town councillor in Kendal in the north-west of England who is an atheist and a member of the National Secular Society threatened legal action because of the council's tradition of opening its meeting with a time of prayer, as we do in your Lordships' House and in another place. It was claimed that prayers would lead to some people feeling excluded. The councillor demanded that the prayers be scrapped or held in a different room. In an attempt to respond sensitively, Kendal Council voted to move the prayers to five minutes before the official start of their meeting, so that those who did not wish to attend did not have to. The councillor responded by saying that he was bitterly disappointed by the decision, objecting to the principle of prayers at all, even though they would take place before the meeting began and there would be no duty on him to attend. He announced that he will now explore legal remedies. In 2008, a similar case occurred in Bideford. This all beggars belief and makes me wonder whether we have taken leave of our senses.

Surely, in a truly tolerant and diverse society, we would not have to contend with such ideological hatred. You do not have to be religious to recognise this country's rich inheritance. Our Judaeo-Christian ideals are woven into the nation's fabric: its laws, its charitable endeavours, its schools, hospitals and hospices, its art and architecture, its culture and its spirituality. It is in all our political traditions. After all, faith in politics gave us Wilberforce, Shaftesbury, Gladstone, Keir Hardie and many others. This makes it all the more perplexing for me to encounter an ideological intolerance that seeks to marginalise religion, and Christianity in particular, not least because the majority of people in this country—almost three-quarters—still call themselves Christians. I am not arguing that we should force the Christian faith on those who do not hold it; I am simply arguing that evidence of the Christian faith in society, such as Bibles, prayers and the wearing of a cross, should not in itself be classed as discrimination.

Along with many others, I was outraged to read about the case of Nadia Eweida, a British Airways employee who was told to conceal a small silver cross which she wore around her neck. In today's *Times*, on page 26, Shami Chakrabarti, under the headline "Freedom must apply to all faiths and none", said:

> "The Christian's right to wear a cross must be defended as fiercely as any other religious liberty",

and she refers specifically to this case. Worse still, she said that BA, having initially been confronted with Miss Eweida's complaint, instructed an international law firm strenuously to resist her claim of religious discrimination. What followed, says Miss Chakrabarti,

> "was an extremely disappointing employment appeal tribunal that found no discrimination, because 'Christians generally' do not consider wearing a cross as a religious 'requirement'. This fundamentally misunderstands the idea of individual rights and freedoms, which do not depend on how many people agree with your conscience or speech. It also opens up secular courts to lengthy arguments as to what is a theological necessity. Making windows into men's souls is as pointlessly complex as it is dangerous".

I wholeheartedly agree with her. I shall not quote from the article at great length but she goes on to say:

> "Here the struggle for religious freedom has been strongly connected with the struggle for democracy itself",

so I think that we should see these issues always as inextricably linked. She says, too, that a new poll has been published today. A Liberty-ComRes poll shows that,

> "86 per cent of British Christians polled disagreed with BA's treatment of Ms Eweida and 80 per cent agreed that her case sets a dangerous precedent. Even more encouragingly, 96 per cent think that everybody should have freedom of thought, conscience and religion as long as they do not harm others; 85 per cent say that regardless of your faith, the law should protect the right to wear its symbols as long as they do not harm others".

Let me give another example: Pilgrim Homes is a 200 year-old charity, set up by William Wilberforce—

Lord Lester of Herne Hill: As another example, could the noble Lord explain which bit of the present law he thinks is coercive and incompatible with the views he has expressed—which I largely share—and why he thinks his amendment is therefore necessary?

Lord Alton of Liverpool: It is precisely because cases like the ones I have just described have come before the courts or tribunals that it is necessary to put in the Bill, in crisp language, exemptions so that when anyone takes up vexatious measures against people like the BA employee I have just referred to, that kind of case does not come before the courts. That is all I want to do. I do not think that common sense, let alone the law, should lead to these kinds of vexatious actions.

Let me give the noble Lord a further example, because I think we would probably be of one mind on this. This is about some elderly Protestant Christians in Pilgrim Homes, a 200 year-old charity that was set up William Wilberforce, which meets physical and spiritual needs. It became locked in a public battle with Brighton Council after the council threatened to withdraw the £13,000 of public money that it gives the home unless the residents complied with a series of very invasive personal questions to do with personal issues including sexual orientation, which they were to be asked every three months.

Government guidance has also been given, for instance, to store Bibles in libraries on top shelves. Why? What is so offensive about scriptures being available to people who want to read them? It does not force them on people any more than the provision of a Gideon Bible does. There is a fairly systematic campaign afoot to ban public reference to the Christian faith, and laws such as the one we are enacting can become part of the armoury. I know that this is not the Government's intention, but they can help prevent such vexatious and discreditable attacks by putting proper safeguards in the Bill.

We live in a society that in the recent past has been known for its religious tolerance. We should be proud of this. This period of toleration began in 1829, when, after centuries of repression, Catholics saw emancipation in the repeal of penal laws, Test Acts and the Acts of Uniformity. Today, 6 million Catholics—10 per cent of the population—participate fully in the nation's public life. Emancipation of Jews followed very rapidly thereafter. In this week of Christian unity in Britain, we should celebrate the co-existence of contemporary Christians, and understand the lessons of past divisions and mutual intolerance, and the applicability of those lessons for dealing with the tensions that exist between different faiths, and those between faith and secular society. If instead of learning to celebrate our country's Christian story and its heritage, we try to deny it, we will be doing nothing to create a genuinely more plural or tolerant society and will probably only succeed in offending the Christian majority.

It is particularly significant that leaders of minority faiths argue for the importance of preserving this country's religious heritage. The Chief Rabbi—probably the greatest of our spiritual leaders in Britain today—in his magnificent book, *The Home We Build Together*, makes the case with much better clarity and eloquence than I am capable of. Speaking of the marginalisation of Christianity, the noble Lord, Lord Sacks, said this:

> "Marginalisation not only shows how deeply British elites are alienated from the national religion".

However, he also said that:

> "This is not yet, but it comes close to, self-hatred … It represents the breakdown of an identity, and nothing good can come of it".

He perceptively writes that Britain set out with a commitment to value all cultures,

> "then it became valuing all cultures equally, a completely different proposition. Then it became valuing all cultures except your own. That is when it becomes pathological. You cannot value all cultures except your own … one who does not respect himself cannot confer respect on others".

I was struck that when the University of Leicester NHS Trust considered banning Bibles from bedside lockers to avoid offending other faiths, Resham Singh Sandhu, the Sikh chairman of the Leicester Council of Faiths, said:

> "I don't think that many ethnic minority patients would object to the Bible in a locker".

Suleman Nagdi, of Leicestershire's Federation of Muslim Organisations, said:

> "This is a Christian country, and it would be sad to see the tradition end".

I have no doubt that the Government will offer a number of reassurances today, but they are no substitute for the crispness of law. Far from being otiose, my amendment would add four new exemptions, which would, I hope, halt the vexatious attacks that I have referred to. They would guarantee the right to celebrate or mark any religious festival; to display or present any holy book, religious symbol or religious object; and to say prayers or make arrangements for funding or contracting with a religious organisation. I have tried to do justice to the amendment and to set out the reasons why such provisions are needed. I beg to move.

Lord Waddington: My Lords, It is unfortunately the case that equality legislation, while giving certain people new rights, has deprived others of theirs. It has also been misinterpreted and misused, sometimes by troublemakers but more often by well-meaning and overenthusiastic people who only half understand the legislation that we have passed. It was obviously someone in the latter category who, in 2008, advised the council in Devon to stop opening its meetings with Christian prayers. When Governments embark on equality legislation they should remember not only that in a civilised society people should be able both to hold religious beliefs and express them but that any such legislation should spell out clearly what is and is not unlawful.

The purpose of paragraph 11 of Schedule 3, as I understand it, is to allow local authorities to support denominational schools without being accused of discriminating against those of different denominations and different faiths. Unfortunately, while spelling out some ways in which the religious character of a school can be maintained, it omits other rights that in my view should be safeguarded to prevent the ethos of a school being undermined. In view of what has happened recently, our fears that the ethos of church schools may be undermined cannot be said to be groundless.

The amendment refers to,

"the celebration or marking of any religious festival".

Christianity is part of our heritage and Christian principles have played a key part in the formation of our society, culture and laws, so one might have thought it inconceivable that anyone would want to stop the recognition of Christmas. The noble Lord, Lord Alton, has already drawn attention to the fact that a college in Scarborough recently decided to do just that and remove Christmas and Easter from its staff calendar. He also referred to the bizarre antics of Oxford Council which, in 2008, dropped Christmas and substituted a winter light festival.

This amendment is concerned with local authorities; there have already been too many cases when local authorities have tried to prevent teachers and others expressing their faith. There was the school receptionist in Crediton, in Devon, who, after learning that her daughter had been told off for speaking about her faith in school, sent an e-mail to friends asking them to pray about the matter. She was accused of misconduct and was disciplined. There was the Somerset maths teacher who was dismissed for offering to pray for one of her pupils who was too ill to come to school and actually too ill to have lessons at home. Surely if there is to be a list of actions with regard to church schools and actions within church schools such as the organisation of acts of worship, which should not be considered unlawfully discriminatory, that list should be very much more complete. It would certainly help, as the noble Lord, Lord Alton, has said, to stop vexatious attacks on those who practise Christianity, the religion in which the vast majority of the people in this country were brought up and which most consider their own, even if they do not attend church. For that reason alone, the amendment is surely worthy of support.

3.45 pm

Lord Lester of Herne Hill: I, of course, share many of the sentiments of the noble Lord, Lord Alton, about some of the ludicrous examples that he has given. I very much hope, as does Shami Chakrabarti, that the appeal be won in relation to British Airways—it is sub judice, but I think I can say that. Having said all that, and although I am not a Christian, I say "Happy Christmas" all the time—when it is Christmas time—and I totally deplore the political incorrectness of the ignorant who say "winter lights" instead of Christmas, and so on.

To come back to the law, we are talking about the exception to Clause 29, which deals with religious discrimination, among others, general discrimination in the provision of services to the public and religious discrimination. I assume, however much we may support the established church, that most of us believe that those who adhere to other religions are also entitled to be treated as individuals on the basis of their religious beliefs and not to be discriminated against. What kind of exception is appropriate to a law which creates a right not to be discriminated against, among other things, on the grounds of religion.

The exception which the noble Lord's amendment seeks to widen is to be found in paragraph 11 of Schedule 3 on page 137, and it is extraordinarily wide. In fact, it is too wide. It says:

"Section 29, so far as relating to religious or belief-related discrimination, does not apply in relation to anything done in connection with—

(a) the curriculum of a school;

(b) admission to a school which has a religious ethos;

(c) acts of worship or other religious observance organised by or on behalf of a school (whether or not forming part of the curriculum);

(d) the responsible body of a school which has a religious ethos;

(e) transport to or from a school;

(f) the establishment, alteration or closure of schools".

All those provisions are there to deal with the kind of points that the noble Lords, Lord Alton and Lord Waddington, have made. The Joint Committee on Human Rights, of which, until recently, I was a member, produced a vast and comprehensive report on the Bill. I will not take time now in boring or detaining noble Lords by reading paragraphs 215 to 220 on pages 72 and 73, which I commend to the Committee. In those parts of the joint committee's unanimous report, attention was drawn to what it had said about the previous sexual orientation regulations. Concern was expressed at the risk of the exemption for the content of the curriculum leading to unjustifiable discrimination being even greater under the broader exemption contained in the Bill—in other words, the one I have just read out. To make it short, the committee expressed understanding and sympathy for,

"the Government's reasons for exempting the content of the curriculum from the duty not to discriminate".

It said, as does the noble Lord, Lord Alton:

"We agree that schools ought not to be distracted by having to justify in legal proceedings the inclusion in the curriculum of particular works of literature, for example. However, we continue to have the concerns we expressed in our report on the Sexual Orientation Regulations, that exempting the content of the curriculum from the duty not to discriminate means, for example, that gay pupils will be subjected to teaching that their sexual orientation is sinful or morally wrong".

The committee continued:

"It is the content of the curriculum (the teaching that homosexuality is wrong), not its presentation, that is discriminatory. We therefore recommend that the exemption for the content of the curriculum be confined to the scope of the existing exemption, and not extended to other protected characteristics".

It was arguing not to go any further than one would here.

I apologise for taking so long, but against that background, I turn to the amendment tabled in the names of the noble Lords, Lord Alton and Lord Waddington. I do not want to get into even deeper waters, but "religion" and "religious" are, quite properly, not defined. The Church of Scientology, which I have professionally represented, would say that it is a religion, has prayers and is a religious organisation, as would many other new religions or cults. The widening of the exemption beyond its already great width would be completely unnecessary, create more ambiguity and give rise to the very problems that the Joint Committee on Human Rights worried about so far as, for example, gay people are concerned. I hope that the Government will oppose this amendment as strongly as we do.

The Lord Speaker: It might be helpful to the Committee if I remind it that no application has been made or granted to lift the sub judice rule in relation to any case relevant to the discussions this afternoon, so the sub judice rule applies.

The Lord Bishop of Winchester: I am grateful for the Lord Speaker's wise advice. I welcome the existing range of sub-paragraphs (a) to (f) of paragraph 11, and I welcome this amendment, not only for its detail but for the sense of the need to put down some markers that underlies it. I suspect that the noble Lord, Lord Lester, would agree with me that no church school should be teaching that homosexuality is wrong or making general statements about orientation. That is not the view of the Christian churches, which are concerned about certain sexual behaviour. It is important to put that right.

I want to speak about the underlying trends that many of us, like the noble Lords, Lord Alton and Lord Waddington, note. They are energetically represented in the correspondence that comes over my desk and, I suspect, those of my friends on these Benches and many others. There is a sense in society, if one can speak of such a thing, that non-faith or, in some of the implications of the Bill, one should say non-religious faith, is the norm. It is uncontroversial, undogmatic, unideological and how everyone ought to be. In fact, it is how everybody is, except for what is often an exaggeratedly small number in such people's minds. Those people seem to be hugely represented in the media, for instance, and, sometimes, in your Lordships' House and the other place. This non-faith is the norm, uncontroversial and non-ideological, except for the reality of an exaggeratedly small number of eccentrics. Religious faith and practice appears to be viewed in many places as abnormal, exceptional, deviant, as if it alone is ideological and controversial and, for a whole range of reasons, undesirable. Your Lordships may think that that is wildly exaggerated, but that is how very many people of faith, Christians and others, feel. The noble Lord, Lord Alton, quoted the noble Lord, Lord Sacks, who is a very distinguished man. This is how many people feel. They write to us and to others. They note cases, some of which are sub judice, and I shall not mention any of them by name.

As I watch this happening—and I come up against it in a range of places, including from time to time in your Lordships' House—it seems to be a thread that is at risk of running through the equality and diversity agenda. In fact, in my observation it does run through it; that fundamentally admirable agenda is often popularly followed out in many a town hall, in a significant element of the lower echelons of many police forces, at the more rarefied level of parts of this Bill, in Parliament, and even, if I dare say so, in some of the judgments handed down by the Joint Committee on Human Rights.

My concern is for Christians, for the churches, for members of other faiths and their attempts to do what any honest believer would by not keeping their faith in some little box, only getting it out at home or with fellow believers. There is also a much greater danger for our society in that we could reach a point where Christians, and peoples of other faiths too, find it increasingly difficult to survive in the public service, and, indeed, in Parliament. A Member of the other place is reported very recently as saying that people who hold Christian views really ought to consider whether they should be working in the public services.

Lastly, there is a danger that a Government, of whatever complexion, who are coming to rely ever more heavily on faith-based social and voluntary and caring services, may find themselves making it impossible for bodies coming from a faith perspective into social service, which is often for the most deprived and needy people, to continue.

I suspect that we may come back to this next Monday. I hope that the Committee will consider the detailed issues raised in the amendment and those issues of principle and principled practice.

Lord Lester of Herne Hill: Can the right reverend Prelate, the Bishop of Winchester, explain to me whether he is then opposed to Clause 29, which guarantees that in the provision of services there should be no discrimination on the basis of religion and belief? Would he rather that that provision was not there? Why does he think that the wide exception that I have quoted is insufficient?

The Lord Bishop of Winchester: I am grateful to the noble Lord for asking that question. I am very happy about Clause 29 with the material that is in the clause about which we are speaking. I am happy that at a range of points in this Bill, in relation to Clause 29 and in other places, the Government have made it clear that they are gathering together existing legislation, rather than either repealing it or tightening it, noose-like. The difficulty that some of us have with the material with which we will be dealing next Monday is that whereas the Government are asserting that they have not changed anything in the existing legislation, others among us believe that it has been very significantly tightened. I hope that is a sufficient answer for the noble Lord.

Lord Warner: Can the right reverend Prelate explain why he thinks that there should not be some limitation on any religious organisation, which is what he seemed to be implying, that is taking taxpayers' money for the provision of services?

The Lord Bishop of Winchester: This would take us into quite another issue. To what extent are your Lordships' House and the other place, the court of Parliament, prepared to work at holding intention regarding competing rights—indeed, competing tracts in this Bill? That seems to be the issue that faces us time after time.

4 pm

Baroness Warsi: My Lords, we have heard an extremely interesting speech from the noble Lord, Lord Alton, which has called attention to many examples of what can happen when the principles of so-called equality are applied in extreme cases. He referred to the Oxford case, the Yorkshire college case and the case of where

prayers are held five minutes early. That particular example is interesting. In this House, for example, prayers are held and people have a choice in whether they want to attend. As a person of the Muslim faith, I regularly attend those prayers, which are a moment for reflection. I think that the point that the noble Lord, Lord Alton, was making in the example he gave was that there was no choice. Effectively the meeting started at the time that it should have started. Those who were the exception were not those choosing not to be there but those who were choosing to be there. The exception was applied against the religious community, which is an important point to note.

Extremes can result in a restriction of religious freedom. Many faith-based organisations do important work for their communities while retaining a distinct religious character. We are concerned that the Bill may restrict their ability to do this and therefore that it could represent a misguided attack on religious groups. I am sure that many of us will remember the publication in February 2009 of guidance from the Museums, Libraries and Archives Council, which answered to Andy Burnham, the then Culture Secretary. I am not sure whether the noble Lord, Lord Alton, is referring to the same example. That department advised that as Muslims in Leicester wanted the Koran moved to the top shelves in libraries, because of the Islamic belief that it is the sacred word of God, the Bible too should be moved to the top shelf. This was, as the guidance stated, so that,

"no offence is caused, as the scriptures of all the major faiths are given respect in this way, but none is higher than any other".

Will the Minister concede that this demonstrates a fundamental misunderstanding of the purpose of equality legislation and the shape of religious beliefs? Surely the Minister does not believe that in order to achieve equality there must be a one-size-fits-all approach. In Protestant Christianity—I stand to be corrected by the many who are more learned in this field than I am—the importance of the Bible as the word of God is not simply that it is a sacred text that must be kept higher than any other text; it is that it must be an accessible scripture which anyone should be able to look at. Therefore it should not be assigned to the top shelf. Achieving equality is more complicated than finding a way to treat everything in exactly the same way.

We are a society made up of individuals with a range of different beliefs. The pursuit of equality should be the pursuit of a situation where people are allowed to cherish their individual beliefs safe in the knowledge that they will not be castigated or discriminated for holding them. It does not, however, mean that the differences should be steamrollered out altogether. Equality achieved by making everyone the same is not real equality. Equality should mean that differences are embraced and not removed. That is why I am troubled when we hear about the legacy of Labour's Britain, where a community nurse can be suspended for offering to pray for a patient's recovery or—as in the example referred to by the noble Lord, Lord Waddington—a school receptionist can face disciplinary action for sending an e-mail to friends asking them to pray for her daughter. Will the Minister tell the Committee how measures in pursuit of equality seem to have been subsumed into a quest to remove any freedom of religious expression?

On a personal note, as a woman of Asian descent who practises Islam and who was born into an economically challenged background, I could argue that I have everything to gain from an overzealous approach to equality. I would probably tick most boxes. Does the Minister accept that this overzealous pursuit of equality can cause a backlash for ethnic minority communities? Much of this overzealous activity is not done by ethnic minority religious communities but in the name of those communities. Thus they, too, fall victim of this overzealous approach which is done in their name. Does the Minister accept that this creates a sense of unease in our communities and does not accord with the Government's so-called pursuit of community cohesion?

The noble Lord, Lord Alton, mentioned an article by Shami Chakrabarti, a lady whom I hold in high regard, and he indentified an extremely important issue, as did she—the state's continual encroachment on our private lives. We must ensure that the Bill does not do that.

Lord Mackay of Clashfern: My Lords, I congratulate the Government on holding fast to their clause which is subject to the amendment. The criticism of it by the Joint Committee on Human Rights is not well founded.

I entirely agree with the noble Lord, Lord Lester of Herne Hill, that many of the examples that we have had cited to us are really quite extraordinary and in no way based on the law as we have it. The sooner that that is manifest, the better it will be for all of us. There are just too many of them, and they are not all one-sided either—they go in every possible direction. The sooner that this stops, the better it will be. I am not sure that I can practically address exactly how to stop it, but I believe that it can be addressed to some extent in the guidance that the Government will offer on the Equality Bill when, as I hope, it becomes law.

As for the funding of public services provided by religious institutions, the Government are funding, with taxpayers' money, the service that the institutions provide. In all cases that I can imagine, the Government think that it is perfectly reasonable that adoption agencies, care agencies and so on are provided with government money because the care, adoptions and so on, are services that the Government wish. The fact that there is a variety of them with a variety of religious ethos—I am not too sure of the proper plural—is helpful. There are a lot of different people in our community, and some can benefit from one type of religious services and others from other types.

The noble Lord, Lord Lester, said that there was no definition of religion in the Bill. In a sense there is, because it says that "religion" includes no religion, and "belief" includes having no belief. In a sense, that is a kind of definition; it may not take you very far, but at least it is there.

The Government may feel that the amendment is unnecessary. I am not sure what their attitude will be. However, a clear statement by Her Majesty's Government from the Dispatch Box that the amendment is unnecessary would serve quite a good purpose.

Baroness Thornton: My Lords, the primary focus of the amendment in the name of the noble Lords, Lord Alton and Lord Waddington, is on the education exceptions in Schedule 3, but, as drafted, it is not confined to that. I will explain why and perhaps address some of the issues that noble Lords raised in the debate.

Schedule 3 and paragraph 11 of that schedule are related to things done in schools. Although the noble Lords, Lord Alton and Lord Waddington, have made it clear that their concerns relate to education, the amendment's effect would be to apply it to bodies carrying out public functions more widely, as other noble Lords have suggested.

The exceptions for religion or belief in the Bill are based on those in existing legislation. We argued through those in detail in relation to the Equality Act 2006. They have been in force for some years now and appear, by and large, to be working well. I have already returned to some of the instances that have been mentioned. We have not been faced with complaints and legal cases in relation to schools or the local authorities that support them or, indeed, more widely. There is currently no case for extending them.

I assure noble Lords that nothing in the Bill is going to outlaw the celebration of any religious festival. Nor does anything in the Bill make unlawful the display of a religious book or artefact. Even if there were a question about this in a schools context, the exceptions for faith schools in paragraph 5 of Schedule 11 recognise that there will be some differences in the ways in which such schools deliver education to children of different faiths.

The amendment seeks to exempt the saying of prayers, but sub-paragraph (c) of the same paragraph already exempts acts of worship in schools, which would clearly cover prayers. The final section of the amendment—which refers to the arrangements for funding or contracting with a religious organisation—makes no particular sense to us in the context of an education authority. I can see no reason why a local education authority should need or want to discriminate on religious grounds when awarding a contract of any kind, so that it would be appropriate to provide an exception to such discrimination.

The exemptions in place at the moment are specifically for schools because of the particular issues around religion or belief that arise in a schools context given, in particular, the part played by faith schools in our system and the approach to organised worship in schools more generally. These, as I said, were covered in great length in 2006 when the Equality Bill, as it then was, was discussed. They are now well understood.

We do not believe that there is any need to introduce further exceptions more widely. First on the list in this regard is the banning of Christmas—that myth has been mentioned by several noble Lords. It never has been and never will be discrimination to celebrate Christmas or any other religious festival—the wording of the discrimination provisions would not allow that. Nor is it easy to believe that the recipient of a public service could claim that they were receiving less favourable treatment solely because a religious artefact or a copy of a holy book is on display in the place where the service is being provided.

The noble Baroness, Lady Warsi, spoke with great wisdom about the top-shelf issue. I absolutely accept her point and the wider point about one size not fitting all. In a way, that is the whole point of this legislation and of the exceptions. The proposed exception for the saying of prayers perhaps raises different issues. Prayers take place in schools but parents have the right to withdraw their children from such acts of worship should they wish to do so. I cannot envisage a situation where it would be appropriate for the provider of a public service to impose prayer on recipients of a service, but nor do I believe that a discrimination case would succeed if, for example, the staff of a church group contracted to deliver a public service shared a quiet moment of prayer at the beginning of the working day. The point must be that it should not be inflicted on unwilling participants and there should be no discrimination against anyone who refuses to take part.

As for the exemption for arrangements for funding or contracting with a religious organisation, I think the argument against works both ways. An organisation offering services of a public nature should not be allowed arbitrarily to pick and choose contractors on the basis of religion or belief, and thus neither to refuse to contract with a business just because of religion or belief nor to prefer one business over another because of it. In some cases, there may be a genuine need for a religious "aspect" to a particular contract—for example, a local authority that contracts out its provision of care for the elderly in an area with a large Jewish community may well choose to use the services of both a Jewish care home and a secular care home. The Bill, via the general exceptions in Schedule 23, would allow that because it enables religious or belief organisations that meet the qualifying criteria to limit their provisions to people who have a particular faith or belief.

I recognise that several noble Lords will be aware of a matter that is related to this debate that is before the Court of Appeal today—the case of Ms Eweida, who was suspended from work. It would, of course, be inappropriate for me to comment on this case in advance of the outcome of the appeal being determined. However, in principle people should be able to choose what they wear and how they dress, subject to any valid restrictions that may be appropriate for employers or any other organisation to impose—for example, for safety or hygiene reasons. What is clear is that any such restrictions need to be a proportionate and reasonable response to dealing with this sort of sensitive issue.

The Equality Bill embraces the cultural diversity of UK society. It is ridiculous to suggest that anyone should stop referring to Christmas or any other religious festival, and local authority tenants will not be asked to take down their Christmas lights. There is nothing in the Bill to stop local authorities or their tenants putting up Christmas trees or lights, or from celebrating any other religious festival such as Diwali, Eid or Hanukkah.

4.15 pm

Baroness Warsi: My Lords, does the Minister accept that, among other things, the Bill is an opportunity to clarify? As it stands, the position is not clarified, which

is why Members around the Committee can refer to so many unusual examples. I think the noble Lord, Lord Lester, referred to them as "ludicrous", but I may be quoting him incorrectly. However, the point is that this is an opportunity to clarify. It may well be that, as it stands, the Bill will not allow such incidents to happen, but could we not use it as an opportunity to clarify and to ensure that they do not occur again?

Baroness Thornton: We are clarifying a great deal in the Bill, including the issues raised in the debates that we have had. I share the perplexity of the noble Lord, Lord Alton, at idiotic decisions; there is absolutely no question about that. If only this Government, or any Government, could legislate against people's occasional silliness. Given the details in paragraph 11 of Schedule 3 and the reassurances that I have been able to give the Committee, I hope the noble Lord will feel able to withdraw the amendment.

Lord Lea of Crondall: Perhaps my noble friend can clarify one further point. There is support on all sides of the Committee for ensuring that when the legislation has been enacted—possibly without the amendment of the noble Lord, Lord Alton—guidance will be given to local authorities on dealing with the ridiculous assertions that some have made. Would that not be normal practice? My noble friend used the word "ridiculous". Cannot my noble friend's thoughts on local authorities be put into guidance? I would then be happy with the position of my Front Bench.

Baroness Thornton: My noble friend makes an important point. The Bill and the guidance and codes which will flow from it will give us yet another opportunity to explain how we expect people to conduct themselves and how we do not.

Lord Lester of Herne Hill: Does the Minister agree that the fact that there are idiotic bodies around which misinterpret the law is no reason for changing the law if one can make sure that it is clear? For example, the police have been known to use the terrorism law to stop people taking photographs of the Palace of Westminster; and the Human Rights Act has frequently and ludicrously been blamed for all kinds of things. There is no reason, is there, to give in to stupid people by making the law less effective? We need to make absolutely sure that our courts lay down the law when they interpret it properly, and that vexatious and frivolous cases are ruled out and costs awarded against those who misuse the law.

Lord Elton: My Lords, we need a definition of what is a silly person. What appears to be a silly person to noble and learned Lords does not necessarily appear to be a silly person to an alderman sitting on a borough council. We need to legislate for the general public and not for the courts.

Lord Lester of Herne Hill: I agree. That is why, when we debated the Equality Bill last time, I advocated taking out the notion of religious harassment. I was worried that individual human dignity would be violated by thin-skinned zealots who would then bring crazy cases in county courts. There would then be publicity in the *Daily Mail* which would bring the law into disrepute. I am totally in favour of defining the law, if one can, to avoid that. However, my experience, after a long time at the Bar, is that idiots, stupid people, thin-skinned people and zealots are always around, and the law should not cater for them.

Lord Harries of Pentregarth: Many of your Lordships will accept the argument of the Government but will not be happy to say that silliness just happens and is something that we have to put up with like rain. Can the Minister give any assurance that guidance will be brought before the House to indicate what the boundaries of sheer silliness might be?

Baroness Thornton: The noble and right reverend Lord makes a good point—a point I was trying to make—that you cannot always legislate against what people might decide to do. You have to make sure that your guidance and the clarity of your legislation is adequate and serves its purpose. The Bill already does that. The noble Lord, Lord Lester, read out that part of the Bill and I could not see how it did not cover the anxieties expressed by the noble Lord, Lord Alton.

Baroness Warsi: I do not wish to detain the Minister much longer but I wish to make two points. First, it was guidance from a government department that led to issues about the top shelf and the Bible and the Koran. Therefore, a part of me does not have much faith in any guidance issued to clarify. Secondly, these issues do not relate just to legislation or how legislation is interpreted. Many of these cases do not come before the courts. These matters are not dealt with in a county court but they are of great importance because they cause unease within our communities. Can the Minister comment on whether, if it is not legislation and the interpretation of legislation, there has been something in the Government's policy and approach which has led to this culture?

Baroness Thornton: No.

Lord Alton of Liverpool: The contributions to the debate on this amendment demonstrate the worth of having discussed this issue. It was good to hear the Minister using the word "proportionate" in her reply. That is what concerns us all. As for "ludicrous", "vexatious", "idiotic" and "silly", I look forward to seeing the noble Lords, Lord Elton and Lord Lester of Herne Hill, sitting with the Minister and working out a new schedule of silly people, silly organisations and silly measures. The tragedy is that that these are not "myths"—a word the Minister used earlier, although she meant it perhaps in a wider sense. These are not hypothetical cases but instances which have occurred. There are others, such as the example recently of a decision in a European court to require in Italy the removal of crucifixes from public places in schools where they have been historically placed for many centuries. We are taking some of this argument to absurd lengths and creating a backlash as a consequence. We ought to be careful where we tread.

[Lord Alton of Liverpool]

I was particularly pleased to hear the remarks of the noble Baroness, Lady Warsi. I concur wholeheartedly with her sense of proportionality. At some time in the future we may well need a short, crisp Bill just dealing with religious liberty and the right of people to hold conscience, not as a way of provoking hateful measures against other groups or oppressing minorities. I hope my own record over 30 years in both Houses of Parliament will demonstrate that you do not have to hate one country because you love another, or hate one faith because you are a member of another, or despise people who have no faith because you have faith. Often we are made up of our own upbringings. My mother, too, was from an overseas community—Ireland. Her first language was Irish, not English. She married my late father who was a Desert Rat and had been demobbed after the Second World War. They married across the denominational divide—not easy in the early 1950s. In Liverpool, the city I represented for 18 years, the Bishop and the Archbishop would not even say prayers with one another at the cenotaph in the 1950s because they did not recognise one another's orders. It was as recently as 10 years ago that members of other faiths were welcomed to the cenotaph in order to celebrate the memory of those who died, from all backgrounds, fighting for this nation in two world wars.

We have travelled a long way and need to tread with great sensitivity in these areas. I was thinking during the debate how fortunate we are in this nation to have the laws that defend our rights. In 1987, after I had helped to cofound an organisation called Jubilee Campaign, which works for human rights all over the world and in particular raises issues of religious liberties of all faiths and denominations, I travelled to Ukraine. I met there Bishop Pavlo Vasylyk, who had spent 18 years in prison. I also met the chairman of the committee for the defence of the church in Ukraine, who had spent 17 years in prison, and the young chaplain who had been at Chernobyl to clear radioactive waste without any protective clothing because he had been caught celebrating liturgies in the open. There are contemporary examples. On Christmas Day of last year, a young man called Robert Park walked over the border into North Korea because of his faith. I am chairman of the All-Party Parliamentary Group on North Korea and have followed the case with great interest; the latest report is that he was beaten almost to death last week. He went there not in a hostile way but in order to challenge a regime that according to the United Nations probably has 300,000 people in its gulags today. The liberties that we enjoy in this country are of huge worth and we must take them seriously. Matters of conscience should matter to us and we must preserve them.

The noble Baroness, Lady Thornton, mentioned provisions already in the Bill, which I had welcomed. I made it clear in my earlier remarks that the schedule applies to education, but I was advised that this was also the place to include an amendment if one wanted to extend some of these questions beyond schools. The Minister cited "acts of worship" and said that it would cover prayer, but prayer in an evangelical, protestant setting is often just two people sitting together and praying. Is that an act of worship? She will know that I mentioned that someone was disciplined not because they prayed with someone but because they had offered to. The person to whom the offer was made did not complain, but somebody else did and it snowballed completely out of control.

Lord Lester of Herne Hill: Perhaps I may reassure the noble Lord that the Human Rights Act, which brings into our law the European human rights convention, guarantees freedom of conscience, worship and religion as part of the general guarantees, including the manifestation of one's religion. Therefore, this statute, if we pass it, has to be read in the light of the convention and the Human Rights Act, where there is ample protection covering the issues that he has stated.

Lord Alton of Liverpool: I recognise what the noble Lord, Lord Lester of Herne Hill, said. We both agree that it is ludicrous that the examples which I gave earlier on, true though they are, should have reached tribunals in the courts. However, the fact that they have done, and that there are those who are pursuing a vexatious agenda, demonstrates, as the noble Baroness, Lady Warsi, said, the need for crispness or, as the noble and learned Lord, Lord Mackay of Clashfern, and other noble Lords indicated, the need for it to be in guidance. That would be right signal that we are strongly opposed to such cases coming before tribunals and that they are not in accordance, as the noble Lord has just said, with the way in which statute currently operates.

There may be need for some amendment. I shall reflect carefully on what the Minister said. I am extremely grateful to her and all noble Lords who have participated in this short debate. I beg leave to withdraw the amendment.

Amendment 58ZA withdrawn.

Amendment 58ZB

Moved by ***Lord Ramsbotham***

58ZB: Schedule 3, page 139, line 8, at end insert—

"as long as any decision or thing done is a proportionate means of achieving a legitimate aim"

Lord Ramsbotham: My Lords, I declare an interest as a member of the Independent Asylum Commission because it was in this capacity that I was alerted to serious concerns about the potential implications of the regressive immigration exception proposed in paragraph 16 of Schedule 3 for disabled asylum seekers and migrants, including those with diagnosed HIV. This is not the first time that concerns about this exception have been raised, because a similar amendment was drafted and tabled by the Equality and Human Rights Commission in Committee in the Commons, where the Government failed to give sufficient reasons for this broad exception being necessary and the need for further debate on the exception was noted.

I welcome the fact that the Bill prohibits for the first time direct discrimination against disabled people in the provision of goods and services. I note, however,

that, in relation to immigration, the Bill creates a new exception where direct discrimination is not prohibited if it is on the ground that doing so is necessary for the public good.

4.30 pm

Previously, disability discrimination in the provision of goods and services was prohibited apart from where it was a proportionate means of achieving a legitimate aim or in certain limited circumstances. Several disability charities, led by the National Aids Trust and backed by RADAR and the Disability Charities Consortium, have voiced their concerns about this new exception where there is no requirement to proportionality. In addition, it is not clear what could fall within the overly broad scope of "necessary for the public good".

For that reason, my amendments return to the approach under Section 21D of the Disability Discrimination Act requiring a legitimate aim and proportionality in disability discrimination. The Joint Committee on Human Rights' scrutiny of the Bill supports this amendment's approach. It states that the Bill should be amended to make clear that any decision to exclude someone from the United Kingdom must achieve a legitimate aim and be objectively justified in line with the standard proportionality analysis. This is what these amendments will do.

The JCHR also has concerns that as the Bill stands this exception could permit treatment of disabled people that could violate their right to equal treatment as well as potentially threatening other rights, such as the right to life protected under Article 2 of the European Convention and the Article 3 right to freedom from inhuman, degrading treatment.

What would be the implications if the exception remained as proposed? I have been contacted by these organisations which are concerned that the exception could be used to exclude disabled people on grounds of cost. For example the additional cost of allowing a migrant with learning difficulties to enter or remain in the United Kingdom, and also on grounds of public health—allowing migrants living with HIV to enter or return or remain in the United Kingdom. In terms of HIV, this could have potential individual and public health implications if people feel unable to disclose their HIV status or access treatment. It may also discourage migrants from seeking an HIV test, with obvious public health consequences including the onward transmission of the virus.

The Government may reassure us that this exception will not be used in this way. However, with this power on the statute book there is nothing to stop a future administration using the power in these ways. In addition, the exception seems to be directly opposed to the policy set out in the UK Border Agency's equality scheme which states that staff are,

"to ensure that asylum seekers are able to ask for assistance, and know that particular needs can be indicated. It should be made clear that disclosure of disability will not be a negative factor in the consideration of cases".

I have already mentioned the JCHR's grave concerns about this exception. The Government proposed a similar reservation to the United Nations Convention on the Rights of Persons with Disabilities to retain the right to introduce wider health screening for applicants entering or seeking to remain in the United Kingdom. The Joint Committee, in its report on the UN convention, noted that the Government have not provided an adequate explanation of their view that the proposed reservation is necessary. It goes on to recommend that the Government abandon this reservation. There are similar concerns that the Government have not provided sufficient reasons as to why this exception is necessary.

There is international precedent in this area that underlines the need to amend the current exemption. Worryingly, a similar exception in Australia has been used to separate disabled migrants from their families. These amendments will safeguard against this approach and ensure that direct discrimination against disabled people is permitted only where there is a legitimate aim and proportionality. I beg to move.

Baroness Warsi: First, I make it clear that we support the Government in retaining the reservation. We supported them when the reservation was introduced with regard to the United Nations Convention on the Rights of Persons with Disabilities to retain the right to introduce wider health screening for applicants entering or seeking to remain in the United Kingdom. We have therefore tabled this probing amendment with the aim of asking the Government some questions pertinent to this area, and I hope that the Minister will be able to furnish the noble Lord, Lord Ramsbotham, and me with some answers to our queries.

The amendments tabled by the noble Lord would greatly narrow the exceptions to the application of Clause 29. Amendment 58ZE, for example, would mean that even the Secretary of State could not make immigration decisions without being subject to the prohibition of discrimination in the provision of goods and services. The amendments would go too far. We agree that the reservation of the public good is an acceptable one. The Explanatory Notes state that it is a new exception that was obviously not required before, because the previous Disability Discrimination Act did not prohibit direct discrimination in the provision of services or the exercise of a function, because disability-related discrimination that did apply to these areas already included the proviso that it could not endanger the health or safety of any person. On those grounds, can the Minister assure the Disability Charities Consortium that this is not in any way a regressive step?

Moreover, can she inform the House what the exact intention is regarding the interpretation of the phrase "for the public good"? The Disability Charities Consortium is nervous that it may be used to apply to cost—for example, the additional costs that may be incurred if a migrant with learning difficulties is allowed to enter the UK. Does the Minister envisage that this example would be affected by this part of the Bill? I would be interested to hear an explanation of where it is hoped that the threshold of "for the public good" would lie. Moreover, what guidance is available to aid interpretation in this area?

Is there a concern that, if it becomes well known that certain conditions would not be welcome, that might discourage potential immigrants from having

[Baroness Warsi]
tests to identify them? Is there any reason to believe that this could be a legitimate worry? I look forward to the Minister's response.

Baroness Howe of Idlicote: I welcome the amendments of my noble friend Lord Ramsbotham and support the points that he has raised, and some of the question raised by the noble Baroness, Lady Warsi.

It seems clear that the current exception could permit a non-citizen who develops cancer, say, to be expelled from the UK if it is deemed necessary for the public good—and it will be very important to hear what that definition is—because of the possible cost of their cancer treatment to the NHS. As the National AIDS Trust has suggested, it could result in families being split up if, for example, one member has a disability such as HIV and they are refused entry because of the costs to the health system over time. That may not be the Government's intention, and I certainly hope that it is not. However, if it is not, it is even more important to amend the Bill at this stage and clarify the situation. I note that in Committee in the other place, the Solicitor-General attempted to reassure colleagues that a legitimate aim and proportionality would be considered by the courts when applying this exception. However, she went on to note that that particular route seemed somewhat circuitous.

Amendments 58ZB, 58ZC and 58ZE would make clear in the Bill—and there is a lack of clarity, as we have argued on previous Bills, though not of this nature—that the exception could be applied only when it is a genuinely proportionate means of achieving a legitimate aim.

I end by reminding noble Lords that disabled migrants are some of the most vulnerable people in our community, and they face potential discrimination from many different angles. They are also a group who can and indeed have contributed a great deal to our society and who deserve protection from discrimination in the same way as their UK-citizen counterparts. It is therefore vital that the Government clarify in the Bill that this new exception can be used only in limited circumstances when it really is a proportionate means to a legitimate aim.

Lord Lester of Herne Hill: These amendments raise a very important issue about the principle of proportionality as it should apply to immigration control in the context of equality of treatment. We support these amendments, but we wonder why the movers of them have restricted them only to disability. In Part 4, one finds that a similar problem arises in relation to ethnic origins—paragraph 17 covers that—and exactly the same problem arises with regard to religious or belief-related discrimination in paragraph 18.

It is not true that the department that I once had the privilege of serving—the Home Office—rejoices in the maxim that power is delightful, and absolute power absolutely delightful, but it is true that it has been a tendency of the Home Office to seek blanket exceptions in this area in order to allow it to exercise its powers as it thinks fit. Therefore, the question is whether the principle of proportionality should apply not only in relation to disability, as these amendments seek, but in relation to ethnicity and religion as well. I see no reason why that principle should not be written into this part of the Bill.

I will give one example from my own professional experience. I acted for the European Roma Rights Centre in the famous case that went to the House of Lords. The Government were sending an immigration officer to Prague airport to prevent Roma asylum seekers getting on planes to come to this country to seek asylum. It was being done on a racial, ethnic basis. There was a similar exception in the existing Race Relations (Amendment) Act to that which we find in paragraph 17. It was then discovered that there was, as was held by the House of Lords, an unlawful, racist policy operating in relation to immigration control. The Minister was forced to withdraw his or her authorisation of the policy before the case was decided.

We have heard a lot about religion so far today, and I am delighted that the Lords spiritual are here in force. I ask rhetorically: how can it be right, for example, that an immigration officer can refuse someone entry clearance or leave to enter in relation to religious or belief-related discrimination? Article 9 of the European Convention on Human Rights protects manifestation of religious belief as a fundamental right. Article 14 protects it "without discrimination". It seems to me that there will be litigation if the powers under paragraph 18 are exercised. There are also very serious problems on disability.

For my part, I support the amendments in the name of the noble Lord, Lord Ramsbotham, and the noble Baroness, Lady Howe of Idlicote, but I believe that the general principle of proportionality—that you pursue a legitimate aim, and that the means employed are no more than necessary to achieve the aim—must apply to the exercise of all of these powers. I look forward to an assurance from the Minister that that will be the case.

4.45 pm

Baroness Thornton: My Lords, currently paragraph 16 of Schedule 3 provides a limited exception to the prohibition on disability discrimination in Clause 29 in respect of certain decisions taken by the immigration authorities. The inclusion of this exception was required because there is no longer a specific justification in the disability provisions of the Bill for differential treatment on the grounds of protection of such things as health and safety and the rights and interests of others, as is currently the case under the Disability Discrimination Act. Amendments 58ZB, 58ZC and 58ZE would remove the current requirement that these exceptions can be used only when it is necessary for the public good, and replace it with a standard proportionality test.

We are resisting these amendments because the effect would be to widen, rather than to narrow, the circumstances in which this exception could be used—which was, I suspect, the noble Lord's intention and was mentioned by the noble Baroness, Lady Warsi. When drafting this exception, the wording was chosen very carefully. It is anticipated that the main purpose of this exception will be to enable a public health protection policy which allows people to be screened for infectious diseases and potentially refused leave to

enter because they have such an infectious disease. That is what happens at the moment, as noble Lords will know, in the case of TB, for example.

However, this is not exclusively what it is about. For example, under the Mental Health Acts, the mental health review tribunal has the power to recommend the removal of a person from the UK for the wider public good. In the main, the tribunal will also be concerned with whether removal would assist the subject—that is, be in their best interests. In addition, some passengers on arrival at ports or airports can behave in a manner that raises concerns about the state of their mental health. A port medical inspector may be required to examine an arriving passenger and, in some instances, will recommend refusal of entry to an individual on the grounds that they may pose a risk to the wider public or themselves. This exception ensures that these practices remain lawful.

As currently drafted, the exception can be used only when it is necessary for the public good. The concept of necessity imposes a high threshold for the immigration authorities to meet. Any action must be not only desirable or one of a number of means of achieving the aim; it must be the only way to achieve a certain result or effect. In comparison, allowing any action to be taken if it is proportionate to do so is a weaker test. For example, a decision to refuse entry to the UK of a foreign national with a contagious illness would be considered necessary only when other less stringent measures would not protect the public—for example, imposing a condition such as the need to undergo treatment or to remain in quarantine for a set period. By comparison, removing the same person from the UK could be considered a proportionate way of protecting the public, as long as it could be shown that these less restrictive means might not be as effective. These amendments would also remove the further limitation of the exception imposed by the public good requirement. This would mean that action could be taken for whatever end, provided it is in furtherance of a legitimate aim.

Amendment 58ZD would also remove the public good requirement. The exception could be used to justify any action provided it was necessary; obviously, we do not think that would be right. The effect would be, again, to widen the scope of this exception and allow the immigration authorities to refuse foreign nationals who are disabled permission to enter or remain in the United Kingdom for any reason, provided it is necessary to do so.

We believe that we have got the balance right by imposing the higher threshold of requiring any action taken to be necessary to protect the public good. When including an exception in the Bill, our intention was to ensure that the UK Border Agency would continue to deliver its immigration and public protection duties, but also to ensure that it is not able to take any action that it is not currently permitted to take. We think that the current drafting of the exception achieves this.

I refer to a point raised by the noble Lord, Lord Ramsbotham, about compliance with Articles 2 and 3 of the ECHR. The noble Lord is mistaken to say that immigration authorities would be permitted by this exception not to comply with their obligations under the Human Rights Act, including Articles 2 and 3 of the convention. They are subject, like all other public authorities, to the provisions of the Human Rights Act and this exception, like any other provision of domestic law, can only be used in a way that is compatible with the overarching rights in the convention.

The noble Baroness, Lady Howe, asked whether this exception would be used to refuse a disabled person permission to enter because of the potential cost It is not the intention to refuse leave to enter or remain to a disabled person who meets the requirements of the immigration rules—it would not be relevant, certainly not relevant on the basis of cost—or indeed, to seek to remove someone with a disability because they are receiving NHS care.

The noble Lord, Lord Ramsbotham, raised the issue of HIV/AIDS and asked whether the exception would be used as a means of refusing permission to enter or remain in the country to those with HIV/AIDS. The answer is no. Prospective migrants are not currently required to declare their HIV status or undergo HIV testing, and it is the Government's policy that HIV testing in the UK is available on a voluntary and confidential basis. Having HIV or AIDS is not in itself grounds for refusal under the immigration rules and there are no plans to change this.

The noble Lord, Lord Lester, raised the issue of religion and belief exception. There are indeed individuals whose religious beliefs are so extreme that it would not be desirable for them to enter or remain in the UK where their presence is not conducive to public good or is undesirable. The immigration authorities would be concerned about the behaviour of such individuals, but in practice it can be difficult to make a distinction between belief and behaviour. We would want the immigration authorities to be confident that they can exclude individuals in such cases without having to fear an allegation of discrimination.

The noble Lord also spoke about the race exception being broader than other exceptions. The race exception is broader because, by the very nature of immigration work, a large number of our policies require differential treatment on the grounds of nationality; notably, nationals from the EU member states benefit from freedom of movement into the UK compared with those from non-EU countries. There are, however, many other occasions where immigration authorities may need to differentiate on the grounds of nationality. For example, immigration officers give extra scrutiny to entrants of a particular nationality if there has been evidence of immigration abuse by people of that nationality. Disability and religion or belief exceptions are narrower because they are intended to operate only in very particular circumstances—for example, the public good.

Lord Lester of Herne Hill: I thank the Minister for her explanation. We will come back to this on Report, but I just ask her to reflect on what I am about to say. The test of necessity for public good is a classic example of a test of proportionality. If the Minister is saying that the amendment is not necessary because that test is satisfied for disability, I would agree. However, the same problem arises for religion, and the conducive-to-the-public-good test is not the same as the test of necessity for public good or proportionality. As far as

[Lord Lester of Herne Hill]
race is concerned, the Minister's response is that you need to discriminate on the basis of nationality in immigration control. I agree, but this exception does not cover nationality, it covers "nationality or ethnic origins", and "ethnic" means race.

My point is that there ought to be a common standard regulating the exercise of these controls on the basis of the principle that the means must be justified as well as the end. Therefore immigration control must be exercised proportionally. If that is not accepted by the Government, they will get a heap of trouble on religion under the European Convention on Human Rights. Could the Minister please reflect on that before Report?

Baroness Thornton: I absolutely undertake to reflect on that issue. The noble Lord has made a very interesting point.

Returning to these amendments, I would like to provide further reassurance. The UK Border Agency's use of these exceptions is subject to monitoring by its chief inspector. In addition, all policies and decisions taken by the immigration authorities are already subject to the provisions and safeguards in the Human Rights Act.

The noble Baroness raised the issue of guidance. Guidance instructions to immigration staff are available in the public domain, including via the UK Border Agency's website, in order to provide transparency in relation to the activities of the immigration authorities.

For the reasons outlined above, I ask the noble Lord to withdraw Amendment 58ZB and not to press Amendments 58ZC and 58ZE, and I ask the noble Baroness not to press Amendment 58ZD.

Lord Ramsbotham: I am grateful to the Minister for that explanation. Having read the debate in the other place and the Solicitor-General's attempts to convince the House of her response, I am not surprised that at the end of our debate there is a great deal still to consider, not least with regard to what has been said by noble Lords on the Floor of this Chamber. The noble Baroness, Lady Warsi, the noble Lord, Lord Lester, and my noble friend Lady Howe have all raised points which I should like to go away and consider, possibly in consultation with the Minister. I do not believe that this is an issue that we can just pass; in the light of what has been said this afternoon, we need to consider it seriously and bring it back on Report. In the mean time, I beg leave to withdraw the amendment.

Amendment 58ZB withdrawn.

Amendments 58ZC to 58ZE not moved.

Amendment 58A

Moved by ***The Lord Bishop of Southwark***

58A: Schedule 3, page 143, line 2, at end insert—

"Part 5A

Marriage

Gender reassignment

A person does not contravene section 29, so far as relating to gender reassignment discrimination, only because of anything done in reliance on section 5B of the Marriage Act 1949 (solemnisation of marriages involving person of acquired gender)."

The Lord Bishop of Southwark: My Lords, my right reverend friend the Bishop of Winchester has had to return to his diocese and so is not in his place. He apologises and has asked me to move this amendment, which stands in his name.

The purpose of the amendment is essentially to preserve an aspect of the existing law enacted by Parliament as recently as 2004. Within the overall scheme of the Bill, the issue at stake may seem minor but it raises the possibility of the law coming into head-on collision with some religious conviction.

In short, the amendment preserves the effect of an exception for Anglican clergy in England and Wales provided for in the Gender Recognition Act 2004. That exception permits, but does not require, a member of the clergy of the Church of England or the Church in Wales to decline to conduct the marriage of a person who is of an acquired gender.

The Church of England does not have a settled position on gender reassignment but respects and upholds the conviction of its clergy who would not, as a matter of conscientious conviction, be able to solemnise marriages where one of the parties had an acquired gender under the Gender Recognition Act 2004. When that Act was passed, a specific provision was inserted into the Marriage Act 1949 so that a priest of the Church of England or the Church in Wales, who would otherwise be under a legal obligation to solemnise the marriages of his or her parishioners, was not obliged to solemnise the marriage of a person if he or she reasonably believed that the person's gender was an acquired gender under the 2004 Act. That was consistent with established practice in legislation dating back to 1857, when the first legislation on judicial divorce provided that a member of the clergy did not have to solemnise the marriage of a divorced person.

In 1907, provision was made so that clergy who had a conscientious objection to doing so could not be required to solemnise matrimony in the case of the marriage of a man to his deceased wife's sister. Other examples include provision contained in the Matrimonial Causes Act 1965 in respect of the remarriage of divorced persons, and provision contained in legislation dating from 1986 and 2007 relating to marriages between persons who would previously have been within the prohibited degrees of kindred and affinity.

There is, then, a consistent line here, which is that Parliament has not sought to impose statutory requirements on the clergy that are contrary to their religious convictions and obligations.

Under the Bill, solemnising matrimony would amount to either the provision of a service to the public or, if not, the exercise of a public function. Without the exceptions that this amendment provides, a member of the clergy who declined to conduct a marriage because one of the parties had an acquired gender would be acting unlawfully.

It will either amount to discriminating against the person by not providing the person with a service, or alternatively would infringe the prohibition on doing anything that amounts to discrimination in the exercise of a public function. We understand that the absence from the Bill of an exception for Anglican marriages is a drafting oversight rather than a deliberate policy

change. This being so, we hope that the amendment can be treated as a matter of tidying up a loose end in the Bill and that the Minister will be able to accept it.

5 pm

Amendment 58A concentrates on the Church of England and the Church in Wales, because at the point of placing the amendment, the legal advice to the Government Equalities Office was that marriages solemnised by non-Anglican ministers in England and Wales, and religious marriages in Scotland, were not at risk of being caught by the wording in Clause 29 regarding service to the public, facilities and public function. We understand, however, that the legal advice since then has developed, with reference to the Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) (No. 2) Order 2005, No. 916. Hence the amendment of the noble Baroness, Lady Gould, which is welcome. However, we also look for an assurance that the Minister is satisfied that the amendment will fully achieve what it has been designed to achieve. I beg to move.

Amendment 58B

Moved by ***Baroness Gould of Potternewton***

58B: Schedule 3, line 8, at end insert—

"(2) A person (A) whose consent to the solemnisation of the marriage of a person (B) is required under section 44(1) of the Marriage Act 1949 (solemnisation in registered building) does not contravene section 29, so far as relating to gender reassignment discrimination, by refusing to consent if A reasonably believes that B's gender has become the acquired gender under the Gender Recognition Act 2004.

Gender reassignment: Scotland

(1) An approved celebrant (A) does not contravene section 29, so far as relating to gender reassignment discrimination, only by refusing to solemnise the marriage of a person (B) if A reasonably believes that B's gender has become the acquired gender under the Gender Recognition Act 2004.

(2) In sub-paragraph (1) "approved celebrant" has the meaning given in section 8(2)(a) of the Marriage (Scotland) Act 1977 (persons who may solemnise marriage)."

The Deputy Speaker (Viscount Simon): Amendment 58B is an amendment to Amendment 58A.

Baroness Gould of Potternewton: My Lords, I rise to tidy up another piece of the Bill, following the right reverend Prelate. I very much appreciate his welcome of this amendment, and I also welcome his. The purpose of the amendment is to allow those who give consent to solemnisation of marriage the facility not to solemnise marriages involving those they suspect of having acquired their legal gender under the Gender Recognition Act 2004, without facing a discrimination claim involving gender reassignment under the Bill; and to recognise that the Anglican Church is not the only denomination that solemnises marriage.

There is no doubt that the Gender Recognition Act 2004 was a landmark piece of legislation that allowed transsexual people to be finally recognised in their true gender. Since it came into force, well over 2,300 people have taken the opportunity to gain a gender recognition certificate. However, it has to be recognised that this situation might not be accepted by all. Surely it is a sign of a healthy and mature society that we can recognise someone's true gender while also recognising that some people of faith—who undertake the important duty of solemnising marriage—may not accept that a man or woman can change gender under law, due to their religious convictions.

As the right reverend Prelate indicated, this issue was recognised during the passage of the Gender Recognition Act, which amended the Marriage Act 1949, to provide clergy of the Church of England and clerks in the Church in Wales with a clause that releases them from their obligation where they reasonably believe one of the parties is marrying in his or her acquired gender. The right reverend Prelate, in his amendment, rightly recognises that this facility should continue and that the Bill should not put that into any doubt by exposing those who take advantage of it to claims of discrimination.

Amendment 58B ensures that celebrants in Scotland and those of other faiths in England and Wales who solemnise marriage should have the same facility. The position of religions other than the Church of England and the Church in Wales also need to be clarified, in case there is doubt that the Bill inadvertently alters their position.

The amendment also deals with people who give consent for marriages to be held in particular buildings—registered buildings under the Marriage Act 1949. Marriages cannot be solemnised in a registered building,

"without the consent of the minister or one of the trustees, owners, deacons or managers thereof, or in the case of a registered building of the Catholic Church, without the consent of the officiating minister thereof.

This permission is given on an individual basis. When permission is refused because the officiating minister reasonably believes that a party to the marriage has transitioned from one gender to another, the amendment ensures that that would not be unlawful discrimination.

The amendments are intended to preserve the status quo, and I hope that they will be supported. I beg to move.

Lord Wallace of Tankerness: I share and endorse the comments of the noble Baroness, Lady Gould, on the welcome importance of the Gender Recognition Act 2004. I seek clarification of the position with regard to Scotland, as the issue has been raised by the principal clerk to the General Assembly of the Church of Scotland. There is a difference in as much as Schedule 4 to the Act makes specific provision for the Church of England, which is reflected in the amendment of the right reverend Prelate the Bishop of Winchester, as moved by the right reverend Prelate the Bishop of Southwark. No such equivalent provision was made for Scotland in Schedule 4 to the 2004 Act. There is a difference in that in England there is a duty on the party of the clergy whereas in Scotland there is not the same duty with regard to agreeing to a solemnisation. It is only at the point of solemnisation that it is a public function and the decision on whether to solemnise could arguably be a religious function.

I also understand that this would be a matter for the Scottish Parliament, given that marriage law is a wholly devolved matter. However, under Schedule 5 to the Scotland Act 1998—in Part II, Head L2—equal

[LORD WALLACE OF TANKERNESS]
opportunities is a reserved matter. There could conceivably be a dispute over where the boundary lies between the competence of the Scottish Parliament and the competence of Westminster, but ultimately that would be a matter for the courts. It would be helpful if the Minister could indicate whether, if a similar protection were given to clergy in the Church of Scotland or other denominations within Scotland, it would be fully within the competence of the Scottish Parliament to legislate.

Lord Hunt of Wirral: In view of what the right reverend Prelate the Bishop of Southwark, said about the way in which legal advice has developed, I had better quickly declare my interest as a practising solicitor and the other entries in the Register. I am not sure what has happened, as the whole purpose of the Bill is to clarify and consolidate. Reading across the amendments that are being put forward, there is an attempt to make sure that everyone understands where they will stand and whether the status quo is being changed in any way. A lot of our debates will be about that. The world outside wants clarity, which is certainly the message that I have been receiving loud and clear from so many different lobbies.

Oversights can occur with lawyers from time to time, though I suppose that in this case it might be the parliamentary draftsman who is to blame. Although I bear my fair share of the blame, so far as Scotland is concerned, I think that the noble Lord, Lord Wallace, is right: we just need to know what effect the provisions will have. I thank the noble Baroness, Lady Gould of Potternewton, for continuously trying to clarify exactly what is happening. We await with great interest an answer to the question of whether it was indeed inadvertence or whether there was some other motive behind it. If so, the Committee deserves a full explanation.

Lord Mackay of Clashfern: I think that the present provisions are related to what was referred to rather politely as an "underdevelopment" of the legal advice, because it has been developed since. It was due to an idea that providing the services of a celebrant of marriage was not exercising a public function. Until now the law has regulated this and there is no doubt that it is a public function in England, Scotland and probably also in the other jurisdictions in the United Kingdom.

I also feel certain that this is a matter of equal opportunities and therefore well within the competence of the UK Parliament. I have no doubt that it would be possible to get the agreement of the Scottish Parliament insofar as there should be any risk in that respect, but I think that putting the provision in the Bill is perfectly competent, and I hope the Government share that view.

Baroness Thornton: I will speak to both Amendment 58A and Amendment 58B, but before I do, may I say to the noble Lord, Lord Hunt, that our job in this House is to test Bills, to test whether they work and to seek clarification of them, and therefore all our discussions are going to be about, does this work, does it do what it says it is going to do, do we think it will work and, occasionally, have we forgotten to put something in that might make it clearer? It is not a question of forgetting, actually; it is probably a question of a test that was done before it even reached the Floor of the House, where we tested it and found that, perhaps, it did not do quite what we intended.

Amendment 58A seeks to make clear that a clergyman of the Church of England, or a clerk in holy orders of the Church in Wales, will not be subject to a claim for discrimination on the grounds of gender reassignment when acting in accordance with Section 5B of the Marriage Act 1949. Section 5B allows a clergyman or clerk of the established church to refuse to solemnise a marriage if he or she reasonably believes one of the couple to have gained their legal gender under the Gender Recognition Act 2004. The 2004 Act was passed to provide transsexual people with legal recognition in their acquired gender. Under that Act, legal recognition of a person's new gender follows from the issue of a full gender recognition certificate by the gender recognition panel. Legal recognition of the new gender has the effect that, for example, a male-to-female transsexual person is recognised for all purposes as a woman in English law. On the issue of a full gender recognition certificate, a person is entitled to a new birth certificate reflecting the acquired gender and is able to marry someone of the opposite gender to his or her acquired gender.

The 2004 Act therefore amended the Marriage Act 1949 to provide clergy of the Church of England and the Church in Wales, who are under an obligation to solemnise the marriages of parishioners, with a clause that releases them from this obligation if they feel unable to solemnise the marriage of a person recognised in the acquired gender. The rationale of the relevant provision, Section 5B, is that a minister should not be obliged by law to act against their personal religious conviction on this matter. This provision is only necessary for clergy of the Church of England and the Church in Wales because they alone among denominations have a legal obligation to solemnise the marriages of their parishioners. This amendment seeks to make it clear that a person acting in accordance with Section 5B will not be liable to a claim for discrimination on the grounds of gender reassignment.

Although the Bill is not intended to cover this situation, we do agree that as a result of the Bill's broader protections for people who are undergoing or have undergone gender reassignment, there is a risk of claims being brought unless an exception such as this is put in place. Consequently, we are happy to accept the right reverend Prelate's amendment.

For Amendment 58B, a similar rationale applies. Although there is no legal obligation on religions or denominations other than the established church to solemnise marriages, those who solemnise marriages in those religions may also have personal religious concerns about conducting marriages involving people who have undergone gender reassignment. Currently they are able to refuse to solemnise marriages involving such people without any risk of a claim for discrimination. However, as with the established church, the Bill may raise questions as to whether any such refusals might give rise to claims for gender reassignment discrimination. We have always been clear that the Equality Bill's extension of protection from gender reassignment

discrimination should not interfere with the current position whereby people conducting religious marriages are not required to conduct a marriage where they reasonably believe that a person has undergone gender reassignment.

With this in mind, we agree that the position of religions other than the Church of England and the Church in Wales needs to be clarified, in case there was doubt that Part 3 inadvertently alters the position. We are therefore grateful for this amendment. In England and Wales, it will allow those, such as Catholic priests, who consent to the solemnisation of the marriage of a person in a registered building the same facility as clergy of the established church to refuse to marry people who have undergone gender reassignment without facing a claim for discrimination, as described by my noble friend Lady Gould. In Scotland, it will allow what it refers to as "approved celebrants" to decline to solemnise a marriage for the same reason. It defines approved celebrants by reference to the Scottish legislation: the Marriage (Scotland) Act 1977.

5.15 pm

Baroness Knight of Collingtree: The word "reasonable" worries me. My experience is that what is reasonable to one person is often not reasonable to another. Who will decide what is reasonable? How will that be implemented?

Baroness Thornton: "Reasonable" is a legal expression that will be used as a test should this come to court. We are trying to clarify the Bill to make it clear that we would not expect the clergy who are mentioned in these amendments to be vulnerable to claims for discrimination. In Scotland, these amendments will maintain the status quo once the Bill is in force. As the noble and learned Lord, Lord Mackay, said, these amendments are within the competence of the UK Parliament as this is discrimination law, not marriage law. I hope that that helps the noble Lord, Lord Wallace.

However, these amendments should not be seen as discriminatory against transsexual people. They do not add anything new; nor do they remove anything. Transsexual people have rightly gained the ability to be legally recognised in their acquired gender. As in other situations, however, this is an area where the Bill should strike a balance. In striking that balance, we agree that, as under current law, people of faith who have the ability to solemnise marriages should not be forced to go against their strongly held personal religious convictions.

Having taken this into consideration, the Government are very happy to accept and support Amendments 58A and 58B.

Baroness Gould of Potternewton: There is nothing for me to add. I thank the Government for accepting the amendment.

Amendment 58B agreed.

The Lord Bishop of Southwark: I thank the Government for accepting this amendment.

Amendment 58A, as amended, agreed.

Amendment 58C

Moved by ***Lord Lester of Herne Hill***

58C: Schedule 3, page 145, line 11, at end insert—

"Part 6A

Television, radio and on-line broadcasting and distribution

(1) Section 29 does not apply to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003).

(2) Sub-paragraph (1) does not apply to the provision of an electronic communications network, electronic communications service or associated facility (each of which has the same meaning as in that Act)."

Lord Lester of Herne Hill: This amendment needs to be considered together with Amendments 113 and 114, which were tabled by the noble Baroness, Lady Warsi, and which are designed to have a similar effect.

Their origin is the concerns expressed by the BBC and Channel 4 that the Bill could result in inappropriate interference with the editorial independence of broadcasters and so have a negative effect on the range and depth of programming. This was forcefully expressed to the Government, and I agreed to table amendments, originally together with the noble Baroness, Lady Howe, with that in mind. The drafting was not ideal, and the drafting of my amendment reflects a great deal of assistance I received, if I am allowed to say so, from the Government and their advisers. It has been agreed with the broadcasters.

The problem refers back to the kinds of problems to which the noble Lord, Lord Alton, referred. For example, if broadcast content is caught by the provisions in the Bill, the broadcasters were concerned that complaints about programming could be brought that might create double jeopardy for broadcasters, since those issues are already dealt with by the designated broadcasting regulators: Ofcom and the BBC Trust.

The sorts of examples—I do not want to multiply any more stupid examples—that came to mind were a claim of race discrimination on the basis that the broadcaster's dramas over a period of time had featured too few non-white people; or because they had shown a film that was thought to be offensive to a particular ethnic group; or a claim of sex discrimination on the basis that a programme was degrading to women; or a claim of race or religious discrimination in relation to a decision to broadcast a film offensive white people or white Christians, in circumstances where it would not have broadcasted a film offensive to non-white people or to Muslims; or a complaint in relation to a scheduling decision over what was broadcast in Holy Week, or on the Sabbath, or during Ramadan.

The noble Lord, Lord Alton, if he were here, would be glad to know that in the view of the broadcasters, those are not just theoretical threats. They have given as an example the West Midlands Police complaining to Ofcom that Channel 4's "Undercover Mosque" might have included material likely to constitute an incitement to racial hatred; or a group called the English group arguing that a programme called "The Seven Sins of England", which discussed anti-social behaviour from a current and historical perspective,

[LORD LESTER OF HERNE HILL]
was racist against the English. There was even a complaint, though it is not in the public domain, that "Carols from King's" included an incitement to racial hatred against Jews, because it included the Christmas gospel, John, chapter 1, verses 1 to 14, and the words:

"He came unto his own, and his own received him not."

It is good to have these examples, because it livens up *Hansard* a great deal. Those complaints are, as the broadcasters have pointed out, costly and vexatious, and they can have a chilling effect on programme makers. As the Bill allows for subjective tests about harassment to some extent, that again has caused some worry. I will not go on, but those are the kinds of concerns which gave rise to my amendment, which has an objective similar to those with which it is grouped. I beg to move.

Lord Hunt of Wirral: My Lords, I was very interested to hear the speech by the noble Lord, Lord Lester. As he knows, we have tabled similar amendments to Schedule 18, to exclude people involved in the public broadcast of programmes from having to abide by the provisions of the public sector equality duty. As the noble Lord has explained, the main aims are to ensure that the content of programmes being broadcast by public service broadcasters should not be inappropriately regulated.

Lord Lester of Herne Hill: I am sorry to interrupt, but I did not point out, as I should have done, that my amendment is concerned with Section 29, and services, not the public service duty, which I think is dealt with separately.

Lord Hunt of Wirral: That is quite correct. The amendment tabled by the noble Lord, Lord Lester, would mean that a broadcaster would not fall foul of the provisions regarding discrimination, as he has just explained, as laid out in Clause 29, which is headed, "Provisions of goods and services". Amendment 113, which I now speak to, would mean that the persons involved in commissioning, content, and broadcast of programmes, would be excluded from those groups who have due regard to the public sector equality duty. Amendment 114, in the names of my noble friends, would mean that any function connected with these activities would also be excluded.

We on these Benches think that it is wrong to include the content produced by public service broadcasters under the provisions of the Bill. The risk is that there would be inappropriate control and interference with their editorial independence, which could risk damaging the creative process, of which we are all very proud in this country, and may risk artificial constraints being placed on the range and depth of programming. I am sure that the whole House would not want to encourage that.

In another place, we received assurance that the Government completely agreed that the public sector equality duty should not apply to the commissioning, content and broadcast of programmes. As I understand it, the Government have produced a new website—lastminuteamendment.com. I carefully researched this website, which has been fully populated of late, particularly yesterday—we have yet to come to those amendments—but I could not see any amendment about this matter. Will the Minister point me in the right direction to find these exclusions? If we are still waiting for them to be drafted, could we have some idea of what timescale is involved?

Lord Mackay of Clashfern: My Lords, I am glad to notice that the noble Lord, Lord Lester, has made an exception to his general policy not to legislate against ridiculous examples by seeking to do it here. These amendments are highly desirable; but is the position of those who take part in the programmes protected? I will not add to the ridiculous examples, but there was a case of someone taking part in a programme who was investigated by the police on the ground of what he had said by way of his religious views about a certain aspect of social life. The position of those who take part in a programme, as well as the authorities which produce the programme, requires to be clarified. This may protect them also, but I am not certain of that.

Baroness Howe of Idlicote: My Lords, I second the amendment in my name and that of the noble Lord, Lord Lester, and I thought that he put the case brilliantly. All the examples given illustrate clearly how important it is to get this right. As the noble Lord, Lord Hunt, said, and as I understood it, there was an intention for the Government to take on the task of putting down an amendment. So I am surprised that all this time has gone by with nothing happening. I hope that a hitch has not occurred, because this provision is crucial. On the cost of the licence fee, I do not think that we want the licence fee, instead of paying for making programmes, to pay compensation to whoever is making complaints about the way in which they have been portrayed. I very much hope that the Minister will reassure us.

The Archbishop of York: My Lords, I, too, support the noble Lord, Lord Lester. I am glad that he has converted at last to the possibility that idiotic cases could be dealt with. However, his example from "Carols from King's" was from John, chapter 1, verse 11 and not verse 14. That said, I do not know whether I want to go a long way with the noble and learned Lord, Lord Mackay, about people appearing on programmes and expressing views which could be an incitement to religious and racial hatred. The law protects us from that side, and I would be more content to leave this issue where the noble Lord, Lord Lester, has left it.

Baroness Royall of Blaisdon: My Lords, Amendment 58C will provide an exception for broadcasters, such as the BBC and Channel 4, from the services and public functions provisions in Clause 29. This is intended to ensure that claims for discrimination, harassment and victimisation cannot be brought in relation to the broadcasting and online distribution of a contents service, as defined in the Communications Act 2003.

We agree with noble Lords opposite. It was never our intention that anything in this Bill should undermine the editorial independence of these broadcasters. The noble Lord, Lord Lester, has made an eloquent case for the exception, and we understand the concerns that have been expressed by the broadcasters themselves. The examples which have been cited—the ludicrous

examples—demonstrate the problems that exist, as well as livening up our proceedings. In the past, the legislation has left it to the courts to decide whether the content of broadcasting output is a public function. Our view has always been that it is not. However, despite this view, we understand that the broadcasters are being forced to spend large amounts of resources dealing with complaints of discrimination. More importantly, we understand that the threat of a successful discrimination case being brought against them in the future has a chilling effect on broadcasters when they are considering commissioning programmes concerned with difficult, challenging and sensitive matters relating to race, disability, et cetera.

This chilling effect can in turn deny the viewing public the opportunity to see controversial programmes that are an important means of prompting public debate. We have therefore concluded that including an exception for the broadcasters in the Bill in respect of the broadcasting and online distribution of content could provide certainty and ensure that the concept of editorial independence is protected. We are therefore happy to accept the amendment tabled by the noble Lord, Lord Lester, and the noble Baroness, Lady Howe of Idlicote, and I thank them both.

Amendments 113 and 114 are amendments to Schedule 18, paragraph 4. These amendments would except from the scope of the equality duty any person involved in the commissioning, content and broadcast of programmes, or any function in connection with the commissioning, content and broadcast of programmes. These amendments are identical to amendments tabled and debated during the Committee in another place. As then, the Government oppose these amendments because they are unnecessary. We have made clear on a number of occasions our intentions for the public service broadcasters and the equality duty in letters to the Director-General of the BBC in a Named Day Question answered by the Secretary of State for Culture, Media and Sport, and during Committee in another place, both of which are recorded in *Hansard*. I also responded to this point at Second Reading.

Our policy is that the duty should not apply to the broadcasting and output functions of the public service broadcasters. Editorial independence for broadcasters is a long-standing government policy and one we are committed to retaining, as our acceptance of the previous amendment has just shown. However, it is important that we list the BBC, Channel 4 and S4C in Schedule 19 and we will do so at the same time as we amend the rest of the list. When we list them in Schedule 19, we will explicitly exclude their broadcasting and output functions. Clause 149(4) makes it clear that if a body is listed in Schedule 19 in respect of certain specified functions, the duty will only apply to those functions.

There are no amendments from the Government that will appear on lastminute.com, as the noble Lord says, because we are having informed discussions with a wide number of public bodies about whether they should be included, including the BBC. We are working closely with the BBC and other broadcasters to define exactly what functions need to be excluded in order to respect editorial independence.

In due course, we will bring forward secondary legislation so that noble Lords will have an opportunity—

Lord Hunt of Wirral: I am following of course what the noble Baroness is saying, but it would be helpful to get some idea of timescale. As I understand it, she is saying there is no need for amendments to primary legislation because we will deal with this through secondary legislation, but I think we are not going to be able to share what is proposed until some later stage. It would be very helpful if some sort of time could be put on when we shall see the result of these discussions, please.

Baroness Royall of Blaisdon: I am told later this year. I cannot give a timescale. What I will try to do is come back to noble Lords in writing with more ideas—notwithstanding the fact that we are speaking to the various bodies involved—about the sort of things that we will be considering in secondary legislation so that noble Lords have more substance about the things that we will be proposing in due course.

Let me explain why listing broadcasters in Schedule 19 is preferable to setting out an exclusion. It is important to list these bodies in Schedule 19 because it means we can be clear about what functions of those broadcasters are subject to the duty and which are not. For instance, by listing the broadcasters we can be clear that certain functions such as those in connection with employment of its workforce are included. If we relied on the public functions provision of Clause 148(2) together with the exception for the commissioning, content and broadcast of programmes, then it would not be clear what other functions were subject to the duty. Indeed, some would argue that the employment of its workforce, for instance, would not be covered. That lack of clarity has been unhelpful to the broadcasters in the past, and we are in discussions with them to make sure we are clear on that for the equality duty.

The noble and learned Lord, Lord Mackay of Clashfern, and the right reverend Prelate, asked whether people who appear in broadcasts will be subject to the duty. Programme participants are not providing a public service and therefore are not excepted, but it is unlikely that they can be thought to be discriminating. Any comments giving rise to an accusation, for example—and I am grateful for the answer coming to me from the Box—racial hatred would be covered by other legal remedies, but that is something that I would wish to clarify in writing. It is a matter that I have some concern about as well and so I would wish to put this in writing to clarify it in my own mind as well as for noble Lords. I ask the noble Lords to withdraw Amendments 113 and 114.

Lord Lester of Herne Hill: We are delighted that the amendments standing in my name and that of noble Baroness, Lady Howe, have been accepted, and I am sure the broadcasters will be as well. On that point, I need to deal with two serious issues: first the teasing by the noble and learned Lord, Lord Mackay of Clashfern, of the charge of inconsistency. He said, as I understood it—and I have to deal with this very serious matter right away since it is so important—that he was glad that on this occasion I was legislating to deal with the silly and ludicrous examples. But why this really matters on this occasion is because of the chilling effect upon freedom of speech and broadcasting which the ability to bring those complaints under the

[Lord Lester of Herne Hill]
Bill would have. That is why it is important to deal with the chilling effect and why the amendment is so important.

The second and equally serious matter is that I am accused of misquoting the Bible and the Book of John. It is probably my poor enunciation. As a boy who went to a bad state school in my early years it is probably the disadvantage of that. I thought I said John, chapter 1, verses 1 to 14. If that is wrong, then I blame the BBC. It is very sad that the BBC does not know its Bible. That is the problem with a secular society that does not know its own Bible properly.

The problem with the public sector duty is that it is vital that broadcasters are included because of diversity, for example, and because they are committed by Ofcom's code and other provisions to full equality. As I understand it, they are not objecting to being included in the public sector duty and it is simply a question of negotiating in the right way. They are in consultation, which I am sure will lead to the correct result.

As to the individuals taking part in programmes, they are not providing a service to the public within the meaning of Clause 29 by participating in the broadcast. They are not performing a public function by doing so and, if they defame, incite to hatred or commit any other civil or criminal wrongdoing, they will be liable for doing so. I hope that that gives some assurance. We are not covering that; we are covering the editorial independence and judgment of the broadcaster. For all those reasons, I again thank the Minister, and the Box, and sit down.

Amendment 58C agreed.

Amendment 59

Moved by ***Lord Hunt of Wirral***

59: Schedule 3, page 145, line 17, leave out paragraph 30

Lord Hunt of Wirral: My Lords, the amendment is tabled in order to ask the Minister why there is a need to replicate provisions in the Disability Discrimination Act. Perhaps she can inform the House of the reasons for this exception.

Baroness Thornton: My Lords, Amendment 59 proposes the deletion of paragraph 30 of Schedule 3 which, at present, disapplies Clause 29—"Provision of Services, etc."—in Part 3 of the Bill in relation to transport by air in the context of disability discrimination and I am happy to expand on the need for this part of the Bill.

The Bill does not make it lawful to discriminate in the provision of services on board aircraft. Part 7 of Schedule 3 provides exceptions with regard to services and public functions only in relation to disability discrimination. The exemption with regard to disability is justified because a specific European regulation protects disabled air passengers against discrimination. European regulation 1107/2006 made it illegal for airlines to refuse to carry disabled and less mobile passengers, and airlines have to give assistance to all people of reduced mobility, including blind people. The EU regulation is directly applicable to the UK.

The enforcement regime is provided by means of a regulation contained in statutory instrument 2007/1895. Aviation is an international business and, as such, it makes sense to make rules on aviation issues internationally. We have a good new European law which has only recently come into effect in the UK. We therefore consider it unnecessary to change the current position whereby air transport services are exempt from the services provisions of the Disability Discrimination Act. Indeed, it would be inappropriate to do so. The existing law will apply to aircraft in respect of all strands other than disability, where European law applies. Therefore no amendment is necessary.

The amendment appears to be based on a misunderstanding, although I realise that it is a probing amendment. In seeking to delete paragraph 30, the amendment would delete the carve-out in paragraph 32, which is made in favour of European regulation 1107/2006, and this would be wholly inappropriate.

A disabled British passenger travelling by air in Europe knows that under the European regulation he or she is entitled to the same level of assistance in all 27 countries of the European Union and we do not want to damage that position in any way. It would be insufficient to rely only on domestic legislation in this area. To do so would result in different strands applying in different countries and would give little reassurance to disabled passengers travelling abroad in Europe. I ask the noble Lord to withdraw the amendment.

Lord Hunt of Wirral: I beg leave to withdraw the amendment.

Amendment 59 withdrawn.

Amendment 60 had been withdrawn from the Marshalled List.

5.45 pm

Amendment 60ZA

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

60ZA: Schedule 3, page 146, line 19, at end insert—

"( ) But provision by virtue of subsection (1) may not amend this Schedule—

(a) so as to omit an exception in paragraph 1, 2 or 3;

(b) so as to reduce the extent to which an exception in paragraph 1, 2 or 3 applies."

Baroness Royall of Blaisdon: My Lords, Schedule 3 currently contains a power for a Minister of the Crown to make an order varying, removing or adding to the exceptions to the services and public functions provisions in Part 3. This power is necessary to allow changes to be made in response to unforeseen circumstances and is subject to the affirmative procedure.

When we considered this power, the Delegated Powers and Regulatory Reform Committee recommended that it should not be used to omit or reduce in scope any of

the exceptions in paragraphs 1 to 3 of Schedule 3. These are the exceptions to the functions of Parliament—the preparation, making, consideration or approval of legislation—and the functions of the courts. Given the particular constitutional significance of these exceptions, it was considered more appropriate that they be removed or reduced in scope only by primary legislation in order to allow full parliamentary scrutiny. After consideration, we are happy to accept this recommendation. The amendment will amend the scope of the power accordingly and I hope noble Lords will support it. I beg to move.

Lord Hunt of Wirral: My Lords, perhaps I may ask the noble Baroness if there was ever any intention to use this part. I am not sure why it was put in the Bill in this way and I do not think the noble Baroness has explained that. Can she confirm what comes under the heading of "Parliament" in this context? Which parts of the workings of the Palace would be included if there was ever any such intention? I was going to ask all kinds of questions but I shall cut back on the amount of time. It would be helpful if the noble Baroness could clarify the background to all this. Most of us strongly agree with the committee's recommendation.

Baroness Royall of Blaisdon: My Lords, the power as a whole is necessary to allow for new and unforeseen circumstances that may affect what counts as the provision of services or the exercise of a public function. It also allows for any future policy change on the exception of air transport services from the disability provisions, enabling the exception to be varied or removed as appropriate. Such a need is recognised in existing legislation.

The noble Lord asked what we mean by the "functions of Parliament". As I understand it, it is to do with the preparation, making, consideration or approval of legislation—for example, debating, legislating and other proceeding—but not the parliamentary shop. It relates to the proceedings in the House, including debates and so on. I cannot enlighten the noble Lord any further at this instance.

Amendment 60ZA agreed.

Schedule 3, as amended, agreed.

Clauses 30 to 36 agreed.

Clause 37 : Adjustments to common parts in Scotland

Amendment 60ZB

Moved by ***Lord Hunt of Wirral***

60ZB: Clause 37, page 20, line 25, leave out subsection (1)

Lord Hunt of Wirral: My Lords, the amendment seeks to leave out subsection (1) of Clause 37, which gives Scottish Ministers the powers to make regulations to provide that a disabled person can make relevant adjustments to common parts in relation to some residential premises in Scotland. Amendment 136ZC seeks to leave out the relevant regulations from Clause 202, which refers to the powers exercisable by Scottish Ministers.

The Minister will be aware that we tabled these amendments to probe the Government's thinking about why such a substantial power was delegated to Scottish Ministers. This was a concern raised by the Delegated Powers and Regulatory Reform Committee in its second report, to which we have already referred. This report stated that the clause had introduced quite a considerable reform because the Disability Discrimination Act 1995 is a reserved matter under the Scotland Act 1998. In response, the department produced a very helpful brief which stated that equal opportunities remains a reserved matter under the Scotland Act and reserved matters are outside the legislative competence of the Scottish Parliament. Under this Bill, despite equal opportunities remaining a reserved matter, the policy in relation to common parts has been considered necessary to give to Scotland the power to make regulations where they see fit. This is, I understand, partly because the regulations would need to fit into many areas of devolved law—such as property law, contract and civil justice.

This document appears to answer many of the questions left unanswered in the Explanatory Notes. Can the Minister inform the House of the consultation and discussions which were had with the Scottish Executive? For example, can she share with us the intention of the Scottish Ministers regarding using this power? The document states that the various limbs of the power are necessary to ensure that the process for Scotland will contain the same main elements as are provided for in the English and Welsh process. It would be interesting to be made aware of whether the Scottish Ministers' intention was to use them in the same way. I beg to move.

Baroness Thornton: Amendment 60ZB would remove a power conferred on Scottish Ministers that would permit them to establish a distinct process by which disabled people could gain consent to, and have made, disability-related alterations to the common parts of residential accommodation in Scotland. The noble Lord, Lord Hunt, is right that we are trying to reconcile the different legal framework in Scotland. I am happy to explain further.

The Delegated Powers and Regulatory Reform Committee in its second report of Session 2009-10 said:

> "The House may wish to invite the Government to justify in more detail the delegation to Scottish Ministers of this substantial power".

The Solicitor-General sent the Government's response on references to the Equality Bill in its second report to the committee. It includes a detailed memorandum on the case for the power in Clause 37. This memorandum is now included in Appendix 2 of the committee's third report of Session 2009-10. It is my sincere hope that the reply and the memorandum will satisfy any residual concerns over the power in Clause 37.

This power is necessary to ensure that disabled people in Scotland have similar rights to those in England and Wales. Clause 36 and Schedule 4 create a framework for enabling certain disabled tenants and other occupiers of property to have alterations made to the structure of the common parts of that property. This is the case where such alterations are a reasonable

[Baroness Thornton]
way to reduce or avoid the disadvantages experienced by the disabled person using the common parts. Examples of the kind of alteration that fall into this category are: the fitting of a stairlift to enable the disabled person to go up and down stairs, providing a ramp for entry and exit to the property, or the widening of a doorframe to allow a wheelchair through. Measures such as these can make all the difference to a disabled person's ability to get out and about.

Making similar provision in Scotland is not straightforward, for three reasons. First, in terms of devolution powers, this subject is at the interface between a reserved matter—discrimination—and a devolved one—housing law and the landlord/tenant relationship, where that exists. Secondly, land law in Scotland is very different to that in England and Wales. Particularly relevant to the Scottish power is the fact that is it common to have joint ownership of common parts in Scotland, which does not arise in England and Wales. Thirdly, these difficulties are compounded by the fact that the Scottish Parliament has already passed legislation giving some tenants in Scotland the right to make alterations for similar purposes to those in Clause 36. In those cases, tenants already have a process in place to facilitate making alterations.

The power in the Bill is needed because Scottish legislation cannot cover two specific situations. These are when a landlord wishes to give consent to his tenant but the work cannot be undertaken because he does not own the common parts, and when disabled owner-occupiers cannot undertake the work themselves because they need the consent of other joint owners. In these cases there will be no provision to ensure that disabled people are able to undertake the necessary alterations to enable them to use the common parts of the property. It would have been possible for the Equality Bill to have made provisions solely in relation to these two situations, but that would have left tenants wishing to make an alteration to have to consult two different sets of legislation—Scottish legislation in relation to seeking their landlord's consent, and the Equality Act in relation to the consent of other joint owners of the common parts. This would make an already complicated process even more difficult and discourage many disabled people from seeking consent. Of course, throughout this process we have been discussing this with our colleagues in Scotland who understand the complications very well.

It was decided, therefore, that in these specific circumstances the best way to protect Scottish disabled people not covered by the Scottish law was to grant Scottish Ministers the power to make regulations to remedy the gaps in their legislation so that all the provisions that the disabled tenants and owners need are in one place, thus helping to facilitate the use of these provisions. Through Clause 37 we are also providing for Scottish Ministers to consult a Minister of the Crown before making the regulations, and for the regulations to be subject to affirmative procedure in the Scottish Parliament. This is considered the appropriate level of scrutiny, given that the provisions made under the power will have an impact on property rights and, by virtue of Clause 199, will be capable of amending primary legislation.

In answer to the noble Lord's question about consultation, this was done by request from Scottish Government officials and disabled people in Scotland, who recognised that this was an issue that we needed to address. I trust that noble Lords will agree that the provision in Clause 37 will significantly benefit disabled people in Scotland by ensuring that they, like disabled people in England and Wales, can benefit from improved access to the common parts of their premises. I hope that explanation has gone some way to reassure the noble Lord.

Lord Mackay of Clashfern: This is an excellent provision in so far as Scotland is concerned, and I congratulate the Minister on her accuracy in expressing the difficulties that exist in this particular area of the law in Scotland. I am just wondering why Scottish Ministers must consult a Minister of the Crown. I suppose it is something to do with co-ordination.

Baroness Thornton: The noble and learned Lord is correct. It is to do with co-ordination to make sure that we marry the wording used in both countries so that there are no gaps or conflicts.

Lord Hunt of Wirral: That was a very helpful outline. In the circumstances, I beg leave to withdraw the amendment.

Amendment 60ZB withdrawn.

Clause 37 agreed.

Clause 38 agreed.

Schedule 4 : Premises: reasonable adjustments

Amendments 60A to 60D not moved.

Schedule 4 agreed.

Schedule 5 agreed.

Clause 39 agreed.

6 pm

Clause 40 : Employees and applicants: harassment

Amendments 61 to 63 not moved.

Clause 40 agreed.

Clauses 41 to 52 agreed.

Schedule 6 agreed.

Clauses 53 and 54 agreed.

Clause 55 : Employment service-providers

Amendment 64

Moved by ***Lord Hunt of Wirral***

64: Clause 55, page 36, line 14, at end insert—

"( ) An employment service-provider must not ask for details of an applicant's health or disabilities before an offer to which subsection (1) applies has been made, except in so far as is necessary to make reasonable adjustments to the selection process."

Lord Hunt of Wirral: My Lords, we now turn to the much discussed provisions regarding pre-employment inquiries and their place within the recruitment process. As the Minister will know, we on these Benches believe that employers should not be permitted to make use of pre-employment health-related questions which are not directly relevant to the candidate's ability, in particular for the job for which they have applied.

We were therefore delighted that, in another place, the Solicitor-General took on board the concerns that we had in this respect and stated that,

"I am engaged with the issue and am impressed by the arguments".—[*Official Report*, Commons, Equality Bill Committee, 18/6/09; col. 374.]

That is language that I would love to hear much more from the Government in this place. Nevertheless, we were disappointed with the new clause which the Government brought forward in response to our worries. For this reason, we have retabled some of the amendments which were discussed in another place.

Amendments 65 and 66 would mean that an employment service-provider would not be able to ask any questions about health or disabilities as they would apply to arrangements made about the provision of the service, except as it was necessary to make reasonable adjustments to the selection process. Amendments 66 and 67 would apply the same proviso to the clauses dealing with trade organisations.

We have also tabled an amendment to remove Clause 60, which, as I have mentioned, the Government inserted on Report in another place, because it does not go far enough. Further to this, we have tabled alternative Amendments 69 and 136A, which cover the issues more adequately and which I hope mean that we will now have a debate during which we find a solution that is more acceptable to all concerned.

Clause 60 goes some way towards addressing our concerns regarding pre-employment questions around health or disability. We are very grateful for the efforts made in drafting the new clause. As the Explanatory Notes state:

"This provision will deter employers from asking questions and therefore opportunities for direct discrimination in recruitment".

It will do this by making it easier for an applicant with a disability to take their case to a tribunal if they feel that they have been discriminated against in the application process. The inquiries, however, are not strictly prohibited. I think I am right in saying that it is hoped that easier access to a tribunal, where the case can be made on the very existence of a pre-employment questionnaire and where the burden of proof is on the employer, would act as a strong enough disincentive to employers.

However, the crucial issue here is not just to make the tribunal process easier but to make it much more difficult for employers to ask health or disability-related questions in the first place, before a job offer is made. This is why the Disability Charities Consortium has stated that while they,

"welcome the Government's efforts to restrict the use of disability-related questions",

the provision needs much,

"strengthening in order to act as an effective deterrent".

Mind, the National Aids Trust, Rethink, the Royal College of Psychiatrists and the Terrence Higgins Trust have also made it clear that they,

"regret that the new clause does not go as far as prohibiting pre-employment inquiries altogether".

There are many reasons to bemoan the Government's new clause, which, while it is a welcome movement on the issue, addresses the issues only in a limited fashion. The Disability Charities Consortium has pointed out that it would take a very confident person with a disability to claim that they knew that the only reason for which they had not been selected for the job was their disability. I am sure that we have all in our time experienced the dejected feeling which comes from being rejected for a job for which we have applied. Would most around this Chamber acknowledge that that gives a pretty severe knock to one's confidence? In this position, there is a great risk that a disabled person, or a person with a mental health issue or HIV, may not have the confidence or may even feel that it would be arrogant to claim that the only reason for which they did not get the job was discrimination.

Furthermore, I am aware that there is considerable stress involved in taking a case to tribunal, in particular where it has to be acknowledged that it will be very difficult to prove the case conclusively one way or the other. The Disability Charities Consortium recognises the merits of the shift of the burden of proof so that employers must demonstrate that they did not use the question to discriminate. Nevertheless, the person with disability still has to take the case to court, and questions about disability in relation to employment are not as clear cut as those about, for example, marital status. The latter are easily defined as discrimination, but the former could be counted as having some relevance for the job. We are therefore entering a very tricky area and we do not think that the Government have come far enough forward on it. I wait to hear from the noble Baroness on this point.

There is the further difficulty that at least part of the problem is to do with the fact that if people with a disability know that questions may be asked, they might be put off applying for a job in the first place. Part of the problem, therefore, is not addressing cases which have arisen but the general perception held by many people with a disability—or to go further than our amendment, people with HIV or a mental health problem—that they will be severely disadvantaged in the job market if they are questioned about this issue.

A recent Rethink survey of more than 3,000 mental health service users showed that half of respondents felt that they had to hide their mental health problems, and that as many as 41 per cent were put off even applying for jobs because of the fear of discrimination by employers. This evidence is further underlined when one sees that the employment rate for people with mental health illness is just 13.3 per cent. I suppose that this is perhaps not surprising when looked at in conjunction with the survey of employers by the Chartered Institute of Personnel and Development, which showed that more than half of respondents would not even consider recruiting from the "core jobless" group, which includes people with drug or alcohol problems, a criminal record or a history of mental health issues.

[LORD HUNT OF WIRRAL]
We therefore need a clear and unequivocal signal that this is not acceptable. As Clause 60 stands, this is not the case.

We have therefore tabled Amendment 69, which would go much further by making it much more difficult for employers to use pre-employment questionnaires in relation to disabilities. There would of course be cases where this is necessary; our amendment allows inquiries for the purposes of "reasonable adjustments" for the interview process, an anonymised written question to allow monitoring of disabled people, and for the purposes of positive action. The prohibition will not apply either when a question is necessary to ascertain whether an applicant would be able to perform a specific employment function. Against that background, I look forward to the Government's response.

We have also tabled Amendment 136A in this group, to give enforcing sanctions to the Equality and Human Rights Commission. The sanction would have a wide scope and give the EHRC a power to take action against employers without there being a need for a direct victim, which would allow redress for system breaches of the law. The sanction can therefore be used by the EHRC to send out a clear message to employers about their actions. However, it is also a sanction limited to use by the EHRC only and is not an additional sanction for individuals.

It was rightly pointed out in another place that there were no enforcing sanctions to add the weight of the law to our provision. I believe we have remedied this and I hope that is going to encourage a positive response from the Government. We acknowledge that, as it stands, Amendment 69 only addresses questions to do with disability and not health. As we have just been discussing, there is clearly a case for including health questions under the prohibition as well as those relating to disability. This is partly because, as we have seen in previous debates, the definition of disability can cause difficulty for those with mental health issues in particular. Furthermore, there is the issue of clarity, to which I referred earlier. It is difficult to separate a question about disability from a question about health. However, if both were covered, this would give businesses a simple direction and the flexibility to ask the questions that they need to and avoid those which they do not.

I say to the noble Baroness, the Chancellor of the Duchy of Lancaster, that I understand that we are going to have our photograph taken together. Excuse me for stressing this, but I am so thrilled that we now have such a senior Member back as chancellor. I am a previous holder of that great title. If I am allowed to digress for a moment, the noble Baroness may discover that she is now about the most senior person. When attending Privy Council she will take precedence over all the people in the Cabinet. If I am allowed to mention this, I remember the noble Lord, Lord Heseltine, standing at the head of the queue, waiting to go in, and I slipped gently in front of him. I shall never forget that. Anyway, I am not supposed to refer to things like that.

I mentioned a little earlier that the Government set up a new website, lastminuteamendment.com. At the eleventh hour, and I really do mean that, only yesterday, we were shown that the Government had published amendments that appear to take many of these concerns on board. If that is the case, we are delighted that the Government now at last see the problems with the clause that they inserted into the Bill at Report stage in the Commons. These amendments seem to address our core concerns—they specifically prohibit health-related questions except under prescribed circumstances until a job offer has been made and, also, as our amendments did, they include a strong sanction from the EHRC.

We welcome these amendments and their intentions. However, given that they were tabled at the last minute and although I did try to work a 24-hour day yesterday—much to the chagrin of my family—I have not had the opportunity to go through them in minute detail. We are going to accept these amendments for now, as we believe that they go a very long way to meeting our concerns. However, I hope that the Minister will accept that there may be outstanding issues in them which will require further scrutiny at a later date.

In responding to these amendments, can the Government say whether there are any other outstanding issues that they are still considering and whether we can expect further amendments? It may be an opportunity, as I so rudely referred to the new website lastminuteamendment.com, for us to be given some idea of what further amendments are going to emerge from the Government over the coming days. I beg to move.

6.15 pm

Lord Lester of Herne Hill: My Lords, I am a little shocked by the noble Lord's speech as I had thought that being a Privy Counsellor and speaking on Privy Council terms involved a high degree of confidentiality and secrecy. What I have just heard seems to me to be a breach of those terms and also the most unwelcome reference to the seniority of the noble Baroness the Minister. I am not sure that it should not all be struck from the record.

However, I support the whole of the proper part of the noble Lord's speech, which I found wise and compassionate and to the point. I agree with what he has said. I would like clarification on just one point that he made. One of his amendments is to give the power to the Equality and Human Rights Commission to deal with persistent discrimination even where there is no victim. I do not have the last Equality Act in front of me, but my memory is that the power already exists for the Equality and Human Rights Commission to be able to deal with persistent discrimination in the absence of a victim, the commission only doing so. I hope that that the Box and the Minister agree with that. Having said all that, we are shoulder to shoulder.

Baroness Royall of Blaisdon: My Lords, perhaps I should speak to the government amendments now—and perhaps I should call the noble Lord my noble kinsman. It is getting terribly exciting. The government amendments were tabled on Friday. I recognise that that gives noble Lords very little time to look at them. However, as noble Lords will know, there has to be a clearing process throughout government. I apologise for the lateness of amendments and will try to give further notice in future. I shall speak now to Amendments 69A, 69B, 69C, 69D, 69E, 69F, 69G, 69H; 108R and 136ZD.

We introduced Clause 60 at Report in the other place to respond to concerns put to us by disability organisations. There was compelling evidence that disabled people are being discriminated against by having their initial applications rejected by some employers once they are aware of a person's disability. In addition, and as the noble Lord said, the widespread use of pre-employment enquiries can act as a deterrent for some disabled people making applications for work.

RADAR told us that restricting the use of pre-employment enquiries,

"is probably the single biggest difference and improvement that could be made through the Equality Bill in relation to the employment of disabled people".

However, disability organisations continue to have concerns and have told us that Clause 60 does not go far enough. Since Report stage in the other place we have had conversations with disability organisations about what might be the best way forward. This set of amendments strikes us as being the best way. There are numerous amendments, but I will be brief.

Amendment 69A makes it an unlawful act under the Equality Act 2006 to ask health questions of all applicants except in prescribed circumstances and so enables the Equality and Human Rights Commission to exercise its existing enforcement powers in relation to this issue. It seems to me that these powers might be exercised most beneficially were the EHRC to identify evidence of a systemic breach of Clause 60(1). Amendment 69A extends the period during which only permitted enquiries can be made up to the stage of making a job offer, whether conditional or unconditional, or selection to a pool of successful candidates where the person recruiting is not in a position to make a job offer for procedural or other reasons.

We were persuaded that this is a more appropriate stage in the recruitment process at which to allow questions because of the two new exceptions which I will describe. We believe this strikes the right balance between the needs of employers to find the best candidate for the job and applicants not to be asked questions about their health that are not relevant to the job. Amendment 69B would permit someone recruiting to ask questions to establish whether an applicant is able to undergo an assessment involving, for instance, participation in a group physical exercise or demonstration of an applicant's ability to carry out a function that is intrinsic to working safely.

Amendments 69C and 69D would enable someone recruiting to ask questions to establish whether an applicant would be able to undertake an essential function of the job. In purely practical terms this makes sense. For example, a vacancy in a warehouse may require that the successful candidate be able to manually handle goods and operate a forklift truck as an essential function of the job. A person recruiting for work would want to establish that the successful candidate can carry out such tasks, with reasonable adjustments if necessary.

I shall not dwell on Amendments 69F and 69G, which offer interpretations of phrases used earlier in the clause, nor on Amendment 69H, which deletes a subsection now embedded in Amendment 69A.

Finally, the consequential Amendments 108R and 136ZD ensure, respectively, that only the EHRC can enforce the unlawful act described in Amendment 69A and add a contravention of Clause 60(1), or contraventions that relate to Clause 60(1), to the unlawful acts to which Section 24A of the Equality Act 2006 on supplemental enforcement powers applies.

This is a balanced and comprehensive set of amendments, which I am pleased to note has the support of disability organisations and the EHRC. The noble Lord cited the comments of many disability organisations on Clause 60 as it stands. Since we tabled the new amendments, however, Rethink, the mental health charity, has said:

"The government's decision to introduce the amendment should put a stop to this discriminatory employment practice which deters so many people with mental health problems from applying for jobs. It could mark a turning point in equal opportunities".

We understand that the National Aids Trust will be making a supportive statement on the amendments, and the Equality and Human Rights Commission has said:

"The Commission strongly welcomes the Government's amendments to prohibit the use of pre-employment questionnaires, except in prescribed circumstances. We also welcome powers to take action in respect of organisations which contravene this prohibition".

The noble Lord rightly said that disabled people should not be put off applying for jobs from fear of discrimination. We believe that the amendments that we are proposing today address those concerns and I have no hesitation in commending these amendments to the Committee.

It might be helpful if I responded to the noble Lord's amendments—or do noble Lords wish to speak before I do? I shall speak to the amendments tabled by the noble Baronesses, and then there will be further debate if noble Lords so wish.

Lord Hunt of Wirral: Have I been promoted?

Baroness Royall of Blaisdon: Yes, you have been promoted. This is an Equality Bill.

I suggest that Amendment 64, tabled in the names of the noble Baroness, Lady Warsi and Lady Morris of Bolton, is not required, as employment service providers are already within the scope of Clause 60; and that Amendment 65 is not required, as we have no evidence that victimisation is an issue where pre-employment enquiries are concerned. Victimisation is about acting against someone because they have made or supported in some way action under the Bill, but we cannot envisage situations where the fact that they had done so would be revealed in questions asked about health in recruitment.

Amendments 66 and 67 would restrict the situations in which a trade organisation may make health-related enquiries when making arrangements for deciding who to offer membership to. We are resisting this amendment because we do not have any evidence to suggest that trade organisations make use of these types of pre-applicant enquiries. In addition, we have no evidence that when they do make these types of enquiries they use the information gained for discriminatory purposes.

[Baroness Royall of Blaisdon]
We therefore believe extending protection in this way is unnecessary. Should noble Lords have evidence to the contrary, it would be useful to have it.

Amendments 68, 69 and 136A cover similar territory and have similar objectives to the government amendments that I have moved. I would suggest that the government amendments do the job more thoroughly, if I may put it that way. But there are aspects of Amendment 69 that we do not agree with. We believe that it is unnecessary to legislate to require employers to specify why they are asking disability-related questions, how the information will be used and that there is no requirement to provide the information. We have ensured that the clause restricts opportunities for asking health questions to specified and legitimate circumstances. It is a matter of good practice if an employer wishes to clarify further the reasons why it is seeking the information.

We consider that it would be impractical to legislate to require information gained for health questions to be anonymised and kept separate from the application form. For example, small employers with no separate human resources department would not be able to anonymise disability-related information and keep it separate from interviewers. We believe that such a provision might be considered good practice and might be included in guidance and codes of practice on the Bill rather than in the Bill itself.

For those reasons, I respectfully request that noble Lords opposite withdraw their amendments, although I understand that there will be further debate on this matter.

Baroness Knight of Collingtree: My Lords, in the name of consistency, and because the word "reasonable" always worries me and because it appears in these amendments, I ask the Minister if I am right in thinking that, for instance—bearing in mind what she said when she raised a certain case about a warehouse a little while ago—if a man came along to apply for a job as a bus driver, it would be reasonable or right to ask him if he had any connection or ever suffered from epilepsy? There are cases like that, which one can think of clearly, which would be reasonable—not barring him on his own health grounds but because he might, in exercising the job, be a danger to others. I think I am right in thinking that what the Minister said would make it perfectly safe and that the public would not have to lose their protection against such questions.

Lord Lester of Herne Hill: Before the Minister answers that, perhaps she will agree with me that "reasonable" is used throughout legislation as a legal test, but as a matter of fact and degree. It depends on the individual circumstances and is context-specific, so Ministers cannot be expected to answer questions about specific cases as though they were courts.

Lord Low of Dalston: As the Minister—indeed, the Chancellor of the Duchy of Lancaster—has said, these amendments have been widely welcomed by disability organisations including RADAR. However, RADAR raised a couple of areas in which it felt that further clarification would be helpful. I hope that the Minister did not cover these points in her long and complex presentation—although it was eminently lucid. I apologise to her if she has touched on them already, but I do not think that she did.

First, RADAR asks what the intention is behind subsection (3) of Amendment 69A, which says that asking about health is not itself a contravention of a relevant disability provision but that relying on the information given could be. It is believed that it is to do with ensuring that disabled individuals can claim discrimination only if they have actually suffered less favourable treatment. It should not restrict the EHRC enforcement power, but it would be helpful if the Minister could give us clarification on that.

Secondly, RADAR would welcome clarification about the extent of the exemption in Amendment 69C, which permits employers to ask questions if it is necessary to establish whether the applicant,

"will be able to carry out a function that is intrinsic to the work concerned".

While it is agreed that employers should be able to ask questions related to the physical and mental requirements of the job, it is not thought that that needs to involve questions about disability or health. For example, for the post of a PE teacher, a school might ask applicants to demonstrate that they are physically fit enough, but it should not ask whether they have any specific impairments or health conditions that would limit their suitability for the job. Likewise, the post of a political adviser will demand the ability to cope under pressure. I am not sure how many political advisers have to do that, but there you are—it may be that sometimes they do. Again, it is thought that applicants may be asked for evidence of how they have coped under pressure in the past, but they should not be asked whether they have had bouts of depression, for example. An applicant for the post of pilot might have to show a minimum number of flight hours to demonstrate their physical capacity to do the job—for example, being able to see the flight instruments or communicate with the flight tower—without the need for specific questions about their sight or hearing. It may be that, in responding to these questions, the Minister will also be able to deal with the point raised by the noble Baroness, Lady Knight of Collingtree, about epilepsy. Anyway, I would be extremely grateful if the Minister could take these points on board in her wind-up.

6.30 pm

Baroness Campbell of Surbiton: My Lords, I also strongly welcome the Government's amendments, again—I had better not make it a habit. I was going to ask for clarification on two points, but I think they have been covered by the noble Lord, Lord Low, so I will leave it and await the answers.

I too feel very strongly about this amendment, having gone through many interrogations from interview panels in the past. I would love to spend the time telling noble Lords stories of some of the questions I have been asked—your toes would curl—but another time.

Baroness Gould of Potternewton: My Lords, I did raise this issue at Second Reading as chair of the Independent Advisory Group on Sexual Health and

HIV, and I was particularly concerned about the question for people who suffer with HIV. My noble friend said that the National AIDS Trust would be putting out a report very quickly; I have received e-mails from it in the last two days telling me how wonderful the Government are. It is absolutely delighted with the change, and says that it really appreciates what the Government have done to address the concerns that it and mental health organisations have raised, following the original Clause 60 that was carried in the House.

I have to say that I read it and, until I got a proper briefing, I was not sure exactly what the Government had done, because it is very complex. Nevertheless, it appears that there is a need to genuinely congratulate the Government on the new amendments which will ensure that the new Clause 60 prohibits the use of pre-employment health questionnaires. Obviously, this is a significant improvement on the original wording. There is no doubt that prohibiting these questionnaires will have an enormous impact. For those with disabilities, particularly stigmatised conditions such as HIV, the very presence of pre-employment health questionnaires can be enough to deter someone from carrying on with an application. Therefore, the Government's amendments today are an extremely welcome step forward which I genuinely believe will remove one of the barriers to disabled people entering the workplace.

Baroness Royall of Blaisdon: I am grateful to noble Lords for their welcome of the government amendments, which have been crafted to respond to some of those toe-curling stories. I have not heard these from the noble Baroness, Lady Campbell, but we have heard similar stories from other people which have made us determined to address these issues.

The noble Baroness, Lady Knight, spoke of the word "reasonable". As the noble Lord, Lord Lester, said, it is a legal term which is used constantly in the courts. It would not be proper and it would be impossible for me to define the term "reasonable". The noble Baroness cited the case of a bus driver with epilepsy. I should reassure her that if one has epilepsy one is not allowed to have a driving licence, so that is relatively easy to answer. I understand that that is the case because I have family members who have epilepsy and who are not allowed—

Lord Hunt of Wirral: There is a time factor.

Baroness Royall of Blaisdon: There is a time factor—I beg your pardon—of one year after the cessation of fits. I think in that case it would be a relevant question for people to ask.

The noble Lord, Lord Low, mentioned subsection (3). The interpretation that he suggested is correct: subsection (3) means that asking about health is not of itself an unlawful act, but relying on the answer to act in a discriminating way may well be. The EHRC's enforcement powers are unaffected. I hope that that clarifies that point.

Lord Low of Dalston: My Lords—

Baroness Royall of Blaisdon: I have more answers, but you are welcome to speak.

Lord Low of Dalston: On that point, it is clear that the clause makes it admissible to ask questions about health but that employers may not rely on the information derived from the answers. Does that mean that the applicant will have to have suffered less favourable treatment before the questions will be inadmissible?

Baroness Royall of Blaisdon: No, I do not think it does mean that applicants have to have received less favourable treatment before the questions are admissible, but I might well return to that shortly.

I turn to the extent of questions. Any questions asked must fall within the specified exceptions. In particular, only questions which are required to carry out an essential aspect of the job would be permitted. In relation to the examples that I cited earlier about a forklift truck driver, only questions which related to his or her ability to use heavy-lifting equipment and to drive the forklift truck could be asked. Therefore, a question on one's mental illness from a previous time would probably be inadmissible.

I come back to some of the questions from the noble Lord, Lord Low. There are valid reasons for each of the permitted situations. We believe that we have achieved a balance between allowing inquiries in legitimate circumstances and limiting scope for abuse. Employers who make precluded inquiries and then use the information to reject candidates from further consideration, or for employment, will be liable to challenge at a tribunal. The tribunal could decide on whether, in acting in this way, the employer had contravened the relevant employment provision of the Bill. We believe that this will be a deterrent to employers in the way in which they gain new staff.

I am grateful to my noble friend Lady Gould, not only for raising this along with other noble Lords on Second Reading, but also for the endorsements that she brings to the Committee. I return again to the secondary questions from the noble Lord, Lord Low. The applicant would have to have suffered discrimination in order to make a claim, but in any event the commission could enforce the ban on such questions. I hope that makes sense.

Lord Mackay of Clashfern: The noble Baroness mentioned an answer to the noble Baroness, Lady Knight of Collingtree, on the question of "reasonable". The truth is that "reasonable" is an ordinary English word. It is not a legal term invented by lawyers. When lawyers framing laws cannot think of detailed criteria by which actions should be judged, they speak of "reasonable" as the best test that can be used, but it is the ordinary meaning of "reasonable" in the English language that applies.

Baroness Royall of Blaisdon: I am grateful to the noble and learned Lord for clarifying that point. Clearly, it is a usual use of the word. It is a word that is used in the courts, but it is with the normal use of the word that we should interpret these clauses.

Lord Hunt of Wirral: I am very grateful to the noble Baroness. My noble and learned friend has explained not only that "reasonable" is an ordinary English

[Lord Hunt of Wirral]
word, but that it is the role of courts to interpret words—ordinary words, every word—under our doctrine of stare decisis and ratio decidendi. It is a long time since I learnt all this. Parliament should not impose on the courts the use of the word "reasonable" when it is an excuse for not having reached a decision. I thank my noble and learned friend.

Lord Lester of Herne Hill: Does the noble Lord accept that when you have issues that involve a spectrum of choices as a matter of fact and degree, ranging from what is clearly unreasonable to what is reasonable, you have to decide them on a case-by-case basis? The courts do that all the time in all kinds of contexts. Therefore, we should not tease Ministers with vexing questions which the courts might have to answer, nor criticise them for putting in a well-known ordinary word that is used in legislation in those contexts.

Lord Hunt of Wirral: This was no criticism. I clarify to the noble Lord that I was merely explaining in a way that I hoped might satisfy my noble friend. I have great difficulty in understanding the relationship between the noble Lord, Lord Lester, and me. As a solicitor I normally instruct the barrister—although not enough, he says. Anyway, I am very grateful to him.

Baroness Butler-Sloss: On a not entirely serious point, the word "reasonable" is entirely reasonable if correctly spelt. It is not correctly spelt in subsection (3) of the proposed new clause introduced by Amendment 69.

Lord Hunt of Wirral: I think this is a resignation issue for me as international chairman of the English Speaking Union. I did not think I needed a judicial opinion but I got one. I greatly respect the noble and learned Baroness.

This has been a very helpful debate. I thank the noble Lord, Lord Low, the noble Baroness, Lady Campbell of Surbiton, for the points that she made, and the noble Baroness, Lady Gould of Potternewton, who added some very important points.

Finally, to continue my dialogue with the noble Lord, Lord Lester of Herne Hill, may I explain that I was not breaching any privy counsellor terms? I was merely describing the queue outside the Privy Council, not the proceedings within it. That would be outrageous, although it has not stopped some people writing about such things in their memoirs. I have yet to enter that fray and I hope I never will.

I thank the noble Baroness the Chancellor of the Exchequer—

Noble Lords: Oh!

Lord Hunt of Wirral: I was just checking. The noble Baroness nodded when I said that. Perhaps there is a reshuffle going on. I remember when, as a Minister, I was talking once when a note was passed to me that said, "You have been moved to another department". There is only one true Chancellor, created in 1396, and that is the Chancellor of the Duchy of Lancaster.

I say a word of thanks to the various organisations that have taken up these issues so well and explained them to us. I hope many of them will now scrutinise the amendments of the noble Baroness with the same degree of clarity that they have scrutinised mine, just to make sure that we have got this right.

6.45 pm

Baroness Royall of Blaisdon: For the record, in response to the noble Baroness, Lady Knight, on the question of epilepsy, I am not entirely sure what the situation is. I would not want to mislead noble Lords so I will write to the noble Baroness and put a copy of the letter in the Library of the House.

To add to all the arguments that have swirled around on "reasonable", I am told that what is objectively reasonable in any particular circumstances depends on the particular facts.

Lord Lester of Herne Hill: The noble Baroness has not made it clear whether the photograph referred to by her and the noble Lord, Lord Hunt, was taken inside or outside the Privy Council.

Lord Hunt of Wirral: I am not sure that the noble Baroness and I could be part of the same Privy Council. I understand that there is to be a very important occasion when all present and past Chancellors of the Duchy of Lancaster will be photographed with Her Majesty the Queen. A similar occasion happened nine years ago, in which I was proud to participate with several other noble Lords.

I will just say "thank you" again. We will scrutinise further but, in the mean time, I beg leave to withdraw the amendment.

Amendment 64 withdrawn.

Amendment 65 not moved.

Clause 55 agreed.

Clause 56 agreed.

Clause 57 : Trade organisations

Amendments 66 and 67 not moved.

Clause 57 agreed.

Clauses 58 and 59 agreed.

Amendments 68 and 69 not moved.

Clause 60 : Enquiries about disability and health

Amendments 69A to 69H

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

69A: Clause 60, page 40, line 10, leave out subsections (1) to (4) and insert—

"(1) A person (A) to whom an application for work is made must not ask about the health of the applicant (B)—

(a) before offering work to B, or

(b) where A is not in a position to offer work to B, before including B in a pool of applicants from whom A intends (when in a position to do so) to select a person to whom to offer work.

(2) A contravention of subsection (1) (or a contravention of section 110 or 111 that relates to a contravention of section 60(1)) is enforceable as an unlawful act under Part 1 of the Equality Act 2006 (and, by virtue of section 119(8), is enforceable only by the Commission under that Part).

(3) A does not contravene a relevant disability provision merely by asking about B's health; but A's conduct in reliance on information given in response may be a contravention of a relevant disability provision.

(4) Subsection (4A) applies if B brings proceedings before an employment tribunal on a complaint that A's conduct in reliance on information given in response to a question about B's health is a contravention of a relevant disability provision.

(4A) In the application of section 135 to the proceedings, the particulars of the complaint are to be treated for the purposes of subsection (2) of that section as facts from which the tribunal could decide that A contravened the provision."

69B: Clause 60, page 40, line 33, at beginning insert "establishing whether B will be able to comply with a requirement to undergo an assessment or"

69C: Clause 60, page 40, line 35, at end insert—

"(aa) establishing whether B will be able to carry out a function that is intrinsic to the work concerned,"

69D: Clause 60, page 40, line 42, at end insert—

"( ) In subsection (5)(aa), where A reasonably believes that a duty to make reasonable adjustments would be imposed on A in relation to B in connection with the work, the reference to a function that is intrinsic to the work is to be read as a reference to a function that would be intrinsic to the work once A complied with the duty."

69E: Clause 60, page 41, line 6, leave out from "the" to third "to" in line 8 and insert "references in subsection (1) to offering a person work are, in relation to contract work, to be read as references to allowing a person"

69F: Clause 60, page 41, line 8, at end insert—

"( ) A reference to offering work is a reference to making a conditional or unconditional offer of work (and, in relation to contract work, is a reference to allowing a person to do the work subject to fulfilment of one or more conditions)."

69G: Clause 60, page 41, line 20, at end insert—

"( ) An assessment is an interview or other process designed to give an indication of a person's suitability for the work concerned."

69H: Clause 60, page 41, line 25, leave out subsection (11)

Amendments 69A to 69H agreed.

Clause 60, as amended, agreed.

Clauses 61 to 63 agreed.

Clause 64: Relevant types of work

Amendment 70

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

70: Clause 64, page 43, line 17, leave out "colleague" and insert "comparator"

Baroness Royall of Blaisdon: My Lords, I shall speak to government Amendments 72, 75, 78, 79, 93, 94, 95 and 96 as well, alongside Amendments 71, 73, 74, 76 and 77 in the name of the noble Lord, Lord Lester.

These amendments are to do with the way in which comparisons are made in equal pay cases and with the material factor defence to equal pay claims. I shall turn first to Amendments 70, 72, 93, 94, 95 and 96 to Clauses 64 and 79, which concern equal pay claims, and then say a few words on Amendments 71, 73 and 74. These amendments are all about how comparison is to be carried out in equality clause claims under the Bill.

Clauses 64 and 79 are intended to maintain the effect of current law, so that a person seeking to make an equal pay claim must use a comparator of the opposite sex, whose pay is the responsibility of the same person. The comparator must be a real person doing the same or similar work, or work that has been found to be of equal value. Amendments 70, 72, 93, 94, 95 and 96 are intended to ensure that doubt is not cast on relevant case law, particularly the case of McCarthy v Smith, which established that a comparison can be made with the predecessor in post. It was not our intention to rule out such comparisons. We agree an amendment should be made, and have brought one before the House with the intention of making clear that these kinds of comparison will still be permitted.

There are, inevitably, differences of approach between our drafting and that of the noble Lord. We consider that it is important that the link between the wording in Clause 64 and the definition of comparator in Clause 79 is maintained to ensure that it is clear how comparisons can be made under this part of the Bill. We believe the concept of comparator is well understood and more appropriate in the equal pay context. The noble Lord has also included in Amendment 74 a direct reference to the effect of the case McCarthy v Smith, while we have not done so. Amendment 74 states specifically that comparisons are "not restricted to work" that is done "contemporaneously".

While I fully understand his wish to make this clear on the face of the Bill, I hope that the noble Lord will understand why we are reluctant to attempt it. That case was brought under Article 141 of the Treaty of Rome, with which our own legislation must be interpreted compatibly. This means that whatever wording we use here, that effect will in any case be maintained. The danger of attempting to make that effect clear on the face of the Bill is that we do not know its boundaries. There is a risk, therefore, that providing new words in domestic legislation—even words as apparently straightforward as those used by the noble Lord—could lead to further complexity as that case law develops.

We think it is better not to attempt to codify the point in the way the noble Lord has done, although we hope that the changes we have made, and what I have said, will satisfy him that the effect of the McCarthy case will be maintained. We will also make the point clearer in the Explanatory Notes. I hope that that is also reassuring, and I look forward to hearing the views of the noble Lord and of the Committee.

I now turn to government Amendments 75, 78 and 79 and to Amendments 76 and 77 in the name of the noble Lord, Lord Lester. These follow helpful debates in the other place about amendments laid to what is now Clause 69, which my right honourable friend the Solicitor-General indicated on Report that we would consider. Doubt was expressed as to whether our wording required an employer to be able to justify a material factor, which is an indirectly discriminatory effect.

[Baroness Royall of Blaisdon]

I believe that there is broad agreement about what is needed. The material factor defence to an equal pay claim should be able to succeed where the employer shows that the factor on which he relies to explain the difference in pay is real and not a sham; that it is not directly discriminatory; and that if the complainant brings forward evidence that is indirectly discriminatory, the employer can show that reliance on the factor is nevertheless justified and proportionate. That is the position now and that has always been our intention for this clause. We have, as promised, considered the clause again, and have laid Amendments 75, 78 and 79 so that it clearly achieves this result.

For example, if an industrial chemist is paid more than a biologist by an employer, although the work is found to be work of equal value, a difference in pay would have to be justified where it had a disproportionate gender impact—perhaps because chemists were mainly men and biologists were mainly women. The employer would need to provide evidence to show why there were pay differences, such as a skills shortage requiring recruitment at a higher rate of pay and his defence would succeed only if he could show that the pay differential was a proportionate means of recruiting people with the requisite skills.

The wording of our amendment and that of the noble Lord, Lord Lester, is different but we believe the effect to be substantially the same. I hope the noble Lord agrees that our amendment will achieve the desired results. On that basis, I would be grateful if, in due course, he would consider withdrawing his amendment and supporting the Government's amendment. I beg to move.

Lord Lester of Herne Hill: My Lords, I am very grateful to the Minister; I shall endeavour in a single speech to speak to all these amendments, including Amendments 71, 73, 74, 76 and 77 in my name. I will try to do this in a way that explains to those who are not lawyers the context of what we are talking about.

The Equal Pay Act 1970—Barbara Castle's Act—was enacted before we joined the European Community. It limited the right to claim equal pay restrictively to cases where a claimant compares her work and pay with those of a worker of the other sex working in the same employment. That is still the position today, and under the Bill, but it does not accurately reflect the wider comparison to which workers are entitled under EU equality law. There is a mismatch between what the law says and what EU law requires.

When the Sex Discrimination Act 1975 was enacted, it did not affect that aspect of the Equal Pay Act, but it allowed claims of discrimination in employment to be made where the employer treats a woman employee less favourably than he treats, or would treat, a worker of the other sex. In other words, a sex discrimination claim in employment does not require an actual comparator, where, but for her sex, the claimant would have received the same benefit as a man, actual or hypothetical. But, read literally, the Equal Pay Act rules out any hypothetical comparison at all.

Clauses 64 and 79 are intended to maintain what the Government consider to be the effect of current law, so that a person seeking to make an equal pay claim must still use a comparator of the opposite sex whose pay is the responsibility of the same person. The comparator must be a person doing the same or similar work, and must, as the Minister said, be a real and not a hypothetical one.

Domestic legislation, however, such as the Equal Pay Act and the Sex Discrimination Act—and now this Bill—must be read and given effect in accordance with EU equality legislation, which is broader. That is made quite clear in the current version of the equal pay directive, which deals with other matters too. Article 33, as is normal under directives, requires the United Kingdom to bring into force the laws, regulations and administrative provisions necessary to comply with the directive by a particular date—the idea being that domestic law should state what EU equality law requires. There is an obligation to notify the Commission and so on.

7 pm

The first problem, as the Minister said, is that, read literally, the Equal Pay Act and, until now, the Equality Bill do not permit a woman to compare her work and pay with those of a man previously employed in the same undertaking. An example is the Wendy Smith case, in which I appeared many years ago. She was a manageress in a pharmaceutical firm and there was only one job, so she could not compare her work and pay with those of her predecessor, who was a man. Lord Denning and co decided that the case should go to Luxembourg because there was a mismatch between what the Equal Pay Act said and what the Court of Appeal realised was required under EU law—namely, that you should be able to compare your work and pay with those of a male predecessor. I tried to persuade the court that this should include the hypothetical comparator but it said that that was too broad. However, you must be able to compare your work and pay with those of your predecessor or successor.

My Amendment 74—I think that this is still one of the few issues of contention between me and the Government—would state in the Bill the true position. It is not suggested by the Minister that it does not state the true position, and it is not said that it is not required by the judgment in McCarthy Ltd v Wendy Smith, but in my view, when a ruling of the Luxembourg Court was interpreted and applied by the Court of Appeal, it is not satisfactory to leave the matter to ministerial statements, explanations, Explanatory Notes or codes or whatever. The law needs to provide employers and employees with legal certainty, which is meant to be one of the main purposes of the Bill. Therefore, I very much hope that this open-minded Minister will at least agree to take away Amendment 74 and consider whether, in compliance with our EU obligations, it should be accepted on Report, when I shall certainly bring it back. That is the first problem.

The second problem is that Clause 64 as it stands is even narrower than Barbara Castle's Equal Pay Act—what is known in the trade as "regression". In Clause 64 the drafter has managed to use "colleague". It requires that the claimant be employed on work that is equal to the work that a "colleague" of the opposite sex does. The word "colleague" is not appropriate for someone who is not working contemporaneously with the claimant.

A person cannot be a colleague if he or she no longer works there. That is why my Amendments 71 and 73 substitute "person" for "colleague" and why the government amendment substitutes "comparator". I am perfectly happy to accept "comparator" rather than "person"; there is no difference.

The amendments simply ensure that the Bill echoes the Equal Pay Act. However, as I said, they do not give effect to the ECJ's judgment in McCarthy Ltd v Smith, which is why I still respectfully insist that Amendment 74 is needed to make it quite clear that the references to the work in Clause 74 are not restricted to work done contemporaneously by the claimant. This is an important area where the Government have done something creative. I greatly welcome that, so I shall move on. However, it is important that we understand what is going on.

Where a sex equality clause will not operate because there is no actual comparator with whom a claimant can compare his or her pay or other terms, Clause 71 commendably enables the person who is treated less favourably than another—by being paid less because of the claimant's sex—to bring a claim for direct sex discrimination using a hypothetical comparator. By way of explanation, if the noble Baroness, Lady Howe, wished to bring an equal pay claim but could not do so because there was no actual comparator, then if there were direct discrimination, which explained why she was paid less than she should be, she could bring a direct sex discrimination claim under Clause 71. That is good and new. However, Clause 71 does not enable a claim of indirect sex discrimination in relation to pay to be brought where there is no actual comparator. In my view, that is not compatible with EU law, although I accept that the circumstances in which EU law does or does not require an actual comparator are not clear. That is why I shall not press that point: it is not fair to expect the Government to operate on the basis of unclear law. I gather that there may be a case that deals with that point.

There are other bits of unclarity. For example, EU law talks about not only the same establishment but the same service, and it is not absolutely clear what is meant by "service". I shall not continue with this legal analysis, so, to cut a long story slightly shorter, I agree that, where the Government have dealt with the problem of "colleague", replacing it with "comparator", that seems to be absolutely fine.

I think that the Government's amendment on the so-called material factor defence has the same effect as mine. I naturally prefer my own drafting but I am not so stupid as to think that it must prevail over the Government's drafting, which achieves the same effect.

In all other respects, I am grateful to the Government for what they have done. However, I insist that Amendment 74 should be included. That change should have been made when all those years ago Lord Denning's Court of Appeal said that what is on the face of the Act does not represent Community law. That is when it should have been amended under the European Communities Act. It was not but we now have an opportunity to do so, unless my amendment is defective in not stating the law correctly, in which case I shall happily look at an alternative on Report.

Baroness Morris of Bolton: I thank the Minister very much for the explanation of her amendments, which we welcome. I look forward to her response to Amendments 76 and 77 tabled by the noble Lord, Lord Lester of Herne Hill, because we need clarity here.

Baroness Howe of Idlicote: I should like to say what a pleasure it was to hear the noble Lord, Lord Lester, setting out as clearly as ever these very important matters and how they should be brought up to date. In particular, he made a very strong case for Amendment 74. I hope that the whole area of direct discrimination and indirect discrimination, which seemed to rule our lives in the early years at the Equal Opportunities Commission, when I was very happy to be the deputy chairman, has moved on and that it has been helped by European law. Let us make certain that we take advantage of this Bill to do just that. I am only rather sorry that the noble Lord, Lord Lester, has decided to move back from the area that he is not quite certain about. Now would seem to be the time to tighten up this area, not least when we have a very receptive Government, who seem to be extremely keen to help and accommodate as many as possible of the amendments that we are trying to put forward.

Lord Mackay of Clashfern: I entirely agree with the substitution of comparator for colleague. The fact that it has been changed from "colleague" to "comparator" is a bow to Amendment 74 tabled by the noble Lord, Lord Lester. There is no doubt that the essence of Amendment 74 is in fact the present law. It was the subject of judicial decision a long time ago, imported in effect from the European law by which we are bound. It is right to make clear in our law—now that we have an opportunity of revising it—that this is the position. The drafting is a matter that Lord Lester has devoted himself to, and it looks to me to be perfectly reasonable—if I may use that expression—but the Government may have some criticism of that. I understood the noble Baroness to say that we had better stick to the present law, as it is in the statute. There is a lot of sense in that, because whenever you change the law, lawyers immediately find an opportunity for further argument.

However, this is a different situation—although this is not at present in the statute, it is present in our accepted law, and has been for a long time. Therefore it is right that in this case the change should be made. I do not think it will provoke new litigation, because the point has been settled some considerable time ago as being the terms of European law. I think European law was clear on this point, although on other matters—as the noble Lord, Lord Lester, said—it is not clear, although we should not venture into that area. Where European law is clear, and our courts have applied it, I would have thought that it was wise to put it in the statute.

Baroness Royall of Blaisdon: I thank all noble Lords who have participated in this brief debate. The noble Baroness, Lady Morris, said that she looked forward to the Government's response to Amendments 76 and 77 from the noble Lord, Lord Lester. I included that when I dealt with government Amendments 75, 78

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and 79—I said that the wording of our amendment, and that of the noble Lord, Lord Lester, is different, but we believe the effect to be substantially the same, and that our amendments have the desired effect. Therefore, we would prefer our amendments to Amendments 76 and 77. I have heard very clearly what noble Lords—especially the noble Lord, Lord Lester, and the noble and learned Lord, Lord Mackay of Clashfern—have said about Amendment 74—

Baroness Morris of Bolton: I think I probably did mean Amendment 74. That is where we need clarity.

Baroness Royall of Blaisdon: I welcome the clarity that this debate has brought, and I welcome the clarity that the noble Lord has encapsulated in Amendment 74. I am pleased to say that the Government will accept the noble Lord's amendment. We are indeed a listening Government.

The noble Lord, Lord Lester, also raised the question of hypothetical comparisons, and why they are not required in equal pay cases. We have allowed direct discrimination claims in Clause 74, where no equality clause applies but there is some evidence of discrimination. There is no such obvious gap in relation to indirect discrimination in pay, although we acknowledge that it is a very complex issue. If a woman can find a male comparator—just one comparator is enough—doing like work, work rated the same or work of equal value, there is an equality clause claim. If there is no such comparator, it is not possible to make a claim under the equality clause provisions alleging indirect discrimination in relation to contractual pay, so it is suggested that we should allow hypothetical comparisons.

We do not accept that a hypothetical comparator is possible in relation to an equality clause claim—you cannot have equality of terms with someone who does not exist, and we do not think European law requires us to attempt to do so. So the remaining issue is whether we should allow indirect discrimination claims to be advanced in relation to contractual pay—where equality clause claims are not possible—as we have done for direct discrimination. We do not see how an indirect discrimination claim could in practice succeed in circumstances where an equality clause claim is not possible. If there is no man in the same employment doing work of equal value, or the same work, any claim must logically be based on evidence derived either from work done in a different employment, or work of avowedly different value.

An indirect discrimination claim may proceed only if the circumstances are not materially different—Clause 23—and we consider a difference of employer or of kind of work as a materially different circumstance. We consider that it would not be possible to construct a suitable hypothetical comparator on the basis of such evidence, which would prevent an indirect discrimination claim being advanced. If we were wrong about that, it is nevertheless very likely that the same difference of employment or of work would be found to justify the difference in pay. More harm than good, in terms of new cases that would ultimately fail, would arise from legislating to make such claims possible in cases where they are not now.

7.15 pm

Lord Lester of Herne Hill: I thank the noble Baroness, Lady Howe, the noble and learned Lord, Lord Mackay, and the Government for accepting the reason for Amendment 74. I do not want to detain the House for more than just a few moments, to explain why, first, I have not pushed the hypothetical comparator for indirect discrimination, but why I think that the Government's approach, as just stated, is too narrow.

I have not pushed it is because although the textbooks indicate that there may be no need for a hypothetical comparator, in the sad life I now have, I spent half the weekend looking at all the cases, and came to the conclusion that I could not honestly stand up here and say it is quite clear that there is no need for a comparator in indirect sex discrimination cases involving pay. However, first, I do not believe that applies where the attack is on a whole system of general application, rather than an individual case. Let me give a couple of examples. I did a case some years ago in the House of Lords where there was a challenge to the Employment Protection (Consolidation) Act 1978, which said you had to work for more than 16 hours a week to get employment benefits. The EOC argued that hit women disproportionately, and that there was no objective justification. The Secretary of State, the right honourable Michael Howard, said that was not so. The Law Lords, led by Lord Keith of Kinkel, unanimously held that there was clear indirect sex discrimination in the requirement to have to work full-time in order to get employment benefits, under European Community law. It was in no way necessary in that case for individual woman W to show, as a part-timer, that she was comparing her work and pay with individual male M. The attack was on the system of general application, and it was completely irrelevant whether the particular woman could find an actual comparator—what mattered was whether the system as a whole had adverse, disparate impact on women, and could not be justified.

That example is already in the casebook. There the claimant was not a woman, it was the Equal Opportunities Commission, but it could now be the Equality and Human Rights Commission. The same I think applies with collective bargaining. Imagine a case like the speech therapists' case, that Baroness Turner will remember, since she and I were—in our different ways—involved in it all those years ago. The speech therapists' case involved mainly women comparing their work and pay with hospital pharmacists, mainly men, at the relevant grade and with clinical psychologists. It is true that Pam Enderby was able to point to a particular man who was a hospital pharmacist and a particular man who was a clinical psychologist. The basis of the case when it went to Luxembourg and came back was that there was a systemic indirectly discriminatory problem—not a directly discriminatory problem—that required the pay systems to be changed to eliminate the indirect discrimination.

In such cases when the attack is on a pay system of general application, whether statutory or otherwise, EC law allows the claim. The really difficult question is whether it goes further. I believe that a case is pending in an employment tribunal that is probably on its way to Luxembourg, so I do not think that it is

fair to ask the Government to legislate on that. However, I would like the Government to think about what I have just said. They may say what they like about their view but if I were right it would lead to more litigation.

Amendment 70 agreed.

Amendment 71 not moved.

Amendment 72

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

72: Clause 64, page 43, line 19, leave out "colleague" and insert "comparator"

Amendment 72 agreed.

Amendment 73 not moved.

Amendment 74

Moved by ***Lord Lester of Herne Hill***

74: Clause 64, page 43, line 19, at end insert—

"(2) The references in subsection (1) to the work that B does are not restricted to work done contemporaneously with the work done by A."

Amendment 74 agreed.

Clause 64, as amended, agreed.

Clauses 65 to 68 agreed.

Clause 69 : Defence of material factor

Amendment 75

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

75: Clause 69, page 45, line 32, leave out from "factor" to end of line 34 and insert "reliance on which—

(a) does not involve treating A less favourably because of A's sex than the responsible person treats B, and

(b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim."

Amendment 75 agreed.

Amendments 76 and 77 not moved.

Amendments 78 and 79

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

78: Clause 69, page 45, leave out lines 39 to 41

79: Clause 69, page 46, line 1, leave out "(2)" and insert "(1)"

Amendments 78 and 79 agreed.

Amendment 80 had been retabled as Amendment 57ZA.

Clause 69, as amended, agreed.

Clauses 70 to 72 agreed.

Clause 73 : Maternity equality clause

Amendment 80A not moved.

Clause 73 agreed.

Clauses 74 to 76 agreed.

Clause 77 : Discussions with colleagues

Amendment 80B

Moved by ***Baroness Thornton***

80B: Clause 77, page 49, line 31, leave out from "that" to end of line 33 and insert "purports to prevent or restrict the person (P) from disclosing or seeking to disclose information about the terms of P's work is unenforceable against P in so far as P makes or seeks to make a relevant pay disclosure."

Baroness Thornton: I wish to move government Amendment 80B, speak to government Amendments 81A, 81B, 82A, and refer to Amendments 81 to 86, tabled by the noble Lord, Lord Lester, which are similar in purpose. The Committee will note that my noble friend the Leader of the House has added her name to Amendment 86, which is necessary to complete the effect of the government amendments.

These amendments are to Clause 77, which is intended to ensure that contractual clauses which seek to prevent employees disclosing details about their pay to one another cannot be used to prevent such disclosures, and so to conceal disparities in pay which are discriminatory on grounds of sex, or indeed on any of the other protected characteristics. The clause has been widely welcomed, and was welcomed by all parties in Committee in the other place. Generally speaking, it seems likely that disclosures of this kind will be made to fellow employees, which may include trade union representatives, but may also include advisers not within the same organisation.

Our intention is that all disclosures of information about pay that are directed towards finding out whether differences exist and which are related to a protected characteristic can be made freely and without sanction by the employer. This will encourage greater transparency, enabling challenges to employers that discriminate in relation to pay. The clause already provides protection where a discussion about pay is between individuals—colleagues—who are in the same employment. However, concern was raised in the other place and by the Joint Committee on Human Rights that we may not have allowed sufficient protection, for example, by allowing disclosures about pay details to be made to trade union representatives.

Although that was our intention, we have accepted that the Bill should put this beyond doubt, and so we brought forward these amendments to ensure that the clause is wide enough to protect that situation as well. The amendments change the clause so that it no longer applies only to discussions about pay with a colleague; it applies to any disclosure of information about pay which the employee can show had the necessary purpose—that of finding out whether or to what extent there is a connection between pay and possession of a protected characteristic.

[Baroness Thornton]

As a result, if the employee approaches a trade union representative who is not also a colleague, any disclosures made in the context of that conversation will be protected. The right to disclose your pay is of limited use, however, if you do not also have the right to ask colleagues about theirs, so the amendments also make clear that a secrecy clause which purports to prevent an employee simply asking a colleague about their own pay also cannot have effect. In particular, if a trade union representative who was in the same employment could not ask colleagues if they were willing to tell him or her what they were paid, in order to look into the question, the task would likely be fruitless. This amendment makes it clear that he or she can do so.

The amendments also make clear that making or seeking to disclose information about pay, receiving such information and seeking the disclosure of such information from a colleague are all protected acts for the purposes of the prohibition on victimisation in Clause 27, so that if action is taken against the employee for doing any of those things, they have a remedy through that clause. The protection extended by these amendments is not all-encompassing. It is not intended, for example, to protect disclosures to competitors aimed at obtaining a better offer. The important effect of the clause is to focus the protection on disclosure of information about pay aimed at uncovering any pay discrimination to help expose pay inequality affecting individuals.

We have taken seriously the concerns that have been expressed about this clause, and I hope that the Committee will agree that the wording of the clause, as amended, better expresses our intent, so I ask the noble Lord to not move his amendment, and agree to ours. I beg to move.

The Deputy Speaker (Viscount Ullswater): I advise the Committee that if this amendment is agreed to I will not be able to call Amendment 81 because of pre-emption.

Lord Lester of Herne Hill: I am grateful to the Minister, who has given me a lot to think about. My amendments are probably too broad in that they would have allowed disclosure about pay to anyone, including hated journalists. I can see why that might be objectionable.

Can the Minister clarify whether a trade union representative would include a trade union official officer representative of another union? Let us take the speech therapists' case—speech therapists are in one union, hospital pharmacists are in another and clinical psychologists are in another, and there are big arguments about the absence of equal pay. Would the government amendments allow the information on the discussion of the pay of each of the three groups to be fully disclosed to the trade union representatives of each of those three unions, all within the National Health Service and all dealing with the same cluster of pay issues? Or is it contemplated to be confined only to your own trade union representative, in which case Pam Enderby could talk only to the MSF trade union representative and not to the representative of the other unions?

7.30 pm

Baroness Thornton: Yes, it would include representatives of the other unions as the noble Lord has described. The aim is to uncover pay discrimination in order to expose pay inequality affecting individuals, so the trades unions of those related occupations would be covered as well. That is my understanding.

Lord Lester of Herne Hill: This is my fault; I have not focused on this. Are there words that say that in the amendment?

Baroness Thornton: We think the amendment covers those, but I will check.

Baroness Turner of Camden: I thank the noble Baroness for this amendment and for what has been said in support of it by my noble friend, because, of course, disclosure is a very important point if you are dealing with differences in pay. We all know that there is a lot of concern about the differences in male and female pay, and we cannot move forward on that unless we have complete disclosure and the protection of people who participate in such a disclosure. The amendments proposed by my noble friend cover that, and I am very grateful for them.

Baroness Morris of Bolton: When this clause about discussion with colleagues was discussed in another place, we put on record our absolute support for it and I reaffirm that support from these Benches. We believe it to be absolutely right that employees should be protected from employers who would seek to impose any sort of pay secrecy clause; this should not be condoned in any way as it could be a method of trying to cover up pay inequalities in the workplace. The Bill allows discussion to take place between an employee and a colleague, or a person who used to be a colleague.

The amendments tabled by the noble Lord, Lord Lester of Herne Hill, would widen this still further to include any person at all. This would certainly increase transparency, particularly in circumstances in which, for example, an employee was too nervous to talk to someone at their place of work. Nevertheless, there could also be concern that it perhaps widens provisions too far, as the noble Lord, Lord Lester, graciously acknowledged. For instance, would that mean that an employee could discuss pay information with a competitor of their company or an outside group with a vested interest in using this information improperly? We want to ensure that companies are called to account for any gender inequality in their pay programmes. Nevertheless, it would not be desirable for companies to be damaged as an unintended consequence of legislation that is designed to ensure so much good.

Baroness Butler-Sloss: I am having slight difficulty in understanding Clause 77, because the word "colleague", to me, would assume somebody working alongside, or at least in the same employment. I do not understand how that could include a trade union official who is not, or has not been, a colleague. Can the Minister explain that? She said a while ago that this would perhaps include somebody who was a trade union official working in an allied industry, but not necessarily

as a colleague working in the same industry. I am not sure that "colleague" would take you as far as the Minister seemed to say the Government were expecting to go.

Baroness Howe of Idlicote: I support these amendments. It may be that the noble Lord, Lord Lester, has not yet quite clarified whether he can go as far as he originally thought, but reading the Bill as it was and the amendments as they have been tabled, there is certainly a need to expand the number of colleagues and non-colleagues—relevant people that you can have discussions with. I very much support that side of it, although I must say that it would be nice to know, perhaps on Report, when the noble Lord, Lord Lester, has had a further look at his original thoughts, whether he can come back with an even wider choice.

Lord Lester of Herne Hill: I thank both noble Lords for what they have just said. My proposal goes too wide, there is no doubt about that, but I am worried about the point raised by the noble and learned Baroness, Lady Butler-Sloss. The word "colleague" does not seem to me apt to include a trade union official from another union, albeit a union concerned with bargaining for the terms and conditions of that area. Since I think it is common ground that the Government intend to cover that, I wonder whether it would be appropriate to bring this back on Report, thinking about the word "colleague" and what might go in its place to deal with trade union officials and other interested persons.

Baroness Thornton: Our amendment removes "colleague" except in relation to a request to another colleague to discuss pay. I refer noble Lords to Amendment 81B:

"Page 49, line 34, leave out from 'A' to 'whether' in line 36 and insert 'disclosure is a relevant pay disclosure if made for the purpose of enabling the person who makes it, or the person to whom it is made, to find out'".

We think this covers the issue of "colleague" and also the issue of different trade unions and trade union representatives.

Lord Lester of Herne Hill: What is the limit on that? If that is right, what is not covered by that?

Lord Mackay of Clashfern: I think the only restriction is that it has to be a relevant pay disclosure. In other words, it is with a view to applying the equal pay provisions. I think that there is a lot to be said, at first sight, anyway, for the Government's interpretation of this, that it is not restrictive except in so far as it is directed towards trying to deal with an issue of equal pay.

Baroness Thornton: The noble and learned Lord is absolutely correct.

Lord Lester of Herne Hill: I am satisfied with that.

Amendment 80B agreed.

House resumed. Committee to begin again not before 8.37 pm.

NHS: Staff Qualifications

Question for Short Debate

7.37 pm

Tabled By ***Baroness Gardner of Parkes***

To ask Her Majesty's Government what assessment they have made of the effect on the National Health Service and patient care of the increasing level of qualifications expected of staff and the entry requirements for qualifications.

Lord Faulkner of Worcester: My Lords, due to an oversight, time limits for speeches in tonight's debate were not publicised as part of the speakers list. If Members' contributions, including that of the noble Baroness, Lady Gardner of Parkes, are kept to 10 minutes, and that of the Minister to 12 minutes, the debate will conclude within its one-hour time limit. I apologise to the noble Baroness.

Baroness Gardner of Parkes: My Lords, it is opportune that we are able to debate this topic today, as the nursing registration body—the Nursing and Midwifery Council since 2002—goes out to public consultation on 29 January to determine the new draft standards for pre-registration nursing education. For this reason, I intend to speak mainly about nursing, as I think it is those changes that presently propose the greatest risk to the NHS. This consultation will be on the NMC website and the link is www.nmc-uk.org. I hope that many people will respond as I believe it would be against the interests of patients and the NHS if nursing became a degree-only qualification and was therefore closed as an option for many ordinary men and women from 2013. Nursing is one of the oldest professions in the world and nurses are held in very high regard by both patients and public. This confidence must be maintained and justified.

The Council of Deans of Health, with 86 member universities throughout the UK, has as its number one aim,

"to be the principal source in the UK of higher education".

It is not surprising that its policy statement on key areas of interest includes:

"The future shape of the healthcare practice workforce, engaging with and influencing healthcare workforce planning issues and processes, engaging with and influencing the Modernising Careers agendas, seeking to generate agreed postgraduate career frameworks and secure funding for post-registration education pathways to support the career frameworks and influencing discussion on the development of the assistant practitioner workforce".

The famous expression, "They would say that, wouldn't they?", seems appropriate.

Many of the best nurses are not academic. They have other qualities and skills and have had good training and great experience in hospitals. The report issued in June 2009 by the noble Lord, Lord Darzi, states that 180,000 nurses will retire in the next 10 years, 100,000 are over 50 and 80,000 are over 55. I am concerned that this country is becoming obsessed with the idea that everyone must have a degree. When the state enrolled nurse—SEN—was abolished in 1989, I thought that it was bad for patients. I still do, and my view is shared by many. I feel it particularly when I

[Baroness Gardner of Parkes]
meet young people who would have made excellent, caring nurses, but could not obtain the required entry qualifications.

There were other practical problems too. At that time I was chairman of a large NHS trust in London, a teaching hospital. We had a nice and certainly convenient nurses' home where trainees lived during their student years. Under the student system introduced in the 1990s, we had to provide accommodation for each student for only one year. The trust, under financial pressures and demands for change from the local council, decided that the nurses' home would be sold off. Nurses found it difficult to obtain suitable accommodation within reach of the hospital, and that is still the case today.

It is understandable that deans of health want everyone to have a degree—that is their job. It is a great ambition but it lacks realism. Not everyone is up to getting a degree, and many of the excellent nurses who prove daily that they do not need a degree might never have been able to get a diploma, much less a degree. Caring about people and caring for people are the things that really matter.

I am a great supporter of higher and better training and opportunities for those who have the ability to achieve a degree and get postgraduate training. Nurse practitioners have been a success and led services in primary and acute care all over the country since 2000. Specialist nurses have made a huge difference to patients and they save much time for consultants by dealing with all the day-to-day problems that patients have. I think that we need more specialist nurses in ever more fields.

My concern is the black hole in healthcare that will be left when the needed number of degree nurses is not realised. The drop-out rates in degree courses are high. Fifty-one per cent of students fail to complete the degree programme in adult nursing in one university in the north-west. In the south-west, West Midlands, Yorkshire and Humber, one-third of students are dropping out. *Nursing Standard* magazine shows that 78 per cent of students on a children's nursing degree course and more than 54 per cent on a mental health nursing course failed to graduate. Such high drop-out rates are very worrying and costly. Universities are facing financial cuts and drop-outs on these scales surely cannot be acceptable. There is a need to look into the causes and find out how to prevent these losses to a profession that will sorely need these graduates.

Who will fill the black hole that I expect in NHS staffing? At present, those who cannot qualify as diploma nurses can become healthcare assistants who deal with many of the patient's day-to-day needs. The noble Lord, Lord Crisp, who has great experience in the health service, told me last week that all the HCAs he has encountered would like to have the title "nurse". He is currently abroad, so I got his permission to quote him. I have some sympathy with that wish, as anyone referred to as nurse has a standing in the community and a reason to be proud. That means a lot to someone who is looking after patients and caring for them, as HCAs do.

Could nurses not move up a stage in their terminology to become specialist nurses or nurse practitioners? There must be a new title—perhaps graduate nurse—that we can give to all degree nurses. I qualified long ago as a dentist. With just my original degree study, I became a dental surgeon. Later the term doctor-dentist was introduced, and now all dentists seem to use the honorary title doctor. Are dentists any better?

On a different note, today I received a letter from the father of a young man who wants to become a clinical psychologist. He has a hearing disability caused by an operation that went wrong when he was an undergraduate. He went back to university and obtained a masters degree, but to pursue a career in psychology he needs work experience, and he considers that the NHS has failed to honour its disability equality duties by not giving him the opportunity to get that work experience. He is of the opinion that his access to joining the NHS is an example of failure in entry level requirements. I want to place that on record for him.

According to the Royal College of Nursing, the trade union for nurses, 1.4 million people work in the NHS in England: about 700,000 are clinical staff, including 133,000 doctors; 408,000 are qualified nurses, midwives and health visiting staff; 22,000 are practice nurses; and 355,000 are clinical support workers, including healthcare assistants. The Nursing and Midwifery Council keeps no record of how many SENs—as opposed to SRNs who qualified before the days of diplomas—continue to work as NHS nurses. The last non-diploma registration was in 1991, and everyone has to be an SRN now. I am not concerned about the catchphrases about degree nurses "too posh to wash" or "too clever to care". My interest is in ensuring that the NHS has the number of well trained and caring nurses that it needs to continue to provide a proper service to patients. Nurses are the backbone of the health service.

The NHS has a different problem in the working time directive, and doctors, nurses, staff and patients will be affected. I hope that something can be done about this. That is not my remit today, and my speaking time is nearly over. The many of us who care about the NHS want to see it improve and continue to serve our people well. I have raised this Question today because I am convinced that the time to think about the impact of a degree-only nurse requirement is now, before 2013. The full implications may not yet be appreciated but they must at the very least be considered carefully.

It would be most unfortunate if the NHS found itself without enough nurses in the next few years. There are many points to think about. First, it is estimated that the applicants who are offered nursing training opt three to one for degree rather than diploma courses. That is understandable, as everyone would prefer the higher status. Secondly, why is there the high drop-out rate? Have students taken on more than they can manage? Thirdly, where do they go if they want to continue nursing but have dropped out for whatever reason? They could possibly become healthcare assistants, but surely they would still prefer to become nurses, even if not graduate nurses. Fourthly, how easy will it be for nurses to move up within the profession after they graduate? How will they be encouraged to become nurse practitioners or specialist nurses? Fifthly, how will the need for more nursing staff be met after 2013? Sixthly, is there a need to develop a registration process

for HCAs, or do we risk over-regulating all health professions, as we have already done in some other professions?

I end as I began, by reminding everyone to respond, whatever their views, to the consultation on the NMC website from 29 January.

7.47 pm

Baroness Finlay of Llandaff: My Lords, I am grateful to the noble Baroness for having raised this important topic in such a timely way. I declare an interest as a practising clinician and as president of the Chartered Society of Physiotherapy, which is a graduate profession. I remind the House that to enter physiotherapy the A-level requirements are as high as for medicine.

In Wales, we already have an all-graduate nursing profession, but I saw the transition, and there are lessons to be learnt. I am fortunate enough to work now with some of the best nurses I have ever worked with. One in particular, Viv Cooper, started as an auxiliary, trained, did a degree and a higher degree. She is now one of the most senior nurses in Wales. When she left school, she was not ready to enter at degree level. It is important to remember that people mature at different rates and need to be able to move up later on.

The briefing of the Council of Deans of Health stated that the key message is that to provide high-quality care, we need a high-quality workforce. Of course we do. Nobody could dispute that statement, but I was alarmed when I read the briefing because it states:

"Nurses who are required to meet future healthcare challenges must be analytical, assertive, creative, competent, confident, computer literate, decisive, reflective, change agents and the critical consumers of research"

It does not say compassionate or risk-intelligent.

There is a problem in a lot of education. Students are being educated to be risk-averse, not to be risk-intelligent. They are now not taking risks on behalf of patients—risks which should be taken—and in the process, the patients are being denied the opportunity, the care, and the decision-making that they ought to have. So I found this briefing somewhat alarming. I was glad to see that it stresses the importance of continuing professional education. Whether it is to diploma level or to graduate level, education is no good unless there is ongoing reflective practice, and ongoing education and training in the workplace.

There is an enormous range of things to be done under the name of nursing; certainly there are some very high-tech, complex procedures that need very highly-trained staff. To be an ITU nurse or a cardiac nurse, for example, you need a very high level of competencies. I worry that the nurses coming out through the graduate entry route may not be adequately trained to do some of the other tasks in nursing; they feel quite intellectually dissatisfied with some of what you might call the more mundane, but emotionally much more challenging situations, such as in psychogeriatric care, where you need an infinite amount of patience, an infinite amount of compassion, and an infinite amount of risk-intelligence. It was for that reason that I was particularly concerned that the briefing did not contain those words. When you listen to complaints from patients, lack of compassion comes high on the list. Sadly, complaints against nurses have gone up by 44 per cent in the past 10 years, and the NMC figures show that allegations have increased dramatically.

There are so many complaints that it is now taking nearly two years to get them resolved. Recent examples, which are on the website and are freely available, included the instance of a midwife handing a newborn to its mother, not realising that the baby was stillborn. It seems unbelievable that somebody could be practising as a professional, and have that lack of basic common sense, let alone competence.

There have been cases of abuse by both graduate nurses and non-graduate nurses against patients. We have to be very careful not to assume that just having a degree will necessarily improve everything. Claire Rayner, president of the Patients Association, commented that she felt that for each complaint there were another hundred where people did not actually dare to complain because they were too frightened or they did not know how to. In response to this announcement, the Patients Association press release stated:

"The basics of nursing care are dignity, compassion, and above all, safety … Since the introduction of Project 2000, which shifted training from the bedside to the classroom, nurses look to the personal prizes of nurse specialisms, and have been allowed to ignore the needs of their sick, vulnerable and often elderly patients. These new proposals risk making the situation worse."

It is to do with the way that the degree-level education and Nursing 2000 have gone, not the degree per se. If you educate people out of the classroom, rather than integrating bedside experience and good examples, then you will not train people to high levels of practice. People need a role model when they are learning. We have discovered when training medical students that the most powerful factor of all is a good role model. That is the person on whom they model their clinical practice for the future. They are all graduates, obviously, but they copy, we hope, good behaviours, although sadly sometimes of course they also copy bad behaviours. If they are being taught by people who are in the classroom, and are not up to date, then they really do not have that role model to build upon.

I wonder whether we should be thinking about a pre-registration year, such as the one we have in medicine. Nurses will be out there and working, but will have to prove their competence and their skills in the workplace just as junior doctors do, and then become registered. It would go with an additional pre-registration year, which entails practical experience. In her recent report *Patients not Numbers, People not Statistics*, Katherine Murphy, director of the Patients Association said:

"It showed what happens when nurses focus on the wrong things and neglect fundamentals, such as helping patients with feeding, bathing and toileting, or assisting those recovering from an operation to get back, quite literally, on their feet … Patients and their families contacted us in their hundreds. They were angry that their final memories were of a loved one enduring appalling neglect—they were right to be."

I have had an e-mail from a Member of this House whose cousin was last weekend in hospital, and is still in hospital. He contacted me in desperation, worried about his cousin's situation, whom I will call P, for Patient, to anonymise this, and whose daughter I will refer to as D. The e-mail said:

"D was there today when the Ward Manager decided to move P to another bay".

[Baroness Finlay of Llandaff]

All sick patients were to be together, because this poor lady had contracted diarrhoea and vomiting. He went on:

"P's relatives were gloved and aproned. The staff were not. P is not allowed a bedpan, but has to wear a nappy and pass water and defecate into the nappy. A so-called matron and an auxiliary came to clean her up, and threw all the dirty linen on the floor. They took her hearing aid out, and put it on the left locker, where she cannot reach it. She is not good today, and rather tearful. I am not surprised, being subjected to this indignity … Last Wednesday, Granddaughter asked a nurse if she could help move Granny as she had slipped down in the bed and was lying awkwardly. Nurse refused because she said of Health and Safety rules she could not. Granddaughter lifted her grandmother up in the bed quite easily. P is petite and slim … Today, D cleaned her mother's right hand thoroughly, as it looked unpleasantly soiled under the fingernails."

Those are the things in care that matter to people. I have had a patient ask me to cut his fingernails, because he did not want to die with dirty fingernails, and I took in my own nail clippers to do it. That is not a menial task; as a professor, I believe that it is my duty. But we need to make sure that however we change training, we have a workforce that meets the needs of the patients that they are there to look after.

Some groups, such as physiotherapy, have done really pretty well. They are doing very well in terms of getting their physios really trained up to look after the cohort for whom they are there. Nursing needs to look at itself quite carefully, and the way it is training people, because otherwise we are going to have a huge gap.

A consultation is being launched about the regulation of healthcare support workers. At the moment, healthcare support workers do a huge amount of work. They do a lot with patients, and are now, at Band 3, often working unsupervised; they are not a regulated group and often exhibit overwhelming compassion and care. I have found that in clinical practice, they are really the mainstay, particularly in the care of patients at home.

This is an important question. I fear that health economics might rebound quite badly. It costs about £26,000 per year to employ a healthcare assistant who can work on her own; it costs about £44,000 per year to employ a registered nurse. There are going to be increasing cost pressures on the NHS; I would not like to see nursing squeezed out by pushing up the banding and the cost, with all nurses being graduate nurses, and then finding out that all we have done is squeeze them out. We would have to reinvent the SEN grade, which had its problems at the time.

7.58 pm

Baroness Masham of Ilton: My Lords, the noble Baroness, Lady Gardner of Parkes, has asked a most important question which needs to be addressed. I was not certain that I could be here today, but when I found that I could I arranged to speak in the gap. When severely disabled people are ill or have an operation in hospital they need the best nursing care from people who will listen and understand their special needs. They are very vulnerable for many reasons.

Years ago, when I was a new patient at the spinal unit at Stoke Mandeville Hospital and in considerable pain, I found that the high-quality nurses on the post-graduate courses were the best. The senior sister always seemed to get the pillows in the correct position, which made all the difference. With the matron and the night superintendent coming around the wards, nursing care was kept up to a high standard. In latter years, the experiences of many vulnerable, ill patients has not always been as good. Will a university degree make a great deal of difference? To some who want an academic profession, it will. Many university graduates may be attracted to work overseas as university life will encourage them to widen their horizons. Will we have enough nurses to cover the ever-increasing needs?

We need highly educated nurses for highly technical procedures, but we also need the dedicated practical nurse who will care for the skin, watch the pressure areas, control infections and not always be moving on to higher positions. Many people felt that it was not a good idea to replace state enrolled nurses with lesser trained care assistants. Even in the private sector, care assistants are dressed as nurses and patients do not know the difference.

Last week, I took evidence about care at the end of life for patients with motor neurone disease. A senior neurologist told us that we have the same percentage of neurologists in the UK as in Albania. We need far more highly skilled specialists in many specialities, be they doctors, nurses or other health professionals. But we also need good, practical nurses who, as has been said, are not too posh to wash but will also take responsibility.

8.01 pm

Baroness Barker: My Lords, I thank the noble Baroness, Lady Gardner of Parkes, for raising this issue in a timely fashion. More than 20 years ago, my mum was in Raigmore Hospital, Inverness, for several months—a hospital about which I have spoken previously in your Lordships' House. She was there for so long that when she left the staff threw a party for her and I am pleased to say that the consultant contributed by making a cake.

Because my mum was in hospital for a long time we went to see her every few days. One day when I went to visit she was very down. I asked what was wrong and she said, "You know, there are nurses and there are nurses, and some nurses are different". That little observation about the way in which someone had been treated predates Nursing 2000 and the change in education about which the noble Baroness, Lady Gardner of Parkes, talked. There have always been nurses who are overwhelmingly compassionate individuals. There are others with different styles of doing their job. In reflecting on this matter, I think that we will fall into a terrible trap if we assume that professionalism is somehow the enemy of compassion. I do not believe that that is true.

The noble Baroness made an interesting comment about dentists. Tempting as it is, I will not go down the route of talking about dentists. But I will say that there was a time when dentists were barbers. Nowadays, my dentist has to know about anaesthetics, radiology, some fairly complex chemistry, and so on. My point is that medicine is becoming much more complicated. What I find worrying about this debate is that time and again we seem to come back to saying, "We recognise that medicine is becoming more complicated.

We recognise that standards in all other areas of the healthcare profession are important". However, we somehow feel that nurses have to stay in the same place and that if they do not something will be jeopardised.

That is dangerous because, as noble Lords have already identified, nurses spend by far the most amount of time with patients. In terms of improving patient care, it is important that the people who spend the most time with patients should have their status elevated so that they can bring about change and argue for change with people who often do not spend very much time with patients—for example, consultants. In some disciplines, consultants do not spend a lot of time looking at what happens to their patients. I want to make the case forcefully that upgrading the nursing profession in an objective and demonstrable way is a very important part of increasing patient care.

I turn now to degrees and training. The noble Baroness helpfully talked about the way in which nurse training has developed over the years. Since the early 1990s, nurse training has been based in universities. I understand from the briefings I have received that 50 per cent of university-based education programmes at degree and sub-degree levels continue to be delivered in hospitals, health centres, surgeries and people's homes. When people listen to a broadcast of this debate, we are in danger of them getting the impression that all nurse education is solely academic. I do not believe that that is the case. Will the Minister confirm that, in future, degree courses will contain a great deal of practical application and that people will learn not only about anatomy and physiology, but also about patient interactions and the importance of bedside manner and communication? If that is the case, I would be happier to support some of the move towards degree-based entry.

Another important point is that nurses in this country have frequently made the observation that nurse education here lags behind the best international practice. Nursing is becoming a profession in which people are much more mobile. Fortunately, in this country we are blessed with nurses from all around the world. Nurses, just like their counterparts at practitioner level, have the right to move around and to have a common set of international standards. I understand that under European directives, degree and diploma students have to complete 2,300 hours of theory and 2,300 hours of practice over three years. I should like confirmation from the Minister that that is the case.

The noble Baroness raised a very important point about the dropout rate of students from degree courses, which is worrying. Today, I telephoned the Nursing & Midwifery Council about that. Its research found that 62 per cent of students leave their course because of financial worries. That is a serious matter and it is at the bottom of all this. Currently, as I understand it, there is funding of about £6,500 for a person undertaking a diploma, but they do not have access to student loans. Funding for degrees is £2,500, but those students have recourse to student loans, which is my key concern. Will that funding regime carry on? Will the Department of Health continue to fund the fees for the courses? As part of the monitoring following the implementation of this policy, will the department closely monitor the effect of student financing on nurses? If that does not work the terrible predictions about gaps in nursing staff made by the noble Baroness, Lady Gardner of Parkes, will come to pass.

That is the most important issue that lies behind this. We are possibly more in danger of deterring competent, caring nurses in the future if we do not get the funding base right than we are by changing the status of the education which they have to go through in order to qualify. I agree too that healthcare assistants are an important part of the workforce. There is a strong case for looking at regulation and career progression for healthcare assistants. They can make a huge difference to the experience of patients in hospital and they are vital. As noble Baronesses have already said, the hospital that treats you but does not care about you, is not a very good hospital at all.

8.11 pm

Earl Howe: My Lords, my noble friend Lady Gardner has raised a subject of far-reaching importance—as so often she does—and for that she deserves our collective and very warm thanks. The question of whether nursing should be a degree-based qualification or not, is one that has been the subject of debate for a number of years, but it is a debate which recently entered a new phase with the Government's announcement last year that from 2013, new entrants to the nursing register will be confined to those who have attained a nursing degree. Those with nursing diplomas who are already on the register will be allowed to stay there, but as a route to entry, a diploma will no longer count.

My noble friend got to the heart of the question that this presents. What good will flow from this change? The justification for it, as we have heard, is the increasing complexity of the nurse's role and the raised levels of responsibility which accompany this. It is certainly true that the job of a nurse is very different today from the way it was even 20 years ago. We have nurse specialists in many different disciplines. The noble Lord, Lord Darzi, stated in his final report that the skills of specialist nurses can help to keep patients out of hospital. Nurses can prescribe medicines; they are in charge of walk-in centres; they can carry out procedures previously reserved for doctors, such as endoscopies; and increasingly, they will be working in a diverse range of community settings. The argument runs that more and more nurses will find themselves assuming leadership roles and having to think critically as well as with a high level of technical knowledge.

All this is surely valid. We need nurses with degrees and we need more of them, not least because of the considerable number of nurses who are due to retire in the next few years. The question is whether it is wise to insist that all new nurses should have degrees. Those like my noble friend who are sceptical of the change believe that its effect will be to deter applications from people who would make good nurses but who are not suited to academic study. The RCN's answer is that this is about encouraging more people to take a nursing degree and not about restricting entry to the profession. That is a good aspiration, but frankly, I cannot see how it can fail to restrict entry to the profession, and I therefore think that the potential shortage of recruits is a worry we need to take seriously.

[Earl Howe]

What research have the Government done to convince themselves that this possibility can be discounted? We should also be worried by some of the reasons being given for the decision. The Royal College of Midwives said:

"We welcome this development, as it will improve nursing care and improve the status of nursing".

I am afraid that I see "status" as having rather too much to do with all of this. Status is quite the wrong place to be starting. The proper starting point is to ask what it is that makes a good nurse in the 21st century and how best can we deliver it.

Talk to any senior nurse, and they will say that there are certain qualities in a good nurse which are indispensible: compassion, kindness and a caring approach. Technical proficiency is essential, but no nurse can ever be a mere technician. Good nurses know their patients; they are team spirited; they are practical people. These are qualities which either you have or you have not, they cannot be taught. Those who oppose degree-only entry say that an absence of such qualities is not the focus of a degree course and is therefore not a determinant of whether you pass or fail, whereas under the old-fashioned apprenticeship system, it would be picked up straight away.

If that is so, then there is an obvious answer. A consultation is under way, as my noble friend mentioned, on the content and structure of the new degree course. There is a big opportunity here to ensure that the character and attitude of a trainee nurse is treated with every bit as much emphasis in awarding a degree as their academic and technical proficiency. I should be glad if the Minister could say whether this is being considered—I hope it is. The suggestion of the noble Baroness, Lady Finlay, of a pre-registration year is a constructive one.

The stories that we hear about bad nursing, not least the appalling accounts published recently by the Patients Association, centre often on nurses who are thoughtless, lazy and uncaring in their approach. There is a lack of basic aptitude and competence. A large part of the argument for raising the bar as regards entry qualifications, rests upon patient safety. For me, this is where the argument for making the change is at its strongest. There is some quite compelling evidence from the United States showing that in hospitals with higher proportions of nurses educated to the baccalaureate level or higher, surgical patients experience significantly lower mortality rates.

There is another compelling reason for the change which we need to appreciate, and that is the effect of the European working time directive on junior doctors' hours. To the extent that doctors are no longer present on a hospital ward to take responsibility for clinical decisions, nurses are now being called upon to do so in their place. There was an interesting article in last week's *Nursing Times* which lays bare this whole topic. Many nurses report that since 1 August last year, which was when the 48-hour week came in, they have been under greater pressure to make clinical decisions that have major implications for the care and treatment of patients. Their complaint is not that this extra responsibility is wrong in itself: it is that very often they do not feel adequately trained for it, added to which they have less time to carry out their basic nursing duties. The net result for as many as half of those responding to the survey is that patients are being put in danger. That is clearly a worrying finding. It is also extremely ironic that an EU directive, which was intended to have health and safety at its core—albeit the health and safety of workers—should be the cause of putting patients at risk. Whether or not we like it, we are stuck with the working time directive. It follows that the mix of staff and the mix of skills on a ward are, in many environments, likely to experience permanent change, and that change has to be catered for in nurse training.

If more nurses are to assume more responsibility for more complex roles, it follows that many basic aspects of patient care, such as washing and bed pans, will fall to healthcare assistants. That implies that it does not really matter if those tasks are not carried out by qualified nurses. That worries me on two counts. First, healthcare assistants are not regulated and require only an NVQ or similar to start work, which does not guarantee much in the way of good patient care. The second worry is about why it is important for nurses to practise basic nursing. I recently received an e-mail from a retired senior nurse, who said:

"Current staff don't seem to realise that ordinary tasks like washes, bedpans and temperature rounds were golden opportunities to develop a much better understanding of each patient and the nature of their illness; and it allowed for a build-up of trust between staff and patient. While seemingly mundane activities are being carried out, patients no longer feel isolated. They feel they can ask their questions and share their concerns without being a bother. In this way the nurse becomes the patient's advocate".

In other words, once you start treating basic nursing tasks as mere routine to be delegated to those less qualified, you risk preventing nurses from delivering nursing care in the fullest sense.

I hope that the work now being pursued by the Nursing & Midwifery Council to introduce a proper system of regulation for healthcare assistants can proceed apace because we need to guarantee standards at that level. I also hope that, with more graduate nurses on hospital wards, we will hear less and less of the phrases "too posh to wash" or "too clever to care". Hospital nurses who will not give basic care to a patient or who will not ever clean up a dirty floor are simply not doing their job.

Graduate-only entry to the nursing register is a decision that has been taken. For it to work as intended, much will depend on how readily we can recreate the apprenticeship model of training on hospital wards, with proper supervision and the right disciplines being instilled in trainees from the outset by experienced nurses. Much, too, will depend on trainees who lack the right attitude being weeded out rapidly. The word "vocational" is no accident in the context of nurse training, for surely every nurse should feel that the work they do is something close to their heart and more than just a job.

Over the next few months or so, during which the new training curriculum will be designed, we will be presented with an opportunity to get the balance and content of the nursing degree absolutely right so that the aspiration which we all share of a nursing workforce fit for modern healthcare can truly be attained.

8.22 pm

Lord Tunnicliffe: My Lords, I, too, thank the noble Baroness, Lady Gardner, for tabling the Question for this interesting debate. I shall start my response on the issue of assessment, which is central to her Question.

Assessments are made case by case where significant changes to national level education programmes or qualifications are proposed. These programmes and qualifications are regularly reviewed by those responsible to ensure that they are up to date and fit for purpose. Such reviews will take account of a range of issues: higher expectations of patients and staff; changes in demographics; changes in the nature of disease; and technological advances. Often these changes are incremental.

However, in recent times these reviews have focused on nursing and midwifery, which have needed more significant changes. In 2008, the minimum qualification to become a midwife was raised to a degree. It was only after a long period, during which increasing numbers of new midwives qualified with degrees, this non-contentious change was required by the Nursing & Midwifery Council in response to the complex and rapidly changing healthcare environment. Midwifery continues to attract more than sufficient applicants to courses.

Similarly, nursing is becoming more diverse and demanding: some types of hospital-based care will be provided in the home or within communities; technology is getting more advanced; people are living longer; and health needs are often more complex.

That is why the Nursing & Midwifery Council, following a review and consultation, announced the intention to raise the minimum academic level for registration as a nurse to a degree. The department, after considerable engagement with stakeholders, including strategic health authorities, announced in November 2009 that in England nursing programmes from 2013 will be degree level. Degree-level education will develop stronger analytical and problem-solving skills. It will preserve nurses' hands-on caring skills and build the skills needed to be increasingly independent and innovative. It will enable nurses to assess and apply effective evidence-based care, safely and confidently lead teams, and work across service boundaries. Nurses will be able to provide increasingly intelligent care with compassion. The change in the level of qualification, combined with revised competences on which the NMC is about to consult, will ensure that new nurses can further improve the quality of care and patient safety faster and more effectively.

Our existing nurses already operate in this environment and are effective at this. They have had the benefit of post-registration development and education. Many, often supported by their employers, will have upgraded, or are upgrading, their existing diplomas to degrees. The NMC has made it clear it will not require existing nurses to have degrees in order to remain registered. The NHS values all its existing nurses; they all have important contributions to make. But we cannot leave things to chance. If we are to improve quality, prevention and productivity, all new nurses need to have the skills and qualities to tackle the changes I have outlined much earlier in their careers. Degree-level registration means benefits for care in terms of improved quality and safety. As the Council of Deans says, graduate nurses spend longer working in clinical areas delivering hands-on care and remain in the profession an average of four years longer than non-graduates.

Regarding costs, the cost of delivering a degree is substantially the same as for a diploma. Universities receive the same fee for both, and both programmes are three years long. New nurses, whether diploma or degree qualified, will continue to enter the NHS at the same pay band as now. We recognise that the change in qualification may make it harder to fill all pre-registration places once they are all degree level. We will attract a new cadre of students to nursing but will also need to actively attract talented people with the right values and develop new routes into nursing. We are exploring how we might better promote nursing careers.

We are also developing proposals with education colleagues to widen access to degree programmes—for example, through apprenticeships, NVQs and foundation degrees. These will construct routes into nursing for those without sufficient academic entry qualifications but who have the right attributes. It will also provide a clearer career pathway and support improved training for clinical support workers who are supervised by nurses and provide valuable care for patients. We are also exploring the potential for fast-tracking existing non-nursing degree-holders through nursing programmes. This builds on the NMC's proposals to increase the proportion of prior learning that can count towards a nursing qualification. More broadly, for professional education that the NHS commissions directly, we are encouraging fairer access by providing financial incentives for universities to improve their approach to equality, widening participation, and reducing attrition. Finally, we are also tackling the student financial support arrangements to make sure they are fairer.

The noble Baroness, Lady Gardner, brought home her anxiety about the black hole, which is key to her overall concerns. There is no evidence to suggest that the position on nursing numbers in terms of workforce planning is in a difficult position. The strategic health authorities developed local workforce plans based on service needs in current demographics. These are shared with the Department of Health. Indeed, the Department of Health is about to develop a Centre for Workforce Intelligence to support the process. The introduction of it is key. Subsequently, the department has worked with strategic health authorities to develop an assurance process to establish that plans are put in place to deliver change. This has looked, for example, at engagement with universities, risk assessment and project management. As the noble Baroness, Lady Finlay, pointed out, it has happened in Wales and we accept that there are lessons to be learnt.

The noble Baroness, Lady Gardner, also raised the issue of attrition. The department recognises that there are high attrition levels on some nursing programmes. We continuously work with strategic health authorities and universities to reduce attrition rates. However, the average attrition rate for degree nurses is 17 per cent while for diploma nursing students it is currently 21 per cent. The move to degree nursing may improve things

[Lord Tunnicliffe]
if this situation persists. Some attrition from health courses is inevitable where students are struggling to fulfil academic or, just as importantly, practical delivery of healthcare and should not progress to deliver patient care.

The noble Baroness, Lady Gardner, raised six questions. I think that I have answered them all or in part. She raised an individual case. I shall not comment on that tonight or on any individual cases, but I acknowledge that maintaining the element of personal service and compassion in nursing is of central importance to us. As the noble Earl pointed out, considerable consultation is to be had with the NMC on setting up the structure of the new procedure. A high level of involvement is a key element of that, as is building these considerations carefully and solidly into the new structure.

The noble Baroness, Lady Finlay, talked about the lessons to be learnt from Wales. She cited a student who was not ready to progress on leaving school and said that people progress at different rates. I have much sympathy with that person. I think that we do not make enough of a commitment—dare I criticise my Government?—although I am sure that we make every possible effort. Lifelong learning should mean what it says. It should mean not only under-25 learning but "all the way through" learning. I learnt just as many skills in the latter part of my life as in the early part. I have listed the various channels that we are trying to progress so that people can come in at a junior level and move on.

Compassion and caring are central to our approach. Of course, we sometimes fail—and we apologise for that—but central to nursing must be compassion and safety. High standards of practical skills will be maintained. The essence of the Question before us is whether a degree will increase the total basket of skills without diminishing the practical skills. The Government feel that the answer is yes.

On the shape of training, the Nursing & Midwifery Council stipulates the hours in the preregistration process. Students currently undertake 4,600 hours of learning, 2,300 of which are in the practice environment; for example, in wards, clinics, outpatient departments, day units, nursing homes and community settings. This will continue to be the case when nursing moves to degree-only.

The issue of risk aversion and nurses not making positive decisions was raised. If we get the graduate course right—and we do need to consult on it—it will improve the ability of individual nurses to make decisions in those critical-judgment areas.

The noble Baroness, Lady Gardner, and others spoke about two levels of nursing and said that there is a need for the practical nurse. We do not see it that way, but, nevertheless, there will be staff involved in patient care. The NMC register has one part for registered nurses; there is no intention to create a second level for assistant nurses. However, it is recognised that there needs to be some form of regulation for some support staff. It is an ongoing area of consideration.

The noble Baroness, Lady Masham, said that we need more specialists, but that we also need compassionate individuals. We agree. The need for maintaining the practical aspect is well understood. I shall not comment much on what the noble Baroness, Lady Barker, said. I think that I gave her individual assurances; I thought that her speech was brilliant and great for the Government. Financial worries are important. We are looking at how we support students as part of the consultation. Health authorities will continue to fund the fees.

The noble Earl, Lord Howe, in many ways made the case for the degree nurse. I agree with most of what he said: it should be led not by status but by competencies which improve their performance, make them work more safely and deliver better healthcare. We commit that compassion and people skills will continue to be part of that training and part of their future.

8.34 pm

Sitting suspended.

Equality Bill

Committee (3rd Day) (Continued)

8.36 pm

Clause 77: Discussions with colleagues

Amendment 81 not moved.

Amendment 81A

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

81A: Clause 77, page 49, line 33, at end insert—

"( ) A term of a person's work that purports to prevent or restrict the person (P) from seeking disclosure of information from a colleague about the terms of the colleague's work is unenforceable against P in so far as P seeks a relevant pay disclosure from the colleague; and "colleague" includes a former colleague in relation to the work in question."

Amendment 81A agreed.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall): If Amendment 81B is agreed to, I cannot call Amendment 82 by reason of pre-emption.

Amendment 81B

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

81B: Clause 77, page 49, line 34, leave out from "A" to "whether" in line 36 and insert "disclosure is a relevant pay disclosure if made for the purpose of enabling the person who makes it, or the person to whom it is made, to find out"

Amendment 81B agreed.

Amendment 82 not moved.

The Deputy Chairman of Committees: If Amendment 82A is agreed to, I cannot call Amendments 83, 84 and 85.

Amendment 82A

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

82A: Clause 77, page 49, line 39, leave out subsections (3) and (4) and insert—

"( ) The following are to be treated as protected acts for the purposes of the relevant victimisation provision—

(a) seeking a disclosure that would be a relevant pay disclosure;

(b) making or seeking to make a relevant pay disclosure;

(c) receiving information disclosed in a relevant pay disclosure."

Amendment 82A agreed.

Amendments 83 to 85 not moved.

Amendment 86

Moved by ***Lord Lester of Herne Hill***

86: Clause 77, page 50, line 14, leave out subsection (6)

Amendment 86 agreed.

Clause 77, as amended, agreed.

Amendment 87

Moved by ***Baroness Morris of Bolton***

87: After Clause 77, insert the following new Clause—

"Equal pay audit following contravention by employer

(1) In the event that a court or employment tribunal finds that an employer has contravened the provisions of this Act relating to equal pay, the employer shall be required to undertake an audit, to be known as an equal pay audit, and to make the results of the audit available in the prescribed manner.

(2) In this section "prescribed" means prescribed in regulations made by the Secretary of State."

Baroness Morris of Bolton: My Lords, I speak to Amendment 87 and the other amendments in my name and the name of my noble friend Lady Warsi. Our amendments would have the effect of easing an unnecessary bureaucratic burden on companies without, we believe, weakening the effect of the Bill on equal pay.

We regard equal pay as a matter of social justice and believe that the plight of women working in firms of all sizes should not be ignored. I introduced a Private Member's Bill on this subject a year ago this week and remain firmly committed to the issue and its importance. I said then that pay inequality is not acceptable whatever the economic times. We must ensure a culture of equality and fairness in the workplace to motivate women, who will play a crucial part as the economy recovers. I reiterate that in the knowledge that noble Lords around the Chamber will share my dismay that in the 21st century women are still paid on average almost 13 per cent less than men, with the figure rising substantially for part-time work. I remind your Lordships that 45 per cent of women who work in the UK do so on a part-time basis.

These women deserve to be treated fairly and protected by the law, yet we have seen the pay gap widen in some areas. That is why I brought legislation before your Lordships' House. I did not pursue it last January because I genuinely believed, as so many of us did, that we would have seen the Equality Bill in your Lordships' House long before now. However, as I and my noble friend Lady Warsi explained at Second Reading, we are not convinced that the Bill's intention to impose compulsory pay audits is the right way in which to proceed. We believe that requiring all companies to carry out this exercise would be costly and time-consuming and would not necessarily be effective.

Surely the emphasis and resources should be directed at problem employers and how we deter unfair practices. The more sensible solution would be to require an audit in all companies in which an employee has brought a successful case on these grounds. That would greatly strengthen the current position by providing meaningful sanctions against unfair employers while not burdening the majority of fair employers with a new administrative burden. I recognise that business organisations are not too keen on the Government's amendments but have concerns with our proposals as well, mainly because they have worries over the tribunal service. We understand those worries and would like to carry out a review of the service if possible.

As noble Lords will see from our proposal that Clause 78 should not stand part, we have serious concerns with the means of achieving a shared desire. Just before Second Reading, there were hints in what appeared to be well informed media that the Government might be looking to row back on company pay audits. The Minister denied that when we raised it at Second Reading, but there is still time for her to reconsider.

The exemptions from this clause are very interesting. Why would they not apply to government departments? Perhaps we are to believe that Her Majesty's Government have an unimpeachable record on equal pay. Sadly, that case does not look too convincing, given that two past Ministers for Women in another place have been appointed to do the job but not been given a salary to do it. If any part of the explanation is that this is superfluous or impractical in the cases to which the exemption applies, that should tell us all we need to know about this clause.

Together with our belief that this clause is over-bureaucratic and puts an undue burden on good employers, we object to it because it will apply only to women in companies of a certain size. The amendment proposed by the noble Lord, Lord Lester of Herne Hill, seeks to address this, but we remain of the firm belief that any equal pay legislation should be there for all women. However, if this clause remains, the metrics for gender pay gap reporting will be crucial.

A number of business organisations have been in touch with us regarding serious concerns about the EHRC report, which will supposedly contain the metrics for gender pay gap reporting. Harriet Harman charged the EHRC with delivering a voluntary reporting framework that would allow greater pay transparency to be measured. The publication was expected to coincide with the Second Reading of the Equality Bill in your Lordships' House on 11 December, but the deadline came and went. According to business groups,

[Baroness Morris of Bolton]
the menu of indicators was agreed on and the final text nearly agreed, but suddenly the deadline was postponed until the new year. In January, an amended draft was then sent out that did not contain the previously agreed menu and text. There were also changes to the language, which reflected expectation rather than encouragement. This was not agreed to by certain business groups, but the late date made it very difficult to have any time for changes. The last-minute changes meant that all employer organisations on the working group found them unacceptable and forced them to reject the report. So the business groups were engaged in the process, which was then undermined. There were discussions yesterday, but the EHRC did not finish these with business organisations who were left waiting, not knowing what was happening or whether the report was going to be published without their agreement.

The way this has been organised means that we do not have the report today. Has it been published yet? It certainly had not been earlier. Have the Government found agreement? What were the parameters of the near agreement before Christmas, and why have the Government rowed back on this? Late amendments, late reports, late metrics—it makes you almost feel like saying, "We can't go on like this". I beg to move.

8.45 pm

Lord Lester of Herne Hill: My Lords, at this late hour I cannot muster sufficient disappointment and indignation, as I feel, about this part of the Bill, and I have already said some of what I feel at Second Reading. Using moderate language, it is in my view a complete betrayal of what I expected would be in the Bill on the principle of equal pay for men and women.

I can deal swiftly with the amendment that the noble Baroness, Lady Morris of Bolton, has just moved. I hope she will forgive me for saying this, but I find the position of Her Majesty's Opposition incoherent—the Amendment 87, Amendment 89 and Clause 78 stand part attempt to water down the gender pay gap information clause. They seek to remove Clause 78 in its entirety and replace it with a clause that would only require an employer to publish a pay audit if a court or employment tribunal found that they had contravened the provisions of the Act relating to equal pay. In other words, the position of the Official Opposition as I understand it is that they do not like what the Government have put in, pathetic and weak though it is, and instead they want to treat an equal pay audit as a punishment—so that only if you were found, in an individual case, to have broken the law would you suddenly have an equal pay audit inflicted upon you. That is not sensible. For one thing, it is entirely arbitrary. We are dealing with a systemic problem that requires a systemic solution.

What is the systemic problem? The systemic problem is that the Equal Pay Act 1970—Barbara Castle's Act—has proved to be unworkable. I am afraid this is because its procedures, which were amended in Margaret Thatcher's time to comply with the European Court of Justice judgment, were deliberately intended to be unworkable. It is tortuous, and the judges have said so. Again and again, senior judges and independent experts have called for a radical overhaul of equal pay legislation.

The matter we were discussing before was technical: it was simply an attempt to state the equal pay law, as it is, in an accurate way in the Bill. Now we are talking about what can be done, more than a generation after the Equal Pay Act was first enacted, to close the pay gap in a really effective way.

When I introduced my own Private Member's Bill, based on Professor Sir Robert Hepple's report, we set up a working party which consisted of all the main government departments, the CBI and the TUC. Month after month we sat and negotiated the equal pay audit that was in my Bill. I remember the CBI representative Mr Cridland, for example, was entirely in favour of it. What has happened now is that I am afraid since their inception the present Government have always asked themselves, and answered, one question: what would the employers think about this? It is the wrong question. The right question is how can you achieve equal pay for women, given the history of non-compliance?

The reason an equal pay audit is required is not as a punishment. It is because employers in the private and public sectors need to review their pay systems to see whether there is any direct or indirect discrimination, and they need to do so voluntarily, not by way of punishment. Any good employer, I hope, already tends to do that. The question is: what encouragement can the law give?

The noble Baroness, Lady Gould, who I am delighted to see is in her place, knows this at least as well as I do, as does the noble Baroness, Lady Turner. At the moment, the law works by encouraging employers to carry out job evaluation schemes. If they carry out a job evaluation scheme measuring the work that men and women do throughout the labour force, and then apply it properly to pay, they can eliminate direct and indirect sex discrimination. The real question is: how can the law best assist in encouraging large and medium-sized employers to do what is needed, which is to eliminate sex discrimination in pay after all these years? I do not suggest that the reason for the pay gap is only sex discrimination—of course that is not the case. Part of the reason has to do with other social factors, which we all know about. There is undoubtedly still persistent and continuing sex discrimination.

It seems to have got into the head, not necessarily of the CBI but some of its members, that it is clever to leave the system as it is now. As I read its submissions, the CBI opposes the timid proposals in the Bill. Employers seem to be under the impression that the best thing they can do is leave the present antiquated, tortuous and unworkable system as it is, so that it can simply be soldered up year after year, leaving it to individual litigation.

In the old days, before the Government of the noble Baroness, Lady Thatcher, came in, there was at least the Central Arbitration Committee, which was there as a collective mechanism to eliminate sex discrimination from pay agreements. That was abolished. There is now no effective collective mechanism. What the Government are doing is, in heaven's name, about as modest as one could conceivably think of. I know the reason. It is not because the right honourable Harriet

Harman believes this; it is because she has been outmanoeuvred by the business Ministers who, in turn, march with the employers on this issue. We are dealing with the majority of the population, but a highly vulnerable group of women are being exploited as a source of cheap labour. The Government, in Part 1 of the Bill, talk about eliminating socioeconomic disadvantage. If they are serious about that, one of the best ways of eliminating it is to give equal pay to women and men.

Clause 78, as it stands, requires the Minister to make regulations about mandatory pay audits. That will only be exercised, as I read it, if there has been insufficient voluntary publication by employers by 2013. That completely unnecessarily delays making the changes that are needed now to address the gender pay gap. Also, the Bill fails to indicate how much detail employers are expected to be required to publish. Instead, that is apparently to be decided after publication of recommendations of the ECHR. The Bill provides no certainty that employers will be required to publish information in sufficient detail to address the gender pay gap.

My amendments, which I am speaking to as part of the group, require a Minister to make regulations requiring private sector employers with at least 100 employees in Great Britain to publish information about differences in pay between their male and female employees. The purpose of that is to identify discriminatory differences in pay so as to encourage employers, as I say, to eliminate sex discrimination in pay by knowing—as they should already know—what their pay systems are, whether they have an adverse impact on women and what can be done, through negotiation or otherwise, to address the situation.

Many years ago when we had the pay freeze—some who are a bit old like me may remember—there was always an exception made to secure equal pay. Now we are in economically straitened times. I think that we would all agree—I hope we would all agree—that because the country is at the moment in such difficulty, it is no excuse to go on exploiting women as a source of cheap labour. I had wished that the EC Commission would have found the energy some years ago to bring further infringement proceedings against this country for failure to comply properly with the principle. I still hope that it will do so, because I can see no other way—with this Government, or whoever wins the next election—of ending this scandal. I am sorry to use such moderate language. I wish I could find stronger language, but I have to say to the Government that, in my view and that of my party and that of women in general, this does not do.

Baroness Turner of Camden: My Lords, I do not want to add anything to what the noble Lord has just said. I would like, however, to mention his Amendment 91, which suggests that "250" be left out and be replaced by "100". Quite recently, I was approached by a number of employees who work in private companies working for the NHS. They told me that they suffer very much from inequality, but that they would not be able to utilise the provisions of this Bill, because the companies they work for are quite small, relatively, and they would not have the 250 employees which make it possible for them to utilise the provisions in the Bill. I wonder whether we could look again at the number 250—whether you have 100 or more or a lesser number—because quite clearly a number of people are working in smaller companies who will not benefit at all from the provisions of this Bill.

I agree with a lot of what the noble Lord, Lord Lester, has said about the provisions in relation to equal pay generally, but I would like to say a few words about that when we come to discuss Amendment 93.

Lord King of West Bromwich: My Lords, as it stands, this clause is only about the gender gap, and subsection (1) only places a duty on employers to report on gender. I believe that this is not sufficient, as this does not expose pay gaps among employees of different ethnic groups, employees of different ages, and employees with or without disability.

It is extremely important that this information is made available, and my Amendment 89A places a duty on the employer to do that. My second amendment, Amendment 91A, places a duty on the employer that information published under subsection (1) shall be made available to the whole workforce and other interested stakeholders.

As the clause stands, there seems to be no such duty and, more often than not, such information stays hidden away in committee meeting minutes. This information needs to be publicly available, so that it can be used to provide equality for all, which, after all, is the aim of this Bill.

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, with permission, I will speak to Amendments 87 and 89, proposed by the noble Baronesses, Lady Warsi and Lady Morris, before turning to Amendments 88, 90 and 91 from the noble Lord, Lord Lester, and Amendments 89A and 91A from my noble friend Lord King.

The noble Baroness, Lady Morris, has a fine record in relation to the gender pay gap. We all, throughout this Chamber, agree on the iniquity of the gender pay gap. What we do not agree on is the means by which to narrow the gap, which is something that we absolutely must do.

Amendment 87 would introduce a new clause similar to a provision in the Equal Pay and Flexible Working Bill, introduced in this House by the noble Baroness last year. It would require only those employers found to have breached the equal pay provisions of the Bill to conduct a pay audit and publish the results. As the noble Lord, Lord Lester, said, it is rather like a punishment clause. We believe that in practice this amendment would make very little difference in closing the gender pay gap because very few equal pay claims succeed at tribunal. More are lost and many more are settled or withdrawn before reaching a tribunal. The latest figures from the Tribunals Service show that, out of the 20,148 equal pay claims disposed of by employment tribunals in the year to 31 March 2009, only 36 were successful at tribunal.

9 pm

Furthermore, Amendment 87 would not affect in any meaningful way obligations on the private sector, in which the vast majority of people in work are

[Baroness Royall of Blaisdon]
employed. Most equal pay claims that reach a tribunal involve public sector bodies, which already conduct pay audits. Often the results of these pay audits are the very reason that a case has been brought in the first place. Amendment 87 would also remove any discretion from tribunals. It would lead to them ordering pay audits where they might be inappropriate—for example, where the employer had recently conducted a pay audit or where there would be no benefit to other employees.

Finally, the requirement imposed by Amendment 87 is indiscriminate. It would apply equally to small employers which may not have the resources to conduct a pay audit and to larger ones that do. As the noble Baroness said herself, there is no great enthusiasm in the business world for the proposals in the amendment, and I certainly urge her to withdraw it.

I now come to Amendment 89—again, tabled by the noble Baronesses, Lady Morris and Lady Warsi. This amendment would make Clause 78 unworkable. I note the intention of the noble Baronesses to oppose the Question that Clause 78 stand part of the Bill, and I shall therefore explain briefly why the clause should stand part. The Government are committed to doing more to close the gender pay gap, but we can only effectively do so, particularly in the private sector, when regular publishing of pay gap information by individual employers produces greater transparency. To address the issue, we must first shine a light on it, and that is how the clause may come into play. I say "may" because the Government hope that we can get greater transparency through voluntary publishing arrangements.

The Equality and Human Rights Commission has, at our request, been working with representatives from the business community, trade unions, the voluntary sector and other stakeholders to help to develop workable arrangements for gender pay publishing by non-public sector organisations, to be promoted on a voluntary basis. Its consultation seeking input from employers, unions and others about their preferred approach began in August and closed on 28 October last year. We expect publication imminently. I deeply regret that the commission has been unable to follow its press release of today with a report, and I shall certainly be seeking clarification on the reason for the delay. It is fair to say that the Government asked the EHRC to undertake the project, but the commission, with its stakeholders, has owned the project from its inception. I respectfully point out that the commission is an executive non-departmental public body and therefore it is an arm's-length body. Of course, the Government were given an opportunity to comment on the draft report, along with all key participants, but decisions about the contents of the metrics report ultimately rest with the EHRC.

The commission's proposals include a range of measures in relation to the gender pay gap from which employers will be encouraged to select in the way that best suits their circumstances, while enabling reasonable comparability for the future. Employers will be able to choose from three quantitative measurement options: an overall single figure; the starting salaries of male and female staff; or the differences between male and female pay grades by grade and job type. There will be no one-size-fits-all approach. The commission will also offer the option of a narrative, which will enable employers to explain the context. The narrative would not be a stand-alone element but would have to be combined with at least one of the quantitative measures. The commission would expect employers employing 500-plus employees to use two or more options from this menu—in most cases, the narrative plus one or more of the quantitative measures. The commission's expectation in respect of employers employing 250 to 500 employees is that they would opt out of one of the quantitative indicators.

I hear the concerns expressed by my noble friend Lady Turner of Camden, who has a fantastic record on these issues. We have taken those concerns into consideration, but it is not something that we can meet at the moment. However, as employers get to grips with the information requirements and begin to publish their data, the Government will carefully monitor the extent to which employers are publishing in accordance with the commission's guidelines. If employers start to embrace greater transparency on pay, progress on recognising and challenging patterns of pay inequality should follow naturally, step by step.

The Government do not intend to use the reserve power in Clause 78 before 2013, to give voluntary arrangements time to work. It would then be used only in the event that insufficient progress on voluntary reporting had been made by that time. The power enables a Minister to make publishing arrangements mandatory through regulations, which would identify which employers were required to publish what information relating to the pay of which employees, and in what form and manner the information should be published. Regulations would also detail the time of publication, which could not be more frequently than annually. Any regulations would have to be consulted on and then debated by Parliament.

We expect that employers will meet their publishing obligations. They should know whom they employ, whether their employees are men or women and what they pay them. However, clearly there need to be proportionate sanctions that may be brought to bear in cases of non-compliance. Any criminal sanction would be pursued only in the most serious cases, and would entail a fine no higher than £5,000.

The noble Baroness, Lady Morris, asked what we were doing in the public sector. The Government propose to use the power in Clause 152 to require all public sector employers with more than 150 employees to publish annually details of the gender pay gap in their organisation. This is one of the proposals for a set of specific duties to support better performance of the new equality duty in the Bill. The proposals are set out in the consultation document published on 16 June last year. The closing date for responses was 30 September. We are considering what people said and we will respond very shortly. When the noble Baroness criticised the Government for not paying former Ministers for Women, I would say we are bang to rights.

I now turn to Amendments 88, 90 and 91, tabled by the noble Lord, Lord Lester. Amendment 88 would mean that voluntary arrangements were not given any time to work. It would reserve the power to make

regulations in Clause 78 into a requirement to make regulations immediately the clause has technically commenced. The Government share people's impatience at the slow progress being made in closing the gender pay gap, but we want to try to bring employers with us on this and convince the doubters that it is in their business interests. That means first giving larger employers the chance to demonstrate their commitment to change on a voluntary basis. The noble Lord asked why the clause does not give details of the information that may have to be published. We want the flexibility to allow us to learn from the voluntary arrangements, which will help to inform any future consultation on these details.

Amendment 90 would implicitly require employers to have analysed the data they had collected to establish the causes of any pay gaps identified before publishing information only about those caused by sex discrimination. Such an analysis is a key element of a formal pay audit. The reserve power in Clause 78 could be exercised in a way that required employers to determine where men and women are doing equal work, or work of equal value, and to collect pay data to identify gender pay gaps. These are also elements of a formal pay audit. However, the power could not require employers to analyse the data to establish the causes of any gaps identified. Not every gap will be because of sex discrimination. We know, for example, that many men and women enter the labour market with different skills and qualifications. However, once the data had been published—which is what transparency is all about—employers could be more exposed to claims if the data disclosed a significant pay gap. It would therefore usually be in the employer's own interests to analyse the data in order to ascertain the reasons for the gap.

Amendment 91 would apply the clause to employers with 100 or more employees, instead of those with 250 or more. This would increase the number of employers in the scope of the clause by over 146 per cent, but it would only increase the number of employees by 16 per cent. We chose the 250-employee threshold as employers with fewer employees are classified as small and medium-sized enterprises. In addition, employers generally only invest in the kind of sophisticated IT, payroll and HR systems that would enable easy collation and presentation of gender pay gap information when their headcount reaches around 250 employees. Smaller employers will of course be free to publish information about their gender pay gaps, and we would strongly encourage them to do so if they wish. I add that a threshold of 100 employers would be lower than that which the Government propose to apply in the public sector. We propose to use the power in Clause 152 to require all public sector employees with 150 or more employees to publish annually details of the gender pay gaps.

I turn finally to Amendments 89A and 91A, tabled by my noble friend Lord King—

Lord Lester of Herne Hill: I hope that it is convenient for me to speak now. I have two main points. First, the Government's position shows no understanding at all of the history. The Equal Pay Act was enacted in 1970 and employers were given five years before it came into force to move their pay so that there was equal pay for women. After those five years, in 1975, the obligation to give equal pay became legally binding. In the early cases, such as the Julie Hayward case, the House of Lords repeatedly warned employers that the results of those cases should lead employers to carry out what the Government would now call mandatory pay awards. That did not happen.

I have listened carefully to the Minister but, with respect, the second reason why what she says is not convincing is because of the CBI's own brief. If the CBI had written a brief saying that it welcomed the Government's proposals and that it would ask its members to give them effect, it might be a different matter. We are trying to change the culture of discrimination, which is more than 40 or probably more than 100 years old.

It beggars belief, but the CBI in its briefing says that,

"forcing companies to report on their gender pay gaps would not help to tackle the root causes of inequality".

It opposes Clause 78, saying that it is too simplistic; it could tar employers; it is short-termist and that there should only be voluntary initiatives and so on. If the CBI, which as I have said in the past was not like this, is now taking this as its official position, what hope is there in a plea to voluntarism all these years after the Equal Pay Act and the European equivalent came into force? It will not happen. It will not happen even if this Government win the next election, and it will certainly not happen if they do not. That is why when we come to Report I intend to push for some beef. My wife, who is a vegetarian, will forgive me for using that phrase.

Baroness Royall of Blaisdon: As a fellow vegetarian, I say that of course we are disappointed with the attitude displayed by the CBI in its briefing, but that does not mean that individual employers should not nevertheless take up the proposals and do whatever they should be doing. We are giving them three years and if after that time they do not comply with the voluntary system, enforcement will come. At this stage in our history, notwithstanding the fact that the noble Lord thinks we are ignoring history, we are in different times and we want to close the gender pay gap. We have reflected on these things for many hours and we believe that this is the best way forward and the best way to see progress. I note what the noble Lord says about Report and the beef, and I look forward to discussing this with him at a later stage.

I now turn to the amendments tabled by my noble friend Lord King, which would mean that employers could also be required to publish and make available to their workforce and unspecified others information about their race, age or disability pay gaps, as well as their gender pay gaps. The Government have seen no evidence of a significant race or age pay gap. The gender pay gap is also much bigger than the disability pay gap, which now stands at 6.4 per cent, and we think that the way to reduce it is to get more disabled people into work.

Publishing gender pay gap information means making it generally known, and the form and manner in which this should be done will be a matter for any regulations made under Clause 78 following public consultation.

[Baroness Royall of Blaisdon]
I do, however, hear what my noble friend says, and I trust that this will not be a problem that grows in future. If it is something that needs to be looked at in future, then look at it we must, but at the moment we do not think that the problem is sufficient to include it in legislation. I therefore ask the noble Baroness to withdraw the amendment.

9.15 pm

Baroness Morris of Bolton: I am most grateful to the Minister for her careful consideration of these amendments. The noble Baroness says that our amendments are a punishment, but the Government's own proposals would seek to impose an unnecessary duty on good employers. The Minister also said that our amendments were discriminate because they would impact on small firms, but that then leaves women who work for small firms with less protection than those who work for large organisations.

The noble Lord, Lord Lester, said that he thought our amendments were incoherent. I think we have a fundamental disagreement; we do not think that they are at all incoherent. We feel that our amendments are good because they do not penalise or put extra administrative burdens on good employers, but send out a strong signal to employers who discriminate against women in pay that, if they do not comply, they will have to have a compulsory audit. I agree with the noble Lord, Lord Lester, that encouragement is better than punishment, and our amendments are indeed intended to encourage good practice. I also agree with him about women not being paid badly, as fodder for low pay, as cheap labour, in bad economic times. I said that, whatever the economic times, the issue of equal pay is one that we should always address.

I am terribly sorry that I did not address the amendments tabled by the noble Lord, Lord King, when I spoke initially. I thought that they were coming in the next group. There is an interesting case to be raised here. The Government say that they do not expect equal pay audits to be a seriously onerous burden on business in terms of cost or administration and, if that is the case, why should the Government not wish to expand the provisions to disability, age or ethnicity? I hear what the noble Baroness said, that, should that be a problem in the future, the Government will look at it. I am not saying that it is what should happen, but if you are doing it for one, it seems strange not to do it for another.

However, I feel that we are miles apart on this, which is sad, given that we want the same outcome, and it seems a pity that we cannot will the same means. Given the hour, I beg leave to withdraw the amendment.

Amendment 87 withdrawn.

Clause 78 : Gender pay gap information

Amendments 88 to 91A not moved.

Clause 78 agreed.

Amendment 92

Moved by ***Lord Lester of Herne Hill***

92: After Clause 78, insert the following new Clause—

"Representative actions in equal pay claims

(1) The Secretary of State must make regulations to permit the Equality and Human Rights Commission or a registered trade union to apply to a court or tribunal as appropriate for a representative action order in relation to a defined class of persons ("the class") who would benefit from the litigation of rights, or common issues in relation to rights, that members of the class may have as a result of the provisions of this Act.

(2) The regulations shall make rules in relation to the making and termination of a representative action order and its conduct.

(3) Such rules shall provide for hearings to be conducted in private when it is necessary for the issues between the members of the class and the Equality and Human Rights Commission or a registered trade union to be resolved and those issues are subject to legal professional privilege shared by members of the class.

(4) Such rules shall make provision for the hearing of any issue as defined in subsection (3) to be undertaken and managed by a different judge or tribunal from the judge and tribunal that have the responsibility for determining the rights or common issue in relation to rights of the member class."

Lord Lester of Herne Hill: I say straight away that Amendment 92 is defective and will therefore need to be reconsidered. It is defective because it deals with representative actions only in equal pay claims, whereas it ought to deal with representative actions in all discrimination claims, and certainly those involving sex discrimination as well as equal pay.

The amendment is also unnecessary in the sense that the tribunal legislation already gives the Government the power to bring in representative proceedings. The Government so far, no doubt because the business Ministers representing employers have decided to oppose this, will not exercise that power. I shall try to think of some ways before Report to make them do so, and I hope that the Official Opposition will join in that.

I want to try to explain why this is such an important issue and, in doing so, I hope that the noble Baroness, Lady Turner, will allow me to go down memory lane to give just one example. About 25 years ago, I had the privilege of representing MSF in the speech therapists or Enderby case. The noble Baroness, Lady Turner, will remember it very well because she was there from the beginning and it was her trade union. That case took 11 years—I say it again, 11 years—from start to finish. We had to go to the divisional court, the Court of Appeal and Luxembourg, come back from Luxembourg and then there were further proceedings. The case involved comparing the work and pay of speech therapists, hospital pharmacists and clinical psychologists within the National Health Service. The Government, in the public sector, used every trick in the book and fought tooth and nail to avoid giving those speech therapists, 99 per cent of whom were women, equal pay with their counterparts.

Each of those women had to fill in a separate originating application, a separate claim form, because there was no procedure in the employment tribunals to allow them to join together, not in an American-style class action, but simply in English-style representative proceedings so that several hundred claimants could be joined together. Because there were hundreds of separate pieces of paper, as is now required, the

consequence was that, by the end, women had moved or died and their male comparators had died or moved. The union had probably lost many of the papers. There was a great law firm, and the whole thing was chaos. Who is helped by chaos? Bad employers are helped by chaos. If the CBI, a body which I have respected very much throughout my years when dealing with discrimination, and major employers, went to the noble Lord, Lord Mandelson, and his colleagues and said that they now accept that there should be orderly, coherent procedures in the employment tribunals for dealing with equal pay, sex discrimination and other discrimination cases, and therefore liberated the Government from any pressures and enabled them to use their existing power, it would be a modest change in procedure that would mean that the collective implications of systemic wrongdoing could be addressed in a single process in an orderly way by a single employment tribunal and upwards.

My amendment is unnecessary and too narrow. It is very modest, because it states:

"The Secretary of State must make regulations to allow the Equality and Human Rights Commission or a registered trade union"—

nobody else—

"to apply to a court or tribunal … for a representative action order in relation to a defined class of persons … who would benefit".

It goes on to explain how that might be done.

One bad argument I heard from within the Administration—I think it came from the Ministry of Justice—was that all this is very sensible, but we have to wait for the civil justice review to change the system for all proceedings. That is one of the arguments that FM Cornford dealt with in his classic book *Microcosmographia Academica: Being a Guide for the Young Academic Politician* as a recipe for doing nothing at all. We do not need to wait to reform the entire civil justice system when we are dealing with discrimination law and a specific jurisdiction. All I therefore beg for is that the Government will exercise their power now—there is no need for consultation, as this is not controversial—to allow the commission and registered trades unions to apply in this way so that we can have orderly proceedings. It is not radical. It is not even liberal. It is just sensible. I beg to move.

Baroness Turner of Camden: I support the ideas behind this amendment—we heard what the noble Lord, Lord Lester, had to say about it—because I recall that when I was a trade union official, when the union wanted to secure equal pay for sections of women workers and wanted to use the legislation, it was necessary to find an individual member in whose name the case could be taken to a tribunal. If the case was won, it was then possible to get the decision carried through to the remainder of the workforce involved. But there was of course a problem. Someone had to be prepared to stand up herself, on behalf of everyone. Of course, it was done. The case to which the noble Lord, Lord Lester, has drawn attention was the case of speech therapists, who were members of my union, and we were fortunate in finding one member, a test-case member, who was willing to go the whole length—the whole 11 years—that it took before we eventually won that case. She was a remarkable woman, but you cannot always rely on exceptional individuals. She is now a professor at Leeds University, in charge of research. She was in every way an exceptional person, but you cannot rely on finding one of those in every case that you wish to take before a tribunal.

It would be so much simpler, as has been indicated, if we were able to take representative cases for the whole group of members; and there is also a case, of course, arguing that it should not just be for equal pay cases but across the whole spectrum of equality governed by the Bill, in which case we would need very different wording. I was in fact approached by a group that wanted a set of wording rather different from that of the noble Lord, Lord Lester, which would enable any equality case to be dealt with on a representative basis, if the union sought to do so. We will maybe consider that at Report. This is certainly an issue which ought to be dealt with by the Government either in the way suggested by the noble Lord, Lord Lester, or perhaps with the aim of a different amendment at Report, when we can take it across the whole spectrum of equalities in order to ensure that representative action can be taken instead of relying on exceptional individuals. They are few and far between, and you cannot always find people who are willing to go the full distance, as did this particular member in this particular case.

Baroness Butler-Sloss: My Lords, I strongly support the thrust of the amendments of the noble Lord, Lord Lester, even though, as he points out, they are ineffective today. I also very much hope that he will induce the Government to think again about whether their existing powers could be put to good effect, because if in fact they are not going to be put to good effect by, I assume, another government department, then they ought to be restated in this Bill. I also share the noble Lord's view that the requirement that further work should be done on the various procedures within the civil courts is quite unnecessary. As a member of the Merits Committee, we dealt with three Crown Court or civil jurisdiction regulations today, without the slightest difficulty, and I do not see the slightest difficulty in having regulations in relation to discrimination quite separate from anything else that comes. It is a perfectly simple thing to do. The wording of the regulations would have to go through the civil courts procedure committee, and no doubt there is another committee, the name of which escapes me, which would also have to look at it. Those are purely and simply procedural matters, to get to the point that the noble Lord is making, and it is well overdue.

One very simple point, which has already been pointed out by the noble Lord and by the noble Baroness, Lady Turner, is that it is inefficient to use a single person when that single person is representing a lot of other people. It would be much more efficiently done, and actually better for the employers, if they knew the extent of those who were involved in this, and everybody knew where they stood. It would be more efficient from the point of view of everybody. It therefore seems to be well overdue.

9.30 pm

Baroness Flather: My Lords, I, too, should like to add a word of support. At a meeting with the Solicitor-General before the Bill went before the Commons I brought up this issue, but I was told that it would not

[Baroness Flather]
be possible to bring it into the Bill. For that reason alone, I am pleased to see this amendment. It would be a great leap forward. The United States has seen a huge change since class actions were introduced. As my noble and learned friend Lady Butler-Sloss said, this would be the right way forward. It is time to bring in this provision and not make scapegoats of individuals who suffer so much over the years as they go through the process. It is unfair to them.

Baroness Howe of Idlicote: My Lords, I support the intention behind this amendment. The more I think about the years we have waited to get anything near equal pay for work of equal value, the more perhaps I have become cynical about how long it will take to achieve. Not least are the excuses, such as, "We are in a bad economic situation". So what do we do? We make certain that we do not give anything at all that we think might cost us, which fails to take account of the fact that one of the good aspects of a recession is that it should be, and is in some cases, encouraging firms to half lay off people—for example, using flexible working—which applies to men as well as women.

However, on a more general point, there are many sides to this issue. I feel almost as if I am arguing the same case for prison reform. Let us do more to prevent it happening in the first place. What is happening in schools? How often are girls being taught about jobs where there is need and where the pay is better, and always has been? Mentoring of that sort would help. There are all sorts of things like that. For example, girls can be given the chance of apprenticeships in areas that they have never thought of or have had suggested to them. Preventive work is part of it.

Clearly, we have more people in the public service than we have ever had before. If the public sector is to set an example, as it should, this will have some effect if it can be shown that it is setting the example for others to follow, not least if it starts with employers of 150 people. I should like to encourage everyone not to be too depressed by all of this, but to think of a range of ways in which we can move ahead.

I am afraid that I am even more cynical than I have indicated so far. When we had equal numbers of trade unions and CBI reps on the Equal Opportunities Commission, I am afraid that my reaction was, "Okay, those six will get together and make certain things do not move as fast as they should". There was too much common interest in not moving ahead. There is a lot still to do, but I am certain that we can move much faster than we are. The idea put forward by the noble Lord, Lord Lester, even if his proposal is not well drafted, is a good beginning.

Lord Hunt of Wirral: My Lords, it is my great pleasure to follow the noble Baroness, Lady Howe of Idlicote, because she was my inspiration when she chaired the Equal Opportunities Commission. I have to say that she never let me get away with anything. Indeed, I have been so committed to the cause we are discussing as a result of her initiative. This is a welcome opportunity to pay tribute to her.

I listened with interest to the noble Lord, Lord Lester, and I understand completely his concerns. But I just say to a number of those who have participated that it is a question of how we get there now. I strongly agree with the noble Baroness, Lady Howe of Idlicote, that we have to do it in a variety of ways. It is no use going down just one road. I have to say to the noble Baronesses, Lady Turner of Camden and Lady Flather, and the noble and learned Baroness, Lady Butler-Sloss, that in many ways I am worried about opening the door to huge class actions. In the United States, we have seen what damage that can do.

I am worried about provisions such as meetings in private and various other things in the amendment, but I do not think that it is necessary to go into great detail because the noble Lord has already put it in context. I believe that our proposals for compulsory pay audits limited to employers who have lost equal pay cases would mean that class actions were no longer necessary. So let us get on with it.

Baroness Royall of Blaisdon: All noble Lords this evening have made a persuasive case in favour of representative actions. We certainly welcome the intention behind the new clause, but we cannot accept it. It would be premature to legislate for representative actions in equal pay cases now because there are a number of difficult issues still to work through in order to understand whether the introduction of representative actions really would promote the better enforcement of individual rights. As the noble Lord, Lord Lester, himself said, including a power in this Bill is really unnecessary. Section 7 of the Employment Tribunals Act 1996 already contains a power to make regulations on procedural rules which could be used to permit representative actions in equal pay claims in employment tribunals. We should think further about the use of this power. I note what the noble Lord said in his speech. I will reflect on that further.

Our recent research into how representative actions would work for equal pay cases has shown that this is a complex issue which generates polarised views, although not in this Chamber. Some of the issues we need to work through include: what happens when discrimination cases are brought together with other cases, such as unfair dismissal; the extent to which costs should be borne by the losing party in tribunal cases; how such cases should be funded; whether claimants should have to opt in or opt out of a representative action; how disputes between a claimant and the representative party should be resolved; and how damages should be awarded and distributed to a successful class of claimants.

There are also more issues to work through with regard to employment tribunals and the civil courts. This is because representative actions are to a limited extent permitted in the civil courts so that when introducing representative actions for things such as consumer and financial services cases, we will be building on an existing legal framework. There is no similar mechanism for grouping cases in the employment tribunals, so introducing representative actions for discrimination and equal pay cases in this jurisdiction would be a completely new departure.

More time is therefore needed to consider the potential impact on the tribunal service. In order to help us work through these issues, the Ministry of Justice will be doing some further work with the Civil Procedure

Rule Committee to develop a tool kit for departments to use and to develop flexible generic procedural rules within which any representative action scheme can operate.

In conclusion, we recognise that there are problems with systemic pay discrimination. We accept that representative actions may bring great benefits both for individuals bringing claims under the Bill and potentially for defendants faced with multiple claims, and we will continue to look at this issue and may consult in due course. Concern has rightly been expressed around the Chamber about the backlog of equal pay cases and we are looking at whether there is more that the Government can do to speed up the handling of equal pay cases. Indeed, we have already introduced a number of measures to improve their handling. For example, the Employment Act 2008 contains provisions to enable ACAS to target conciliation resources on equal pay cases, with most likelihood of early resolution, and removes time restrictions on ACAS conciliation after an employment tribunal claim is made.

We have also taken other actions in this field. But for the reasons I outlined earlier, I ask the noble Lord to withdraw his amendment.

Lord Lester of Herne Hill: I am grateful to the Minister and to everyone who has spoken in this short debate. The Women's National Commission said in its briefing that it supports the concept of representative actions as a means of speeding up equal pay claims and taking the pressure off individual women who often do not have the confidence to pursue claims against their employers, even if they are represented by unions. It continues:

"Unequal pay is often systemic rather than individual, requiring an overhaul of an entire pay system, not just compensation to a few brave individuals".

That was the point the noble Baroness, Lady Turner, made in her important speech.

The citizens advice bureaux network, which is a grass roots body throughout the country, deals helpfully with representative proceedings. I shall not go through what it says now but it makes extremely intelligent suggestions about how the procedure already existing in the civil courts under civil procedure rule 19.6 might be invoked. I should say to the noble Lord, Lord Hunt of Wirral, that I am not in favour of class actions American style; and I am not in favour of lawyers getting a big cut out of damages claims on behalf of women. I welcome the fact that the conditional fee agreement scheme is to be cut back so that greedy lawyers cannot do that. I am not in favour of any of that. All I am seeking is limited procedural reforms on the lines of what we already have.

On Friday morning I am going to address the Trades Union Congress annual meeting on equality, at which about 400 or 500 people will attend. I have had the privilege of doing so for the past 10 years and I always give a report on the progress, or lack of it, that we have made. I promise the Government that on Friday I shall tell the people there what has happened in this debate and I shall ask each and every one of them and their organisations to write to the Minister because I cannot think of any other way to do this. We will have to use muscle if necessary—but muscle should not be necessary for a simple procedural reform. On that basis, I beg leave to withdraw the amendment.

Amendment 92 withdrawn.

Clause 79 : Colleagues

Amendments 93 to 96

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

93: Clause 79, page 51, line 6, leave out "colleague of A's only" and insert "comparator"

94: Clause 79, page 51, line 15, leave out "colleague of A's only" and insert "comparator"

95: Clause 79, page 51, line 18, leave out "colleague of A's only" and insert "comparator"

96: Clause 79, page 51, line 24, leave out "colleague of A's only" and insert "comparator"

Amendments 93 to 96 agreed.

Clause 79, as amended, agreed.

Clauses 80 and 81 agreed.

Schedule 7 agreed.

Amendment 97

Moved by ***Baroness Gibson of Market Rasen***

97: After Clause 81, insert the following new Clause—

"Time off for trade union equality representatives

(1) The Trade Union and Labour Relations Consolidation Act 1992 is amended as follows.

(2) After section 168A insert—

"168B Time off for trade union equality representatives

(1) Subject to subsection (4), an employer shall permit an employee of his who is—

(a) a member of an independent trade union recognised by the employer, and

(b) an equality representative of the trade union,

to take time off during his working hours for any of the purposes listed in subsection (2).

(2) The purposes are—

(a) carrying on any of the following activities in relation to members of the trade union employed by the relevant employer—

(i) analysing equality monitoring data and reviewing the impact of policies and practices on different groups;

(ii) providing information and advice on equality issues;

(iii) promoting the value of equality and diversity in the workplace;

(iv) investigating complaints relating to equality at work;

(v) supporting and advising trade union officials in the carrying out of any duties that concern equality issues;

(vi) attending equality committees or forums related to equality established by the employer;

(b) preparing for any of the activities listed in paragraph (a).

[Baroness Gibson of Market Rasen]

(3) The employer is required to provide information to the representative to enable him to carry out the activities listed in subsection (2)(a)(i) and (iv).

(4) Subsection (1) only applies if—

(a) the trade union has given the employer notice that the employee is an equality representative of the trade union, and

(b) the training condition is met in relation to him.

(5) The training condition is met if—

(a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in subsection (2), and the trade union has given the employer notice in writing of that fact.

(b) the trade union has given the employer notice in writing that the employee will be undergoing such training, or

(c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.

(6) If an employer is required to permit an employee to take time off under subsection (1), he shall also permit the employee to take time off during his working hours for the following purposes—

(a) undergoing training and development activities which are relevant to his functions as an equality representative,

(b) where the trade union has in the last six months given the employer notice under subsection (5)(b) in relation to the employee, undergoing such training as mentioned in subsection (5)(a).

(7) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken, are those that are reasonable in all the circumstances having regard to any relevant provision of a Code of Practice issued by the Advisory Conciliation and Arbitration Service or the Secretary of State.

(8) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.

(9) For the purposes of this section, a person is an equality representative of a trade union if he is appointed or elected as such in accordance with its rules."""

Baroness Gibson of Market Rasen: My Lords, in speaking to the amendment I return to the theme of equality representatives in the workplace which I raised in my Second Reading speech. I have cut this speech to a bare minimum in the interests of time.

It has been repeatedly demonstrated in studies from a range of countries that worker activity, with union support behind it, is a major factor in increasing the opportunity for equality at work. Statistics show that better standards of equality of opportunity are achieved in unionised workplaces than in similar non-unionised ones. As a former equal opportunities commissioner, I obviously welcome this. I would say to the noble Baroness, Lady Howe, that I hope I was a progressive commissioner.

Equality representatives are at the core of the amendment. There are hundreds of thousands of equality representatives appointed and supported by trade unions and their members in the United Kingdom. They are important people in industrial relations. It has been estimated that they save society between approximately £200 million and £600 million each year. This results from a reduction in lost time. It involves race, gender and disability equality issues, as well as age and sexual orientation matters.

The amount of time equality representatives spend on their activities varies considerably. In a 2009 survey by the TUC, 88 per cent of equality representatives had spent time on providing information on equality issues to members, 77 per cent on promoting good equality practice and 61 per cent on assisting employees with investigations for discrimination and harassment complaints. Sixty per cent had been involved with flexible-working requests, 59 per cent with discriminatory practices and 41 per cent with requests for parental leave. That is just a flavour of what equality representatives do.

This all sounds very good, so why this amendment? A recent TUC survey found that only 36 per cent of equality representatives had an employer who automatically consulted with them frequently, only 26 per cent actually negotiated with union representatives and 22 per cent of employers never involved their union reps. A failure to consult with the workforce, or even to respond to points raised, can have devastating consequences. On the other hand, equality representatives working with the employer can intervene very positively towards the well-being of employees. This amendment shows the kind of legislation which would be of great help to both sides of industry.

The TUC, which I thank for this briefing, believes that equality representation should not be an add-on to the overall well-being of employees. Consultation with the workforce should be an automatic action for any good employer and any Government claiming to care for the well-being of the country's workforce should provide legislation to assist it. I know that the Government are unlikely to accept this amendment and I have no intention of pushing it to a vote, but it is an important issue, especially to individual trade unions and their members and to the TUC, so I hope that a way forward can be found for a constructive debate on the question of legislation to support equality representatives. I beg to move.

Lord Hunt of Wirral: I share the concerns expressed by the noble Baroness, Lady Gibson of Market Rasen. I should declare an interest, having once been a solicitor for the Transport and General Workers' Union. An awful lot of people do not realise the extent of advice and support that goes on within a trade union. So much focus is put on the political side—particularly by the militants—that people forget the enormous amount of work involved. Mr Blyton of the Transport and General Workers' Union, who I used to work for, was an example to everyone of how to ensure that people got the best advice.

Have the Government done any assessment of the additional amount of work that is going to be necessary? The noble Baroness made the point in her Second Reading speech that she felt that the work would dramatically increase. I am worried about that. Do the Government envisage that the impact of this Bill would be so great as to put an enormous amount of additional work on the shoulders of trade union equality representatives, and have they done any work in this respect? What discussions have taken place with businesses and what consultation has occurred on how best to deal with this? How much time do they envisage should be permissible or allowable, for instance, under

the terms of the amendment? And would the amount of time off envisaged allow a business to remain properly functional under those terms? We just need a little bit more information before we can decide how best to proceed.

Lord Lester of Herne Hill: I agree with the speech we have just heard from the noble Lord, Lord Hunt of Wirral. In the old days trade unions were very often on the wrong side in discrimination cases and then it began to change. The Transport and General Workers' Union under Jack Jones was conspicuous, as were the white collar unions, eventually overcoming prejudice in the craft unions, for example, on the basis of race.

We are dealing with highly vulnerable groups. Trade unions are indispensable in standing up for the underdog and trying to redress some of the balance. Part 1 of the Bill refers to socioeconomic disadvantage; the trade union movement stands for removing it. Time off to allow trade union representatives to tackle inequality is extremely important. Although I agree that specific questions need to be dealt with, I totally support the object of the amendment.

Baroness Thornton: My Lords, I am pleased to speak on Amendment 97, tabled by my noble friend Lady Gibson. We had a flurry of anxiety earlier because we were not quite sure that she was here, but she was of course in her office watching us on the television. I am very pleased that she is here to speak to this amendment. The noble Lord, Lord Lester, reminded me that one trade union fiercely resisted the introduction of women into one of our major emergency services in the early 1980s. I remember that quite clearly; I was cutting my teeth in the London Labour Party at the time.

The intention of the amendment is to give trade union equality representatives a statutory right to reasonable paid time off to perform their functions and for training. It is commonly referred to as "facility time". Currently, only trade union officials, union learning representatives and safety representatives have a statutory right to facility time. There is agreement across the Chamber that equality representatives do a brilliant job, and the Government very much support their work.

Following a recommendation by the Women and Work Commission, the Government have spent just over £1.5 million from the union modernisation fund and the Government Equalities Office on building capacity and supporting the evaluation of the effectiveness of this relatively new type of trade union representative.

This funding came to an end in December, and we have now received and are carefully considering a report of the evaluation, which will be published shortly by the TUC. I am pleased to say this report is very positive about the impact that equality reps are having in the workplace.

The report acknowledges that statutory time off would enable equality reps to increase the amount of time they spend on the role and help attract new equality reps. This does not, however, represent a compelling case in itself. My noble friend would surely acknowledge that to make real progress in this area of employment relations there has to be greater consensus between trade unions and business, although I think that there is great hope for the future.

In September and October last year, the Government Equalities Office conducted a round of discussions with employers and other key stakeholders on the right to facility time for equality representatives. Opinions received were fairly equally divided along predictable lines.

There is not yet sufficient empirical evidence that time off should come through the law. However, in addition to statutory time off, the evaluation report points to other, non-statutory ways of developing the role through guidance. We are committed to working with the TUC and business to consider what else we can do to foster a consensus on the way forward. We will not forget the legislative option, but we do not believe that the time is right now.

Given what I have said, I hope that my noble friend knows that we are committed to and will continue to support the development of equality reps as part of our wider equality agenda. I ask her to withdraw her amendment.

Baroness Gibson of Market Rasen: My Lords, I thank the noble Lords, Lord Hunt and Lord Lester, for their positive contributions to this debate, which I very much appreciated. I also thank my noble friend the Minister for her positive response regarding future working with the TUC. That is all that I was trying to achieve with the amendment. On that positive note, I beg leave to withdraw it.

Amendment 97 withdrawn.

Clause 82 agreed.

House resumed.

House adjourned at 9.55 pm.

Grand Committee

Tuesday, 19 January 2010.

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Viscount Ullswater): My Lords, if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and will resume after 10 minutes.

Child Poverty Bill

Committee (1st Day)

3.31 pm

Amendment 1

Moved by ***Lord Freud***

1: Before Clause 1, insert the following new Clause—

"2010 child poverty target

(1) The Secretary of State must, before the end of the period of three months beginning with the day on which this Act is passed, publish and lay before Parliament a report setting out an assessment of progress made towards meeting the 2010 target.

(2) The 2010 target is that in the financial year beginning with 1 April 2010, fewer than 1.7 million children live in households that fall within the relevant income group as defined by section 2(2)."

Lord Freud: My Lords, the amendment gives us the opportunity to investigate thoroughly the issues surrounding the target in real time, so to speak. It is a genuine mystery why we are likely to fail to reach the 2010-11 target. There was a mysterious turnaround in performance in approaching the child poverty targets in 2004, despite a remarkable boom. The figures show that when this Government came into office in 1997—I am using 1997-98 as the base year—there were, depending on whether you are considering the before housing costs or the after housing costs, either 3.4 million or 4.2 million children in households below the poverty line, which is defined as below 60 per cent of the median income.

In the turnaround year of 2004-05, which was the best year of performance, the figures had fallen to 2.7 million or 3.6 million, depending on whether you are considering the before or after housing costs. I know that there are estimates for what may or may not have happened subsequently, which clearly we can discuss, but the actual figures for 2007-08 show that the number had risen again to 2.9 million on the before housing costs and 4 million on the after housing costs. In the discrepancy between the before and after, you can see the strain caused by the housing boom in that period, because the increase in child poverty since the low point—the good point—of 2004 is roughly double on the after housing cost basis what it is on the before housing cost basis.

None of the explanations that I have heard so far—we rehearsed some of them at Second Reading—are satisfactory, especially as we are not talking about a relative phenomenon or a move relative to the median. This is not a statistical quirk. If we hold the definition of poverty steady—in other words, if we use the absolute definition of poverty, not the relative one—we see that the number of children in poor households grew by 200,000 after housing costs since that good year of 2004. At best, it only held flat on the before housing cost figure. Indeed, when you look at the before housing cost figure, you see that the numbers below 50 per cent of the median went up by 100,000, which means that the very poorest have done considerably worse since the turning point. It is not surprising that the Rowntree trust warned in its report *Monitoring Poverty and Social Exclusion 2009*:

"At this rate of progress, it would take until the 2050s to halve child poverty".

That is a worrying statement, given that we had a fantastic boom in the last decade. It is vital for the sake of this Bill that we understand these trends properly. As the Spanish poet George Santayana famously said:

"Those who cannot learn from history are doomed to repeat it".

In another place, Stephen Timms admitted that the Government had got only two-thirds of the way towards their target. This was said in Committee, before other policy initiatives were announced. I should add, to reinforce the importance of this, that he went on to say:

"The arrangement that the Bill sets out is significantly more demanding for the coming decade than arrangements that have been in place over the past 10 years".—[*Official Report*, Commons, Child Poverty Bill Committee, 20/10/09; col. 8.]

The target was ambitious, but the Government badly failed to meet it in a good economic climate.

Some major questions need answering when you start to look at the statistics. There was a reduction in relative poverty among children in workless households but not in working households. How much of the poverty has been caused by income transfers as opposed to tackling the causes of poverty? For instance, we do not have a full assessment of the effect of the removal of the 10p tax rate and the measures to compensate the people who were affected by it. It would be immensely valuable to have a proper report of this period.

This would also give us a dry run in assessing the significance of statutory targets in this context. In particular, it would give us a genuine check on what such a measure as Clause 15 in this Bill really stands for. Clause 15 says that the Secretary of State must take into account the,

"fiscal circumstances and in particular the likely impact of any measure on taxation, public spending and public borrowing".

The clause is immensely significant, given the history of statutory targets. Let me take the example of the fuel poverty target in the Warm Homes and Energy Conservation Act 2000. When that was taken to court in a process of judicial review, the Government were able to plead successfully that resources were not available. Clause 15 seems to have the same effect,

[LORD FREUD]
allowing the Government of the day to argue that the money was not available. Indeed, Stephen Timms explicitly told the Committee that,

"in the current environment, Government spending is very tightly constrained. That, in particular, is what has limited what has been possible over the last couple of years".—[*Official Report*, Commons, Child Poverty Bill Committee, 20/10/09; col. 9.]

It is not very encouraging, then, that he forecast that there would be a further decade of what he delicately called "consolidation", which was a reference to the progress of the economy. He also confirmed that there would not be a carve-out of the obligations under this Bill from those of the Fiscal Responsibility Bill. Let us find out soon whether we have a Bill that means something or is purely declamatory.

The risk being run is that this Bill is interpreted as being either a diversionary tactic or a poisoned pill. It could be argued that it is diversionary in that this Government have failed to succeed in the benign conditions that have prevailed in the past decade and have therefore stopped looking at that and have lifted their eyes and our eyes to the distant horizon. The Bill can be accused of being a poisoned pill because it provides an opportunity for whoever is the Opposition to lambast whatever Government are in power for not making further progress in very difficult conditions while avoiding taking responsibility for the current Government's time in power. I am not accusing the Government of these unworthy sentiments; I am warning that opposition to this amendment will make them seem that they are being manipulative in this way.

Therefore, the proposal is that we use a formal report as a tool to understand what the real challenge is, we avoid the accusation that this Government are unworthily using diversionary tactics and we understand what a statutory target really means in the real world. If this Bill fails to stand up in the real world, which I fear it might as it is currently drafted, at least the next Government will know that they will need to tackle the problem in another way. I beg to move.

Baroness Thomas of Winchester: My Lords, I shall be brief. We support this amendment to mandate the Secretary of State to make a report setting out an assessment of progress towards meeting the 2010 target. Such a report should focus minds on the scale of the task towards meeting the 2020 goal. As the noble Lord, Lord Freud, has said, for most of the past 10 years the economy has been healthy, but we are still a very long way from meeting the halfway target on child poverty and this will get even harder in the next five years or so when belts will have to be tightened.

Although it is not strictly relevant to this amendment, I particularly welcome the government amendment that we shall reach next week and which was announced in the Pre-Budget Report. It proposes an extension of the entitlement to free school lunches and milk for primary school children whose parents are on working tax credits and an increase in child benefit this year over and above indexation.

The Earl of Listowel: My Lords, I seek reassurance from the Minister on a point that the noble Lord, Lord Freud, raised with regard to a concern that we might be promoting income transfers as opposed to tackling the roots of poverty. One questions, for instance, whether one might be diverting money towards supporting families on benefits, as important as that is, which could be spent on ensuring that there are more and better-quality social workers. We could spend the money on ensuring that there are more foster carers, because the number that we have and retaining them are so dependent on the fact that they have good social workers to support them. Alternatively, we could spend the money on our teachers and ensure that there is better sex and relationship education in schools, thereby reducing the rates of teenage pregnancy and ensuring that families prosper and children are taken out of poverty in that way. I am sure that we will come back to this debate. However, I would be grateful if the Minister would offer reassurance that other important objectives will not be lost in the narrow pursuit of the important targets that we are discussing today.

3.45 pm

Lord Eames: My Lords, perhaps I may raise a further, possibly technical question in the discussion on the amendment. It concerns the incorporation in the proposed legislation of the Assembly of Northern Ireland and the Scottish Parliament. My question—raised also by the noble Lord, Lord Freud—concerns the definition of the target that will be set. Will the Minister assure me that, in the process of reaching the target and assessing whether the United Kingdom as a whole has reached the target, due attention will be paid to a uniform definition of how the devolved authorities in the two areas that I mentioned provide information that will go towards the UK target as a whole?

I raise this because in Northern Ireland, as many noble Lords know, there are sensitive political issues surrounding the definition of poverty that is used from time to time. For example, the issue of free meals is politically sensitive. Any noble Lords who know Northern Ireland will realise that this is a sensitive issue. I would not like a Bill that I certainly support to suffer in its implementation because of a lack of clarity on how the various definitions were arrived at to measure the reaching or not reaching of the overall United Kingdom target. I hope that my question is relevant.

Baroness Afshar: My Lords, perhaps I may add that, particularly in areas with dense immigration and population, the level of poverty is such that there is always a tendency to divert resources from one good provision to another. Therefore, if new provisions are made—and I very much hope that they will be—existing provisions must not be threatened by trying to move the same money around various provisions.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): My Lords, this is a good way to start our deliberations. The aim of the Bill is to drive the long-term sustainable eradication of child poverty, ensuring that tackling child poverty is a priority for everyone. This requires us to make continued progress

in tackling child poverty. We are, and will continue to be, held to account on the goal of halving child poverty to 1.7 million children by 2010, but the Bill is predominantly about ensuring that we do not lose sight of the long-term goal. It increases the accountability of the Government for their child poverty goals. It sets out a rigorous process of reporting and accountability that will hold the Government to account. In addition, the Child Poverty Commission will provide valuable expertise and advice to feed into the reports and the strategies on progress. The Bill does not weaken our commitment to tackling child poverty; it strengthens it.

The amendment would require the Secretary of State to publish a report within three months of Royal Assent on progress towards the 2010 child poverty target of fewer than 1.7 million children in qualifying households living below the 60 per cent median income threshold. I will explain why the amendment is unnecessary and in fact problematic. First, a report published this year would not provide the definitive statement that noble Lords are looking for on whether the 2010 target will be met, because the data for assessing this will not be available until the HBAI statistics are published in 2012. A report published within three months of Royal Assent would not capture, for example, the impact of the raft of measures introduced since the 2007 Budget that we expect will lift around a further 550,000 children out of poverty.

The report would also fail to take into account any measures that may be taken later this year in, for example, a forthcoming Budget or, although we do not anticipate this, an early Budget after the general election. As such, the report demanded by noble Lords would fail to provide an accurate assessment of progress towards the 2010 target and I do not see any particular value in it. However, I would like to reassure noble Lords that the latest child poverty data, for 2008-09, will be made available through the annual publication of the HBAI dataset. Progress against the 2010 target will be evident from that publication, although, as I have just said, this statement will be for 2008-09 and so will not take into account the measures that we put in place in the most recent Budget and the Pre-Budget Report.

Finally, there is a practical problem in requiring that a report be published within three months of Royal Assent, as this could fall in the period during a general election, when, obviously, we will be away from the scene for a month.

However, I support the noble Lord's desire to boost transparency in reporting on progress against child poverty targets. Indeed, these are two cornerstones of the Bill. Clause 8 requires the Secretary of State to publish a strategy setting out the measures that will be taken to meet the four child poverty targets in Clauses 2 to 5. To ensure that the Secretary of State reports on the progress in tackling child poverty, Clause 13 requires the Secretary of State to produce and lay before Parliament an annual progress report setting out the progress that has been made in tackling child poverty. Subsection (1)(a) of the clause requires that annual reports report progress against each of the targets, which is exactly what noble Lords are seeking. That will come, with full information and all the appropriate data, but it cannot be delivered within three months of Royal Assent. The first strategy must be laid within 12 months of Royal Assent and the final report within a year of the anniversary of the publication of the strategy.

Perhaps I may pick up on some of the additional points that noble Lords have made. The noble Lord, Lord Freud, suggested that the Bill is either a diversionary tactic or a poison pill, although I am not sure why we would want to poison ourselves. However, I assure the noble Lord and others that this is nothing to do with diversionary tactics. This is building on the progress that the Government have made to date in tackling child poverty and setting out a means of moving forward so that we can meet the targets set out in the Bill by 2020.

The noble Lord suggested that a mysterious turnaround or cataclysmic event took place in 2004 which changed the progress that we had been making. He spoke of mysterious trends and said that it was vital to understand them. To understand the trends and what is happening, we need to unpick and analyse the data. There is nothing mysterious about that, because there are a number of components.

For example, the Institute for Fiscal Studies report *Poverty and Inequality in the UK*, published in 2009, points out that some of the changes were not statistically significant. It states in respect of the decomposition of the change in child poverty from 2004-05 to 2007-08 that it can help to tell us why child poverty has risen, but it should be pointed out that the overall rise in child poverty before housing costs was not statistically different from zero. The report unpicks various components and states that the rise in child poverty is due to incidence effects: an increased risk of poverty for particular family types, with changes in the composition of families, a decline in worklessness among lone parents and increases in the number of couples in full-time work acting by themselves to reduce poverty.

However, other factors need to be taken into account. We need to look at the increase in benefits in relation to the dynamics of inflation and we need to take into account the fact that, over a part of this period, employment levels stayed relatively even. For part of the period, real earnings growth was below inflation. It was also a period when price increases obtained, particularly in food, fuel and energy. To say that somehow we cannot understand what is happening is some way from reality, but we need to unpick the position.

This is not just about income transfer, to deal with the point made by the noble Earl, Lord Listowel. Of course income transfers and income are part of tackling poverty, but they are just part of the equation. The key part of the Bill is the requirement to bring forward strategies to address the causes of poverty, better to understand what is happening and the dynamics. A key part of that is not only the engagement of local authorities, which is covered in Part 2, but drilling down on delivery across a whole range of building blocks. That is crucial to our making further progress.

The noble and right reverend Lord, Lord Eames, asked about Northern Ireland and the devolved Administrations. The targets will be set in the Bill,

[LORD MCKENZIE OF LUTON]
with the exception of the persistent poverty target, which is subject to regulation in due course because of the survey arrangements, and they apply to England, Scotland, Wales and Northern Ireland. The devolved Administrations are required to have strategies setting out how they will contribute to the UK targets. How free meals are dealt with is an issue about how income is defined in the surveys. That definition will be common right across the UK. I hope that that has helped the noble and right reverend Lord.

At Second Reading, an issue about some of the survey information was raised by the noble Baroness, Lady Blood. There are issues about sample sizes and being able to particularise some components to areas, regions and countries, but the targets will be set in the Bill and will be common throughout the UK. The surveys from which the data are derived will have common definitions of things such as income. I hope that that deals with that point.

I think that what I have set down about what would flow from the Bill in terms of reporting requirements should meet what the noble Baroness, Lady Thomas, seeks. I urge noble Lords not to focus on something that would be rammed through in three months' time, because I do not believe that that would genuinely provide the information and analysis that are appropriate for noble Lords.

I conclude by responding further to the noble Lord, Lord Freud, especially on his question of whether this is a diversionary tactic. We know that it will be challenging to meet the 2010 target. The current economic situation—although we now look to be on the mend—has implications that we perhaps do not yet fully understand. I do not know whether the report in *Financial Times* today is correct, but it suggested that the noble Lord's party would seek to bring forward a manifesto that effectively watered down the Government's commitment to ending child poverty by having a whole array of targets, so that it would be hard to identify or measure any progress. If that is the noble Lord's intent, I would be very interested to hear from him. I would certainly be interested to hear any denial that he may wish to make on that, because that is the backdrop to our discussion of the Bill. If we are trying to undermine and pick away at the bases of the targets, that is the context in which we will debate these matters, although I do not think that that would be the best and most productive use of this opportunity.

This is an important Bill, because it is about being clear about a range of targets, each of which has to be met, but it also recognises that it is not only about income and that a whole raft of things impact on poverty. The development of the strategies and the monitoring that will underpin them going forward represent the way in which we as a country can make real progress. On that basis, I hope that the noble Lord will not seek to press his amendment.

4 pm

Lord Northbourne: Earlier in the discourse we heard about data being produced on child poverty. Are those simply household income data? Is the Minister suggesting that household income is the same thing as child poverty?

Lord McKenzie of Luton: Issues around the definition of poverty, hardship and material deprivation are interesting points and doubtless we will cover them during our deliberations. Four targets are set down in the Bill, three of which are entirely income-related. There is the persistent poverty target, which looks at a collection of periods during which, on an income measure, people are treated as being in poverty. Then there are the absolute low-income target and the relative low-income target, but there is also the combined low-income and material deprivation target, which looks at wider factors.

I stress, though, that that is only the issue of measurement and targets, which has to sit alongside the requirements under the Bill to bring forward strategies to tackle socio-economic disadvantage for every child in the UK. That is a core part of the Bill, involving local authorities. If it were only about targets and nothing else, it would not be the right way to proceed—I am sure that we would have agreement on that. It is more fundamental than that, though; we will come on to this in subsequent deliberations, but it is about issues around the family, worklessness, health and educational opportunities as well.

Lord Northbourne: My question is whether the data that will be published in three years' time will include information about all the other things that the Minister has spoken about, on which I entirely agree with him.

Lord McKenzie of Luton: My Lords, the data specifically referred to in the Bill will be the income-related targets plus material deprivation. Those are built on the household below average income data, which are issued as a national-statistics-type routine publication. That includes a lot of data other than just the specific targets that will be included in the Bill. Alongside that, a whole raft of measurement goes on routinely across the Government at the moment. We have a whole raft of PSA targets touching on education, homelessness, worklessness and many other issues. That is a routine part of government. Those data are all in the public domain and will help to inform the strategies. There has to be a report on progress against those strategies and, when the data are brought forward, we will build on and use them. They are not just income-related data; they are much broader than that across government. The targets that are to be met are those four specific, mainly income-related targets, but including the crucial one of material deprivation.

The Earl of Listowel: My Lords, I am grateful to the Minister for his reply to my specific questions. I look forward to our debates on Clauses 8 and 13. To follow up on the point made by my noble friend Lady Afshar, although I think that the Minister was more or less answering it in what he said to me, it is a matter of concern that the many good projects working in communities, to which good people are recruited, find themselves on two-year or three-year contracts and unfortunately are told, "We don't know whether you will be working next year. You've shown huge commitment and built relationships with vulnerable adults and young people, but we don't know whether we can employ you". Is there any way that the Government

will be able to monitor, as this is being implemented, whether funds are being diverted to financial income objectives to the detriment of important interventions of that kind? Perhaps that would be difficult. I am sure that we will hear more about this.

Lord McKenzie of Luton: I am grateful to the noble Earl for prompting me and I give my apologies to the noble Baroness for not dealing with this point earlier. I could not give an assurance in those terms; I do not think that any Minister could. It depends on the next comprehensive spending assessment and on how we move forward with the Fiscal Responsibility Bill, which is not inconsistent with the provisions of this Bill.

Three-year funding for local authorities has been a positive development under this Government. Previously, it was very much more hand to mouth, year by year. However, I recognise the point made by the noble Earl. What is increasingly happening at local authority level is the removal of ring-fenced funding—the Supporting People programme is one example. Removing ring-fencing provides local authorities with greater discretion and the opportunity to innovate on how they deploy their funds. There are interesting pilots called Total Place, which are trying to get to grips with the multiplicity of funding streams going to individual locations to see what better use can be made of those funds. There is one project in my own patch in Luton, so I am close to that. Those opportunities will help to address the concerns of the noble Baroness, which the noble Earl reiterated. However, there is no way that one could guarantee that current levels of funding, in all respects on every programme, would continue as at present.

Perhaps I may use this opportunity to pick up on the point raised by the noble Lord, Lord Freud, about Clause 15. To be clear, the duty to meet the targets is absolute and is not affected by that clause, which simply requires the strategy to meet the 2020 target to take into account the broader economic context. It is about ensuring that the Government meet the targets in a sustainable way that delivers value for money. That can only be sensible and it is the responsible thing to do.

Lord Kirkwood of Kirkhope: Perhaps I may respond to the Minister's speech, because he misses the point. Although I would not have worded it in this way, and I am not thirled to a three-month timetable, the amendment's value is that it provides an opportunity to reflect on the policy experience of the past 10 years. The noble Lord, Lord Freud, raised some interesting policy questions, which deserve examination. The obvious answer as to why there was a dip in momentum in this whole policy area after 2004-05 was that the Government stopped spending money on it. There was a vast improvement after child tax credits were introduced and the whole tax credit initiative was undertaken. You can argue for a long time over whether or not that was effective or organised, but there was a major boost over what went previously.

My question, which may be slightly different from that of the noble Lord, Lord Freud, is why that momentum did not continue. There was a big step up and people such as Donald Hirsch would say that you could see the difference that it made. Why did the Government then turn away from deploying what appeared to be an effective set of policies? I do not know the answer, but it is hard to argue that the resources were not available. That is another important point that the noble Lord, Lord Freud, is making. What we are all facing—Lisa Harker said this in her report—is that the next 10 years will be even harder, because we do not have the resources that we have had for the past 10 years.

Someone needs to sit down and think carefully about the active labour markets and where the policy fits in of work for those who can and security for those who cannot. What did it do? What did it not do? What could have been done better? They should examine the uprating policy. In the other place, every Select Committee inquiry on this area—I was responsible for two or three of them—found that, if you uprate on the basis of the retail prices index while the rest of the world is organised on the basis of an increase in earnings, year on year people will inexorably slip further and further behind. That will happen for the next 10 years, starting from where we are right now, unless something is done about it.

The point of the amendment is that someone needs to assess the Bill soon after it is passed—as I said, it might take more than three months. I do not know whether the Bill is a diversionary tactic, but it is a process Bill. There is nothing in it that by itself will make anyone any richer. That is a frustration that I think the Committee will find. We all want to get our jackets off and get stuck in to what will actually make a difference. All that the Bill gives us is a process. It is viable as far as it goes, but there is nothing new in it, except extending the responsibility to local authorities and to the constituent nations of the United Kingdom, which is valuable, although they may think that it is a graveyard pass, because they will get sucked into responsibility for not meeting the targets so that the blame can be shared. That is how they see it; they may be wrong, but that is how they see it.

The amendment has value. The Child Poverty Commission is not the right body to do this job. If we are to give proper consideration to everything that has gone on heretofore to learn lessons to hand on to the Child Poverty Commission, what is proposed in the amendment is an excellent way to do that. For the Government to hide behind the fact that the figures will not be available is to miss the point. The amendment calls for a radical look at how things have been done—successes as well as failures—so that that can inform the process.

I have two other points to make. First, the noble and right reverend Lord, Lord Eames, made an important point. We will come to it later, but, in passing, the four nations group, the importance of which the Government have recognised, should be in the Bill for the reasons that the noble and right reverend Lord mentioned. There should be some recognition of the four nations group, because if it is to hold the ring and be successful—I hope that it will be, although there will be problems and it will not happen by accident—this needs to be carefully thought through. Although I think that the Government understand its importance from my

[Lord Kirkwood of Kirkhope]
discussions with them, I share the concern of the noble and right reverend Lord, Lord Eames. There should be formal recognition of the group in the Bill. Perhaps we can find some way to do that in the course of our proceedings.

There is an enormous spatial dimension to this whole question. The analyses of the figures and the measures that we are contriving in the Bill are mainly snapshots. The Family Resources Survey considers the snapshots, although there is a longitudinal element in the General Household Survey. Looking just at what is happening at a particular time in families does not take account of persistence. We will come to that later—we have tabled amendments on it. The cities report in the press yesterday is very important, because it captures the fact that different cities and different communities in this country are in an entirely different place when it comes to child poverty. Places such as Springburn in Glasgow are very different from Northampton or Reading; you cannot ignore that. The figures have to be handled with very great care. We will come to amendments tabled by the noble Lord, Lord Freud, concerning the equivalence ratios and the Gini coefficients. You have to be careful how you use all those, because they are only rough measures and can be treated only relatively. We cannot invest all the importance of the policy dimension in future in those measures alone. However, we cannot forget the huge spatial dimension.

I am sure that the noble Lord, Lord Northbourne, will come to this in his inimitable way in the course of our proceedings, but, finally, there are not just these figures but a wider hinterland of factors that determine whether low-income families are in trouble or not and whether or not we reach the target in 10 years' time. I am sure that it was not deliberate, but I think that the Minister missed the point of the amendment. It is an attempt to be positive and to capture lessons that we should sensibly learn to take the policy forward.

4.15 pm

Lord McKenzie of Luton: If I may say so, it is the noble Lord who has missed the point. Nobody is saying that we should not look to learn lessons from what has happened to date—from what has worked and what has not. That is the whole purpose of how we are seeking to move forward on this. The noble Lord will know from the Peers' information pack that a strategic direction paper will be published in the spring. The Child Poverty Unit is working on this.

Lord Kirkwood of Kirkhope: It is going forward.

Lord McKenzie of Luton: Looking at how we go forward is, in part, based on understanding where we have got to now and where we have not got to—perhaps where we were hoping to have made greater progress. A process is under way through the development of the strategy and the strategic direction paper to do what the noble Lord wants. The key objection to the amendment is that it forces a particular process over a three-month period when we will not have key data that would make analysis of progress towards reaching a particular target better and more meaningful. Certainly we have to look at progress and analyse that. That is what the strategic direction paper and the strategies that flow from it will entail.

The noble Lord also said that this was all to do with moving away from investing in benefits. Income transfers are part of the solution, but what we have also learnt recently is that they are only part of the solution. There are other issues such as promoting work as the best means out of poverty, supporting family relationships and family life, early interventions, excellence in delivery, sustainability and affordability. All are part of a package to make progress.

I also say to the noble Lord that three months is premature to look at the 2010 target because we have had provisions post the 2007 Budget. Many of them relate to income transfers and benefits and are designed to improve the position. They have not flowed through into the data yet. We need to see how that works in practice. Therefore we are not apart in recognising the need to understand the lessons of the past in building for the future; the issue is the mechanism by which, and timeframe within which, we do it.

Lord Freud: I thank the Minister for giving me the opportunity to respond on the point about today's *Financial Times* story. I start by emphasising the importance that the Conservative Party places on child poverty and sorting it out. I was going to use the word "eradicate", but I realise that we will probably have a lot of debate about what that means, so I have used "sorting it out" instead. There is a difference between the Government and my party in this area. We are concerned that the efforts that we put into child poverty are directed at getting to the sources and causes of poverty, not to the measurement of it and to financial manipulation. In some amendments that we have tabled and will debate, we are trying to shift the emphasis of the Bill from targets that are essentially financial measures to some of the causes. I will not go into detail now, because we will spend a lot of time discussing this later, but that is the difference.

Lord McKenzie of Luton: Is the noble Lord saying that, should the Bill achieve Royal Assent broadly on its current basis with those targets in it, given the opportunity—I do not think it fruitful to debate here whether it will get that opportunity—his party would change the measures of poverty and the targets? Or is he saying that he would accept them and would want some others as well?

Lord Freud: Yes, we are trying to amend the Bill by the addition of some targets. Measurement is clearly important, but the risk is that the measures, being purely financial, drive state intervention in a particular direction. As we all know, targets tend to drive bureaucracies—they get bedded in. We want a better balance of targets. We want to see targets that look to the causes of poverty, not only to the measures of poverty.

We have not completely written off the dialogue of the process of Committee and Report, where we may be able to discuss these matters and get to some

agreement. It is rather premature to think about further progress after the Bill; a politician would not hand over defeat at this stage. Let us see how we go through this process.

Lord McKenzie of Luton: It is important that we get some clarity on this issue. Whatever else appears in the Bill, if the four existing targets as described end up in the legislation, and should there be a change of Government and should it fall to the noble Lord and his colleagues to implement this—though I do not concede that for a moment—would they feel bound by those targets, whatever else they were bound by?

Lord Freud: I will not shelter behind hypotheticals. I will not just say "if" and "if" and "if", which the Minister's question does. Clearly one needs to measure performance. The Government have four targets in the Bill. We are not absolutely happy with the financial measures and we have tabled a lot of amendments to probe them. We accept that there need to be financial measures, but whether we need to look at improving the financial targets depends on the extent to which the Government respond to some of the concerns about the shape of them. I am not in a position at this stage to say whether we would change anything that comes through this process. I am trying to give the Minister an honest direction of travel without sheltering behind easy excuses.

On the financial targets in particular, we have put down an amendment that tries to get at the absolute levels of persistent poverty, which we do not think are satisfactorily covered in the four measures in the Bill. There are some real improvements that we would like to put in regarding how one measures poverty. We have put them in at this stage as an extra, but when we come to discuss them we may decide that they could be a substitute.

I go back to Amendment 1. I want to talk about what has been happening with regard to poverty. I am grateful to the noble Lord, Lord Kirkwood, for pulling us back to the core issue. Something odd has gone on with child poverty in what should have been an easy period. I am grateful for the noble Lord's reference to the excellent IFS report on this. The report explained why the improvement in child poverty rates did not continue, but it did not explain why it came to a full stop. I should like to make a counter point by referring to the Rowntree report *Monitoring Poverty and Social Exclusion*, which takes a series of data on home repossessions. It states:

"One example is home repossessions which at an annual rate are back at the 1993 level but which, more importantly here, is yet another series that reached its low point back in 2004, since when it has climbed again … The extent to which 2004 marks a turning point in quite a lot of the statistics presented here is worthy of attention in its own right".

The IFS report, excellent as it is, deals with the financial aspects and not with a series of measurements that all reflect a deterioration in or at least a flattening out of the improvements for the poor.

The final point that I want to make, and again I am grateful to the noble Lord, Lord Kirkwood, for reinforcing it, is that it is not entirely satisfactory for the Government to shelter behind the technical point of three months and whether data will be available. If the exact timing is a genuine issue, clearly it is something to look at. We will come back to the issue at a later stage, but for the time being I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 1 : Duty of Secretary of State to ensure that targets are met

Amendment 2

Moved by ***Baroness Thomas of Winchester***

2: Clause 1, page 1, line 10, at end insert ", and

( ) the relative low income after housing costs target in section (Relative low income after housing costs target)"

Baroness Thomas of Winchester: My Lords, in moving Amendment 2, I shall speak also to all the other amendments in the group, as they are consequential. At Second Reading, I went into some detail about why we believe that the figures after housing costs, as set out in the households below average income surveys, should be added as a fifth target. What I did not say explicitly was that the difference between the number of children living in poverty according to the figures taken before housing costs and those taken after housing costs is huge.

According to the latest figures, on the before housing costs measure some 2.9 million children are living in poverty, but on the after housing costs measure the figure is 4 million. Is this why the Government are so keen on the before housing costs figure? I noted, as did the Minister, that in the Second Reading debate the noble Lords, Lord Freud and Lord Sheikh, both used the after housing costs measure when talking about the number of children in poverty. Was that because 4 million sounds more dramatic than 2.9 million or was it because the after housing costs figure is the one that all groups such as Gingerbread and Save the Children use on an everyday basis?

The Equality and Human Rights Commission states clearly that not taking housing costs into consideration can mask the poverty of certain groups. There can be no question but that housing is a very large part of most people's budget and therefore a big determinant of their living standards. Looking at a person's standard of living without taking housing costs into account is to miss a significant part of the picture.

At this point, I must repeat what I said at Second Reading. We are not advocating the replacement of the before housing costs target with the after housing costs target; we just suggest that the after housing costs target should be added. Would it cost more to add a fifth target? No, it would not, because the households below average income surveys collect both sets of data. There is an explanation in their dataset under the heading "Methodology", which states that there are arguments both ways and that the two sets of data are set out,

"principally to take into account variations in housing costs that themselves do not correspond to comparable variations in the quality of housing".

[Baroness Thomas of Winchester]
If the Government themselves believe that it is important to collect both sets of data, why are they not both in the Bill, given the dramatic difference in the numbers of children in each survey?

4.30 pm

One of the most powerful arguments, which I also advanced at Second Reading, is that housing benefit is included in the measure of income before housing costs, so a large family who receive housing benefit will appear to have a relatively high income unless that figure is discounted. This distorts the figures not only in London, where housing costs are high relative to income, but in poor rural areas, where housing costs might also be high relative to income. It must also be remembered that in many rural areas there is no social housing to speak of, so all or most rented property is in the most expensive private sector.

The Government have two arguments against my amendment. The first argument is that they can make international comparisons only with the before housing costs measure. I think that this is a particularly feeble argument, as the Minister knows. He will have the before housing costs figure for comparisons anyway, so this is a non-argument. The second argument is that housing figures are collected in the material deprivation target, but this does not address housing costs as such. The 21 questions include only two about housing: one is about keeping a house adequately decorated, while the other is about having enough bedrooms for every child of 10 or over so that they can share their bedrooms with a sibling of the same sex. The Minister said at Second Reading that measures of housing quality are included in the list, but those are the only questions that I can find that are about housing.

It may be argued that people can choose whether to live in a higher-quality house, but this is not borne out by the experience of many of the groups that advise us. Many people are constrained by factors such as proximity to schools and to work and transport links and they simply cannot choose to live in good-quality housing in a nice area.

Perhaps the last word should go to the Joseph Rowntree Foundation's reports on what is needed to end child poverty in 2020. All its reports use the after housing costs. It says that this measure is widely reported in the literature and is arguably more informative, especially when considering the economic well-being of individuals at the lower end of income distribution. It also points out that the Government themselves used the after housing costs for the 2004-05 target, so why the change? One is led to the inevitable conclusion that it must be because the before housing costs target looked much better. Rather than argue further for one or the other, what is the barrier to putting both before housing costs and after housing costs in the Bill? I beg to move.

Lord Northbourne: Has the noble Baroness considered that housing costs and transport costs are, to a considerable extent, interactive? You can get cheaper housing out in Hertfordshire, but then the costs are greater getting into London. This should somehow be factored into the equation. It is also a fair question to ask the Minister. If the Government intend to exclude housing costs from the figures, are they saying that the child benefits from the higher housing costs? What I am trying to say is that the after housing costs may relate to the child, but the child does not actually benefit from what the household costs, so that the overall cost of the household, which reflects the amount that goes to the child and which affects child poverty, ought to include the housing cost.

Lord Kirkwood of Kirkhope: I have three points to make in support of my noble friend's important amendment. First, the last report by the House of Commons Work and Pensions Committee in the 2007-08 Session—its second report—was called *The Best Start in Life? Alleviating Deprivation, Improving Social Mobility and Eradicating Child Poverty*. Its conclusion in Recommendation 2 was that abandoning the use of the after housing cost measure,

"may mask the true extent of child poverty".

It went on to argue, after taking evidence from a wide range of sources, that the DWP should use the after housing costs measure as a basis for the PSA target. We have moved on since then—that was the 2007-08 report.

My second point is that anybody who looks at this—perhaps I am not the best person to make this argument—will see that London is the epicentre of poverty in the United Kingdom, for a variety of reasons. People might be surprised about that. If you look at the extent to which poverty arises in London, it is clear that the Government will not reach any of their targets unless something dramatic is done to improve the circumstances that apply in London. There is a combination of the worst contra-indicating factors of ethnicity, disability, shortage of part-time work and large families. Noble Lords all know what predisposes low-income household families to suffer. The conditions are all in existence in London—in spades. If that is true of the generality of these factors, housing is the biggest issue of all. When you see the housing benefit system struggle to cope in London, you realise how important the issue is. It is not just regional. The Government will not succeed in what they are trying to do by 2020 unless they address the situation in London.

Finally, I will make a point as a watcher of these things. The statistics on below average income households are very dense. The people who generate the reports issue press releases that make them intelligible to ordinary people. My fear is that, if after housing costs are not treated with the same significance by the Government, the people who write the reports will not emphasise them. The May 2009 figures for households below average income were very clear, when they were explained by the people who produced them, about the significance of the after housing costs measure. If the Government abandon after housing costs in the way that has been suggested in the Bill, my fear is that that the measure will slip off their agenda and it will be much harder for ordinary people trying to make sense of what is going on and to find the trends to mine the raw data for themselves if they do not get explanations from the officials who produce the reports.

Lord Freud: My Lords, I have a great deal of sympathy with the points raised by the noble Baroness. She is quite right to seek to make these financial targets as accurate a measure as possible for assessing the well-being of children living in the relevant households. I have already spoken about the danger of relying on purely financial measures of child poverty. We will talk in more depth about that. The issue here is the extent to which housing is a freely chosen good for people in the community and to what extent it is effectively imposed on them as forced spending.

The housing boom over the past decade has undoubtedly led to a situation in some areas of the country where high housing costs are not, as the Government insist, a matter of choice for families. This might be true if ample affordable housing was available, but we all know that such accommodation is in critically short supply in many areas of the country. The noble Lord, Lord Kirkwood, mentioned London. He is quite right that London has a terrible problem with supplying affordable housing. It is almost laughable to claim that before housing cost income is a comparable indicator of lifestyle across the country.

I am not convinced that this amendment on its own will calm my concerns about the financial targets. The dangers of relying solely on financial targets will not be avoided completely, no matter how carefully we define the measurement of those targets. After housing costs might indeed be more indicative of disposable incomes, especially in some parts of the country, but the noble Baroness identifies in a later amendment another cost that many would argue is non-discretionary. I can think of many more areas that could be excepted. For example, why is money spent on food basics still to be considered discretionary? Transport costs, as the noble Lord, Lord Kirkwood, mentioned, are also unavoidable in many cases. A dramatic example is childcare, which is often a necessary cost of working. Then there are school uniforms, heating costs and so on.

These amendments are right to try to match the targets that the Bill sets more closely to the deprivation that a child actually feels. I am sceptical about the possibility of defining household income with sufficient precision to make it a direct proxy for child well-being in all cases, but this amendment represents an improvement over what is currently in the Bill—I say that at the risk of being accused again of trying to water down the Bill for our own nefarious purposes. I will be interested to hear the Minister explain why the Government continue to reject such a measure and indeed seek in practice to prevent a future Government from using after housing costs, should that Government wish to do so.

Baroness Afshar: My Lords, I would like to add some more choices that are unavoidable. For many minority households, the only choice is to stay with a relative, leading to unsatisfactory conditions and overcrowding in many houses that minorities live in. I do not want to get into a competition over whether West Yorkshire is poorer or worse, but those of us who visit these households find that, although they do not often have childcare problems because everyone looks after everyone's children, the conditions and the lack of privacy drive children out almost as soon as they can leave. This is a serious matter, which needs to be considered.

Lord Eames: My Lords, at the risk of prolonging a discussion that at times does not seem to have exact relevance to the wording of the amendment, let me say that from my own experience the whole question of how we define poverty and deprivation in relation to children covers such a vast area of concerns that this discussion is becoming almost ethereal.

A few minutes ago, the noble Lord, Lord Kirkwood, rightly referred to the fact that there is disparity between geographical areas of the United Kingdom—what would apply in County Antrim would not apply in the streets of Glasgow, and so on. It is equally true—and I feel that this will fast become the real problem in this entire discussion, even when we are looking at future amendments in this Committee—that unless we have a clearer notion of what contributes to the basics in a child's life, irrespective of where that child lives, we are going to get into all sorts of difficulties, which will find their way into the discussion of legislation. Speaking again from my experience of over 43 years of dealing with the pastoral needs of families in my home country, I assure the Committee that we are just scratching the surface of the problem.

I have listened carefully to what your Lordships have said today. If I may say so, my concern deepens with each speech that I have listened to. What I believe the Government are attempting to do in this Bill has my wholehearted support. However, I do not see the difficulty as lying in the niceties of words or the niceties of various attempts to avoid issues. The real difficulty that we face is in determining what constitutes the human rights of a child and what constitutes a penalty in the life of a child. Therefore, I make a plea at this stage, if I may presume to do so, that we should be careful that we do not get our thoughts hung on one attempt to define the poverty of children. So much contributes to it. The Minister sensed this in his introduction and covered it, but we lost sight of it when we heard various details that subsequently came up. I hope that I am not wrong in that. The longer our debate goes on, particularly in another place, there will be added confusion due to the simple fact that we have failed to understand that there is no simple, solitary, unitary approach to what constitutes the penalty in the life of a child.

4.45 pm

Lord Martin of Springburn: My Lords, I hope that the Committee will forgive me, as this is the first time that I have spoken in Committee in this House. If I stray from the conventions, I hope that noble Lords will put me right. My noble friend Lord Kirkwood mentioned my former constituency of Glasgow North East—it used to be known as Springburn—where I have lived since I was 14 years of age. Even within that part of Glasgow there are many differences between communities. The poverty can be different from one part to another.

I am very sympathetic to the idea that we must put housing into the equation as often as we can. I remember that a friend of mine, a previous Prime Minister, said,

[Lord Martin of Springburn]
"Education, education, education". I always used to say to him, "No, it is housing, housing, housing". When I first became an MP, the local authority had in good faith built non-traditional housing. It did not do that on its own; central government told it that unless it built non-traditional housing it would not get grants to rehouse people out of the slums—the slums where I lived in the 1950s. In the 1950s there was a lot of heavy drinking, particularly among the men. They went out drinking because there was no room in their kitchens as families had five or six children. I am not saying that those men acted rightly, but they often used to say that they went to the pub to get a bit of peace and quiet. Many of them stopped drinking when they got a decent house with a garden and separate rooms for their sons and daughters and for the mother and father. They did not have that in the old tenements.

In these non-traditional houses, water used to run down the walls. It is one thing to talk about poverty, taking the rent into consideration, but someone living in a traditional house could heat the house easily. People living in a non-traditional house with water running down the walls had to get extra heating, particularly given the climate in the west of Scotland. You could have cold evenings even without the snow that we have had recently. Sometimes the only thing that they could turn to was paraffin heating, which created more condensation and bigger problems than they had to start with. No one can tell me that that did not lead to problems for children. We are saying that a child living in poverty is unhappy. Therefore, a child living in bad housing is unhappy. I told the previous Prime Minister that there is no point in a clever child coming home from school to do his or her homework if they are living in a very cold house.

At times, I really despair about the media. During the recent by-election in my old constituency, the media churned out statistics on how people in the east end of Glasgow can die earlier than people in India. However, they did not mention the good points. You should look at all the good that is in our communities. I recently counted about 14 community-based housing associations. They involved men and women, with help from central government—I give the Government credit—and the great help of the local authority. The local authority says: "There is no use in us being one big social landlord and we will give the work to the community". Not only did these community-based housing associations become landlords, which was their first job, but as a spin-off they created community halls where the child in poverty could get a decent night's entertainment, whether that be a club, a dance or a disco. It should be remembered that, where there is bad housing, people tend to leave and facilities shut down. That means that the youngster in poverty has to pay bus fares if there is a bus transportation system to get them to a place of entertainment in the city centre, whereas, in more affluent areas, such facilities can be around the corner.

I could go on and on. In one of the poorest parts of my old constituency, which I still keep in touch with, is a district called Possilpark. I am very fond of it, because that is where I served my apprenticeship and met my wife Mary. I cannot complain about it. However, a lot of people say: "Possilpark? A terrible place". The poverty was such that people could not afford a community-based housing association in the normal sense. They had to make representations to the Scottish Office and now the devolved Government to get a community-based housing co-operative, which meant that all the funds went back into the association. It is marvellous because, in an area where there are serious problems with drugs and break-ins, elderly people live very safely, because the co-operative has provided not only decent housing but a sense of community spirit, which means that the old folks are well looked after.

I learn more about the ideas of the Bill when I listen to the Minister. However, all that I can say is that it is hard to define child poverty. One family can have X income, while another family can receive exactly the same but the child is deprived because of serious problems in that family—it could be alcohol, drugs or even buying luxuries rather than food to put on the table. Many things go on in families for which it is difficult to legislate, create a Bill and say, "We have eradicated the problem".

I say this as someone who came from the old tenements in Glasgow, which, by the way, were terrible slums. They were a disgrace, but the community was absolutely marvellous. I could count some 24 relatives in three different tenement closes. There was a sense of security and belonging, which was fantastic. At the same time, there are many problems that we must look at. When we put housing into the equation, if a child lives in a decent home, if the rent is not high and the parents are relaxed, the child is happier. If the mother and father are worrying about where the next shilling is coming from because they have to pay a big mortgage, the child will be unhappy. We are tackling child poverty because we want children to be happy. Housing must always be in the equation. Thank you.

The Earl of Listowel: My Lords, I am prompted by what all speakers have said to support the amendment and I ask that it be at least given very careful consideration. The noble Baroness, Lady Afshar, pointed to overcrowding and the noble Lord, Lord Martin, spoke eloquently of his experience in Glasgow. I have followed this issue over the years and I must say—I declare an interest as a landlord—that we have singularly failed to provide adequate housing for many of our people, which is a great national dishonour. Unfortunately, the pressures are there for that to carry on. We have not built as many homes as we intended to. It is important to be a home owner now, which makes it difficult to develop new areas because everyone is understandably afraid of the impact that that might have on the value of their property. This is just one factor.

As my noble and right reverend friend Lord Eames said, we should see the child as a whole and not overemphasise any particular one of their needs. However, perhaps we need this particular indicator to ensure that we do not continue to fail families as we clearly have done, although I pay tribute to the Government for reducing the numbers of families living in temporary accommodation, which I think is below 100,000 now, and for their heavy investment in social housing.

5 pm

Lord McKenzie of Luton: My Lords, I thank the noble Baroness, Lady Thomas of Winchester, for her amendment, which has given us a chance to have a quite moving discussion on a very important issue. I will deal with the detail in a moment.

The noble Lord, Lord Martin, made the case far more eloquently than I could for decent and affordable housing and talked about the wider impact on the family and on poverty if that is not available. As he explained, it can have a rather perverse impact on communities; in his experience, the worse the housing the greater the common cause for people to get together to build their own community. He talked about access to work and social behaviour and gave the example of people going down the pub because the house was too uncomfortable to stay in, with all that that leads to. This is an absolutely crucial issue.

Clause 8, which we will come on to, deals with the UK strategies that must be brought forward. It particularises the building blocks—the fundamental causes—of poverty, although not necessarily all of them. The strategies must address those. Clause 8(5)(d) deals with,

"housing, the built or natural environment, and the promotion of social inclusion".

That is absolutely key. This is probably not the time to debate the history of council house building, but I will say that I cut my political teeth in a council; we used to debate Parker Morris standards and we built council housing in those days.

The noble and right reverend Lord, Lord Eames, made the hugely important point that there is a risk that, if we unpick all these issues, we will miss the totality. However, we recognise that child poverty is multifaceted and complex. We must address it by looking at the building blocks and seeing them in the context of the whole. That is what, we hope, the strategy will drive.

The noble Baroness, Lady Afshar, talked about overcrowding and its impact in causing children to leave home. Again, that is something that I recognise. I could take noble Lords to places in Luton where housing associations were set up by mothers who had lost their kids to London because they had fallen out after a row and there was no other safe haven. These issues are hugely important.

The amendment would include in the Bill a target for relative low income measured after housing costs. The other amendments are consequential and would ensure that the target was referred to alongside the existing targets as and where appropriate throughout the Bill. The new target imposed by Amendment 6 would be in addition to the relative low-income before housing costs target in Clause 2 and the other targets in Clauses 3 to 5.

The questions of whether poverty should be measured before or after housing costs, and the impact of housing quality on children's outcomes, were debated at length in the other place. These are issues that a number of noble Lords feel very strongly about, as we have heard, particularly the noble Baroness. Let me make it clear that the Government recognise the importance of ensuring that children live in suitable, good-quality housing that is affordable and of the impact of housing conditions on children's health and educational development.

For this reason the Government have placed, and will continue to place, significant focus on the availability of affordable homes. For example, the latest investment of £290 million at the end of November, delivering almost 5,500 more affordable homes across 149 local authority areas, brought the total government help for housebuilding since June to £1.8 billion. As the noble Earl, Lord Listowel, said, there is still a gap between housing need and the housing that is available. I have referred to recent investment and, at Second Reading, I referred to the decent homes standard. Since 1997, more than £23 billion of public and private money has been invested in improving social housing. By the end of 2010, we expect that 95 per cent of social homes will meet the decent homes standard.

There has been a substantial net reduction of 1.4 million families in non-decent homes among the poorest households since 1997. Our further ambition is to build an additional 3 million homes by 2020. Over the next three years, a further £3.4 billion will be provided to support decent homes delivery, along with a further £1.9 billion of PFI credits. We are aware of the challenge and we have made progress, but there is more to do.

Clause 8(5)(d) states that, in preparing the UK child poverty strategy, the Secretary of State must consider what measures ought to be taken with regard to housing. As with each of the areas listed in Clause 8(5), work is under way to analyse the impact of housing on child poverty and to inform the first child poverty strategy. This analysis will determine the key priorities for this policy area and, subsequently, appropriate monitoring arrangements.

The duties in Part 2 will drive local authorities and their delivery partners to address housing issues where these arise in local areas. This picks up on a point that a number of noble Lords made about disparities between and within regions. The engagement of local authorities and their needs assessments will be a key driver for making sure that these matters are addressed in the strategy. As I said, the duties in Part 2 will drive local authorities and their delivery partners to address housing issues where these arise in their local areas. For example, we expect the needs assessment process to identify the quality of housing experienced by families with children living in poverty in the local area.

The Government recognise the importance of housing costs to families' disposable incomes and the impact of those costs on their overall living standards. However, there are a number of reasons why the Government have chosen to use before housing costs measures of poverty in the Bill. First, measures of housing quality, specifically the number of bedrooms relative to the number of children and whether families can keep their homes in a decent state of decoration, are currently included in the list of items used for the combined low-income and material deprivation measure in Clause 3, as the noble Baroness recognised when she moved her amendment. So if a child is experiencing poor housing, that will be reflected in the material deprivation score.

[Lord McKenzie of Luton]

More important is the fact that the material deprivation measure will also pick up whether families cannot afford other items on the list. That could be because they have expenses such as high housing costs that take up a large proportion of their income, which means that they have less disposable income available to spend on other goods and services. The position does not rest only on those two particular items; it depends on the rest of the items set out in the material deprivation list as well. We will come on to talk about the costs incurred by disabled people shortly, but we would expect those extra costs to impact on the deprivation score over other items.

This is illustrated by looking at the child poverty statistics as set out in the HBAI series by region. For example, as the noble Lord, Lord Kirkwood, said, it can clearly be seen in London that using the combined relative low-income and material deprivation measure shows a far higher average risk of poverty than using the relative low-income measure for this region would suggest. This highlights in particular the high housing costs of living in London and the impact of those costs on remaining available income.

Secondly, it is important to note the drawbacks associated with an after housing costs measure. Measuring income after housing costs can understate the relative standard of living that some individuals may have by paying more for better-quality accommodation. The noble Lord, Lord Freud, raised the interesting issue of the element of choice that people currently have in what is a difficult market situation, but clearly some people still exercise that choice. Conversely, income measures that do not deduct housing costs may overstate the living standards of those whose housing costs are high relative to the quality of their accommodation. It is for this reason that the combined low-income and material deprivation measure is an important improvement because it takes into consideration both income and living standards.

We should also bear in mind the argument that has been made by my noble friend Lady Hollis—it was reiterated by the noble Lord, Lord Northbourne—about high housing costs potentially running alongside cheap transport, whereas cheaper housing usually comes with higher transport costs. The challenge of going down this path was outlined by the noble Lord, Lord Freud: where do we draw the line on this process? The noble Baroness pointed out that a measure of poverty that deducts housing costs should therefore potentially also deduct transport costs and that we do not have the data available to do this accurately. In addition, because the cost of many other items varies between and within regions, adjusting our income measure to take account of them all would be extremely difficult, if not impossible, to achieve and would result in an overly complicated measure. Given the drawbacks associated with an after housing costs measure, we consider that the material deprivation indicator is a better way of capturing the impact that housing costs have on living standards.

I acknowledge that the amendment would not change the current approach to measuring child poverty. Instead, it would add a further target to the Bill that we do not consider would be beneficial. We appreciate the importance of having a range of targets to enable us effectively to capture the different facets of poverty, which is why we have included four comprehensive targets covering different measures of financial poverty. However, for the reasons that I have set out, we consider that having a relative low-income indicator for housing costs in conjunction with a combined low-income and material deprivation indicator ensures that we are effectively capturing the particular issue of affordability of housing in the targets and through consideration of the issue in the national strategy and by local authorities undertaking their duties under Part 2 of the Bill.

The noble Baroness said that the Government used to include both before housing costs and after housing costs and asked why there was a change. The original child poverty PSA was to quarter child poverty by 2004-05 on both BHC and AHC measures. It is true that after this the Government changed to focus on before housing costs. This was before the extensive *Measuring Child Poverty* consultation in 2003-04, which arrived at the long-term measure of child poverty. It was decided to focus on before housing costs, only because of the inclusion of the combined low-income and material—

Baroness Thomas of Winchester: Before the noble Lord leaves that point, will he say whom the Government consulted?

Lord McKenzie of Luton: It was an extensive consultation. Somewhere in my pile I have a copy of the government response to it. There was an interim and then a final response. That included those whom we would regard as the usual suspects in all this. More widely it included academics and specialists; I am getting a nod from the Box. I should be happy to share that information more extensively with the noble Baroness.

It was because of the low-income and material deprivation measure that we decided to move and focus on before housing costs. Later we will perhaps delve more deeply into material deprivation measures, so I shall not speak more extensively on that at the moment. The noble Baroness explained what they are meant to capture.

The noble Baroness asked why housing benefit is included as income in the before housing costs measure of poverty. We believe that it is right that housing benefit is included in the before housing costs income calculation. Households in receipt of housing benefit pay their housing costs using their total income, including housing benefits. Households that do not receive housing benefit will need to pay their housing costs through their total income. Including housing benefit enables like-for-like comparisons between the incomes with which households pay housing costs and meet their other needs. To deduct housing benefit from those that receive it would underestimate the total income with which they could meet their housing costs and other needs.

The noble Lord, Lord Freud, and the noble Earl, Lord Listowel, talked about the lack of affordable housing. For decades, there has been a mismatch between supply and demand for new homes, with housing supply failing to keep up with our aspiring

and ageing population. This has led to significant problems of affordability, particularly for those seeking to buy their first home. Addressing affordability and tackling poor housing are a key priority of the Government. We have made substantial progress over the past years, but, as I said, there is more to do. Over the years 2009-11, we will invest around £7.5 billion in affordable housing. With this investment, we are expecting to deliver 112,000 affordable homes. The Government's ambition is to deliver 240,000 additional homes per year by 2012. In 2007-08 the number of housing completions was at its highest level for about 30 years, although, obviously, current market conditions have made that somewhat difficult to repeat immediately.

As for the additional costs potentially associated with after housing costs targets, in the impact assessment to the Bill the Institute for Fiscal Studies estimated that eradicating child poverty could cost up to £19 billion in 2020 on a before housing costs basis, if this were achieved solely through increased tax credits and benefits. Obviously, this is not the approach supported by the Bill. The Bill is specifically designed to ensure that the Government use a wide range of interventions via public services, with financial support being only one of those interventions. This will be a more cost-effective, sustainable and efficient approach. However, there is uncertainty in quantifying these costs. Because there is a significantly greater number of children—more than 1 million would need to be lifted out of poverty on an after housing cost basis—we can be confident that, if achieved solely through tax credits and benefits, the costs would be significantly greater than £19 billion.

Currently, the level of relative poverty after housing costs is 31 per cent, or 4 million children. Meeting the target would require a reduction to less than 1.3 million. As was noted at Second Reading by several noble Lords, the existing targets in the Bill are already extremely ambitious. The Pre-Budget Report sets out the five principles of our child poverty strategy: that work is the most sustainable route out of poverty; that families and family life should be supported; that early intervention is necessary to break the cycle—

5.15 pm

Lord Freud: I thank the Minister for giving way. My question concerns his assumption, when he compared costs before and after including housing, that they would have to use the same parameters in each case—60 per cent of the median, reduction to 10 per cent, and so on. As I understand the amendment tabled by the noble Baroness, it considers costs both before and after housing. Clearly, if the Government were to use exactly the same parameters, they would be superseding the easier target with a more difficult one. However, that may not be the intention. It may be that both should be measured but against different financial criteria. I invite the Minister to respond on whether every target has to be measured against exactly the same financial criteria.

Lord McKenzie of Luton: If the financial criteria question is about the percentage of children and the percentage of mean household income, those are not common across the four measures in the Bill. Two of the measures have a 5 per cent threshold; one of them does not have a threshold at all at the moment, because it depends on the longitudinal study that is being developed about persistent poverty; and the other has a threshold of 10 per cent. They are not consistent, so here I am responding to the amendment, which adopts the same 10 per cent criterion and 60 per cent of median income, which applies to the before housing costs target. Obviously, if the amendment were different, we would have to consider that, but the fundamental issue is how we best cater for and represent issues of housing cost in the data and targets that we consider. Our point is that by considering a low-income figure and a material deprivation figure—looking at income and, effectively, costs through material deprivation—we have the best route to get the best measure.

Lord Freud: I thank the Minister for giving way. It is possible to view the amendment as rather cynical, just replacing an easier target with a tougher target—the 2.9 million with the 4 million—but it is also possible to look at it in a more qualitative way. It is an attempt to consider another dimension: housing deprivation. If I am straying slightly from the specific words of the amendment, I hope that noble Lords will forgive me. My point is that, if housing deprivation is desperately important, which it is, and this is of value as a measure, it would be possible to devise such a measure with a different threshold or median percentage, so that we are looking not at an inconsistent target—the £19 billion would not necessarily change—but at ensuring that the children whom we are capturing are the more appropriate ones, so that we are capturing something valuable. Whether or not that point is within the letter of the amendment, I would be interested in the Minister's thoughts and response.

Lord McKenzie of Luton: My Lords, it is perfectly feasible to advance an amendment that has a different figure from 10 per cent of the number of children in relevant households and a percentage of median income other than 60. I am not sure whether that addresses the concerns. Let me make it clear that we do not see this as a cynical amendment. The case is genuinely and strongly felt and was argued extensively in the other place. We are continuing with that debate here. As the noble Baroness, Lady Thomas, stressed, the amendment sets an additional target rather than replacing one.

I am about to conclude my response. I have not strayed into the argument raised by the noble Baroness when she introduced her amendment about making international comparisons on the basis of before housing costs. For the record, I will say that we do.

Finally, as noble Lords are aware, the HBAI series contains child poverty figures both before and after housing costs. We are committed to ensuring that both figures will continue to be published, to ensure that it will always be possible to monitor child poverty trends on an after housing costs basis, as well as to keep under review the impact of housing costs on families' living standards. I understand the point made by the noble Lord, Lord Kirkwood, that after housing costs figures could drift if they do not have equal status for these targets, but I do not see that that follows. There are plenty of people, including the noble Baroness and the noble Lord, who will make sure that the Government

[Lord McKenzie of Luton]
remain focused on that statistic. I apologise that I have been speaking for a while and ask the noble Baroness not to press her amendment.

The Earl of Listowel: My Lords, I apologise for detaining the Committee and the Minister further. Looking back at the answers that he has given, could he say a little more—or perhaps write to me—about social housing and the steps that have been taken since 1997 to invest in it? What he said about decent homes probably covers that to a large degree. Is the fund for social housing being replenished? It causes a lot of dissatisfaction and unrest in some areas when outsiders are perceived as coming in and taking social housing that is in short supply. In some areas it gives rise to a lot of tension. It would be comforting to know what the Government are doing about that.

Lord McKenzie of Luton: My Lords, I am happy to write to the noble Earl with much more detail than I can bring to mind on my feet. There has been a significant amount of investment in low-cost housing to enable people to buy as well as to rent. Particularly in recent times, there has been the opportunity for local authorities, after some while, to build new council homes for rent. I might be wrong on this statistic, but something like 70,000 affordable homes will be built this year and next. I will write to the noble Lord with much more detail. This is not only to deal with the decent homes standard and to make sure that existing housing is brought up to a decent standard. There is an extensive new-build programme, with particular focus on affordable housing both for purchase and for rent. In the current economic climate, it has been particularly difficult to move forward on that, which is why the Government have promoted shared equity schemes as well as another scheme whose name escapes me. I will write to the noble Earl on that.

Baroness Thomas of Winchester: My Lords, I am most grateful to all noble Lords who have spoken in this debate. The noble and right reverend Lord, Lord Eames, who is not in his place at the moment, said that he thought that the discussion was ethereal. I think that this debate has been slightly surreal in some ways. I thought that this would be a rather dry subject, because it involved just the figures to be captured, but it has turned out to be a much wider debate about housing. The noble Lord, Lord Martin, made a very good Grand Committee maiden speech. He told us all about housing in Glasgow and about the men who went to the pub to get away from the overcrowding and stopped drinking so much when they got a house of their own. That was a very interesting aspect of life in Glasgow.

I wish that we had been able to talk more about housing in general, but we had better stick to the topic of the amendment or we will be here all night. Surely leaving housing to the material deprivation score is rather a convoluted way of arriving at a family's disposable income. I would have thought that collecting the after housing costs was much simpler. Even if HBAI is still going to collect them, I am still not quite sure why the Government do not give in and say, "Okay, we will collect both, and then we will be happy and you will be happy". I was interested to hear the Minister say that the consultation showed that people wanted the before housing costs, because all the groups and the academic researchers seemed to prefer the after housing costs. That is why we tabled the amendment, because the method that it proposes seemed to be the one that everyone used, as it is much simpler. I wonder whether HBAI will continue to collect after housing costs after the Bill has been enacted. I hope that it does, because it tells us something.

I must also talk about transport. I certainly do not disagree with the point about transport, particularly in London. Everyone knows that if you have a low-paid job, on the whole you live out of London and come in because the transport is relatively good, but in some rural areas it may be more expensive to live near a transport hub. This is why we need both figures. London is a particular example, but there are many other areas of the country that we should not ignore.

I will not speak any further about this, although I am afraid that the Minister has not told me anything that I did not know already. I am tempted to table this amendment again on Report and call for a Division, but I will leave that to another day. In the mean time, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Baroness Crawley: My Lords, this may be a convenient moment for the Committee to break during pleasure for 15 minutes.

5.30 pm

Sitting suspended.

5.45 pm

Amendment 3

Moved by ***Lord Freud***

3: Clause 1, page 1, line 10, at end insert ", and

( ) the persistent material deprivation target in section (Persistent material deprivation target)"

Lord Freud: My Lords, I referred to this general area when the Minister asked me whether our view on financial targeting would change. This amendment effectively introduces an additional financial target. Its aim is to set out as reliable a figure as possible, given the state of the data, for the kind of really persistent poverty which concerns the electorate. It is designed to be a rock-bottom measure of long-term poverty combined with long-term deprivation.

One central issue of concern with the financial targets set out in the Bill is the lack of reliability of the data. The income data on which we rely come in the main from the Government's Family Resources Survey. Each year it questions around 25,000 households. There is of course an issue about the reliability of the responses. That is a point we shall pick up on in another amendment. By definition, a survey only records an individual's income at a certain point. For instance,

if I am in between jobs, I can record nil income and be counted as poor. Not surprisingly, people move rapidly in and out of these deciles. Peter Saunders at Policy Exchange, in his fascinating paper *Poverty of Ambition*, points out that more than half of the poorest 10 per cent of households move out of the bottom income decile within 12 months. He informs us that of the 18 per cent of households with incomes below the poverty line in 1991, only 2 per cent were persistently poor in every one of the subsequent 10 years. Temporary drops into income poverty are not what the general public understand to be poverty.

Long-term or persistent poverty is covered in Clause 1(1)(d). The trouble is that the measure of income alone seems pretty dubious if you read the IFS report, written for the DWP by a team led by Mike Brewer, entitled *The Living Standards of Families with Children Reporting Low Incomes.* We have already looked at another report from the IFS today. This report finds a particular problem with self-employed families that have higher living standards than employed families on similar incomes. Additionally, households with children on the lowest incomes do not have the lowest average living standards. The IFS closely examined the number of children in hardship, in particular long-term hardship, using the Families and Children Study and the British Household Panel Survey, known respectively as the FACS and the BHPS in common shorthand. It found that the proportion of children in long-term hardship—that is, three consecutive years—was greater than the proportion in long-term poverty; that is, three years of income poverty. Interestingly, however, the document stated that about one-third of children in poverty for three years never experienced daily living deprivation according to the Families and Children Study*;* almost one-third never experienced consumer durables deprivation; and much higher proportions were never in hardship according to the other measures. Therefore, a combination of the two measures over a persistent period would allow us to capture that group of children who are at the heart of disadvantage in this country. Once they are clearly targeted, we can focus on how best to help them. I beg to move.

Lord Kirkwood of Kirkhope: My Lords, I commend the noble Lord, Lord Freud, for bringing this amendment forward. Persistent material deprivation has always exercised me more than anything else. As I said earlier, I share his view that looking at statistical metrical data is not sufficient to deal with the problem. However, I wonder how easy it would be to collect the data in the way that he suggested. I genuinely do not know whether it would be easy to do so. It is obviously easier for statisticians. We all accept these surveys a little too casually. For the reasons that he has given, it is not safe to rely on them exclusively, because they are subject to statistical problems and contain lacunae. I agree with him that in the area of self-employment, the figures are notoriously difficult to rely on. He has highlighted something that we need to look at. People who have lived in poverty for three out of four years are a key group who should be targeted and given special assistance. If he can devise other methods that are fair across the board and easily administered, I would be very willing to look at them and would encourage the department to study the suggestions.

The one note that worried me in the excellent introduction to the amendment given by the noble Lord, Lord Freud, was the fact that he seemed to suggest that people are not as poor as they are made out to be. That is not my experience. If I was left entirely to my own devices, I would use minimum income standards when dealing with material and persistent deprivation, as other European nations do. Material deprivation gets worse as it goes on, and if people are stuck in the trough of material deprivation for three out of four years, they should be entitled to take advantage of the unique gift to the nation suggested by the noble Lord, Lord Freud; namely, the changing of the DEL/AME rules. If I was the head of a family and I could demonstrate that I had been in material deprivation persistently for three out of four years, I should be able to go to Jobcentre Plus and say, "I want to do something to get me out of this". It might take £5,000, £10,000 or £15,000 to get me qualified as a healthcare assistant or a plumber. It would make absolute sense if you could demonstrate that the conditions applied; namely, material deprivation for three out of four years. People should get a hand—I mean a serious hand—in the form of the bursary or grant that they need, with the childcare to match. If people act in good faith, they deserve special treatment of that kind. That is a bit of a fantasy, because it is a very difficult thing to organise. However, it would motivate people and would not have any of the perverse disincentives to work involved in simply giving people extra money.

We as a society have to do something to deal with family households in material and persistent deprivation. My experience is that it is not just that they trade themselves out, as the Policy Exchange work that I have studied suggests. The worst thing that happens to them is that they fall into and out of work. For children, that is even worse, because they do not know where they are at any given moment. Being locked into a cycle for three or four years in which you are in low-paid work, then receive benefits and then go back into low-paid work destroys any ability to give a real advantage to young children. It is very difficult for families to deal with the key formative moments of their children's lives.

The amendment goes a long way towards meeting my concerns in principle. I do not know about its operational effectiveness or feasibility, and if I rightly detected that the noble Lord, Lord Freud, thinks that there are not as many people at this level of poverty as I think there are, I distance myself from him to that extent. Otherwise, it is a perfectly good idea in principle, and I look forward to hearing what the department has to say about it, because it is worth thinking about.

The Earl of Listowel: Perhaps the Minister can help me to understand this better. I, too, am grateful to the noble Lord, Lord Freud, for his amendment. On the one hand I see that, if we want to make a difference, it is important to target the neediest, because they will often be missed, and it is they who need the most dedicated help to improve their lives. On the other hand, I think about the experience on the continent with children in care: more children are taken into care, but there is also more outreach to families, more support and more early intervention.

[The Earl of Listowel]

My thought in responding to the amendment is that it may be a good approach to detect families before they fall into persistent poverty, but that supporting families when they are in this state of persistent poverty is also very important. I am torn. I suppose that one wants to try to do both: to intervene early to prevent them from entering into persistent poverty, and then to make damned sure that families in persistent poverty get the intervention that they need to get out of it before all the terrible consequences have an impact on their children.

6 pm

Lord McKenzie of Luton: My Lords, I thank the noble Lord, Lord Freud, for his amendment, which deals with an interesting and relevant issue.

I agree with the noble Earl, Lord Listowel, that early intervention and support for children in care and for families is important. I am sure that we will discuss this at greater length in due course in Committee, particularly as our Green Paper is due out soon. I think that the noble Lord's party also produced a possibly equivalent publication yesterday. That approach is a key part of building the strategies and is not inconsistent with needing to address the issue of people who are persistently in poverty. The two must both be addressed.

The amendment proposes that a second persistent poverty target is included in the Bill, and would introduce a corresponding duty on the Secretary of State to meet it. It would also require the progress against the new measure to be reported in the annual progress report. The proposed target measures the persistence of combined material deprivation and low income. The existing target measures the persistence of low income and is set out in Clause 5.

We recognise the importance of including in the Bill a measure of persistent poverty. The length of time that a child is in poverty can have a significant detrimental impact on their experiences and life chances, so it is necessary to ensure that moves out of poverty are sustained and that children do not experience the negative consequences of persistent low income.

We also believe that it is crucial for the targets to capture material deprivation, and the combined low income and material deprivation target will ensure a focus on those families that are experiencing the material effects of living in poverty. It recognises that some families face unusually high unavoidable costs, which mean that their living standards are poor even though their income does not fall under the relative low income poverty threshold. The material deprivation measure in Clause 3 complements the persistent poverty measure in Clause 5 because material deprivation is more likely to affect households which have been poor for a number of years than those households experiencing temporary low income, the point that the noble Lord, Lord Freud, effectively made.

We appreciate the importance of having a range of targets that provide a comprehensive definition of success in eradicating child poverty and the need to measure progress and drive action against the many facets of poverty. That is why we have included four complementary poverty targets in the Bill, including a persistent poverty target and a material deprivation target. However, we believe that including further targets would run the risk of a lack of focus. In addition, I can say that we are not aware of any evidence to suggest that the proposed measure would add significantly to the comprehensive definition of poverty created by the four targets. Decile units aside, the target level proposed in the amendment essentially renders the new target unnecessary. The Bill already places a duty on the Secretary of State that requires fewer than 5 per cent of children to be in poverty according to the combined material deprivation and low income measure by 2020, and therefore it is extremely unlikely that this target could be met without meeting the proposed new target as well. So for the 5 per cent target to be met and the 10 per cent target not met would require the poverty rate on this measure to fall from 10 per cent or above to 5 per cent in the single year prior to 2020 and, even less likely, that all the children lifted out of poverty in that single year to have been poor on this measure for the previous three years. This would allow for the 10 per cent of children who have been poor during three of the previous four years, even though only 5 per cent were poor in 2020, the fact that the 5 per cent material deprivation target essentially requires that the proposed new target is met means that the amendment would add unnecessarily to the Bill.

There is also a technical reason why the amendment could not be accepted in its current form, but obviously these things can be sorted out. Any measure of persistent material poverty would have to relate to calendar years rather than financial years, as stated in the amendment, because the only longitudinal survey available to measure income and material deprivation produces estimates for the calendar year. The noble Lord, Lord Kirkwood, asked whether it is feasible. The answer is yes, but other components would need to be added to the present longitudinal study in order for it to pick up material deprivation because you would be tracking the same families over the period; at the moment, material deprivation does not do that.

Someone said that it has been recognised that child poverty cannot be understood merely through the measurement of income. Poverty is also the result of being deprived of those things in life that it would be assumed to be necessary in order to be a full member of contemporary society. These items are not just material objects but include social activities. They change over time as we experience technological development and social change, and any measure of material deprivation must recognise this. In addition, it needs to be recognised that parents and children will have different needs, and therefore an understanding of child poverty requires a measurement of both parental and child material deprivation.

Let me also say that the persistent poverty measure in Clause 5 is not intended to be a measure of persistent material deprivation, rather it is a measure of persistent low income and has been included because evidence shows that being in a low-income household for a continuous period of time can, not surprisingly, adversely affect children's outcomes. We know that children who live in persistent poverty are more likely than those

who experience temporary poverty to be at risk of poor outcomes, such as being suspended or expelled from school or living in bad housing. We acknowledge that some children who experience persistent material deprivation will not be captured by the persistent low income measure in Clause 5. However, they will be captured by the material deprivation measure in Clause 3. The target for this measure is less than 5 per cent, revealing our commitment to tackling the material effects of poverty and low income.

Unlike low income, material deprivation is unlikely to be a short-term situation. Material deprivation is measured according to which items from a selection of basic goods and services a household cannot afford. These goods and services tend to be accumulated over a number of years. Therefore, we would expect to see less distinction between persistent and temporary material deprivation than between persistent and temporary low income. This is one reason why we did not use material deprivation to define our persistent poverty measure. We have established methods of measuring material deprivation that show that it is an aspect of poverty that does not change rapidly. This is to be expected, as material deprivation will lag behind income falls, and moving out of material deprivation will lag behind income rises. We know of no evidence to suggest that the proposed measure would add significantly to the definition of poverty encapsulated by the four targets.

The noble Lord, Lord Freud, referred to the IFS report. We will be quoting extensively throughout our proceedings from the substantial work that the IFS does. We recognise in particular that the surveys do not necessarily pick up self-employed income to the full. It is frequently the case that those at the bottom end of the distribution scale are shown not to be in hardship. There are issues here. The measure for relative low income has been fixed at 60 per cent of the median partly because it takes us above those problem areas. That said, I hope the noble Lord will accept that we are on the same page in trying to address the issues. However, this proposal would not add anything of significance to the Bill.

Lord Freud: I thank the Minister for that response. I also thank the noble Lord, Lord Kirkwood, and the noble Earl, Lord Listowel, for their contributions. I will hone in on the concern. When you have targets, there is always an instinct to nudge the figures just above the targets and go for easy results. There are signs, which we discussed elsewhere, that there has been a bit of that. There has been a sharp rise in the figure for underperforming children in the under-40 per cent of the median category—a much sharper rise than that for children in the under-60 per cent category.

The risk is that we do not properly isolate those children who are the most vulnerable in the country. The data are hazy. Peter Saunders of Policy Exchange, in his *Poverty of Ambition* piece, draws out how poor some of the data are. He states:

"Astonishingly, for those in the bottom 5% of the income distribution, deprivation scores get worse as income rises. Children with equivalised incomes below 40% of the median income are less deprived than those with incomes between 40% and 60%. Children in the bottom 2% of incomes are less deprived than those whose incomes are well above the poverty line".

All kinds of odd things are happening in the data. If the Government take a relatively undifferentiated approach, they are likely to miss out the children who really need support.

I am very appreciative of the general support of the noble Lord, Lord Kirkwood, but he was concerned that the amendment would produce a rather small figure. It would, but it would be an immensely valuable group of people to isolate because they are probably the most needy people in the country. On the point made by the noble Earl, Lord Listowel, we would consider the children in, or likely to be in, the circumstances of the group and start honing early interventions for that group. That is the purpose here.

The noble Lord, Lord Kirkwood, also talked rather flatteringly about the DEL/AME switch. One of the most interesting parts of the huge amount of research in the area comes from the Child Poverty Action Group in its recent report. It states, bluntly, that the approach now being adopted towards welfare is the approach that we should adopt towards poverty. In other words, we should go to the people who have the problem and provide individualised support on a holistic basis.

I used this quotation at Second Reading, but it bears repeating. In the same way that it is increasingly recognised that,

"a personalised, multifaceted service is required to assist jobseekers successfully into employment",

so a similar approach needs to be applied to poverty. I cite the Child Poverty Action Group.

Picking up on the point made by the noble Lord, Lord Kirkwood, about DEL/AME, the cost of the worst-off children is enormous for society. We know that it will cost, quite literally in many cases, millions of pounds per child. If we can isolate them and start to consider the costs we will incur and make the DEL/AME switches, as we do for welfare, we will start to prevent those costs. That has nothing to do with being a do-gooder, it is a cold assessment of the interests of the country to invest in preventing huge future costs. One does not have to be a bleeding heart to see the logic of that. If we are to do it, we must isolate the children and get very sophisticated about assessing where the investment should go.

The purpose of the amendment is to start the process, so that we can begin tiering it up and thinking about the different amounts of money that we can put to different levels of need, and consider value for money.

6.15 pm

Lord McKenzie of Luton: On a point of clarity, the Government would agree with much of what the noble Lord has just said. The point at issue is whether the measure that he has proposed for measuring another target is a meaningful one. In a sense, that is related to the policies that flow from the strategy, but that is the particular issue before us. We have common cause on issues around support and investing to challenge poverty; when we get into the detail of the strategies at local level as well as nationally, some differences in policy arise, but when it comes to seeking to achieve that, we

[Lord McKenzie of Luton]
agree. The Government's point is that the measure that the noble Lord seeks to have in the Bill does not add anything that aids that process.

Lord Northbourne: Surely the Minister would agree that, if you have four things that are obligatory and something else that is merely quite a good idea, that last thing will not get the same amount of attention. Having heard what the noble Lord, Lord Freud, has said about the personalised approach—the Minister and I sat in this Room for hours arguing about that on the Welfare Bill and I greatly supported what he did on that Bill—I think that there is a serious case for getting something into this Bill that will have that effect.

Lord McKenzie of Luton: The amendment does not particularly say or do anything about a personalised or a non-personalised approach; it is simply about an alternative target. The purpose of the suite of targets is to try to ensure that we identify the level of poverty that there is and that we are able to track progress against those targets so that we can see that we are addressing the issue and making a real difference to the lives of young people. The sole point here is that the proposed additional measure does not help that process. What is in the Bill already covers the situations of those people who are in persistent poverty.

Lord Freud: I thank the Minister for making that point. I shall come back to it, though. There are enough discrepancies in the data, as we can see from the IFS report among others, to suggest that when you want a hard, irreducible measure of the income and deprivation of people in real hardship, if they are measured over a reasonable period such as three years, you know that you are capturing them. The data on shorter periods seem much more volatile, including on deprivation. If you want to start to tier the children at risk, therefore, this group—three years plus three years, in each—would seem to be an enormously valuable place to start. My reading of the data suggests that the one-year material deprivation does not capture those children reliably. I accept that this is clearly an issue of data interpretation, as the Minister has said. I will commit to go and brood on the data and we may even discuss them in the interim before deciding whether this is to be assumed.

Lord McKenzie of Luton: I am happy to have a discussion between now and when we next get to Committee, perhaps with officials, so that we can do some number-crunching to see if we can reach a joint understanding of the issues around data.

Lord Freud: I very much appreciate the Minister's offer. If we sat down with officials and the data for a hard look at this, we would reach an agreement based on those data. I suspect that we would then produce a joint agreement, if we could agree that something needed to change. On that basis, knowing that the noble Lord is such a generous Minister, I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Clause 1 agreed.

Clause 2 : The relative low income target

Amendment 4

Moved by ***Lord Freud***

4: Clause 2, page 1, line 13, leave out "10%" and insert "9.85%"

Lord Freud: My Lords, I did not table this amendment just to amuse you. It replaces the target figure of 10 per cent with a no less arbitrary, but rather less comfortably round, figure of 9.85 per cent. This is, of course, a probing amendment, and I hope to give the Minister and the Committee more generally the chance to discuss the value of setting a target at the particular threshold stated in the Bill, of 10 per cent of children.

Everyone would find decreasing the percentage of children brought up in relative poverty to a much lower figure, such as 10 per cent, a praiseworthy aim. If a future Government meet the target, they will have made enormous strides in improving the welfare and opportunities of children in the UK. However, 10 per cent does not represent the eradication of child poverty, as some colleagues of the Minister still insist on claiming. They may express it as: "That's the nearest we can get, given the lack of reliable data".

The whole objective of this Bill is to ensure that child poverty remains at the top of political priorities for the next decade. I actually see this as a reduction from the original intention, which is to make the UK among the best countries in Europe for a child to live and be brought up in. I am asking: is this percentage the right figure to be aiming at in the context of the data we have? An arbitrary target such as 10 per cent could become unhelpful. You would not, for instance, reject a measure just because it reduced the level of child poverty to 11 per cent. You would not stop focusing on the area just because you had already reduced it to 9 per cent.

I shall address the issue of the reliability of the data. Some organisations with perfectly honourable and good intentions have lobbied to replace the figure with a target of 5 per cent. That target has been reached, albeit for rather short periods, by a few countries, which have tended to be small and enjoying an economic boom when they achieved it.

I agree with the Government that 5 per cent is not a realistic figure, given the limitations on the data and the way that poverty is a transient phenomenon, as I have already discussed. I have much more sympathy with the Government's aim that the target, once reached, should be maintained for three years so that any improvement in children's lives is genuinely long term and represents a permanent change, not a one-off surge for the target year with a collapse afterwards.

It is clear that we shall spend a lot of time discussing the strategies for how to tackle child poverty, but before we have that discussion I want to be comfortable that the figure of 10 per cent, which is so prominent in the Bill—it is placed early and in a prominent position—does not hinder steps that the Secretary of State should be taking and is a helpful and appropriate

measure of success. With this amendment, I want to give the Minister the opportunity to provide a full explanation of why the 10 per cent threshold has been chosen.

Baroness Thomas of Winchester: My Lords, could I ask the noble Lord, Lord Freud, whether this is the amendment under which he wants to discuss the methodology behind how the figures are collected and weighted or is he going to do that on another amendment?

Lord Freud: I have several amendments on the figures, but this is about the threshold. Another amendment looks at how the figure of 60 per cent is derived and why, so this amendment asks about the sensible threshold to aim for and why this particular threshold has been selected. I should have said, "I beg to move", and I apologise for the oversight.

The Earl of Listowel: My Lords, I think that the noble Lord, Lord Freud, is asking what will keep us heading for the target. However, I have not quite caught what he was trying to say. Nevertheless it reminds me that whatever we have in legislation, we need to be motivated to achieve improvements for these families. A great deal of legislation passes through this House. We had the Children Act 1989, which was a wonderful piece of legislation that enshrined in law all sorts of protections for families. Later the noble Lord, Lord Laming, said during the course of the Children Act 2004 that if we had only implemented the 1989 Act, we would not need a new Bill. So this is an important Bill and these are important targets.

The noble Lord, Lord Freud, implied what figures such as 10 per cent, 11 per cent and 9 per cent really mean. We want to eradicate child poverty as far as possible. That is what we are here for. Putting a figure on it could be unhelpful in some ways because it might suggest that once poverty is down to 10 per cent, we can stop trying. That is not right. We have to keep going because we do not want any child to grow up in poverty. That may be beyond our means, but we are going to try as hard as we can not to let that happen.

I am sorry to take some time on this, but will the Minister and his colleagues think about institutionalising other means to tackle the problem? The noble Lord, Lord Martin, spoke eloquently about his personal experience of the poverty experienced by many families in Glasgow, and I have spoken to MPs who have had extremely powerful experiences when accompanying health visitors and seeing the poverty in which some families are living. If industry can set up the Industry and Parliament Trust, a mechanism by which Members of the House of Lords can easily visit a business and shadow an engineer over a period and get to know and build relationships with people in industry so that they understand and give the right priority to the concerns of industry, why should there not be a programme through which parliamentarians can accompany health visitors visiting families living in poverty and perhaps build a relationship with a health visitor or a family over a number of years and by that means be motivated to enact this legislation and make it happen?

I recently read a biography of the first Earl Attlee, who had an upper middle class background, and went to live in the east London settlement of Toynbee Hall. He was so moved by that experience and his earlier experience of seeing how people in deprived areas lived that he achieved what he did when he led the Labour Party. I apologise for taking your Lordships' time when we are running rather slowly, but I wanted to flag this up as something that the Minister might like to consider with his colleagues. I should be interested to hear his thoughts on it.

6.30 pm

Lord McKenzie of Luton: My Lords, I thank the noble Lord, Lord Freud, for giving me the opportunity to explain government policy on this issue, but first I wish to pick up the comments of the noble Earl, Lord Listowel. He made a fascinating suggestion. On too many occasions we get wrapped up in the Westminster bubble. We have connections with the outside world but we can become remote from what is happening at the sharp end. Although there are lots of influences at play when we develop legislation, including consultation and engagement with stakeholders and the people on the front line, I readily accept that the more that we who have the privilege of sitting here and in the other place understand the experiences of suffering people who live in poverty and whose interests we should be looking after, the better it will be.

The noble Earl also mentioned industry. This issue is not limited to parliamentarians and benefits from the engagement of business. Indeed, a lot of good work goes on in that regard. On the issue of strategies, engagement at local level looking at needs assessment on the part of local strategic partnerships and partners is another way to ensure fuller engagement. One could argue that you do not have to be poor to want to eliminate poverty, but understanding its ramifications and seeing that up close is hugely important. I thank the noble Earl for his suggestion in that regard.

I say to the noble Earl that once we reach the target, Schedule 2 of the Bill makes it clear that the level, or no less than that, has to be maintained beyond 2010. I remind noble Lords that the relative low income target refers to,

"less than 10% of children",

so it is not a case of reaching the 10 per cent or just under the 10 per cent. That is no excuse for stopping there. However, as I shall go on to explain, reaching that target is a challenge.

As we have discussed, the Bill contains four child poverty targets to be met by 2020. The relative low income target is only one of the targets and progress has to be made against all of them. HBAI is key dataset for the analysis of income poverty and is treated as such by both researchers and the Government. The noble Lord, Lord Freud, has on several occasions implicitly challenged the data and their robustness. We shall have a debate on that on a subsequent amendment. Any data based on surveys have their qualifications, but questioning the nature and robustness of the data on which these targets are built is not an excuse to cast them aside, even though there are issues that need to be understood around them.

[Lord McKenzie of Luton]

The importance of HBAI comes from the fact that the household income data it contains have been extensively reviewed and processed to ensure that they are properly comparable between households. The survey used to calculate these statistics, the Family Resources Survey, is the most comprehensive survey of incomes and income sources in the UK, with an extensive suite of validation procedures to ensure that the data are of high quality. The data play a vital role in the analysis of patterns of benefit receipt, and are used for policy evaluation and benefit forecasting.

Every year around 25,000 households across the country are surveyed—an annual sample larger than almost any other UK social survey. However, the Government's low-income statistics are based on a survey and, as with anything based on a survey, are subject to a degree of uncertainty. It is for that reason that it is necessary to round the statistics to the nearest 100,000 children or percentage point. In practice, a change in the target level from 10 per cent to 9.85 per cent of children would not be measurable to that degree of accuracy. We need a whole-number target, which is why we have chosen less than 10 per cent—I accept that this was a probing amendment to establish why we chose that figure. To measure levels of low income to an accuracy of more than the nearest percentage point would involve a significant boost of the sample size and, obviously, of the costs of the survey.

There will always be criticism that households whose income is just over the percentage of median income set in the target will not benefit from the legislation, and that this is arbitrary. However, the Bill contains four child poverty targets to be met by 2020, and these have been chosen on the basis of extensive consultation. In establishing the targets, we are recognising the need for a comprehensive definition of success that captures the many facets of poverty, long-term poverty and material deprivation that can reinforce the negative impact of low income on childhood well-being and life chances. Targets ensure that policy will have to tackle poor living standards and persistent poverty, as well as raising incomes at a given point in time. Together, the targets reflect the reality that the length of time experiencing low income, and the lived experience of poverty, matter.

A relative child poverty level of below 10 per cent would be the lowest in this country since at least 1961. It would more than reverse the doubling of relative child poverty between 1979 and 1998-99. As I said, by setting a range of targets in the legislation, we are confident that achieving all the targets will make a real and lasting difference to the children of the UK. Reducing child poverty rates to those consistent with other modern European economies with historically low levels of child poverty, such as Finland, Sweden and Denmark, would be a major achievement. The best child poverty rate that has ever been achieved in Europe is 5 per cent, but the figure has not been sustained. Using data from 2007, the best in Europe would equate to a level of 10 per cent. We propose to reduce the rate to less than 10 per cent, alongside extremely challenging targets to reduce the number of children in households suffering from persistent poverty, low income, material deprivation and absolute low income.

The Government believe that it would not be possible to define eradication as zero children in relative income poverty. However, a rate of less than 10 per cent is an ambitious but technically feasible goal for the sustained eradication of child poverty that would put the UK's child poverty rate firmly among the best in Europe. There were technical issues with the survey used to measure poverty that meant that some children in families with short-term low income, or whose incomes were not recorded accurately in the survey—the noble Lord has referred to that—will be classed as in poverty even though they do not have low-income standards.

I hope that that has explained the 10 per cent figure. If achieved, it would put us in line with the best in Europe, and to focus on it along with the other three would enable us to make a real difference to children who are in poverty today.

Lord Freud: I thank the Minister for taking the opportunity of the probing amendment to answer so fully. His main explanation concerned data quality, and that is correct: when you look at some of the data collected, you see that there are grounds for serious concerns about its quality, so I accept what he is saying.

Lord McKenzie of Luton: Would the noble Lord expand on what he sees as the major issues around the quality of the data?

Lord Freud: One of the big problems when you do a survey is that the responses to it are apparently fairly confused, with people not knowing what they should be reporting and what they should not. Some people report nil because they do not consider benefits as part of their income. That is part of the concern. The other part is deliberate underreporting. In support of the amendment on the black economy, I have quite a lot of data to introduce to the Committee about what various academics estimate that economy to be, and where it might be.

This is a genuinely difficult issue. I imagine that if a surveyor came into noble Lords' rooms and asked them to tot up their incomes, everyone in this Room would find it pretty difficult to do that on a consistent basis. That is what some of the researchers who have questions in this area say. We will have other opportunities to discuss this.

I did a few sums on the back of a dirty piece of paper on the cost of my 0.15 per cent reduction from 10 per cent. If we were to take the IFS figure of £19 billion and calculate purely on income transfers, the cost of the reduction would be in the order of £200 million. I do not feel that I should put that kind of cost in a probing amendment, so I take pleasure in begging leave to withdraw it.

Amendment 4 withdrawn.

6.45 pm

Amendment 5

Moved by ***Lord Freud***

5: Clause 2, page 1, line 18, leave out "60%" and insert "60.15%"

Lord Freud: My Lords, this is pretty obviously another probing amendment. It raises the issue of why the Bill fixes on a figure of 60 per cent of median income as the target that defines the limit of poverty. I quote from the Policy Exchange document, *Poverty of Ambition*:

> "So why choose 60% of median income as the cut-off? The answer is that there is no scientific reason, except that most academics and policy experts are happy to accept such a definition. They appear to have settled on 60% because it produces the sorts of poverty numbers they regard as plausible".

It would therefore not be acceptable for the Minister to respond to this amendment by saying that many academics think that 60 per cent is the right answer. I am very concerned that the figure has been developed as a classic example of groupthink, which has caused more tragedies in history than virtually anything else—from the Trojans thinking it smart to take wooden horses left by Greeks into their city, to people around No. 10 deciding that Saddam Hussein must have weapons of mass destruction.

I might point out that the 60 per cent figure is also suspiciously round. I have been a banker for many years, and when someone comes up to me with a round figure of 60 per cent, I look at it with great suspicion. If it had some kind of scientific basis, it would inevitably come with a decimal point attached. Does it really make a difference to a family to move them, for instance, from 58 per cent of median income to 60 or 61 per cent of median income, especially when the target process will encourage exactly that kind of manipulation? We may have seen such manipulation in recent years.

We will discuss the iron triangle later, because I have tabled another amendment. However, I will warm everyone up to the topic by arguing that we should not set the 60 per cent figure in isolation. The amount that we pay people in income transfers has an obvious impact on their incentive to work, depending on the marginal withdrawal rates that we establish. If we have withdrawal rates that motivate people back into economic activity, we have to worry about the cut-off point at which people start contributing to the Exchequer, and about the support level.

This Government have not yet done the work of linking the three elements of the iron triangle. They may discover that when they do—I have a feeling that they will look at this pretty deeply—there is some serious modelling involved, and that the 60 per cent figure may not be the optimal one. In other words, if they fixed a higher or lower figure, it might encourage more people into the workplace, and overall poverty rates would be lower—even at the arbitrary 60 per cent figure, which is not based on anything scientific or on minimum income standards. Jonathan Bradshaw, at the University of York, did us all a service in his paper that showed how arbitrary the figures that we are talking about have been.

I would welcome hearing from the Minister either why this is the best possible figure, or why the Government may have to do more work to establish that. I beg to move.

Lord McKenzie of Luton: My Lords, Amendment 5 would change the threshold of median income used to determine whether a household is in relative income poverty from 60 per cent to 60.15 per cent. I recognise that this is a probing amendment, as was the amendment that we have just discussed. As I have already stated to the noble Lord, HBAI is the key dataset for the analysis of income poverty. However, we can agree that surveys are subject to a degree of uncertainty. It is for this reason that it is necessary to round the statistics to the nearest 100,000 children or percentage point. The change from a threshold of 60 per cent to 60.15 per cent of median income would not have a noticeable impact on the statistics when rounded to these levels.

The threshold of 60 per cent of median income is in line with international best practice. The National Statistics publication *Households Below Average Income* contains statistics on the number, proportion and characteristics of children in households with incomes below 50, 60 and 70 per cent of median income both before and after housing costs, as well as in low income and material deprivation. This gives an idea of the sensitivity of trends in the figures to the particular threshold used. As I said before, there will always be criticism that households whose income is just over the percentage of median income set in the target will not benefit from the legislation, and that this is arbitrary. But a level must be set and we believe that this is the right one. Just to reiterate, the Bill contains four challenging child poverty targets that must all be met by 2020. Together, they provide a comprehensive definition of success, and that is why we believe that the figure of 60 per cent is appropriate.

We use a relative measure of poverty because we accept that poverty is a relative concept. Living standards that would have been considered normal 100 years ago, such as not having running water or an inside toilet, are now indicators of unacceptably low living standards. Most academics and experts now agree that poverty in the UK should be measured with a relative measure. Among others, Professor Peter Townsend's work in the late 1970s contributed to this consensus. Initially, the relative measure used was 50 per cent of mean income. This definition was easy to understand and represented a level of income that experts generally agreed was a reasonable threshold for acceptable living standards. Since then, it has been recognised that using the median rather than the mean provides a better threshold because it is not unduly affected by the incomes of the very rich. However, changing from 50 per cent of mean income to 50 per cent of median income dropped the poverty threshold below the level of income that had been generally agreed to provide acceptable living standards. The measure of 60 per cent was therefore adopted. So using a median income threshold recognises that poverty is a relative concept which changes over time, and is the basis on which we have adopted the target.

It was suggested that using the 60 per cent threshold encourages policy makers to help the easiest to reach. Our goal is to eradicate poverty for all children. The framework that the Bill establishes for achieving the goal, using national child poverty strategies and duties on local government to tackle child poverty, applies to

[Lord McKenzie of Luton]
all children in the UK. The Bill contains safeguards to ensure that policy is not focused on the children that it is easiest to help. Indeed. Clause 8(2)(b) states specifically that the strategy must set out measures to ensure,

"as far as possible that children in the United Kingdom do not experience socio-economic disadvantage".

This provision ensures that the strategy must set out measures to cover all children regardless of whether they are covered by the targets and regardless of target levels.

The noble Lord reverted to his now famous "iron triangle", and I am sure that we will have a chance to debate it in due course. The issues around making work pay are very important and we have always accepted that. The Government have done a great deal in recent times to make sure that work does pay. Clearly, marginal deduction rates in relation to income transfers and withdrawal of benefits impact on incentives to work. But I would just say to the noble Lord that the number of families facing the highest marginal deduction rates, above 70 per cent, have halved since 1997, and the Government have made significant efforts to reduce the poverty trap by making work pay. Inevitably, given the generosity of the tax credits, more households will see support withdrawn as their income rises, because more people are in receipt of those credits. Again, the 60 per cent figure that has international credibility and that was originally founded on an assessment of what level of median income moved people into hardship or began to do so is the basis on which the 60 per cent is structured. I could not say to noble Lords that 60.5 per cent or 59.5 per cent would not be better measures, but I believe that it is an appropriate measure, and it is one that underpins our approach to the Bill.

Lord Freud: I thank the Minister for that answer. I confess that it leaves me disturbed relative to my groupthink case. We have drifted into a generally accepted figure without any scientific basis. One problem with being a leader in this area, in the sense of setting a statutory target based on what is effectively a comparator that has become a useful basis on which to compare countries around the rich world, is that what served perfectly well as a comparator base does not stand up so well when you subject it to a more stringent requirement; namely, a set of targets. Many people involved in this area are concerned at the fact that we have established these standards and equivalence scales without any assessment of minimum income standards, which is the scientific approach. Many amendments later will deal with that, so I will not go on about it.

Lord McKenzie of Luton: I want to ensure that it is clearly on the record that we do not accept that the 60 per cent measure is just an issue of groupthink, and that people have collectively stuck to the figure because they could not think of anything different. There is a wealth of evidence that poverty measured by the 60 per cent threshold is strongly related to poor outcomes. That was behind its conception and that is the basis for the figure. The noble Lord said that it is used as a comparator. It is in part, but it is also a driver of domestic policy, as it should be.

Lord Freud: I thank the Minister for that clarification. I will make absolutely clear that we on our Benches accept absolutely the need for a relative measure. We do not go down the road of absolute poverty measures. We accept that the relative measure is the right way to go. In practice, the difference between absolute and relative is not as great as it seems, because every now and then one adjusts the absolute figure to reflect the requirements of living in particular societies, which is a much cruder way of using the relative poverty target. Therefore we accept the relative poverty target that the Minister talked about. Our concern is that, despite the fact that quite a few academics insist that it is a reliable figure, other academics and policy researchers have called it arbitrary. I quoted Peter Saunders, but he is not alone.

The other point that I wanted to pick up on is the impact of having a target at a level that means that for a bureaucracy, it is much easier to nudge people over the target than to work on the people farthest away from the target. I reiterate a point I made at Second Reading: both Save the Children and the IFS made the point that the number of children in severe poverty was growing even before the 2004 turning point. That may suggest the impact of targets on the way that the bureaucracy behaved.

I thank the Minister again for his explanation. It is a probing amendment; I do not want to pursue it at a later stage. I think that I have learnt all that I will learn from the Minister. Accordingly, I beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Clause 2 agreed.

Clauses 3 to 5 agreed.

Amendments 6 and 7 not moved.

Amendment 8

Moved by ***Lord Freud***

8: After Clause 5, insert the following new Clause—

"Non-financial targets

The Secretary of State will, following consultation with the Commission (established under section 7), establish a set of non-financial targets relating to the number of children brought up in—

(a) households with parents who are married, in a civil partnership or in a long term relationship,

(b) workless households,

(c) households where one or more parent is addicted to drugs, alcohol or gambling, and

(d) households where a parent lacks level 2 key skills."

Lord Freud: My Lords, this is probably the central, most important amendment that we wish to make to the Bill. There is a real difference in philosophy between the Government and us over the Bill, and that is how best to tackle the problem of child poverty. The Government have traditionally been interested in tackling it through financial means. The agent in control of the

child poverty agenda has been the Treasury. Sir Nicholas Macpherson, its permanent secretary, told the Treasury Select Committee in 2007:

"The primary reason that the Treasury has led on Child Poverty is that we control the levers which are critical for meeting the 2010 target, as we set the levels of financial support for families. Employment will have an important impact on achieving our goal of halving child poverty, but financial support is the most important lever".

I acknowledge that that approach seems to have been modified recently, and I note that the impact assessment to the Bill mentions balancing the approach. It states:

"Rather than just trying to address child poverty through increasing transfers ... the most effective strategies would be to combine action on income with other social policies designed to reduce the disadvantages of growing up in poor families and deprived neighbourhoods".

It concludes:

"The legislation is specifically designed to ensure that the Government uses a wide range of interventions via public services, with financial support only one of these interventions".

I apologise if I have taken some of the references that the Minister would have used to respond to the amendment. I am conscious that the Minister responsible for the Bill is the noble Lord, Lord McKenzie, who has just piloted the Welfare Reform Bill through the House, with its emphasis on individualised intervention to help the economically inactive. I therefore certainly know that he will understand and appreciate the important specific interventions to support the most disadvantaged. Indeed, many of those around this Table today discussed exactly these issues in our consideration of the Welfare Reform Bill, and I welcome the fact that we can have an informed debate around the Chamber because of that experience.

The sophisticated report by the Child Poverty Action Group, *Coping with Complexity*, is entirely in line with this approach. It emphasises the complexity of poverty and calls for policies to tackle a wide set of features of poverty. Let me lay my cards on the table. As noble Lords will know, my party's policy is centred on tackling the causes of poverty rather than the symptoms. Our concern is that there is an imbalance in the Bill between the two approaches. The Bill lays out a range of financial targets and contains no direct targets to deal with the causes of poverty. It smells of the traditional Treasury approach and not the modern DWP one. The amendment aims to ensure that the Government worry just as much about the fundamental causes of poverty as they do about the score card.

We are far from alone in this concern. Let me again quote the Child Poverty Action Group, which says:

"It would be churlish not to acknowledge the progress made in the official measurement of poverty and wrong to deny a political commitment to tackle the problem".

We entirely concur with that, and we would never wish to be accused of being churlish, as we discussed a few months ago. The Child Poverty Action Group continues:

"Nevertheless, the measures currently employed fall far short of capturing the multi-dimensional experience of poverty described above".

I chose the four targets in the amendment because all the current evidence indicates that they are the main drivers of poverty. I have not specified the exact targets because these can be developed by the commission. Indeed, it would be an invaluable service on the part of the commission. Moreover, flexibility may well be desirable in setting the precise levels that will have an impact on solving the problems, and the system should be able to absorb this.

Let me deal with the specific targets individually. The most important target relates to stable relationships. The Child Poverty Action Group found that,

"the effect of separation on a couple (whether married or co-habiting) in terms of increasing risk of poverty was much greater than for any of the other triggers that we were able to investigate, including job loss".

Yet the underlying trends show big increases. I am indebted to the Centre for Social Justice for its document *Breakdown Britain*, which opens up this area. It is a little old—it dates from 2006—but it cites the big trends: a decline in the number of couples, down from 70 per cent of households in 1971 to 53 per cent in 2003, and an increase in lone-parent households from 7 per cent to 10 per cent. Couple instability has increased dramatically from 500,000 separations in 1971 to 3.5 million in 2001. At the same time as these trends have become clear, the number of cohabiting couples has increased, up from negligible levels in the 1970s to 2 million in 2003. In other words, by that year, cohabiting couples represented 10 per cent of all households and 16 per cent of all couples.

I do not think we need to take a moral stance about cohabitation compared with marriage, but the sad truth seems to be that relationships involving cohabiting parents are far more likely to break down that those of married parents. According to research undertaken for the Centre for Social Justice, it is estimated that 30,000 children aged under five experience the break-up of their married parents, while 90,000 experience the break-up of their unmarried parents. The CSJ concludes by stating:

"In other words, as the number of divorces affecting young children declines, family breakdown trends are being driven entirely by the increase in unstable cohabiting partnerships".

Here we have what on the surface looks like a major cause of poverty, and in particular of poverty in young children, but this Government do not even collect the relevant figures. The Minister, Helen Goodman, said:

"Defining the causes of poverty, as the amendments would require, is therefore not possible to achieve at present owing to gaps in the evidence base and limitations in the data available".—[*Official Report*, Commons, Child Poverty Bill Committee, 9/12/09; col. 423.].

The irony of this is that the "gaps in the evidence base" and the "limitations in the data available" arise chiefly because the Government created them. They did so first with the Office for National Statistics Neighbourhood Renewal Unit failure to publish a family breakdown index and statistics along with the other seven indices of neighbourhood deprivation after the Social Exclusion Unit had specifically named family breakdown as one of the causes. They did so secondly when Jacqui Smith announced that marital status would be removed from government forms.

To judge from an article in the *Sunday Times* on 27 December, the Government have become late converts to the importance of stable relationships and marriage.

[LORD FREUD]

Indeed, a Green Paper is projected for this week outlining measures designed to shore up parental relationships. Ed Balls was quoted as saying:

"I think our policy now is actually about the strength of the adult relationships and that is important for the progress of the children".

We should welcome this recent conversion, especially as the government spokesman, Helen Goodman, said in Committee that the Government were not wholly convinced that family breakdown was a cause of poverty. Regrettably, the conversion has happened 10 years too late. So the purpose of paragraph (a) in this amendment is to ensure that we monitor and have strategies in place to prevent family break-up, whether the parents are married or cohabiting. The evidence would suggest that the greatest concern should lie with the latter group.

7.15 pm

I shall move on to address the issue of workless households. Here it is possible to speak more briefly, not least because I think that we and the Government are in agreement that work is a key route out of poverty. The issue here is less the direct effects of worklessness on income levels—indeed, this strategy on its own will do little for in-work poverty. It is disturbing that a Joseph Rowntree Foundation report has found that in each of the past two years, the number of children in low-income households where at least one adult is in paid work has grown by almost half a million from the low point reached in 2003-04.

More important is the example set by parents regarding the importance of work for their children. If a child lives in a household in which neither parent works, they have no role models leading them to work. Indeed, family members can put strong pressure on their offspring not to engage in such a disruptive activity. This, we argue, is part of the reason why social mobility has been found by researchers to be decreasing rather than increasing.

The Child Poverty Action Group analysis found that,

"changing the status of a household head from employment to unemployment has substantial negative effects on a child's home life, risky behaviour and educational orientation—effects which, in the symmetrical world of cross-sectional modelling, could be reversed by policies that successfully help unemployed people enter work".

I should acknowledge that it makes various caveats about exactly who that should apply to, but the central point is made.

Paragraph (c) of the amendment is slightly different. According to *Breakdown Britain*, there are about 1.5 million children growing up in substance-abusing households, more than 1 million with parents abusing alcohol and 350,000 in households where there is drug-taking. According to the Gambling Commission, about 250,000 adults were defined as "problem gamblers", although I could not find figures on how many children they were responsible for.

There are two issues here. First, many parents with an addiction of this kind are likely to be unsatisfactory parents—in other words, their addiction is likely to reduce the well-being of their children. Secondly, such addicts deeply undermine the whole approach of the Bill, with its measures of income and material deprivation. A substantial proportion of the income is likely to be diverted from the welfare of the child to feeding the parents' habit. It is absolutely no good to adopt strategies in these cases based on increasing income. This is where we see the benefits of a child well-being approach, which would capture the evidence of inadequate parenting.

Paragraph (d) of the amendment covers another area where I suspect that there is little difference between ourselves and the Government. To put this in context, this is the area where the UK has the greatest relative disadvantage as an economy. The Leitch review found that 35 per cent of the working-age population do not have the equivalent of a good school-leaving qualification. That is more than double the proportion in countries like Canada, the US and Germany. About 4.6 million have no qualifications at all, according to Leitch, while 5 million working-age people lack functional literacy and 7 million lack functional numeracy. I do not think that the figures have changed materially since 2006.

There is a strong correlation between low skills and unemployment, especially when combined with other disadvantages. Lowly educated parents are more likely to be unemployed and living on benefits. At the same time, poor educational performance by parents is a strong predictor for that of their children. Our high number of NEETs, now running at about 950,000 children and young adults, is therefore both a poor outcome for children and a foreboding situation for their children in turn. This final paragraph aims to ensure that we measure and control education and skills at home. I beg to move.

Baroness Walmsley: I am moved to comment on the amendment. I quite accept that we should have a non-financial target—the welfare or well-being of the child. The problem is that, if you try to devise a list of any other targets, you are on very shaky ground. We have to keep in mind what we will do to achieve the targets. The list could well be incomplete for some families. The welfare of the child may be much better achieved by reducing domestic violence in the household. I see that that is not on the noble Lord's list. It could be better achieved by teaching one or other of the parents how to cook a good meal.

Some of the targets listed by the noble Lord are slightly dodgy. I accept that the noble Lord has included not just parents who are married but has added the words,

"in a civil partnership or in a long term relationship",

but when we are thinking about what we are going to do to achieve such a target, whatever figure we put on it, it amounts to social engineering, whatever the evidence is about what happens to children among couples of various kinds with various legal statuses. We must be very careful with targets of that nature. The only one that is fairly straightforward is that in paragraph (d),

"where a parent lacks level 2 key skills",

but that is dealt with by a different piece of legislation.

I accept the evidence that you are more likely to have poverty in workless households, and neither do you have a role model for a young person growing up,

but, again, worklessness is addressed by other pieces of legislation and would certainly be addressed by a sensible set of strategies arising from Clause 8.

The provision that worries me most is paragraph (c). I ask myself what the noble Lord would do to achieve such a target. Does he have in mind reducing benefits just in case they happen to be spent on alcohol, drugs or gambling? What about the children in that household if we are to do something of that nature? If the noble Lord has in mind improving the funding for treatment for drug addicts and people addicted to alcohol and gambling, I would have a great deal more sympathy with that part of his amendment, but it worries me greatly that that may not be what he has in mind.

Baroness Hollis of Heigham: Although most of us sympathise with the concerns that the noble Lord has expressed, I—and, I suspect, others—resist his wish to add the new clause to the Bill. The Bill is already hugely challenging. It is about something that, to a limited degree, government has some capacity to deliver, which is transfers of income to address income poverty as measured by the four targets.

The noble Lord has produced a list of additional items that, as the noble Baroness rightly said, are extremely hard, first, to measure and, secondly, to deliver. When this was discussed, at the other end of the building, there was a competition among Members of the Committee to add what they called Christmas decorations, or Christmas baubles, to the Christmas tree. Among others was not just domestic violence but housing overcrowding. Why is that not mentioned, because that, too, is a key driver of children's underperformance at school? Financial incompetence leading to debt is one of the key differences between two people with identical incomes. One is in material deprivation; the other is not. Why? Because one has gone to the pawnbroker, instead of the credit union, for capital goods. What about mental health and mental illness? Why is that not mentioned? All the evidence suggests that that is a more profound driver than all this little lot put together.

Baroness Massey of Darwen: Disability.

Baroness Hollis of Heigham: Let alone disability, which we will address in subsequent amendments; my noble friend is absolutely right. That, too, is a key driver.

The problem here is that, although no one doubts that the items listed by the noble Lord are part of a holistic background to child welfare, the Bill is intended to deal with a portion of that, which is the contribution to the poverty of child welfare through income poverty. Government strategy is already dealing with issues such as worklessness. The whole strategy of the past 10 years has sought to do that and we collect the evidence for it. The Government already invest in education to bring the next generation of parents up to level 2 and beyond.

Lord Freud: I thank the noble Baroness for giving way, but I point out to her that the Bill is very much not saying, "We will do all this through income transfers", it is actually saying, "We will have strategies to eradicate poverty, or pull it down to 10 per cent". As I understand it, it is absolutely not saying that the only strategy is income transfers. It is saying that the Secretary of State must have a strategy to reduce poverty, and that strategy presumably includes actions to do some of the things in this amendment.

Baroness Hollis of Heigham: I disagree with the noble Lord. I think the Bill is about a strategy to reduce child poverty, and the measurement is by the four target indicators in terms of absolute, persistent, material deprivation and relative poverty. Those are the indicators that will form the targets by which performance will be measured. As I say, I do not think there is any difference between any of us about the desirability of meeting some of the objectives that the noble Lord has included in this amendment. Indeed, the criticism already laid out by the noble Baroness, Lady Walmsley—I add to it—is how minimalist his amendment is if he is trying to look at the well-being of the whole child. My argument is different; namely, that this Bill should not carry such additional items because you cannot measure some of them, and even if you could, Government should not interfere with them, and, as regards others, Government could not take any action on them even if they could measure them. If Government cannot do it, this becomes a wish-list, Christmas cracker sort of amendment which I hope very much the noble Lord will not pursue.

For example, we can measure family relations, the statistics exist. The ONS will give you all the statistics you want about family size. However, the noble Lord cannot utilise a phrase he is very keen on, the difference between causes and symptoms, to ascertain whether people who marry enjoy the stable relationships which persist in cohabitation, and whether people who cohabit would, if they married, have short-lived relationships and experience the trauma of divorce. He cannot untangle that. I cannot untangle that. The statistics cannot untangle that. Therefore, there is not a lot of point in Government seeking to produce targets against which they are supposedly going to encourage parents to go into marriage in order to produce extra stability for the children.

We do not disagree that each of these indicators, and twice as many more as the noble Lord has failed to mention, matter to the well-being of the child, but they are not part of the push of the Bill. They should not overburden it with things that are well intended, aspirational, cannot necessarily be measured and almost certainly cannot be delivered.

Lord Northbourne: As so often happens, the noble Baroness, Lady Hollis, has put her finger on the main aspect of this problem. However, I cannot begin to agree with the conclusions that she draws. I believe that the Bill is wholly unbalanced. It is meant to address child poverty but addresses household income. That is a perfectly respectable thing to do and if it was called the Household Income Bill I would be perfectly happy with it, but it is not. I started to write a speech about this but I have in a sense been shot down. I was going to say, and I believe it is true, that one of the commonest fallacies in the world is to believe that because two things coincide statistically one must be

[LORD NORTHBOURNE]
the cause of the other. Perhaps I may waste the time of the Committee for about 30 seconds. I thought of this the other day when I was going through some greetings cards and I found one which said, "Birthdays are good for your health. The more you have of them, the longer you live". That rather struck home. Undoubtedly, household poverty is extremely important in terms of outcomes for children. How are we going to balance this Bill so that the financial aspects of it do not receive disproportional importance and the non-financial aspects get swept neatly under the table? That is the issue that we are all concerned about. I thank the noble Lord, Lord Freud, for bringing forward these issues, because in this absolutely hopeless amendment, he actually makes a tremendously important point.

7.30 pm

Baroness Thomas of Winchester: We understand exactly why the Official Opposition have tabled the amendment. It was a theme running through the proceedings in another place that we should measure child poverty not just in terms of money, but with a much wider perspective. A child's well-being is arguably the most important thing of all, even though it is very difficult to measure. We shall be discussing later amendments that address this very matter. It is shameful that this country is ranked 21st out of 25 EU countries, and was actually ranked last in the UNICEF well-being index in 2007, on child well-being.

After all, the phrase "poor but happy" is shorthand used by adults when remembering their childhood—particularly when they are on "Desert Island Discs". I have a lot of sympathy with the whole notion of non-financial targets, although we must be hard-headed and recognise, as the noble Baroness, Lady Hollis, said, that income transfers must not be relegated to below non-financial targets in the Bill.

It is not entirely clear, as my noble friend Lady Walmsley, said, why these targets have been chosen in the amendment, and any data on them would surely be difficult to collect. The first problem is with proposed new paragraph (a). What constitutes a long-term relationship? How would the figure be collected? If someone is asked, "Are you in a long-term relationship?", the answer might be, "I hope so", but for some people that might be only 10 months, while for others it would be 10 years. After all, many long-term relationships last longer than many marriages. We should not forget that more than half of poor children are in two-parent, not one-parent, families.

Then there is proposed new paragraph (c), which, as my noble friend Lady Walmsley said, is very difficult. It talks about households where one or more parent is addicted to drugs, alcohol or gambling. What about addiction to cigarettes, which must make a terrible hole in a family's budget, or to compulsive shopping? This is quite likely to be the straw that breaks the camel's back and land a family, already struggling with household bills, in debt. As my noble friend said, there is no mention of domestic violence, but we know that that is very bad for children. We can all think of things to put in this kind of list. Either we should have an exhaustive list or no list at all, and leave it to the commission to come up with some research, if it thinks that would be helpful.

Presumably the purpose of this proposed new clause is to enable strategies to be developed to address each of these targets. We know, for example, of the Official Opposition's plans for a married couple's tax allowance, which we do not happen to agree with. Anyway, how would the noble Lord, Lord Freud, try to persuade couples to get married? Surely he is not suggesting that couples would decide to do that simply because of the tax allowance. What about the rest? If it was discovered that there was even more addiction than previously thought, would a future Government make sure that there were sufficient effective treatment centres around the country to cope with demand? Or would they have another go at trying to make treatment compulsory by sanctioning JSA? When this Government tried to make drug treatment compulsory for those receiving JSA, there was an outcry on the grounds that compulsion does not work, and the Government did not even try to make treatment for alcoholics compulsory.

There are real problems with collecting this kind of data, although I understand why the amendment has been tabled and I welcome the debate.

Lord McKenzie of Luton: My Lords, I thank the noble Lord for his amendment. We are against the clock here, because we have to conclude by 7.45 pm, so I shall be as brief as I can. In fact, I am helped in that by the powerful contributions we have heard from my noble friend Lady Hollis, and the noble Baronesses, Lady Thomas and Lady Walmsley. They covered much of the ground that the Government would wish to. I see that the noble Lord, Lord Northbourne, retains his view that this is a wholly unbalanced Bill. I hope that during our proceedings we will convince him otherwise.

I say to the noble Lord, Lord Freud, regarding this assertion that the Government have concentrated on tackling poverty through financial means, of course we see the central importance of income, but we have always had a full strategy across the drivers of child poverty. The *Child Poverty Review, 2004* and *Ending Child Poverty: Everyone's Business* in 2008 have set up the full range of policy instruments required to tackle child poverty, parental employment, childcare, housing, deprivation, skills, education and the progress that the Government have made on those issues. I want to be clear that the Bill is about tackling income poverty, material deprivation and socio-economic disadvantage, and our aim is that children should not live in poverty in the UK or suffer the effects of wider socio-economic disadvantage.

Ensuring a focus on income and material deprivation is central to that aim, but so is taking action beyond financial poverty. There is overwhelming evidence of the impact that income poverty has on children's lives in terms of both their experiences now and their chances in the future. Income poverty blights children's lives, it impacts on their education, their health, their social lives and relationships with their parents—the noble Lord touches upon some of these issues in his amendment; some of them he does not—and it impacts

on their future life chances. Having this focus on income targets, however, does not mean that we are not alive to and aware of the drivers of poverty that need to be addressed to meet the ultimate goals of reducing poverty and deprivation. The building blocks stated in the Bill make clear the range of areas that need to be addressed as the drivers of poverty.

It is important that any progressive Government tackle the broad range of issues and policy areas that are related to poverty. Any effective strategy to meet the income targets will need to look at tackling the causes of poverty. During the oral evidence session, Donald Hirsch gave the example of somebody who is currently in school and who might in 10 years' time be a parent living in poverty if they do not get good enough educational qualifications. We need measures to ensure that that person, who has a disadvantaged upbringing themselves, achieves better at school in order to fulfil the income targets.

Our strategy needs to be multifaceted if we are to break intergenerational cycles of poverty and so truly end child poverty. This multifaceted approach is supported by the provisions in the Bill. The UK strategy will need to meet both the purposes set out in Clause 8(2) and show how the targets will be met. Clause 8(2)(b) requires the strategy to meet the purpose of ensuring as far as possible that children in the UK do not experience socioeconomic disadvantage.

Clause 8(5) requires the strategy to consider what measures, if any, ought to be taken across a range of key policy areas. These building blocks have been determined through the analysis of evidence that shows that they have the potential to make the biggest impact in tackling the causes and consequences of growing up in socio-economic disadvantage. In preparation for the first child poverty strategy, we are carrying out a thorough review of the evidence base to help us understand causal pathways and identify how different sets of policies can contribute to the 2020 target. In doing so, we are considering relevant data and statistics, including information around workless households and parental skill levels, as the amendment suggests.

The amendments proposed by the noble Lord are not necessary or helpful. The Bill requires strategies to set out the specific actions that need to be taken across this full range of areas to meet the targets and ensure that children do not experience socio-economic disadvantage. It is for the annual reports to monitor progress on these actions. The appropriate monitoring tools to assess the impact that they will have on progress will need to be established alongside the strategy development.

I do not wish to imply that the issues raised by the noble Lord are not important. I have already mentioned the importance of educational attainment; in addition, we are clear that looking at families where persistent unemployment or low skills are an issue will need to be part of an effective strategy that ensures that families are in work that pays.

However, we need to be careful not to confuse causation with correlation—a point which the noble Lord, Lord Northbourne, made very effectively. As we said at Second Reading, evidence suggests that although child poverty is associated with family breakdown, there is no clear causal link. The high level of worklessness among lone parents is what increases the risk of poverty for children in lone-parent families. Lone parents in work are at a lower risk of poverty than are many other working families. To paraphrase the speech given by the noble Baroness, Lady Thomas, at Second Reading, the myth that single parenthood leads to child poverty was exploded in the oral evidence sessions in the other place. Why are there more single parents in Denmark, yet lower rates of child poverty? We must be careful about how we use statistics. It is also important to remember that nearly two-thirds of children in relatively low-income households live in families with couples.

Amendment 49 proposes that, to inform their child poverty strategy, the Government collect data on households with parents who are married, in a civil partnership or in a long-term relationship, and households in which one or more parent is addicted to drugs, alcohol or gambling. I understand that the Office for National Statistics collects information on marital status; my noble friend Lady Hollis confirmed that. However, the causal link between this information and child poverty statistics is not clear cut.

I imagine that information on levels of drug, alcohol and gambling addiction would be rather harder to obtain. It is not clear, for example, at what point a habit becomes an addiction, or indeed the extent to which this impacts on household income or on children's well-being. I therefore question whether the information listed here is necessarily the most useful data on which to draw when preparing a child poverty strategy, and indeed whether it is appropriate to specify in legislation that such data are collected as opposed to other data on the drivers of poverty.

Finally, the role of the commission is to advise on the development of the strategy, and the Government must have regard to its advice. It is important that the accountability for setting targets and monitoring progress remains with Ministers and Parliament rather than with an unelected body. The commission will bring a wealth of experience and knowledge of the area and will be able to advise the Government on areas on which it believes an effective child poverty strategy should focus. Trying to second-guess its work should not be our aim for the Bill.

Having heard that explanation and the powerful contributions from other noble Lords and noble Baronesses, I urge the noble Lord to withdraw his amendment.

Lord Freud: I am aware that I have literally two minutes in which to respond. I thank the Minister for his response and all noble Lords and noble Baronesses who have responded, although they were not necessarily desperately supportive.

What I am driving at in this amendment is the difference between a child's well-being and income poverty. We will come back to this. I clearly failed to understand the criticisms of my amendment. The noble Baroness, Lady Hollis, asked what we do when we find out that particular people are cohabiting. We have an estimated material couple penalty in the tax credits system of about £1,200 a year. Actually, that is

[LORD FREUD]
an incentive not to be together. The noble Baroness, Lady Walmsley, says that the amendment is social engineering to change that. I can say only that we have reversed social engineering to drive people apart.

As for addiction, if the noble Baroness, Lady Hollis, were to take the Bill purely as an income transfer Bill, what is the point of transferring income to people who inject—in other words, drug addicts?

I am aware that I have to wind up. We will return to this issue, but for now I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Baroness Crawley: I suggest that this is a convenient moment to adjourn the Committee until 2 pm on Thursday 21 January.

Committee adjourned at 7.46 pm.

Written Statements

Tuesday 19 January 2010

Alcohol

Statement

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): My right honourable friend the Secretary of State for the Home Department (Alan Johnson) has today made the following Written Ministerial Statement.

The Home Office has today published the Government's response to the consultation on the new code of practice for alcohol retailers. The consultation ran from May to August 2009 and invited responses from the public, the licensed trade, enforcement agencies and health bodies. More than 7,000 responses were received from across a range of respondents and independently analysed.

The Government's response to this consultation has been published on the Home Office website, and can be read at http://www.homeoffice.gov.uk/crime-victims/reducing-crime/alcohol-related-crime/index.html. A copy will be placed in the Library of both Houses.

We are committed to reducing alcohol-related crime, violent crime and anti-social behaviour on a number of fronts, including educating young people, campaigns encouraging people to drink more responsibly, and tough enforcement when those who drink too much cause harm to themselves and others. We also need those who retail alcohol to work in partnership with government, the police and local authorities to reduce these risks. The majority of alcohol retailers behave responsibly, but a minority conduct irresponsible promotions or practices—the mandatory code will stop these where they take place.

Subject to the parliamentary timetable, we intend to introduce the following mandatory licensing conditions that will apply to pubs, clubs and hotels and other "on-licensed" premises:

banning irresponsible promotions, such as drinking games, speed drinking, women drink for free, and all you can drink for £10;

banning pouring drinks directly into the mouths of customers;

ensuring free tap water for customers; and

ensuring that all on-trade premises offer small measures of beers, wine and spirits to customers.

In addition, we will also introduce a mandatory licensing condition to ensure that all those who sell or supply alcohol have an age verification policy in place requiring them to ask anyone who looks under 18 for proof of age by providing appropriate identification.

Armed Forces: Defence Information Infrastructure

Statement

The Minister for International Defence and Security (Baroness Taylor of Bolton): My honourable friend the Parliamentary Under-Secretary of State for Defence (Quentin Davies) has made the following Written Ministerial Statement.

On the 18 December 2009 the Ministry of Defence signed the next programmed critical phase to its incremental contract to deliver the Defence Information Infrastructure (DII) Programme which is placed with its delivery partner, the ATLAS Consortium. The contract amendment to include DII increment 3a is worth around £540 million and the cost of ownership of the whole DII programme remains unchanged at £7.1 billion.

DII increment 3a will provide a further 42,000 computer terminals operating in the restricted and secret domains at the remaining MoD permanent sites, replacing outdated legacy IT systems with improved capability to meet the current and future threats to the UK and its allies. Increment 3a will provide enhanced capability to around 60,000 personnel, notably within the RAF, at Joint Helicopter Command and at other defence locations.

DII is the largest defence IT programme of its type in the world and is already delivering operational benefits to the UK's front-line troops and to the wider department. Once delivered in full DII will provide a single, secure and coherent IT infrastructure across the whole of defence, providing support to some 300,000 users, using around 140,000 computer terminals. Through delivery, DII will ensure essential IT operational capability is maintained and enhanced to meet the challenges defence must be prepared for. The overall DII contract currently runs to 2015.

DII is on track to deliver estimated benefits to the department in excess of £1.6 billion over the 10 years of the contract.

Bribery

Statement

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My right honourable friend the Lord Chancellor and Secretary of State for Justice (Jack Straw) has today made the following Written Ministerial Statement.

I have today laid before the House the UK Foreign Bribery Strategy, CM 7791. Copies are available in the Vote Office and the Printed Paper Office, and on line at www.justice.gov.uk/publications/foreign-bribery-strategy.htm (This follows my Written Ministerial Statement of 15 October 2008 (*Official Report*, col. 44WS).

The overarching aim of the strategy is to reduce the involvement of UK nationals and companies in foreign bribery and the harm it causes. Our work is grouped under four strategic objectives: strengthening the law, supporting ethical business, enforcing the law, and international co-operation and capacity building. Throughout, the strategy draws on the wide range of responsibilities across departments, devolved Administrations, law enforcement, prosecution authorities and regulatory agencies which contribute to the overarching aim.

This strategy will be implemented and monitored through a Foreign Bribery Strategy Board, made up of officials from across Whitehall departments, devolved Administrations, law enforcement, prosecution authorities and regulatory agencies. We will measure success

through the delivery of specific pieces of work and the UK's performance in international anti-corruption surveys and corporate studies. The work will be informed by continuing dialogue with domestic stakeholders and international partners, and by analysis of trends from overseas corruption assessments and research. We will review the strategy in 2012 in the light of our next OECD evaluation, and provide annual progress updates to Parliament.

Defamation Proceedings: Costs

Statement

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My right honourable friend the Lord Chancellor and Secretary of State for Justice (Jack Straw) has today made the following Written Ministerial Statement:

Today I published a consultation paper entitled *Controlling Costs in Defamation Proceedings—Reducing Conditional Fee Agreement Success Fees*. The paper sets out the Government's interim proposal to reduce the maximum success fee currently permissible under a conditional fee agreement in defamation proceedings, while it considers Sir Rupert Jackson's *Review of Civil Litigation Costs*, published on 14 January, for longer term reform.

Conditional fee agreements (CFAs), a type of no-win no-fee agreements, were first made enforceable in 1995 to improve access to justice for consumers of legal services. Changes introduced in the Access to Justice Act 1999 further extended their use and attractiveness to claimants. However, in the light of experience over the past decade, it has become clear that—in publication proceedings in particular—the balance has swung too far in favour of the interests of claimants, and against the interests of defendants, for whom access to justice needs to be a reality too.

CFAs allow lawyers to take on a case on a no-win no-fee basis. This means that if the case is lost, the lawyer does not get paid. However if the case is successful, the lawyer can recover his costs as well as an additional uplift or success fee. The Conditional Fee Agreements Order 2000 currently prescribes the maximum success fee that lawyers can charge at 100 per cent in all categories of case including publication proceedings. That 100 per cent maximum was intended to allow lawyers to cover the costs of those cases which failed with a success fee from those which won. The consultation paper proposes that the maximum permitted success fee in defamation and some other publication proceedings in England and Wales be reduced to 10 per cent.

The Government have for some time been concerned about the impact of high legal costs in defamation proceedings, particularly the impact of 100 per cent success fees. The Government do not believe that the present maximum success fee for defamation proceedings is justifiable. Evidence shows that the success rate of defamation actions does not justify such a generous success fee. This view is supported by the conclusions of the *Review of Civil Litigation Costs: Final Report*, available at http://www.judiciary.gov.uk/about_judiciary/cost-review/index.htm. The proposal in the consultation paper is intended to be an interim measure to complement changes introduced on 1 October 2009 designed to control the costs of individual cases, while the Government give detailed consideration to the recommendations from Sir Rupert Jackson. The proposal to reduce success fees would help reduce the costs further and limit the potential harmful effect that very high costs could have on the publication decisions of publishers.

Copies of the consultation paper will be placed in the Libraries of both Houses and on the department's website at www.justice.gov.uk.

ECOFIN

Statement

The Financial Services Secretary to the Treasury (Lord Myners): My right honourable friend the Chancellor of the Exchequer (Alistair Darling) has made the following Written Ministerial Statement.

The Economic and Financial Affairs Council will be held in Brussels on 19 January 2010. The following items are on the agenda.

Legislative deliberations

Taxation

Savings tax directive—ECOFIN will discuss proposed amendments to the savings tax directive to tackle cross-border tax evasion on savings income, by automatic exchange of information. This and the following items have strong links to the international transparency agenda, including work by the G20 on tax havens and non-co-operative jurisdictions under the UK's G20 presidency in 2009.

Recovery directive—the recovery directive is aimed at improving existing procedures for recovery of direct and indirect tax debts, including on income tax, VAT, excise duties and EU agricultural levies. The Government support the extended provisions, which will reduce the opportunities for businesses and individuals to escape paying tax which is legally due in one member state, by moving to another member state.

Administrative co-operation directive—ECOFIN will seek a general approach on this directive, which will improve exchange of information and bring the EU into line with OECD standards by removing the right to refuse information on grounds of bank secrecy. The Government support these goals.

Non-legislative activities

Taxation

Anti-fraud agreements with third countries

ECOFIN will discuss the draft anti-fraud agreement with Liechtenstein, and a negotiating mandate for anti-fraud agreements with Andorra, Monaco, Switzerland and San Marino. The proposed agreements provide for exchange of information to international standards in administrative and criminal matters in the tax field and related areas.

Presentation of the presidency work programme

The Spanish presidency will present its ECOFIN work programme for the first half of 2010.

Statistics: Eurostat report

ECOFIN will agree a set of conclusions on a report by the Commission's statistics agency into the quality of official statistics in Greece. This follows a request from the November 2009 ECOFIN for the Commission to examine the issues regarding the Greek Government deficit and debt statistics. The Government support the taking of prompt action to rectify the situation in Greece.

Fiscal Responsibility Bill

Statement

The Financial Services Secretary to the Treasury (Lord Myners): My honourable friend the Economic Secretary to the Treasury (Ian Pearson) has made the following Written Ministerial Statement.

The Treasury has today published a revised draft of the code for fiscal stability, updated to reflect the provisions of the Fiscal Responsibility Bill. Copies of the document are available in the Vote Office and have been deposited in the Libraries of the House.

Haiti: Earthquake

Statement

Lord Brett: My right honourable friend the Secretary of State for International Development (Douglas Alexander) has made the following Statement.

An earthquake of magnitude 7.0 struck Haiti, near the capital Port-au-Prince at 16:53 local time on the 12 January. Numerous significant aftershocks followed the initial quake. This is a major international humanitarian disaster and a tragedy for the people of Haiti. In Port-au-Prince, the tremors destroyed more than 20 per cent of buildings. At the epicentre 10 miles away, 80 to 90 per cent of buildings were damaged. It is clear that the scale of the human tragedy is enormous. UN Secretary General, Ban Ki-Moon, said that the Haitian emergency was the most serious humanitarian crisis faced by the United Nations in decades, surpassing those caused by the Asian tsunami, the recent Pakistan earthquake and cyclone Nargis in Burma.

The Haitian Interior Minister has estimated that the death toll could reach 200,000 with many more injured and an estimated 3 million people affected. The United Nations estimates that at least 2 million of these people will require immediate relief assistance for the next six months. So far, we know of one British citizen who has lost his life in the earthquake, Frederick Wooldridge, who worked for the UN Mission in Haiti. We pay tribute to the important work of Mr Wooldridge and others like him in the UN Stabilisation Mission, working for the security and stability of Haiti. We have received reports that other British nationals are missing but do not have any further information to give at this stage.

The Department for International Development's response began within an hour of the earthquake and we had an assessment team in the air within 10 hours. Relief agencies are having to overcome enormous challenges to get help into the affected areas and we share their frustration and the urgency of meeting desperate needs. Damage sustained by the main airport in Port-au-Prince, together with air traffic control restrictions, meant that getting into Haiti was difficult. The British Government's own search and rescue team of 64 people were in the neighbouring Dominican Republic in the early hours of the morning of Thursday 14 January. The first UK search and rescue team was established in Port-au-Prince on 14 January and since then has been searching for trapped people. They have so far rescued three people live from the debris and helped treat many more. I would like to pay particular tribute to the professionalism and dedication of our team in Haiti, made up of members of the UK Fire and Rescue Service as well as volunteer medical staff, and DfID staff.

DfID announced an initial contribution of £6.2 million on 14 January. These funds are already providing immediate relief in the form of the 64 person UK search and rescue team,; £1 million to help the UN's humanitarian agency provide 30 or more staff to help with co-ordination; £2 million for the World Food Programme for logistical support, including trucks and other vehicles, and humanitarian base camps, to get assistance to those in need in Port-au-Prince and remote areas; £1 million for the Red Cross to support urgent medical care; and £300,000 to World Health Organisation for disease surveillance work.

DfID announced a tripling of funding to £20 million on 18 January and we will make further funding decisions based on the ongoing assessment of needs and discussion with the United Nations and Government of Haiti. We have agreed to help the Red Cross fly supplies from Panama into Haiti over the coming days. We are considering options for how the UK could deliver further relief supplies to Haiti.

A shortage of trucks and fuel, exacerbated by the airport's limited capacity to receive, warehouse, and dispatch relief supplies, continues to hamper relief efforts in and around Port-au-Prince, although road access from the Dominican Republic is possible and the port at Cap Haitian in the north of Haiti is operating. Getting food in through shattered infrastructure is an enormous problem. This is why we have made an early contribution to the World Food Programme for logistical support.

Needs are huge with food shortages in many areas. But food distribution is accelerating, with the World Food Programme distributing emergency rations to over 70,000 people yesterday (Monday), up from 20,000 on Friday. Large numbers of doctors and other health staff are arriving. There are at least nine field hospitals operational in Haiti as well as a 1,000-bed hospital ship. DfID has provided £200,000 funding for a specialised surgical team from Merlin to operate for the next two weeks in Haiti. The team of 11 medical staff should be on the ground in Haiti later today.

International co-ordination in such disasters rests with the United Nations. However, given the extensive damage to UN headquarters and their loss of staff, they are struggling to meet demands, and the US is bringing vital resources to bear. Our £1 million funding allocation to OCHA is being used to bolster capacity and we have sent a humanitarian adviser to support

United Nations operations. The British Government are willing to support further secondments and have offered staff to the World Food Programme. We are also looking at whether practical assistance can be given to the Government of Haiti.

Together with the United Nations, we are working with the US humanitarian teams and military. We have an adviser working in the USAID Operations Room in Washington liaising with American counterparts. The EU humanitarian working group met to discuss the situation in Haiti on Friday, and PUSS Foster attended the EU Foreign Affairs Council meeting yesterday to discuss the immediate humanitarian response and also longer term recovery and reconstruction. We will support that process and press for strong EU co-ordination and commitment to Haiti.

We are following the security situation very closely, both for our teams and for the wider operation. Ban-Ki-Moon yesterday called for an additional 2,000 troops and 1,500 police for the peacekeeping mission. We hope that the UN Security Council will approve this and that these personnel will be mobilised as a matter of urgency.

The challenges that lie ahead are formidable. Access to food, water, shelter and medicines are the immediate concern for the people of Haiti and those involved in the disaster response. Haitians will also need law and order, electricity, and a return to something approximating normality if people are to begin the grieving process and start to rebuild their lives. We did not have a bilateral development programme with Haiti before the earthquake, and our focus will be on ensuring a substantial effort from the EU, World Bank and other multilaterals to provide the long-term reconstruction support that Haiti will need.

Planning

Statement

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): My right honourable friend the Minister for Housing and Planning (John Healey) has made the following Written Ministerial Statement.

During the passage of the Planning Act in November 2008, the Government committed to carry out a review to establish the nature and extent of development on garden land. We said that if the evidence confirmed a problem we would look at how best to remedy the situation, provided that any changes should not have the effect of undermining our policy objectives on housing.

I am today publishing the independent research and review carried out by Kingston University, and I can also announce changes I am making today to strengthen national policy advice, making it clearer that the powers to take the decisions on whether to grant applications for development on gardens rest firmly in the hands of local authorities.

The research finds that problems with inappropriate building on back gardens is not a widespread, national or growing problem, and that local authorities can deal successfully with unwanted applications for garden development through the development of specific local policies. The report also finds that the Planning Inspectorate supports around four out of five of the decisions made by local authorities on such land—especially where local policies are in place.

Based on the conclusions of this independent report, I believe a blanket ban on back garden development—which no local authority advocated—would be wrong, as these are precisely the types of decisions that are best taken locally within an effective planning system that is responsive to the specifics of an area.

However, I do recognise that more needs to be done to reinforce the current policy position and encourage local authorities to take seriously the concerns of communities if development on gardens is a particular concern. So I am today announcing that the Government are strengthening Planning Policy Statement 3 to make clear that there is no presumption that land that is previously developed is suitable for development, or that all of the curtilage should be developed.

This is an important development, as it reinforces the PPS3 message that local authorities are best placed to consider whether different types of land are suitable for housing. PPS3 retains a focus on brownfield land, where this is suitable for housing.

Local authorities need to be able to defend decisions on any planning application, whether for garden land or otherwise, based on established strong local policies. The report finds that a very small number of the authorities reviewed as part of the work had local policies on back garden development. I have therefore asked the Government's chief planner to write to every local authority in England today to remind them about the issues they should take into account when considering the use of garden land for development and whether or not this is a local problem for their area.

I am also committed to collecting better data on the use of gardens for housing, and work is under way with Ordnance Survey to improve land use change statistics.

I have placed a copy of the report and the data received in the Library of the House.

Safeguarding Adults

Statement

Baroness Thornton: My honourable friend the Minister of State, Department of Health (Phil Hope) has made the following Written Ministerial Statement.

Safeguarding vulnerable adults who are at risk of harm sits at the heart of government. Those who need safeguarding help are often elderly and frail, living on their own in the community, or without much family support in care homes; they are often people with physical or learning disabilities, and people with mental health needs at risk of suffering harm both in institutions and in the community. It is to these and to many others that government have a duty of safeguarding.

Safeguarding encompasses three key concepts: protection, justice and empowerment. Government have an important role in the protection of members of the public from harm—before harm has happened

and after it has happened. This includes ensuring that services and support are delivered in ways that are high quality and safe. Government have an important role in facilitating justice where vulnerable adults become the victims of crime; and finally, Government have a role in the empowerment of people at risk. To empower them to recognise, avoid and stop harm; to empower them to make decisions based on informed choices, to balance taking risks with quality of life decisions; and to empower people if they have been harmed, to heal and to live with self-confidence and self-determination.

No Secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse was government guidance on safeguarding, issued in 2000. In 2008-09 a national consultation exercise was held, in which some 12,000 people took part. Many sent us detailed responses; others wrote us very personal letters about their own experiences. Safeguarding partnerships met and discussed many of the 100 questions we posed; they debated and analysed and explored the issues with commitment, with passion and with dedication. Rarely have so many different professionals—social workers, police officers, nurses, housing officers, lawyers and voluntary sector workers—all responded to the same consultation. We are grateful to all who responded and we have listened carefully to the views expressed. A summary of responses was published on 17 July 2009. This Written Ministerial Statement sets out the Government's programme of actions in response to the consultation.

There were a number of key messages from the consultation. These included that stronger national leadership was needed, that local arrangements should be placed on a statutory basis; and that revision and updating is needed to the "No Secrets" guidance. Our plans respond to all these points.

Around 3,000 people participated in the consultation as members of the public, as users of social care, health care, including some who had suffered abuse in some form. Of the wide-ranging views expressed, first and foremost was that the voice of vulnerable people needed to be heard much more than it currently is. Vulnerable people wanted to be heard in safeguarding policy and practice and in situations where they were victims of harm. We will reflect these views very carefully in developing our response.

First, the Government will establish an inter-departmental ministerial group (IDMG) on safeguarding vulnerable adults. This group will include Ministers from the Department of Health, Home Office, Ministry of Justice, the Attorney-General's Office and the Department for Communities and Local Government. The inter-departmental ministerial group will demonstrate government commitment to the issue of safeguarding vulnerable adults; provide national leadership; co-ordinate government policy and set the framework for effective local arrangements. We plan to have the first meeting in March. The IDMG will have three roles. It will:

- determine policy and work priorities for the forthcoming year;
- provide a strategic and co-ordination role; and
- provide public and parliamentary advocacy for this policy area.

Secondly, the Government will introduce new legislation to strengthen the local governance of safeguarding by putting safeguarding adults boards on a statutory footing.

Local safeguarding adults boards bring together the key agencies that have a part to play in safeguarding—particularly social services, the National Health Service and the police, but also other organisations. They are one of the main drivers in effective safeguarding arrangements founded on effective partnership and joint working. An effective board provides clear leadership and helps individual organisations develop complementary safeguarding and empowerment strategies.

Safeguarding adults boards exist in many parts of the country, but they are not mandatory and their effectiveness is variable. A key message from the consultation was that local leadership and scrutiny of safeguarding needs to be improved and strengthened. The Government will therefore introduce legislation to put safeguarding adults boards on a statutory footing, to ensure that effective leadership and co-ordination in this important area is assured for all vulnerable people wherever they live.

Thirdly, the Government are launching a programme of work with representative agencies and stakeholders to support effective policy and practice in safeguarding vulnerable adults.

We will produce in the autumn, new, comprehensive, multi-agency guidance to set out clearly the roles and responsibilities for all those involved in safeguarding vulnerable adults. This will be built on and bring together targeted guidance and support materials, which will be developed in the coming months, including:

- a guide to the law on safeguarding, to help professionals understand and effectively use the range of legal powers that can prevent and deal with harm—including the Criminal Justice Act 1988, the Fraud Act, the Domestic Violence, Crime and Victims Act 2004, and the Mental Capacity Act 2005;
- targeted guidance and toolkits for specific professionals, including general practitioners, nurses, housing staff and police officers; and
- the Association of Chief Police Officers has set up a working group under the umbrella of the economic crime portfolio to lead a programme of work to improve our response to financial crime against vulnerable adults. Work is currently under way to complete an intelligence assessment with additional work to follow to further aid those involved at the frontline.

Finally, I wish to thank those on the advisory group and those in the local safeguarding partnerships who have helped us in this review of safeguarding. We will continue to draw on the expertise and views of relevant organisations and stakeholders, through a newly convened advisory board, as we develop the full programme of work to see through the plan of action announced today.

Waterways

Statement

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): My honourable friend the Minister for Marine and Natural Environment (Huw Irranca-Davies) has made the following Written Ministerial Statement.

I will today place copies of the consultation document setting out the Government's proposed strategy for Inland Waterways of England and Wales, *Waterways for Everyone,* in the Libraries of the House. A copy of the consultation document and details of how to respond to the consultation can be found on Defra website at www.defra.gov.uk/corporate/consult/waterways /index.htm.

Waterways for Everyone sets out the Government's proposals for an updated strategy for the inland waterways of England and Wales. This builds on the Government's 2000 strategy, *Waterways for Tomorrow,* and sets out our approach to further enhance the public benefits provided by our inland waterways through widening the involvement of stakeholders and potential beneficiaries in the management and development of the waterways.

Waterways for Everyone also demonstrates the valuable contribution that the inland waterways can make to a wide range of public policy objectives. These include place-making and shaping, climate-change mitigation and sustainable transport, health, well-being, recreation and sport, tourism and business development and developing fairer, stronger and more active communities.

Written Answers

Tuesday 19 January 2010

Afghanistan

Question

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government what items of equipment issued to soldiers in Afghanistan have upgraded versions which are not part of the standard issue; what deficiencies there are in the equipment issued compared to the upgraded versions; what costs soldiers have to cover as a result; and when upgraded versions of the equipment will be issued as standard. [HL1052]

The Minister of State, Department for Business, Innovation and Skills and Ministry of Defence (Lord Drayson): The Government take all measures possible to ensure that the clothing and personal equipment issued to our Armed Forces is both right for the job and right for them. The personal equipment, including protective clothing, which is issued to our troops when they deploy is fully fit for purpose, and there is no need for them to buy their own, although soldiers do sometimes seek to personalise equipment which is issued as standard.

Once an item of equipment is upgraded, the upgraded version will normally become standard issue for those who need it.

Air Rescue Service

Question

Asked by ***Lord Haworth***

To ask Her Majesty's Government whether they intend to carry out a formal consultation over their intention to establish a joint private finance initiative search and rescue helicopter service with the Maritime and Coastguard Agency; if so, whom they intend to consult; and over what timescale. [HL976]

The Minister of State, Department for Business, Innovation and Skills and Ministry of Defence (Lord Drayson): The Search And Rescue Helicopter (SAR-H) private finance initiative (PFI) competition strategy was announced by MoD and Department of Transport Ministers on 9 May 2006 (*Official Report*, col. 12WS).

The competition to bring together the search and rescue capability currently provided by the Ministry of Defence and the Maritime and Coastguard Agency into one harmonised service continues, with two industrial consortia (AirKnight and Soteria) actively engaged. The result of the competition will be announced when an appropriately mature solution has been established.

We have regularly briefed interested parliamentarians and appropriate third parties through the UK SAR Strategic Committee throughout the competition.

Alcohol: Pricing

Question

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government what assessment they have made of the feasibility of introducing a policy of minimum pricing for alcoholic drinks, what measures they are considering in that regard; and what impact such measures might have on (a) reducing public disorder, and (b) limiting damage to health caused by over-consumption of alcohol. [HL1226]

Baroness Thornton: In December 2008, the department published an independent review of the effects of alcohol pricing and promotion from the School of Health and Related Research at the University of Sheffield. The review estimated the effects on crime and health of a range of options including the impact of different levels of minimum unit price.

A copy of the publication, *Independent Review of the Effects of Alcohol Pricing and Promotion from the School of Health and Related Research at the University of Sheffield*, has already been placed in the Library.

We continue to look at how we can tackle the problems caused by cheap alcohol, while respecting the rights of responsible consumers. The Government have said they will commission further research in this area.

Armed Forces: A400M

Questions

Asked by ***Lord Gilbert***

To ask Her Majesty's Government whether Airbus has discussed with them the circumstances that would induce it to decline to proceed with the production of the A400M. [HL1099]

To ask Her Majesty's Government how many months behind schedule the A400M aircraft was on 31 December 2009. [HL1103]

To ask Her Majesty's Government how much further delay in the production of the A400M aircraft they will accept before cancelling their order. [HL1104]

To ask Her Majesty's Government what was their share on 31 December 2009 in the cost overruns on the A400M aircraft; and by how much that figure is increasing each month. [HL1105]

To ask Her Majesty's Government what is the maximum cost overrun they will accept before cancelling their order for the A400M aircraft. [HL1106]

The Minister of State, Department for Business, Innovation and Skills and Ministry of Defence (Lord Drayson): The first flight of the A400M prototype which took place in December 2009 was 23 months late. Airbus Military has previously announced that customer deliveries would commence approximately

three years after the achievement of first flight, meaning that the first delivery of a UK aircraft would occur approximately four years after first flight. Once full aircraft production activities have commenced, this amount of delay is expected to apply to the remainder of customer deliveries.

The matter of cost overrun is subject to ongoing negotiation between Partner Nations and Airbus Military, and is commercially sensitive.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government how many countries, other than those engaged in its production, have placed orders for or asked for options on the A400M. [HL1100]

Lord Drayson: These are matters for EADS and any customers or potential customers for the aircraft.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government how many tonnes overweight they anticipate that the A400M will be. [HL1101]

To ask Her Majesty's Government what will be the effect on the originally planned air lift capability of the A400M aircraft of the increase in the weight of the plane. [HL1102]

Lord Drayson: The empty weight of the delivered aircraft remains to be determined and is not a contractual requirement.

The important figure is that the A400M aircraft has been specified to carry a payload of 32 tonnes, and it is currently forecast to meet this requirement.

British Citizenship

Questions

Asked by ***Lord Avebury***

To ask Her Majesty's Government what differences would exist between the British citizenship which would be acquired by a solely British National (Overseas) who, immediately prior to 1 July 1997, was a British Dependent Territories citizen by virtue of birth in Hong Kong, and who is registered as a British citizen (a) using Form EM under section 1(1) of the Hong Kong (British Nationality) Act 1997, or (b) using Form B(OS) under section 4B of the British Nationality Act 1981; and what are the reasons for the differences. [HL1234]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): A BN(O) born in Hong Kong before 1 July 1997 and registered as a British citizen under Section 1(1) of the British Nationality Act 1981 will become a British citizen "otherwise than by descent". A BN(O) born in Hong Kong before 1 July 1997 but registered as a British citizen under Section 4B of the British Nationality Act 1981 will become a British citizen "by descent".

Section 2(1) of the 1997 Act provides that a beneficiary of that section would become a British citizen otherwise than by descent if, before 1 July 1997, he was a British dependent territories citizen otherwise than by descent. This was proposed by Lord Willoughby de Broke in his Private Bill, which was then taken forward by the Government into the British Nationality (Hong Kong) Bill in 1997.

Registration under Section 4B of the British Nationality Act 1981 gives British citizenship by descent. That section was originally inserted by Section 12 of the Nationality, Immigration and Asylum Act 2002, and conferred an entitlement to registration as a British citizen on British Overseas citizens, British subjects and British protected persons who have no other nationality and have not previously given up any other nationality. That section provided for those registered as British citizens under Section 4B to become British citizens "by descent". As such, they would be unable to transmit their citizenship to a further generation born outside the United Kingdom. This would be consistent with their previous position, whereby British Overseas citizenship and the statuses of British subject and British protected person are usually non-transmissible.

Provision was made for British Nationals (Overseas) to be registered under Section 4B in the Borders, Citizenship and Immigration Act 2009. No change was made to the provision that citizenship is acquired by descent.

Asked by ***Lord Avebury***

To ask Her Majesty's Government why Home Office Form B(OS) asks British Nationals (Overseas) to state the certificate number, date of issue and place of issue of their registration certificate when registration certificates have not been issued to British Nationals (Overseas); and whether they will update the application form and guidance notes to reflect the information to be provided by British Nationals (Overseas). [HL1235]

Lord West of Spithead: Form B(OS) originally asked British Overseas citizens, British protected persons and British subjects to provide details of their certificate of registration if they had acquired that status by registration. From 13 January 2010 British Nationals (Overseas) are able to qualify under Section 4B if they meet the relevant statutory requirements.

As BN(O) status was acquired by acquisition of a passport, I accept that it may be useful for the form B(OS) to ask for the applicant's passport details.

However, I am confident that BN(O)s in Hong Kong will not miss out because of this omission, as applications are submitted via the Consulate-General who will ensure that the relevant information will be passed on to UKBA. UKBA will revise the application form in this respect.

Asked by ***Lord Avebury***

To ask Her Majesty's Government which application form a solely British National (Overseas) should use to apply for British citizenship if he or she wishes the application to be considered under the British Nationality (Hong Kong) Act 1997, and,

should that application fail, to be automatically considered under section 4B of the British Nationality Act 1981. [HL1236]

Lord West of Spithead: A BN(O) who believes that he or she qualifies for registration under the British Nationality (Hong Kong) Act 1997 should make an application using form EM. If, on consideration of the application, it appears that he or she does not meet the statutory requirements for that section, UKBA would automatically consider whether there was an alternative entitlement to registration under Section 4B of the British Nationality Act 1981.

Channel Tunnel

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government what assessment they have made of the effectiveness of the restraints on unauthorised immigration via the Channel Tunnel. [HL1194]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): The juxtaposed controls, operated by the UK Border Agency (UKBA) in France and Belgium, have been extremely effective in countering illegal entry to the UK through the Channel Tunnel. Staffed on a 24/7 basis and supported by a range of measures, including the deployment of world-leading technology, enhanced intelligence and closer working between all agencies, these controls have created one of the toughest borders in the world.

The Channel Tunnel is used by services from the Eurostar Ports (Brussels, Lille and Paris) and Eurotunnel at Coquelles. From 2007 to 2009, over 5,800 passengers who were inadequately documented or did not meet the UK conditions of entry, were refused entry at the Eurostar ports. During the same period, over 2,200 passengers were refused at Coquelles port.

A total of 396,000 freight vehicles travelled through the Channel Tunnel in 2009. Over the same period, working alongside the French authorities, UKBA staff searching freight vehicles prevented 2,225 individual clandestine attempts to enter the UK illegally, via the Channel Tunnel.

In addition, the number of illegal immigrants detected in Kent has been reduced by over 80 per cent, since 2002.

Democratic Republic of Congo

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what representations they have made to the government of the Democratic Republic of Congo about the fate of shegues, or street children, in Kinshasa; what assessment they have made of reports that shegues are being imprisoned at Angenga and Buluwo; and what assessment they have made of conditions in those prisons. [HL1150]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): We were not aware of reports that shegues are being imprisoned—and have asked the UN to investigate if shegues are being imprisoned and if so, what conditions they are being held in, and can report back when we hear.

Dubai

Question

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government what is their advice to United Kingdom citizens on investing in Dubai. [HL1269]

The Minister for Trade and Investment (Lord Davies of Abersoch): UKTI provides services for British businesses to ensure that they are better equipped to succeed in international markets. However, UKTI does not recommend specific commercial investments to British businesses. Dubai still offers good opportunities for British businesses, particularly in the financial services, construction, mass transport, health, energy, and education sectors.

Embryology

Questions

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government further to the Written Answers by Baroness Thornton on 16 December 2009 (*WA 236*) and 5 January (*WA 23–4*), why the Human Fertilisation and Embryology Authority (HFEA) chief executive stated in his letter on 9 November 2009 that at least 681 human eggs were used under research licence R0122 to investigate laser biopsied blastocysts if the HFEA does not hold any inspection reports for research licence R0122 describing polar body biopsy of eggs and if no use of eggs was recorded in the initial application for that licence and any subsequent renewal applications or in the cited progress report. [HL1209]

To ask Her Majesty's Government further to the Written Answers by Baroness Thornton on 5 January (*WA 24–5*), why the Human Fertilisation and Embryology Authority (HFEA) inspection report for licence R0152 that quoted "a lack of suitable oocytes for use in the study" is not included amongst those available on the authority's website; and why the HFEA has not placed a full copy of the report in the Library of the House. [HL1210]

To ask Her Majesty's Government further to the Written Answers by Baroness Thornton on 9 November 2009 (*WA 111*) and 5 January (*WA 24–5*), how the proposed use of eggs fulfils the criteria of the research licence if a researcher repeatedly requests the use of numbers of eggs that are more than they claim to have used each successive year, with particular reference to information cited in the 2005 inspection report and licence renewal. [HL1211]

To ask Her Majesty's Government further to the Written Answers by Baroness Thornton on 5 January (*WA 24–5*), when the Newcastle Fertility Centre began providing information on the number of failed-to-fertilise eggs donated for use under licence R0152 and the number actually used in the project; whether the estimated number of failed-to-fertilise eggs takes account of ten failed-to-fertilise eggs reportedly having been used between August 2004 and July 2005 if the research team initially relied chiefly on such eggs, as reported in The Times on 31 May 2005 and in The Obstetrician & Gynaecologist (2007) Volume 9, Issue 3, p. 177–80; and whether oocytes that a researcher might subsequently deem to be unsuitable would be erased from the Human Fertilisation and Embryology Authority's records of total oocyte usage. [HL1212]

To ask Her Majesty's Government further to the Written Answers by Baroness Thornton on 5 January (*WA 24–5*), what was the mean number of eggs collected per cycle at the Newcastle Fertility Centre in each year since 2004; whether the estimate of 900 failed-to-fertilise eggs potentially available for research takes account of those figures combined with the number of treatment cycles performed annually at the Newcastle Fertility Centre and the percentage of all eggs that failed to fertilise according to the initial application for licence R0152; and whether estimated numbers of failed to fertilise eggs based on these figures takes account of a total of 1224 failed to fertilise eggs obtained between 2 June 2005 and 11 May 2006 or a total of 1170 failed to fertilise eggs obtained in 2007 according to Human Fertilisation and Embryology Authority research licence inspection reports. [HL1213]

Baroness Thornton: A research licence under paragraph 3(1) of Schedule 2 of the Human Fertilisation and Embryology Act 1990 (as amended) authorises the creation of embryos in vitro and keeping or using embryos for the purposes of a project of research, whose purpose must be consistent with paragraph 3A of that schedule. Parliament has decided in view of the special importance attached to embryos that no research may be conducted on them without a licence, but that is not the case for research involving only eggs or sperm.

The Human Fertilisation and Embryology Authority (HFEA) has advised that it receives information about the use of eggs incidentally to the research licensing process, but the information it holds on the use of eggs is necessarily limited, compared to the information it holds on the use of embryos. Directions 0002 issued by the HFEA (dated 1 July 2009) require licence holders to maintain records on total numbers of embryos created, used or disposed of in undertaking of the licensed research. Such data held by the HFEA are made available in inspection reports and research licence committee minutes published on the HFEA website. Where inspection reports and research licence committee minutes are not available on the HFEA website these can be requested from the HFEA.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government with regard to a letter from the Human Fertilisation and Embryology Authority's legal adviser on 7 December 2009 describing the volume of correspondence about the use of eggs under research licence R0152, how many academics, clinicians or interested members of the general public requested such information under the Freedom of Information Act 2000; what indication such applicants provided regarding their interest in the relevant data; what response was provided to each of those applicants; and what proportion of the HFEA's time was spent dealing with those requests. [HL1214]

Baroness Thornton: The Human Fertilisation and Embryology Authority (HFEA) has advised that a high-level keyword database search of over 400 freedom of information requests made between 18 September 2006 and 13 January 2010 identified eight relevant requests, excluding requests from the noble Lord. The HFEA also advises that it is not possible to quantify what proportion of its time was spent dealing with these requests, and responses to requests made under the Freedom of Information Act are undertaken without consideration of the applicant or their purpose in making the request. The HFEA's responses to these requests concerned the regulatory oversight of the research licence.

Flooding

Question

Asked by ***Lord Greaves***

To ask Her Majesty's Government what payments they have made to (a) local authorities, and (b) other bodies, in connection with the flooding in 2007. [HL960]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): In the wake of the summer floods of 2007, the Government committed to the effective management of flood and coastal erosion risk. Spending across central and local government has increased from £307 million in 1996-97 to £660 million in 2008-09, £715 million in 2009-10 and is set to reach £780 million in 2010-11.

The Government made available a comprehensive package of over £136 million to assist those affected by the 2007 floods. Funding given to local authorities included:

£18.8 million funding through the Bellwin scheme which provides financial assistance to local authorities dealing with emergencies;

£18.4 million from the Department for Communities and Local Government (CLG) for flood recovery grants to support the recovery work of local authorities, and particularly their work with those in greatest and most immediate need;

around £41 million from the Department for Transport for repairs to local highways;

£13.5 million from the Department for Children, School and Families for schools and children's services affected by the floods;

over £1.2 million from CLG for local authorities giving council tax discounts, so families do not face council tax bill for homes they could not live in; and

local authorities received £30.6 million from CLG's Restoration Fund, and were free to spend it according to local priorities.

Other main recipients of the £136 million support package included:

regional development agencies provided £10 million in support of business and economic recovery in the affected areas;

the Department for Work and Pensions paid Community Care Grants and Crisis Loans totalling £810,891 to people on qualifying benefits to meet the cost of replacing essential household items; and

VisitBritain received £1 million from the Department for Culture Media and Sport to support rural tourism in England through promoting rural destinations and visitor attractions.

Following the 2007 floods, Sir Michael Pitt carried out a review of the event. The Government set aside £34.5 million to implement Sir Michael's review.

The table below provides details of how much has been allocated to date. It shows that a total of £20.2 million has been allocated to individual agencies and bodies by Defra.

Allocation to:	*Allocation (£m)*	*Allocated by Dec 2009*	*To deliver:*
Local Authorities	£15 million	£10 million between 80 local authorities	Local authority leadership on flood risk management in the highest priority areas, including surface water management plans, tackling surface water problems, mapping of drainage assets, and oversight and maintenance of sustainable drainage systems for new housing, etc.
Environment Agency and Met Office	£5.0 million	£3.76 million	A new joint forecasting and warning centre, including the extreme rainfall alert.
Environment Agency	£8.5 million	£5 million	All other recommendations where the Environment Agency leads, including its new strategic overview of all types of flood risk in England, better modelling, forecasting and mapping for flooding particularly surface water, roll-out of ex-directory flood warnings, reservoir inundation maps, and a national flooding exercise to test the new response arrangements.
Met Office	£0.5 million	£230,000	Research to make use of new detailed forecasting models for flooding.
Cabinet Office	£0.4 million	£0.2 million	New team within the Civil Contingencies Secretariat to run a national campaign to improve the resilience of critical national infrastructure.
Others	£10,000	£10,000	To fund the Risk and Regulatory Advisory Council to consider the communication of flood risk to the public.
Contingency	£5.1 million	£1.0 million	To provide a contingency fund in case allocations need to be increased in some areas, and to include: Up to £2 million for an improved flood rescue capability; up to £1.25 million to support the production of reservoir emergency plans by local resilience forums. Funds have also been provided to the following additional activities announced since the Government's response. £750,000 to support local authority flood risk management apprenticeships this year and next. A further £250,000 is being funded from other budgets.

Allocation to:	Allocation (£m)	Allocated by Dec 2009	To deliver:
			£140,000 to fund a reservoir inundation mapping tool.
Total	£34.5 million	£20.2 million	

From: Annex A of the Progress Report on the Government's Response to Sir Michael Pitt's Review (published 15 December 2009).

Government Departments: Bonuses

Question

Asked by ***Lord Newby***

To ask Her Majesty's Government for each of the last three years for which figures are available, how many people were eligible for performance bonuses and special bonuses in the Department for Environment, Food and Rural Affairs and its agencies, by civil service band; how many people received each type of bonus, by civil service band; what the average payment was for each type of bonus, by civil service band; and what the maximum payment was for each type of bonus, by civil service band [HL36]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): An element of Defra's overall pay award is allocated to non-consolidated variable pay related to performance. These payments are used to drive high performance and form part of the pay award for members of staff who demonstrate exceptional performance—for example, by exceeding targets set or meeting challenging objectives.

Non-consolidated variable pay awards are funded from within existing pay bill controls, and have to be re-earned each year against predetermined targets and, as such, do not add to future pay bill costs. The percentage of the pay bill set aside for performance-related awards for the SCS is based on recommendations from the independent Senior Salaries Review Body.

The tables below details how many people were eligible for and received a non-consolidated variable pay awards and the average and the maximum payment for a non-consolidated variable pay award, by civil service band, awarded under the Defra standard pay and performance management process for the three most recent performance years for which the relevant payments have been published in the department's accounts.

Table 1 covers staff at grade 6 and below or equivalent in core Defra (including staff who transferred to DECC on 3 October 2008) and those executive agencies (Animal Health, Veterinary Medicines Directorate and Marine and Fisheries Agency) that are covered by the core department's remuneration arrangements. It covers senior civil servants in core Defra and its executive agencies (Animal Health, Veterinary Medicines Directorate, Marine and Fisheries Agency, Rural Payments Agency, Veterinary Laboratories Agency, Centre for the Environment, Fisheries and Aquaculture Science and the Central Science Laboratory—which is now part of the Food and Environment Research Agency, which was created on 1 April 2009).

The remaining tables cover staff at grade 6 and below or equivalent, employed in those executive agencies that operate delegated pay arrangements (Rural Payments Agency, Veterinary Laboratories Agency, Centre for the Environment, Fisheries and Aquaculture Science and the Central Science Laboratory, which is now part of the Food and Environment Research Agency, which was created 1 April 2009).

Core Defra—(including staff in Animal Health, Veterinary Medicines Directorate and the Marine and Fisheries Agency)

Table 1

	Performance Year 2005-06		Performance Year 2006-07		Performance Year 2007-08	
	SCS	Non- SCS	SCS	Non- SCS	SCS	Non- SCS
Number of staff eligible for non-consolidated performance payment	189	5805	186	4980	171	4565
Number of staff who received a non-consolidated performance payment	153	2242	152	1807	150	1764
Average value of non-consolidated performance payment	£6,000	£400	£8,000	£400	£8,500	£400
The value of maximum non-consolidated payment	£15,147	£4,506	£15,640	£4,577	£17,250	£3,966

Core Defra—(including staff in Animal Health, Veterinary Medicines Directorate and the Marine and Fisheries Agency)

Table 1

	Performance Year 2005-06		*Performance Year 2006-07*		*Performance Year 2007-08*	
	SCS	*Non- SCS*	*SCS*	*Non- SCS*	*SCS*	*Non- SCS*
Percentage of SCS paybill set aside for non-consolidated performance payments	6.5%	N/A	7.6%	N/A	8.6%	N/A

Veterinary Laboratories Agency

	Performance Year 2005-06	*Performance Year 2006-07*	*Performance Year2007-08*
	Non-SCS	*Non-SCS*	*Non-SCS*
Number of staff eligible for non consolidated performance payment	1313	1360	1290
Number of staff who received a non-consolidated performance payment	251	212	226
Average value of non-consolidated performance payment	£228	£253	£274
The value of maximum non- consolidated payment	£684	£627	£605

Central Science Laboratory—which is now part of the Food and Environment Research Agency, which was created on 1 April 2009

	Performance Year 2005-06	*Performance Year 2006-07*	*Performance Year 2007-08*
	Non-SCS	*Non-SCS*	*Non-SCS*
Number of staff eligible for non- consolidated performance payment	681	680	670
Number of staff who received a non-consolidated performance payment	260	328	332
Average value of non-consolidated performance payment	£657	£799	£554
The value of maximum non-consolidated payment	£2,943	£3,063	£3,807

Rural Payments Agency

	Performance Year 2005-06	*Performance Year 2006-07*	*Performance Year 2007-08*
	Non-SCS	*Non-SCS*	*Non-SCS*
Number of staff eligible for non- consolidated performance payment	3078	3529	3330
Number of staff who received a non-consolidated performance payment	505	813	1126
Average value of non-consolidated performance payment	£500	£700	£200
The value of maximum non- consolidated payment	£500	£700	£800

Centre for the Environment, Fisheries and Aquaculture Science

	Performance Year 2005-06	*Performance Year 2006-07*	*Performance Year 2007-08*
	Non-SCS	*Non-SCS*	*Non-SCS*
Number of staff eligible for non-consolidated performance payment	554	562	541
Number of staff who received a non-consolidated performance payment	511	506	496
Average value of non-consolidated performance payment	£745	£975	£1,267
The value of maximum non- consolidated payment	£5,147	£5,902	£5,405

Asked by ***Lord Newby***

To ask Her Majesty's Government for each of the past three years for which figures are available, how many people were eligible for performance bonuses and special bonuses in the Department of Health and its agencies, by civil service band; how many people received each type of bonus, by civil service band; what the average payment was for each type of bonus, by civil service band; and what the maximum payment was for each type of bonus, by civil service band [HL37]

Baroness Thornton: An increasing element of the pay awards for the department and its agencies over the past three years has been allocated to non-consolidated performance pay. These payments are used to recognise excellent performance and exemplary behaviours in contributing to the department's objectives.

Non-consolidated variable pay awards are funded from within existing pay bill controls and have to be re-earned each year. They do not add to future pay bill costs. In the case of the senior Civil Service, the percentage of paybill set aside for performance-related awards is based on recommendations from the independent Senior Salaries Review Body. For staff at

AO to grade 6, the percentage of paybill set aside was determined by a three-year pay settlement introduced in 2008-09.

The following tables show, for the department and its agencies, how many people were eligible for (estimated at year end) and received a non-consolidated variable pay award and the average and maximum payment for the award, by civil service band, awarded under the department's standard pay and performance management processes for the past three years of published accounts. The tables include in-year and end-year performance payments but not non-consolidated payments made as part of a pay award to those at or near the maxima of their pay scales.

Core Department of Health

	2006-07[1]		*2007-08*[1]		*2008-09*	
	SCS	*Non-SCS*	*SCS*	*Non-SCS*	*SCS*	*Non-SCS*
Number of staff eligible for performance-pay award	261	2,069	247	1,987	260	1,985
Number of staff who received a performance-pay award[2]	175	241	176	433	214	924
Median value of a performance-pay award	5,662	700	8,927	661	7,927	500
The maximum payment for a performance pay award[1]	30,699	9,000	[3]22,750	9,000	[3]26,775	12,000
Percentage of SCS paybill set aside for performance pay	6.5%	N/A	7.6%	N/A	8.6%	N/A

Notes:

1. The table includes both in-year and end-year non-consolidated performance payments. End-year payments are in respect of performance in the previous year; that is, end-year payments made in 2008-09 relate to performance year 2007-08 etc.

2. The number of eligible staff will be slightly underestimated as there are a number of staff with "unknown" grades on the department's HR information system.

3. In addition, an individual employed on a SCS non-standard form of contract, which links a higher than normal percentage of their pay to performance, received total non-consolidated payments of £27,500 in 2007-08 and £49,004 in 2008-09.

Medicines and Healthcare products Regulatory Agency

	2006-07[1]		*2007-08*[1]		*2008-09*[1]	
	SCS	*Non-SCS*	*SCS*	*Non-SCS*	*SCS*	*Non-SCS*
Number of staff eligible for performance-pay award	109	818	112	867	120	812
Number of staff who received a performance-pay award	72	191	75	168	98	310
Median value of a performance-pay award	4,584	400	9,289	500	9,301	500
The maximum payment for a performance pay award	12,480	15,809	19,776	12,573	26,085	17,500
Percentage of SCS paybill set aside for performance pay	6.5%	N/A	7.6%	N/A	8.6%	N/A

Notes:

1. The table includes both in-year and end-year non-consolidated performance payments. End-year payments are in respect of performance in the previous year; that is, end-year payments made in 2008-09 relate to performance year 2007-08 etc.

NHS Purchasing and Supply Agency

	2006-07[1]		*2007-08*[1]		*2008-09*[1]	
	SCS	*Non-SCS*	*SCS*	*Non-SCS*	*SCS*	*Non-SCS*
Number of staff eligible for performance-pay award	9	259	8	260	6	248
Number of staff who received a performance-pay award	7	71	*[2]	13		58
Median value of a performance-pay award	4,800	1,000	*	1,000	8,530	538
The maximum payment for a performance pay award	5,420	3,500	*	2,500	11,432	3,500
Percentage of SCS paybill set aside for performance pay	6.5%	N/A	7.6%	N/A	8.6%	N/A

Notes:

1. The table includes both in-year and end-year non-consolidated performance payments. End-year payments are in respect of performance in the previous year; that is, end-year payments made in 2008-09 relate to performance year 2007-08 etc.

2. Where there are less than five employees in a grade, data are omitted on grounds of confidentiality.

Government: Office Equipment

Questions

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*, 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 (a) the Central Office of Information, (b) the Charity Commission, (c) the UK Statistics Authority, (d) the National School of Government, (e) the Audit Commission, and (f) the Cabinet Office in the latest period for which figures are available. [HL991]

Baroness Crawley: As part of its commitment to the Government's sustainable procurement agenda the Cabinet Office uses Evolve (100 per cent recycled) 80 gsm copier paper at an average cost of £1.77 for a 500 sheet ream. The average costs to the Central Office of Information and the National School of Government, for a 500 sheet ream, were £1.96 and £1.66 respectively. The Charity Commission uses a combination of Evolve

(100 per cent recycled) 80 gsm copier paper at its London and Newport offices and EP4 (75 per cent recycled) 80 gsm copier paper in its Liverpool and Taunton offices. The average cost per 500 sheet ream is £1.96 excluding value added tax. The Charity Commission will be using Evolve in all its offices by the end of the year. The average price paid by UK Statistics Authority, including ONS, is £2.43 per 500 sheet ream.

The Cabinet Office is not responsible for the Audit Commission.

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*, 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 (a) HM Courts Service, and (b) the Ministry of Justice in the latest period for which figures are available. [HL995]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): The purchase of stationery items has being consolidated. The Ministry of Justice, which includes HM Courts Service, therefore uses only two white A4 80gsm photocopier papers. Reducing the varying number of photocopier papers has enabled the ministry to negotiate competitive pricing, giving the tax payer value for money. If the average price of these products were disclosed it would breach the commercial confidentially provisions in the contract and would give an unfair advantage to other suppliers.

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*, 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 Home Office and each of its agencies in the latest period for which figures are available. [HL1030]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): As part of its commitment to the Government's sustainable procurement agenda, the department uses recycled photocopier paper. The average purchasing costs, excluding value added tax, of a 500-sheet ream of white A4 80 gsm recycled paper paid for by the Home Office and each of its agencies, in the latest period for which figures are available, are in the attached table:

Recycled photocopier paper	*Home Office and UKBA*	*CRB*	*IPS*
Average cost per ream	£1.79	1.62	£2.14

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*, 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 (a) the NHS Purchasing Supply Agency, and (b) the Department of Health, in the latest period for which figures are available. [HL1034]

Baroness Thornton: The department is committed to the Government's sustainable procurement agenda and uses 100 per cent recycled A4 80 gsm photocopier paper at a current average price, excluding value added tax, of a 500 sheet ream in 2009 of:

NHS Purchasing and Supply Agency	£2.40
Department of Health	£2.30

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*, 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 Scotland Office in the latest period for which figures are available. [HL1173]

The Advocate-General for Scotland (Lord Davidson of Glen Clova): During financial year 2008-09, the photocopier paper purchased by the Scotland Office was purchased at an average cost of £1.84 per ream of 500 sheets, excluding value added tax.

Gross Domestic Product

Question

Asked by ***Lord Jones***

To ask Her Majesty's Government what proportion of United Kingdom gross domestic product was represented by manufacturing in 1990 and in 2009. [HL1071]

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 Jones, dated January 2010.

As Director-General for the Office for National Statistics, I have been asked to reply to your recent Parliamentary Question asking what proportion of United Kingdom Gross Domestic Product (GDP) was represented by manufacturing in 1990 and 2009. (HL1071)

When assessing industry percentages to total production it is more appropriate to assess against total gross value added (GVA) as opposed to GDP.

This is because GDP equals GVA plus unallocated taxes and subsidies such as VAT which are not able to be allocated to industry production.

In current (nominal) price terms for the calendar year 1990 total manufacturing is estimated to have made up 22.5 per cent of total GVA. For 2008 (the latest complete year currently published), total manufacturing is estimated to have made up 12.3 per cent of total GVA.

Health: Contaminated Blood Products

Questions

Asked by ***Lord Morris of Manchester***

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 5 January (*WA 41–2*), between which officials in the Republic of Ireland's Department of Health and Children and the Department of Health in Her Majesty's Government the information in the answer was agreed; whether at any stage any minister in Her Majesty's Government or of the government of the Republic of Ireland was involved in the matter; and what attention was given to the status of the expert group, which was not a tribunal, and its remit, limited to hepatitis C infection caused by anti D. [HL1133]

Baroness Thornton: No Ministers in either Her Majesty's Government or in Ireland were involved in the exchange of information between officials as these related to factual matters. In this instance, the correspondence was between the blood policy team in the Department of Health and the Blood and Tissue Policy Unit in the Irish Department of Health and Children.

The expert group in Ireland was established by the Minister for Health in 1994. Its terms of reference were:

"To examine and report to the Minister for Health on the following matters:

all the circumstances surrounding the infection of the anti-D immunoglobulin product manufactured by the Blood Transfusion Board; and

the systems and standards in place for donor selection, the manufacturing process and use of the anti-D immunoglobulin produced by the Blood Transfusion Board.

To make recommendations to the Minister for Health on the above matters and on any other matters relating to the Blood Transfusion Board which the Group consider necessary".

Asked by ***Lord Morris of Manchester***

To ask Her Majesty's Government what part Crown Immunity played in protecting the Blood Products Laboratory from legal proceedings for failing to comply with the Medicines Act 1968 to the hurt of haemophilia patients treated with contaminated NHS blood and blood products. [HL1134]

Baroness Thornton: Crown immunity gave no protection from civil legal proceedings. Some affected individuals who had acquired HIV infection through their treatment with blood products did bring a civil action in 1990, which was settled out of court.

Immigration: Yarl's Wood

Question

Asked by ***Baroness Hamwee***

To ask Her Majesty's Government on what basis parliamentarians may be refused entry to Yarl's Wood immigration removal centre. [HL1023]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): The Detention Centre Rules 2001 allow the Secretary of State to manage visits to immigration removal centres. Requests from parliamentarians to visit any centre are therefore directed for consideration to the Home Secretary and to the Minister of State for Borders and Immigration. We receive many such requests and are normally able to comply.

Kazakhstan

Question

Asked by ***Viscount Waverley***

To ask Her Majesty's Government whether they will support the holding of a summit rather than a ministerial meeting at the end of the 2010 Kazakhstan chairmanship of the Organisation for Security and Co-operation in Europe; or by when they will make that decision. [HL990]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): At the 2009 Organisation for Security and Cooperation in Europe (OSCE) Ministerial Council in Athens, member states noted Kazakhstan's proposal for an OSCE summit in 2010. Ministers pointed out that such a high-level meeting would require adequate preparation in terms of substance and modalities.

The OSCE will decide to hold a summit when there is a consensus on what the substance would be. Progress in the OSCE's discussions on the future of European Security, otherwise known as the "Corfu process", will be an important consideration.

Legislation

Question

Asked by ***Lord Norton of Louth***

To ask Her Majesty's Government which Acts of Parliament have been subject to post-legislative review in pursuance of the policy to review Acts three to five years after enactment. [HL1176]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): The first post-legislative review Command Paper was published in December 2008 on the Electoral Registration (Northern Ireland) Act 2005 (Cm 7504) and the second in June 2009 on the Railways Act 2005 (Cm 7660). Three further papers are due to be published by the end of February 2010.

Command Papers on other Acts passed in 2005 are being developed and will be published by the Summer Recess in 2010, unless the department has negotiated an extension with the relevant departmental select committee of the House of Commons. Subsequent Acts will publish reviews within three to five years of Royal Assent.

In March 2008, the Cabinet Office produced detailed guidance for departments on post-legislative scrutiny (available on the Cabinet Office website). A system has also been put in place to ensure that all departments are working on producing Command Papers for Select Committees on the implementation of each Act.

Life Expectancy

Question

Asked by ***Lord Selkirk of Douglas***

To ask Her Majesty's Government what was the average life expectancy in England for (a) men, and (b) women in each year from 1979 to 2009; and whether they have access to comparable figures for (1) Northern Ireland, (2) Scotland, and (3) Wales. [HL1310]

Baroness Crawley: The information requested falls within the responsibility of the UK Statistics Authority. I have asked the authority to reply.

Letter from Dennis Roberts, Director, Surveys and Administrative Sources, Office for National Statistics, to Lord Selkirk, dated January 2010.

The director for the Office for National Statistics has been asked to reply to your recent Parliamentary Question concerning the average life expectancy in the UK constituent countries since 1979. 1 am replying in his absence. (HL1310)

The attached table provides the period expectation of life at birth for England, Wales, Scotland and Northern Ireland for each year (where available) from 1979 to 2009 for males and females. The period expectation of life at birth is the average number of years a person would live, if he or she experienced the particular country's age-specific mortality rates for that time period throughout his or her life.

Period Expectation of Life at birth, UK constituent countries, 1979-2009

Year	*Males*				*Females*			
	England	*Wales*	*Scotland*	*Northern Ireland*	*England*	*Wales*	*Scotland*	*Northern Ireland*
1979*	70.4	69.7	..	..	76.4	75.9	..	..
1980*	70.8	70.3	69.0	69.3	76.8	76.3	75.2	75.0
1981	71.1	70.4	69.1	69.2	77.0	76.4	75.3	75.5
1982	71.3	70.7	69.3	69.8	77.3	76.6	75.5	76.0
1983	71.6	71.1	69.6	70.1	77.5	77.0	75.6	76.3
1984	71.8	71.2	69.9	70.3	77.6	77.1	75.8	76.7
1985	72.0	71.4	70.0	70.6	77.8	77.4	76.0	76.9
1986	72.2	71.6	70.2	70.9	77.9	77.5	76.2	77.1
1987	72.4	72.0	70.4	71.1	78.1	77.9	76.5	77.3
1988	72.7	72.3	70.6	71.5	78.3	78.0	76.5	77.5
1989	72.9	72.6	70.8	71.7	78.4	78.3	76.6	77.6
1990	73.1	72.8	71.1	72.1	78.6	78.5	76.7	78.0
1991	73.4	73.1	71.4	72.6	78.9	78.8	77.1	78.4
1992	73.6	73.2	71.5	72.7	79.0	78.8	77.1	78.6
1993	73.9	73.4	71.7	73.0	79.2	78.9	77.3	78.7
1994	74.1	73.4	71.9	73.1	79.3	78.9	77.4	78.7
1995	74.4	73.7	72.1	73.5	79.5	79.1	77.7	78.9
1996	74.5	73.8	72.2	73.8	79.6	79.1	77.9	79.2
1997	74.8	74.2	72.4	74.2	79.7	79.3	78.0	79.5
1998	75.0	74.3	72.6	74.3	79.9	79.3	78.2	79.5
1999	75.3	74.6	72.8	74.5	80.1	79.6	78.4	79.6
2000	75.6	74.8	73.1	74.8	80.3	79.7	78.6	79.8
2001	75.9	75.3	73.3	75.2	80.6	80.0	78.8	80.1
2002	76.1	75.5	73.5	75.6	80.7	80.1	78.9	80.4
2003	76.5	75.8	73.8	75.8	80.9	80.3	79.1	80.6
2004	76.8	76.1	74.2	76.0	81.1	80.6	79.3	80.8
2005	77.2	76.6	74.6	76.1	81.5	80.9	79.6	81.0
2006	77.5	76.7	74.8	76.2	81.7	81.1	79.7	81.2
2007	77.7	76.9	75.0	76.3	81.9	81.2	79.9	81.2
2008*	77.9	77.1	75.2	76.6	82.0	81.3	80.0	81.2
2009*	78.4	77.5	75.8	77.0	82.4	81.7	80.4	81.7

* These life expectancy figures are based on the national interim life tables (NILT) for all years apart from those marked with one asterisk. As figures are not available from the NILTs for these years the life expectancy estimates are based on a single years data rather than three years.

** National interim life tables are not available and so life expectancy figures based on assumed rates of mortality from the 2008-based National Population Projections have been used.

.. Data not available

Northern Ireland Office: Bonuses

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what percentage increase in salaries and bonuses the staff in the Northern Ireland Office received in each year since 2000. [HL615]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): All staff in the Northern Ireland Office (NIO) are paid in accordance with guidance issued by Cabinet Office/HM Treasury.

The following table sets out the salary and non-consolidated performance pay increases since 2000. It should be noted that the percentage figures listed in the table relate to the average increase in pay or non-consolidated performance payments across the NIO (rather than the increase awarded to each individual) in accordance with the terms of each years pay award.

Year	*Grades A to D2 Pay*	*In Year Performance Payments*	*End of Year Performance Payments*	*Senior Civil Service Pay*	*Senior Civil Service Performance Payments*
2000	4.5%	0.4%	n/a	4.8%	***
2001	4.8%	0.4%	n/a	4.7%	***
2002	5.5%	0.4%	n/a	6.0%	2.3%
2003	3.0%	0.4%	n/a	5.1%	3.8%
2004	*2.95%	0.4%	0.54%	3.5%	4.0%
2005	**4.65%	0.4%	0.54%	4.2%	5.0%
2006	3.6%	0.4%	0.54%	3.25%	6.5%
2007	3.6%	0.4%	0.54%	2.6%	7.6%
2008	3.54%	0.4%	0.54%	2.5%	8.6%

* In 2004, the pay award equated to 3.49%. However, 0.54% was used to fund the introduction of the end of year non-consolidated performance payment scheme.

** In 2005, the pay award equated to 4.65% over a 16 month period. This equated to 3.49% over 12 months.

*** Records indicate that SCS non-consolidated performance payments were introduced in 2001, effective from April 2002.

Northern Ireland Office: Taxis

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government how much officials of the Northern Ireland Office claimed on expenses for the use of taxis in December of each of the last five years. [HL948]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): Staff may claim taxi expenses for non-pre-booked journeys which are approved by line managers in accordance with the departmental travel policy. These are reimbursed through staff expenses claims and are recorded as incidental expenditure on the departmental finance system.

Extracting the information requested would require a manual investigation of all the claims for this period. These costs cannot be provided except at disproportionate cost.

Passports

Questions

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government how many applications were dealt with by the Personal Passport Interview procedure in 2009. [HL1222]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): The total number of confirmation of identity interviews completed in 2009 is 291,190.

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government how many Personal Passport Interview applications were rejected in 2009. [HL1223]

Lord West of Spithead: There were two passport applications refused in 2009 as a direct result of confirmation of identity interviews. As the main function of the interview is to act as a deterrent to those attempting to assume another identity, we expect the number to remain low.

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government how many Personal Passport Interview applications were made at each of the offices and at each remote venue in 2009. [HL1224]

Lord West of Spithead: Attached is the breakdown of how many confirmation of identity interviews were conducted at each of the Identity and Passport Service's interview offices in 2009. A total of 2,244 interviews were conducted in 2009 using the Video Interview Service and these are included in the host offices' totals. However, a breakdown of how many were undertaken at each remote location is also attached. (Host Offices denoted by**)

Jan 09—Dec 09 Interview Office	*Interviews Conducted*
Aberdeen	2035
Aberystwyth	640
Andover	1601

Jan 09—Dec 09 Interview Office	Interviews Conducted
Armagh	744
Belfast**	3191
Berwick on Tweed	217
Birmingham	17830
Blackburn	5624
Bournemouth	2291
Brighton	3848
Bristol	5019
Bury St Edmunds	1763
Carlisle	1197
Chelmsford	7353
Cheltenham	2607
Coleraine	1019
Crawley	4358
Derby	6787
Dover	1634
Dumfries	461
Dundee**	2350
Edinburgh	3710
Exeter	2240
Glasgow**	8427
Inverness**	1139
Ipswich	2293
Kendal	1204
Kings Lynn	920
Kingston upon Hull	2879
Leeds	10146
Leicester	5709
Lincoln	2684
Liverpool**	9382
London	59317
Luton	9656
Maidstone	4928
Manchester	14346
Middlesbrough	3611
Newcastle	6849
Newport	5535
Newport IOW	581
Northampton	4249
Norwich	2796
Oban	86
Omagh	391
Oxford	3175
Peterborough	3409
Plymouth	1972
Portsmouth	4419
Reading	8917
Redruth	515
Ripon	700
Scarborough	603
Selkirk	275
Sheffield	7380
Shrewsbury	2036
Sleaford	667
South Molton	662
St Austell	1149
Stirling	1149
Stoke on Trent	3641
Swansea**	3831
Swindon	1712
Warwick	3123
Wick	176
Wrexham**	2647
Yeovil	1726
York	1659
Totals	291190

VIS Interviews completed in 2009

Location	Interviews completed from Jan to Dec 2009
Lerwick	167
Kirkwall	114
Lochinver	5
Ullapool	8
Lochcarron	10
Stornoway	76
Balivanich	33
Barra	5
Portree	38
Elgin	261
Kingussie	11
Fort William	51
Tobermory	7
Tiree	5
Lochgilphead	42
Dunoon	36
Rothesay	25
Bowmore	21
Campbeltown	40
Lamlash	10
Cumnock	67
Dalmellington	41
Girvan	25
Stranraer	121
Caernarfon	568
Newtown	8
Haverfordwest	464
St Mary's	7
Total	2244

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government what was the total cost of the Personal Passport Interview project for (a) 2007, (b) 2008, and (c) 2009. [HL1225]

Lord West of Spithead: The operational costs, excluding depreciation of set-up costs, associated with running the interview office network in each of the three years are outlined in the attached table.

Year	Total Cost
2007	£12,968,533
2008	£27,174,342
2009	£27,562,223

Police: Northern Ireland

Question

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government to what extent the Police Service of Northern Ireland is financially structured to enable effective co-operation with the

Northern Ireland Office and the Department of Health, Social Services and Public Safety in the Republic of Ireland on Access Northern Ireland and the Safeguarding Board for Northern Ireland. [HL941]

Baroness Royall of Blaisdon: The PSNI receives an overall budget from which it meets the overall costs of policing including any cooperation needed with other organisations. Matters on prioritisation within that budget are a matter for the Chief Constable.

In addition to this, a further arrangement exists between AccessNl and PSNI, for the disclosure of relevant non-conviction information. This arrangement is subject to a separate funding agreement.

Prisoners: Voting

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government whether the European Union has the power to rule the next general election result illegal if prisoners are not allowed to vote. [HL1080]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): No. The franchise for parliamentary general elections is not within the scope of EU law.

Royal Navy: Fleet

Question

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government how many (a) aircraft carriers, (b) destroyers, (c) frigates, and (d) other battleships, are operational; and for which each of the 11 Admirals in the Royal Navy is responsible. [HL958]

The Minister for International Defence and Security (Baroness Taylor of Bolton): The Royal Navy currently has three aircraft carriers, six destroyers, 17 frigates and three other capital ships (HMS "Ocean", HMS "Albion" and HMS "Bulwark") in the operating cycle, though those undergoing maintenance or refit are held at lower readiness for operations. In a letter dated 6 March 2007 to the honourable Member for New Forest East (Mr Lewis), the readiness policy for Royal Naval ships was set out. A copy of the letter was placed in the Libraries of both Houses.

Admirals in the Royal Navy are not assigned responsibility for individual vessels.

Schools: Truanting

Question

Asked by ***Lord Ouseley***

To ask Her Majesty's Government how many school children played truant on average for one day per week during each of the years 1997–98 to 2007–08; what were the total number of days in each of those years that school children played truant; what is the number of days in the current year; and what are the implications for the educational attainment of persistent truants, particularly those from disadvantaged backgrounds. [HL1006]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): Information is collected on authorised and unauthorised absence.

Unauthorised absence is absence without leave from a teacher or other authorised representative of the school. This includes all unexplained or unjustified absences, such as lateness, holidays during term time not authorised by the school, absence where reason is not yet established, and truancy. Information collected by my department on absence is a more comprehensive measure of children's missed schooling. Our focus is on reducing all forms of absence, not just a small subset. The issue is not whether the pupil had permission to be absent; it is how much absence the pupil has. Those pupils who miss 64 sessions (typically 20 per cent of sessions) are classed as persistent absentees.

The latest available published information on absence is published as SFR 03/2009 "Pupil Absence in Schools in England, including Pupil Characteristics: 2007-08" at http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000832/index.shtml.

Table 4.1 provides the available information on persistent absence (data are not available prior to 2005-06). Table 1.1 shows the percentage of sessions missed due to authorised, unauthorised and overall absence.

The analysis below, shows that KS4 attainment for persistent absentees is lower than for other pupils. We are focusing our efforts on reducing persistent absence and the latest figures available show that the percentage of pupils who are persistent absentees reduced to 3.6 per cent in 2007-08, from 4.1 per cent in the previous year.

2007 KS4 Attainment by Persistent Absence—comparison of selected groups

The percentage of pupils in mainstream maintained schools (including CTC's and academies but excluding special schools) achieving 5+ A-C including English and maths in 2007*

	Others	*Pupils who were Persistently Absent in both KS years*
Girls	50.4%	7.8%
Boys	40.8%	4.7%
White British	46.0%	6.5%
Minority Ethnic	44.5%	5.8%
FSM	23.3%	3.3%
SEN	11.7%	2.2%
EAL	42.4%	5.7%
All Pupils	45.7%	6.4%

The figures show that pupils who are not persistent absentees are seven times more likely to achieve 5+ A*-C including English and maths compared to persistent absentees.

Table 1.1

Primary, Secondary and Special Schools[1] [2] [3]: Pupil Absence by type of School

1996-97 to 2007-08

England

	1996-97	*1997-98*	*1998-99*	*1999-00*	*2000-01*	*2001-02*
Total						
Number of day pupils of compulsory school age (4)	6,654,070	6,611,130	6,699,580	6,728,210	6,791,270	6,800,360
Number of pupil enrolments (5)	..	..	..	..	..	..
Percentage of half days missed due to (6)						
Authorised absence	6.67	6.68	6.47	6.27	6.68	6.43
Unauthorised absence	0.73	0.78	0.77	0.74	0.76	0.75
Overall absence	7.41	7.45	7.24	7.01	7.44	7.19
Primary Schools (1)						
Number of day pupils of compulsory school age (4)	3,770,800	3,730,360	3,734,770	3,719,190	3,741,370	3,704,090
Number of pupil enrolments (5)	..	..	..	..	..	..
Percentage of half days missed due to (6)						
Authorised absence	5.58	5.71	5.39	5.19	5.59	5.40
Unauthorised absence	0.48	0.50	0.49	0.47	0.49	0.45
Overall absence	6.06	6.21	5.89	5.66	6.08	5.85
Secondary Schools (1)(2)						
Number of day pupils of compulsory school age (4)	2,802,350	2,799,590	2,885,420	2,930,540	2,969,980	3,016,860
Number of pupil enrolments (5)						
Percentage of half days missed due to (6):						
Authorised absence	8.06	7.90	7.79	7.57	7.97	7.62
Unauthorised absence	1.01	1.09	1.07	1.04	1.06	1.09
Overall absence	9.06	9.00	8.86	8.61	9.03	8.71
Special Schools (3)						
Number of day pupils of compulsory school age (4)	80,920	81,180	79,390	78,480	79,920	79,410
Number of pupil enrolments (5)						
Percentage of half days missed due to (6)						
Authorised absence	8.68	8.60	8.55	8.30	9.15	8.88
Unauthorised absence	2.56	2.69	2.48	2.17	2.29	2.10
Overall absence	11.24	11.29	11.02	10.48	11.44	10.98

	2002-03	*2003-04*	*2004-05*	*2005-06*	*2006-07*	*2007-08*
Total						
Number of day pupils of compulsory school age (4)	6,793,940	6,768,720	6,704,920	6,568,160	6,332,070	6,244,890
Number of pupil enrolments (5)	..	..	..	..	6,582,430	6,478,700
Percentage of half days missed due to (6)						
Authorised absence	6.25	5.96	5.77	6.05	5.49	5.28
Unauthorised absence	0.74	0.76	0.81	0.92	1.00	1.01
Overall absence	6.98	6.72	6.58	6.96	6.49	6.29
Primary Schools (1)					~	
Number of day pupils of compulsory school age(4)	3,665,170	3,617,430	3,565,050	3,509,550	3,306,900	3,263,380
Number of pupil enrolments (5)	..	..	..	..	3,463,120	3,412,000
Percentage of half days missed due to (6)						
Authorised absence	5.38	5.08	5.00	5.30	4.66	4.69
Unauthorised absence	0.43	0.41	0.43	0.45	0.52	0.57
Overall absence	5.81	5.49	5.43	5.76	5.18	5.26
Secondary Schools (1)(2)						
Number of day pupils of compulsory school age (4)	3,049,580	3,072,960	3,063,120	2,983,050	2,952,350	2,910,520
Number of pupil enrolments (5)				3,056,330	3,042,077	2,989,290
Percentage of half days missed due to (6):						
Authorised absence	7.20	6.92	6.57	6.82	6.36	5.87
Unauthorised absence	1.07	1.14	1.23	1.42	1.52	1.49
Overall absence	8.27	8.06	7.81	8.24	7.87	7.36
Special Schools (3)						
Number of day pupils of compulsory school age (4)	79,190	78,340	76,750	75,550	72,810	70,990
Number of pupil enrolments (5)	..	..	..	..	77,230	77,400

	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
Percentage of half days missed due to (6):						
Authorised absence	8.85	8.64	8.61	8.79	8.55	8.41
Unauthorised absence	1.98	1.86	1.87	1.80	2.07	2.16
Overall absence	10.83	10.50	10.48	10.59	10.62	10.57

Source: Absence in Schools Survey and School Census (7)

(1) Includes middle schools as deemed.

(2) Includes maintained secondary schools, city technology colleges and academies (including all-through academies).

(3) Includes maintained and non-maintained special schools. Excludes general hospital schools, independent special schools and independent schools approved for SEN pupils. Previously published figures for 1996-97 to 2005-06 included independent special schools and independent schools approved for SEN pupils and will therefore differ from those in Table 1.1 .

(4) Pupil numbers are as at January 2008. Includes pupils aged 5 to 15 with sole and dual (main) registration. Excludes boarders.

(5) Number of pupil enrolments in schools from start of the school year up until 23 May 2008. Includes pupils on the school roll for al least one session who are aged between 5 and 15, excluding boarders. Some pupils may be counted more than once (if they moved schools during the school year or are registered at more than one school). See Notes to Editors 11 to 13.

(6) The number of sessions missed due to authorised/unauthorised/overall absence expressed as a percentage of the total number of possible sessions.

(7) Figures in italics have been sourced from the absence in schools survey. Other figures are derived from school census returns. Totals provided for 2005-06 combine figures from both sources. See Notes to Editor 9. Dashed lines in time series indicate changes in the underlying data source.

.. Not available

. Not applicable

Table 4.1

Primary, Secondary and Special Schools[1] [2] [3]: Persistent Absentees [4]

2007/08

England

	2005-06	2006-07	2007-08
Primary Schools (1)			
Number of pupil enrolments that are persistent absentees (4)(5)	..	60,960	56,750
Total number of pupil enrolments (5)	..	3,463,120	3,412,000
Percentage of pupil enrolments that are persistent absentees	..	1.8	1 7
Percentage of half days missed by persistent absentees due to (6)			
Authorised Absence	..	2222	21.46
Unauthorised Absence	..	7,82	849
Overall absence	..	3003	2995
Percentage of absence for which persistent absentees are responsible (7)			
Authorised Absence	..	84	7.6
Unauthorised Absence	..	26.4	24.8
Overall absence	..	10.3	9.5
Secondary Schools (1)(2)			
Number of pupil enrolments that are persistent absentees (4)(5)	217,390	203,180	168,140
Total number of pupil enrolments (5)	3,056,330	3,042,080	2,989,290
Percentage of pupil enrolments that are persistent absentees	7.1	67	5.6
Percentage of half days missed by persistent absentees due to (6)			
Authorised Absence	23.21	22.41	21.14
Unauthorised Absence	12.26	13.86	15.38
Overall absence	35.48	3627	36.52
Percentage of absence for which persistent absentees are responsible (7)			
Authorised Absence	24.0	23.5	20.1
Unauthorised Absence	60.9	609	57.6
Overall absence	30.4	30.7	27.7
Special Schools (3)			
Number of pupil enrolments that are persistent absentees (4)(5)	..	8,820	8,450
Total number of pupil enrolments (5)	..	77,230	77,400
Percentage of pupil enrolments that are persistent absentees	..	11.4	109
Percentage of half days missed by persistent absentees due to (6)			
Authorised Absence	..	29.27	29.12
Unauthorised Absence	..	12.95	13.85
Overall absence	..	42,22	42.97
Percentage of absence for which persistent absentees are responsible (7)			

Table 4.1

Primary, Secondary and Special Schools[1] [2] [3]: Persistent Absentees [4]

2007/08

England

	2005-06	*2006-07*	*2007-08*
Authorised Absence	..	41.6	40.4
Unauthorised Absence	..	76.0	75.0
Overall absence	..	48.3	47.5
Total			
Number of pupil enrolments that are persistent absentees (4)(5)	..	272,950	233,340
Total number of pupil enrolments (5)	..	6,582,430	6,478,700
Percentage of pupil enrolments that are persistent absentees	..	4.1	3.6
Percentage of half days missed by persistent absentees due to (6)			
Authorised Absence	..	22.59	21 .50
Unauthorised Absence	..	12.48	13.64
Overall absence	..	35.07	35.15
Percentage of absence for which persistent absentees are responsible (7)			
Authorised Absence	..	17.1	14.6
Unauthorised Absence	..	51.8	48.3
Overall absence	..	22.5	20.1

Source: School Census

(1) Includes middle schools as deemed.

(2) Includes maintained secondary schools, city technology colleges and academies (including all-through academies).

(3) Includes maintained and non-maintained special schools. Excludes general hospital schools.

(4) Persistent Absentees are defined as having more than 63 sessions of absence (authorised and unauthorised) during the year, typically over 20 per cent overall absence rate.

(5) Number of pupil enrolments in schools from start of the school year to 23 May 2008. Includes pupils on the school roll for at least one session who are aged between 5 and 15, excluding boarders. Some pupils may be counted more than once (if they moved schools during the school year or are registered in more than one school). See Notes to Editors 11 to 13.

(6) The number of sessions missed due to authorised/unauthorised/overall absence expressed as a percentage of the total number of possible sessions.

(7) The total number of sessions missed due to authorised/unauthorised/overall absence by persistent absentees expressed as a percentage of the total number of sessions missed due to authorised/unauthorised/overall absence by all pupil enrolments.

.. Not available

Totals may not appear to equal the sum of the component parts because numbers have been rounded to the nearest 10.

Senior Salaries Review Body

Question

Asked by ***Lord Morris of Aberavon***

To ask Her Majesty's Government what are the annual salaries, bonuses and payment per day of each member of the Senior Salaries Review Body. [HL1285]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): I refer my noble friend to the answer given to Lord Dykes on 16 December 2009 (*Official Report*, col. *WA 253*).

Sexual Abuse: Northern Ireland

Questions

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government when the Police Service of Northern Ireland was first alerted to alleged child sexual abuse by Liam Adams; whether the decision not to seek a European arrest warrant was the responsibility of the Police Service of Northern Ireland or the Public Prosecution Service for Northern Ireland; and whether the Secretary of State for Northern Ireland or any Northern Ireland Office ministers or advisers were alerted to and consulted on the issue by the Police Service of Northern Ireland or the Public Prosecution Service for Northern Ireland. [HL936]

Baroness Royall of Blaisdon: It would be inappropriate for me to comment on any application for a European arrest warrant as this is an ongoing police investigation.

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government who was the Chief Constable at the time when the Police Service of Northern Ireland was first alerted to alleged child sexual abuse by Liam Adams; how many subsequent meetings, for any purpose, the Chief Constable had with Gerry Adams; and whether the allegation was raised or discussed between them. [HL937]

Baroness Royall of Blaisdon This is an ongoing police investigation and it would be inappropriate for me to comment further.

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government whether they will ask the Northern Ireland Policing Board to conduct a full inquiry into how the Police Service of Northern Ireland dealt with allegations of sexual abuse by Liam Adams. [HL938]

Baroness Royall of Blaisdon: The Government have no plans to ask the Northern Ireland Policing Board to conduct such an inquiry.

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government what discussions took place between the Police Service of Northern Ireland and An Garda Síochána about the alleged sexual abuse by Liam Adams; whether the issuing of a European arrest warrant was discussed; and what other child security measures were discussed. [HL939]

Baroness Royall of Blaisdon: These are operational matters for the Chief Constable. I have asked him to reply directly to the noble Lord, and a copy of his letter will be placed in the Library of the House.

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government what discussions about alleged sexual abuse by Liam Adams have taken place between the Secretary of State for Northern Ireland, other Northern Ireland Office ministers and advisers, and their counterparts in the Republic of Ireland. [HL940]

Baroness Royall of Blaisdon: This is an ongoing police investigation and it would be inappropriate to comment further.

UK Border Agency: Staff

Question

Asked by ***Baroness Hamwee***

To ask Her Majesty's Government what is the remit of the Central Stakeholder Team of the Communications Directorate of the UK Border Agency; and how many staff are employed in it. [HL1025]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): The central stakeholder team currently comprises nine full-time and one part-time staff. These staff:

work with stakeholders to promote compliance with immigration and customs requirements and to facilitate legitimate travel and trade;

develop ongoing relationships and consult stakeholders in order to inform policy development, services, decision making and planning;

facilitate visits to agency facilities and services by parliamentarians, diplomatic visitors and other stakeholders; and

develop the capacity of staff across the agency to work effectively with our stakeholders.

UK: EU Resident Citizens

Question

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government how many citizens of each other European Union state are resident in the United Kingdom. [HL1090]

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 Wallace of Saltaire, dated January 2010.

As Director-General for the Office for National Statistics, I have been asked to respond to your Question asking how many citizens of each other EU states are resident in the United Kingdom. (HL 1090)

The Office for National Statistics collects data on nationality on the Annual Population Survey (APS) which covers residents of the UK. The latest estimates available are for the 12 month period of April 2008 to March 2009. The estimates of the number of UK residents for each other EU member state are given in Table 1 attached.

Estimated population resident in the United Kingdom, by EU27 nationality3,4,5

April 2008 to March 2009 *United Kingdom*

thousands

Nationality	*Estimate*		*CI +/-*
Poland	499	a	30
Republic of Ireland	342	a	24
France	121	b	15
Germany	104	b	13
Italy	96	b	13
Portugal	89	b	12
Lithuania	68	b	11
Spain	68	b	11
Slovakia	48	b	9
Netherlands	47	b	9
Romania	46	b	9
Bulgaria	30	c	7
Greece	27	C	7

Estimated population resident in the United Kingdom, by EU27 nationality3,4,5

April 2008 to March 2009 — *United Kingdom thousands*

Nationality	*Estimate*		*CI +/-*
Latvia	27	c	7
Sweden	24	c	6
Czech Republic	23	c	6
Hungary	19	c	6
Denmark	19	c	6
Austria	16	c	5
Belgium	14	c	5
Cyprus (EU)	12	c	5
Finland	10	d	4
Malta	6	d	3
Estonia	5	d	3
Slovenia	1	d	1
Luxembourg	:	d	:
Former Czechoslovakia	2	d	2

"." = negligible or rounded to zero

		Statistical Robustness[1]
a	05= CV <5	Estimates are considered precise
b	5= CV <10	Estimates are reasonably precise
c	10= CV <20	Estimates are considered acceptable
d	CV =20	Estimates are not considered reliable for practical purposes

Source: Annual Population Survey (APS)/Labour Force Survey (LFS), ONS

Notes:

1. Standard error is an estimate of the margin of error associated with a sample survey. The coefficient of variation (CV) indicates the robustness of each estimate. It is defined as:

$$\% = \frac{\text{standard error}}{\text{estimate}} \times 100$$

2. CI+/- is the upper (+) and lower (-) 95% confidence limits. It is defined as: 1.96 x standard error

3. Estimates are based on the Annual Population Survey (APS) which is the Labour Force Survey (LFS) plus various sample boosts.

4. It should be noted that the LFS:

excludes students in halls who do not have a UK resident parent

excludes people inmost other types of communal establishments (for example, hotels, boarding houses, hostels, mobile home sites etc)

is grossed to population estimates of those living in private households that only include migrants staying for 12 months or more.

5. The LFS weighting does not adjust for non-response bias by the nationality variable.

Young Offenders Institutions: Social Workers

Questions

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

To ask Her Majesty's Government how many social work posts in young offender institutions are vacant. [HL1129]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): There are currently 22.5 social worker posts in young offender institutions and dedicated units for young women. Ten and a half of these are vacant.

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

To ask Her Majesty's Government what progress has been made in agreeing a formula for local authorities to fund social work posts in young offender institutions. [HL1130]

Lord Bach: It is the statutory duty of local authorities to provide social work services under the Children Act 1989 to young people in custody. We are continuing to work with the Youth Justice Board and other key stakeholders to develop long-term, sustainable arrangements which will ensure the future of these important social work posts.

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