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House of Lords

Monday, 25 January 2010.

2.30 pm

Prayers—read by the Lord Bishop of Liverpool.

Death of a Member: Lord Richardson of Duntisbourne

Announcement

2.36 pm

The Lord Speaker (Baroness Hayman): My Lords, I regret that I have to inform the House of the death of Lord Richardson of Duntisbourne on 22 January. On behalf of the House, I extend our condolences to the noble Lord's family and friends.

EU: External Action Service

Question

2.37 pm

Asked By ***Lord Howell of Guildford***

To ask Her Majesty's Government what progress has been made in setting up the European Union External Action Service.

Lord Brett: My Lords, the detailed organisation and functioning of the European External Action Service will be decided by the member states by unanimity on the basis of a recommendation from the high representative, the noble Baroness, Lady Cathy Ashton. The noble Baroness has set up a high level group, the Ashton group, comprising senior members of the Commission and the Council Secretariat and member states' ambassadors to work through the key issues to be addressed.

Lord Howell of Guildford: I thank the Minister for that reply. Did he hear Javier Solana's view that this is going to be "the biggest diplomatic service in the world"? Has he noticed that, since the Lisbon treaty came into force, 54 new super-delegations, previously EU embassies or delegations, have been set up around the world? To whom will this enormous force be accountable, what will it cost and how much of the impact will fall on the already squeezed Foreign Office budget?

Lord Brett: My Lords, we are looking not at the creation of a major new entity but at the reorganisation of the current external representation of the European Union into a much more coherent and effective body. We therefore do not see, as perhaps others do, a massive increase in representation or numbers.

It is not yet possible to give a detailed breakdown of costs. Any costs would have to be held within the overall EU budget for financial perspectives, which is €49.8 billion, but we are committed, in the form of Cathy Ashton's high level committee, to producing results by April this year, which is not far away. I regret to say that I do not have them at the moment.

Lord Dykes: Although the Minister is not directly responsible, does he agree that it is sad that UKIP and the Tory Party continue with their deep hostility to the EAS proposal? Is it not important for the Government to insist and reassure the House that the Foreign Office's and EAS's representational activities in future will remain totally and self-evidently separate? Will he say a word about the possible indications of UK recruitment applications for the EAS?

Lord Brett: I should not make any comment on the first point for fear of stealing the thunder of the noble Lord, Lord Pearson of Rannoch, who I am sure will be seeking to speak in a moment. It is clear, however, that, as has been said, there will not be an overlap between European external representation, which is about representation on those issues for which Europe has a clear, defined and unanimous policy, and the representation of Her Majesty's Government, which protects the interests of the United Kingdom. Undoubtedly staff will transfer to EAS and we hope there will be representational staff from a number of member states, not least the United Kingdom. We have excellent candidates and we will put them forward. We hope to have secondees in place to ensure that our voice is heard among others so that policy goes forward in a successful manner.

Lord Hannay of Chiswick: My Lords—

Lord Judd: My Lords—

Lord Davies of Oldham: We have plenty of time. Can we hear first from the Cross Benches and then from my noble friend.

Lord Hannay of Chiswick: My Lords, what steps are the Government taking to ensure that senior appointments in the External Action Service are made on the basis of professional competence, including knowledge of languages and experience in the matters most required for the post in question, and not by Buggins's turn or by a rigid national quota system?

Lord Brett: My Lords, the noble Lord makes an important point. It is very important indeed that appointments should be made through a transparent procedure and be based on merit, not nationality. The high representative will oversee the setting up of recruitment processes for EAS. We expect this to be unique. We will not want this to be on a traditional concours system. We do not want to see a long lead time or a long list; nor do we want to have mandatory requirements for candidates to have X number of languages. We need the right skills and experience for the job. For example, the Chinese may need to have an EU head of delegation who has a strong knowledge of the region and even speaks Mandarin if he wants to have the maximum impact. That is what we will seek to have in the appointments that we will be part of making and no doubt Cathy Ashton will seek to ensure that we have such representation.

Lord Judd: With so many of the global issues facing the international community only possible of solution by international co-operation, does my noble friend agree that there has never been a time when this service has been more needed and that the quality of

[LORD JUDD]
the people within it will be crucial? It is absolutely essential that we begin to speak in harmony and establish common objectives on global warming, economic issues, security and the rest.

Lord Brett: My Lords, I could not agree more with my noble friend. We are delighted to have Cathy Ashton giving that leadership and to have a body of people that will represent the European Union coherently on all those issues where there is unanimity. There will be a greater degree of transparency and accountability to the member states, which will strengthen Europe and the United Kingdom.

Lord Pearson of Rannoch: Can the noble Lord give us a clear assurance that there will be any British embassies left in 10 years' time? If he can give that assurance, will he tell us where they will be? If he does not have the answer at his fingertips, would he be good enough to put a letter in the Library?

Lord Brett: My Lords, I used to listen to with great interest, and enjoy, the questions of the noble Lord and the expertise and perseverance he showed on Europe. However, since he became leader of UKIP, his questions have got more esoteric and strange; I can think of no stranger one than this.

Lord Wallace of Saltaire: My Lords, I understand that the United Kingdom is not represented directly in about 40 or 50 members of the United Nations. Can the noble Lord indicate how many of those countries the External Action Service may have resident representation in?

Lord Brett: The European Union has some 130 external delegations at present. There are some 200 countries and territories, as I recall, in the diplomatic world. Clearly, I cannot answer the question because it is part of the process that is being gone through by high representative Cathy Ashton and her colleagues. However, I am sure that we can expect a sensible solution.

Baroness Park of Monmouth: Can the Minister assure us that the creation of these missions will not lead the Treasury to have the brilliant idea of closing down our missions in those countries? However excellent the EU may be, it is not reasonable to expect a mixed EU representation to look after our national commercial interests and our national defence interests or indeed to handle the issue of passports and entry into this country. We shall need our own missions. I want to be assured that we shall not lose them in a splendid cost-cutting exercise by the Treasury.

Lord Brett: My colleague, the Minister in another place, has given the assurance that there is no connection between the role that we have as a national Government, that of our embassies which represent us abroad and the new structure in the European Union. I am confident that that is the case. Judgments were made solely in relation to the merits of the case and the arguments for having embassies abroad.

Energy: Performance Certificates

Question

2.45 pm

Asked By ***Lord Redesdale***

To ask Her Majesty's Government when they will transfer responsibility for energy performance certificates from Communities and Local Government to the Department of Energy and Climate Change.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): My Lords, the Government have no plans to transfer responsibility for energy performance certificates from Communities and Local Government to the Department of Energy and Climate Change.

Lord Redesdale: My Lords, is this not a case of non-joined-up government? Now that the Department of Energy and Climate Change is a year old, should not one of the major tools for finding out about emissions from the building sector be transferred to it? Is the Minister confident that DCLG is doing a good job with EPCs, given how few buildings that should have them by law have them?

Lord McKenzie of Luton: My Lords, I believe that the responsibility is with the appropriate department. Although DECC has overall policy responsibility in respect of climate change, CLG has broad responsibility for the built environment, including the planning system, building regulations and housing, so the responsibility is appropriately sited. We realise that there are challenges on quality and performance and those are being addressed.

Lord Bates: My Lords, when energy performance certificates were introduced in Northern Ireland, they were not attached to the costly and bureaucratic home information packs. Will the Minister explain why the same policy approach was not taken in England and Wales?

Lord McKenzie of Luton: My Lords, home information packs are bedding down well and have proved to be a useful instrument to help purchasers. I think that the right decision was made.

Lord Tope: My Lords, how many buildings in the commercial and domestic sectors do not have EPCs?

Lord McKenzie of Luton: My Lords, EPCs are needed for buildings that are constructed, sold or rented out. There are something like 4 million domestic EPCs and 141,000 non-domestic EPCs on the register. I cannot specifically answer the question how many there should be, but there are high levels of compliance, certainly in the domestic sector.

Baroness Gardner of Parkes: Will the Minister comment further on his remark that the home information packs are bedding down well? Has he not read in the

press comments by estate agents saying that the packs have not been any help whatever, which I believe is the general public view?

Lord McKenzie of Luton: My Lords, more than 2 million HIPs have been prepared, providing important information up front to help to inform buyers' decisions. As a result, more than 2 million home owners now have an energy assessment and recommendations in their EPC that can help them to cut up to £300 off their fuel bills. Despite a difficult housing market, HIPs are helping to reduce transaction times. An estate agency survey, which looked at 37,000 transactions, showed that, on average, sales with HIPs go through seven days quicker.

Earl Attlee: My Lords, is the Minister confident that the air conditioning and heating systems in government buildings are properly managed?

Lord McKenzie of Luton: My Lords, I could not guarantee that every single government building is managed as it ought to be. Obviously, a good deal of attention is paid to this. It is important to seek to ensure that costs are contained, particularly in relation to energy. Certainly, so far as EPCs are concerned, I believe that there is a high level of compliance in public buildings.

Lord Brooke of Sutton Mandeville: My Lords, the Minister is confident that these certificates are now sited in the right department, but is that confidence shared by the Department of Energy and Climate Change, particularly given how the energy directive gave rise to the certificates in the first place?

Lord McKenzie of Luton: My Lords, we are a joined-up Government and the view that I have expressed is the Government's view.

Baroness Byford: My Lords, on the home information pack figures that the Minister gave us, how many people have had to go back and get new information packs because there is a very short timescale for their viability?

Lord McKenzie of Luton: My Lords, I do not have that information to hand, but I can say that we intend to evaluate the effectiveness of HIPs by updating the 2007 *HIP Baseline Research* report. The new report should be available later this year.

Lord Redesdale: Can the Minister guarantee that all government buildings, which by law should have an EPC, have an EPC?

Lord McKenzie of Luton: My Lords, I asked that question in preparation for this exchange and I have not got an absolute assurance. One would expect there to be full compliance on the part of government.

Earl Attlee: If the noble Lord cannot answer the question asked by the noble Lord, Lord Redesdale, how can he answer mine?

Lord McKenzie of Luton: My Lords, I confess that I have forgotten the noble Earl's question.

Earl Attlee: My Lords, I asked whether the heating and ventilation systems of government buildings were properly maintained. The noble Lord was able to answer my question, but he could not answer the question asked by the noble Lord, Lord Redesdale.

Lord McKenzie of Luton: With respect, the noble Lord was looking for some sort of absolute assurance that every single building was treated as it should be. I would answer that I hope that that is the case, particularly in relation to ventilation systems, as they are important energy emitters and they need to be properly maintained and surveyed. However, I do not think that anybody could sensibly give an absolute guarantee in those terms.

Immigration: "Bogus" Colleges

Question

2.51 pm

Asked by ***Lord Naseby***

To ask Her Majesty's Government what action they have taken in the last six months to prevent illegal immigration through the use of "bogus" colleges and to close down student loan scams used to obtain visas.

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): There are currently around 2,000 sponsors on the tier 4 register. In the past six months we have carried out around 600 inspections, suspending 140 and revoking 15 tier 4 licences. United Kingdom Border Agency staff are trained to spot forged loan documents. Applicants who use them are refused and may be banned from entering the United Kingdom for up to 10 years. On 12 November 2009, the Prime Minister announced a review of tier 4 that will report back shortly.

Lord Naseby: The Minister will know that I asked the question last July. Why is it still so easy for these bogus colleges to operate and to bring in illegal immigrant students? Why is it that at this time we have a large number of sham applications from Pakistani students? It would appear that the assessment of their entry requirements is done outside Pakistan by one of our embassies. Is that not a situation where that embassy has no idea of the tricks of the trade in that part of the world? Would it not be far better if the whole assessment was done by our own people in Pakistan?

Lord West of Spithead: My Lords, the noble Lord asks a large number of questions. First, I do not accept that we have not got a handle on these various colleges. There were initially some 15,000 colleges in the DIUS list, of which about 4,000 regularly had foreign students. After going through them and guaranteeing that they are bone fide colleges, we have now reduced that number to about 2,000. We have made careful checks of those colleges—I mentioned the number that we have closed down—so we have a very strong handle on that.

On the students coming into the country, it is important to keep in balance the fact that foreign students in this country, just in terms of fees, bring in

[LORD WEST OF SPITHEAD]
£2.5 billion a year; with all the other added value, it is about £8.5 billion a year. We have to balance that against ensuring that we do not get a lot of people coming here who are not entitled to be in this country. I think we keep that balance fairly well correct and we are very good at doing those checks. I could go into more detail, but I will open it up for more questions.

Lord Pearson of Rannoch: My Lords, is there any truth in the suggestion that, of the 66,000 people who came to this country from Pakistan in the nine months to last September, only 29 were interviewed by British immigration officials and the rest by contracted interviewers in Pakistan or elsewhere?

Lord West of Spithead: My Lords, the system is that we look at documentation before any of the people provide their biometrics. After looking at that documentation, we assess whether we need to have a face-to-face interview. We are content that we are achieving good results. Indeed, I was speaking earlier today to the independent watchkeeper, who was appointed last year; we will see in his report, which comes out later this week, that he is fairly satisfied with the levels that have been achieved.

Baroness Hamwee: My Lords, does the Minister agree that this matter goes wider than just immigration? Is there not a reputational issue for the country—I appreciate that he is a Home Office Minister, but this is joined-up government—in having colleges which purport to provide first-class education but are, in the terms of the Question, "bogus"?

Lord West of Spithead: My Lords, I had hoped that I had answered that question—we now have a clear view of what sort of schools are allowed. Since March 2009, for any school wishing to bring people in we have a team which inspects it and looks at the whole area, including the quality of its courses. We make sure that the school is aware of what it has to do in terms of where those students move to if they leave the college. There is, in effect, a tick-off list of things that colleges have to go through. That is why some have been suspended. Indeed, there have been bogus colleges, but we are taking enforcement action. There is a lot of money in this. One college in east London was closed because it was not meeting the requirements. It was quite clearly bringing in people for immigration purposes. Two of the people had £2.65 million in cash at their home address. It must have been an awfully big suitcase. They have been put inside for about eight years each—25 years in total for the team. So we are enforcing and we are doing things.

Lord Dholakia: My Lords, is it not possible for the Minister to ensure that information about bogus or bona fide colleges is available to students when they make their applications, because in many cases it is perfectly feasible to fall into the trap of applying to colleges that are not genuine?

Lord West of Spithead: My Lords, the noble Lord raises a good point. I would be surprised if something was not available and I will check and get back to the noble Lord in writing. If there is not, I will ensure that the Home Office provides that information.

Lord Mawhinney: My Lords, the Minister has been very positive about government policy; that is what we would expect of him. However, he also said that in the examination of 600 colleges, 140 were closed. Who takes responsibility for the prior existence of those 140 colleges which were not fit for purpose?

Lord West of Spithead: In fact, to be precise, I said that 140 were suspended; 15 have had their licences removed. The UKBA would have to take that responsibility because it carried out the inspections with DIUS, not having made sure that the colleges were appropriate. That is why there is re-checking to ensure that this is done.

Lord Skelmersdale: My Lords, the Minister must know the number of visas issued. Is there any way of correlating this with the number of students who have or have not left this country at the end of their courses?

Lord West of Spithead: My Lords, when we have e-borders we will be able to check people in and out much more accurately. With biometrics we will be able to tally those numbers. At the moment, we are not able exactly to do that. Since tier 4 was launched, we have been dealing with just short of half a million applications. We are dealing with very large numbers of people. When e-borders are introduced, we will have a much better handle on this and be able to know exactly who has come in, who has gone out and where we stand.

Lord Avebury: My Lords, what happens to a person who has legitimately obtained an entry certificate to attend a college which is subsequently declared to be bogus? Can he transfer to a legitimate institution or is he sent back home?

Lord West of Spithead: My Lords, he is allowed to transfer to another institution, but these institutions now have to be properly registered.

Lord Roberts of Llandudno: My Lords, I am not sure whether this is the Minister's responsibility, but, considering the needs in Haiti, is he willing to engage with the Government in providing more opportunities—educational scholarships and so on—to those who have suffered so much in the devastation over the past two weeks?

Lord West of Spithead: My Lords, I am sure that the whole House sends its deepest sympathy. What has happened in Haiti is absolutely appalling. I am wary of making a commitment to do anything—I get into enough trouble as it is—but I will look into it.

Health: Reciprocal Agreements

Question

2.59 pm

Asked By ***Lord Smith of Clifton***

To ask Her Majesty's Government why they are rescinding the reciprocal health agreements with Guernsey, the Isle of Man and Jersey with effect from 1 April.

Lord Tunnicliffe: My Lords, the Government ended their agreement with the Channel Islands on 31 March 2009 and are ending their agreement with the Isle of Man on 1 April 2010 as they do not represent value for money for the UK taxpayer and travel insurance is widely available. Tourists will continue to receive free accident and emergency treatment. However, they will now be expected to have insurance to cover the cost of further emergency and other treatment.

Lord Smith of Clifton: My Lords, I thank the Minister for that rather unsatisfactory explanation. I have two points. First, why was the arrangement not renegotiated, rather than unilaterally stopped? Secondly, does the Minister agree that this is very ageist? A large number of very old people travel to and from the Crown dependencies, particularly the Isle of Man. I declare an interest here: I am one of them, and I cannot get personal health insurance. If I were to leave and then had to have an air ambulance back, it would cost in excess of £4,000.

Lord Tunnicliffe: My Lords, the agreement had a six-month notice clause on either side; in fact, we provided a one-year notice of the termination. It is not value for money for the UK taxpayer, and it is not the role of the UK taxpayer to provide travel insurance to citizens. We have a series of bilateral agreements, where they make sense, and we have some obligations under the European Union. We do not have a specific obligation to old UK residents wanting to go to the Isle of Man.

Lord Quirk: My Lords, I declare an interest as a Manxman. Can the Minister clarify an anomaly? Neither the Isle of Man nor Switzerland is a member of the EU, but on 7 January the Minister of State, Gillian Merron, told MPs that, unlike visitors from the Isle of Man, those from Switzerland would still be "entitled, free of charge", to all NHS hospital treatment and care. Is this act of charity because so many tourists from Switzerland are destitute bankers?

Lord Tunnicliffe: That is a lovely idea, but in practice it is more complex. An enormous amount of European Union regulations extend to the European Economic Area, which is Switzerland, Norway, Lichtenstein, Iceland and the whole of the EU. The agreements we have with the countries of that area are under EU regulations 1408/71, and the general heading of the co-ordination of social security, which have the effect of looking after workers, pensioners and tourists as described. They are part of our European obligations. We do not have those responsibilities with the Isle of Man because it chose not to be a full member of the EU; it is a Protocol 3 member—a Crown dependency—and it only enjoys a customs union.

The Lord Bishop of Winchester: My Lords, I declare an interest as the bishop with responsibility for the Church of England in the Channel Island Bailiwicks, and also as somebody financially affected, both personally and with regard to my diocese, by the Government's decision which is the target of the noble Lord's Question. The Government have mentioned that they have a range of bilateral agreements, and some with places a great deal further away that the Channel Island Bailiwicks. Are they considering making that kind of bilateral agreement with the Bailiwicks of Jersey and Guernsey? It should be remembered that moves such as that which is the target of this Question cause considerable, further damage to any sense the people of those islands—subjects of Her Majesty—have that Her Majesty's Government really understand their needs and position.

Lord Tunnicliffe: My Lords, the relationship with the Channel Islands is a special one. That and the relationship with the other two Crown dependencies depend on their being sovereign territories. As a generality, they do not come under the UK Government, but under the Crown. The bilateral agreements that we have elsewhere are judged to be of value. None that we have outside the EAA involves the movement of funds. These agreements were terminated because we were paying money to these various communities. We were paying £2.8 million this year to the Isle of Man, £3.8 million to Jersey and £0.5 million to Guernsey. We did not feel that that was good value for money.

Lord Cope of Berkeley: My Lords—

Lord Dubs: My Lords—

Lord Davies of Oldham: My Lords, we have not heard from the government Benches since Question 1.

Lord Dubs: My Lords, perhaps my noble friend would comment on the position of British tourists visiting the Channel Islands or the Isle of Man. Is it not a fact that they will now no longer have the sort of health cover that they would have if they visited one of the EU countries? Does this not mean that they have to take out insurance; and, if this were widely known, would this not be damaging to tourism in the Channel Islands and the Isle of Man? Surely the time has come to renegotiate the matter.

Lord Tunnicliffe: My Lords, the position as described is accurate. British tourists will need to take out insurance to go to the Isle of Man. However, we recommend that, wherever British tourists are travelling, they take out insurance. It is not as straightforward getting healthcare across the world as might be described. It is important, as a generality, that British tourists take out healthcare insurance because of the variations in service. In the EU, we have an arrangement.

Lord Cope of Berkeley: My Lords, does the Minister recognise that while it may be fair enough for one of Her Majesty's Governments—the one over there—to renegotiate these agreements with others of Her Majesty's elected Governments in these dependencies, it is not fair for them simply to bully them in the way that they are doing? Will they now negotiate these things properly with the dependencies?

Lord Tunnicliffe: My Lords, there was no bullying. These agreements were not perpetual, but had proper termination clauses. The proper termination period was given. No new information came forward from other parties. We think that the way we have behaved is entirely reasonable.

Lord Elystan-Morgan: My Lords—

Lord Davies of Oldham: I am very sorry, my Lords, but our time is up.

Passengers' Council (Non-Railway Functions) Order 2010

Motor Vehicles (International Circulation) (Amendment) Order 2010

Overhead Lines (Exempt Installations) Order 2010

National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010

Infrastructure Planning (Decisions) Regulations 2010

Communications Act 2003 (Disclosure of Information) Order 2010

Motions to Refer to Grand Committee

3.07 pm

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

That the draft orders and regulations be referred to a Grand Committee.

Motions agreed.

Equality Bill

Committee (4th Day)

3.08 pm

Clause 83 : Interpretation and exceptions

Amendment 97ZA had been withdrawn from the Marshalled List.

Clause 83 agreed.

Schedule 8 : Work: reasonable adjustments

Amendments 97A to 97D not moved.

Schedule 8 agreed.

Schedule 9 : Work: exceptions

Amendment 97E

Moved by ***Lord Alli***

97E: Schedule 9, page 165, line 3, leave out paragraph (f)

Lord Alli: I shall also speak to Amendment 119A tabled in my name and those of the noble Baronesses, Lady Campbell of Surbiton, Lady Neuberger, and Lady Noakes.

Amendment 97E seeks to offer priests the same employment protections in relation to their sexuality as other members of society. As the law stands, an individual cannot be sacked for simply being gay, except, as I explained at Second Reading, one class of people—and that is the clergy. At Second Reading, the right reverend Prelate the Bishop of Chester suggested that the way in which faith communities operated is sexuality-neutral. But the church's stance was based on an intolerance towards sexual relationships outside marriage, whether they were gay or straight. I said then that I thought the right reverend Prelate was mistaken, and I am pleased to clarify the point.

What the law actually says is that an exemption is made for,

"a requirement related to sexual orientation".

Sexual orientation is not the same as having sex inside or outside of marriage. This is not semantics, and it is at the heart of what I am seeking to correct. Simply by being gay, the law allows religious organisations—in this case the employer—to sack a priest, in this case the employee. So even where a gay man takes a vow of celibacy, the law still allows for his dismissal. The law is not about adultery; it is not about sex outside of marriage; it is not even about gay sex. It simply allows for the dismissal of the individual for being gay. I am not sure that is what we intended when we wrote the Bill. It is like saying it is all right to be sacked for simply being black. How can that be right?

There are very few people who do not know of gay members of the clergy. In fact, I suspect from the letters I have had that the Church of England is full of them. It has to be asked: what is the purpose of this law? Why is it there? Let me tell you what a law like this does while it remains in place. It creates a climate of fear and insecurity. It is a threat. It does what all nasty bits of discriminatory law do—it wields the power to destroy somebody's life, but it holds it in reserve.

Be in no doubt—this is an unpleasant and spiteful provision, in my view unintended to be so. Ever since I made it clear that I was going to bring forward this amendment, I have had many discussions from people inside and outside the church. Many have quoted Article 9 of the European Convention on Human Rights. But all rights flowing from that convention have a caveat that limits their effect, as long as they do not disturb other people's rights. Article 9—or, indeed, Article 8 which protects gay people from discrimination—does not apply when looking at this provision. A policy of "don't ask, don't tell", if you are gay, but keep it under wraps or risk losing your job, is simply wrong. It will never be right. That is the reality which gay priests, whether they are celibate or not, must face every day. It is a fear that they live with. This is the persecution which I believe we should seek to fix in this Bill at this time.

I hope Amendment 119A will be less controversial. Its intention is to remove the prohibition against civil partnerships taking place in religious buildings. I shall repeat that: it is to remove the prohibition against civil partnerships taking place in religious organisations. It is a straightforward amendment. It does not seek to force religious institutions to host civil partnerships

and I would not intend it to. It simply has to be a matter for them to decide whether or not they wish to do so.

There can be no doubt, however, that civil partnerships have been a huge success. I suspect that many noble Lords will have been touched in some way by the range of civil partnerships that have happened in the community. Noble Lords put through this House a really significant measure. I want to reiterate my thanks to the many noble Lords who helped that provision find its way on to the statute book.

In July last year, the Quakers passed a resolution which, in effect, would allow civil partnerships to take place in Quaker meeting houses. I know that other religious groups are seeking to follow suit, such as Liberal Judaism, the Metropolitan Community Churches and the Unitarian Church. It seems rather perverse that the law prevents them from doing so: the law no longer respects religious freedoms; it seems to be dictating religious behaviour, which cannot be right.

At Second Reading, I was heartened by the speech of the right reverend Prelate the Bishop of Chester, who mentioned that he might be more sympathetic to the amendment. The support of the church on this provision to remove the prohibition would be a simple and generous step to take. I know that the noble Baroness, Lady Noakes, hoped to speak on this amendment, but unfortunately she has been detained. She asked me to make it clear that she would have supported it and that she wanted to speak in this debate.

I hope that my noble friends on the Front Bench will think very carefully about supporting the amendment and will give it further consideration, as it will benefit the lives of many people of faith. I beg to move.

3.15 pm

Baroness Neuberger: I wish to speak to Amendment 119A. As the noble Lord, Lord Alli, has cited, it is four years since civil partnerships became lawful in this country. During that time, 35,000 couples have entered into a civil partnership. That has brought huge happiness, recognition and benefits to couples across the UK. We all know that, at present, civil partnerships, like civil marriages, cannot be conducted in religious premises.

Unlike heterosexual couples who have a choice, gay couples are disbarred from making any sort of faith commitment within a religious building. As president of Liberal Judaism, which was the first religious organisation, as far as we know, to produce and publish a liturgy for same-sex commitment ceremonies, I believe that those faith groups and individual organisations that wish to allow civil partnerships to take place within their religious premises should not be prohibited from doing so. That would mean a civil partnership taking place within a Quaker meeting house, for example, or in a Unitarian church, or in a Liberal Judaism synagogue, followed by some kind of faith-based commitment ceremony, the second following naturally from the first.

I want to make it clear that those faith-based organisations which support the amendment do not argue that everyone should allow such ceremonies. This is purely a permissive amendment to allow those who wish to do so the right to do it. I have some personal experience in this area. I have officiated at many same-sex commitment ceremonies which I have found uplifting and moving. Often there is a sense of joy far beyond that experienced with heterosexual marriages, however delightful they are, as only recently have gay couples, who have been together for years, been able to have any kind of public ceremony. We have come a long way but there is a little further to go.

Recently, I talked to two registrars at civil partnerships where I have been a guest and where I have officiated at a commitment ceremony later on. They said, speaking from their personal viewpoint, that they find the prohibition on the use of religious premises strange. They argue that for many people, at whose ceremonies they have officiated, a religious element would have been desirable had it been possible. In my experience, there has been real joy for gay couples who have had a religious element after a civil partnership ceremony. That has been carried out at a reception in a hall or wherever and not in a synagogue. On two occasions, the couples concerned had specifically told me how they would have been overjoyed and, even more—this is very Jewish—their parents would have been overjoyed, if they could have had a ceremony within a synagogue as well. I believed them: they had tears in their eyes as they raised that with me. The prohibition meant that, in some way, what they had was second best.

When we in Liberal Judaism published our liturgy for same-sex commitment ceremonies and encouraged couples who had been through a civil partnership ceremony to have a religious commitment ceremony afterwards, we were responding to a deeply felt desire. I support the amendment because I believe that it is a matter of common justice that we recognise the love and commitment of same-sex couples. I can see no reason why there should be a prohibition against such ceremonies taking place on religious premises.

The Religious Society of Friends, the Unitarian Church and the movement for Liberal Judaism are all in accord on this and I hope that people of other faiths, or other parts of the same faiths, will see that we are seeking to overturn a prohibition and by no means forcing others to do the same as us. I believe that this should be a matter for religious organisations to decide for themselves and that, once they have done so, the law of the land should not stand in their way.

Baroness Butler-Sloss: My Lords, I have received a powerful letter from a Quaker telling me something I had not known before—that the Quakers, at their yearly meeting last year, decided to seek a change in the law so that what the noble Baroness, Lady Neuberger, described could come to pass. This is a permissive amendment and I am utterly persuaded by it. I would be totally opposed to it being a requirement, because many churches would find this utterly abhorrent; but in so far as there are churches and synagogues and other faith places that would like this to happen, it is entirely appropriate and I support the amendment.

Baroness Campbell of Surbiton: My Lords, I support Amendment 119A moved by the noble Lord, Lord Alli. It feels very good to be supporting another part of the Bill. I am not, I hope, just a disability lobby, I

[Baroness Campbell of Surbiton]
feel very passionately about the whole equality agenda, and was persuaded to add my name to this amendment because I see the issue as a matter of religious freedom. I support its permissive approach: it seems good to enable the various religious denominations which now wish to perform and bless civil partnerships to be able to do so. There is no suggestion that this may be mandatory; I have had many conversations with my Christian friends over the past few weeks to talk about the permissiveness of this approach, and they feel that it is a fair approach.

Some of your Lordships will have received a briefing note from the Quakers and others who feel that they should be able to follow the insights of their members in celebrating long-lived committed relationships between man and man or woman and woman in exactly the same way as they currently recognise the marriage of opposite-sex couples. Our laws sometimes need to adapt to catch up with society. I think that this is clearly the situation here. For me, accepting and valuing human diversity by supporting our fundamental differences will be the glue that binds us in the future. I urge your Lordships to support the amendment.

The Lord Bishop of Winchester: My Lords, the noble Lord, Lord Alli, suffers, as do the churches, from the determination of the Government and others to use the language of orientation when it is perfectly clear—and I am sure that it is perfectly clear to him—that the issue for the churches and for people of some other faiths is of sexual behaviour, not of sexual orientation. However, granted the language that is used, both in European legislation and in our own, we have had no alternative but to go along with this language of sexual orientation when it is actually sexual conduct that is the matter at stake for the churches. I should be very surprised indeed if the noble Lord had any evidence of any clergy being put at any kind of risk at all simply on the grounds of their orientation, in the sense that the churches use the word, as opposed to their conduct in matters sexual.

It also needs to be clear—the noble Lord himself was very clear—that the churches have a particular understanding of marriage. The right reverend Prelate the Bishop of Chester was right when he said that this is not distinctly aimed at gay people, but at the question of sexual conduct, whether marital, heterosexual or homosexual.

Rather surprisingly, too, the noble Lord concentrated simply on priests. The churches' interest in these matters—we will come to this when we discuss the next group of amendments—lies in our absolutely rooted conviction that a person of faith seeks to live in every respect according to the teaching, tenets and vision of the faith of which they are part. That is just as much a matter for certain lay people in the employment of the churches as it is for clergy.

Lastly, there are exemptions in the Bill on a whole range of points, such as the need for disability organisations to be able to employ particular people, for organisations connected with race and ethnicity to employ people of a particular ethnicity at certain points, and for crisis centres and women's refuges to employ particular people of a particular gender. It would be discriminatory if the House and Parliament went down the route suggested by the noble Lord's amendment.

On Amendment 119A, noble Lords will well remember the Civil Partnership Act, in which civil partnership was postulated in significant ways as being analogous to civil marriage, notwithstanding the fact that nothing in that Act says in any way at all what a civil partnership is or to what those entering into it are committing themselves. Her Majesty's Government in that process made it absolutely clear that they did not regard the civil partnership as a form of marriage.

The amendment in the name of the noble Lord, Lord Alli, and to which noble Baronesses have spoken so clearly, would blur the distinction between civil and religious marriage as two paths to effect what is in law the same relationship, because registrars by law are not permitted to engage in, or to allow others to engage in, any kind of religious ceremony in a civil marriage. It would also blur the characteristics of the civil partnership as distinct from marriage, whether conducted in a church service or by a registrar.

Shortly down the line, were this amendment to be passed—I understand that Stonewall has made this intention entirely clear—is the likelihood of a steady and continuing pressure on, if not a forcing of, the churches, the Church of England among them, to compromise on our convictions that marriage has a character that is distinct from that of a civil partnership. Churches of all sorts really should not reduce or fudge, let alone deny, that distinction. That is why we should refuse the noble Lord's amendment, enticing though it is.

Lord Harries of Pentregarth: My Lords, I support Amendment 119A. The Government were absolutely right to respect the religious sensitivities of the Church of England when the Civil Partnership Bill went through Parliament, but since that time a new situation has emerged. The Quakers, liberal Jews and other religious bodies have made it quite clear that they want permission to conduct these ceremonies in a religious context with religious language. This is a fundamental issue of religious freedom not just for the individual but for what Burke called one of the little platoons—the institutions—of our society. Their freedom should be respected in this regard.

Baroness Greengross: My Lords, I was privileged to attend here in Westminster the civil partnership celebration of a very senior British medical doctor and his American partner. It was a very moving and lovely ceremony, but they had another ceremony in New York in their church. They are deeply committed Christians, and that dimension was quite different and terribly important to them. It made them feel that they were on a par with everyone else. I support the amendment.

3.30 pm

Baroness Howe of Idlicote: I also support Amendment 119A. It is quite clear from the briefings, which we have had from all sides, that this is a permissive, not a mandatory clause. If the Church of England

wishes to continue in the way it always has, then that is entirely a matter for it. I am sure it will be able to stand up to whatever extra pressure is put as time goes on. On the churches that clearly want to be allowed to do this, if the particular organisation, church, priest or whoever is in charge wishes to perform such a ceremony, we should allow what people at other churches want. I support the amendment.

The Lord Bishop of Chichester: I apologise for speaking again from these Benches, but one important distinction is being missed. A lot depends on what you mean by "a church". You might say that the Church of England may carry on in the way that it wants to, but the people responsible for marriages in the Church of England are not an abstraction called the Church of England or even, although I may sometimes wish it were different, the bishops; the people responsible are the incumbents of parish churches. I am sympathetic to this amendment and hope we may find a way that would enable those religious bodies that are quite comfortable with this to proceed in that way. However, I fear that to pass the amendment in its present form would put pressure not on the national institution of the Church of England but on the incumbents of the parishes and lead to widespread disarray throughout the Church of England. I hope there may be some room for manoeuvre over this, but as it stands it would achieve something different from that which is intended.

Lord Lester of Herne Hill: First, we do not support Amendment 97E because it is not necessary. We hope that the noble Lord, Lord Alli, will not find it necessary to divide the House on it. However, we support Amendment 119A for reasons I will briefly give.

Amendment 97E seeks to remove sexual orientation as an occupational requirement that may be used as a reason not to employ someone for the purposes of employment by a religious organisation. Schedule 9(2) lists the exceptions for occupational requirements where the employment is for the purposes of an organised religion, and those reproduce the existing exceptions in the Sex Discrimination Act and the sexual orientation regulations. Article 9 of the European Convention on Human Rights protects the fundamental right to freedom of thought, conscience and religion, and Article 8 protects the right to respect of private and family life, including a person's sexuality and sexual identity.

I respectfully put it to the right reverend Prelate the Bishop of Winchester that the distinction he and others seek to draw between it being okay to be gay but not okay to have sex while being gay would not be recognised under the European convention, any more than would be the distinction drawn between sex outside and inside marriage. It represents a deeply held and sincere belief by some devout Christians—which I respect—but it is simply not the case that, for example, people who enter into a civil partnership are okay if they do not have sex together. The whole point of the relationship of being sexual partners is that you have an enduring and loving relationship in which sex is a perfectly normal activity. With respect, that distinction would not pass muster under European convention or European Union law.

It is important to recognise—I hope here the bishops will cheer up—that in accordance with Article 9 of the convention, religious organisations are entitled to organise themselves in accordance with their beliefs and those of their followers. For example, it is well recognised that a church or ecclesiastical body may as such exercise on behalf of its adherents the rights guaranteed by Article 9 of the convention and that any interference must be proportionate. The Article 9 rights of the churches and their supporters and/or believers potentially conflict with the Article 8 rights of gay and lesbian people.

In recent years, the right to non-discrimination on the basis of sexual orientation has become enshrined in European law. Convention case law has established that Article 14 includes differences of treatment because of sexual orientation, with no distinction drawn between having sex or being gay. Convention law requires that where sexual orientation is the ground for a difference of treatment, there must be significant and convincing objective justification for the treatment. The Joint Committee on Human Rights, of which I was a member, made that clear in its report on the sexual orientation regulations in 2007.

The same is true under EU law. I will not detain the House by quoting from the framework directive. Suffice it to say in reassurance to the noble Lord, Lord Alli, that the only exception permitted in striking a fair balance between religious freedom and the right of respect for the private life of gay and lesbian people is one which accords with the strict test of proportionality. Therefore, the amendment which seeks to remove the safeguard for churches is overkill and unnecessary.

Amendment 119A would to amend the Civil Partnership Act by removing all bans on civil partnerships which take place in religious premises or using religious services. I was the author of the Private Member's Bill which resulted in the Civil Partnership Act, so I am naturally very sympathetic to the amendment. I agree with the powerful speeches that the House has heard from the noble Baronesses, Lady Neuberger, Lady Greengross and Lady Howe of Idlicote, the noble and learned Baroness, Lady Butler-Sloss, and the noble and right reverend Lord, Lord Harries of Pentregarth. Many religious same-sex couples want to have their partnerships blessed by religious organisations. Others feel that civil partnerships are not equal to marriage. Article 12 of the convention guarantees the right to marry, but this applies only to a man and a woman. In the United States, litigation is pending to establish a constitutional right of same-sex couples to marry. I doubt that it will succeed.

Amendment 199A does not go so far. It would permit but not require a religious aspect to be given to civil partnership ceremonies if the church or other religious body agrees. I believe that this is an issue which needs to be dealt with. As the noble and learned Baroness, Lady Butler-Sloss, said, this is permissive and is not in any way an imposition. Regrettably, I doubt whether we can do that in the Bill, which does not mean that we should not do it. It may be that we can do it in the Bill, but broadening the application of Article 8 of the convention in respect of the private and family life of same-sex couples needs to be done in

[LORD LESTER OF HERNE HILL]
a way that does not require religions to jump one way, as the right reverend Prelate the Bishop of Winchester would jump, or the other way, as, for example, the Quakers or liberal Jews would jump. As to churches, there is an issue about how religious acceptance in the Bill might work. The public function would be considered as regards the registration in providing a facility or service in a religious setting. There are also some convention issues about civil marriage.

While we fully support the amendment in its object, we hope that the Minister will express the Government's support for the principle of Amendment 119A and will undertake to consult speedily on whether and how it can be put into law, having of course consulted religious organisations, gay rights organisations and the public at large.

Lord Elystan-Morgan: My Lords, I may be very naive in this matter. I was not present in the House in 2004 when the Civil Partnership Act was passed. I was playing judicial truant at the time and I apologise for that. It seems to me that two simple questions are raised. First, is it proper for a religious organisation that wishes to bless a civil partnership to be proscribed from doing that? Secondly, is it correct that the individual involved in that civil partnership should be denied that blessing if that religious organisation wishes so to pronounce it? It seems to be entirely a question of whether or not there is any good reason at this stage for that limitation. As to why it was brought about in 2004, I know not. It may very well be due to sensibilities relating to religious organisations, but it is entirely permissive. It does not place any obligation upon anybody who does not wish that obligation to be so placed.

Lord Hunt of Wirral: My Lords, I have already declared my interests at the start of Committee stage. There is a further interest I should declare as a churchwarden in the Church of England in the County of Somerset in the benefice of Chewton Mendip and Emborough. In that capacity, I have come across several examples of the situations that we are now debating. The problem here is that there are two separate issues. The noble Lord, Lord Alli, wants to remove any possibility of there being a requirement related to sexual orientation for any form of employment. The second amendment, which is on a separate issue, means that there would be no ban on allowing civil partnerships to take place on religious premises.

As I understood it from the noble Lord—several noble Lords who have participated in this debate have echoed this—the second amendment is intended to be permissive. In other words, his intention is not to force religious premises to hold civil partnership ceremonies but to allow them to do so with their permission. I recall, as he reminded us, that on Second Reading the right reverend Prelate the Bishop of Chester suggested he would be happy to get into discussions with the noble Lord regarding his suggestion of,

"some sort of permissive arrangement for the faith communities",

which, he said,

"would be worthy of careful discussion". [*Official Report*, 15/12/09; col. 1449.]

I have not yet heard what has been the result of those discussions and whether there were any further ideas brought to the table. This topic ought to be thought through with the seriousness that it deserves. As we have just been reminded, there were debates on this issue when the Civil Partnership Bill was in Committee in this House. I remember that we were informed by the noble and learned Baroness, Lady Scotland, that civil partnerships were to,

"stay absolutely within the secular field and do not trespass on the different and sometimes conflicting religious beliefs of others, who may adhere to a plethora of religions". [*Official Report*, 12/05/04; col. 140.]

As I understood the position, therefore, both civil marriage and civil partnerships were to mirror each other and remain entirely secular. That is what we decided. In other words, to carry out a civil partnership ceremony in a religious premises would be a breach of the law. The Government have therefore made their views well known on this subject. We on these Benches would agree with their view. The civil partnership ceremony and the civil marriage ceremony are considered equally and neither can take place on religious premises.

The debates on the Civil Partnership Act informed us that, while the actual ceremony could not take place on religious premises, a religious centre would then be allowed to act in whatever way it wished as regards the couple. They could, for example, give them a blessing—we have had one example of this—or add some other religious element to the day. Perhaps the Minister could inform the House whether this is still the case. Does the Minister have any figures or estimates as to the number of couples who add a religious element on to the end of their civil partnership? Indeed, has any research taken place to think through the impact of the proposals being made by the noble Lord? I strongly agree with the noble Baroness, Lady Neuberger, that we have come a long way. I greatly welcome the fact that we have done so, but we must pause for a moment and consider how much further we should go in what is a very sensitive area.

The amendment of the noble Lord, Lord Alli, would prevent sexual orientation ever being a requirement for a position of employment, and I think he recognises that what he says involves controversy. He does not believe that anyone should be sacked from or persecuted in their job or vocation because of their sexuality. However, does he accept that whatever his intentions, which we can understand, this would be an attack on the central doctrines or tenets of various religious organisations, some of them very influential in our lives?

We have to address more fully the scope of exemptions applied to employment regulations, which we will do in later debates. Perhaps it suffices to say now that we believe it is right to preserve the status quo regarding employment provisions, but when the noble Lord comes to consider what action to take, I would like to ask him whether he considers that religious organisations that believe in gender specification being a requirement for employment, such as the Roman Catholic church which believes that women should not be priests, should be allowed to make such specifications? Also, if he believes that sexual orientation should not be allowed to be part of a specification for employment, what is

his reasoning behind allowing gender and certain other characteristics to remain? We would argue that they should remain as they are, but if the noble Lord is interested in changing the law for one characteristic, he has to look at the possibility of changing it for others as well, which is why we on these Benches are not minded to support his amendment.

3.45 pm

Baroness Thornton: Amendment 97E in the name of my noble friend Lord Alli would mean that a requirement related to sexual orientation could no longer be applied by an organised religion in relation to employment for the purposes of the religion. For example, the Church of England could no longer require a gay Minister to be celibate, should it so wish. Paragraph 2 of Schedule 9 replaces and harmonises separate exceptions in current discrimination legislation for occupational requirements where the employment is,

"for the purposes of an organised religion".

The existing exceptions are contained in Section 19 of the Sex Discrimination Act 1975 and regulation 7(3) of the Employment Equality (Sexual Orientation) Regulations 2003.

Paragraph 2 and regulation 7(3) both refer to a requirement "related to sexual orientation" rather than to be of a particular sexual orientation. This choice of wording was deliberate so as to accommodate the concerns of some churches about certain forms of sexual behaviour rather than sexuality as such. However, a person is protected from discrimination because of how their sexual orientation is manifested, such as being in a same sex relationship, as well as because of their sexual orientation. If "requirement related to sexual orientation" was removed from the exception, a church would not be able to require a minister of religion to be celibate if they are not married. This is because only a person who is heterosexual could meet the requirement to be married. Therefore, the requirement would constitute discrimination because of sexual orientation, unless it was allowed by the exception.

In the Government's view, paragraph 2 of Schedule 9 strikes an appropriate balance between competing rights. The rights in question are the rights of followers of organised religions to manifest their religion and the rights of others not to be discriminated against because of sexual orientation. The Government would risk upsetting that balance if we were to prevent churches and other organised religions from manifesting their religion in the limited circumstances allowed by the exception.

The Joint Committee on Human Rights also considers in its recently published Report on the Bill that,

"in general, the provisions of Schedule 9(2) … strike the correct balance between the right to equality and non-discrimination and the rights to freedom of religion or belief and association, especially if interpreted in line with the approach set out in *Amicus v Secretary of State for Trade and Industry*".

In that case, the High Court decided that regulation 7(3) of the 2003 regulations does not interfere with any rights under Article 8(1) of the European Convention on Human Rights. In other words, regulation 7(3) does not involve any violation of the private rights of gay, lesbian and bisexual people. It simply limits the scope of what the regulations add to existing rights. That applies equally to paragraph 2 of Schedule 9 because it has the same effect as regulation 7(3) of the 2003 regulations.

Amendment 119A, also spoken to my noble friend Lord Alli—

Lord Lester of Herne Hill: In the Amicus case the Minister referred to, the learned judge Mr Justice Richards went on to say:

"It was entirely proper … for the State to seek to balance the rights of homosexuals against those of followers of organised religions. The strength of feelings on both sides is amply demonstrated by the claims … in these proceedings. The balance struck is proportionate".

He also made clear that the exception had to be strictly construed. Can the Minister confirm that?

Baroness Thornton: The noble Lord is, as ever, completely right and I thank him for his remarks.

Amendment 119A, as the noble Lord, Lord Hunt, pointed out, is a different issue. This amendment seeks to remove the prohibition which prevents civil partnerships from taking place in religious premises and from including religious language. This amendment, however, is not a workable solution to this issue. Amending the Civil Partnership Act in this way could lead to inconsistencies with civil marriage, have an unexplored impact on devolved Administrations, and lead to confusion on what is permitted and what is required. I will therefore be asking my noble friend to withdraw his amendment. However, as with many others who have spoken, I am not unsympathetic to his intentions.

I will outline why we think there is a problem and what issues would need to be solved for us to proceed with this matter. The Government have been at the forefront of introducing measures to protect the rights of lesbian, gay and bisexual people. The Equality Bill replicates the comprehensive protections from discrimination because of sexual orientation which we put in place in 2003 in the employment area and extended in 2007 to services and public functions. Civil partnerships provide lesbian and gay couples with legal recognition of their relationships, giving them vital protections and benefits. As has already been mentioned, 35,000 couples have formally registered their relationship since the Act came into force at the end of 2005. The noble Lord, Lord Hunt, asked if research has been undertaken on how many people have added a blessing to this. I do not have those figures but the noble Lord's point underlines the point I was making about the things we need to consider as we move forward in this area. Civil partnerships were originally designed to be broadly similar to civil marriage. Let me repeat what my noble and learned friend the Attorney-General said:

"Just as with civil marriage, these unions will be entirely secular and the restrictions on religious content and religious premises therefore mirror the position for civil marriage".—[*Official Report*, 12/5/2004; col. 139GC.]

That is one of the issues that would need to be resolved.

My noble friend wants lesbian and gay couples to have the opportunity to enter into a civil partnership in a religious setting if they wish to do so and if the

[Baroness Thornton]
religion in question allows it. That is, at present, not permitted. Indeed, it is expressly prohibited in the provisions that my noble friend's amendment seeks to delete. As is the case for civil marriage, which is regulated by the Marriage Act 1949, civil partnerships are entirely secular in nature. As such, they cannot take place in religious premises or contain any religious language. The secular nature of these civil unions clearly separates them from religious unions. It is open to churches and the religious community to arrange blessings for civil unions or not, according to their own tenets.

My noble friend's amendments would change the present position of parity between civil partnerships and civil marriages. We would find ourselves in the anomalous position of allowing, for example, prayers to be said at a secular venue in the course of forming a civil partnership but not when solemnising a civil marriage. One consequence would be that this would appear to discriminate against heterosexual couples who might want a religious element to be added to the proceedings for their civil union. We have to consider the practicalities of that situation. Would he require a now secular registrar to carry out religious services? Would members of the clergy be able to conduct a ceremony not in their place of worship? These are the kinds of issues that need to be teased out.

As we have heard, some denominations, such as the Quakers, have been clear about their wish to carry out same-sex religious partnerships. However, different faiths have different views on these issues. Further, the legal position in relation to the solemnization of religious marriages differs between different faiths, and such matters are often closely entwined with doctrine and teachings. For instance, in some faiths it is the building that is approved for the solemnization of marriages, while for others, such as Quakers and Jews, there are greater freedoms about where to marry. Under the Marriage Act 1949, places of worship are currently registered only for the solemnization of marriage, and therefore we could end up with the situation where we have legislated for religious partnerships but there are no buildings where they can take place and no one who can perform such a ceremony. There are also, as ever, different arrangements for Scotland and Northern Ireland. These are not reasons for not looking seriously at the issue that my noble friend has raised, but I hope that they illustrate the complexities of moving forward.

We fully accept the fundamental importance of this issue to many same-sex couples, and we recognise the strength of feeling that some people have about the need for change. We also recognise, though, that any change would bring into play some fundamental issues and would risk undermining the parity that has been carefully established between civil partnership and civil marriage. Any change can therefore be brought only after proper and careful consideration of these issues, which is why it is important that we listen, discuss and consider views on this important issue, particularly the views of those churches and organisations that want to conduct same-sex unions on a voluntary basis so that same-sex couples can have the opportunity to formalise their relationships in a religious setting.

We want this dialogue to move forward and we want all those with an interest in this issue to have their say. We believe that this careful consideration will pay off in how we proceed together to the next stage of resolving this issue. I hope that my noble friend accepts the reasons behind the need to resist this amendment, and that he will support the Government's commitment to look at this issue further. I call upon him to withdraw his amendment.

Lord Alli: My Lords, I agree with the right reverend Prelate the Bishop of Winchester—the first and the last time I shall say that in this debate—that the language on sexual orientation may be incorrect: we may be talking about sexual conduct, not sexual orientation. That is what I would like to see as correct in the Bill.

The right reverend Prelate asked whether there were any examples of this form of discrimination in the church. I shall give him two: Dr Jeffrey John, required to step down as Bishop of Reading in 2003 in spite of being celibate, and John Reaney, refused a job as a youth worker by the Bishop of Hereford in 2005 in spite of an agreement that he would be celibate. So there are examples, and we need to think about them carefully.

The Lord Bishop of Winchester: There was no such agreement with Mr Reaney to which the noble Lord refers.

Lord Alli: We will differ on that matter. The issue in Amendment 97E is about the wording regarding sexual orientation, and I would like the Government to look at that and see if they can do something about it.

The noble Lord, Lord Hunt of Wirral, asked a question about women priests. The noble Lord and I should maybe avoid that entire debate at this stage of Committee as I fear it could go on for some time, but I would say to him that to my knowledge there are no women priests, in any church, trying to conceal their gender for fear of discrimination. There is a significant difference between sexuality and gender.

I thank all those who have spoken on Amendment 119A. The majority of speakers, with the exception of the Benches Spiritual, reflected the mood of most people outside this House, where there would not be an objection to this. This is a permissive amendment. It does not seek to force the churches into taking any kind of action. It simply seeks to remove the prohibition. Most people would probably judge that to be a fair thing.

4 pm

Lord Tebbit: My Lords, the noble Lord is making an extremely interesting argument. Is it not broadly true that we have all decided that civil marriages should not take place in churches? Is that discrimination? If so, it seems a fairly sensible discrimination.

Lord Alli: My Lords, that is a point that confuses me; perhaps others can enlighten me. A civil marriage with a religious component is surely a marriage. If you

want to marry with a religious ceremony, you are allowed to do so. It is called a marriage. If you wish to have a civil partnership and you want to share that celebration with people of your own faith and, more important, they want to share it with you, and their church permits it, this amendment would allow it to happen. There is a difference, but heterosexual couples have a solution because they can get married in church. That should satisfy both those needs.

This is not meant to be an attack on the central tenets of religion. The Quakers, liberal Judaism and the Unitarian churches want these provisions to allow them to start their debate.

I was a little disappointed by the responses of the Front Benches on all sides of the Committee. Maybe it is the way the usual channels work; maybe it is because this Bill has a pace; maybe we do not want to enter into these discussions at this stage in Parliament. Normally in the winding-up it is for the proposer to say, "I will read the Minister's comments carefully and reflect on them". I ask for the opposite. Will the Front Benches read carefully what the Committee is saying to them and think carefully about what they have heard, which has been a reasoned debate, with reasoned arguments from all round the Committee? Will the noble Baroness and the noble Lords on both Front Benches please think again? I hope that they will support this amendment. In the interim—

Lord Lester of Herne Hill: My Lords, the noble Lord has expressed disappointment with all the Front Benches, but will he accept from me—having, as it were, started the whole business of civil partnerships—that we fully support the object of his second amendment? We are concerned not with boring technicalities but with dealing with the difficult problems that the Minister has indicated so that we can achieve the results that he, and we, would like.

Lord Alli: I will certainly accept that, and with good grace. On the basis of that, I beg leave to withdraw the amendment.

Amendment 97E withdrawn.

Amendment 98

Moved by ***Baroness O'Cathain***

98: Schedule 9, page 165, line 5, leave out "application is a proportionate means of complying" and insert "requirement is applied so as to comply"

Baroness O'Cathain: My Lords, it is a privilege to open a debate of such importance and interest to so many people. I am grateful for the support that I have received from many noble Lords for what we seek to achieve. In particular, I thank the noble Lord, Lord Anderson, the right reverend Prelate the Bishop of Winchester and the noble and learned Baroness, Lady Butler-Sloss, for co-sponsoring my amendments. Unfortunately, due to the timing of this debate, the noble Lord, Lord Anderson, has had to go to Strasbourg to fulfil his commitments to the Council of Europe. However, he supports the amendments.

I intend to test the opinion of the Committee on these amendments. Organisations that are based on deeply held beliefs must be free to choose their staff on the basis of whether they share those beliefs. It would, for example, be appalling if the Labour Party could be sued for not selecting Conservative candidates and no one would want to see Greenpeace sued for refusing to appoint oil executives to its board of directors.

A belief in freedom of association demands that, even if we do not share the beliefs of an organisation, we must stand up for its liberty to choose its own leaders and representatives. That, in essence, is what this debate is all about. I accept that the Government intend to protect the freedom of churches to choose their own staff, but their wording does not mirror that intention. The exemption in paragraph 2 to Schedule 9 to the Bill allows churches to discriminate on the grounds of sex, sexual orientation and marital status when making appointments to key religious posts. An exemption along these lines has existed for more than 30 years. Some think that this is special pleading for the churches, but the principle of exemptions is widely accepted, not just for religion.

Paragraph 1 of this schedule is a general employment exemption that applies when being of a particular race, sex or other protected characteristic is a crucial requirement for a particular job. This makes perfect sense. My next point has already been mentioned today, but how would a rape crisis centre operate if it was forced to employ male counsellors? Beyond the employment sphere, Schedules 3 and 6 contain broad exemptions for insurance, political posts and for Parliament itself. Clause 193 even contains an exemption for sport, so the churches are not alone in needing limited exemptions from discrimination law in order to allow them to function normally.

It has been said that paragraph 2 is intended to be nothing more than a restatement of existing exemptions for religion. However, the Government have tinkered with the wording. Whereas the key phrase,

"employment is for the purposes of an organised religion",

was previously undefined, the Government decided to insert a new definition, contained in paragraph 2(8). In addition, whereas previous legislation did not include the qualifying word "proportionate", that word now appears twice in paragraph 2. If the Government's intention was to maintain the status quo, as they have said continuously since April 2009, why not use the same wording? After all, it has been in use without difficulty since 1975, when it was incorporated in the Sex Discrimination Act. By tinkering, they have caused enormous concern among religious groups. It is essential that the wording is returned to what it was. All the religious groups and their lawyers say that the result of my amendments would be the retention of the status quo. That is what we want—nothing more and nothing less.

Many noble Lords will have received briefing in support of Amendments 98, 99 and 100 from the Church of England and the Roman Catholic Church. Support, however, goes much wider than that. A letter pleading specifically for all three of these amendments was sent to the Government in November last year,

[Baroness O'Cathain]
signed by numerous religious groups, including the Hindu Council UK, Sikhs in England, the Jain Network, the Muslim Council of Great Britain, the Fellowship of Independent Evangelical Churches and many other Christian groups. These are the very groups that the Government intend should be protected by paragraph 2. These are the ones whose religious liberty is now at stake. If we get this wrong, these are the ones who will have to pay the legal bills to defend themselves in court.

The religious groups, particularly the Church of England and the Roman Catholic Church, have made representations to the Government on this issue since the Bill was published in April last year. Until two weeks ago, the Government denied that paragraph 2 caused any problems and refused to budge. Now, at the 11th hour, they have admitted that there is a problem and have tabled Amendment 99A. It is a slight improvement, but they still have not got it right. For a church post to be exempt, paragraph (b) in Amendment 99A requires proof that the post exists to promote or explain the religion. The Church of England briefing that we all received last week says that paragraph (b) leaves,

"an unacceptable amount of legal uncertainty".

The briefing states:

"Although Ministers may say that 'exists to' does not mean 'exists only to', our legal advice is that that does not reflect the natural meaning of the words and that [subsection] (b) as drafted would require promoting or representing the religion, or explaining its doctrine, to be the defining characteristic of the job. That is highly problematic because many roles in the Church of England that involve promoting or representing the religion could not simply be described as 'existing' for such a purpose. Many posts require their holders to carry out multiple functions, some of which would involve promoting or representing the Church, while other functions of the same post would not".

The briefing concludes that the government Amendment will leave the churches worse off than under existing law.

This is very serious. We cannot accept the government Amendment. We have been forced into the position of having a vote at Committee because of government Amendment 99A. The doctrine of pre-emption means that I could not bring my own amendments back at Report if Amendment 99A went through today. We must vote to decide the issue now. I wish the Committee to consider all three of my amendments as a group. They are a package. They seek to maintain the status quo by taking out the changes inserted by the Government. Amendments 98 and 99 would remove the new proportionality tests. Amendment 100 would remove the new definition of organised religion. Amendments 99 and 100 are therefore consequential on Amendment 98. The Minister may take a different view on what is consequential. I am sure that she will explain her view when she speaks. For my part, I invite the Committee to regard Amendments 98, 99 and 100 as a package and to vote accordingly.

The other package on offer today is the Government's Amendment 99A. Due to the fact that it offers an alternative definition of organised religion from the one already in the Bill, it also requires Amendment 100 to go through. It seems a little complicated, but a single Division will decide the matter: if the Committee supports Amendment 98, it is rejecting Amendment 99A; if the Committee rejects Amendment 98, then the Government get their way and Amendment 99A goes into the Bill.

My package of amendments represents the legal status quo, which is supported by the Church of England, the Roman Catholic Church and others. The Government's package represents a change in the wording of religious exemptions that is not supported by the churches. I beg to move.

4.15 pm

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, with permission I will speak to government Amendment 99A, but I will of course respond to all amendments at the end of the debate. Amendment 99A revises the definition of employment,

"for the purposes of an organised religion",

in paragraph 2(8). This provision has already been the subject of much debate in both this House and another place. Our amendment seeks to address concerns that have been expressed to us by the churches and others about the terms of paragraph 2(8). I have not tabled this Amendment because I believed that there was a problem with the original drafting. However, having listened carefully to the debate in this House and to representations from many members of the churches, we recognised that there were concerns about the need for further clarification. That is precisely what this amendment seeks to do—to clarify, not to change.

The definition in paragraph 2(8) was not tinkering; it was introduced because responses to the consultation on the Government's proposals for the Bill highlighted some confusion about when the existing exceptions can lawfully be used. We also received examples of cases where one of the existing exceptions—Regulation 7(3) of the 2003 regulations—appeared to have been misused, such as in relation to the finance director of a church.

The Government's intention is not and never has been to narrow the scope of the existing exceptions, as the Solicitor-General made clear on a number of occasions in another place. Paragraph 2(8) is designed simply to reflect how my noble friend Lord Sainsbury of Turville described the scope of Regulation 7(3) when replying to the debate on the 2003 regulations in this House on 17 June 2003. He said:

"When drafting Regulation 7(3), we had in mind a very narrow range of employment: ministers of religion, plus a small number of posts outside the clergy, including those who exist to promote and represent religion".—[*Official Report*, 17/6/03; col. 779.]

Clearly, many people, including some noble Lords, remain unpersuaded that paragraph 2(8) reflects this description. They maintain that it narrows the scope of the existing exceptions. In particular, they are concerned that it does not cover people employed by churches in representational roles and could even rule out most priests because of the amount of time that they may spend on activities that do not directly involve ritualistic or liturgical practices, for example. That point was well made by the most reverend Primate at Second Reading.

Ministers have listened to those concerns and Amendment 99A seeks to address them. The wording of paragraph 2 of Schedule 9 reflects very closely that used by my noble friend Lord Sainsbury to describe the very narrow range of employment covered by Regulation 7(3) of the 2003 regulations. I should explain that,

"for the purposes of an organised religion",

is a significantly narrower expression than,

"for the purposes of a religious organisation".

A religious organisation could be any organisation with,

"an ethos based on religion or belief".

That is the expression used in paragraph 3 of Schedule 9, which allows, for example, a care home run by a religious foundation to require employees to be of a particular religion or belief in certain circumstances. However, employment,

"for the purposes of an organised religion",

means a post, such as a minister of religion, involving work for a church, synagogue, mosque or temple. Ministers of religion are clearly in employment,

"for the purposes of an organised religion".

To remove any shadow of a doubt, the revised definition that we are proposing refers to them explicitly. The words "wholly or mainly", which it was claimed necessarily implied some kind of arithmetic or quantitative test, have been removed.

The small number of posts outside the clergy to which paragraph 2 applies are those that exist to promote or represent an organised religion or to explain the doctrines of the religion. I should like to clarify that this does not mean that the post must involve only one or more of those activities, but one or more of them must be intrinsic to the post. By "representing" the religion, we mean acting or speaking for, and with the authority of, those in leadership within the religion. We therefore intend senior employees with representational roles, such as the secretary-general of the General Synod and the Archbishops' Council of the Church of England, to be within the definition. A further example is that of a senior lay post at the Catholic Bishops' Conference charged with acting on behalf of bishops when contributing to public policy developments. These are both roles where the emphasis is more representational than promotional. There will be similar such roles in other organised religions. An example of a post that exists more to promote the religion is that of a missionary working for a church in this country. A church youth worker who primarily organises sporting activities would be unlikely to be covered by the exception. However, a youth worker whose key function is to teach Bible classes probably would be covered, because explaining the doctrines of the religion would be intrinsic to the role.

Because the exception applies only to a very narrow range of posts, all roles will need to be closely examined to determine whether or not they fall within the scope of the exception. An organised religion that applies in relation to a role a requirement related to sexual orientation, for example, must be prepared to justify this on a case-by-case basis. Whether or not a particular role exists to promote or represent the religion or explain its doctrines will depend on the purposes of the role and the nature of the work that it involves.

It is certainly not our intention that the exception should apply to employees such as administrative staff, accountants, caretakers or cleaners. Whether or not an applicant for the job of church bookkeeper is, for instance, married to a divorcee should not be a reason not to employ the person. In addition, the exception would not apply to most staff working in press or communications offices, although senior and high-profile roles within such offices that exist to represent or promote the religion would probably be within its scope. The revised definition that we propose also covers a case where a post to which the exception applies has just been created and the first person to hold it has yet to be appointed.

Amendment 99A would provide more clarity and greater legal certainty about the scope of the exception—for organised religions themselves, for the people whom they employ and, in the event of legal proceedings, for the courts. I commend it to the Committee.

I will add some information about the reasoned opinion. Last November, the European Commission delivered a reasoned opinion to the Government on two aspects of our implementation of the European directive underlying the 2003 sexual orientation regulations. We had previously satisfied the Commission's concerns over a number of other aspects of our implementation of the directive. The reasoned opinion was apparently disclosed by the Commission, without the Government's prior knowledge, and Mark Harper in another place referred to it during the Bill's Report stage. We have asked the Commission to explain this apparent unauthorised disclosure. I take this opportunity to make it clear that we have not, as asserted by Mark Harper and others, informed the European Commission that the Bill will amend Regulation 7(3) of the 2003 regulations, which paragraph 2 of Schedule 9 replaces, so as to bring this into line with the directive. That was incorrectly stated in the reasoned opinion.

Issuing a reasoned opinion is one of the formal steps in infraction proceedings, which the Commission can bring where it considers that a member state has incorrectly transposed a directive. The generally agreed position is that reasoned opinions are confidential between the Commission and the relevant authorities in the member state concerned. If the Commission is not satisfied with the member state's response, the case could be referred to the European Court of Justice. That is why I cannot say any more about the reasoned opinion in question, to which we will be responding in due course. However, I thought that it was important to set out the Government's views on that issue.

The Archbishop of York: My Lords, I want to explain why I shall be supporting Amendments 98, 99 and 100, moved by the noble Baroness, Lady O'Cathain, in preference to Her Majesty's Government's Amendment 99A.

This debate has the potential to be one where the competing arguments pass each other like ships in the night. We do not want it to be like the radio exchange recorded between an American naval ship and Canadian authorities off the coast of Newfoundland in 1995. The Americans said, "Please divert your course 15 degrees to the south, to avoid collision." The Canadians replied, "Recommend you divert your course 15 degrees to the

[The Archbishop of York]
north, to avoid collision." The American captain said, "This is the captain of a US Navy ship. I say again divert your course." The Canadians replied, "Negative. You will have to divert your course." Americans: "This is the aircraft carrier USS Missouri. We are a large warship of the US Navy with heavy weaponry and nuclear warheads. Divert your course now!" Canadians: "We are a lighthouse. Your call." It is true.

It is important, as we make up our mind on the choices before us, that we are clear what they are. Are the disagreements ones of principle or are they about how best to reflect agreed principles in how the Bill is drafted? Arguing about drafting may be less exciting than arguing about principles, but we are a legislative Chamber. When important issues concerning individual rights and religious freedom are at stake, we have a duty to ensure not only that the principles are right, but that the drafting is clear.

There are those who struggle with the concept of allowing any exemptions for religious organisations from provisions relating to discrimination in the field of employment. But the argument is simple. Religious organisations, like all others, must be able to impose genuine occupational requirements in relation to those whom they serve. There are many jobs that you can do for the Church of England without necessarily being an Anglican or indeed a Christian. But for our clergy, and for some key lay roles, we impose certain requirements in relation to faith and conduct. The same is true of all other churches and religious organisations, although the nature of the requirements will vary in each case.

Even within religious organisations, certain requirements about marital status or personal conduct may be different between roles. An obvious example is that the Roman Catholic Church insists that priests and bishops are male and unmarried. The Orthodox Church has the same requirements, except that it will ordain as priests, although not bishops, those already married. The Church of England allows women to be priests but not bishops. We allow both to be married. We also impose restrictions on marriage after divorce, cohabitation and same-sex relationships. These touch on matters—gender, marital status and sexual orientation—that the law lays down that employers in general should not take into account. To use the language of the Bill, they represent "protected characteristics" that can form the basis of discrimination claims.

By contrast, churches and other religious organisations cannot draw the same clear-cut distinction between who we are and what we do; between what we believe and how we conduct ourselves; between work life and private life. Successive legislation over the past 35 years has always recognised the principle that religious organisations need the freedom to impose requirements in relation to belief and conduct that go beyond what a secular employer should be able to require. Noble Lords may believe that Roman Catholics should allow priests to be married; they may think that the Church of England should hurry up and allow women to become bishops; they may feel that many churches and other religious organisations are wrong on matters of sexual ethics. But if religious freedom means anything, it must mean that those are matters for the churches and other religious organisations to determine in accordance with their own convictions. They are not matters for the law to impose. Start down that road and you will put law and conscience into inevitable collision, and that way lies ruin. As Edmund Burke said:

"Bad laws are the worst sort of tyranny".

I am not determining a point of law, but seeking to restore tranquillity and a spirit of moderation, magnanimity and meeting the other half way. Aristotle, in his *Nicomachean Ethics*, says that magnanimity is that which is just and sometimes that which is better than justice: it corrects the law when that is deficient because of its generality.

In all that they have said, Her Majesty's Government have sought to provide assurances that they do not want to go down the road of putting the law and conscience into inevitable collision. I welcome that. However, if that is the case, the onus is on Her Majesty's Government to demonstrate why any narrowing of the provisions in existing legislation under the Sex Discrimination Act 1975 and the 2003 sexual orientation regulations needs to be made. There is no doubt that paragraph 2 of Schedule 9 to the Bill would constitute a significant narrowing of the present law, for the reasons that I set out at Second Reading. When I heard the Leader of the House describing what may be exempt, I said to myself, "My gosh, here comes a barrage of endless tribunals". The Government's Amendment 99A goes some way, but not far enough, to meeting the objections.

When your Lordships' House debated the 2003 regulations, the Minister of State at the time, the noble Lord, Lord Sainsbury of Turville—whom the noble Baroness has already quoted—said that,

"we had in mind a very narrow range of employment: ministers of religion, plus a small number of posts outside the clergy, including those who exist to promote and represent religion. The words on the page reflect our intentions".—[*Official Report*, 17/6/03; col. 779.]

The wording of Amendment 99A is either a departure from those intentions or fails to satisfy them. We have gone from posts outside the clergy, including those who exist to promote and represent, to posts that exist only to promote or represent.

Again, the question is about preserving the status quo and about not introducing legal uncertainty. The 2003 regulations did not impose a proportionality requirement. That was a deliberate policy decision on the part of Her Majesty's Government. Now, on the eve of this debate, it is suddenly being suggested that the words in the Bill are needed to avoid legal challenges from the European Commission. This is a very puzzling claim when Ministers have insisted all along that the Bill does not narrow the exemption provided in the 2003 regulations. It is hard to see—

4.30 pm

Lord Lester of Herne Hill: I am very sorry to interrupt the most reverend Primate, but what he has just said is not the case. The opposite is what the Minister has said, that this was not done in any way to comply with the EU Commission's opinion. This was magnanimity shown to the church.

The Archbishop of York: I am still puzzled, given that in 2004 the Government successfully defended the compatibility of the regulations in European law against a challenge from Amicus in the High Court. The judgment was given on 26 April 2004, paragraphs 88 to 128.

Noble Lords are entitled to some explanation as to why the unpublished opinion of officials reached in private in Brussels is to be preferred—that is my view—to the Government's own previous view that was sustained by a High Court judge after all the arguments had been tested in open court and a judgment produced running to some 58 pages. In the High Court, Her Majesty's Government had argued that it would not be right for courts or tribunals to make judgments about questions of doctrine. Her Majesty's Government were right to take the view in 2003, and there is no good reason for them to take a different view now that they have the High Court judgment on their side.

So why are Her Majesty's Government now dissatisfied with their own very recent handiwork? Where are the examples of actual abuses that have caused difficulties? Where are the court rulings that have shown that the law, as it is, is defective? As they say, "If it ain't broke, why fix it"? The truth is that there are none because the status quo has been working perfectly satisfactorily. The earlier balances were struck by Parliament very carefully. The right course is to leave them exactly as they are. That is what Amendments 98, 99 and 100 will achieve.

Her Majesty's Government's Amendment 99A would introduce fresh legal uncertainty with unnecessary arguments over whether "exists…to" means that promoting, representing or explaining has to be the defining characteristic of a job, rather than simply one of its necessary components. Noble Lords know where I am going; principles matter and drafting also matters. For this reason, I support the amendments of the noble Baroness, Lady O'Cathain.

Baroness Butler-Sloss: I have added my name to Amendments 98, 99 and 100. In the same way as the noble Baroness, Lady Campbell of Surbiton, I support religious freedom, which is why I supported Amendment 119A and I now support these amendments.

In the exemptions provided by the Employment Equality (Sexual Orientation) Regulations 2003, regulation 7(3), which is highly relevant to today, did not include the express requirement of proportionality, although regulation 7(2) did require it. Those exemptions, including the absence of proportionality, were challenged in the High Court in the Amicus case which has just been referred to by the most reverend Primate. Not to have the requirement for proportionality was upheld by the High Court judge.

The introduction of the word "proportionate" in the two regulations inevitably changes the legal position. The word "proportionate" must mean something, and something more than the previous position because it was not there before—despite what seems to be the erroneous view of the Government, that this is exactly the same. Once you put a new word in it must be different. If this paragraph is challenged in the courts as a matter of interpretation or construction, a judge would look at the words in regulation 7(3) of the 2003 regulations and at the introduction of the word "proportionate" and be bound to find that there was a change.

The effect would be to cause major problems for churches. There might be a situation where a church met the organised-religion test but could still lose a legal challenge in a particular case if a litigant argued that their action was disproportionate in his or her situation. That is not just my opinion—although I was once a judge, I do not see myself as an expert—but I have been provided with very important advice by James Dingemans, Queen's Counsel, which supports exactly what I have just said. He has also raised an interesting point about the status of celibacy of priests of the Roman Catholic Church and whether under the new paragraphs of Schedule 9 the church might be challenged as not being a proportionate means of complying with the requirements of that church to have celibate priests. It is a very interesting idea. I do not know whether anyone from the Roman Catholic Church feels like expressing a view on that but it is raised again by James Dingemans, Queen's Counsel. This is a controversy stretching over nearly 1,000 years so these are not uncharted waters, but it would be odd if it came up under the word "proportionate" in the Equality Bill.

The noble Baroness, Lady Royall, quoted the noble Lord, Lord Sainsbury of Turville, who was speaking to the 2003 regulations. Perhaps I may add to her quotation of the noble Lord because he said in relation to the exemption in Regulation 3 admitting the test of proportionality:

"we do not believe that these regulations should interfere with religious teachings or doctrine, nor do we believe it appropriate that doctrine should be the subject of litigation in the civil courts".—[*Official Report*, 17/6/03; col. 778.]

The proposed rewording in this Bill is likely to have just the effect the noble Lord wished to avoid in 2003.

I turn to government Amendment 99A. It continues to restrict the rights of religious groups to employ those who will be in sympathy with them and their strongly held religious convictions. However, through the Minister, the Government say that Amendment 99A clarifies the position. In my view, it does exactly the opposite for this reason: one has to ask what does the word "exists" mean? Is it intended to require the person selected to fill a post which solely exists to promote or represent the religion or partly exists for that purpose? The Minister says that it partly exists. I am not certain that that is the way the present wording will be seen if the matter gets to court.

I shall give an example. The Minister spoke of a youth worker and so shall I. A youth worker may be employed to teach Sunday school but he may also be employed to drive the parish bus for the youth group. If the parish employs him to drive and driving is as important in one sense as teaching on a Sunday—he teaches one day a week but drives for three or four days a week—is he in an employment that exists for the purpose of promoting and so on, according to the words of Amendment 99A? I think there is a real doubt and, therefore, a real possibility that the use of the word "exists" might precipitate court proceedings, which would be an expensive and regrettable position

[Baroness Butler-Sloss]
and which quite clearly the Government do not intend. In my view, it imports uncertainty and may very well inhibit flexibility in the use of the employee by those who are afraid that by employing someone with more than one job they may be open to court proceedings.

I also had a very touching letter from an organisation called Ellel Ministries, which reads:

"We are writing from Ellel Ministries International to ask if you'd kindly consider the implications of the Equality Bill to a Christian ministry such as ours. We have four centres, we help people in their time of need, we provide free Christian counselling, in the form of healing retreats, to the suicidal, the depressed, the traumatised, the abused and to the broken. If this Equality Bill became law, we'd be unable freely to employ people who are best qualified to bring the appropriate level of help to those in need".

It does not sound as though this is primarily Christian teaching. This is primarily helping, in a Christian organisation, those who are suicidal, depressed or traumatised, and I suspect that they are right, that they would not be able to have someone of their particular religious persuasion.

This is probably a commendable effort by the Government to clarify what has happened, but it has not had the effect of clarification. It will have, possibly unintentionally, the effect, if it is passed, of restricting the rights of religious groups to work with those of the same views, holding the same religious convictions, and it will, if passed, create the confusion it seeks to avoid. Therefore I, too, support Amendment 98.

Lord Pilkington of Oxenford: My Lords, I want to widen the debate somewhat, because it touches the very roots of democracy in society. It has been a fundamental principle of the democratic state, certainly over the last 100 years, that independent corporations within the state have a freedom and enjoy a freedom. Churches and faith groups are independent corporations. Their life does not spring from the state, but from within their own communities. Freedom, for them, means the right for their members to follow the rules of their faith, provided it does not offend decency or public order.

Even in a different age, less democratic, more intolerant than our present age, this principle was observed. In 1795, the narrow Protestant Parliament of Ireland gave £8,000 to the Catholic Church to build the seminary at Maynooth. The English state, when the Union of Parliaments occurred, continued with this grant, which rose to about £26,000 a year, a lot of money in the early 19th century. The Bill alters all this and we are in grave danger of using the ideology of equality to question the demands that faith communities make on their pastors and followers.

Traditionally, faith schools—the essence of faith in many cases: the Roman Catholic Church almost bankrupted itself to create its schools—demanded that their staff followed the practices of the faith that the school represented. This was certainly the case when I was briefly in charge of a parish in the early 1960s, when teachers in local schools were expected to respect the faith that the school represented and on which the faith had spent large sums of money. The Bill seems to me to restrict this right to employ members of their creed and those who practise their moral code only to those who are pastors, priests or teach doctrine. I think it ought to extend to many more people, particularly teachers in schools, and not be restricted to that narrow area.

I return where I began: that hard-fought right of independent corporations to express themselves is an important element of what we mean by freedom in the state. Dictators always restricted these rights of churches, trades unions and more, and this, in a funny way, is what we are doing at the moment in the interests of ideology.

In France, savage anticlerical legislation was passed in 1905. The result was 50 years of conflict—fifty years in which charitable activities were restricted—and we see a faint sign of how that could occur with us in what has happened to the Catholic Children's Society. It is a paradox that in the early 19th century the narrow, intolerant Protestant minority was prepared to build a Catholic seminary and that our generation, which is supposedly generous and understanding, is actually restricting the rights of church bodies and inaugurating conflict that can only do harm. I beg noble Lords to support the amendment.

4.45 pm

Baroness Turner of Camden: My Lords, these amendments deal with the requirements which an employer with a religious ethos may demand of his employees. Clearly, the Bill does not intend that an employer with a religious ethos should be able to require that all employees, irrespective of the job for which they are employed, must be adherents of the employers' religion. It does, however, provide for certain exceptions. It is clear that the Government's amendments in this group are intended to set out clearly that an employer may not insist on such a requirement for most jobs, only for those that relate directly to the purposes of organised religion. Amendment 99A sets this out very clearly, and I support it; it clarifies wording that is not as clear as some of us would like.

I oppose Amendments 98 and 99. The Bill allows an employer with a religious ethos to employ people with protected characteristics only if it is,

"a proportionate means of complying with the doctrines of the religion",

or,

"a proportionate means of avoiding conflict with … a significant number of the religion's followers".

The amendments, however, seek to remove the words "proportionate means". This is not acceptable. It is an attempt to interfere with the rights of others, which the Bill intends to protect. It is unfair, unjust, and more likely to lead to conflict than anything else. Do the movers of the Bill really see any virtue in being disproportionate? Of course not. The Government have attempted to meet concerns that have been voiced by certain religious groups, and I therefore hope that they will insist on maintaining the wording.

Lord Davies of Coity: My Lords, noble Lords might recall that at Second Reading and on the second day of Committee I expressed my fear that the Christian church was being marginalised in this country. I believe that the Government understand this, hence their own amendment, but like other Christians I believe that their stance does not go far enough. I shall therefore

vote for Amendment 98, moved by the noble Baroness, Lady O'Cathain, and supported by the right reverend Prelate the Bishop of Winchester and my noble friend Lord Anderson. If the amendment fails to be accepted, I will not oppose the Government's amendment simply because half a loaf is better than no bread at all. It was my Christian faith that guided me into the trade union and political movements and that led me to be for the abolition of the capital punishment long before it was abolished in this country. My support for my Labour Government is second only to my Christian faith. The standards and morals of the Christian church makes this country a much better place, and I shall always oppose any measures that seek to marginalise the Christian church.

Lord Lester of Herne Hill: I hope in this debate that I am the lighthouse and not the aircraft carrier, but we will see. Before I come to the law, I want to mention the episode of the noble Lord, Lord Sainsbury of Turville. I think it was I who pressed him because I was concerned that the then regulations were too broad and would allow a religious body to discriminate against a lesbian cleaning lady. That concern led to the judicial review in the Amicus case and Mr Justice Richards, as he then was, giving a strict interpretation of broad regulations indicating that they could not be read in a loose way. I say that to avoid some misunderstanding which has been expressed about that case and his judgment.

Amendments 98 and 99 would remove the principle of proportionality. That is a general principle of European law by which the United Kingdom is bound. The amendments would remove that principle as regards differences of treatment made to comply with the doctrines of a religion. As has been said, there are a number of exemptions for religious requirements in paragraph 2 of Schedule 9 relating to sex, marriage, sexual orientation and so on. For example, in certain circumstances it is permissible, for the purposes of religious employment, for a difference of treatment to be made in accordance with a requirement either not to be of a particular sex or relating to sexual orientation—quite right, too.

Under the Bill, these exemptions must be applied in a manner that is a proportionate means of complying with the doctrines of religion. Removing proportionality here, as these amendments seek to do, would mean that any religious organisation could implement the requirements without a sense of proportion and in breach of the general principle of European law. In other words, the organisation could lawfully use its powers in a way that was excessive. That would inevitably lead to complex and costly litigation, as happened in the Amicus case, in our and the European courts, the outcome of which would be to require the principle of proportionality to be applied as part of the law of the land, whatever the movers of these amendments and the seven Bishops now present may say. It is the law under European law and it is the law of the land. Proportionality is required whether they like it or not.

In my view—James Dingemans QC takes controversial views on some of this in other contexts, with great respect to him—Amendments 98 and 99 are outwith the scope of Article 4(1) of the EU framework directive, while Amendment 100, in opposition to government Amendment 99A, would also clearly be incompatible with European Union law. In view of the way the debate has gone, it is important to have regard to what is meant by proportionality. The European principle of proportionality is at the heart of the Bill. It requires a fair balance to be maintained between rights and freedoms where they compete or conflict with each other. The principle of proportionality is inherent in European Union law, European convention law and our own law. It applies to our legal system via the Human Rights Act and specific legislation such as in the Equality Bill. That principle is allied to the European principle of legal certainty.

Lord Pilkington of Oxenford: Would the noble Lord explain how other members of the European Community—France, for example, and Germany to some extent—restrict teaching in their faith schools to members of the faith and the practice of the faith? How have they avoided the European Court?

Lord Lester of Herne Hill: I am not addressing the issues about faith schools at this stage and it is confusing to do that. I promise that we will come to that. But I am keen, and it is very important, to stick to the issues with which we are now concerned. Faith schools are another difficult matter to which we will come later. In addition, the European principle of legal certainty requires that civil rights and obligations, such as the right to equal treatment without discrimination, be clearly stated and that the exceptions to the rights also be clearly stated so that the law is intelligible and accessible. We, and the Government, have to try our best to meet the principles of proportionality and legal certainty as law makers.

A restriction on a right or freedom has to be a proportionate interference. There must be a reasonable relationship or proportionality between the means employed and the aim pursued. The European courts and our courts have made it clear that the means used to impair the right of freedom must be no more than is necessary to accomplish the legitimate aim. Here, we are concerned with the fair balance required between the fundamental right to respect for one's private and family life without discrimination, and the fundamental right to freedom of thought, conscience and religion. Those rights are protected by Articles 8, 9 and 14 of the convention and by EU equality law.

A core aspect of self-determination and individual autonomy is the protection conferred by Article 8 of the convention on sexual relations and what are called "proclivities", sexual orientation and identity, all of which are part of the core aspects of an individual's private life. For example, decades ago the archaic law treating homosexual conduct as an offence, even if conducted in private and between mature and consenting adults, was held to be contrary to Article 8, and we had to change our law.

The Bill protects gay and lesbian individuals against discrimination. But, like the regulations it replaces, it includes necessary exemptions to accommodate the fundamental right to freedom of thought, conscience and religion, exceptions well recognised in the EU framework directive. In other words, the right to be

[Lord Lester of Herne Hill]
protected against sexual orientation discrimination is not absolute. The same applies to freedom of conscience and religion. There are no absolutes here.

The Strasbourg court has made it clear that the controlling doctrine is that of proportionality. A classic example was the case about the bar on homosexuals in the Armed Forces. Religious and other beliefs, and convictions, are part of the humanity of every individual, including atheists, agnostics, sceptics and the unconcerned. It is only the manifestation of religion or belief that may be subject to prescribed limits. That reflects the fact that the way that beliefs are expressed in practice is what can impact on others.

Despite the protestations made by senior clerics, including those on the Benches here, I believe that the measures in the Bill accommodate the reasonable needs of the churches and other religious organisations to manifest their beliefs and to practice their faith in accordance with their beliefs, subject to the overriding requirement of proportionality. I find it astonishing and deeply depressing that the right reverend Prelates should find the principle of proportionality—a principle which is deep in Christian ethics—to be a principle to be removed from this Bill. I am, frankly, appalled that that should be the position.

Noble Lords: Oh!

Lord Lester of Herne Hill: I believe that the Bill strikes a fair balance and that the removal of the principle of proportionality would be clearly contrary—

Baroness Butler-Sloss: Does the noble Lord see any difference between the wording in Regulation 7(3), which did not have proportionality, and the word "proportionate" in the amendment.

Lord Lester of Herne Hill: Of course there is a difference in the wording. But in each case, under the regulations and now, the European principle of proportionality has to be complied with. Therefore, it is highly beneficial that the law now makes it clear in the current wording, which is why the principle of proportionality is clearly spelt out. It does not change anything in existing law, since it was always the case, as the Amicus case demonstrates, that any exception must be strictly construed in accordance with European law.

We have been here before, in 1998. I am not sure who else remembers what happened during the passage of the Human Rights Bill. At that stage, amendments were approved in this House, as could happen today, to give specific protection to religious beliefs because of concern among the churches that the Bill might force them and their members to engage in acts contrary to their religious principles, for example in relation to whom they would marry in a church or whom they would employ. Those amendments, as were subsequently shown, were wholly inappropriate and unnecessary. By a concession made to the churches, however, Section 13 of the Human Rights Act was included, which states:

"If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right".

5 pm

Lord Campbell of Alloway: Those amendments were moved by me to get religious toleration an exclusion from the very sort of position that the noble Lord is talking about. I withdrew the amendment because an arrangement had been made with Lambeth Palace. I never saw the arrangement; I do not know what it was, but I withdrew the amendment, so it was never in fact enacted.

Lord Lester of Herne Hill: My memory is normally terrible, but I think what happened was that the House did approve them, the Commons disagreed and then by compromise Clause 13 was put in. Perhaps that is beside the point at the moment. The point I am making is that all of this happened then. A concession was made, there has been no subsequent case in which the concession was ever needed, because in practice the Human Rights Act did not affect the churches, but the same kinds of concerns were then expressed.

The Equality Bill gives very strong protection to the rights and freedoms of the churches and religious organisations and, if I can take up the word used by the most reverend Primate the Archbishop of York, I agree with him that magnanimity is of the essence. The Government have in fact, although you would not think so from some of the responses, been magnanimous in the way that they have included Amendment 99A. I am not going to go over the ground on this amendment, but I would like to explain about the framework directive because it is really important. UK law has to implement the directive and it is important for the Bill to ensure full compatibility. In my view, it does so if it is amended as the Government propose and if its present text is approved.

The Bill and Amendment 99A maintain a fair balance between conflicting rights and freedoms and meet the obligations under the directive. In the Amicus case, the High Court held that Regulation 7(3) of the old regulations does not interfere with rights under Article 8(1) of the convention and that it strikes a fair balance. As I have explained, however, the problem about Amendments 98 and 99, which I very much hope will not be approved today, is that they overreach in seeking to widen further the rights of churches and religious organisations to discriminate because of someone's sexuality. They are not compatible—I would love to know whether the Minister and her legal advisers agree with this—with the UK's obligations under the directive.

You will be glad to know that I am not going to quote the directive. It goes into great detail. The current wording reflects current law. The Government amendment is even clearer and faithfully reflects the scope of the exception currently in the old employment regulations. I am glad that the Minister has clarified that Amendment 99A would not permit sexual orientation discrimination against those involved in youth work. I consider that Amendment 100 would allow, although that may not be the intention, arbitrary and disproportionate discrimination by religious organisations and therefore should not be accepted.

The Lord Bishop of Winchester: The more I listen to the noble Lord, the more I find, as was the case when I listened to the noble Baroness, Lady Turner, that I am

glad that my name has been added to the amendments tabled by the noble Baroness, Lady O'Cathain. It simply is not true to say that those on this Bench have no interest in or respect for proportionality, and of course that is engaged in all this. I have a vivid memory of conversations I had in my previous post with a Muslim cleaning lady in a voluntary aided church school in the middle of Stoke-on-Trent. She was entirely properly engaged there and, rather intriguingly, she was extremely impressed with the Christian religion as she found it enunciated in the school that her children attended. But it was entirely right that she should be an employee of the school in that role.

It is of course true that proportionality is a requirement in European law, but as I understand it, the 2003 regulations, as Her Majesty's Government successfully argued in the Amicus case, themselves strike a proportionate balance and there is no need for the legislation itself to employ the term in order to achieve proportionality. Indeed, as the noble and learned Baroness, Lady Butler-Sloss, so carefully drew out—it is a privilege to be among those who support the amendments with her—adding the word "proportionate" now is likely to change the interpretation that the courts will make of this legislation. It will require the courts to inquire into the precise nature of the particular religious doctrines in order to discover what is the minimum necessary to comply with them. I am advised that the existing 2003 legislation already complies with EU proportionality requirements without giving rise to legal wrangles of this kind about doctrines. That seems to be common sense and sounds to me, although I am not a lawyer, like responsible law.

The question that has not been adequately answered is why the Government, having said all along that they are consolidating and replicating—we have heard that word this afternoon—find themselves introducing this fresh material when, again so far as I understand it, they won the case in the High Court which alone could justify bringing the word "proportionate" into the sections that Amendments 98 and 99 seek to remove it from, and thus go down the road of Clause 2(8) as it appears in the Bill. As others have said, the beauty of Amendments 98 and 99 is that they restore the status quo, which we believe to be entirely defensible. I am not convinced by the noble Lord's language about the magnanimity of the Government. On the contrary, I reacted with a real pang of regret when the Minister said that she still sees no problem with Clause 2(8), but perhaps it was important to "clarify but not change", to use her words. However, it is precisely because the subsection is so profoundly objectionable to us that the only way forward is its removal, and here I bring into play the considerations enunciated by the noble Lord, Lord Pilkington. I shall not go into the detail so beautifully laid out by the noble and learned Baroness, Lady Butler-Sloss, which makes it clear why we reckon that government Amendment 99A will make for a great many more problems than removing the amendments altogether.

Lord Lester of Herne Hill: Is the right reverend Prelate aware that Article 4(1) of the framework directive states specifically that the characteristic in question must constitute,

"a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate"?

What is wrong with putting that obligation expressly into the Bill so as to conform fully with European law?

The Lord Bishop of Winchester: Obviously I am aware of the material from which the noble Lord has quoted, but it remains my contention that, granted that the Government's primary intention as I understand it is to consolidate legislation into a single Bill, to draw in a fresh use of that word at this point is likely to do a great deal more mischief than good. That said, it would be rash—

Lord Wedderburn of Charlton: I hesitate to interrupt the right reverend Prelate again, but surely the word "proportionate" is already implied by European law. Therefore, for our statute to use the same word is merely accepting a European legal doctrine. Where is the freshness?

The Lord Bishop of Winchester: The freshness is because the Government have all along said, although we have not accepted it, that they are consolidating and replicating, rather than narrowing, the legal provisions under which we act.

It is important at this point in the debate to revisit two areas. The first is why these questions are of such importance to churches, religious organisations and charitable organisations with a religious ethos. For centuries, religious organisations and churches have employed lay people in senior administrative and pastoral roles. The question that the noble Baroness, Lady Butler-Sloss, raised from Ellel Ministries is an important one—namely, to check that such organisations would not fall foul of this legislation if they were seeking to employ people necessary for the working of their organisation. That was the fundamental point made by noble Lord, Lord Pilkington. Churches need to be able to appoint members, either of their own particular church or of some other, who are of good standing and whose ways of living and behaving advocate and credibly represent, rather than undermine, the Christian faith and the objectives of the organisation concerned—not, as I have already said in relation to the word "proportionate", cleaners or people doing the books or whatever, but people representing those organisations according to one bullet point or more on their job description.

My anxiety is that, notwithstanding a huge amount of work done by the Roman Catholic Church, the Church of England, the Evangelical Alliance and a range of other organisations, we still seem not to be getting across the sheer reality in so many churches. With youth workers, for instance, many a parish in my own diocese employs lay people as part of the paid staff under the leadership of the minister to work with students, families and children. Listening to the noble Baroness just now, I had the vision either of a whole new department of state responsible for vetting all these contracts to see whether these people were a genuine occupational requirement, or of the churches being burdened with endless lawsuits of one kind or another. I have a lay assistant, not a chaplain, who represents me in a whole range of ways; his job description notes that he does so. Is it not entirely reasonable that he should be a Christian of good standing whose life

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tallies with his Christian profession and who is therefore able to represent me, not someone living in some quite other way so as to make his representation impossible and to undermine my own activity?

Churches, religious organisations and charities have senior lay staff, one element of whose responsibility is to represent the convictions, character and vision of their organisations. I was glad that the noble Baroness mentioned some of those. It is a matter of great importance to us. The same is true of the senior staff of the Evangelical Alliance. An English diocese in the Church of England has a diocesan secretary—the head of its diocesan administration—who is almost always lay. It would be impossible for us to work with that woman or man, representing us widely in a whole series of contexts—

5.15 pm

Lord Harries of Pentregarth: I am sorry to interrupt the right reverend Prelate, but the whole tenor of his speech seems to be in support of the Government's amendment. I cannot at the moment distinguish his position from what has already been made clear by the Government about the kind of categories that will be included—the very categories that he is mentioning.

The Lord Bishop of Winchester: That is not the point, as I and others see it. It seems precisely that, just as the noble and learned Baroness, Lady Butler-Sloss, noted, this language of "exists" threatens to narrow rather than to replicate the existing law and threatens to lead us, because there are people who want to bring cases against churches to test all this out, into defending an utterly unnecessary series of legal actions. We are as aware of the question of proportionality as anyone else is and we know the background law. That is my response.

My anxiety is that the kind of things that I have been speaking of make paragraph 2(8), as we have been saying for months, simply an unrealistic nonsense. The situation is little improved by government Amendment 99A. The Government are quoted in paragraphs 175 and 176 of the Joint Committee on Human Rights scrutiny report as saying that they are confident that they understand the legitimate needs of the churches in this matter, but their own amendment undermines that still further. It is for that reason that I ask the Committee to support Amendments 98 and 99.

Lord Warner: Does the right reverend Prelate accept that, even if this Committee passes the amendments proposed by the noble Baroness, Lady O'Cathain, the reality is that he will be governed and restrained anyway by the framework directive, so he will be back straightaway in the position that the Government's amendment produces?

The Lord Bishop of Winchester: No. We have heard that point argued on different sides of the Committee by eminent lawyers and I am by no means convinced that the noble Lord is accurate in what he has said. If he were, the points made by the noble Lord, Lord Pilkington, who is no longer in his place, would be exactly exemplified.

Lord Lester of Herne Hill: My Lords, the right reverend Prelate said that I have not been accurate. Does he mean by that that I have misquoted the directive and its reference to proportionality, or the case law? What exactly does he mean?

The Lord Bishop of Winchester: My Lords, that would be a case for a judge, not for me.

Baroness Deech: My Lords, I have thought long and hard about this matter and I wish to share a short and general thought on the issue. Equality, human rights and freedom have become in themselves a religion or a philosophical belief—almost organised, in fact, given the number of bodies that exist to enforce them. We have, therefore, a clash between two sets of religious or philosophical beliefs and I see no reason why one should be superior to the other. Indeed, equality, freedom and human rights have grown out of the older established religions. To prevent the older established religions from continuing to teach their principles will, in the end, produce a generation that cannot see the point in equality, freedom and human rights, the justification for which lies originally in religion.

Since we are, in my view, dealing with clashes of philosophical beliefs, there is a danger for those who uphold equality, freedom and human rights—I, of course, am one of them—that this becomes like a juggernaut, crushing all other religions. Anyone who stands in the way gets the sort of treatment that reminds me of what took place when there were clashes between the organised religions a few hundred years ago. It behoves those who believe in equality and freedom to be magnanimous and tolerant and to allow other religions the same freedom that equality itself, and all that goes with it, has.

It is for that reason that I support the amendments tabled by the noble Baroness, Lady O'Cathain—with one other proviso. Court intervention in religious matters has not worked well. If, according to European law, we must be proportionate, writing that into the legislation is unnecessary because it is there anyway. However, the courts have great difficulty. I instance a recent judgment about a faith school where the noble and learned Lords of the Supreme Court—not always Lords now—admitted that it was a shame that the case had come to court and that what was being done was not at all appropriate. We ended up with a rather sad judgment, which flew in the face of the way in which Jews have defined themselves for thousands of years. The intervention of the court should be avoided if at all possible. It costs hundreds of thousands of pounds and may not be appropriate.

This is a case for magnanimity, tolerance and flexibility. Therefore, I urge your Lordships to support the amendments tabled by the noble Baroness, Lady O'Cathain.

Lord Graham of Edmonton: My Lords, I rise to make a brief intervention. Over the weekend, I listened to the warning given to this House that today there would be a big issue that should merit our attention. The House is aware that, over the years, in religious matters, I have not played a part—never mind a major part. However, I was moved to reflect on this situation.

Many people in this House—and some make a declaration of it—are Christians, with beliefs and doctrines, and a life encompassed by a religious phrase. I confess that, at my age, I have been open to persuasion from a great many people and a great many causes but have never been moved to declare myself a Christian with a capital C. When I look at what Christianity is—its precepts and concepts—I subscribe to them. When I was younger, I was a Sunday-school teacher, which I enjoyed. When I joined the Royal Marines in 1943 and the man in charge said, "I now need to take down your religion," I said that the only religion I could remember is the Congregational Church and that I was a member of the Boys' Brigade. He said, "Right. You're an OD." I asked, "What's an OD?". An "OD" stood for "other denominations".

I have gone through life not moved as obviously as so many people here, and in other places, are by these issues. When a Bill appears, people can see that there is an aspect to it that needs to be varied, words changed. I came to the Equality Bill not moved by a religious fervour, but moved by the kind of things that most people understand by a lack of equality in gender, economics and many other ways.

What the Government have been doing, defending and attacked for doing is listening to what has been said. It remains for the House to decide whether they are right or wrong. In a few minutes time we will go through the Lobbies.

I cannot recall that people in my former seat of Edmonton talk of little else but proportionality or things like that. Quite frankly, most ordinary people are not moved by the issues that are taking centre stage here. An hour ago, the Government and the Leader of the House were trying to get the wording as right as possible.

Amendment 98 states,

"leave out 'application is a proportionate means of complying' and insert 'requirement is applied so as to comply'".

Noble Lords might be able to understand the tautology there, but it is rather difficult for someone like me to do so. Amendment 99 states,

"leave out 'application is a proportionate means of avoiding conflict' and insert 'requirement is applied so as to avoid conflicting'".

We have preconceived ideas of where we stand in the political spectrum, but I believe that the Government are trying to give the House its best shot to deal with inequalities.

Reference has been made by more than one noble Lord to the briefs that they have received. I have not received those briefs, but I received briefing from the Humanist Association and other bodies. I respect those bodies and I read the briefing. The issue on which I received more representations than any other was Section 28. I received more than 500 letters on that. Out of courtesy I replied to all of them and said that I would listen to the debate and take note. I cannot believe that the issue we are discussing will arouse as much passion as Section 28. That issue, which was so big and aroused such strong feelings, was accepted and has faded, and the Government have done their best to move on.

As regards religious tolerance, I detect that certain words indicate that the Church of England and religious bodies and faiths feel that they are being attacked, undermined or not listened to. I do not speak for the Minister or for the Government, but, frankly, that notion is laughable and ludicrous. The Government are trying to do what they believe is right and are listening very carefully. The Minister will point out that the last thing this Government want is another fight with somebody else; they have enough on their plate and do not want any more. The Government deserve support for their attitude to the Bill, and will get mine.

The Lord Bishop of Exeter: My Lords, I am grateful to the noble Lord, Lord Lester, for taking us in his inimitable way through the wider complexities of European law and regulation. I should like to return to that.

Reference has been made to the reasoned opinion of the European Commission concerning the implementation in the UK of the EU equality and employment directives. I fully accept the assurance that Amendment 99A is not a response to that reasoned opinion, but is motivated by listening to the concerns of the churches and other faith communities and trying to meet them, for which I am grateful. However—there is always a "however"—there is a further sense in which the EU context is, I believe, both relevant and instructive. The only other two EU states against which infraction proceedings have been taken to date in connection with the employment framework directive and the equal treatment directive are Ireland and Germany. In Germany, concerns have been expressed by the churches which are very similar to those expressed in the Chamber today. In the light of those concerns, that part of the infraction proceeding dealing with the churches has been withdrawn for various reasons, the main one being that Germany, like many countries in Europe, has a written constitution with a self-determination clause for churches, and so the demands of the churches were deemed to be reasonable.

In the UK, we lack such a written constitution, which is perhaps something to be regretted. However, where we stand at present is that implicit in the law as it stands is an acceptance of such faith community self-determination. My problem with the Bill, and the amendment tabled by Her Majesty's Government, is this—and I think it is to this that the noble and learned Baroness, Lady Butler-Sloss, and others have alluded—that it takes us yet a further step away from such self-determination and in the direction of state, court or tribunal determination in matters which touch the very heart of religious faith and life. It is for that reason that I welcome the amendments in the name of the noble Baroness, Lady O'Cathain, and I do hope that your Lordships will welcome them too.

5.30 pm

Lord Tebbit: I will just make one short observation. It seems from what has been said from the Benches opposite and from the noble Lord, Lord Lester, that we have a choice tonight—whether we walk in fear of the law of the Lord or the law of Brussels. I know which way I am going.

Lord Lester of Herne Hill: Before the noble Lord sits down, would he agree that the rule of law—

Noble Lords: No!

Baroness Warsi: My Lords, that is a very interesting point at which to rise. I noted earlier the comments made by the noble Lord, Lord Davies of Coity, about his commitment to his religion over his commitment to his political party. As a Muslim I am quite concerned these days to talk about my commitment to my faith as opposed to my commitment to anything else because I may occasionally be seen as a security risk.

On Amendments 98, 99 and 100 tabled by the noble Baroness, Lady O'Cathain, or the alternative government Amendment 99A, we have heard addressed the definition of employment,

"for the purposes of an organised religion".

Powerful arguments have been put forward by the noble Baroness, Lady O'Cathain, the most reverend Primate the Archbishop of York, and the noble and learned Baroness, Lady Butler-Sloss. As the law stands, where the employment is for the purposes of organised religion, an employer may apply a requirement for a person to be of a particular sex, or not to be a transsexual person, or make a requirement on the basis of the employee's marriage or civil partnership status or sexual orientation, as long as the requirement is in line with a genuine occupational requirement,

"for the purposes of an organised religion".

We believe that the Bill as currently drafted significantly narrows the scope of roles which would be included as,

"for the purposes of an organised religion".

It does this by narrowing the definition of employment in this context to those roles which "wholly or mainly" involve,

"leading or assisting in the observance of liturgical or ritualistic practices of the religion,"

or,

"promoting or explaining the doctrine of religion".

There is a clear difference between a more general "purposes of all religion" and the more narrow specification of what that entails. The current law is contained in regulation 7(3) of the Employment Equality (Sexual Orientation) Regulations 2003, which states that a requirement may only be imposed by religious organisations "so as to comply" with religious doctrine or "so as to avoid conflicting" with religious convictions. The drafting of the Bill would add a requirement to be proportionate, which introduces another layer of legal necessity and so means that it is further removed from the status quo.

As this Bill made its progress through another place and your Lordships' House, the Government have stuck firmly by their claim that they have only clarified and not narrowed the definition. I would question this for two reasons. First, the Government have claimed that there is a need to clarify the language. In another place, the Solicitor-General stated that,

"there has been some confusion about what is meant by 'the purposes of an organised religion'",—[*Official Report,* Commons Equality Bill Committee, 23/06/09; col. 455.]

and that further clarity was needed to "clear up misunderstandings". Yet we have seen no evidence of this. The only support we have heard for this claim of confusion is that there may have been some newspaper advertisements which claimed the exceptions were applicable to jobs when they should not have been applied.

Can the Minister therefore tell us whether there has been any court or tribunal case about specific newspaper articles, and can she inform the Committee what evidence there is of detriment being suffered which would warrant the change in the law? I should state that I would be expecting to see a great deal of evidence to merit that change. The Government have stated time and again that they are not changing the law one iota, but just clarifying it. The fact that they have stuck so firmly to this line, in the face of almost overwhelming opposition and evidence to the contrary, suggests that there must be a powerful argument, backed up by powerful evidence, for the need for this further clarity.

Secondly, the Minister will not be surprised to hear that we would like to raise the European Commission's reasoned opinion 226. Noble Lords will now be aware that the exemptions for organised religion passed in 2003 were broader than those allowed by the employment directive of 2000. Paragraph 19 of the reasoned opinion stated, however, that:

"The UK Government has informed the Commission that the new Equality Bill currently … before the UK Parliament will amend this aspect of the law and bring UK law into line with the Directive".

This brings us to a difficult situation. We have been told that the Government have not changed the law at all, just clarified it. The European Commission has been told, although I hear what the Minister says in response, that it has indeed been narrowed to fit with the directive. Perhaps the Minister could—

Lord Wedderburn of Charlton: I am sure the noble Baroness would not wish to be unfair to the Government in any respect, but it has been argued that, for example, the doctrine of proportionality is already part of European law and was therefore part of the law in this area before this Bill was ever thought of. The fact that the Government have put in "proportionate" has not produced some fresh or new element; it has stated the law as it is, but making it much clearer that benefits for those of a religious persuasion that were not proportionate to the issue would not qualify. This is not therefore a new part of law, although some noble Lords sitting in front of me have argued points about law which are perhaps best left to judges—I would not say merely to lawyers. There is not a new element in what the Government propose.

Baroness Warsi: The noble Lord makes an important point and it is to clear up that confusion that I raised these questions with the Minister. If there is some confusion about what the European Commission says the Government have said, and what the Government say they have said, she should be able to tell the Committee where that confusion arises from. Can the Minister confirm whether appropriate representations have been made to the European Commission about its confused understanding of what the Government have or have not said to them?

The Minister has taken time to inform the Committee of the Government's new Amendment 99A. We are grateful that the Minister has listened to the concerns

voiced from all sides of the House and accepted that the wording in the Bill as it stands does not reflect the Government's claim for their intended policy. Nevertheless, we still find the definition unsuitable. Paragraph (a) makes it clear that Ministers are included, which the previous definition left open. Paragraph (b), however, contains a definition which, it seems, would be rendered the same as "wholly or mainly" in practice. This, therefore, still represents a narrowing of the current situation.

We on these Benches are not asking the Minister to change to law and we are not asking for a new exemption for religious organisations, but the case of Amicus makes it clear. The confusion appears to be in the Government's drafting, in the inclusion of "proportionate" in the Bill. My understanding is that the Government may argue that to take out "proportionate" would raise questions both in the European Commission and in courts of law. We cannot argue that a particular amendment should not be passed because the Government drafted it wrong when they first drafted the Bill. I understand that the Government are making representations to the European Commission that the law as it stands complies. If that representation is being made and the Government believe it, what is the necessity to change the law? I hope that I have made it clear that we are merely asking that the status quo be preserved.

Baroness Royall of Blaisdon: My Lords, this has been an excellent debate on an important group of amendments. I have to say that some aspects of the debate have saddened me, but none the less it has been extremely important and reasonable in many ways.

Amendments 98 and 99 are in the names of the noble Baroness, Lady O'Cathain and the noble and learned Baroness, Lady Butler-Sloss, my noble friend Lord Anderson and the right reverend Prelate the Bishop of Winchester. These amendments would remove the express test of proportionality in sub-paragraphs (4) and (5) of paragraph 2. In effect, paragraph 2 would state that complying with religious doctrine or avoiding conflict with strongly held religious convictions, are automatically proportionate occupational requirements.

Paragraph 2 replaces and harmonises the two separate exceptions for religious occupational requirements in current discrimination legislation that my noble friend referred to when replying to the debate on my noble friend Lord Alli's Amendment 97E. The existing exceptions do not expressly include a proportionality test, as many noble Lords have said, but it is implicit, and its expression in paragraph 2 does not narrow the exception. It simply clarifies the existing law, reflecting, as the Joint Committee on Human Rights pointed out in its recently published report on the Bill, the approach adopted in the Amicus case to which I referred earlier.

In the view of the High Court in that case, one of the existing exceptions, regulation 7(3) of the Employment Equality (Sexual Orientation) Regulations 2003, is

"on its proper construction, very narrow. It has to be construed strictly since it is a derogation from the principle of equal treatment; and it has to be construed purposively so as to ensure, so far as possible, compatibility with the Directive",

that the 2003 regulations implemented. Regulation 7(3) was intended to form part of the implementation of Article 4(1) of that directive, which requires the implementing legislation—regulation 7(3) and, therefore, paragraph 2 of Schedule 9—to incorporate a proportionality test.

The proportionality test is fact-sensitive, meaning that what is proportionate in any particular case will depend on the circumstances. Therefore, in a case being taken to an employment tribunal, this would require assessment by the tribunal, but it would not be necessary or indeed appropriate for the tribunal to determine whether the doctrines of a particular organised religion could themselves be said to be proportionate. Rather, the tribunal would have to decide, in the particular circumstances of the case, whether applying the requirement in question was proportionate to comply with the religion's doctrines or avoid conflicting with a significant number of the religion's followers' strongly held religious convictions. For example, it is unlikely that applying a requirement to a senior church representative not to be married to a divorcee would be a proportionate way of complying with the doctrines of the religion if the person's spouse previously had been married only briefly before converting to Christianity. I am very grateful to the noble Lord, Lord Lester, for his clear explanation of proportionality and the European law. I note the concerns expressed by the noble and learned Baroness and I shall return to those shortly.

It is important to note that the proportionality test appears explicitly throughout the Bill. Removing the test from paragraph 2 of Schedule 9 would put this provision out of step with other exceptions for occupational requirements in Schedule 9 and other areas in the Bill where a test of proportionality applies. It is unclear what the courts or tribunals might infer from a difference of approach in this case.

I come back briefly to the reasoned opinion from the European Commission. I am very grateful to the right reverend Prelate the Bishop of Exeter for his acceptance of the Government's position that I set out earlier. I hope that Her Majesty's Official Opposition will also accept that we did not inform the European Commission that the Bill will amend regulation 7(3) of the 2003 regulations, which paragraph 2 of Schedule 9 replaces, to bring this position into line with the directive. That was incorrectly stated in the reasoned opinion.

Opinions between the Commission and the relevant authorities in the member states concerned are confidential. We of course have to respond to the European Commission. It would not be appropriate for me to state everything that was in our response to the Commission, but the Commission has wrongly accused the Government of saying something. Therefore it would be entirely natural if the Government were to make representations to the Commission, pointing out that we had been wrongly accused. Perhaps I may put it in that way.

5.45 pm

I was asked why we are narrowing the scope of the existing exceptions by including a proportionality test. It is true that the existing exceptions, which paragraph 2 of Schedule 9 replaces and harmonises, do not include

[Baroness Royall of Blaisdon]
an express proportionality test, but they must be interpreted by the courts as if they did, in order to be compatible with European law. In response to the noble Lord, Lord Tebbit, that is not to say that in following European law we need not necessarily follow the law of the Lord. Therefore, for the sake of clarity, we are spelling out the requirement implicit in the existing exceptions. Not doing that would put the exception in paragraph 2 out of step with other exceptions for occupational requirements in Schedule 9, the wording of which has been harmonised. That is consistent with the Bill's fundamental aim to simplify and harmonise the law, wherever possible.

The noble and learned Baroness, Lady Butler-Sloss, suggested that by adding proportionality the Government meant that the exception meant something different. Making the test explicit simply clarifies the existing law, reflecting the approach adopted in the Amicus case. That is also the view of the Joint Committee on Human Rights.

I turn to Amendment 100, tabled by the noble Baroness, Lady O'Cathain, the noble and learned Baroness, Lady Butler-Sloss, my noble friend Lord Anderson of Swansea and the right reverend Prelate the Bishop of Winchester. This amendment is necessarily consequential on government Amendment 99A, but of course the noble Lords wish to remove the definition in paragraph 2(8) of employment,

"for the purposes of an organised religion",

not replace it.

Removing the definition would reduce legal certainty and be a recipe for confusion. Organised religions and people whom they employ or who apply to work for them would not know for certain to which posts a requirement related to sexual orientation, for example, could lawfully be applied. It would also increase the risk of the exception being misused. In the event of legal proceedings, employment tribunals and the courts could not be certain as to which roles Parliament intended the exception to cover.

The noble Baroness, Lady O'Cathain, asked whether the Labour Party would expect Greenpeace to employ oil executives. This exception is not about the ability of churches or religious organisations such as charities to require employees to share their faith. There are separate exceptions for this in paragraphs 1 and 3 of Schedule 9. This particular exception allows churches and mosques to discriminate in limited circumstances because of sexual orientation, marriage, civil partnership and gender reassignment.

In response to questions on the Government's amendment, I am grateful to my noble friends Lady Turner of Camden and Lord Graham of Edmonton for their support. The noble and learned Baroness, Lady Butler-Sloss, asked what "exists" means. It means the same as what my noble friend Lord Sainsbury meant when he used that expression during the passage of the 2003 regulations, which the High Court in the Amicus case interpreted. As I said earlier, the activity must be intrinsic to the role, but it need not be the entirety of the role. The noble and learned Baroness asked about a youth worker who taught Bible classes and drove the school bus. That was a good example, but, as I suggested earlier, the situation would depend on the purpose of the role and the nature of the work involved. Organised religions must be prepared to justify applying requirements of this kind on a case-by-case basis. It is important to emphasise that the exception applies to a very narrow range of employments.

The right reverend Prelate the Bishop of Winchester and others suggested that the Bill as the Government wish to amend it would make it more difficult for people to bring forward exceptions, and there would be more tests, bureaucracy and activity in the courts. We do not believe that at all. This Bill is about maintaining the status quo: it certainly would not mean more work for lawyers.

The right reverend Prelate the Bishop of Winchester also asked if paragraph 2 would prevent any lay assistant from being a Christian of good standing. It certainly does not prevent a lay assistant to a bishop from being a Christian. It would allow the application of requirements related to sex, marriage and civil partnership, and sexual orientation.

The noble Lord, Lord Pilkington, spoke of the important principle of freedom. The freedoms that we enjoy and celebrate will not be affected in any way by the passage of this Bill. As I understand it, the noble Lord was arguing for the widening of exceptions. That would not be acceptable: we want the status quo. Like all Members of this House, I want to enjoy and celebrate tolerance and to continue to do so.

As I mentioned earlier, the right reverend Prelate and others are under the impression that our amendment would mean a narrowing of the exceptions. That is not the case. Like the noble Baroness, Lady O'Cathain, we believe that there should be exceptions. There are exceptions, but there must be clarity; we do not want to leave any extra work for lawyers.

The right reverend Primate the Archbishop of York asked if the Government amendment would be limited to posts which exist only to promote or represent the religion. The answer is no: the word "only" does not appear. As I have made clear, posts which exist to promote or represent the religion are not limited to posts which only involve one or more of these activities, but one or more of them must be intrinsic to the post.

The Archbishop of York: I am very grateful for the noble Baroness's explanation. However, I am still not sure what is meant by "exists to". Does that mean promoting, representing or explaining has to be the defining characteristic of a job, rather than simply one of its necessary characteristics? The Minister has to define that. For example, the Secretary General of the Church of England sits on the Archbishops' Council, takes its minutes and does a number of things. He exists to do that, but that is not the only definition of the role of secretary general. Sometimes you may find him accompanying me to something else, which has nothing to do with the General Synod of the Church of England. Can the Minister assure us that unnecessary arguments about the meaning of "exists to" will not be introduced? My argument with the Minister is to do with the drafting, not where the Government are going.

Baroness Royall of Blaisdon: My Lords, as I mentioned when I originally spoke to this amendment, the Secretary General of the Synod would certainly

be covered. The point is that one of these characteristics must be intrinsic to the post: that is the test.

Earlier on, the right reverend Prelate and the noble Baroness, Lady Warsi—

Baroness Trumpington: He is a Primate, not a Prelate.

Baroness Royall of Blaisdon: Primate, I beg your pardon: he is indeed a Primate, my Lady.

They asked about court decisions. The point is that most cases do not come before a tribunal or court, however there is evidence that the absence of a definition caused confusion and that the existing exceptions were being misused. The Government received examples of where the exceptions appeared to have been inappropriately applied, such as advertisements by the Church of England for a pensions assistant and a director of finances.

There has rightly been much discussion of the need for exceptions, and we respect that need. There has also been talk of magnanimity. Magnanimity is justice, but I believe that what we are doing is justice. The Government are providing clarity. They are not narrowing the provision; they are consolidating and replicating but they are also clarifying, and good legislation means clear legislation.

The right reverend Prelate the Bishop of Exeter suggested that the amendment opens the Church up to more court intervention—I have spoken to this earlier. We believe that the opposite is true. By setting out clearly in the legislation the circumstances in which the exception applies, and therefore the balance of rights which must be struck, we believe that the courts will not need to adjudicate on these matters. As the judge said in the Amicus case,

"it was entirely proper in the present case for the State to seek to balance the rights of homosexuals against those of followers of organised religions. The strength of feelings on both sides is amply demonstrated by the claims and interventions in these proceedings. The balance struck is proportionate".

Our aim is to maintain that balance.

The noble Baroness, Lady O'Cathain, rightly wants to stand up. She mentioned her package of amendments: I would like her to withdraw her Amendments 98 and 99, but if she tests the will of the House, I will wish to move the government amendment.

Finally, I agree with the most reverend Primate that principles and values matter. Among the principles that we all cherish are liberty, tolerance and equality. I believe that what we are discussing and what the government amendment delivers adhere to those three principles which we all cherish.

Baroness O'Cathain: My Lords, I am very grateful to all those who have taken part in this debate. I am grateful to the Minister, whom I count as a friend even if we do not always agree. We have had some excellent speeches, and some particularly wonderful speeches from the Bench of bishops, which clarified a lot of things in my mind.

The odd thing about this debate is that those of us who want to see Amendments 98, 99 and 100 succeed agree with government policy as stated by the Minister. The Government say that they do not want to change the legal position for churches when it comes to the ability to appoint staff—neither do we. They say that they do not want to narrow the exemptions—neither do I; neither do we. I just want the status quo. The noble Lord, Lord Lester, stated that we want to widen the exemptions. We have never stated that—we have never asked for a widening of the exemptions; we just want the status quo.

Let us not forget that in 2004 the status quo wording was challenged in court by the Amicus union. The law of the land at present is the law as stated by our High Court in the Amicus case. This supports the original wording to which we want to return—not to the reasoned opinion of the European Commission, or, with respect, to the opinion of the noble Lord, Lord Lester.

Finally, you will be glad to hear, I will speak generally about the Bill. In another place, Michael Foster MP, the Equalities Minister, told one national newspaper that churches should be "lining up (their lawyers)" in anticipation of legal challenges. That cannot be the right approach to protecting religious liberty, but without the package of Amendments 98, 99 and 100 that is precisely what would happen. We must keep the status quo, and I wish to test the opinion of the House.

5.59 pm

Division on Amendment 98

Contents 216; Not-Contents 178.

Amendment 98 agreed.

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6.16 pm

Amendment 99

Moved by ***Baroness O'Cathain***

99: Schedule 9, page 165, line 8, leave out "application is a proportionate means of avoiding conflict" and insert "requirement is applied so as to avoid conflicting"

Amendment 99 agreed.

Amendment 99A

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

99A: Schedule 9, page 165, line 10, at end insert—

"( ) Employment is for the purposes of an organised religion only if—

(a) the employment is as a minister of religion, or

(b) the employment is in another post that exists (or, where the post has not previously been filled, that would exist) to promote or represent the religion or to explain the doctrines of the religion (whether to followers of the religion or to others)."

6.17 pm

Division on Amendment 99A

Contents 174; Not-Contents 195.

Amendment 99A disagreed.

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6.31 pm

The Lord Speaker: I inform the House that if Amendment 100 is agreed, I cannot call Amendment 100A because of pre-emption.

Amendment 100

Moved by ***Baroness O'Cathain***

100: Schedule 9, page 165, line 13, leave out sub-paragraph (8)

Baroness O'Cathain: I wish to test the opinion of the House.

6.32 pm

Division on Amendment 100

Contents 177; Not-Contents 172.

Amendment 100 agreed.

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6.45 pm

Amendment 101 had been withdrawn from the Marshalled List.

Amendment 101ZA

Moved by ***Baroness Turner of Camden***

101ZA: Schedule 9, page 165, line 26, leave out "an" and insert "a genuine"

Baroness Turner of Camden: My Lords, in moving Amendment 101ZA, I shall also speak to the other amendments in the group.

Baroness Thornton: Would noble Lords please leave the Chamber quietly?

Baroness Turner of Camden: Amendment 101ZA seeks to make a relatively minor amendment to the part of the Bill that lays down requirements relating to religion or belief. Paragraph 3(a) uses the words,

"it is an occupational requirement".

I want it to say, "it is a genuine occupational requirement". I do not suppose that anyone can really disagree with that, although we shall have to wait and see.

The next amendment in the group relates to a rather more complicated issue. The intention behind it is to limit the ability of an employer with a religious ethos to require that an employee should be an adherent of a particular religion, normally the employer's own. The Bill provides for certain exceptions to be permissible in limited circumstances, but I do not see why an exception of any kind should be permitted when the employer in question provides a public service. This may increasingly come to be the case, as there seem to be arrangements in hand for charitable and religious organisations to take on responsibility for services that are normally provided by public—mainly welfare—services. Such services would normally have equal opportunities policies for their employees. There is no reason why a religious or charitable organisation that undertakes work in the public arena that is funded by the taxpayer should be able to insist that the employees who carry out the work should be of a particular religion. That is surely unfair and against the general ethos of the Bill.

Amendment 101C, my final amendment in the group, would insert after line 31 on the same page of the Bill:

"The exception under paragraph 3 shall not be used to justify discrimination on any other protected ground".

That is important, because we are talking here only about religion and belief and we do not want discrimination against characteristics that are already protected quite specifically in the Bill—sexual orientation, disability and so on—to be possible somehow or other in this provision. That needs to be taken account of.

I do not know why Amendment 125A, in the name of the noble and learned Lord, Lord Mackay of Clashfern, has been included in this group of amendments. I do not know what it intends, but it appears to relate to sexual orientation, which is one of the protected characteristics in the Bill. It is not appropriate for this group of amendments, but I shall listen with interest to what the noble and learned Lord has to say in support of it. On the face of it, I do not agree with it.

The noble Lord, Lord Lester, has tabled a very similar amendment to mine. Again, I wait with interest to hear what he has to tell us, but my view is quite simple: a religious organisation that gives a public service does not have the right to insist that its employees should be of that religion. It is a very simple point and I beg to move.

Lord Lester of Herne Hill: I shall speak to this group of amendments as a whole. I cannot resist making the observation that, in the Division, the Lords Spiritual managed to vote as turkeys for Christmas—if noble Lords will forgive me for saying so—by removing the new and magnanimous protection that they were given. Proportionality was taken out of the Bill, probably encouraging the European Commission to suggest that our statutory powers will infringe its own and lead to further trouble. With this group, I will try to get clarification that the Bill will comply with EU law.

Amendment 101ZA, in the name of the noble Baroness, Lady Turner, will insert "a genuine" into the phrase,

"it is an occupational requirement",

in paragraph 3 of Schedule 9. Can the Minister confirm that the amendment is not necessary because occupational requirement is already interpreted to mean a genuine occupational requirement when read in light of Article 4.1 of the directive? If that is confirmed, the need to include "genuine" becomes, as lawyers say, otiose.

Amendment 101A seeks to insert the requirement that a public authority cannot apply the requirements exemption relating to employment for the purposes of religion or belief. Amendment 101B—my amendment—seeks to do the same thing. Both amendments seek to give effect to the exemption in Article 4.2 of the framework directive and consolidate Regulation 7(3) of the Employment Equality (Religion or Belief) Regulations 2003.

Amendment 101C, in the name of the noble Baroness, Lady Turner, would write into the Bill what I think is the view of the European Commission:

"The exception under paragraph 3 shall not be used to justify discrimination on any other protected grounds".

Paragraph 3, as part of Schedule 9, deals with other requirements relating to religion or belief. The problem that the Commission may have raised is that the wording of the old regulations—and it seems this part of the Bill—contradicts the provision under Article 4.2 of the directive, which specifically says that permitted differences of treatment based on religion,

"should not justify discrimination on another ground".

Amendment 101C seeks to correct that. It is important because, as the noble Baroness, Lady Turner, said, some religious organisations have made it clear that they would seek to use this provision relating ostensibly to religion or belief to discriminate against employees on the basis of their private conduct—conduct relating to their sexual orientation or marital status. That is clearly outside the terms of Article 4.2 of the directive. We seek confirmation that that is so.

Furthermore, the judgment of Mr Justice Richards, as he was in the Amicus case, makes it clear that lawful, private sexual conduct consisting of gay or lesbian sex is so closely bound up with sexual orientation

that discrimination on the grounds of such conduct is not only unlawful—it is not a genuine occupational requirement under Article 4.2—but also direct discrimination and cannot be justified. Again we seek clarification. That is our understanding of the law.

Amendment 125B is in my name but I have decided that there is no need to add to the complexity by pursuing it. Finally, Amendment 125A, in the name of the noble and learned Lord, Lord Mackay, would remove the exemption for sexual orientation in the provision of services by a public authority. As I understand it, his amendment would allow public authorities that provide services to discriminate against service users based on their sexuality. There are already a number of narrow exemptions for religious service providers but where they are publicly funded they should not be able to discriminate against those to whom they provide their public services. I do not want to go into the unanimous Court of Appeal judgment in the Ladele case—Heaven forbid that I should—where the registrar providing a public service refused to preside at a civil partnership registration, except to say that the judgment of Lord Neuberger, Master of the Rolls, and his two colleagues was, in my respectful judgment, inconsistent with Amendment 125A. We would therefore not support the amendment. I hope that that is clearer than mud.

The Archbishop of York: The noble Lord said that the Lords Spiritual were like turkeys voting for Christmas. Actually, the Government said that they wanted to keep the status quo. We voted for the status quo and not for something quite different. In the case that has been recycled endlessly here, the claimants challenged what was thought to be a breach of Regulation 7(2) under the directive, but Lord Justice Richards decided that it was not. We have voted not for Christmas but for the tranquillity and magnanimity that we found in the regulations that were passed a long time ago.

Lord Mackay of Clashfern: I will allow the noble Baroness, Lady Turner, out of her difficulty by explaining what my amendment is about. I have no responsibility for the grouping but I did not object, as I am delighted to be associated with her. The noble Lord, Lord Lester, joins in the fray a little later. My amendment has only a marginal connection with that of the noble Baroness.

The problem is with what has happened. The Bill gives an opportunity of looking at the field that was taken up before by primary and secondary legislation. With secondary legislation there is of course no possibility of amendment except an out-and-out rejection. This is the first opportunity to look at these two matters together. This amendment was affected by the House of Commons procedures. It never got a full discussion as the click—if that is the right word—of the guillotine came down when the Member was moving it. The other place never really got to any discussion.

Secondly, it is right that we should consider this amendment now. I repeat the point made by the noble Lord, Lord Alli, on his first amendment this evening: the words used in the Bill—and hitherto in the statute—are "sexual orientation". The last time I spoke on this subject I mentioned that, when the Commission originally made this proposal for the equal treatment directive, it pointed out that the discrimination factor was not sexual practice but sexual orientation. That is an important distinction. There is no reason why the provision should apply in respect of sexual practice. If it applied truly to sexual orientation alone, I would find it unobjectionable, but the fact is that, as a result of development, sexual orientation has now become associated with sexual practice. I do not see why there should be a restriction on a public authority or on organisations contracting with public authorities in that connection. It appears to me that it would be perfectly reasonable for a public authority, or an organisation that is contracted to and getting grants from a public authority, still to use its discretion in connection with matters of sexual practice.

This issue was raised in connection with Catholic adoption agencies and grants. It is important to notice that, where a public authority or a contractor to a public authority is giving a service, it is the service that the public authority wants to pay for and to support. If the service is given, the mere fact that it is given in a particular religious ethos does not appear to matter, except from the point of view of choice. I do not want to reiterate the debate about Catholic adoption agencies, but one of the results was that, where a Catholic adoption agency decided to hold to the tenets under which it had previously operated, it just closed down. The result of that is only to destroy a successful, excellent service. It does not give the lesbian or gay community the slightest benefit, because the service previously offered is no longer available, but it means that a service that had success in difficult areas was closed. For my part, I cannot see the need for that.

This matter goes much wider than the Catholic adoption agencies, but the same principle applies. Where a service is required and a particular group is in a position to give a good service, it should not be prohibited from taking part in a publicly funded exercise simply because it has a particular view and practice with regard to sexual practice. That is the reason for my amendment. I will not expound it at great length because it is quite simple. It is in this group because it deals with the same basic matter as the other amendments in the group.

7 pm

The Lord Bishop of Winchester: My Lords, I welcome the amendment in the name of the noble and learned Lord and what he said about it. I was expecting him also to note that this is an area of the Bill where Parliament was particularly badly served by the practices at the other end of the Corridor. I believe that similar amendments were laid before the other place, but they were guillotined very quickly. It is a great pity that the House is so sparsely attended, given that we have such important business. I welcome the points made by the noble and learned Lord and I value the explication of the noble Lord, Lord Lester, of why Amendment 101ZA was otiose.

I turn to Amendments 101A to 101C and 125B. The effect of the two amendments in the name of the noble Baroness, Lady Turner, and, if I understand them rightly, those in the name of the noble Lord, Lord Lester, seems to be an utter impracticality. They would be likely to have the effect, if they were passed,

[The Lord Bishop of Winchester]
of driving Christian and religiously based organisations out of the market for providing publicly funded services and, therefore, of removing from government at every level, nationally, regionally and locally, the opportunity to buy in services of a particular faith-based character and of a particular quality of excellence. At the minute, as I understand it, it is very much the policy of the Government to do that, which is an element of their activities that I welcome.

It is entirely impractical to suggest that a church or a faith-based organisation could be doing its work with its usual staff, for some of whom there would be a genuine occupational requirement of the sort that has been discussed under the Bill, but that, at the point when those same staff or that same charity were contracted to provide a service for government, whether national or local, the existing staff would not be usable for that purpose. The charity could not possibly employ another lot of staff or some other staff. There could not be two sets of staff and, if it was working without the staff doing its mainstream activity, it could not be offering the service for which it was contracted. If I understand the gist of the amendment in the name of the noble Baroness, Lady Turner, and the amendment tabled by the noble Lord, which is saying the same thing, I cannot think how that could be practical.

Amendments 101C and 125B seem to be a further narrowing of exemptions and a further restriction on religious organisations or organisations with a religious ethos in offering public services and receiving public money for bits of their work. I take paragraph 176 of the report on the Bill by the Joint Committee on Human Rights to be the background to the noble Lord's amendments and his speech. The report states:

"We are concerned about the status of employees of organisations delivering public services who find themselves as employees of organisations with a religious ethos who have been contracted to provide the public service".

That seems to put the cart before the horse. An organisation would be contracted to provide a public service because it already provides that kind of service in work for which it does not receive public money. The report continues:

"They have a right not to be subjected to religious discrimination on the basis of the ethos of the contracting organisation if they are otherwise performing their job satisfactorily".

It is necessary to say again that, if those involved are people for whom a genuine occupational requirement is permissible, they will be representing the organisation with its faith-based ethos or the church. If their personal lives are contradictory to their own faith-based position and that of the organisation or the church, they will not be performing their job satisfactorily. That is the essence of this case and the reasons why Amendment 101C, which I now understand as I did not before, and Amendment 125B are insupportable.

Lord Lester of Herne Hill: Perhaps the right reverend Prelate would tell me whether he read the last bit of paragraph 176. The Joint Committee said:

"We are concerned that the widespread use of the 'religious ethos' exception … in Schedule 9(3) by organisations based on a particular religion or belief who are contracted to deliver services on behalf of public authorities could result in public functions being discharged by organisations in receipt of public funds who are nevertheless perceived to discriminate on the basis of religion or belief".

Does the right reverend Prelate accept that that is a valid concern?

The Lord Bishop of Winchester: I read to the end of the paragraph and it is side-lined in my text. But I am intrigued by the language, "nevertheless perceived to discriminate". The whole paragraph makes my point that if this is the line to be taken by government, that could mean goodbye to many of these organisations being available to offer some of their work through receipt of public funds, and to serve the state and the public in that way. That is the logic of that because I do not believe there is widespread use. I believe the use being made is legitimate and, to use the word we have all been using this afternoon, "proportionate". It does not seem to me that they can be doing their job satisfactorily if they are in denial of the objectives of the organisation they are serving in their private lives. I do not believe, however, that any Christian's life is private in that sense. Our activities are before the public, whoever we are.

Lord Warner: My Lords, I support the spirit of Amendments 101A, 101B and 101C. I am particularly attracted to the elegance of Amendment 101B. Before I begin my remarks, could I say to the right reverend Prelate that I am a long-standing supporter of a mixed economy of providers in public services? I have no problems with that at all. Indeed, I spent six years as a director of social services doing just that in Kent and I have transferred public services into other bodies. However, one of the features of this kind of transfer when another body takes over public services is the discussions that take place around assurances being given to the staff who are being transferred from the public body. Usually one of the deals is that their conditions of services are safeguarded. That does not mean that they are going to be then subjected to inquiries about their religion and their private lives. It does not mean that they are going to be discriminated against when promotions come up. It is absolutely reasonable for a Government who are taking an Equality Bill through this House and through Parliament, and it is not discriminatory against the churches, to protect those staff in those circumstances from discrimination. As I understand, these amendments do just that.

If we are not going to change the legislation in that way, we—and by "we" I also mean the Government—are accepting that level of discrimination, because the Bill does that. Sad to say, my honourable friend Vera Baird acknowledged that in the other place. She simply brushed aside the concerns in paragraph 176 of the report of the Joint Committee on Human Rights by in effect saying that,

"the Government do not want to interfere with the religious ethos of the organisations, even though they deliver public services".—[*Official Report,* Commons, Equality Bill Committee, 23/6/09; col. 455.]

I think that is rather sad, not because I want the Government to interfere in the ethos of religious organisations but I would like them to be more robust in protecting the position of staff who are going to be

transferred. I say that as a supporter of some degree of transfer of functions from public bodies for the better delivery of services to other organisations. I do not expect my noble friend the Minister to jump up and say "What an insightful man you are, Lord Warner. We thoroughly agree with everything you have said and we are going to have a change of heart". But I ask her to consider some questions before the Government give up the idea of any amendment in this area.

The questions the Government should ask are as follows. There are only five: First, when working under contract with or on behalf of a public authority, are organisations with a religious ethos permitted to put a religious requirement on a previously secular position such as a care worker? We need an answer to that. Secondly, are public service workers who are transferred to a contracted religious organisation from the public authority at risk of being made redundant or of dismissal should their new post have religious requirements attached to them which they cannot meet? Thirdly, if employees must reapply for their position with their new religious employer, is it possible that their lack of required beliefs might render them ineligible for the very post that they had previously held? Fourthly, are public service workers who are transferred to a contracted religious organisation from the public authority at risk of having their career prospects restricted because more senior positions have religious requirements attached to them? Fifthly, are public service workers who are transferred to a contracted religious organisation from the public authority at risk of having their career prospects restricted because activities, training and other benefits are restricted to those who fulfil particular religious beliefs?

Those are all legitimate questions that trade unions, staff representatives or management should be asking before they transfer staff from a public to any organisation, religious or otherwise. It is particularly relevant when it is a religious organisation, which is what these amendments address. I do not expect my noble friend necessarily to answer all those questions now but I do expect her to give a serious answer in writing to those questions to reassure me and, I suspect, other members of your Lordships' House.

7.15 pm

The Lord Bishop of Winchester: Does the noble Lord agree that he and I are talking at cross purposes about two quite different situations? I was speaking, as I should have thought was clear, and on what I thought was the matter being attended to, of organisations, either church organisations or of religious ethos, which find themselves contracted to undertake service on behalf of the Government and receive payment for doing so. The noble Lord is speaking of the transfer of organisations from the public service into the employment of a religious organisation. The points he is making have to be thought through. Some religious organisations might judge that to accept the kind of contract he is speaking of would so dilute their aims and objectives that they should not enter it in the first place. Some religious organisations which have agreed to such contracts have had their objectives so diluted that they have ceased to be what they were. But we were, I think, talking about two quite different situations.

Lord Lester of Herne Hill: Before the noble Lord, Lord Warner, replies, may I add a point that has not yet been made and which I think needs to be made? Under the European Convention on Human Rights and under the Human Rights Act, the United Kingdom has a policy of obligation to ensure that public authorities and bodies that are private but performing functions of a public nature, do not discriminate on the basis of a person's sexuality, among other things. That is an obligation which, to take the example of the noble Lord, Lord Warner, reaches beyond a public authority in the strictly formal sense to a body which is private in form but is exercising functions of a public nature which involves discrimination.

The right reverend Prelate talks about a religious body which finds itself performing functions of a public nature and receiving state funding for doing so. I do not think it is a question of finding itself doing so—it chooses to do so. Instead of deciding not to have public funding and not to perform the service, it chooses to do so. Once it does, the United Kingdom has an obligation to ensure, on the basis of the case law I have seen, that it does not discriminate on the basis of sexual orientation, except in very narrow circumstances, such as necessity, proportionality and so on.

That is why it is important to clarify the issues we are talking about to ensure that, when one contracts out functions that would normally be performed by the state to bodies that are "private", the reach of human rights law extends to them. If they decide not to accept public funds and not to perform a public service, that is their entitlement. One could say, however, that otherwise they might be having their cake and eating it and the poor old UK Government would ultimately be responsible for that, either under the Human Rights Act or under the convention.

Lord Warner: My Lords, to answer the right reverend Prelate, I do not think we were talking at cross purposes. I was very clear in what I was talking about: the legislation as it stands potentially discriminates against those people who transfer from a public body to an organisation with a religious ethos that is carrying out functions on behalf of a public body. I have a longer speech with which I will not delight the House tonight about the possible discrimination for the users of those services as well, but that is a matter perhaps for another day. I am speaking on the narrow point that we need to protect staff who are transferred from a public body to an organisation which has a strong religious ethos. The questions I have asked relate to that, and it is no good trying to pretend that we are not faced with a real problem here.

Lord Elton: The interests of the user of a service is surely not something for another day, but for us to consider when looking at these amendments. It seems to me that the issue has been extraordinarily absent hitherto because we have been discussing the rights of the people who deliver services.

The effects of legislation which has been passed without democratic discussion in another place, first as secondary legislation and secondly under the guillotine,

[LORD ELTON]
have been to very considerably injure the users of services, and that is what I hope your Lordships will concentrate on.

Lord Patten: My Lords, I support my noble and learned friend Lord Mackay in his Amendment 125A. Between us we just about represent the two ends of Christian practice in these islands, as indeed we live at their opposite ends geographically. It is a strange irony that my noble and learned friend should be leaping to the defence of the Roman Catholic Church, something I shall draw to the attention of the Archbishop of Westminster, who I am sure will be suitably grateful. We need help from whichever quarter we can get it.

That said, my noble and learned friend and I also represent between us a determination to try to protect reasonable and centuries-old established religious freedoms rather than wishing to come up with some brand spanking new right or another. Indeed, the attacks by the present Government on historic religious freedoms that Amendment 125A seeks to correct have become so severe that in a new Parliament, I think that the pressure for an Act to protect religious freedoms will grow and grow. It will also be an issue in the forthcoming general election for individual candidates breaking this way and that. There will also be pressure to resist the present trends encouraged by the European Convention on Human Rights which surely was never meant to entrench that in all cases, and without exception, the individual automatically trumps the group or community. Surely there must be some continuing recognition, as Amendment 125A seeks to establish, that in a truly tolerant and pluralistic society, there is not simply a collective of individuals, for therein, in that attitude, lies totalitarianism.

This was summed up very well by my noble friend Lord Bates speaking, as it were, ex cathedra from the Conservative Front Benches in his winding-up speech on 14 January in the debate introduced by the noble Lord, Lord Harrison, on toleration. My noble friend said,

"there is growing intolerance towards people of faith … they are being victimised. That cannot be right. I am sure that the pendulum has swung, but we need to remember that legislation and the pendulum were meant to correct something that was wrong".—[*Official Report*, 14/1/10; col. 687.]

Amendment 125A seeks to recalibrate the pendulum's swing in the interests of religious tolerance, and in it my noble and learned friend has taken a very measured and careful approach. One reason that the pendulum may have gone a bit haywire, as pendulums do, is probably constitutional. As my noble friend Lord Elton just pointed out in his brief but telling intervention, when another place debated back in 2006-07 issues concerning not only religious adoption services but also the state of residential homes, the record shows that precisely four minutes was allowed for the debate on religious adoption agencies before the guillotine fell. My noble and learned friend speculated that guillotines fall with a click, but I think they come down with a clunk and a thud. But what is entirely wrong is that no time at all was allowed for debate on the position of those providing services in residential homes where there is a religious ethos.

I understand from reports in the press that the noble Lord, Lord Butler of Brockwell, who is not in his place today, and other great members of the upper reaches of our mandarinate are producing a report for publication on Wednesday that will highlight a number of ways in which governments, in particular this Government, have failed to govern well. I understand that it is going to say that one of the worst things that has happened is that so much legislation has gone through another place with no scrutiny whatsoever. I believe that to be totally wrong and for it to have been done in such a prejudicial way as to try to attack historic freedoms and religious faiths of all sorts, not just Christian, in this country. I think it is on constitutional as well as on the other grounds that it is necessary to take a fresh look at the issue, and that is what Amendment 125A seeks to do.

There are important human rights concerns here, but not just for service providers. As my noble friend Lord Elton has just so rightly pointed out, there are human rights that the legislation to which I have referred have trampled on. Let us take adoption services and the right of the child who needs a family and the rights of a family that wishes to adopt a child: what about those rights? I refer also to the rights of the providers of adoption services who sometimes are not so much concerned with their own personal and private lives but wish to provide services in response to faith beliefs and are moved to do so as an expression of their faith and their vocation—something which I believe this Government have treated with contempt, and I choose the c-word "contempt" with great care.

Already, as the right reverend Prelate said in his speech, agencies run by, for example, various Catholic children's societies have stopped providing services for children and would-be adopters who need their help. For example, the Catholic Children's Rescue Society in Salford and the Catholic Children's Society in Westminster have been forced to cease their adoption work. What a triumph for the equality project that is. The recently retired CEO of the Westminster Catholic Children's Society said in giving the reason why the service has had to cease:

"We would not be able to state within the context of adoption, that it is our belief that a married couple is better for children".

I respectfully and admiringly agree with Mr Jim Richards—just for the record, once a Labour councillor and now in his happy retirement a deacon in the Roman Catholic Church.

I would like to ask the Minister this: how many children does she think have suffered so far because of this legislation? How can the Government really claim to be in favour of diversity and choice? Do they not recognise that religious charities and trusts which contribute to the provision of adoption for the young or provide residential homes within a faith ethos for the elderly, the disabled or those with learning difficulties have their own ethos which should be respected? In logic there can be no case under any circumstances for insisting that religious groups operate against their beliefs unless they are the unique monopoly supplier. I have never known of such a unique monopoly supplier of any service for which public funds are provided.

Surely, when we see equality laws to help one group—which I do not necessarily object to—are so constructed that they turn out to damage another group—which I object to very much—however worthy in their original aims, it seems that the whole equality agenda has lost its balance and begun to promote inequality, thus becoming an inadvertent tool for intolerance and the oppression of religion in these islands.

So I hope that the Minister will contemplate carefully what my noble and learned friend Lord Mackay, my noble friend Lord Elton and the right reverend Prelate the Bishop of Winchester have said and agree to take away these issues to consider them before Report.

7.30 pm

Lord Warner: Does the noble Lord not think that, when public bodies responsible for providing public services contract out with religious organisations, they have some responsibility to ensure that vulnerable people are safeguarded under those regimes? There are plenty of examples of religious organisations which have abused public trust in these areas, and we cannot always be sure that they will not proselytise for people who are not of their faith who happen to be in their care at a particular time. Does the noble Lord agree that perhaps things are not quite as rosy as he was suggesting?

Lord Patten: I do not much care for the noble Lord's smear of Catholic adoption agencies that they have somehow been involved in abuse or proselytising. I do not care for that at all. It is my belief that individual religious groups, as a testimony to their faith and beliefs, should be allowed, as part of the historic religious freedoms of this country, to provide a service to whoever wishes to buy it, whether it is the public sector or private individuals seeking to adopt a child or wishing to place their disabled or elderly relation, or adult relation with profound learning difficulties, within a religious community. The Government are totally wrong to take away from our churches and faith groups that historic right. This will come back again and again in the coming months. At the next Parliament, if we have not addressed these issues through amendments like the excellent Amendment 125A tabled by my noble and learned friend, many of us will be pressing for a Bill to protect religious freedoms in this country.

Lord Elton: Perhaps I may address the point that the noble Lord, Lord Warner, made. I am a little puzzled by his position. Presumably, a local authority can agree with an organisation with which it is making a contract what the terms of employment shall be for the purposes for which it is delegating the work. If it does not get a satisfactory agreement, it can either not transfer it to anybody or transfer it to somebody else. The local authority is not tied. It is not in a cleft stick. It does not have to go to a Roman Catholic organisation for adoption if it does not feel able to protect its transferred staff in the way it would wish to.

Lord Warner: I do not want to delay this debate much longer and I do not disagree with the noble Lord. I was really trying to counter the rather rose-tinted view of religious organisations being put forward by the noble Lord, Lord Patten.

Baroness Whitaker: I came into this debate not to speak but to listen. However, I am getting extremely confused. Perhaps my noble friend on the Front Bench can dispel my confusion. The amendments tabled by my noble friend Lady Turner appear to be excellent and to further what I understand to be the spirit of this part of the Bill and also Section 29 about services. Regarding employment and services, we are talking about functions carried out with the use of taxpayers' money by organisations acting as public authorities. I had thought that the purpose of the Bill was to make unlawful the discrimination, on various grounds, of people who either worked in these authorities or received the services. The amendments tabled by my noble friend Lady Turner appear to assist that.

Then I hear from noble Lords opposite that, in fact, freedom is being attacked by this will to erode discrimination. That is why I am puzzled. The freedom not to be discriminated against is prime. Surely this Bill is not for an organisation using public money and refusing its services in a discriminatory manner. Incidentally, I am aware of several religious organisations which provide services and employment on behalf of the public which absolutely comply with the spirit of the Bill, so there does not really seem to be this peculiar posited battle between freedom and discrimination. I hope my noble friend can explain the primary purpose of the Bill.

Lord Hunt of Wirral: I thought that the primary purpose of this Bill was to simplify and codify the law. Perhaps I have come to the wrong place. We have just heard a very extensive, wide-ranging debate, which, as my noble and learned friend pointed out, has been greatly extended by the fact that these issues were not properly debated in the other place. There is a problem. If you neglect the elected House and impose timetabled Motions which then cut out debate on issues as important as this, you are not doing your job as a Government to be answerable to the electorate.

Some very important issues have arisen in this debate. It started with the noble Baroness, Lady Turner of Camden, wanting to put in the magic word "genuine". We have not had much of a genuine debate about whether or not the word "genuine" needs to be inserted, which is technically what this debate is about, although there are a number of other amendments grouped. The most reverend Primate the Archbishop of York started off this debate so well when he said that surely what we have just voted for is tranquillity. He was responding to the noble Lord, Lord Lester, who said that the Bishops' Bench was a row of turkeys waiting for Christmas. If I may say so to the noble Lord, Lord Lester, I think the most reverend Primate was naturally very upset at that accusation. Surely what we want to do is to simplify the law and make it much easier to understand so that everybody knows what their rights are. I should not be confused, but I am a little uncertain as to what the Government are trying to achieve with this section. Is it preserving the status quo? Is it simplifying the law? Is it seeking to codify the law? I am not sure and we deserve an explanation from the Minister.

In so far as Europe is concerned, the Government must be regretting certain parts of the Bill, which they were advised would strengthen their case with the

[LORD HUNT OF WIRRAL]
European Commission. By voting to remove a portion of the Bill earlier, we have actually weakened the Government's case. It would have been a much stronger case had they never put those provisions in in the first place. I am not sure that they were needed.

To go back to what is perhaps the most important principle, I agree with my noble friend Lord Patten and my noble and learned friend Lord Mackay of Clashfern. We have to strive to make sure that we do not create a situation where societies doing valuable work, often with the most deprived children, can no longer carry on that vital work. I agree with the noble Lord, Lord Warner, and I pay tribute to him. I saw him on a couple of occasions urging for a more mixed economy and the better delivery of services by utilising the resources of the private sector. I agree with him that we have to be very careful that the rights of an existing workforce to be transferred to another provider are carefully measured against the needs of the community that is being served. That must all be taken into account when the organisation taking on the service has to consider the implications of taking on that service, but also the Government have to consider how best they can ensure that the right service is carried on by the right people. My noble friend Lord Elton made a number of good points.

Like the right reverend Prelate the Bishop of Winchester, I am troubled and concerned by a number of aspects in this group of amendments—trying to dictate people's religion, what religious organisations can ask of their employees, the whole issue of faith schools and everything else that has been brought into this debate, which has lasted almost an hour.

We ought to return to the original purpose of the Bill, as the noble Baroness, Lady Whitaker, just said. What is the purpose of the Bill? When I was Secretary of State for Employment, I had the benefit of the noble Baroness as my director of the equalities office. I like to think that now and again, although perhaps not in public, she might acknowledge that I took careful note of a lot of guidance that I received from her, and I take careful note of some of the things that she said just now.

I say to the noble Lord, Lord Lester of Herne Hill—and, in a way, to myself—that we are lawyers. I am one of the few people in the solicitors' profession who still has a practising certificate, and I have had for 41 years. In many ways, I suppose people would think that we wanted the law to be complicated, but we do not; we want it to be simple and understandable. It is far better for society that we achieve that, so we look to the Government to clarify this situation.

Baroness Thornton: My Lords, there are various matters in this debate that need to be answered and I will do my best to do so, while being mindful of the time. With the leave of the House, I will answer the questions turned about—that is, I shall refer first to the amendment of the noble and learned Lord, Lord Mackay, and then move on to the others, because that will work better.

I say to the right reverend Prelate the Bishop of Winchester who, along with some other noble Lords, has suggested that there was little or no debate about Schedule 23 in Committee in another place, that that is not so. Similar amendments to both Amendments 125A and 125B were tabled and debated at some length.

In answer to the noble Lord, Lord Hunt, the provisions in Schedule 9(3) and Schedule 23(2) replicate the effect of current provisions. I hope that that point will deal with most of these amendments.

Lord Hunt of Wirral: My Lords, the Minister carefully used the words "replicate the effect of". Does that means that she believes they express it in a better way, or is it a codification of existing law?

Baroness Thornton: I do not know the answer to that in detail because I have not made that comparison myself. As the noble Lord is aware, the Bill is largely about consolidating. I can certainly get him a detailed answer that will go through the two schedules and do that analysis for him, if he so wishes.

Lord Lester of Herne Hill: Would it be right to say that one of the main purposes of the Bill is to state the law accurately, so far as possible, and in a way that reflects European as well as domestic law so that it is more accessible and all in one place?

Baroness Thornton: The noble Lord is right; hopefully, it will mean that the law can be easily read.

Amendment 125A would provide an exception for religious or belief organisations, or persons acting on their behalf, to impose restrictions because of sexual orientation on the provision of any services or functions being provided on behalf of a public authority. As noble Lords have rightly mentioned, we have a significant number of religious or belief organisations providing valuable services, often aimed at meeting particular requirements in some sectors of the community. I take issue with noble Lords who say that that is not the case and that the Government have not done a great deal to support those organisations in their work.

Under existing law, these organisations have a limited number of exceptions enabling them to refuse to provide a service or a function to gay, lesbian or bisexual people. We believe that this exception is entirely appropriate but only where such restrictions are necessary to comply with the doctrine of the organisation or in order to avoid conflict with the strongly held convictions of members of the religion or belief that the organisation represents.

Where a relevant religious or belief organisation is delivering a public function, however, that exception does not apply. This is because, while the Government are sensitive to people's religious beliefs, in circumstances where public money is being used to fund a service we take the view that the service should be provided to people irrespective of their sexual orientation, and I hope that the right reverend Prelate would agree with that. That is also the view of the Joint Committee on Human Rights, which welcomes the re-enactment and clarification of the existing provisions in Schedule 23(2) that concern discrimination on the basis of sexual orientation. The committee considers that there is nothing in any human rights standard that requires an

exception to be provided to permit religious organisations to discriminate because of sexual orientation when delivering services on behalf of a public authority.

7.45 pm

By contrast, the law enables the relevant religious or belief organisations to limit their service provision to people who have a particular faith or belief even where those services are being provided as part of a public service. This difference in treatment is for a valid reason. 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. We see that as entirely legitimate, provided that all those in need of care—I think the noble Lord, Lord Elton, made the point that we should address ourselves to those who need the care—are provided with it and to the same standard.

The exceptions as they are drawn and already operating provide the correct balance between the rights of those of a given sexual orientation to receive public services and not to be discriminated against and the freedom of others to manifest their religion or belief. For example, it is entirely legitimate that a local authority should contract with a Muslim organisation to provide meals on wheels that are halal. We cannot envisage any circumstances in which a religious organisation providing a public service could legitimately be allowed to provide it only to those of a given sexual orientation. This exception is designed to ensure that vital activities of such religious or belief organisations are not unduly hindered. Many of these organisations are used by local authorities because they provide specific services of a nature that the local authority itself cannot, or they do it in a better and more cost-effective way.

I turn to Amendments 101A and 101B. The amendments would mean that a religious organisation would be unable to require its employees to be of a particular religion or belief if they were acting as a public authority on behalf of, or under contract to, a public authority. Again, I make the point that religious organisations play an important role in bringing diversity to public life and the delivery of services that meet the needs of diverse communities. We recognise that such organisations need to be able to preserve their religious ethos. Schedule 9(3) allows them to have regard to their ethos when applying an occupational requirement for an employee to be of a particular religion or belief. Carefully targeted exceptions are an important means of allowing religious organisations to pursue their legitimate objectives.

It is important to stress that we are not doing anything new in the Bill with regard to the exception. We are preserving an existing exception in the Employment Equality (Religion or Belief) Regulations 2003, which implement EU directive 2000/78/EC on establishing a framework for equality in employment. A number of people seem to think that this exception gives religious organisations carte blanche to require all employees to adhere to their particular faith. This is simply not the case. I hope that I will be able to address the issues that my noble friend Lord Warner has raised in the next set of remarks that I make. I will then amplify them by writing to the noble Lord.

The principal function of a care home is the provision of care, not as a vehicle for a religious organisation to proselytise. That means that most of its employees are providing care. As I said, the exception requiring employees to be of a particular faith is not carte blanche for every employee to be required to be of a particular faith. On the contrary, it is very limited and will apply to only a very small number of posts. Its application will be subject to stringent tests. In practice, the further removed the function is from a place of worship—for example, the care home—the more difficult it is for those tests to be met.

The EU directive specifically recognises religious employers as a special case. This is an entirely justified exception. It is right that it should apply to all relevant employees and workers, including those working under contract for public authorities. It is worth noting that the relevant article in the EU directive refers specifically to both private and public organisations whose ethos is based on religion or belief. There is no question of broadening the exception through the Bill. It remains a tightly drawn exception applying to very few types of employment. Its application will continue to be subject to strict tests.

The employer must show that requiring an employee to be of a particular religion or belief is an occupational requirement and that the application of the requirement is a proportionate means of achieving a legitimate aim. Lastly, the employer must be able to show that it has an ethos based on religion or belief. Any organisation choosing to rely on exemption needs to be able to justify its decision before an employment tribunal if challenged.

As we are not introducing anything new in the Bill, there is no question of legions of public workers suddenly having to reapply for their jobs the moment this part of the Bill is enacted. My noble friends asked legitimate questions. What would happen where public service workers are transferred to contracted religious organisations from a public authority? Could they be made redundant or dismissed should their new posts have a religious requirement attached to it that they cannot meet?

First, the strict tests that I have described would have to be met for the given post to have the exception applied to it. In the case of a care worker, for example, it is unlikely that it could be argued that he or she must be of a particular religion or belief for the purposes of the job unless the nature of his or her job goes beyond simply the provision of care. In most cases it would be sufficient that the employee should have some understanding or respect of the faith in question.

In addition to those tests for attaching a religious requirement to a given post, the Transfer of Undertakings (Protection of Employment) Regulations 2006 would need to be taken into account by the new employer in this situation. The TUPE regulations provide protection for employees from dismissal as a result of transfer. The employee would be treated as being unfairly dismissed unless the reason for the dismissal was economic, technical or organisational. It is difficult to see how a dismissal simply based on an employee's religious belief, or lack of it, could fall within the permitted reasons for dismissal under TUPE, as this is unlikely to constitute an organisational reason.

[Baroness Thornton]

As for the future prospects of public service workers who are transferred to a contacted religious organisation, in practice an occupational requirement that an employee be of a particular religion or belief applies to a very small number of cases. Again, the strict tests applying to the exception need to be met in every single case. Protection would be offered and would be discussed before that transfer of engagements was made.

The Government's view is that this exception strikes the right balance between protection—I hope that my amplification of this will reassure my noble friend—and allowing employers with a religious ethos the flexibility that they need.

I turn now to Amendments 101ZA and 101C—

Lord Patten: My Lords, before the noble Baroness leaves this important point, will she be kind enough to ensure that any letter that she writes on this point to the noble Lord, Lord Warner, is circulated to all noble Lords who spoke in this debate, because these are complicated and, I suspect, fiendishly difficult areas?

Baroness Thornton: My Lords, I give that undertaking willingly.

Amendments 101ZA and 101C seek to tighten up the drafting of paragraph 3 of Schedule 9, which preserves an exception that is currently provided by Regulation 7(3) of the Employment Equality (Religion or Belief) Regulations 2003. It permits employers and other persons with a religious ethos to require those working for them to be of a particular faith, provided that there is an occupational requirement with a legitimate aim. This test has to be applied to each post for which the exception is considered. A requirement must, by definition, be crucial to the post and not merely one of several important factors. The facts in each case will show whether the requirement is genuine. Therefore, I do not agree that Amendment 101ZA is necessary, although I appreciate that the 2003 regulations contain the word "genuine". I have always wanted to say the word "otiose" in the Chamber, so I am very glad to echo the noble Lord, Lord Lester. We consider that the word "genuine" is unnecessary. My noble friend will know that we are trying to keep unnecessary words out of this Bill to keep the Bill's English simple and plain.

I turn to Amendment 101C. I hope that I can assure my noble friend that the exception in paragraph 3 is intended to apply only to the protected characteristics of religion or belief as permitted by the EU framework directive on employment and occupational discrimination. The exception allows the application of a requirement to be of a particular religion or belief and thus could not apply to any other protected characteristics. With those reassurances, I hope that noble Lords will withdraw their amendments.

Lord Mackay of Clashfern: My Lords, the amendment that requires to be withdrawn is the one put forward by the noble Baroness, Lady Turner. Before she says what she wants to do about it, could I be sure that I have understood the Minister correctly? With respect to my Amendment 125A, does "sexual orientation" in the Bill mean sexual orientation or does it extend to sexual practice?

Baroness Thornton: My Lords, it says "sexual orientation", so that is what it means.

Lord Lester of Herne Hill: My Lords, I am completely satisfied and would not dream of moving either of my amendments. However, I am not at all satisfied by the notion that sexual orientation does not include sexual practice, as it plainly does.

Baroness Thornton: My Lords, it does. I am sorry. I misunderstood the question and gave the wrong answer.

Baroness Turner of Camden: My Lords, I thank my noble friend for that very detailed response. I also thank noble Lords who have contributed to a very interesting and rather wide-ranging debate—much wider-ranging than I anticipated when the amendment was drafted. In particular, I thank the noble Lord, Lord Warner, because he spoke from a great deal of experience and gave what I thought was an unanswerable case that, when you have a transfer of employees from one employment to another, any union will do its best to ensure that the transfer that takes place does not mean a worsening of employment conditions for those employees. As far as this amendment was concerned, the idea was to ensure that people did not face demands in relation to their employment when a transfer was taking place that they had not had to face when they first took employment with a public service.

The right reverend Prelate contributed substantially to this debate, as he has on previous occasions. What does he think would be the case for an individual who is being transferred from one employment to another and, when he or she turns to that employment with a religious ethos, suddenly has to face a change in conditions that he or she had not anticipated when he or she first took that employment? If he or she had to face a situation in which sexual orientation was part of the requirement, or requirements in relation to sexual orientation were something that had to be considered that he or she had not had to consider at all in first taking the employment, it would be quite unacceptable. My noble friend made it clear that that was not the Government's intention.

We have had a substantial number of assurances from the Government, which I should like time to consider, because this is a very complicated matter. I accept that in certain respects what has been suggested was not really required, because it is covered. I accept what was said in relation to Amendment 101ZA—namely, that it is not necessary to insert "genuine" before "occupational requirement". That point was made by the noble Lord, Lord Lester, and I accept it completely. I thank him for that and for his detailed contribution on this rather complicated question. In the mean time, I beg leave to withdraw the amendment.

Amendment 101ZA withdrawn

Amendments 101A to 101C not moved.

House resumed. Committee to begin again not before 9 pm.

Flood Risk Regulations 2009

Motion to Resolve

8.01 pm

Moved By ***Lord Taylor of Holbeach***

To move to resolve that this House calls on Her Majesty's Government to revoke the Flood Risk Regulations 2009 laid before the House on 19 November 2009 (SI 2009/3042).

Relevant document: 2nd Report from the Merits Committee.

Lord Taylor of Holbeach: My Lords, I begin by declaring my interests as a farmer and grower and as a member of a number of organisations with an agricultural background. I am also a vice-president of the Association of Drainage Authorities. Although the latter may be a particular focus of interest, it should not lead noble Lords to assume that I possess a great depth of knowledge of the subject, although it might account for my interest in raising this matter for debate.

The Minister introduced these regulations in a Written Statement on the very day of the Cumbrian floods. Since then, the House's Merits Committee has drawn our attention to aspects that it considers are particular causes of concern. The LGA has written about the funding of local authorities' role vis-à-vis these regulations. For this reason, I seek to move the Motion in my name before the House this evening.

As I said, these regulations were laid before Parliament on the very occasion of the Cumbrian floods. By further chance, last Friday I had the opportunity to visit Cockermouth and Carlisle on a fact-finding visit, which greatly added to my knowledge of the disaster and its aftermath. I acknowledge the kindness of all the people whom I met and talked to, particularly Messrs Robert Jackson, senior and junior, who farm just outside Cockermouth. To stand on their riverside fields, still strewn with debris and kelter from Cockermouth, just half a mile upstream, was an awe-inspiring experience but also a worrying one. Hay bales and uprooted trees one might have expected to see 10 weeks later, but to see wheelie bins by the dozen, furniture, fridges and other electrical goods scattered across the fields was, to my mind, alarming. More dramatic than that were the acres of meadowland and a drilled field of autumn barley strewn with boulders, some as big as footballs, laid out as if on a beach, and in some cases feet deep. It is hard to see how this grade one land is to be reinstated. It seems to me to be as lost as the 40 metres of the same barley field lost to the river. It caused me particular concern that, although the Rural Development Fund money, up to £6,800, might well be adequate for the costs that some farmers face in clearing up, it was totally inadequate for the task facing Mr Jackson and the dozen or so farmers similarly affected.

There was also a confusing lack of direction from the Environment Agency and Natural England about their role. Indeed, I received mixed messages both on the clear-up and future strategy for the Derwent river basin. It was not satisfactory to stand half a mile from a town struggling to re-establish normal life and be given the impression that the Environment Agency had no funds for managing the accumulation of gravel in the river or for river margin protection. It was perhaps even more worrying to find Natural England worried about SSSIs, biodiversity and the habitat of crayfish. That indicated to me that a stronger sense of direction was needed. I am tempted to coin a phrase and say, "We can't go on like this". I am pleased to say that the leader of the county council, Mr Jim Buchanan, has agreed that it must be a priority to assist in moving litter from sites such as Mr Jackson's farm. The commission of temporary waste dumps and the waiving of regulations governing movement of waste are fine, but that was of little or no assistance to Mr Jackson given the scale of his task in moving the debris off his land.

It is not all negative. The Carlisle flood abatement scheme was recently completed and 600 homes that might otherwise have been flooded remain dry. On being shown the scheme, I observed that it had brought a pleasant cycle path and footpath along the newly flood-walled and protected River Caldew flowing through the town. However, this green vein, attractive though it is, has a downside in that this river, although canalised, is choked with rubble, mud and self-sewn willows and buddleia in the interests of providing natural habitats. I doubt the wisdom of a river management system that allows such a feature in an urban area. It cannot help water movement and we know that fallen trees and debris caused a great deal of havoc in Cockermouth.

I may have travelled a little from my Motion, but we should consider the application of these regulations. We could, I suppose, consider that these regulations are part of the Government's legislative response to the Pitt report and the summer floods of 2007, but that is not strictly the case. We would, however, be right to consider them as ancillary to the Flood and Water Management Bill, which is at present in another place and which we can confidently expect will arrive in your Lordships' House before too long. Indeed, my first question to the Minister is whether it is right to bring forward a statutory instrument that uses a concept of lead local flood authority and lays out duties for that body before primary legislation has set up the concept. The Flood and Water Management Bill defines "lead local flood authority" in Clause 6(7) on page 4, and defines "risk management authority" in Clause 6(13), also on page 4, as the lead local flood authority. Clause 7 states:

"The Environment Agency must develop, maintain, apply and monitor a strategy".

Under Clause 7(2)(a), the strategy must specify,

"the English risk management authorities".

All that is in the forthcoming Bill. We know that the EU floods directive 2007/60/EC covers the assessment and management of flood risks. The implications of its provisions are the subject of this statutory instrument. Earlier water environment regulations charged the Environment Agency with providing a management plan for each river basin district.

The new regulations before us introduce the concept of lead authorities and seek to reciprocate their activities, with flood risk assessments, maps and management plans already being undertaken by the Environment Agency. Defra believes that this will not impose an

[Lord Taylor of Holbeach]
additional burden on the local authorities concerned. That is hard to believe but, as Defra has committed to funding any new burdens for local authorities as a result of these regulations, can local authorities be reassured that their responsibility in this area will be fully funded? I suspect that the LGA's concern is that it all depends on what is meant by "new burdens".

My concern extends beyond the financial to the engineering skills available in-house. There could be considerable costs in employment of consultants, or is the Environment Agency instructed to work alongside local authorities in the work involved? The engineering of water management is a particular branch of the engineering profession. It is there that my particular interest as a fenman and as vice-president of the Association of Drainage Authorities comes into play. It must be suggested that had an IDB or river authority been in place on the Derwent or the Cocker, the impacts of the floods may have been lessened, as the management of the river and its ecology would have benefited from such engineering skills. The regulations before us list IDBs in part 6 as authorities from which the Environment Agency and local authority require information, but that is all. They have no statutory consultation role, unless invited, as far as I can see. I might add that neither do the police or the emergency services, but their knowledge would be invaluable in areas that have experienced floods. This is surely an oversight. It is important that such assessments are properly constructed on sound analysis of the evidence, which requires a professional input. It is obvious that there are implications for property values, both private and commercial, in their publication.

I turn to the semantics of hazard and risk. Under Regulations 18 and 19, the Environment Agency and the lead local authorities are required to produce both hazard maps and risk maps. "Risk" is defined under Regulation 3, but of "hazard" there is no sign. Both the *Concise Oxford* and *Chambers* dictionaries that I have consulted define "risk" as "hazard" and "hazard" as "risk". Would it not help if the meaning were determined and described so that they were clear and so that the functions of each of these pairs of maps or plans were obvious to us all?

Finally, while I do not doubt that these desk exercises can be used to good effect, they are no substitute for on-the-ground management by individuals dedicated to the proper management of water, the sound engineering of our rivers and the safety of people and property. I beg to move.

The Earl of Selborne: We are all grateful to my noble friend Lord Taylor for giving us an opportunity to consider the Flood Risk Regulations, although a debate before 10 December 2009 would have been more timely, for they have now been transposed into domestic legislation. Normally, I am supportive of EC measures which seek to promote consistent environmental regulation throughout member states. In this case, I fear we have missed an opportunity to scrutinise the EC floods directive and its transposition into domestic law through a vehicle which would have been much better designed than these regulations, that is the Flood and Water Management Bill which is at present going through Parliament.

The EC directive has the worthy aim, among others, of establishing effective cross-border flood risk management. This is one issue that simply does not arise, as the regulations we are considering apply only to England and Wales—they do not relate to Northern Ireland. What we need is bespoke consideration. As my noble friend just explained, some of the very clear national issues that we have are about flood management appraisal and putting into effect the right proposals.

A proper parliamentary scrutiny of the transposition of this directive in the Flood and Water Management Bill would have been an ideal way to set about it. I am sure Parliament would have made a helpful contribution as to how the regulations could have been fine tuned, as appropriate for our national needs. However, Parliament has effectively been deprived of the opportunity. We have had no opportunity to look at the fine detail, as we would if we had been in Committee on a Bill. The irony is that most of us support the thrust of the directive and see the need—not perhaps for cross-border flood risk management for England and Wales—but certainly for detailed appraisal and management proposals to be prepared, particularly in areas of priority.

8.15 pm

The Minister may point out in replying that, as part of the public consultation on the draft Bill, one chapter addressed the issue of the transposition of the floods directive. The Explanatory Memorandum to these regulations reports that 48 per cent of respondents were broadly in favour of the proposed transposition arrangements, 46 per cent made general comments and 5 per cent were against the proposals. The conclusion that I draw from these figures is that the large majority are, like me, in favour of the general thrust of these regulations, but there is plenty of scope for improvement. Forty-six per cent of people would not have made comments if they did not have ideas as to how the arrangements could be improved.

As my noble friend Lord Taylor just remarked, there are very specific issues on flood management which are all too apparent and need to be addressed. The way the EC floods directive has been transposed into UK law is a missed opportunity. Frankly, Parliament has been treated poorly. I know that the original intention was for the Government to use the Bill to transpose the legislation—they were worried about the cost of infraction proceedings. What has happened is that, for pure convenience in administrative matters, Parliament has been sidetracked. That is a great pity.

Baroness Byford: My Lords, I would like to follow my noble friend Lord Selborne, because he touched on a couple of things which are extremely worrying. I take his point that many of those who responded had queries. I have looked at the observations of the Merits of Statutory Instruments Committee on the Bill. My noble friend Lord Taylor of Holbeach stated in his introduction that he was quite concerned about the extra resources needed. In fact, the Merits Committee points out in paragraph 19 that,

"a significant number of respondees called for sufficient funds and resources,"

to be available to,

"local authorities to undertake their responsibilities,"

under this directive. Can the Minister say how many people asked and how many was a significant number? How confident are the Government that they—Defra particularly—will have sufficient funds and resources, in terms both of money and of manpower and skills? All of us are well aware of the dire straits in which the Government find themselves within departments, and Defra is one of those departments that is looking to find cuts in commitments. How confident can the Minister be, if local authorities realise that it will cost them more than was originally understood, and if the Merits Committee are right in saying that the lead role has been underestimated by Defra, that that will be resolved? There is no sense in us today passing measures under which we have no guarantee that those costs will be met.

I go back to the point made by my noble friend that this discussion should have taken place within our debates on the Flood and Water Management Bill. My noble friend is slightly more gentlemanly than me in his approach, but having been Front-Bench spokesman for 10 years on this brief, it irritates me beyond words that we are asked to accept legislation on this issue in the form of statutory instruments. As we know well, we can debate it tonight and we can raise issues with the Minister, but it will not change anything because we cannot change the regulations. Whereas, if proposals were in primary legislation—a Bill—one would have a chance to alter and improve it. I, and I think all of us, support many of the things that this statutory instrument is trying to do.

I have some basic questions on costs and skills, bearing in mind the cost-cutting that will come to Defra and, indeed, local authorities. I return to the very good example raised by my noble friend. We are grateful that he went to Cockermouth and talked to some of the farmers up there. The regulation refers to those with economic interests and the environment. I hope that farming is considered to be an economic business, because if it is not, it jolly well should be, because farming is a business. My noble friend raised the problem of the enormous costs that a particular farmer will incur that will not apply to other farmers in relation to some floods. How do the Government intend to support the local authority to help that farmer to cover those extra costs?

I wish to raise two other issues. One is about the maps that will be created. My reading of the statutory instrument is that they will be available to members of the public. Will they be able to obtain them online? Will there be a cost? How will that work? My final point is that obviously some areas and counties do not have the same risk-management problems as those experienced by other counties on a regular basis. Are they expected to produce reports and plans as full as those required to be produced by an authority with constant risk-management problems? Those are specific issues, but I am anxious because this statutory instrument has raised real issues that need addressing. Our only chance to do so is through the statutory instrument, and I am grateful to my noble friend for raising this matter.

Lord Teverson: My Lords, I should declare an interest as a member of a unitary authority, Cornwall Council, which will be one of the authorities which has to implement these regulations, which have already been passed.

I was interested in the comments around subsidiarity raised by the noble Earl, Lord Selborne. I, too, read these regulations and two issues sprang out at me. One was whether the directive, if we or the European Union Committee looked at it, would pass the subsidiarity test. Within continental Europe, given the large river basins, including the Rhine and the Danube, cross-border planning is important, and more than two member states are often involved. However, these regulations apply only to England and Wales, and a small part of Scotland, but do not apply to the Northern Ireland/Republic of Ireland border. I wonder whether these regulations are essential to us as a member state in terms of European legislation.

Exactly as the noble Lord, Lord Taylor, said, having looked at a number of these issues that are largely already covered in UK legislation—perhaps not sufficiently—I should be interested to understand from the Government which parts of the directive are not covered sufficiently. They may be perfectly good in relation to what the Government want, but there is insufficient explanation as to which parts of the directive are not covered by existing EU legislation and, therefore, why such an order is necessary. If the Government wish to improve the current legislation, as many of us would wish to, it would be much better—as has already been stated—for that to be included in the Flood and Water Management Bill. I should be particularly interested to understand why the current spatial planning flood-risk assessments do not cover what the directive already requires and why we therefore need, in terms of implementation of European legislation, flood-risk management plans.

Like many other Members of this House, I am also concerned at the cost of this. The £6 million one-off cost may be credible, but the ongoing zero cost is very optimistic. All local authorities are under financial pressure and will continue to be so. They are putting their budgets together at this very moment; although this is of great importance, it will be an additional pressure on local funding which regrettably will have an effect on other services as well.

I could not see anywhere within these regulations, which are now already within the law of the land, when these plans by local authorities have to be submitted. I did not see any timescales and I would be interested to hear those.

This is an important debate and I do not wish to prolong it any further. My only comment is that in my experience of Parliament whenever a Member stands up and says, "My Lords" or "Fellow Members, I will be brief", they are always the longest speaker. It is also the case that when Members stand up and say they know nothing about the subject or are very modest about what they know, they come forward with extremely important, in-depth and relevant speeches. We certainly heard such a speech from the noble Lord, Lord Taylor, this evening.

Earl Cathcart: My Lords, I understand that these regulations were previously intended to be part of the draft Flood and Water Management Bill, but the Government decided to push them separately without debating them in either House, as has been said. I thoroughly agree with my noble friends Lord Selborne and Lady Byford that it would have been much better to have debated them before December.

My noble friend Lord Taylor has asked why it is right to bring forward these regulations before primary legislation. I agree: it is like putting the cart before the horse. It is very unusual to have secondary legislation coming before primary legislation. One can only assume that the Minister does not expect the flood Bill to make it through all the stages of the parliamentary process to become law. On this side of the House, we have said that we will support the Bill, so what are the Government not telling us? In their endeavours to comply with EU legislation, the Government have brought forward these regulations regardless of whether the flood Bill becomes law or not.

I want to move on, as others have done, to the cost of implementing these regulations. I understand that Defra's impact assessment suggested a one-off cost of £6.66 million. The Minister is no doubt already aware that the Local Government Association believes that the Government have underestimated this, and that the cost will overrun. Can the Minister confirm, as others have asked, that Defra will not only fully fund this cost, but also that of any overrun?

My last point concerns Regulation 7, "Lead local flood authority", and it was raised by my honourable friend Anne McIntosh in another place in Committee on the Flood and Water Management Bill. Regulation 7 states that the lead authority should be the county council, where there is no unitary authority for an area. Obviously, the county council should be the lead authority in many instances—for example for sustainable drainage along the highway—but what about when a planning application is being considered? The district council is clearly the planning authority, so it seems obvious that it should deal with the Sustainable Urban Drainage System, or SUDS. However, under Regulation 7, the county is the lead authority in this area, whereas the district, as I have said, is the most appropriate authority to deal with SUDS. Does the Minister propose to give guidance to councils suggesting with which level of local authority the lead should lie? Otherwise, as things stand, the planning process will be unnecessarily prolonged; I know we are all keen to speed up this process.

It might not seem obvious that SUDS is relevant to these regulations, which deal with flood risk management, maps and plans, but it is. These regulations are now law. They define who is to be the lead authority and so have a direct link with and bearing on the flood Bill.

8.30 pm

Lord Davies of Oldham: My Lords, I am grateful to all noble Lords who have participated in the debate. By their very participation, they have answered the charge that there is very little opportunity to discuss the issues. I hasten to add that it is also the case that we are confident that the Flood and Water Management Bill will be before the House immediately after the Recess. There will be a number of weeks before there is any question of Parliament being dissolved. Consequently, we look forward to constructive debate on the issues during that time, within the framework of the Bill. Far from the Government having denied any opportunity, they have provided a dual opportunity: the opportunity for debate on the regulations, and the opportunity for subsequent debate on the Bill. I am grateful that noble Lords have indicated that there is merit in both, and that there is not much that we will want to see translated into law.

I will add that if noble Lords are critical of the opportunities for discussion of the regulations in the other place, the fault lies with those who had the opportunity of asking for that debate. Here, the noble Lord from the opposition Front Bench asked for this debate and duly got it. The fact that his colleagues in another place did not ask for a debate is not the Government's responsibility: it rests firmly with those who chose priorities other than this important one. I am glad that the noble Lord chose this important one, and that we have the chance to debate the issues. As I indicated, we will be able to do even more when the Bill is before us.

I emphasise the links between the two. The noble Earl, Lord Selborne, is absolutely right to say that the Government were probably worried about the issue of infraction if they delayed too long their response to the directive: that is why they introduced the regulations in November. We were then able to take into account what the regulations covered when it came to the drafting and presentation of the Bill. We have the advantages of both being contributory to dealing with what we all recognise is a matter of great importance and some urgency, given what that the noble Lord, Lord Taylor, and others who have spoken, identified as the risk of flooding and the horrors that were visited on Cumbria in the latter part of last year.

The Government are not apologetic about the situation: far from it. This is largely because the directive substantially followed the pressure that they were applying to the European Community to secure the directive that they wanted. We find it relatively straightforward—although there are always problems—to follow the principles of the directive and bring them within the framework of our regulations because they are largely consistent with how we want to act.

We are also conscious of the fact that the European dimension on this is important. There is no doubt about the flood risk in Europe. The noble Lord, Lord Lawson, is in his place, so I will not provoke him by any reference to climate change; but the noble Lord, while disavowing any such concept, will recognise that parts of Europe have been subject to more extensive and dramatic flooding than has been the case in the recent past. Therefore it is right that the Government address the issues. After all, we experienced floods in 2005 and 2009 that produced devastating effects on localised communities, and so have reason to act.

I repudiate the idea that the Government have not been keen for scrutiny: quite the opposite. We will provide opportunities for that, and will be constructive about the legislation. I have no doubt that the

contributions made here today will be constructive, because no noble Lord has addressed the regulations—or, in passing, the Bill—without offering the view that they are necessary and that we need legislation that is effective and deals with the problems that we all appreciate.

The noble Lord, Lord Taylor, rightly identified one crucial issue. He was by no means the only one because the noble Baroness, Lady Byford, and the noble Earl, Lord Cathcart, also raised this point. I recognise that there are obligations on the local authorities, but we have made it clear, and the local authorities have in their representations accepted that point, that resources will be available for this. We have indicated that if there are additional costs above and beyond the provisions that we have made this is part of the negotiations that we had in the preparation of the legislation. We have been concerned to increase the level of public involvement. Obviously local authorities have been involved with costs and I assure the House that Defra recognises its responsibility as regards costs, and the responsibility will remain with Defra.

We have said that if it becomes clear that local authorities have incurred additional costs in fulfilling their responsibilities under the directive, Defra will provide the extra funds in full.

Lord Campbell-Savours: My Lords, will my noble friend give way? Is any information being made available on who is going to get this money? Many local authorities will have a minimal case to make in terms of flood risk. Has any work been done on the profile of expenditure and who is getting it?

Lord Davies of Oldham: My Lords, of course it will be the local authorities which are involved in the risk management exercise and for which the risk with regard to floods is important. The noble Lord, Lord Taylor, spoke of his visits to Cumbria. He will recognise that my noble friend Lord Campbell-Savours lives there and represented part of the area in the other place for a considerable time. I want to assure him that there are different funds available with regard to clean-up and clear-up after the devastation. I applaud what the noble Lord, Lord Taylor, said about the necessity of recognising—the noble Baroness, Lady Byford, also emphasised this point—the catastrophic impact upon some farmers from the floods. We are going to give help with regard to that. We have clearly signalled it and the issue of clear-up is enormous. The noble Lord, Lord Taylor, identified in his graphic description what a formidable challenge that is for land that has been devastated in this way.

The Government of course have indicated that they will address the consequences of the floods for Cumbria. It will not be overnight and not by the stroke of a pen—everybody recognises the difficulties. As regards farmland, of course, time is also key because there is no way in which clear-up of that kind of devastation can be effected in a short period of time. But that is separate from the resources that I was indicating related to the directive and the implications and the work that derive from it.

In these terms, the Government maintain that we have consulted on the directive, we have consulted certainly on the Bill; noble Lords have indicated in their speeches the responses that we have had on these issues. We know the degree of public anxiety. I want to assure the noble Baroness, who raised the next stage of public consultation, that the maps will go on line. There is every intention of seeking to involve the public with regard to the presentation of the maps and the proposals in these terms. Consequently, I hope it will be appreciated that the Government intend to act in as open a manner as possible, knowing full well that local areas are extremely important sources of information on risk assessment as regards flooding. It is important that we tap into that.

I hope noble Lords will also appreciate the drafting of the regulations and especially the drafting of the Bill. I know that the Bill is not immediately before this House but it has had very extensive consideration in the other place with which noble Lords will be acquainted. Those deliberations indicate the openness of the legislation, the necessity for consultation and, above all, the necessity of effective co-ordination with localities on the implementation of the legislation. In that respect, I hope I can reassure noble Lords.

This is our only debate on these regulations—it is customary to have only a one-hour debate on regulations. However, we also have the Bill. The advantage with the proper response to the European directive and the regulations is that we were given an early start in November and a chance to put the regulations alongside the Bill. We are conscious of the constraints of time and everyone knows that we do not have a full parliamentary Session before us. The Bill was introduced into the other place at an early stage and it will come to us a week after the Recess. Therefore, we have a framework for a full debate on it.

I want to assure noble Lords about the opportunities for getting this legislation right and seeing that the regulations complement the Bill. I heard the criticism that the regulations offer less debate. Of course they do, but they also supplement the Bill and enable us to cover a range of areas which otherwise might led to a very protracted debate on the Bill with the danger that it might not be delivered in the time allotted. There is a logic to that position.

Therefore, the Government are in no way apologetic about the way in which they have approached these issues. First, although we are as one with everyone who has spoken this evening on the importance of action in this area, we must have a clear definition of why we need legislation. Secondly, I want to reassure the House on the issue of costs. We are addressing the costs and we appreciate above all that effective consultation at a local level is the only way in which these issues will be conducted satisfactorily.

I realise that I have not answered every single point in what has been a fairly wide-ranging debate, but I hope I have succeeded in indicating to the House that far from these issues not being subject to open and full consultation and then debate, this House will soon enjoy the opportunities which the other place has had to debate the Bill. Therefore, where there are weaknesses with regard to the regulations—I am the first to recognise

[Lord Davies of Oldham]
that any form of regulation, given the extensiveness of this issue, is bound to be limited in its impact—and we will be able to address them when we consider the Bill.

Baroness Byford: My Lords, by his last comment, is the Minister indicating something that does not normally happen: that if for any reason this House decides that changes need to be made to the statutory instrument that may happen? Normally, that never happens.

Lord Davies of Oldham: No, my Lords, I was not indicating that. The noble Baroness will be well aware of the fact that we cannot amend a statutory instrument that will be part of the regulation that has been passed by Parliament if in fact it goes through this stage this evening. What I was indicating is that we will be able to look at what is then in law as far as the regulations are concerned and consider the Bill against that background. I am indicating that, of course, the regulations make their contribution to addressing this issue.

The Bill is far more important and much more wide-ranging, as would be expected, and I was indicating to the noble Baroness that the Bill should be seen in that context. If from that we had a position in which the regulations needed to be advanced further, we could then subsequently address that, but we are dealing this evening with regulations which will go through as they stand. Of course, it may be from the Bill that there is a necessity identified of secondary legislation and, of course, the Government will be prepared to look at that.

8.45 pm

Lord Teverson: My Lords, I do not think that the Minister has answered any of my questions. While some of them may be too difficult within such a short debate, perhaps he could just tell me when these flood-risk management plans need to be completed and ready, since, as I said, I do not see that anywhere.

Lord Davies of Oldham: My Lords, we have to deliver this by 2011: that is the deadline that we are working to and that is why the deadline for the introduction of the legislation was in November last year. We did not quite hit that deadline, but we were within two weeks of doing so, in terms of the European directive. I think that all noble Lords who have spoken in this debate will be concerned not just with deadlines which are derivative from a European directive. We are all conscious of our fellow citizens and their industries—of which farming is an important one, as has been identified this evening—who have suffered from the flooding problems in very graphic ways and we need to address ourselves to those issues.

Lord Taylor of Holbeach: My Lords, I thank the Minister for responding to this short debate. My noble friend Lady Byford got to the nub of the issue in her challenge to the Minister—there is no doubt that the passage of this statutory instrument does indeed, to some degree prejudice our capacity to debate the Flood and Water Management Bill. However, that is not an unusual situation.

I thank all noble Lords who have spoken in this debate for their general support for what we have sought to do this evening. Generally approving the Government's purpose in introducing the Flood and Water Management Bill also exposes our responsibility as Members of this House to debate the Bill and to ensure that it achieves the Government's objectives and the objectives that are shared by other Members of this House, so I hope the Minister will not assume that that debate will be all sweetness and light. At least the debate this evening has shown that the detail of the Bill will be very properly debated on its arrival here.

As for the regulations, I am grateful for the Minister's assurances to the noble Lord, Lord Campbell-Savours, first, that local authorities' expenditure will be fully funded by Defra—I believe that that is what the Minister said—and, secondly, that funds will be made available beyond what has already been committed to deal with the extraordinary circumstances in which certain businesses and individuals find themselves as a result of the Cumbrian flood damage.

Given the nature of these things, I am sure the House will wish me to withdraw the Motion.

Motion withdrawn.

8.50 pm

Sitting suspended.

Equality Bill

Committee (4th Day) (continued)

9 pm

Amendment 101D

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

101D: Schedule 9, page 165, line 39, at end insert—

"( ) a requirement not to be a disabled person"

Lord Low of Dalston: My Lords, in moving Amendment 101D, I shall speak also to Amendments 101E and 101F, which all amend paragraph 4 of Schedule 9. Their effect would be to remove the blanket exemption of service in the Armed Forces from the employment provisions of disability discrimination legislation. But it is important to be clear just what the amendments do and do not do. They amend paragraph 4(3) of the schedule so that it no longer disapplies Part 5—that relating to work—from service or work experience in the Armed Forces as regards disability. However, Amendment 101D adds,

"a requirement not to be a disabled person",

to the requirements which may be applied to service in the Armed Forces if they can be shown to be a proportionate means of ensuring combat effectiveness.

The exemption I seek to modify was in the Disability Discrimination Act when it was enacted in 1995, along with similar exemptions in respect of service in the police, prison and fire services. In 2004, the police, prison and fire services were brought within the scope of the DDA by the regulations implementing the European directive on equal treatment in employment and occupation. But an exemption from that directive was negotiated in respect of service in the Armed Forces. That exemption is retained in the Bill and also

formed the subject of a reservation to the UN Convention on the Rights of Persons with Disabilities when it was ratified last June.

At first sight, trying to lift the taint of discrimination from the ban on disabled people serving in the Armed Forces seems like political correctness gone mad. What disabled person would want to make a point of serving in the Armed Forces if they did not have to? Of all the bastions of exclusion that one would most like to storm, the armed services would probably not rank high on anyone's list. Surely it could have the effect only of undermining fighting capability. Disabled people need to recognise their limitations and be realistic about how far they take the principle of inclusion.

Why, then, do disabled people care about this? The answer is that excluding any occupation lock, stock and barrel sends a very negative signal about disability and undermines the principle of full inclusion and citizenship for disabled people. Is it even necessary? What about all the civilian jobs that do not require combat effectiveness, including cooks, radio operators, quartermasters and the like? But a principle is not worth having if it flies in the face of all practicality. Therefore questions of practicality inevitably come into it. In the fighting services of today, it is said, sharp demarcation of roles no longer exists. You can be cooking one minute and fighting on the front line the next, or if not actually fighting on the front line, then fleeing for your life, which requires you to maintain a pitch of fitness which is out of the question for disabled people. This begins to make the argument based on the wide diversity of jobs available in the forces difficult to sustain.

But there may be more to this than meets the eye. The argument that bans all disabled people from serving in the Armed Forces on the basis that people in wheelchairs or people who are totally blind could not possibly go into action is based on a very narrow and outdated stereotype of what disability is and certainly not one that is recognised by the DDA. There disability includes things like severe disfigurement, diabetes, controlled epilepsy, having had a mental illness at some time in the past, and many more conditions, none of which would necessarily disable a person from active service in the Armed Forces.

What is to prevent such a person being fully combat-effective? This is the crux of the argument for sticking up for disabled people's right not to be excluded automatically from serving in the Armed Forces. It is not about the diversity of jobs but the diversity of disabilities. The matter was considered in 1999 by the Disability Rights Task Force, of which both the noble Baroness, Lady Campbell, and I were members, along with the question of service in the police, prison and fire services.

The MoD was understandably concerned about operational effectiveness. It argued that disability, or a history of disability, was not compatible with the need for a combat-effective fighting force able to undertake military operations anywhere in the world at any time. The task force recognised the special nature of the Armed Forces and the significant efforts they make to retain personnel who become medically unfit. However, it did not consider there was a case for a major public sector employer to be exempt from the provisions of the Disability Discrimination Act or that disabled people in the Armed Forces should be denied protection against unfair discrimination in employment. It noted that, under the DDA, employers are not required to do anything that is unreasonable and, for example, employ or retain someone who cannot do a particular job after any reasonable adjustments have been made. This acknowledged the concerns of the defence chiefs about being sued by disabled people claiming to do things which they plainly could not do. The task force therefore recommended that the employment provisions of the DDA should cover the Armed Forces as well as the police, prison and fire services. But, in the case of the Armed Forces, it recognised that adequate safeguards needed to be put in place to ensure that operational effectiveness was not compromised.

That is what my amendments do. They would relax the total exemption of service in the Armed Forces but add the requirement not to be a disabled person to the requirements which may be applied to service in the Armed Forces if they can be shown to be a proportionate means of ensuring combat effectiveness. In this way, disability is placed on the same footing as the requirement to be a man or not to be a transsexual person, and the safeguards called for by the task force in the interests of combat effectiveness are guaranteed.

The matter was considered again last April by the Joint Committee on Human Rights in the context of reservations to the UN Convention on the Rights of Persons with Disabilities. It said that it had seen no evidence to support the Government's position but that the exemption was justified and appropriate. It noted the conclusion of the EHRC that lifting the exemption which had previously applied to the police and fire services, which both place similar demands on their personnel, had had no negative impact upon the ability of both services to determine objectively who joins the service or upon operational effectiveness and that so far no other EU party to the convention has felt the need for such a reservation.

Given the breadth of the proposed reservation, the committee considered that it is open to challenge as being incompatible with the object and purpose of the convention, which the UK has ratified, and reiterated its recommendation that this should be reconsidered in the context of the Equality Bill. If the Government decide to lodge a reservation in the terms proposed or any alternative based on the principle of combat effectiveness, we recommend that they should commit to keep the reservation under review and undertake to reconsider the necessity for it within six months of Royal Assent.

It is very disappointing, therefore, that the Government have not seen fit to reconsider the matter in the context of the Equality Bill. What we are speaking of here is a right not to be automatically excluded from service in the Armed Forces, not an automatic right to do so. No one is saying that any disabled person can perform any role in the services. In the words of the noble Lord, Lord Lester of Herne Hill, speaking in the debate held in Grand Committee on the ratification of the UN convention:

"Recruitment should be based on assessments of individual merits, rather than on the basis of stereotype or prejudice".—[*Official Report*, 28/4/09; col. GC26.]

[LORD LOW OF DALSTON]
All that disabled people want is the right not to be subjected to a blanket ban which states that the one thing a disabled person cannot be allowed to do is serve in the Armed Forces of his country. I beg to move.

Baroness Wilkins: My Lords, I strongly support Amendment 101D moved by the noble Lord, Lord Low, which seeks to remove the Armed Forces exclusion from the provisions of the Disability Discrimination Act. The noble Baroness, Lady Campbell, also very much wanted to support this amendment. As the noble Lord has said, the matter was strongly pressed when she was a member of the Disability Rights Task Force, but unfortunately, although she would have liked to be here, the hour has grown too late.

The military has a narrow view of what constitutes disability. Perhaps I may expand on that. The military believes that all forces personnel must be fit to be deployed instantly to any part of the world and to be fully operational in whatever circumstances they happen to find themselves. Some people believe that inclusion in the DDA would mean that the military would have to consider blind soldiers, submariners in wheelchairs and so on. They have not grasped the concept of genuine occupational requirements. It is perfectly reasonable for the military to impose a fitness standard for new recruits and, providing that the standard can be justified, people who do not meet it could be rejected. The DDA permits this. However, the military has a blanket ban on disabled people.

Everyone should be considered on their merits. It is worth noting that when Sir Bert Massie was chair of the Disability Rights Commission and spoke to military commanders, they were shocked to learn that facial disfigurement counted as a disability. Ironically, the many soldiers who have been burnt in the course of their duty would be protected if the military were subject to the DDA. When the Act was first passed, the uniformed police and the fire service were also excluded. They used the same defence that is now used by the Armed Forces. From 1 October 2004, the exemptions for the police and the fire service were abolished, and it is interesting to note that the performance of both has continued to improve.

A recent report in the press showed that the Armed Forces were doing a great deal to retain soldiers who have been injured in Afghanistan. To a large extent, the military is already beginning to implement some of the principles of the DDA, and surely the exclusion of the military from the Act makes less and less sense as the years pass. I suspect that part of the anxiety within the military is the fear of appearing in civilian courts because of the belief that civilians cannot possibly understand the rigours of military life. This is the same belief that was applied to gender and race, but the military is now subject to the law regarding both; disability is still the exception. I urge noble Lords to think again about this exclusion anomaly and to support the amendment.

9.15 pm

Lord Craig of Radley: I would like to start by recognising the determination and commitment to this theme of the noble Lord, Lord Low, over many years. He wrote to alert me to his Amendments 101D, 101E and 101F and, predictably, wanted me to speak in support of his proposal. The noble Lord is aware that I am not going to speak in support of his amendment.

I am not the first former Chief of Defence Staff not to be in favour of, or attracted to, this idea. Way back in 2000, the noble Lord, Lord Low, was very active in seeking to lift the restrictions on disabled persons from joining and serving in the Armed Forces. At that time, the then serving Chief of the General Staff—now the noble and gallant Lord, Lord Guthrie—spoke in a very public way against the idea, no doubt much to the disappointment of the noble Lord, Lord Low, and others seeking honourable ways to eradicate discrimination against the disabled. The persistence and commitment shown by the noble Lord deserves acknowledgement but I share the reservations of the noble and gallant Lord, Lord Guthrie.

The Minister will be well briefed on the reasons for the policy of the Ministry of Defence, so I shall not attempt to cover all the points in her notes. Only a fortnight ago, the Under-Secretary of State for Defence and Minister responsible for veterans, Mr Kevan Jones, was reported as giving a number of cogent reasons why the Armed Forces must confine their search for recruits to those individuals who meet certain medical, physical and fitness standards. To do otherwise is to limit the potential for flexible and worldwide deployment, following training, of individuals for their particular roles. The Ministry of Defence's policy is clear and robust, and with good reason.

Noble Lords will recall that in recent years the Armed Forces have not only been heavily committed to operations but have been steadily civilianising posts where front-line fighting and operational capabilities are not required. This applies not only to HQ posts but also, through the use of public finance initiatives, to many other tasks once undertaken by men and women in uniform but now contracted out to civilian companies. So on a practical level, the opportunities that once might have existed for some disabled individuals are all but gone. I know that the noble Lord, Lord Low, is not expecting the Armed Forces to recruit disabled men or women to tasks that they are unable to perform satisfactorily, so realism as well as principle is at stake.

As a good employer, the Armed Forces are rightly keen to do all that they can to retain trained individuals who have been wounded or injured while on duty and who wish to stay. For the very few who remain and cannot return to full time operations, there is, hopefully, still some small scope to use them productively. Indeed, I hope there always will be. It is both morally right as well as helping to amortise the cost of their training and experience to fit them in to a less demanding position—a position which could well not be available if the Armed Forces were to change their policy and recruit a uniformed element solely to fill such positions. We could offer no hope for those who have fought and recovered from their injuries. Surely that would be even more unfair.

The less expensive alternatives of employing a civilian or contracting to industry have helped to reduce the size of the uniformed services, thereby cutting pay and

pension provisions and easing pressures on the defence budget. I do not foresee any change in that position. There may well be opportunities for the disabled in these non-uniformed posts where they are able to integrate with and support the Armed Forces in their vital work, but for those who seek to become full-time members of the Armed Forces, the present MoD recruitment policy is realistic, rational and reasonable. I do not support the amendments.

Lord Lester of Herne Hill: I do not intend to draw upon my rather inglorious career in national service as a second lieutenant in the Royal Artillery, although I should say, as one who was at 24 hours' notice to help invade Suez, that I do not think that if the amendments of the noble Lord, Lord Low, had been in force, we would have been any less effective in some areas than we proved to be. That, though, is beside the point.

I shall explain why we so strongly support the noble Lord, and not only for the reasons given in the report by the Joint Committee on Human Rights, to which I was party. I shall not read the relevant two pages of the report now—they are there for everyone to read. Instead, I shall explain why the Ministry of Defence and senior members of the Armed Forces have in the past persistently opposed the application of equality legislation on very similar arguments to those that are now being deployed in relation to disability. Not only is that true of the Armed Forces but it was once true of the police service.

The case that I am most proud to have argued in my career was not about the Armed Forces but about the police service in Northern Ireland. In 1986 the chief constable of the Royal Ulster Constabulary had decided, a few years before, that in order to combat the IRA and terrorists it was important that the part-time reserve police force should be composed of men, because it was ungallant to expose women to the risk of death by terror and because men were more likely to be effective than women in combating terrorism in the police service. The Minister of the day blocked the women's access to justice by granting a national security certificate, which was, like the present law in relation to disability in the Armed Forces, a blanket ban allowing of no exceptions.

We eventually finished up in the European Court of Justice, this being a case about sex discrimination, and the court said, "Even in terms of national security, you must not have a blanket ban". The case went back to Belfast, I had the privilege of cross-examining the chief constable, evidence was given in camera, and of course it turned out that the women were every bit as able as the men—more able, in certain posts—in combating terrorism. In the end the chief constable had to concede and the policy had to change. That was a case about police power, not Armed Forces power, but it involved violence, the use of weapons and all the rest of it.

Next, the Ministry of Defence decided, in its wisdom, that women could not enter the Armed Forces if they were pregnant, nor if they became pregnant. It became necessary for us to bring a judicial review challenging that on the basis of European law. Ridiculous though it seems, that was the policy, and it was deployed with powerful arguments by the military in the same way that it is doing now. The Ministry of Defence was forced reluctantly to change that policy.

The next case was with regard to homosexuality. There was a blanket ban on becoming a member of the Armed Forces if you were openly gay, so Mr Lustig-Prean and others eventually had to go to the European Court of Human Rights in order to establish their right to equal treatment and overturn the blanket ban.

Now we are faced with a ban on disability. The Joint Committee on Human Rights questioned the Minister from the Ministry of Defence, received written evidence and so on. We could not understand how it was possibly justifiable to ratify the UN Convention on Disability with a blanket reservation allowing any discrimination on the basis of disability rather than a flexible test that, of course, made sure that members of the Armed Forces were combat-effective in the posts that were needed. Now we face very sensible amendments by the noble Lord, Lord Low, which introduce proportionality and flexibility, while maintaining the combat effectiveness of the Armed Forces.

I have no doubt whatever that Ministers will have to get up on behalf of the Ministry of Defence, which—and I say this with the utmost respect—has never knowingly been in the vanguard of reform in the equality area, to explain why the Government cannot accept these amendments because the MoD will not allow it. Very well. If that is the Government's position I predict that, at some point, somebody or a group of disabled people will challenge the Government in the courts and they will succeed.

For those reasons I oppose the blanket ban and strongly support the noble Lord, Lord Low. I admire him hugely for his persistence in raising the matter and I only wish that glasnost would come to the MoD.

Baroness Masham of Ilton: My Lords, in this amendment we speak of brave and honourable people, who have risked their lives. To have a blanket ban cannot be good for rehabilitation. The Committee should think for a moment of some past leaders. Douglas Bader lost both legs, yet had very high morale. Nelson had one eye. Napoleon had one arm. They were leaders of men. Rehabilitation is so important. If people from the services feel that they have no future, rehabilitation goes downhill.

I hope that the amendment of the noble Lord, Lord Low, will be looked at carefully because a blanket ban is a dangerous thing.

Baroness Howe of Idlicote: My Lords, I also support my noble friend Lord Low's amendment. Listening to this discussion takes me back even further to the Sex Discrimination Act, where there were various exemptions for the police over height requirements for certain jobs and goodness only knows what. We have moved a little way since then.

I understand fully what my noble and gallant friend Lord Craig is saying. However, given the speed at which we are treating people with disabilities, people are living who might well not have lived in the past, We have a proportion of our population who have absolutely the same rights as the rest of us to lead a full and fulfilling life. I suggest that we follow the examples that have been given. It is not an absolute requirement.

[Baroness Howe of Idlicote]
Clearly, reasonableness dictates what can and cannot be done. We already know that those who are in the armed services have been looked after, resettled and so on quite effectively. We are saying that entrance should not be blocked either. That is a very important point.

I hope that the Minister will give some hope that this will be seen as part of our future behaviour and attitudes to everyone, whether or not they are disabled according to this huge range of so-called disabilities that we have now got—and we have heard how wide the range is these days—to lead full and satisfying lives.

9.30 pm

Lord Hunt of Wirral: My Lords, I pay tribute to the noble Lord, Lord Low of Dalston, who put across his amendments in a very reasonable way, rehearsing a number of the arguments we have heard before. This is a very difficult issue. Everyone who has participated in the debate has contributed to a greater understanding of what is at stake here. Listening to the debate, the problem I had was that there were so many cross-issues here. Perhaps the most important concerns what happens to someone who is injured or suffers some form of illness or disability while on active service. Certainly, it is my experience that our Armed Forces look after those who suffer in that way exceedingly well. Issues around this have arisen in the past, but in every case that I have investigated I was satisfied that rehabilitation was very much at the top of the priorities for the individual concerned.

Therefore, we come back to the point raised by the noble Baroness, Lady Wilkins, about the fitness standard. I can see that that can be justified. We are asking our Armed Forces to do more and more, and we pride ourselves on our flexibility and the ability to utilise everyone who is part of the team on the front line. The noble and gallant Lord, Lord Craig of Radley, knows a tremendous amount about this subject. We should heed his words that the situation is being addressed by the Ministry of Defence in a realistic, rational and reasonable way. Confronted with that evidence, I need some persuading that we should change the law. The noble Baroness, Lady Masham of Ilton, said that a blanket ban, on the face of it, seems a dangerous thing. I am not sure that it is a dangerous thing, but there has to be a broader attitude towards disability than we have at present. I am not sure that that should apply to the front-line forces, but I want us to put rehabilitation much higher up the list of priorities.

As always, the word "reasonable" summarises the attitude of the noble Baroness, Lady Howe of Idlicote, to all these issues. She used that word again tonight. Is it reasonable to continue in the way that we have? The noble Lord, Lord Lester, knows a tremendous amount about this subject and I bow to his expertise. I said earlier that we should try to simplify, rationalise, consolidate and codify the existing law so that everyone can understand it. I think most people would understand that you have to have able-bodied people on the front line who are able to undertake all those tasks which put their lives at risk in defence of freedom and in our defence.

Lord Lester of Herne Hill: I am grateful to the noble Lord. He keeps using the phrase "the front line", but does he realise that the blanket ban we are talking about does not apply only to the front line? Does he think that it would be good to protect ourselves against the kind of litigation about which I have warned?

Lord Hunt of Wirral: I was really following the noble and gallant Lord, Lord Craig of Radley, when he pointed out that in today's flexible fighting force, the front line summarises the line to which you could be called at any time, whatever your task. I think that the noble Lord, Lord Low of Dalston, conceded that in opening the debate. If one wants to see an even more flexible fighting force, I am not sure that we should impose these restrictions on the forces' ability to provide the fittest possible fighting force. I agree with the noble Lord about the need to avoid litigation. We must ensure that when this Bill eventually leaves this House it is immune to such challenges, which could otherwise occur unless we make the law simple and easy to understand.

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, I, too, thank the noble Lord, Lord Low, for tabling this important amendment. We have given long and careful consideration to whether it is appropriate to retain the Armed Forces' exception in relation to disabled persons. As we have heard this evening, this exception has been carried forward from the current disability discrimination legislation.

I hear what many noble Lords have said about the police and fire services, which have done away with their disability exemptions. However, the Armed Forces perform a role that is fundamentally different from organisations such as the police and fire services. All service personnel are weapons trained and need to be able to respond to the uniquely harsh realities and complexities of warfare. This involves deployment overseas and prolonged working in stressful situations and arduous environments. Service in the police and fire services is intrinsically different, not least because there is no requirement for everyone to be weapons trained or to serve overseas for prolonged periods. The Government do not therefore consider that a direct comparison can be drawn between services in such disparate organisations.

We believe that it is right for decisions on operational effectiveness to be taken by Ministers, accountable to Parliament and based on military advice, not by the courts. Like the noble and gallant Lord, Lord Craig of Radley, we believe that the Armed Forces must be able to determine and set their own standards, based on the tasks to be performed. Combat effectiveness relies on teams consisting of fully able personnel in order to meet the worldwide obligation to deploy.

The Armed Forces are called on to perform in a wide range of different tasks and great damage would be done if the base requirement for physical fitness was abandoned. It is important to ensure that personnel have the fitness attributes to cope with the physical demands of service in the Armed Forces. The Armed Forces thus have a medico-legal obligation to ensure that they do not recruit individuals who are clearly unfit for task and to protect vulnerable applicants

from harm. Recruiting those who are not fit for task potentially endangers not only the individual's health and well-being but also the safety of other personnel serving in the same unit or in the same operational environment.

The noble Lord, Lord Low, rightly spoke of the diversity of disabilities and, as my noble friend Lady Wilkins and others have said, the Armed Forces no longer make generalisations about disabled people's capacity to serve. Indeed, the Armed Forces already demonstrate their willingness to follow the spirit of disability legislation by recruiting people who have some degree of impairment, including learning disabilities, and by retaining service personnel who became disabled in the course of their duties. The noble Lord is absolutely right to say that there is much more that we could and should be doing in this area.

The noble Baroness, Lady Masham, and the noble Lord, Lord Lester, spoke of a blanket ban of disabled people in the Armed Forces. Whereas the provision permits the Armed Forces to discriminate against disabled people, its purpose is not to allow the operation of a blanket ban. The purpose of the exception is to allow the Armed Forces to organise themselves so as to be able to operate effectively. The Armed Forces have a good record of recruiting and retaining service personnel.

The retention of service personnel who become disabled, whom the Armed Forces have a clear moral obligation to look after, requires a sensible balance to be struck between the needs of the service and those of the individual. Adjustments for disabilities are made when practical, but it is not possible for the services to retain everyone who becomes disabled. Cases are considered on an individual basis against manpower requirements. While the services endeavour to continue to employ people injured on duty, where necessary in an alternative role, they do not artificially create posts to accommodate them.

I add that the Armed Forces' exemption is entirely consistent with European law. Member states have an exemption from the relevant directive, which says that,

"in so far as it relates to discrimination on the grounds of disability and age",

it,

"shall not apply to the armed forces".

In 2009, the UK ratified the UN Convention on the Rights of Persons with Disabilities, to which we entered a reservation on behalf of the Armed Forces to safeguard the exemption. The European Union has also ratified the convention without prejudice to the derogation in the directive for all member states' Armed Forces.

In response to the question of when the UK's reservation to the convention will be reviewed, the Ministry of Defence gives careful consideration to whether its policies and practices meet our current needs or whether they could be revised. The MoD reviewed the current arrangements recently but concluded that it remains essential that we retain our reservation and the Armed Forces' exemption from domestic disability legislation. We will, however, continue to keep these under review.

I know that the EHRC has suggested that there should be a pilot exercise whereby the employment provisions of the Bill, plus specific justifications concerning combat effectiveness, should be simulated and that the exercise should be independently reviewed to determine any risk to the MoD's ability to ensure the fitness of the people whom it recruits into the Armed Forces. However, we do not think that such an exercise would be helpful and would not want to run the risk of recruiting someone who was not fit for task. Recruiting those who are not fit for task potentially endangers not only the individual's health and well-being but the safety of other personnel serving in the same unit or operational environment.

Therefore, while I note what the noble Lord, Lord Lester, said about the potential for future challenges to our current position, for the moment we have not changed our position, although I have carefully listened to what noble Lords have said. I ask the noble Lord to withdraw the amendment.

Lord Low of Dalston: I am grateful to everyone who has spoken. In particular, I am grateful to my noble and gallant friend Lord Craig of Radley for the collegiate way in which he expressed his opposition to my amendment. We remain in mutual respect of one another, but in mutual disagreement.

I did not expect the Government to roll over and accept the amendment. The Minister's response was fairly predictable. I have heard it several times before. The Ministry of Defence may keep the matter under review, but its response does not change. It has not changed for the past 10 years and I do not expect it to change in a hurry. However, like the noble Lord, Lord Lester, I predict that it will have to change one of these days, just as the responses of the police, prison and fire services have had to bow to the onward march of our concern for equality in this society.

The noble Baroness said that the stance of the British Government is consistent with EU law. That is perfectly true, in that the European Union permits an exemption in respect of service in the Armed Forces as regards disability. The UK just happens to be isolated and alone as the only country within the EU that has felt the need to avail itself of such an exemption.

I shall try to be a little conciliatory. It is disappointing that the Government have not felt able to be a little more flexible, given that we framed the amendment in such a way as to give the Armed Forces a get-out, an exception, in cases where excluding disabled people was a proportionate response in the interests of combat effectiveness. However, there we are—the Government have not felt able to go that far tonight.

When we on the task force discussed these matters with the Ministry of Defence, I suggested that if the MoD were to relax the blanket ban, perhaps a code of practice could be designed in such a way as to cater for the concerns of the service chiefs. I respectfully repeat that suggestion to the Government. I am sorry that it has not been followed up since we discussed it on the task force.

Lord Hunt of Wirral: If the noble Lord will allow me, I find this a fascinating suggestion. Had it come earlier it might have given rise to an extended but

[LORD HUNT OF WIRRAL]
certainly worthwhile debate. Can he clarify whether he has raised this idea before? I am not saying that I would be in favour of relaxing the blanket ban, but certainly I am interested in whether some form of code could be worked up which would allow people with disability and in general to support the Armed Forces in some way, other than being part of the flexible fighting force. Has such a code been considered in the past? I cannot recall that it ever has.

9.45 pm

Lord Low of Dalston: I am grateful to the noble Lord for his positive intervention. I did not raise this before only because I had kept it in reserve until I had heard the Government's response. Given the response that we have had from them, it seemed appropriate to throw in that suggestion in winding up. We suggested a code of practice when the task force was considering these matters, and it was taken up by the Disability Rights Commission when it was established. There were perhaps some preliminary discussions—I think it was floated with the Ministry of Defence—but it does not appear to have got off the ground. I am grateful to the noble Lord for his positive response to the suggestion, and I would be extremely grateful if the Government would pick this up to see if it would represent a way forward or out of the complete impasse at which we seem to be regarding the exemption.

Baroness Royall of Blaisdon: My Lords, clearly it is an interesting suggestion—like the noble Lord, Lord Hunt, I was not aware of it. I certainly could not agree to look into it in the course of this Equality Bill. The Government's position now is absolutely clear, we are not going to waver and we are not going to consider such a code in the context of the Equality Bill. However, I will undertake to take back the suggestion of a code to see if we can reflect further and perhaps work on this proposal. As I said, this will not be in the course of the Equality Bill.

Lord Low of Dalston: I am grateful to the Minister for that response. I would not expect to see it in the Equality Bill, but perhaps it can be picked up afterwards. No doubt if we could agree on a code of practice, it would have to come before Parliament and noble Lords would then have an opportunity to pronounce upon it. With that constructive end to the debate on all sides, I am happy to withdraw the amendment.

Amendment 101D withdrawn.

Amendments 101E and 101F not moved.

House resumed.

Allhallows Staining Church Bill [HL]

First Reading

The Bill was presented and read a first time.

Kent County Council (Filming on Highways) Bill [HL]

First Reading

The Bill was presented and read a first time.

House adjourned at 9.49 pm.

Grand Committee

Monday, 25 January 2010.

3.30 pm

The Deputy Chairman of Committees (Baroness Pitkeathley): My Lords, I remind noble Lords that if there is a Division in the Chamber while we are sitting the Grand Committee will adjourn as soon as the Division Bells are rung and will resume after 10 minutes.

I draw noble Lords' attention to a mistake in the Marshalled List. Those of us who were here on Thursday remember that we dealt with Amendments 9 to 21 in that sitting. The first amendment to be debated today will be Amendment 22.

Child Poverty Bill

Committee (3rd Day)

3.31 pm

Schedule 1 : The Child Poverty Commission

Amendment 22

Moved by ***Lord Freud***

22: Schedule 1, page 18, line 5, at end insert—

"( ) the member is unfit for office by reason of misconduct,

( ) the member has failed to comply with the terms of his appointment, or"

Lord Freud: My Lords, as noble Lords will know, it is with some regret from my perspective that we do not have the chance to go back and debate the black economy—or informal economy—amendment again.

Amendments 22 and 23 seek to insert in the Bill powers that appeared in several pieces of recent legislation establishing similar independent bodies. I am curious as to why the Bill did not contain the usual wording. I appreciate that there are often small discrepancies between different Bills, but these provisions seem exceptionally pared down. I wonder whether the Minister is able to give us more clarity on what sort of behaviour would be considered a firing offence under these provisions. Given that the Government's view of the commission is for it to be facilitator of government policy-making, what would happen if the Secretary of State were to conclude that the commission's advice was not in line with the department's assessment of government policy?

The Secretary of State for the Home Office recently removed the Government's drugs adviser from his position as head of the independent expert body—the Advisory Council on the Misuse of Drugs—because of public comments disagreeing with government policy. That body was established under a 1971 Act which, as far as I can see, does not contain provisions on the removal of a member. Does that mean that the chair of this commission will be in a stronger position than the unfortunate Professor Nutt? Will he or she be able to publish criticism without putting their job at risk?

If these provisions give the chair a greater level of immunity, what will the consequences be if the commission and the Secretary of State do not agree on the appropriate strategy for reaching the targets? Constructive criticism can be taken too far. If the commission insists on taking a radically different approach to meeting the targets and refuses to work with the Secretary of State, we would agree that the Government must remain ultimately accountable. I am sure that the Minister would agree that if the chair of the commission is not aiding the Secretary of State in the formation of policy, the necessary steps should be taken. Can the Minister confirm that that would be possible under these provisions? I beg to move.

Baroness Crawley: My Lords, I hope that I will be able to give the noble Lord the assurances that he is looking for. First, I shall speak to Amendment 22, which is intended to add two further grounds for removing a member of the commission to paragraph 6 of Schedule 1—removal due to misconduct or a failure to comply with the terms of appointment. I agree with noble Lords that a future Secretary of State must have sufficient powers to remove a member of the commission if it transpires that they are not fit to serve in that office. I am therefore happy to confirm that the existing provisions within paragraph 6 of Schedule 1 will allow the Secretary of State to remove a member on these grounds.

In particular, the provision in paragraph 6(d) empowers the Secretary of State to remove a member should he be satisfied that the member is "otherwise unable or unfit" to perform his duties. This gives the Secretary of State the power to remove a member on the grounds both of misconduct and failure to comply with the terms of his appointment. The noble Lord raised the example of Professor Nutt. In that case, the Secretary of State was confident that he was empowered to remove that person on the basis of his not complying with the terms of his appointment.

The provisions of paragraph 6 of Schedule 1 follow precedents set in other legislation setting up advisory public bodies, such as the National Minimum Wage Act 1998, which established the Low Pay Commission, and the Social Security Act 1980, which established the Social Security Advisory Committee. As we know, we are talking about an advisory NDPB. With those assurances, I invite the noble Lord to withdraw his amendment.

Amendment 23 is similar to Amendment 22, in that it seeks to ensure that a commission member can be removed if he is unwilling to perform the duties of that office. I reassure the Committee that such a person can be removed using the existing provisions of the Bill. First, an unwilling member could conceivably be absent from a series of commission meetings. In the ordinary course of events, one would expect a member of the commission who was unwilling to perform his duties to resign his office. Paragraph 5 of Schedule 1 provides for him to do so in writing to the Secretary of State.

There may, I suppose, exceptionally be an instance of a person becoming unwilling to serve and at the same time reluctant to offer to leave the body. In such a case, the grounds set out in paragraph 6(d), covering

[Baroness Crawley]
inability or unfitness to perform the duties of the office, are sufficient for the Secretary of State to remove him from membership of the commission.

The noble Lord, Lord Freud, asked about the provisions in these amendments compared with other Bills. The provisions in Schedule 2 are based on previous legislation establishing NDPBs—for example, the Climate Change Act establishing the Committee on Climate Change. If the noble Lord would like to write to me detailing the pieces of legislation that are not included, as he sees it—

Lord Freud: I thank the Minister for giving way. It will probably be easier if I enunciate them now rather than putting pen to paper. The wording that we are looking at in this amendment has been taken from the Pensions Act 2008, the Planning Act 2008, the Statistics and Registration Service Act 2007 and the Safeguarding Vulnerable Groups Act 2006.

Baroness Crawley: My immediate response to the noble Lord is that those Acts may not be talking about advisory bodies—that is, the status of the body in front of us today. As he will know, a number of different bodies—statutory bodies, advisory bodies and others—do not fall within either of those definitions. I am very happy to write to the noble Lord and expand on that but at present we are confident that, as it stands, the schedule provides for enough instances for the Secretary of State to feel able to remove someone who is unfit or unwilling to discharge his responsibilities.

The noble Lord, Lord Freud, asked what kind of behaviour would constitute a firing offence. We would consider a commission member to be in breach of their appointment if, for example, they became unwilling to serve on the body or failed to be present for a series of commission meetings. Detailed terms of employment should be set out in a commission member's contract. Much of this information will be in the contract that the commission member agrees on appointment, not as we see it in the Bill. With that, I hope the noble Lord will feel able to withdraw the amendment.

Lord Freud: I thank the Minister for that explanation, but perhaps I may spend a little more time exploring the word "unwilling" in all its manifestations. I am conscious that in this area there are some deeply entrenched differences of approach on how to tackle poverty as a whole. Let me draw a hypothetical example. If we had a Government who were staunchly focused on dealing with the causes of poverty within their strategy, and if one or more commission members believed that the solution lay purely in income transfers, and if there was no support within the commission for the Government's strategy, despite direction by the Secretary of State, under the Minister's interpretation, would that constitute unwillingness? If so, could that unwillingness be dealt with by removal from office under the clause?

Baroness Crawley: My Lords, I go back to the principle that this is an independent advisory body. In our debate on Thursday of last week, a great deal of emphasis was placed on the importance of independence in setting up this advisory body. If it is to be independent, the value of the commission will rest entirely on its ability to provide independent expert advice. However, as the noble Lord said, if the Secretary of State feels that the advice that he or she is given is not advice that they can work with or does not move the policy forward, ultimately it will be very much within the power of the Secretary of State to take decisions on what the advice and strategy should contain and on the best way of addressing child poverty.

I do not know whether that directly answers the noble Lord's position, but it would be unusual for a Secretary of State to continue working with a member or members of a commission who were unable to meet the terms of reference of the work set out, which is within the purview of the Secretary of State. However, there is always space for minority views. The noble Lord will know that often there are one or two people—maybe more—on such bodies who wish to put in a minority report on a particular issue. That can and does happen within the machinery of government. The advice that the commission gives to the Secretary of State will be made public, so it will be clear in the public domain what is and what is not a minority view on the commission. Ultimately, it will be for the Secretary of State to decide which advice he wants to take from his commission and which he does not.

Lord Freud: I am grateful to the Minister for that very clear explanation. On that basis, I beg leave to withdraw the amendment.

Amendment 22 withdrawn.

Amendment 23 not moved.

Amendment 24

Moved by ***Lord Freud***

24: Schedule 1, page 18, line 27, at end insert—

"( ) Before requesting the Secretary of State to carry out, or commissioning others to carry out, research on behalf of the Commission, the Commission must have regard to existing research."

Lord Freud: My Lords, this is a common-sense amendment to ensure that the limited resources of the commission are not wasted on duplication but instead are targeted on improving the sum of knowledge available to us. We have already discussed the limitations of the data on which government measures are to be based, and I look forward to the meeting with the Ministers and their officials which I was offered last Tuesday. In requesting additional research, the commission could play an important role in plugging the gaps. Of course, the effectiveness of the power given in paragraph 10 depends not only on the funding made available to the commission but on the willingness of the Secretary of State to allow such research.

I want to confirm the meaning of paragraph 10. Is it saying that the Secretary of State can choose whether to comply not only with a request that the Government carry out research but with a request that the commission may ask another for some work? Must the commission ask for permission before requesting a third party to undertake some research for it? Allowing the Secretary

of State to veto any independent research will surely limit the ability of the commission to provide effective independent scrutiny. I beg to move.

Lord Rea: My Lords, this amendment gives us the opportunity to recognise the meticulous research work done by a number of units, up and down the country, on the topic of assessing minimum income needs. The University of York, the London School of Hygiene and Loughborough come to mind, and there are others. If further research is needed or commissioned, the experience and expertise developed by those units should be recognised.

This also gives me the opportunity to remember and praise the pioneering work of the namesake of my noble friend Lord Morris of Manchester, Professor Jerry Morris of the London School of Hygiene, who died a few months ago in his 100th year. Not only was he one of the first to recognise the need accurately to define minimum income standards based on need but, throughout his long life, was at the forefront of public health and epidemiological research—most famously, for his work on demonstrating the benefit of exercise in preventing coronary heart disease and the existence and importance of inequalities in health. He will be very much missed by all those involved in promoting public health.

Baroness Crawley: My Lords, I thank the noble Lord, Lord Freud, and my noble friend Lord Rea for their contributions. The Government, like the noble Lord, Lord Freud, are keen that the work that this body does represents not only the finest research that is capable of being provided to Government but, alongside that, value for money.

Noble Lords will be aware that on Report in another place we tabled a government amendment providing the commission with a research capability. We agreed with Members on all sides that this would improve the quality and independence of its advice to the Secretary of State. This provision is now expressed in paragraph 10 of Schedule 1.

In making this amendment, we were mindful of a number of considerations. First, we want to ensure that we have a common understanding of what we mean by "research". Inviting organisations combating child poverty to speak to commission members and making visits to see what works on the ground and to see and hear the experiences of children and families in poverty are both ways of gathering information that we envisage the commission may wish to adopt. They are certainly among the approaches pressed by a number of respondents to the consultation on the Bill and witnesses in the oral evidence sessions.

I am happy to put on the record today that we see both these activities as already within the scope of the Bill. Resources made available under paragraph 9 of Schedule 1 can include resources to carry out these activities. We envisage making explicit reference to them in the commission's terms of reference. Furthermore, on allocating the commission's funding, paragraph 9 of Schedule 1 requires that it is adequately resourced to comply with its statutory duty to provide advice to the Government. The commission will want to draw on the already large body of existing high-quality research into the extent, nature and causes of child poverty. It may also wish to tap into the emerging findings of relevant new research commissioned or conducted by government departments in the normal course of their work. It will, at all costs, avoid duplication.

This model follows the very successful one used by the Low Pay Commission, an advisory body respected for the quality of its research. In practice, we expect there to be an early discussion between the commission and the Secretary of State to agree the areas to be studied, and then commissioning and delivery of an annual programme of work by the Secretary of State on its behalf. Indeed, this is the process followed by the Secretary of State and by the Low Pay Commission when drawing up its annual research programme.

I share the noble Lord's concern that, in exercising this research power, the commission must avoid duplicating existing research. However, the amendment is unnecessary. Should the commission make a request to the Secretary of State for new research where he is able to point it to existing sources, sub-paragraph (2) of paragraph 10 gives the Secretary of State ample scope to decide not to comply with the commission's request and to explain his reasons for doing so.

I am also confident that the criteria for membership in paragraph 4 of Schedule 1 are such that familiarity with, and expert mining of, existing material will be natural to its ways of working. In practice, I think it highly unlikely that the commission would wish to use its limited resources to request work that duplicates existing material.

The noble Lord asked me specifically about paragraph 10. The Secretary of State can refuse to comply with a request to carry out research. That decision must be reasonable, and he must explain the reasons behind it. This would apply to research being carried out by the Secretary of State or by others. Ultimately, the Secretary of State has control over the budget. I hope that, with those reassurances, the noble Lord will feel able to withdraw his amendment.

Baroness Hollis of Heigham: It may be premature to ask, but does the Minister have any sense of what the commission's overall budget for research might be? What could be done will depend on that. She rightly said that the DWP commissions and produces much admirable research. It is well publicised and I think that we are grateful for it. However, the two areas of research which the department finds harder to access and which we could perhaps steer the commission toward considering are, first, the work undertaken through seminars and journals. It is not DWP research and has not yet been fully and officially published. It is the sort of thing that goes into abstracts of journals. I know that a lot of such semi-subterranean work is being done by social policy and social work departments which never quite hits the light of day but can be important in some of the areas that we are considering; for example, fostering of children.

Secondly, the research that the DWP has done—for example, longitudinal research on lone-parent behaviour commissioned from the Policy Studies Institute, of

[Baroness Hollis of Heigham]
which I was a trustee—is long-time. When the commission, the government or civil servants seek an answer to a question, and if one is doing anything other than a 20 or 40 person-focused qualitative interview, it normally takes about 18 months to two years before one can get it. By the time one has found the contractors, negotiated the contract, done the pilot work and evaluation and reported back, the questions have changed. One of the real problems in high-quality research is the picking-up-the-petticoats attitude to quick-and-dirty research which may steer you in the right direction in the interim. Quite often, you want quick answers to show that something is probably going in the right direction, but you will confirm it when the full research has been done.

Will my noble friend consider whether the commission could go into those two areas which the DWP finds hardest to deal with: first, subterranean research and, secondly, quick-and-dirty research, to see whether a policy is steering in the right direction, thereby feeding back into policy development and pilots much more quickly?

Baroness Massey of Darwen: I not entirely clear what "subterranean" is, although I think I know what "quick-and-dirty" is. Will the commission be responsible for evaluating the effects of initiatives as well as research into why?

Baroness Crawley: Yes, it would want as holistic a piece of research as possible. Within the limited resources that it has, I am sure that that would be its aim.

I thank both my noble friends. My noble friend Lady Hollis asked specifically whether we had some idea of the commission's research budget. The detailed work published in the impact assessment for the Bill showed that a budget in the order of £390,000 per annum would be sufficient to support the work of a Child Poverty Commission that can readily provide high-quality and effective research. This figure is based on an indicative budget for funding research of about £200,000, but that will obviously be looked at.

I was asked whether the commission was responsible as an evaluator. Generally, no—as an advisory body it would not be responsible as an evaluator. I was also asked by my noble friend about subterranean and quick-and-dirty research.

Baroness Hollis of Heigham: They are totally different categories.

Baroness Crawley: The noble Baroness says that they are totally different categories. The Box tells me that we would expect the commission to look at short-term research projects as well as longitudinal projects, if that is appropriate. The Secretary of State can ask the commission to look at any research matter relating to targets and strategy; these are matters that we would expect to be stated in the terms of reference. I shall write to my noble friend about the quick and dirty and the subterranean.

4 pm

Lord Freud: My Lords, I thank the Minister for that answer. I pick up the point made by the noble Lord, Lord Rea, about the excellence of research in this country. We do have some of the best research in the world in this country in this area. The underlying concern in my amendment was that we do not try to set up competing centres of research out of this commission when we already have world-leading research, and that the function of the commission should not be as a research centre. It should be advising the Government. Without the amendment, the Bill leaves it up to the Secretary of State to control that situation and to ensure that we hold on to our genuinely independent centres of research without a competitive element from the commission, rather than build it in to the Bill, as my amendment seeks to do. I do not think that we have a shortage of research or pilots, which are a very similar thing. However, we often have a shortage of determination to drive through the findings of research or pilots into full mainstream national programmes.

With those thoughts, and with thanks to the Minister for her reply, I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Amendment 25

Moved by ***Lord Freud***

25: Schedule 1, page 18, line 31, at end insert—

"(2) All such remuneration, allowances and expenses must be published monthly on the internet."

Lord Freud: This is a very simple amendment. It is self-evident what it is trying to achieve. For better or for worse—and I do not expect the Minister to agree with me on this point—there has been a marked increase in the number of quangos, commissions, councils and committees under this Government. This has unavoidably led to questions of value for money, especially when it is clear to everyone that public spending must and will be cut. Of course, one would want a person of suitable qualifications to be employed in this role, but value for money must be maintained, and improving the transparency of quango funding is an important part of that.

There is a read-across to our last debate. If the commission is to carry out independent research, there are questions to be answered over whether its funding is to be spent primarily on commissioning new research or analysing what is already out there. A higher level of funding would be much more acceptable for the commission if it was seen to be undertaking new studies. I beg to move.

Baroness Crawley: I thank the noble Lord. I understand his concerns about the establishment of a new advisory body and its associated costs. However, I cannot let the noble Lord get away with saying that these bodies have increased under this Government. I remind him that there has been a 6.7 per cent reduction in the number of non-departmental advisory public bodies since 1997.

Amendment 25 would provide for payments made to members of the commission to be published online each month. Expenditure on this new advisory body must represent real value for money. Here, I very much agree with the noble Lord, Lord Freud. Once established, the Child Poverty Commission will be a public body. As such, it will have to comply with all parliamentary rules on managing public money. This means that it must deliver value for money for the taxpayer at all times. In accordance with the Cabinet Office publication *Public Bodies: A Guide for Departments*, which is relevant to an advisory body of this nature, we will set out the total costs of the commission in an annual report to Parliament by the sponsoring department. This report will be laid in the Libraries of the Houses. It is also worth noting that members of the commission, or their employers, will be provided with no more recompense than is sufficient to ensure that their service does not leave them out of pocket. We are determined that this body will offer value for money. With those assurances, I invite the noble Lord to withdraw his amendment.

Lord Freud: I thank the Minister for that response. However, the context in which we are discussing transparency has changed dramatically over the past six months, with all the media and public concern about payment for public office. Clearly, that concern has affected Members of both legislative Houses. To the extent that one can make any new bodies utterly transparent in the way that I am endeavouring to do, it can only be good for that body. It will come to be seen as a higher requirement generally in public service. I anticipate that this is a trend that we will see in the years to come as a direct result of what has happened with expenses over the past year. With those observations, I beg leave to withdraw the amendment.

Amendment 25 withdrawn.

Schedule 1 agreed.

Clause 8 : UK strategies

Amendment 26 not moved.

Amendment 27

Moved by ***Lord Kirkwood of Kirkhope***

27: Clause 8, page 4, line 11, at end insert ", and

( ) for the purpose of ensuring as far as possible that households with children in the United Kingdom have the minimum incomes necessary to sustain a healthy diet, other necessities, safety and wellbeing for those children"

Lord Kirkwood of Kirkhope: My Lords, we come to an important part of the Bill. As we know, in Clause 8, under the heading "UK strategies", subsection (2) clarifies what the Government are to do in driving towards the 2010 and 2020 targets. Subsection (2) sets out a twin strategy. It looks at the duty to ensure that the targets are met, as we discussed earlier; it also, in paragraph (b) refers to the need to ensure,

"as far as possible that children in the United Kingdom do not experience socio-economic disadvantage".

In that regard, Amendment 27 refers to "minimum incomes". I note that there is another equally important and weighty amendment grouped with Amendment 27, so I hope we can spend a little time looking at what we should be doing to make these strategies as well focused and effective as possible.

I have been looking at this area for most of my parliamentary career, in another place and here. One thing that has always bedevilled everyone is the length of time that it takes for some of these statistics to come through. The Family Resources Survey and the General Household Survey are, by definition, complicated survey work. No one is complaining that the social scientists who do it are sitting on their hands; it just takes a lot of time to disinter the meaning from the figures and cross-tabulate the results. When we get to 2010, it will be another two years before we know whether the Government have made a mark. If we cannot speed these things up and do not have a real-time understanding of what is happening in low-income households throughout the UK, it is a matter of concern.

There is a well worked methodology for minimum income standards. In 1998, the Family Budget Unit produced a minimum income standard for families with young children called "Low Cost but Acceptable". The Centre for Research in Social Policy in Loughborough and the Family Budget Unit in York have recently created a methodology that scientifically looks, in real time, at what low-income households need on a variety of indicators. It has to be an ongoing survey, but the Family Budget Unit has been able to get sponsors to do it only intermittently. When it is done, we know what standards must be met in order to keep people in a sustainable state of well-being over the longer term. It is an idea that is worth considering.

The Joseph Rowntree Foundation has, from time to time, sponsored some of this work. A July 2008 report *A minimum income standard for Britain: what people think* included a survey on public attitudes on a minimum income standard for Britain. It took ordinary people from the family types that it was studying. With expert support, they intensively discussed what they thought should be in a low-cost but acceptable budget and what should be left out. The survey found a remarkable degree of unanimity. For example, the group was quite easily able to define what a minimum income standard would look like, were it to be set up. The definition was:

"A minimum standard of living in Britain today includes, but is more than just, food, clothes and shelter. It is about having what you need in order to have the opportunities and choices necessary to participate in society".

The group looked at what constituted an acceptable income for different family types.

I stress that we are looking at needs, not wants. There are any number of standards that would be wish lists. The report listed minimum requirements to sustain families with children, retired families and families without children. There were four basic categories: warmth and shelter; health and diet; social integration; and avoidance of stress. That work is important in indicating how far short we are of acceptable standards of living. In this July 2008 dataset—which is now out of date—pension credit couples who claimed their full

[Lord Kirkwood of Kirkhope]
means-tested benefits came up to a minimum but acceptable standard, which is a measure of success for which the Government deserve some credit, subject to the condition that the means-tested benefits have to be applied for, and we all know about the difficulty of getting people to claim their benefits.

There is a reasonably scientific method of answering the question, "How much is enough?". We do not do that, which is a great shame. If we are going to have a meaningful strategy, this should be an important part of that work and that strategy.

4.15 pm

There are different ways of applying the test of how much is enough. You can look at social indicators, attitude surveys and focus groups. The budget standards methodology that the family budget unit has worked out is a very useful tool at the very least.

Noble Lords may know that there is quite a wealth of international experience in countries such as Australia, North America, the Netherlands and Sweden. Minimum income standards have been a productive feature of their tax benefit debates for years. No one is suggesting that any of these states reach the position of being able to pay everyone a minimum acceptable standard benefit level, although some of the Scandinavian countries come close. The standards are a valuable tool and they are usefully deployed in debates in those countries. The European Union in 1992 recommended that sister European states in the then European Union should adopt this standard as a useful indicator in the course of their national policy-setting discussions.

Although to my knowledge this has never been done, the minimum income standards could help us to understand regional differences. I said earlier in the proceedings of the Committee that I am fearful that, no matter what we do, the problems in London are so severe that unless we solve them, we are not going to solve the larger problem. I am talking in terms of housing costs in particular, and other things as well, because households predisposed to low income are in a higher proportion in the London area. Regional figures, using this quite sophisticated technology and methodology, could help us to understand how we need to deploy some of the policies regionally differently. You would expect someone like me from Scotland to say that the west coast and Glasgow have a different set of circumstances to those you find in terms of poverty on the east coast and in the capital city of Edinburgh. Again, drilling into these actual budget levels at a regional dimension throughout the United Kingdom would make the application of the policy more effective. I hope that there might be different ways in different regions to deal with different parts of the problem as they are seen in different regions.

Mentioning Glasgow reminds me that nutritional standards on the west coast of Scotland are terrible, compared to anywhere. I am a Glaswegian and I had 18 years of it, and I am only just starting to recover now. We need to pay close attention to nutritional experts, who are some very clever people who do some expert work, for example in London university. Some of the minimum acceptable costs can be cleverly and accurately pinned down, so there is no excuse for saying that we do not really know what we need to do. We know exactly what we need to do in terms of nutritional standards for young people, particularly children at a formative age. I am conscious of the excellent work that the Zacchaeus trust and others have done to try to point that out.

I have two further points. First, the minimum income standards have something else that commend them uniquely; they are sustainable. If you can get families near to a modest but acceptable level of living in terms of the budget standards that they need for food and clothing and so on, and, indeed, in terms of the other half of it, the variable costs that make up a budget—insurance, rent and so on—you can be fairly safe in the knowledge that they are on a sustainable plane unless something dramatic happens. You cannot see that when looking only at the financial level of benefit because you do not know what is behind it—the levels of debt and all the other circumstances—and so it is important to have a sustainable, acceptable living standards measure.

If this is to be done, it has to be on an ongoing basis so that the trends can be mapped and people can see where they are heading in real time and in a useful way. If we are serious about a strategy between now and 2020, this is one of the most important things that the Government could do in order to convince me that they are serious not only about sorting out the problem in the fullness of time but about doing so on an ongoing basis. I beg to move.

Baroness Finlay of Llandaff: My Lords, I have an amendment in the group and I hope to build on the arguments put forward by the noble Lord. I declare an interest having just agreed to become the patron of Foodbank Wales; I have done so because of the amount of food poverty in Wales.

The issue of minimum income standards was previously raised at the Committee stage in another place and it is clear even from the discussion so far that it requires further scrutiny. At that point in the Bill's passage, the Government explained that they had ruled out minimum income standards because different research methods tend to make different assumptions and that it is difficult to get one answer to the simple and single question of how much income is enough. This response does not justify dodging such a crucial point: namely, how much it costs per week to live healthily in the UK. The Government merely made an obvious methodological point about the nature of research, but this does not dismiss the case for minimum income standards, nor dilute our obligation to answer fundamental questions when devising a child poverty strategy.

A recent study by the Rowntree Foundation indicated that while the minimum food standard is £43 per week, unemployment benefit for a single, childless woman under the age of 25 years is only £50.95. Admittedly after 25 years it rises by in the region of £7, but that leaves less than £8 remaining to purchase all the other necessities such as fuel, clothing and so on. In reality, this makes accessing a healthy diet low on the list of an individual's priorities.

Throughout the Committee stage so far, the Committee has continuously returned to the crucial point that the strategy behind the Bill must address the causes of

child poverty and not only its symptoms, and the Government have repeatedly acknowledged this as a priority. We have heard the term "cycle of poverty" many times, and yet we continue to shy away from the very axis that accelerates the problem—namely, the health of the mother and the child. The Bill categorises children as "materially deprived" if they cannot form a range of basic activities such as school trips and celebrations on special occasions. How much more fundamental is the right of our children to a healthy diet? Is it not short-sighted to neglect calculating the costs of this?

In the time available, I could not do justice to the crucial importance of nutrition during pregnancy and infancy in tackling disadvantage. The noble Lord, Lord Freud, touched on the importance of maternal nutrition, and I should like to elaborate a little further. In brief, it is becoming apparent that low birth weights, of which Britain has the highest rate in western Europe, are associated with poor cognitive abilities and serious brain disorders such as cerebral palsy.

I remind the Committee that I come from south Wales, where we have the tragedy of the highest epidemic of spina bifida and anencephaly through folate deficiency. That was due to diet. Since folate supplements have come in, we have seen that drop dramatically. If you do not get diet right in pregnancy, you store up problems that will be there for the whole of the child's life, from the moment it is born.

In 2002, Sir Derek Wanless's report to the Department of Health, *Securing Good Health for the Whole Population*, expounded an egalitarian sentiment, harmonious with the sprit of Every Child Matters. He identified birth rate as a pivotal cause of a vicious cycle of poor health; he recognised that the cycle repeats itself from generation to generation and traps communities in poverty and health inequality. The cycle of poverty will remain repetitive and relentless unless we have the courage to tackle its very core and root that out. That is what the amendment seeks to do.

By identifying the amount necessary to ensure pregnant women and children have sufficient money to eat properly, my amendment aims to tackle the origins of this crisis in a serious and effective way. A recent article in the *Guardian* highlighted the issues of debt for many young pregnant women and, against that backdrop, their inability to afford to eat properly. The Minister in another place reminded us that a health and pregnancy grant is available to women from the 25th week of pregnancy, but that is far too late. From the time of conception and in those early phases of cell division, long before you might say that the foetus is medically viable, is when the nutritional influences probably have their major effect. We have to get this dealt with pre-conception, let alone from birth.

I anticipate that I shall be reminded that my amendment makes theoretical sense, but we cannot monitor the ways in which pregnant women will spend their money. Admittedly, there is a paucity of empirical data to guide our judgment, but I point the Committee to one study, conducted in Gary, Indiana in the USA between 1970 and 1974, which was published in the *Journal of Human Resources* and supports this strategy. I also emphasise the importance of educating women, which means girls at school onwards, about the value of a nutritious diet and what it contains. Unless we do that, the policy will not be able to be enhanced.

I am proud that the NHS is more than just a faculty. It symbolises Britain's social democratic conscience and recognises that good health is instrumental to each individual's chance of prosperity and success. If we had a modern-day Beveridge report in front of us now, child poverty would sadly be one of the five giants. Consequently, having boldly pledged to end child poverty by 2020, we cannot be pusillanimous in our efforts. I have no doubt that addressing the crucial question of what it actually costs for mothers and their children to access a healthy diet among other necessities is pivotal to delivering the promise.

Lord Rea: What I have to say is very complimentary to what the noble Baroness has just said, and may be slightly repetitive. However, it gives me an opportunity to cover further that vital stage in child development—the earliest stage, with the foetus in utero. Healthy babies, as the noble Baroness said, are produced by healthy mothers, particularly adequately nourished mothers. Many studies have shown that the most critical phase of development—the foetal environment at the very beginning of pregnancy—is the time when damaging effects can occur and is the most vulnerable time for the child. It is the time when the heart and cardiovascular system and the central nervous system are formed from the primitive streak, before the foetus is recognisable as a future human being. This occurs in the first few weeks of gestation, often before the mother realises that she is pregnant. That is why it is so important to ensure that not only mothers and women who know they are pregnant but also potential mothers—that is, all women of child-bearing age—have sufficient income to buy an adequate diet.

4.30 pm

The human foetus is quite an effective parasite. It will take most of the things that it wants from its mother's tissues but if the cupboard is bare, the foetus will be wanting. The noble Baroness pointed out, in particular, the effects of anencephaly and spina bifida resulting from folate deficiency. If that can occur, then other vital nutrient deficiencies are also likely to have serious effects. I should like to point out the possible effect of a lack of long-chained polyunsaturated fatty acids, found most richly in fish, on the subsequent IQ of babies. The ALSPAC study of 14,000 babies from pregnancy through to their early teenage years—I think that that is their current age, although I am not sure exactly how old they are—showed that those aged eight whose mothers had consumed very little fish during pregnancy had significantly lower IQs than those whose mothers had eaten quite a lot of fish. Of course, many social factors were involved but a lot of care was taken to allow for any bias based on things such as social class, education, smoking and so on. The study needs to be repeated but it is important and it points to the fact that we have to be very careful that, regarding the very young foetus, those nutrients are easily available to prospective mothers.

[LORD REA]

That is why it is so important for women to have an adequate budget to buy the diet that they need. What this diet should contain and what it costs has, as other noble Lords have said, been the subject of very careful research by the Family Budget Unit at York, as well as by the Nutrition and Public Health Research Unit at the London School of Hygiene and Tropical Medicine, together with a number of other units.

As the noble Baroness, Lady Finlay, said, the York team calculated that the minimum cost in 2008 for a healthy diet was £43.73 a week for a single person living alone. Of course, both noble Lords who have spoken so far have pointed out how very difficult it is for a person living on present levels of benefit to meet those costs when there are so many other demands on their meagre resources, even to survive, let alone to lead a life as a useful member of society. As the noble Lord, Lord Kirkwood, said, the cost of housing produces a particularly heavy burden in London. Although there is housing benefit, it is often not adequate and plenty of other costs are not covered. Therefore, inevitably less is spent on food, which means that the diet contains fewer of the vital nutrients which are particularly important in early pregnancy. That is why it is so important to ensure that benefit levels and the minimum wage are based on realistic, carefully researched estimates of need and not on arbitrary or uprated historical levels.

Baroness Hollis of Heigham: My Lords, I have a lot of sympathy with the amendments but also, I am afraid, some reservations and hesitations. The first amendment, in the name of the noble Lord, Lord Kirkwood, focuses not just on diet—particularly, that of pregnant women—but on the wider range of adequate living standards. Looking again at households below average income on pages 68 and 69, where the full range of indicators of material deprivation are listed, I wonder why he feels that the Government have not adequately included that through material deprivation to reach the issue of sufficient budgetary standards.

One could argue about sufficient generosity, but it seems that that test shows whether there is sufficient income to meet those standards of material deprivation which would suggest that someone is below adequate budgetary level. I wonder why he thinks that the HBAI stats and approach are not suitable for his concerns; while I obviously share those, I do not see why they are not good enough, although they could perhaps do with fine tuning over time. That is my first point; why do we not already have his considerations embedded in the Bill by virtue of material deprivation, which in turn piggy-backs on the HBAI 20 indicators?

My second point is on pregnant women. I absolutely take on board the very well informed and expert views of the noble Baroness, Lady Finlay, and my noble friend Lord Rea, so this is just a suggestion, as most benefit levels for pregnant women do not kick in until very late in pregnancy. The key thing that this Government were able to introduce—and all congratulations to my noble friend on it—was the Sure Start maternity grant, which is worth £500 over and beyond other benefits. The reason that it was done through Sure Start was to ensure that younger, single and potential lone parents had the enticement, if you like, of coming into maternity care in order to get their benefit.

As I understand it, however—and I was just checking on this—we do not normally pay it until 11 weeks before an expected confinement. Is there any reason why my noble friend and, through him, the officials behind him, should not look at whether they could break that up into two payments of £250? One payment could come early enough, at the first signs of a confirmed pregnancy, so that there is a space of capital—that £250 or so would be in a box, over there—available for the more expensive items in a diet. Folic acid is very cheap, but other items could include fruit and vegetables, meat with iron and appropriate fish. We could do that at virtually no cost; so could my noble friend take that away? Could we make the Sure Start maternity grant more suitably match the dietary needs of pregnant young women, before 11 weeks before their confinement?

My third question is, again, general. It is about budgetary standards and, again, goes back to the noble Lord, Lord Kirkwood. Rereading Mike Brewer's IFS report, what comes out very clearly is that over half of all children in long-term poverty never suffer hardship and that, overall, only about 3 to 4 per cent of children in long-term poverty suffer actual material deprivation or hardship at the same time. In other words, very simply, where two people have the same income and one is in hardship while one is not, that shows that that may be through debt, addiction or for a whole series of reasons.

Baroness Thomas of Winchester: The black economy.

Lord Kirkwood of Kirkhope: The informal economy.

Baroness Hollis of Heigham: Whatever; all of those may come into play, but what it shows is that looking at income levels, even based on dietary standards, will not necessarily address the problem. It seems to me that it is actually a more profound problem about education and attitudes to well-being, and prioritising budget spending. It is very clear, affording to the IFS study, that on those existing lines of benefit levels and income over half of all children below the poverty line, or 60 per cent—and this is persistent poverty, not temporary or one-year but three-year poverty—are nonetheless not in severe hardship or suffering material deprivation. Therefore, that suggests that you have to go below those figures to ask, "What is going on here?". That may well be about education and spending, but it does not mean that by increasing the income—although I would obviously be happy to see that—we are necessarily addressing the problem as the noble Lord would hope.

Lord Northbourne: The noble Baroness has put her finger on a tremendously important point: increasing income will solve the problem in certain cases, but not in others. Can the noble Lord, Lord Kirkwood, indicate what his recommendations would cost the Exchequer as against the recommendations being made in the Bill? The noble Baroness, Lady Finlay, placed emphasis

on pregnant women and the nutrition of children in utero. Not being a specialist on the subject, I can only say that I support the principle behind it.

I do not know whether we have any scientists here; I think that they are probably mostly social scientists. Should we not seriously look also at the nutrient value of food? Scientific technology now can do amazing things; for instance, a breeding programme is aiming to achieve—and, I believe, is achieving—much higher protein values in maize, which is important in nutrition in many third world countries. It sounds frivolous, but if we could make potato chips nutritious, we would have it made—we would not need any more money.

Baroness Hollis of Heigham: How about Coca-Cola as well?

Lord Freud: My Lords, I have considerable sympathy with both amendments. It would be a matter of dismay to support, as we do, a Bill to eradicate poverty, albeit on a necessarily new-speak definition of "eradicate", and then learn that such eradication would still leave children with an unhealthy diet, unsafe and lacking other necessities such as warmth or clothes.

At the heart of the two amendments is the question whether the 60 per cent median is the best measure of poverty. We debated this matter last Tuesday and the Minister assured us that there is,

"a wealth of evidence that poverty measured by the 60 per cent threshold is strongly related to poor outcomes".—[*Official Report*, 19/1/10; col. GC161.]

That is a fairly weak response to the issue.

The Liberal Democrat team did not show much interest in the amendment in question, perhaps because I raised it. However, Amendment 127 may show why they were aiming to keep their powder dry. Its proposers seem to be dubious about whether the 60 per cent median will do the trick and to be calling for what is effectively a minimum income standard based on what it costs to live in this country. The noble Lord, Lord Kirkwood, put particular emphasis on what it might cost to live in Glasgow.

I should like to take the opportunity presented by the amendment to explore the relationship between three sets of figures: the 60 per cent median figure; minimum income standards; and benefit and tax credit transfers. I revert first to the Rowntree study which the noble Lord, Lord Kirkwood, raised, *A minimum income standard for Britain in 2009*—I managed to find a slightly updated version; it is one year on from the version that he cited. The study found that the minimum income standard in that year for a couple with two children—I shall use that as the benchmark—was £438 per week before housing costs. The cost after those costs is £361, but I shall use the first figure. The income transfer payments are considerably below that. The figure for 2007-08 comes out at £306 before housing costs, and £218 after housing costs, for the same family. The HBAI study suggests that the same couple would need to receive a net disposable income, in 2007-08, of £361 before housing costs to be on or above the 60 per cent median figure, which is our definition here of escaping poverty. Just for reference, the figure is £323 after housing costs.

4.45 pm

I am conscious that I have been unable to assemble exactly the same years in these three bits of data for the comparable figures. That is because I do not have a team of such excellent civil servants sitting behind me as does the Minister. I think that that he has five—and another three is it?—so eight brilliant civil servants. I have done my best without them, but I am sure that they will be able to get the precise figures. But the direction of those figures, even though I have not got exactly same year for the Rowntree 2009 figure, is clear enough. The income transfers are currently well below the 60 per cent median figure, which in turn is well below the minimum income standard that people like Rowntree in York come up with.

My question is a very simple one. Can the Minister let us know whether the Government feel that the 60 per cent median figure gives families enough to live on?

Baroness Thomas of Winchester: I found the Rowntree study, *A minimum income standard for Britain in 2009*, an extremely interesting document. The noble Lord, Lord Freud, has just mentioned it. One thing that it said was that a full-time earner on the minimum wage cannot achieve the minimum income standard, which it calculated as £13,900 per single person—although, for the purposes of this Bill, we are more concerned about families with children.

The researchers said that for a couple with two children it is reckoned to be £27,600. I was interested in what they counted as the minimum income standard, and found that it was rather democratic; they asked the public what they thought and came up with a figure. I did not realise that research could be quite so democratic. They said that even though benefits went up last year by 5 to 6 per cent, the amount needed to achieve a minimum standard of living also rose by about 5 per cent after rent, so the adequacy of benefits relative to the standard did not improve. They made the point that someone on the minimum income spends a greater than average portion of their budget on food, domestic fuel and public transport, for which prices have risen by 7 to 12 per cent. They talked about the poverty line of 60 per cent median income, which is the figure in the Bill. That may be a rough and ready benchmark, but it was considered to be quite a suitable one. They went on to say that the cost of living was going up faster for someone around the minimum income standard than for the average family, so the only way in which people on benefits would improve their position was if median real incomes fell.

We know that the Government's position for some time has been that benefits should be only a short-term shelter for people before they get a job. If they are given any more money, they will be more reluctant to get a job—that is part of the Government's reasoning. Even if they are on employment and support allowance or incapacity benefit, unless they are very ill or disabled, they will be expected to do something in return for benefits. But that misses the point that there will always be more than 1 million children living in households which are wholly dependent on benefit, because their

[Baroness Thomas of Winchester]
parents are long-term unemployed or temporarily unemployed or perhaps become disabled or go to prison—or because of domestic violence.

Here are some rather depressing figures. Children whose parents claim JSA have a 70 per cent risk of living in poverty. If their parents are on income support, it is a 54 per cent risk; and if their parents claim working tax credit, it is a 29 per cent risk. We do not say that benefits must immediately be raised to the minimum income standard, but there should be some estimation of what it is. The Secretary of State should consider what it is when setting out the measures to be taken under the UK strategy. It is worth pointing out that benefits in this country are not particularly generous, contrary to popular belief. I come back to my noble friend's question at the beginning: if other countries, such as Norway, Sweden, Germany and Canada, know how much money is enough to live on, why do we not?

Baroness Meacher: My Lords, I was not anticipating speaking but I will speak briefly in support of these amendments, particularly from the perspective of the Marmot national commission on inequalities in health, the report of which will be published on 11 February. I was a member of that commission. I was particularly struck by the comment of the noble Baroness, Lady Hollis, that children in families on benefits, living below the 60 per cent level, are not necessarily in severe hardship. That may be so, but the Marmot commission will certainly provide a considerable body of evidence to show that those children living and being brought up in poverty will have their lives blighted throughout, in health, employment prospects and many other areas. Certainly, if they continue in poverty they can expect some 17 years of additional disability in later life. I simply ask the Minister and the opposition spokespeople to take a good look at the Marmot commission report on or after 11 February. I think it should inform future policy on these issues.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): My Lords, this has been a wide-ranging and fascinating debate. I thank the mover of the amendment and all noble Lords who have spoken. The Child Poverty Bill makes clear our robust commitment to eradicating child poverty. It is clear, as set out in Clause 8(5), which covers the strategy, that financial support is an important building block in an effective child poverty strategy. We will consider all potential methods of achieving our child poverty targets when we develop our strategies, including assessing the role of support for those who cannot work. However, I have some disagreement with the thrust of these amendments. We are committed to ensuring that the tax and benefits system provides adequate financial support. Over the last 10 years, we have invested heavily in supporting families. Families in the poorest fifth of the population are £5,000 per year better off as a result of personal tax and benefit changes since 1997.

There are several considerations that we must take into account when considering Amendment 67. We have recognised in this debate that the causes of poverty are multiple and complex, and that eradicating child poverty will require a comprehensive strategy to tackle each of these. Amendment 27 could, however, unbalance the strategy by requiring excessive weight on treating the symptoms of poverty and, to quote the noble Lord, Lord Freud, an excessive focus on one lever of tackling poverty—that is, guaranteeing that a household with children has a minimum income that would be sufficient to lift children out of poverty. Placing this obligation in the Bill would reduce the flexibility that the Bill provides for forthcoming strategies. It would force a focus on a particular approach to tackling child poverty that might not be as effective as other options.

More importantly, it does not present a sustainable approach. Several noble Lords focused on the importance of the strategy being sustainable. We know that escaping poverty through work has wider beneficial impacts on families, compared to escaping through financial support alone.

Entering work has many social benefits. It may reduce stress in the family and provides role models for children. Supporting families into work is also the most sustainable approach to tackling poverty. However, Amendment 27, by placing more emphasis on minimum incomes than on labour market incentives, could reduce the financial incentives to enter employment. The Government need to have the flexibility to balance these objectives.

We also have to recognise that many aspects of the benefits system are designed to provide short-term support in response to changing circumstances, such as short-term unemployment, rather than long-term sources of income. Requiring the Government to include measures in their strategy that create a minimum income does not take account of this purpose of the benefit system and could have a perverse impact on its effectiveness.

A requirement to prepare a child poverty strategy containing measures guaranteeing that out-of-work benefits lift families out of poverty could result in a resource-intensive and unsustainable approach to tackling child poverty. It would require substantial spending to achieve and could, potentially, entrench the intergenerational cycles of worklessness that are one of the underlying causes of child poverty. It runs directly counter to our objective of having a sustainable approach to tackling poverty.

Finally, there are also technical difficulties with adhering to minimum income standards in guaranteeing a minimum household income. With the survey techniques we use to assess household income, it is not feasible to ensure that no household falls below a certain income level. This is why our child poverty targets have been set at levels of 5 per cent or 10 per cent rather than at zero.

Amendment 67 would have a similar effect, by creating pressure to increase out-of-work benefits based solely on the impact on minimum income guarantees without taking into account the distorting impact on incentives to work and an undue reliance on unemployment benefit. Moreover, by setting the national minimum wage too high, Amendment 67 also risks damaging employment prospects. It proposes that the

Secretary of State should have regard to minimum income standards in setting out-of-work benefits and the national minimum wage, and that he should consider research into the minimum cost of living.

The level of unemployment benefit and the national minimum wage are set at levels designed to accommodate competing demands. For example, the national minimum wage rate is subject to a comprehensive annual review by the independent Low Pay Commission, which takes into account a wide range of evidence when recommending the rates. Its aim when setting the rate is to help the low paid, while making sure that employment prospects are not damaged by setting it too high. By placing undue weight on a single factor, this amendment could undermine the independence of the Low Pay Commission, which is key to ensuring support for the policy by wide sectors of society.

The Government welcome the research that has already been carried out on minimum income standards. We have heard about that today, particularly the work completed by the Joseph Rowntree Foundation. We continue to follow this research with interest. However, we do not agree that this approach should be enshrined in law in the way proposed. Indeed, the researchers do not believe that minimum income standards should be used as poverty thresholds. The noble Lord, Lord Kirkwood, effectively acknowledged that when he moved his amendment. Instead, we believe that the Government should have the flexibility to balance these objectives, as we currently do, against other objectives around labour market incentives, burdens on business and, ultimately, the impact upon individuals and the UK economy.

The Government have consulted extensively on the long-term measure of child poverty. Minimum income standards were ruled out because different research methods tend to make different assumptions, and it is difficult to get one answer to the question "How much income is enough?". Even if it were possible to define income adequacy on a fully consistent basis, it would be difficult to generate a long-term, robust time series, which is essential for measuring progress. It would therefore be inappropriate to give such explicit consideration to minimum income standards when considering rates of unemployment benefit and the national minimum wage.

Taken together, the four income targets in Clauses 2 to 5 define a stretching goal. Achieving them will not only mean the lowest poverty rates since records began, and which will be in line with the best in Europe, but will tackle material deprivation and mean that the same families are not persistently poor. Although temporary periods of low income, such as that caused by a short spell of unemployment, can create difficulties, the most damaging effects of poverty are caused by long-term and recurrent spells of relative low income. The approach set out in the Bill, using a combination of four targets, is therefore a crucial part of ensuring that poverty does not affect children's life chances over the long term.

5 pm

A number of additional points were raised. The noble Lord, Lord Kirkwood, talked about the time that it takes for data to come through, and I think that we acknowledged that point. One way in which the Bill helps is through the local needs assessment, by which it is possible not only to deal with the regional differences to which the noble Lord referred but to understand in near time what is happening on the ground. We have to live with the time that it takes for the surveys to wend their way through, because integrity and the robustness of those surveys are very important.

A number of noble Lords, including the noble Baroness, Lady Finlay, and the noble Lord, Lord Freud, referred to a benefit raise. The rates quoted were correct but they would typically not include additional benefits such as passported benefits, free school meals and exemption from NHS charges. They do not include housing benefit, council tax benefit or mortgage interest support, for example. It was suggested that housing benefit levels in London were insufficient to cover housing costs. The structure of the reformed housing benefit, the local housing allowance, was intended to ensure that in any particular area housing benefit would bring half the potential properties within the scope of people who wished to rent. However, a review of housing benefit is under way, and we wait with interest to see where it goes.

The noble Lord, Lord Kirkwood, raised the question of how much was enough for a family to live on. The reality is that different families have different needs and wants and will spend their income in different ways. Taken together, the four targets outlined in the Bill will provide a good indication of whether progress is being made on the various facets of poverty, such as persistence of poverty and material deprivation.

My noble friend Lady Hollis, as ever, made some telling points—in particular, on the disparity in the numbers of people on relatively low incomes who are not in material deprivation. We had an interesting debate, which I do not think we should open up again, on the informal economy and the other issues that perhaps drive some of the reasons for that.

The noble Lord, Lord Kirkwood, touched on the complexity of the benefit system. He knows well, as we have debated it endlessly, that the Government have an aspiration to simplify the benefits system. We know, as we take steps along the way to do that, that inevitably it will be challenging. There are often significant costs involved, but we shall continue to strive to do that. Again, it was the noble Lord who made reference to international comparisons. I agree with him in the sense that issues around minimum income standards should be part of the debate. The Government are not saying that we would not give consideration to those, and I think that he called them a valuable tool. However, as he acknowledged, no country exclusively uses minimum income standards when setting benefit levels, although come countries consider them—in particular, the Nordic countries.

The noble Baroness, Lady Finlay, raised the issue of research into minimum income standards. We have not ruled out such research; we expect to take it into account in developing the child poverty strategy as part of a range of research and evidence that we will draw on. Indeed, we are doing that at the moment. It is not as though we are closing our minds to it.

[LORD MCKENZIE OF LUTON]

The noble Lord, Lord Rea, raised issues concerning a healthy diet, particularly for pregnant women, young children and babies. His expertise in that area makes that a pertinent point.

My noble friend Lady Hollis referred to the lump sum available to low-income families to help with the cost of a new baby and asked whether it could be paid in two parts. We shall certainly consider that but part of the problem is that, in order to access it, one needs to have gone through an assessment and engagement with a health professional around the general welfare and health needs of the new baby. It is unclear whether the noble Lord's approach would be consistent with that.

The noble Baroness, Lady Meacher, referred to reports on inequalities of health. Again, I acknowledge her expertise in this area. Health is a key building block in the strategy. Inequalities of health can sustain poverty and disadvantage.

My noble friend Lady Hollis said that the material deprivation component of our targets is already in the Bill and asked why that is not doing the job. The noble Lord, Lord Freud, asked whether the 60 per cent median threshold is enough and whether benefits are set appropriately. There is no direct link between benefit rates and the level of income needed to be lifted from poverty. Most benefits are uprated annually to ensure that the level keeps pace with inflation, and the uprating method varies by benefit type, but in general most contributory, non-contributory and extra-cost benefits are uprated by RPI. What people need to live on varies greatly and depends on their needs and a range of factors. Different research methods make different assumptions and generate a range of estimates, which is why we need the four targets in the Bill and not just one, and why we need to focus on the causes of poverty as well as the achievement of those targets.

That is probably an inadequate response to a wide-ranging and knowledgeable debate, but I hope that I have been able to set out the Government's position on these matters and that noble Lords will not press their amendments.

Baroness Finlay of Llandaff: I shall respond briefly because my Amendment 67 may not be called for a little while. I have an ongoing concern that we have not addressed head-on the problem of poor diet. If women have an inadequate diet in pregnancy and the foetus is deprived, and children have a poor diet, those children are blighted for life. Due to that, I shall certainly return to the matter on Report.

I accept fully the Government's criticism of some aspects of the wording of the amendment but, if we are talking about setting targets against child poverty, I do not see how as a nation we can afford to ignore the importance of adequate nutrition and its impact. We have an enormous problem with childhood obesity in this country. We know the disadvantage at which it puts children and we know that it is linked to inadequate diet. Many children are obese and malnourished. This is at the heart of the issues—

Lord McKenzie of Luton: I should stress that we support the necessity to consider diet and healthy eating. Health is a key strand of the building blocks that the Secretary of State is required to consider when developing the strategy, as is education, childcare, social services, housing and the built and natural environment. It is part of the approach to the strategy but is not directly reflected in one of the four targets that we are measuring, which are based on income. However, the strategy will not succeed if we do not address health inequalities.

Lord Freud: I support the noble Baroness, Lady Finlay, and wish to make a point which goes to the heart of her concern. As I understand the point she was making, nutrition is what matters most early in a pregnancy. One of the most interesting things about the way in which the tax credits and benefits system has been going is that, because of its emphasis on child poverty, there is now developing—I shall try to draw this out in a later amendment—quite a distortion of the way in which the poor are supported.

If you are a lone parent with one child, according to the House of Commons Library, you are now running at only 4 per cent from the minimum poverty line. If you are a single woman—a potential mother or a pregnant individual—your income distance is now 22 per cent. What the noble Baroness is saying, as I understand it—I have great sympathy because we have been trying to make this point all the way through the debate on the causes of poverty—is that poverty and an inadequate diet around the period of conception or shortly afterwards have a causative effect on poor outcomes later. It could be argued that the way in which we are distorting our benefits system for the poor to help child poverty has a direct impact on such poor outcomes.

Lord Kirkwood of Kirkhope: My Lords, I am grateful to noble Lords who have taken part in the debate; it has been an important and significant period in the course of the Committee's work. I have been particularly struck by the powerful medical evidence given by the noble Lord, Lord Rea, and the noble Baroness, Lady Finlay, and I am grateful to them. I shall go away and reflect on what they have said. If there are other reports in the pipeline in early February, we might have the advantage of seeing them before the Committee finishes its work on the Bill. They might even describe, for example, the benefits of adding folic acid to bread. We could perhaps even make chips with folic acid, but I am not sure about Coca-Cola. However, these are serious points and I shall go away and reflect on the powerful evidence we have heard in that direction.

On the points made by the noble Baroness, Lady Hollis, the HBAI proxies for standards of living are too patchy. It is clear from the deprivation indices that people cannot afford many of the things on them, although they do not say by how much they are short. However, I should say to the noble Baroness that it might be possible to expand some of the HBAI proxies and I shall go away and think about that. They are not adequate at the moment—we may disagree about that—but she has a gem of an idea that I am willing to explore. There is room to trade and I am willing to think again about the issue. At the moment, the HBAI proxies do not cover the full gamut of a family unit budget.

5.15 pm

Do the Government feel confident that the 60 per cent median poverty figure is enough to live on? It clearly is not enough for people who are in persistent poverty for three out of four years. I am not saying for a nanosecond that we should adopt minimum income standards as targets for benefit payments; I am simply saying that if the figures had been available to us today, we would be in a much better position to make an informed judgment about what needs to be done. I agree that I have not really worked this out in that it is not costed—people should not hold that against me or I will sue them—but if you could show that a typical family with a 10 year-old and a four year-old child were a long way below the minimum income standard for three out of four years, then I would look to the interesting ideas put forward by the noble Lord, Lord Freud, as a proxy for targeting. Such people need remedial help. If they are a long way below minimum income standards for three out of four years and have a 10 year-old and a four year-old, they are in trouble.

The spend-to-save philosophy that the noble Lord, Lord Freud, has valuably given the nation enables you to be confident in saying to people who ask, "Why does this family get help and not that one?", that you are using resources in a way that is understandable and explainable. That is another club in your golfing bag, or whatever the figure of speech is, and not having it leaves us flying blind in a way that I do not think is useful.

Lord McKenzie of Luton: I just remind the noble Lord that, as well as low income and material deprivation targets, there is a persistent poverty target in the Bill, although we had a debate about whether that should be persistent material deprivation. I am not sure that we agreed to differ but we did differ on that. However, this is not just a question of the 60 per cent target. In fact, for low income and material deprivation, the equivalised net income is based on 70 per cent of median equivalised income.

Lord Kirkwood of Kirkhope: I had spotted that earlier. However, that is two or three years out of date and, for a lot of other reasons, I think that minimum income standards are a much better tool with which to make more accurate policy decisions. I thank the Minister for his response and I shall of course withdraw these amendments and reflect on what has been said. It was very disappointing in that he said that this is all too difficult because of work disincentives. If the Minister does not think that money has to be deployed between now and 2020 in some way, then he will never get to his targets. I understand the argument that, if you set benefit levels too high, people stay at home. I do not think that anyone is arguing for that, but he seemed to hide behind it and say, "This is all a waste of time because it flies in the face of established policy". That is what he seemed to be saying .

Lord McKenzie of Luton: I am conscious that it is not helpful to get into a dialogue on this. I very much recognise that income is a crucial part of tackling poverty, and income transfers are a part of creating a decent benefit system. I have cited some of the progress that we have made as a Government since 1997 but there is a balance there concerning work incentives. We have endlessly debated the benefits of work in terms of aiding health and self-esteem and breaking into the generational cycle of poverty in households. We need to make progress on that, but tackling health inequalities is not necessarily an income issue for families—it might, in part, be an educational issue—so we need to use more of these levers to make progress.

Lord Kirkwood of Kirkhope: I acknowledge that, but we are talking about earning, and if minimum income standards were available today and if there were a government figure, that would demonstrate clearly that the minimum wage was not enough to reach the 60 per cent. That is a worry as well in terms of where the Government and their policy are going.

This has been a good debate and I undertake to go away and think about this matter. The Government must start making it clear that the strategies will be fully supported by all the measurement methodologies available. I for one will certainly be disappointed if the commission that we are setting up does not look at minimum income standards urgently, with a view to informing some of this policy. I have not given up hope that we will somehow be able to get this insinuated somewhere into the Bill. I am grateful to colleagues and this has been a useful debate. The Committee will, I hope, return to it at a later stage. I am grateful to the Minister and beg leave to withdraw the amendment.

Amendment 27 withdrawn.

Amendment 28

Moved by ***Lord Freud***

28: Clause 8, page 4, line 11, at end insert ", and

( ) to ensure that the UK appears in the upper half of any table of OECD (Organisation for Economic Co-operation and Development) countries published by UNICEF measuring child well-being"

Lord Freud: My Lords, the intention of this amendment is to explore the relationship between child poverty and child well-being. It is interesting to see how many experts tell us that child well-being as a whole is a more important measure than child poverty. Child poverty is an odd concept because we cannot measure it directly. Children do not, on the whole, have income or wealth, so we measure a proxy in the shape of those households which contain children. It is likely that a proportion of any extra resources put into those households will not go into improving child well-being. Either it will be diverted or cash adjustments may simply not be very effective in improving well-being. At the risk of irritating the Minister, I remind him that, in its formal targets at least, the Bill is not exactly a child poverty Bill; it is a relative household income Bill. The question that this amendment poses is: if we are interested in our children, should we concentrate harder on their well-being? This is important because the set of targets selected here will drive particular

[LORD FREUD]

interventions. However, the Child Poverty Action Group, in its recent document *Coping with Complexity*, tells us that,

"if the aim is to achieve the greatest improvement in wellbeing overall, improving the home and neighbourhood environment is likely to be more effective than reducing material deprivation".

I was concerned to read Professor Jonathan Bradshaw's paper on child poverty and well-being, which points out that,

"the child poverty rate explains only about 30 per cent of the variation in overall well-being".

I quote his conclusion at length because it is very interesting:

"The relative child poverty rate which has been adopted by the EU as the only child related primary or secondary indicator of social inclusion is not adequate to represent variations in child well-being across the EU25. The proportion of children in jobless households is worse. Educational attainment, which might be adopted, is even worse. There are some single indicators that are highly correlated with child well-being and for which there is data across the EU25. However it might be better for the EU to adopt the kind of multi-dimensional index of child well-being of the kind explored"—

in the paper he is writing. He concludes that what those indices show is:

"The results are disappointing for a UK audience. Despite the efforts that are now being made to abolish child poverty and through Every Child Matters improve the well-being of children, the UK finds itself resolutely at the wrong end of the international league table. This may of course be lag effect—much of the well-being data is old and when more recent data become available we may be moving up the league table".

Professor Bradshaw concludes ominously:

"There is a long way to go".

He states:

"Given the wealth of the UK, our children are doing badly",

and that the UK,

"again is notable for not getting the child well-being that its spending deserves".

I shall not dwell for too long on the embarrassment of the relative position of the UK in the UNICEF table of 21 rich countries in 2007. We were 18th in terms of material well-being—only Ireland, Hungary and Poland were worse; 13th in health and safety—that is the only half-way respectable performance; 18th in education; bottom in family and peer relations; bottom in behaviours and risk; and 20th in subjective well-being, which is bottom because the US was unscored in that category. At Second Reading, the Minister said that much of these data are old. I feel guilty saying that that is a classic Civil Service-type answer given the fantastic civil servants in this Room—I think there are still eight of them—so I shall say that it is a civil-servants-not-in-this-Room-type answer, and I am sure the Minister felt uneasy delivering it.

It would be more worrying if we were to achieve the child poverty target and then find that we still have the lowest child well-being in the rich world. That is the problem with targets. If they are proxies, you do not always get what you want.

Baroness Hollis of Heigham: Does the noble Lord not agree that that is not the right question to ask? Having got the transfer of income to address the child poverty issue, the question is what we must do at the same time to ensure child well-being. These are not either/ors, but the noble Lord keeps trying to suggest that they are.

Lord Freud: If one were to ask most voters whether they would prefer to hit the child poverty target or to be number one in child well-being in the rich world, I think the majority would choose the latter. People would like to see us leading on child well-being and would see child poverty as secondary to that. This amendment is designed to make sure that we focus on what I say we really want, which is child well-being. I beg to move.

Baroness Walmsley: I agree with the noble Lord, Lord Freud, that this country should be aiming at the well-being of every child. We want every child to be healthy and happy and to fulfil his or her potential in life. However, the noble Lord has too much ambition for the Bill. Child welfare is achieved by a raft of different strategies to address different aspects of their well-being, and it is very complex. The Bill has ambitious, but fairly narrow, targets. Our job in this Committee and, later, on the Floor of the House, is to make the Bill, within its objectives, as good as we can. What the noble Lord suggests is a distraction. I do not disagree with it in principle. As an only just ex-trustee of UNICEF, I am very concerned, despite all the criticism of the report to which the noble Lord referred, that the UK found itself at the bottom of that list. I am sure we would all like to see our children right at the top.

We need to look at this Bill and what it is trying to achieve as just one of many strategies. We might well cite the importance of getting rid of the violence in our society, which affects so many of our children, their behaviour, stress and their brain development—all things that I have spoken about many times in the House. We might well look at children's education and other aspects, some of which can be achieved by improving their income, but not all. In this Committee, we must focus on the meat of the Bill.

5.30 pm

Baroness Hollis of Heigham: My Lords, I support the comments made by the noble Baroness, Lady Walmsley. We have said this before. I have written various books, for my sins. What infuriates me most when they are being reviewed is when the reviewer says, "I wish you had written a different book". I say, "Sod that! That wasn't the book I was seeking to write". In a sense, that is part of the debate today. No one challenges what the noble Lord is saying. No one denies that these things can add to the misery of children. So can the mental ill health and violence of parents, and so can a whole series of issues, which have to be addressed and may be addressed in parallel. That is not to say that the Bill should not remain focused, otherwise we will not address these targets; they will get lost sight of in a wider approach to well-being.

I have another reason to hesitate. I am not particularly accusing the noble Lord of bad faith, but I worry when I read some of the reports coming from the

Centre for Social Justice. By fixing on some of these factors and others like them, it seems to suggest that the lack of moral fibre in parents is the driving force of the poverty of the children who then experience deprivation. Therefore, it is not our job to transfer money; it is our job to moralise the parents into behaving in the ways that we would like to see, which conveniently gets us off the hook of redistributing money, because it is the parents' own fault. I am not suggesting that the noble Lord is advancing that argument today, but I have seen it run in columns of newspapers time and again, when research such as this tries to suggest that it is in some sense due to the fecklessness, lack of moral fibre, unwillingness to work, poor relationships and failure to marry—this, that and the other—of the parents, and that that dowry to their children gives them poverty. I do not doubt that those are contributory factors in many ways, but to say that they are the causes of poverty and that income is merely the symptom can, if you are not careful, lead you down the slippery slope of saying that it is the parents' own fault and that if only they bucked up and received a proper, decent moral education and if only we could fix all that, we would not have to address children's poverty, because it would get sorted out in the wash.

Lord Northbourne: My Lords, leaving aside the politics that has been going on about this issue, both noble Baronesses have put their fingers on a tremendously important point, and one that I made very early in the Bill. There is only one problem with this Bill—that it calls itself the Child Poverty Bill. The implication is that the Bill is the Government's major tool in reducing child poverty. If they were somehow to introduce a form of words that made it clear that this is, in fact, a very good and important Bill on a particular subset of the problem of reducing child poverty and increasing child well-being, we would all have to shut up—and we could probably get through Committee stage a great deal more quickly. In the next few amendments, we are all trying to get things into the Bill that we feel should be in a child poverty Bill.

Baroness Massey of Darwen: I agree with the noble Baronesses, Lady Walmsley and Lady Hollis. I wonder whether the noble Lord, Lord Freud, has read the report issued two years ago by the Children's Commissioners of all four nations. I found it very interesting. Sometimes one would think that all children are desperately unhappy, not able to get out of bed and committing crimes all over the place. That report, which was very balanced, gave the views of children. It talked about what they found wrong with living in their particular countries, but also what was right. The issue of what was right is very significant because they felt that a considerable amount was. From that, one would not have thought that we were at the bottom of every league table. I am a trustee of UNICEF and welcome its reports, but from listening to children, one would not think that we are as desperate as we seem to be in that report.

Lord McKenzie of Luton: My Lords, I thank the noble Lord, Lord Freud, for tabling this amendment, which has given us the chance for an interesting debate. Indeed, this is the first of a series of amendments that seek to specify additional areas that noble Lords believe should be covered or taken into account in developing the UK's child poverty strategy. There was a significant debate in the other place on the nature of that strategy as required by Clause 8, particularly on whether the breadth of the areas to be considered in developing the strategy, as listed at subsection (5), is sufficient. Those issues are at the heart of this amendment and subsequent amendments. With that in mind, I shall take this opportunity to explain a little further the thinking behind the clause before I address this amendment.

Building on analysis of the evidence of the drivers of poverty, our approach is to set out the broad aspirations to be followed in preparing a child poverty strategy for 2020. The aims are that while families are in work that pays, they have the support they need to progress; that financial support is responsive to family situations; that poverty in childhood does not translate into poor experiences and outcomes; and that children's environments support them to thrive. Together, these aspirations will achieve the 2020 vision that no child will grow up in poverty and deprivation by 2020 or beyond.

A child poverty strategy, as required by Clause 8, will need to consider measures in a number of policy areas that match those aspirations and encompass the main drivers of child poverty. Improving parental skills and employment and financial support for families with children will ensure that families have the resources that they need to lift their household income above the poverty line. Promoting children's outcomes in health, education, childcare and social services, while improving the quality of housing and local area facilities and services and promoting social inclusion will help to break intergenerational cycles of poverty.

The policy areas set out in Clause 8 closely match the building blocks set out in the consultation document *Ending Child Poverty: Making It Happen*. Those policy areas were chosen through detailed analysis of the main barriers to eradicating child poverty, and through extended discussion and consultation with stakeholders inside and outside government. Some of those areas directly impact on the resources of families now; others impact on the development of today's children, who will be the parents of tomorrow. We have deliberately set out the main areas of policy in broad terms in subsection (5) to allow the strategy to respond to changing circumstances between now and 2020. Part of the task in developing the strategy will be to consider what specific measures are needed in each area. We are carrying out a thorough review of the evidence base to help us understand the causal pathways and identify how different sets of policies can contribute to the 2020 target. That will ensure that the strategy tackles the root causes as well as the symptoms of child poverty, preventing poverty occurring now and in future.

The Bill deliberately avoids being too prescriptive about the content of the strategy. Clause 8 specifies a number of broad areas, encompassing the main drivers of child poverty, which we would expect a child poverty strategy to address. It does not specify detailed policies

[Lord McKenzie of Luton]
that the strategy must contain; such specificity would not be appropriate, as each three-year strategy will need to respond to changing circumstances between now and 2020 and build on evidence about what works in tackling child poverty. It is envisaged that more specific measures will be considered, as appropriate, in each three-year phase.

Amendment 28 includes in the Bill consideration of the UK's performance on the UNICEF child well-being measure compared with other OECD countries. The amendment targets the UK's ranking in future UNICEF reports on child well-being. The UK's performance in the 2007 report has been raised previously by a number of noble Lords and was raised again today by the noble Lord, Lord Freud. As I made clear, the report highlighted some significant challenges for children's well-being in the UK. However, much of the data in the report were old and did not provide an accurate picture of what it was like to grow up in the UK in 2007.

Let me explain why Amendment 28 is not appropriate. First, introducing targeting and index-ranking in the way the amendment seeks to do would create perverse incentives to focus on improving the UK's score rather than on addressing important practical issues in improving child well-being. Secondly, there continue to be problems with the data that UNICEF uses—namely the health and behaviour of schoolchildren data from 2001-02. This source collects data from England, Wales and Scotland only and omits Northern Ireland, so it cannot be used to construct a complete picture of child well-being in the UK. The UNICEF child well-being measurement index aggregates across six dimensions of well-being to provide an overall country score.

A report published by the OECD in September 2009 also conducted an international comparison across different dimensions of child well-being but did not aggregate countries' scores into a single index. The OECD report cautions against the creation of an overarching index given that there is little theory to guide how aggregation should take place, and also because it masks varied performance across dimensions for different countries. There are also differences in data availability across countries and any league table or ranking cannot fully account for them. Given different data availability across countries, there is a risk in all international comparisons that countries that have relatively better data collection in place are penalised because of their ranking. Given this, I hope that the noble Lord will agree that the amendment does not propose an appropriate focus for the child poverty strategy, which is what the noble Baroness, Lady Walmsley, and my noble friend Lady Hollis said in their powerful contributions.

The noble Lord, Lord Freud, referred to the fact that the UK is at the bottom of the child well-being index in the UNICEF report. Certainly part of the data on which the report was based relates to 2005-06. He referred to voters being asked whether they would prefer to be top of a well-being table or to be top of an income target that had been met. The two are not mutually exclusive and to pose it in that way, as my noble friend Lady Hollis said, is to create a misconception. We had a disagreement the other day about whether this is all leading to the saying that the income targets are not important and that you would not adhere to them. I accept that the noble Lord said that he signs up to the targets in the Bill in the same way that we do, and that is to be welcomed. Whatever definitions we use, it is absolutely clear that unless a household has a decent income, persistent and grinding poverty will pervade. That is why it is important that we stay focused.

The noble Lord, Lord Northbourne, again questioned the description of the Bill. However, described as it is, it creates the focus that we want. My noble friend Lady Massey referred to the four nations report. I have not perused it, but I am encouraged to do so by her comments. Having said that, I urge the noble Lord to withdraw his amendment.

5.45 pm

Lord Freud: I thank the Minister for his response and all noble Lords for their contributions to the amendment. The Minister made a point about persistent and grinding poverty.

We want to help children brought up in persistent and grinding poverty. As noble Lords know, I am looking forward to our discussions because we want the Bill to capture children in persistent and grinding poverty. The noble Lord, Lord Kirkwood, said that when we can find those children, the way that we help them may be radically different from the blanket approaches that one could see with large numbers. When we can isolate the children who are really suffering, we can get effective strategies to help those families.

We should worry about this a lot because, in the end, the well-being of the children is probably more important. I was surprised to read Bradshaw's conclusion about the discrepancy between the poverty rate and the well-being rate. He said that the poverty rate explains only 38 per cent of the variation in well-being. My concern is that it is perfectly possible to achieve the targets we have, yet not shift the well-being figure very much. That is why I raise this issue.

As the noble Baroness, Lady Walmsley, said, it may be too ambitious—

Baroness Walmsley: I did not say it was too ambitious; I said it was ambitious.

Lord Freud: I look forward to reading *Hansard* tomorrow. It is ambitious, but is it the right ambition? Is it a more important ambition than child poverty? The noble Baroness, Lady Walmsley, said that it is not appropriate in the Bill. Where else can we try to achieve child well-being if not in a Bill directed at trying to help children? I am not aware that we have a set of targets to try to get really good child well-being in this country consolidated in any other place.

I thank the noble Baroness, Lady Massey, for her reference to the report by the Children's Commissioners of the four nations, which I have not read, to my shame. I shall now do so and look forward to enjoying it.

I come to the point raised by the noble Baroness, Lady Hollis, and I subtract her reference to turf. The arguments laid out by the Centre for Social Justice are

not about moral fibre or moral judgment. The line of argument is simple. For instance, the Child Poverty Action Group says that separation is the most important single cause of poverty—not correlation, but cause. All the experts in this Room are familiar with the figures that show that after a separation—

Baroness Hollis of Heigham: I know the statistics about what happens to women and to men, but it is also the case that a lone parent in work is no more or less poor than anyone else. In that situation, it is worklessness, not the status, nature and structure of the family that creates the poverty.

Lord Freud: From memory, I think the figures showed that a lone female parent's income declines by 28 per cent, whereas men's income goes up by 4 per cent. I can be corrected on these figures.

Baroness Hollis of Heigham: That is absolutely right. We know that divorce impacts on men and women very differently. However, in dealing with families on benefit, the female lone parent will often be on benefit, while the man will be in work. When she gets into work, her situation is not particularly different from that of the man.

Lord Freud: I am grateful to the noble Baroness, Lady Hollis. I will go through the Centre for Social Justice's argument. In a year, only 30,000 children under five are affected by the separation of married couples, while 90,000 children are affected by the separation of cohabiting couples. This is despite the fact that—again, speaking from memory—only 16 per cent of couples with children cohabit; the rest are married. The vast majority of this problem derives from the breaking up of cohabiting parents. That is where the problem is.

It is not a matter of morals or moral fibre to look at the situation and say that it is very dangerous. The Centre for Social Justice goes on to provide analysis in its *Dynamic Benefits* report and the Green Paper that it put out last week. It has assessed the average material couple penalty to be £1,336 per year.

Baroness Hollis of Heigham: A few amendments back the noble Lord was arguing exactly—and correctly—the opposite. That is, in the equivalence scales, couples are overestimated compared to single people, including lone parents, because the scales use an 8:6 ratio for the first and second person in a couple, whereas the OECD uses 100 per cent and 50 per cent. The noble Lord rightly said that the OECD figures were probably more accurate. In other words, far from there being a couple penalty in the benefit system, the noble Lord himself was arguing the opposite: couples were overweighted in the benefit system, based on his information and research on the equivalence scales.

Lord Freud: I was not arguing that. There is a difference between the absolute figures and the equivalence figures. I am just quoting a well researched figure from the Centre for Social Justice, which finds that the difference between being apart and being together is £1,336 if you are a low-income family, with all the discouragement that that has for family formation and families staying together. You can—and some people do—argue that the financial effects have no impact on behaviour. I find that suspicious. Usually financial effects on that scale—we are talking about a reasonable scale—will influence behaviour, particularly when there is this very high level of break-up in cohabiting families with low incomes.

Lord McKenzie of Luton: I know that we will come back to this, so I will not prolong it much. In the figures that the noble Lord has quoted, what account was taken of the costs of two people who previously lived together now living apart? What was the impact of there being two lots of costs that those newly formed households had to meet?

Lord Freud: I thank the Minister for the question. I do not have that figure. I almost have to respond as he would: I shall write to him when I have found out what the exact figure is.

Baroness Hollis of Heigham: Is the noble Lord arguing that couples should get more than they do currently, or is he saying that the couple rate is correct and that the lone parent rate is too high? It is not the case that the financial penalty breaks up a couple because they decide that they are better off living apart but none the less have an intimate relationship. First, it is not worth, say, a lone parent with a couple of children by another father having a boyfriend living in the house if, as a result, her benefit goes down, particularly if the boyfriend is unemployed. Again I say, with reference to the noble Lord, Lord Northbourne, thank goodness for that, because the key perpetrator of much family domestic abuse and violence is the live-in, quasi-stepfather who is not the biological father of the children.

The noble Lord has to disentangle the issues far more than he is doing. If, when a couple break up, they simply get half the couple's rate, then, as my noble friend Lord McKenzie says, that is not enough to form two separate households. If the noble Lord is going to allow them enough to form two separate households, there will be a significant cost implication, and he has to look at that. However, in practice things happen the other way round: it is not that couples break up because of the financial problem; it is that couples who have a sexual relationship none the less do not cohabit in a household because of the benefit penalty, and that has some real pluses in terms of child protection. Better a lone parent than a stepfather.

Lord Freud: I thank the noble Baroness, Lady Hollis, for that, but I am slightly taken aback. Last time she accused me of social engineering, and she is now saying that I am assisting in the prevention of stepfathers by having a couple penalty. That slightly surprises me. The figures that I quoted earlier showed that the lone parent with one child is now only 4 per cent below the poverty level. As the best relative performer of all the people dependent on benefits, the lone parent is better off remaining separate than moving in with someone

[LORD FREUD]
who may be the biological father. It is often a question of couple formation as much as couple break-up, but that is just not a tradition in some parts of our community.

The important argument being made here is made not on moral grounds but on genuine grounds. We have a system that discourages couple formation among lower-income groups and there is a very high level of break-up. Accordingly, many children under the age of five in that group are being thrown—at least, initially—into poverty. That is the well-being issue at the heart of this matter. I know that there is a difference between us here but some would argue, as would researchers, that there is a causative effect and not just a correlation. The Minister has been arguing that there is a correlation but others, including the Centre for Social Justice, believe there is a causative relationship.

I wanted to have a debate on this amendment because the well-being issue is vital. I shall go back to it and think very hard about how to encourage—

The Deputy Chairman of Committees (Lord Geddes): My Lords, a Division has been called in the Chamber. Is the noble Lord just about to finish?

Lord Freud: I beg leave to withdraw the amendment.

Amendment 28 withdrawn.

The Deputy Chairman of Committees: My Lords, it has been suggested that this would be a convenient moment to break for natural reasons. We normally do so for 15 minutes but we now have a Division as well. I am in the hands of the Committee, but I suggest that we make it a 25-minute break.

6 pm

Sitting suspended for a Division in the House.

6.30 pm

Amendment 29

Moved by ***Lord Freud***

29: Clause 8, page 4, line 11, at end insert—

"( ) For the purposes of this Part, the definition of "socio-economic disadvantage" is not limited to financial considerations and must include, in particular, consideration of whether the family has experienced—

(a) family breakdown,

(b) alcohol or drug addiction,

(c) a lack of education and skills, or

(d) persistent unemployment."

Lord Freud: The Minister has on several occasions stressed the importance of socio-economic disadvantage when saying that the specific targets that we propose to tackle the causes of poverty are not needed, because the strategy contains a protection so that children do not experience socio-economic disadvantage. "Socio-economic disadvantage" is a nice-sounding expression, but I am genuinely puzzled as to what it could mean in a legislative context. When could a child say that he or she suffered or did not suffer socio-economic disadvantage? The guardian of the term would seem to be the Office for National Statistics and it has changed significantly—

The Deputy Chairman of Committees (Viscount Simon): My Lords, I am very sorry to interrupt. Another Division has been called. We adjourn for another 10 minutes.

6.32 pm

Sitting suspended for a Division in the House.

6.43 pm

Lord Freud: My Lords, I shall quickly go through what I started with, on the basis that the listener absorbs half of what is said and remembers half of that—and that is doing well. The issue is socio-economic disadvantage, which is a nice-sounding expression, but I am genuinely puzzled as to what it means in a legislative context. Following on from that, when can a child say that he suffered or did not suffer socio-economic disadvantage? The guardian of the term socio-economic is, as best as I can tell, the Office for National Statistics. The definition has changed significantly over the years; in the last century—by which I mean the 20th century—we had two versions of "socio-economic". One was based on social class and occupations and the other on socio-economic groups.

6.45 pm

Early this century we changed to a new socio-economic classification, and this definition is, I presume, the legal basis on which this part of the clause rests. I am not sure that it does quite what is intended. The website for the Office for National Statistics states:

"The NS-SEC aims to differentiate positions within labour markets and production units in terms of their typical 'employment relations'. Among employees, there are quite diverse employment relations and conditions, they occupy different labour market and work situations. Labour market situations equate to source of income, economic security and prospects of economic advancement".

It goes on to specify the subtlety of work relationships but then concludes:

"Not everything can be explained by what a classification directly measures, employment is not the only determinant of life chances".

So the formal classifications here would not seem to be very helpful in the context in which we are talking.

Is the Minister taking us back to the last century with this definition? In other words, does the phrase mean only "economic and social disadvantage"? This would appear to be equally difficult to apply in practice. Given the slowing rate of social mobility, it would appear that being born, for instance, to parents who were in the lower classifications, however defined, would make it difficult for children to move to higher levels. Surely this cannot be what is meant. I seek to probe the Minister as to exactly what the term means in a legislative and judicial context.

It is in this context that I seek to put some flesh on the bones. On some of my previous amendments, noble Lords have commented that I have been trying to put ornaments on a Christmas tree. My response to that is that if a clause is completely vague it serves a purpose to give it some definition. I have once again selected the four main factors, based on the research, which lead to poor outcomes for children. As the amendment states, these are: family breakdown, addiction, a lack of education and skills and persistent unemployment. I do not intend to go through them again as I laid out the rationale for them last week, albeit in the context of their use as formal targets rather than in the strategies clause.

However, I shall revert to the issue of addiction. This category is different in kind to virtually all the others. Nearly all the categories of deprivation look at helping the whole household which contains children. This approach breaks down in the case of addiction. Here there is a divide between the interests of the children and what the parents are driven to spend funds on. It is absolutely no good to try to help children of addicted parents solely through financial transfers. As my noble friend Lord De Mauley said at Second Reading, this strategy would delight only the local drug dealer and off-licence outlet. There must be other strategies to help the children of addicts.

Again this is not a marginal issue. According to the Centre for Social Justice, there are some 1.5 million children of addicts, and this number is likely to overlap considerably with the number of children who are classified as being in poverty. The poverty target for next year, as we all know, is 1.7 million children. I know that we are set to miss it but, nevertheless, it could well be that the vast majority of children left in poverty in the difficult decade we are entering are the children of people who are driven to divert resource away from supporting them.

When the Minister responds I should like to learn two things from him. First, what is the formal meaning of "socio-economic" in this context? Secondly, what strategies will the Government adopt to help the children of the addicted? I beg to move.

Lord McKenzie of Luton: My Lords, I thank the noble Lord, Lord Freud, for his amendments, which seek, first, to focus the definition of socio-economic disadvantage on those non-income policy areas that he argued are the key drivers of poverty—namely, family breakdown, alcohol and drugs addiction, lack of education and skills, and persistent unemployment. The amendments seek, secondly, to broaden the focus of the strategy specifically to consider family breakdown and alcohol and drugs addiction. Along the way, the noble Lord pressed on the Government's view of the definition of "socio-economic disadvantage" for the purpose of the Bill.

Amendment 29 tries to particularise the definition of socio-economic disadvantage so that it is not limited to financial considerations and must include a consideration of family breakdown, alcohol and drug addiction, a lack of education and skills, and persistent unemployment. I reassure the noble Lord that we agree that socio-economic disadvantage should not be limited to financial considerations. Indeed, the duty in the Bill was included partly to balance the strategy so that it would not focus exclusively on income measures to meet the four largely income-related targets. However, particularising the definition to the extent that it is effectively limited to those four policy areas is not the right approach.

There is no precise definition in the Bill of socio-economic disadvantage. However, we consider that it relates to a child's access to material and social resources, and their ability to participate in society. A person who is affected by socio-economic disadvantage will be in an unfavourable economic and/or social position relative to someone else. Over the long term, lack of access to stimulating and enriching experiences and opportunities may adversely affect children's development and well-being. As they grow up, this is likely to impact on their outcomes in key areas such as education, health, employment and income. The strategy includes provision to ensure that all children are covered by it, not only those in private households.

I am afraid that I remain far from convinced that family breakdown and addiction are at the heart of tackling child poverty and that socio-economic disadvantage should refer explicitly to them. The noble Lord has made many assertions during our deliberations so far about the accuracy of the data underpinning the targets in the Bill, yet he needs to examine with his expert eye the statistics. Is he really contending that measuring family breakdown and addiction would be a more rigorous basis of evaluation than the ONS-approved HBAI data that we use for the targets?

Research has shown that children are at increased risk of adverse outcomes following family breakdown and that negative outcomes can persist into adulthood. However, the difference between children from intact and non-intact families is small and the majority of them will not be adversely affected in the long term. Some children can benefit when it brings to an end a harmful family situation; for example, where there are high levels of parental conflict, including violence.

As we have just touched on—and perhaps should not labour—we take the view that lone parenthood has only a small effect on poverty and child outcomes according to the best available evidence, although I am aware from our recent discussions that the noble Lord takes a different view. Meanwhile, we agree that actions to improve education, skills and employment are important. In preparation for the first child poverty strategy required under the Bill, we are producing a strategic direction paper that reviews 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 a wide range of relevant data and statistics, including information around workless households and parental skill levels.

I put it to noble Lords that it is not necessary to define "socio-economic disadvantage" in relation to these areas. Instead, it is better to follow our approach of naming policy areas in Clause 8(5) that must be considered in the UK strategy. I see no merit in the amendment and therefore urge the noble Lord to withdraw it.

Turning to Amendment 35, Clause 8(5) requires the strategy to consider what measures, if any, ought to be taken across a range of key policy areas. These are

[LORD MCKENZIE OF LUTON]
referred to as the "building blocks". They have been determined through 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.

Lord Freud: On a point of clarification, when the Minister referred to Amendment 35, did he mean Amendment 34? I have grouped Amendments 29 and 34 together.

Lord McKenzie of Luton: Yes, I apologise. I meant Amendment 34.

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. Amendment 34 is another attempt to place family breakdown and alcohol and drug addiction at the heart of the Bill, this time in the building blocks. We have just debated why we do not consider that appropriate. I do not wish to imply that the issues raised by the noble Lord are not important, but the evidence does not show that family breakdown and addiction are the key drivers of poverty. Therefore I do not accept that they should be added to the building blocks.

The noble Lord asked what the Government would do to tackle drug and alcohol addiction and their impact on children. We know that parents' drug and alcohol use can cause harm to children at all stages of development. The most effective way to keep children safe is to engage parents in treatment and work with them to strengthen the family. The Government are investing almost £80 million in 2009-10 to support families at risk through the Think Family programme. We have given parents with drug problems priority access to treatment and have supported a network of family self-help groups to develop across the country.

The drug strategy, which was introduced in February 2008, sets out actions to take a long-term view of prevention by intervening early with families at risk, improving treatment for parents with drug problems and protecting their children. It will improve drugs education and strengthen the role of schools and children's services in identifying problems and intervening earlier; integrate substance misuse issues within mainstream children's services and targeted youth support; improve access to positive activities and ensure effective specialist treatment for under-18s. There is considerable additional information to explain what the Government are doing to tackle drug and alcohol addiction and its impact, particularly on children.

We have been through the key issues that this amendment raises. I hope that the noble Lord is satisfied with the explanation.

Lord Freud: Before the Minister finishes and I respond, my question is: what does "socio-economic disadvantage" mean? If I am a child—which once I was—how do I sue the Secretary of State for not worrying about my socio-economic disadvantage? What do I say? What has he not done? What am I suing for? It is meant to be a law, but if it does not mean anything why have it? If it means something, what does it mean?

Lord McKenzie of Luton: My Lords, we should be clear that the Bill does not create any individual rights for children. That is not the purpose and thrust of the Bill. As I hoped I had explained, we have not specifically defined socio-economic disadvantage, but the Bill seeks to address those issues where a child's access to material and social resources, and their ability to participate in society, are impaired.

Lord Freud: I am sorry to come back to this and I thank the noble Lord for giving way again. Under the Bill, the Secretary of State has to set up a strategy to ensure that targets are set, and he has to ensure that children do not experience socio-economic disadvantage. Presumably the group of children suffering socio-economic disadvantage can, as a group, take the Government to judicial review based on the fact that they have been left in social disadvantage. That is how I read the provision. If that is not the case, I do not understand what the Bill is doing; if it is the case, I do not understand exactly how we are going to define in legal terms what is meant by socio-economic disadvantage.

Lord McKenzie of Luton: My Lords, I reiterate that the Bill does not create any rights for children individually to pursue a Secretary of State if they consider that they are left in socio-economic disadvantage. The noble Lord missed a part of Clause 8(2)(b), which says,

"for the purpose of ensuring as far as possible that children in the United Kingdom do not experience socio-economic disadvantage".

I am sure that the noble Lord understands the thrust of that. It seeks to ensure that all children get the same opportunities, that they are not income-deprived, that they have the opportunity, through education, to gain skills and knowledge, to enjoy life and to engage with others. I suppose we could write an essay on that. I do not think it is very helpful to try to pin down a very narrow legal definition. However, that is what the noble Lord is doing with his amendments, and that is why we object to them.

Lord Northbourne: I apologise for interrupting the noble Lord. I heard what he said but I want to ask a question about what he did not say. Would the quality of family life be an element in socio-economic disadvantage?

Lord McKenzie of Luton: It seems to me that it could be. We want children to grow up in stable family households, but that does not necessarily mean households where there are two partners or two partners who are married. We want them to have a stable life where they can flourish. It is one of those terms which is easier to identify when it is not present rather than when it is.

Lord Freud: I thank the Minister for that response but I have to confess that it leaves me more puzzled than when I initially raised the amendment. This is a clause in UK law that will put a duty on a Secretary of State—I think we agree on that—but the Minister has not been able to provide me with any definition of what that means in a real sense. It may be the case that an individual child cannot take the Secretary of State to law but certainly a group such as Save the Children

or the Child Poverty Action Group should be able to take the Government to judicial review under the clause. Having listened to the Minister's answer, I do not understand on what grounds such a group would be able to take the Government to judicial review. He emphasised the words "as far as possible" in the clause and I am left feeling—I shall give way for extra clarification—that Clause 8(2)(b) does not mean anything at all in legal terms.

Lord Oakeshott of Seagrove Bay: The noble Lord has asked some very pertinent questions of the Minister but perhaps I may ask one of him. Does he feel that proposed new paragraphs (c) and (d) in his amendment, which refer to,

"a lack of education and skills",

and

"persistent unemployment",

are completely separate from financial considerations? It seems to me that they are intimately bound together, although paragraphs (a) and (b) in the amendment may not be. Some of the things that we have seen lately from him and his right honourable friend David Cameron suggest that somehow economic and financial considerations are completely separate from a lack of education and skills or persistent unemployment, although it seems to me that they are intimately bound together. He has asked some very pertinent questions of the Minister; perhaps he could explain to us whether he regards those items as totally separate from the financial considerations that we are talking about.

Lord Freud: I thank the noble Lord for his intervention. I am concerned that some noble Lords may be irritated if I answer at great length because we have already gone through this issue. However, I shall answer the point briefly.

We accept the financial measures but are concerned that they should be balanced by clauses which tackle the causes of poverty, and we have brought forward our interpretation of what those clauses should be. As the Committee may be able to tell, I am baffled by some of the answers I have received on the word "socio-economic" and I am trying to put some definition around the part of the strategy which seeks to support children specifically. The conclusion I draw from the Minister's explanation—and I do not think I am the only Member of the Committee to do so—is that the clause does not have any teeth. I am trying to give the clause some meaning by putting in specificity.

It is open for noble Lords to argue that this may not be the best way to make the clause specific, but I hope the Committee can see the direction of my argument. I do not think the word "socio-economic" as it stands in the clause does anything to help children.

Baroness Hollis of Heigham: The noble Lord needs to read the whole of Clause 8. Basically, it does what many other pieces of legislation do. It starts with a declaratory statement of intent—to overcome disadvantage and ensure that the targets are met—in subsection (2)(a) and (b); then it must refer to the other nations; then it must be laid before Parliament; and then it outlines the dimensions of that socio-economic disadvantage against which, if appropriate, measures should be taken. This is outlined in subsection (5)(a), (b), (c) and (d).

I do not understand the noble Lord's problem. The clause sets out the territory that the UK commission will occupy in seeking to deliver subsection (2) and describes it in subsection (5).

Lord Freud: I thank the noble Baroness for that. However, that has not been the debate indicated by the Minister's response. He has said that the socio-economic disadvantage protection is an extra protection from the targets process.

Baroness Hollis of Heigham: It cannot be extra protection from the target process because that is in subsection (2)(b); the targets are in subsection (2)(a).

Lord Freud: Thank you again. I am arguing that the Minister has placed a great deal of weight on the word "socio-economic"; I cannot see that it carries any weight in a legal context because it is an undefined word. I may have been misinformed and, if so, I would be willing to hear the legal definition of "socio-economic". What does it mean here? That is the question.

Lord McKenzie of Luton: My Lords, we have tried to explain what we believe it means and the purpose of the use of that term. We have explained that it is not specifically defined in the Bill. My noble friend has rightly said that you have to read the totality of the clause. Clause 8(2) is about the UK strategy and subsection (5) is about preparing that UK strategy. If the Secretary of State fails to prepare a reasonable strategy and, as a result, the targets are not met, one of the sanctions for failure to have an effective strategy is the risk of a judicial review complaint for not meeting the target. Alternatively, there may be grounds for a judicial review for failing to prepare strategies in compliance with Clause 8 or preparing unreasonable strategies as discussed below. I do not believe that it is right to say that use of the expression has no legal teeth. A further sanction, which applies to subsection (2)(a) and (b), is that the annual reports to Parliament must state whether the strategy has been implemented in full and, if not, the reasons why. There is therefore political and public accountability for not implementing the strategy. To say that it is a useless expression, which is the import of the noble Lord's comments, is unreasonable.

Lord Freud: I thank the Minister for that. I remain baffled about what Clause 8(2)(b) adds by adding an ill defined word to the process. The strategy in Clause 8 is to achieve precisely defined targets. Clause 8(2)(b) throws in that the Secretary of State must ensure that children,

"do not experience socio-economic disadvantage".

In debates on earlier amendments, the Minister leant on that phrase. In particular, he said that it implies a responsibility for the Minister that is broader than just meeting the targets and that that is why it is there. That is why I am concerned. When we look at the clause closely, when it is undefined, we see that it does not

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add anything. If a Secretary of State were to say, "I don't know what it means. I did my best, guv", that would be a defence in law. If that is the case, if we are doing pinpoint—

Lord McKenzie of Luton: That will not do, because the Secretary of State will have had advice from the commission, which will have had lots of information given to it. The Secretary of State could not just tear it up and say that he would not have any regard to it. That advice would cover not just the four individual targets but would address issues, one presumes, around socio-economic disadvantage. To write it off in the way the noble Lord has done is not appropriate. I accept his point that it is not as tightly and specifically defined as a clearly measurable target. However, there is a clear obligation on the Secretary of State to have a UK strategy that must do two things. In preparing that strategy, the Secretary of State must consider certain things. My noble friend had it right: the collection of requirements gives full value to the wording of the clause.

Lord Freud: I thank the Minister. I do not want to go on and on. I understand the targets in subsection (5) perfectly, and I am perfectly happy with most of them, but I do not understand how one can use fuzzy language like this when it is meant to achieve something. This is just a question of proper drafting. I urge the Government to think very hard about drafting sentences that are so difficult to define, apply or use. I beg leave to withdraw the amendment.

Amendment 29 withdrawn.

7.15 pm

Amendment 30

Moved by ***Lord Freud***

30: Clause 8, page 4, line 21, at end insert "and the promotion of economic enterprise"

Lord Freud: My Lords, I am moving Amendment 30 in order to give us the opportunity to highlight the importance of enterprise in empowering people to return to work and the role that the Government can play in encouraging and supporting those seeking to return to work. This recession has sent thousands into unemployment, putting children in those affected households at risk of being brought into poverty and deprivation as one or more of their parents is unable to find work. There is general agreement about work being at the heart of any permanent route out of poverty, which the Government's IFS report noted. It said, quite categorically, that—

Baroness Hollis of Heigham: Could I not suggest to the noble Lord that his amendment is completely redundant, given that the concerns he wishes to express, which I am sure that we all share, are fully covered in Clause 8(5)(a)? Unless we are going into a Second Reading debate on the Government's economic back-to-work policies and their strategies on unemployment across the nation as a whole, I do not see how the amendment will add anything to the Bill beyond what is already in that paragraph.

Lord Freud: I thank the noble Baroness for her intervention. The importance of this is that work is the main route out of poverty; that is an agreed position of the Government and has been regularly stated by them. It is very easy to overlook the fact that meaningful work—or a very substantial proportion of it—comes from private enterprise.

Perhaps I might return to the IFS point that I wished to quote, that,

"the magnitude of the difference in living standards between workless families and families with at least one worker with similar incomes … is difficult to explain".

The key point that I was making last week was on the difference between a pound earned and a pound transferred. I think it is rather easy to explain the difference. The self-respect that comes from supporting yourself, the independence of living on income other than government benefits, and the important social aspects of interacting with colleagues and the public are all benefits that employment gives to people in addition to their wage. Of course, any child living in a household feels those benefits too—the IFS report is very clear on that—so there is universal consensus that promoting and facilitating employment should be at the heart of any strategy to help children out of poverty.

Unfortunately, at the end of 13 years of a Labour Government, it is clear that Labour is rather better at talking about that than achieving it. Although we have finally seen a small fall in the headline unemployment rate—the first since May 2008—there are still millions out there seeking work, with 2.3 million people classed as economically inactive but not appearing in the official unemployment figures. The figures for children are just as bad. The new figures show that 2.14 million children, and one in five of the under-fives, are growing up in households dependent on out-of-work benefit. With long term unemployment still rising, now is certainly not the time to become complacent.

In an economic climate where jobs are very thin on the ground, enterprise and entrepreneurship are crucial. We need to get people off benefits as soon as possible, before their future earning prospects become permanently damaged. There is a valuable role for enterprise here. The IFS report was specifically commissioned,

"to explore the fact that self-employed families have, on average, higher living standards than would be suggested by their income".

We all accept that where a family is surviving on a low income, it is better for all involved if that income comes not from the Government's benefit offices but from work. It is now clear that it is even better if the wage earner is working for themselves.

The IFS report concludes:

"When comparing households with children with similar incomes, self-employed families with children have higher average living standards than employed families with children … who in turn have higher average living standards than workless families with children ... Both surveys suggest that those in self-employment are less likely than those in employment to experience hardship when experiencing poverty".

What are the Government doing to help families lift themselves out of hardship? Labour policies supporting those wanting to set themselves up in self-employment are very thin on the ground. The New Deal self-employment option covers only 5,000 people a year, and the amount of support for business start-ups is only £400, which is hardly sufficient for a one-man operation and certainly not enough to set up a business that is capable of employing others. Would the Minister not agree that the Conservative work for yourself scheme, a network of business mentors, tied in with substantial loans, would add significant value to the excellent work undertaken by organisations such as the Prince's Trust?

There is much more that I could say about the value to people, and therefore to their children, of getting back into work. The Minister has heard me say much of it previously in our debates last year on the Welfare Reform Act. I am glad that the promotion and facilitation of employment of parents is drafted into Clause 8, but I would like a specific role for enterprise to be added. I beg to move.

Baroness Hollis of Heigham: The answer to the noble Lord's question why children in self-employed families with the same income apparently do better than families who are in employment, as shown by the IFS study, goes back to the under-declaration of income on which he commented earlier in Committee. There is therefore a real question mark over the legitimacy of some of their claims for in-work benefits.

Lord Martin of Springburn: My Lords, I can see some merit in the argument that the noble Lord has put. As someone who has served an apprenticeship, I know that when a person works long and hard in a factory where there are perhaps 300 or 400 workers and redundancy comes along, the one thing that they are not used to is self-employment. They could be tradesmen. By that, I do not mean to be chauvinistic: I mean tradeswomen as well. When I say journeymen, I mean journeywomen as well. When tradesmen and journeymen are faced with self-employment, they do not know how to go about it, because they have always had an employer who looks after the administration of their wages, their national insurance and tax deductions. When we try to help people in poverty and out of work, there is a case for saying, "Look, you're an electrician. Why don't you work for yourself?" or "You're a plasterer. Why don't you work for yourself"? But it takes training. People do not just go from working for an employer out into the street and just get on with being self-employed. There is more to it than that. The promotion of business, particularly in our poorer areas, will help substantially.

I stayed only two miles outside my previous constituency, so I travelled through it almost daily—in fact, I travelled through it coming here. There is a carwash system there. Often, when we talk about people living in areas of higher unemployment, we say, "Ah, they don't want to work", but that is not particularly true. The carwash system that I walked past is manually operated. We often have sub-zero temperatures. When you get snow down here, it becomes a big national issue; when we get snow up home, nobody talks about it. I see people there working in wet, soaking conditions all day and every day, and in low temperatures.

They gladly work hard, and my heart goes out to them. Many of them live in some of the areas where there is deprivation. There is no point in going into those housing estates and talking about socio-economic disadvantage; they will say things like, "We've not got any money", or, "We've got bad housing". They will say something like, "I'm skint"—which means they have got no money. They will not say, "I'm at a socio-economic disadvantage". I have a wee difficulty with the language. It is all right for the academics reading this, but it is hard for the very people that we want to reach to understand. If you are trying to help people, you should use language that the recipients understand—and, looking at this Bill, I do not believe that we are doing that.

On enterprise, I dealt with a lot of asylum seekers. One came in from eastern Europe, and he was not allowed to work, because while you are claiming asylum you cannot have a work permit. Lo and behold, he went to an industrial estate and got a small unit, half the size of this Room, and set up a car valet scheme. He was earning quite a lot of money. I told him, "You're not allowed to do that". He came to me as the MP and said, "Tell the officials to leave me alone—I'm earning, I'm doing well here". I said, "But you're not allowed to do that". The point is that he came from a part of Europe where it was part of the culture to become self-employed. It is not that people are lazy in some of the areas that we are trying to help, but self-employment is not in their tradition or their psyche.

In Glasgow, there used to be hawkers—I do not know whether they are called hawkers here in London. They were men and women who had wheelbarrows and who went round the doors and sold second-hand clothes; it was honest, hard work. Many of the sons and daughters of those hawkers, because they were self-employed, were not afraid to get into business on their own. But there are people who are afraid to do so. If you can get enterprise schemes and give training and give the skills, that is so important. We must give apprenticeships—we must even give adult apprenticeships. Many of the men and women who are unemployed are unemployed because when they left school no one was looking for an apprentice at that time. They went into unskilled work and became unskilled labourers. Therefore, when they were made redundant, they could not turn their hand to other things. If we had schemes by which we could give adult apprenticeships and give apprenticeships to young people leaving school, that would build up their confidence to such an extent that they would be prepared to get into self-employment.

I would not get into the argument about whether self-employed couples do better than couples who are employed. The name of the game is to earn a wage, so that the child can get the benefits that other children get. That is the important thing.

Lord McKenzie of Luton: My Lords, this is a brief but interesting encounter around an amendment. We have no disagreement about the importance of work in helping people out of poverty on a sustainable basis. That has been the key focus of our employment

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policies for a decade or more. The noble Lord will be well aware of that; he used to be one of our advisers at one stage, so he knows full well the thrust of our effort. That applies not only to people's economic well-being but, as Dame Carol Black's report—*Health, Work and Well-being*—showed, it is good for people's health to be in employment. Getting back into work can be part of their recovery; falling out of work can damage their health. We have no disagreement on that. I do not have the detailed figures in front of me but the noble Lord referred to some of the unemployment figures. If he compared the unemployment data now with where they were in the two previous recessions, which took place when his party was in government, he would see a dramatic difference. That is because the Government have been active in helping people into work and to sustain jobs.

7.30 pm

I say to the noble Lord, Lord Martin, that, yes, we are committed to enterprise as well, whether it is direct employment, self-employment or partnership working. People have different appetites, skills and levels of risk that they want to undertake.

Turning specifically to the amendment, it would relate to additional areas that the noble Lord believes should be either covered or taken into account in the development of the UK child poverty strategy. As I have already pointed out, the list of policy areas or building blocks in Clause 8(5) was selected though detailed analysis of the main barriers to eradicating child poverty. We do not see any benefit in expanding the detail of that list. Again, I do not wish to dismiss the importance of promoting economic enterprise or to claim that it is unrelated to the goal of ending child poverty and ensuring that children do not live in socio-economic disadvantage.

Like my noble friend Lady Hollis, I was intrigued by the analysis that the noble Lord seemed to make about the self-employed and the employed who were seemingly on the same household incomes but with one being better off. The conclusion was that somehow there is some magic in being self-employed that, of itself, improves people's material well-being. As my noble friend pointed out, this is as likely to be due to under-reporting of income as anything else.

Taking steps to promote economic enterprise, particularly among low-income families, will have a role to play in reducing levels of child poverty. It is vital that the child poverty strategy addresses the need for job creation. The flexibility associated with some self-employment could, for example, help lone parents back into work. We are already working to ensure that as many people as possible can get back to work in the economic downturn. To give just one example, the six-month self-employment offer was introduced nationally from 6 April 2009, focusing support on self-employed jobseekers who have been out of work for six months or more.

Clause 8(5)(a) already requires the Secretary of State to consider measures in relation to promoting and facilitating parental employment and skills. Moving into work or self-employment clearly reduces the risk of being in poverty. Again, I do not deny the importance of encouraging economic enterprise. I would argue that the Bill already refers to facilitating the employment and skills of parents. What this amendment seeks is already adequately covered by the Bill's provisions. Given the hour and where we are, I will not spell out all the detail of the Government's efforts to encourage and promote enterprise, but they are considerable. I hope the noble Lord will feel able to withdraw his amendment.

Lord Freud: I thank the noble Lord for his response. I am also conscious of the time; we have had an enjoyable session. I will make one or two small points.

First, on the Minister's point about the two previous recessions, the difference is very interesting. One of the biggest differences—I do not know how to quantify this in relative terms, but it is critical—is the flexibility that the private sector, in particular, has shown in the levels of part-time working. Interestingly, that flexibility was not supported or financed by the Government in this country but by Europe. That has been remarkable.

Baroness Hollis of Heigham: That is simply not true. First, it is certainly the case that the non-labour on-wage costs in Europe are much higher than in the UK; they run at about 40-odd per cent and in the UK they are about 26 per cent. Secondly, thanks to the Government's introduction of working tax credits and tax credits, particularly for lone parents and disabled people at 16 hours work, there has been a positive inducement for part-time work which pays.

Lord Freud: I am grateful for the intervention of the noble Baroness, Lady Hollis. However, that is not the point I seek to make; I apologise if I have not made it clear. The main areas where people have gone on to three or four-day weeks are in high-end jobs and the manufacturing sector, normally at a cost to the employee, although there has been some support from employers. The process in Europe, including in Belgium and Germany, is that the subsidies are provided by the Government. This Government have not supported that process and I congratulate them on that because it has saved a lot of money. That has happened more flexibly here than in any other European country and is a testament to a relatively flexible labour market.

There has been a substantial difference—I do not mean to go on and on about this—between this recession and past recessions. I do not know how to quantify the absolute effects of the process but it has been a substantial element. The worry is that we may be slower coming out of the recession as the economy reabsorbs all those part-time workers rather than taking on new ones, which is an interesting economic issue.

Lord Oakeshott of Seagrove Bay: I am sorry, but I did not quite follow what the noble Lord was saying. He was congratulating someone—was it the Government?—on the fact that they were not helping the process of this, frankly, forced part-time working. What we have actually got is a great deal of hidden unemployment. This affects not only factory workers but, as the noble Lord will know from his experience

in the City, includes city solicitors and so on. Through this hidden unemployment, many people are effectively being forced to take a pay cut and being forced onto part-time working. Was the noble Lord congratulating the Government on not doing anything about that? I could not quite follow what he was saying.

Lord Freud: I realise I have to be politically correct in these matters. I was congratulating the Government on not subsidising a process of adjustment but allowing the market and the contracts between employers and employees to hold sway, albeit the employees took a hit. In practice, what happened economically was that instead of having another half-a-million people unemployed and fully dependent on the state, the misery was spread in that way. So, yes, I was congratulating the flinty heart of the Government on this occasion. That is what I was trying to do but I do not know whether they appreciated being congratulated on this.

On the point about enterprise and self-employment, the Government have substantially downplayed self-employment as a solution for unemployment. I quoted a figure of 5,000 a year going down the self-employment route as compared with the figures for the end of the last recessions of nearly 100,000 a year. The noble Lord, Lord Martin, emphasised the point that, as a route out of unemployment, it is of great value. However, you need help. That is why I advertised our policy, which I knew the Committee would appreciate, of a mentoring process. You cannot expect people to do it on their own. That was why I wanted to push that particular aspect of supporting it.

I am very grateful to the Minister for his response, although I am disappointed that he has not just automatically accepted the amendment. I cannot understand why he does not do that more often. On that basis, I beg leave to withdraw the amendment.

Amendment 30 withdrawn.

Baroness Crawley: My Lords, this may be a convenient moment for the Committee to adjourn until 3.45 pm on Wednesday.

Committee adjourned at 7.40 pm.

Written Statements

Monday 25 January 2010

Animal Health Bill

Statement

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): My right honourable friend the Secretary of State (Hilary Benn) has made the following Written Ministerial Statement.

Today, I am laying before Parliament a draft Animal Health Bill that sets out major changes that I am intending to implement on responsibility for, and management of, animal health in England.

The draft Bill would establish a new body in England, headed by an independent board and chair, with responsibility for animal health policy and its application, matters that currently rest with the Department for Environment, Food and Rural Affairs. The draft Bill draws on extensive consultation over a number of years on the policy of responsibility and cost sharing for animal health. It is based on a partnership working approach that will be increasingly central to the development of animal health policy and the means by which it is carried out on the ground. This will enable the experience and expertise of those making a living in the livestock and other animal-related sectors to contribute to the policies and decisions on animal health.

Central to long-term success in combating animal disease, reducing its incidence and cost and increasing the nation's resilience to its impacts is bringing about behaviour change among those directly affected. The development of responsibility sharing in the provisions of the draft Bill will help to secure the needed changes in business practices and attitudes.

The other part of this new approach, as proposed by Iain Anderson in his report on the lessons to be learnt from foot and mouth in 2001, is a degree of sharing of the costs involved with those who both benefit directly from animal health measures and whose businesses bear the brunt of animal disease. Accordingly, the Government will bring forward in due course separate measures relating to cost sharing.

Copies of the draft Bill are available in the Vote Office.

Banks: Northern Rock plc

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.

I am pleased to inform the House that the planned legal and capital restructuring of Northern Rock as announced in my Written Ministerial Statement of 8 December 2009 successfully took effect on 1 January 2010. As a result, two new companies are now carrying out the business formerly carried out by Northern Rock—Northern Rock plc, a new savings and mortgage bank, and Northern Rock (Asset Management) plc, the existing company (renamed) that holds and services the majority of the existing residential mortgage book.

The Government's actions to stabilise Northern Rock over the past two years have protected the savings and deposits of hundreds of thousands of British families. From 1 January 2010, a healthy new Northern Rock will offer savings and mortgage products, increasing competition in the sector and providing consumers with more choice.

In my Statement of 8 December, I also promised to provide the House with details of the financial support provided by the Government to support the restructuring of the company.

On 31 December 2009, the Government provided Northern Rock plc with £1.4 billion of capital support in order for the company to meet the Financial Services Authority (FSA) regulatory capital requirements. The Government have also provided a commitment to the FSA that up to £1.6 billion in additional capital support will be provided to Northern Rock (Asset Management) plc should the need arise in order for Northern Rock (Asset Management) plc to continue to meet its regulatory capital requirements. These amounts are within the £3 billion of capital support announced by the Government in August 2008.

The outstanding government loan owed by Northern Rock (Asset Management) plc has been reduced by £12.6 billion from £26.9 billion as at 31 December 2007 to £14.3 at 31 December 2009. The loan increased on 4 January 2010 by £8.5 billion, taking the outstanding loan balance to £22.8 billion, in order for Northern Rock (Asset Management) plc to finance the difference in mortgage assets and retail and wholesale deposit liabilities that were transferred to Northern Rock plc. As previously announced, Northern Rock plc will use the cash that it has received from Northern Rock (Asset Management) plc to increase mortgage lending.

The Government are also providing a working capital loan facility to Northern Rock (Asset Management) plc currently up to £2.5 billion to help with the orderly wind-down of the company. This liquidity facility is similar to the working capital loan facility that the Government have provided to Bradford & Bingley plc. The Government expect the loan facilities to Northern Rock (Asset Management) plc to be repaid in full.

The restructuring of Northern Rock has been assessed as the best means of achieving the Government's stated objectives to support financial stability, protect depositors' money and deliver value for money to taxpayers. The restructuring is also part of the Government's policy to encourage and support a well functioning mortgage market, where lenders lend responsibly and borrowers have access to a wide range of mortgages that they can afford to repay. At some point in the future, the Government will sell its stake in Northern Rock plc. In any sale, the objectives of the Government will be to promote competition for retail services, secure the best possible return to taxpayers and ensure that Northern Rock plc will continue to increase its lending to home owners.

Connecting Communities

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 Secretary of State for Communities and Local Government (John Denham) has made the following Written Ministerial Statement.

On October 14, I informed Parliament about my plan to reinvigorate and connect with those communities that are feeling the pressure from recession most acutely and to ensure that they are well placed to share fully in future prosperity and emerge stronger and more cohesive. On 14 December, I extended the programme beyond the initial 21 local authorities to 75.

I can today inform Parliament that I am announcing a further extension of the programme to bring the total number of areas receiving targeted help in addressing local issues to 161 across over 100 local authorities.

I am also announcing an additional £20 million of resources for the programme to continue in the next financial year.

The programme is enabling local people to influence, shape and change policies on issues that really matter in their community. It will help to make sure that those people who are feeling the pressure the most are getting a bigger say and a fair deal.

Practical actions delivered on estates and streets will focus making changes that address local people's concerns, reconnect them with jobs and tackle head-on issues—real and perceived—that left neglected can prove fertile territory for extremism and those who would divide our communities.

Equality Bill: Policy Statement on Specific Duties

Statement

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My honourable friend the Parliamentary Under-Secretary of State, Government Equalities Office (Michael Jabez Foster) has made the following Statement.

The Equality Bill, currently before the House of Lords, will introduce a new integrated equality duty, which will bring together the existing race, disability and gender equality duties and extend to cover age, sexual orientation, religion or belief and gender reassignment in full. The equality duty will follow the same structure as the current duties and will be underpinned by a number of specific duties, to be set out in secondary legislation, which will help public authorities in the better performance of the duty.

On 11 June 2009, Government published a consultation document entitled *Equality Bill: Making It Work—Policy Proposals for Specific Duties*, setting out policy proposals for the new specific duties. The consultation finished on 30 September and today we have published a policy statement in response to the consultation entitled *Equality Bill: Making It Work—Policy Proposals for Specific Duties. A Policy Statement*, summarising the responses and setting out our further thinking for the specific duties.

We are placing copies of the policy statement in the Libraries of the House. Copies will also be available on the Government Equalities Office website www.equalities.gov.uk.

We will consult further on the draft regulations for specific duties following Royal Assent to the Equality Bill.

EU: Energy Council

Statement

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): I represented the United Kingdom at the EU informal Energy Council in Seville on 15 January 2010.

The council began with a wide-ranging discussion on the possible contents of a new energy action plan (due in early 2010). Debate focused in particular on two areas highlighted by the presidency's questions—the internal market and low-carbon technologies—as well as the need to diversify further the routes and sources of EU energy supplies and ensure consumers were protected.

Discussions on the internal market focused in particular on interconnection and how to ensure the investment that will be required. Member states referred, among other things, to implementation of the third internal energy market package and the role of the Agency for Co-ordination of Energy Regulators (ACER).

On low-carbon technologies, renewables and smart grids were consistent themes. Some member states supported specific cross-border projects such as the Mediterranean solar plan and the North Seas offshore grid initiative. Other technologies where it was felt EU action might be useful included: electric cars, biomass (in particular developing sustainability criteria) and carbon capture and storage. Most member states also referred to the importance of energy efficiency.

Ministers visited the Abengoa solar plant over lunch. This was followed by presentations on the EU's strategic energy technologies (SET) plan and on domestic solar energy, biomass and electric vehicles policy from member states. The UK made a short presentation on domestic carbon capture and storage.

The Spanish presidency concluded that there was strong support for progress on an EU energy action plan, as well as further work on the SET plan, during its presidency.

In the evening, Ministers attended a joint dinner with Environment Ministers, although there was no formal agenda.

EU: Environment Council

Statement

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): My right honourable friend Ed Miliband, Secretary of State for Energy and Climate Change, has made the following Written Ministerial Statement.

I represented the United Kingdom at the EU informal Environment Council in Seville on 16 and 17 January 2010.

The council programme began with a session on the role of civil society post-Copenhagen. Short speeches from industry, trade union and civil society representatives were followed by ministerial discussion which highlighted the importance of government, companies, NGOs and civil society working together.

The second item covered environmental governance and technological co-operation, which included presidency questions on mercury, international environmental governance and the sixth environmental action programme. The session opened with two presentations from UNEP and the Institute for Prospective Technological Studies. In discussions on international negotiations on mercury, the UK intervened to call on the EU to proceed with caution in seeking to broaden the scope of the legal instrument, in order not to stall the intergovernmental negotiating committee process. In addition, several member states showed support for the UK view on the need to reform the current international environmental governance system. In relation to the sixth EAP, the UK indicated that any new framework must be based on a comprehensive assessment of where we are now, what will be the challenges of the next 10 years and what are the most appropriate mechanisms to address these challenges.

The final session in the council programme focused on next steps following Copenhagen. The UK highlighted that it is in the EU's economic and environmental interests to show leadership and that the shared objective now should be to broaden, deepen and strengthen the commitments made in Copenhagen, and quickly to take forward the actions necessary to deliver the promises on finance that we made in the accord. The EU should encourage more countries to associate themselves with the accord, maintaining the momentum towards a legal framework. An exchange of views followed on the target that the EU should submit to the accord appendix by 31 January. The presidency concluded that, while support was lacking for an unconditional offer of 30 per cent, the EU would need to find a formulation that underlined the EU's willingness to move to 30 per cent in the right circumstances.

EU: Scrutiny Override

Statement

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): My honourable friend the Minister for Europe (Chris Bryant) has made the following Written Ministerial Statement.

The figures given in the House of Lords Answer delivered on 5 January 2010, *Official Report*, cols. *WA 26-27*, were incorrect. The latest report shows there were a total of 15 instruments (and not 14 as incorrectly given previously) which Ministers supported before one or both of our parliamentary EU committees had completed their scrutiny. Instrument 15 related to document 7616/08 on ship source pollution, a Ministry of Justice lead. The table below provides information on how many of these 15 instruments were scrutiny overrides in each House, with the departments shown as leading on these instruments.

Department	*Total number of instruments overridden*	*Overrides in House of Lords*	*Overrides in House of Commons*
Treasury	6	6	5
Defra	5	5	2
BIS	1	1	
DCSF	1	1	1
FCO	1	1	
MoJ	1		1
Total	15	14	9

Haiti: Earthquake

Statement

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

An earthquake of magnitude 7.0 struck Haiti near the capital Port-au-Prince on the evening of 12 January. During the course of last week, smaller but still significant aftershocks continued to affect the area around Port-au-Prince. The situation for an estimated 3 million Haitians remains precarious.

It is clear that this is a human tragedy of enormous proportions. The United Nations estimates that at least 2 million people will require immediate relief assistance for the next six months. So far, the Government of Haiti say that 150,000 people are confirmed dead and the Haitian Interior Minister estimates that the total death toll may reach 200,000.

Following my Written Statement to the House on 19 January, British officials from the Foreign and Commonwealth Office have been in contact with over 70 British nationals in Haiti, who have confirmed that they are safe and well, and we are co-ordinating with US, Canadian and EU partners to facilitate an assisted departure for any British nationals who wish to leave Haiti. We have received reports that other British nationals are missing, but we do not have any further information at this stage.

The British public have responded with generosity to the Disaster Emergency Committee appeal, which has so far raised over £42 million. I pay tribute to the work of the Disaster Emergency Committee, its NGO members and the British public for this remarkable response.

The British Government have s moved very quickly with our response. The UK search and rescue teams were in Haiti for over a week, carrying out their lifesaving work, including pulling three people from the rubble alive, arranging medical evacuations, treating the wounded and helping the United Nations to co-ordinate the overall search and rescue effort. After consulting with the United Nations, we concluded that they had done all that they could and that the rescue effort was moving on to another phase. The British team returned to the United Kingdom on Saturday 22 January, at the same time as other international search and rescue teams headed home. The United Kingdom should be incredibly proud of their efforts.

We have also committed £1 million for the International Federation of the Red Cross to provide food, shelter, water and other immediate needs for 20,000 families;

£2 million for the World Food Programme for transport and logistics; £1 million to assist with aid co-ordination to ensure that the right aid reaches those who need it quickly; £300,000 for the World Health Organisation for disease surveillance to help to prevent epidemics; and a further £2.5 million to NGOs with established operations on the ground—Oxfam, Action Against Hunger and Handicap International—to deliver clean water, shelter, medical care and food for 160,000 earthquake victims.

On 19 January, as the scale of the disaster that had unfolded in Haiti became clearer, the British Government announced a tripling of our humanitarian aid to £20 million. The additional funding will enable our support to extend beyond immediate humanitarian relief. Over the next four or five days, we are sending a further three flights with non-food items such as shelter kits, jerry cans and blankets. The United Kingdom's Stabilisation Unit is deploying civilian experts and supplies to help to restore vital government functions. A team of three from the unit has already deployed with equipment including vehicles, field offices and communications equipment to support British efforts and strengthen co-ordination with other partners in Haiti.

We have also taken the decision to deploy the Royal Fleet Auxiliary ship "Largs Bay", to carry further vital relief goods. The ship is expected to depart by the end of the month and will help to assure continuity of supply of vital goods such as food, shelter and medical supplies. Following a request from the United Nations, it is expected to stay on to assist in distributing supplies around Haiti.

We continue to support strengthened co-ordination by the United Nations and the Government of Haiti. The United Nations Office for Co-ordination of Humanitarian Affairs has rapidly increased its staffing to co-ordinate relief on the ground. The humanitarian clusters are accelerating their work and we are exploring options for further help to the shelter clusters. The Prime Minister spoke with Secretary-General Ban Ki-Moon last week and subsequently with President Obama to discuss how both countries could support the United Nations in their roles. The Prime Minister welcomed the role played by President Clinton as UN Special Envoy to Haiti and that of acting Special Representative Edmond Mullet.

The United States military is playing a crucial role in supporting the humanitarian effort, keeping the airport functioning, clearing the port and enabling aid to get where it needs to. It is working well with the United Nations in support of the international relief effort.

Aid is now getting through to affected communities but the pace of delivery needs to be accelerated. So far, over 500,000 people have received assistance. By 22 January, there were over 120 water distribution points in Port-au-Prince. The Government of Haiti have identified six formalised settlements to house 120,000 people and work has started to build them. Medical provision is also improving and the United Nations has announced that there are now enough doctors and surgeons in the country. There are at least nine field hospitals operational in Haiti as well as a 1,000-bed hospital ship and six more on the way. The Department for International Development provided funding for an assessment team and a specialised surgical team from Merlin, which are now working on the ground in Port-au-Prince.

More still needs to be done. 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. Over 200,000 people have left Port-au-Prince for other parts of Haiti and as many as 800,000 people are believed to be reliant on temporary shelters. Our early contribution to the World Food Programme for logistical support has helped, and RFA "Largs Bay" will transport more trucks to help with aid distribution. Ministers are liaising at the highest level with the relevant authorities to unblock bottlenecks.

The situation for many survivors in Haiti remains precarious. In these difficult circumstances, it is notable how civil society in Haiti has come together in the face of personal tragedy. I am meeting with faith leaders today to discuss how to support the work of church networks in Haiti and others in bringing people together. The British Government will support Haitians in this task.

We continue to follow the security situation very closely, both for our teams and for the wider operation, and share the concerns expressed by the United Nations that the relatively stable situation could deteriorate. Following Security Council Resolution 1908 to bolster the Haitian peacekeeping mission with an additional 2,000 troops and 1,500 police, we congratulate countries offering additional personnel and urge the speedy deployment of these peacekeepers in their humanitarian role.

Once the relief phase is over, it is essential that the international community does not forget about Haiti. We welcome the efforts that multilaterals are already making to support the recovery and reconstruction. We expect our contribution to be through our very substantial support to multilaterals and we are looking urgently at ways of providing longer-term support for Haiti through the European Commission, the World Bank and other multilaterals. To this end, the European Union Foreign Affairs Council meeting of Development Ministers on Monday 18 January pledged longer-term reconstruction funding as well as significant funding for humanitarian support. Also, today member countries from the long established grouping the Friends of Haiti will meet in Montreal to start the planning process for a major conference in the spring on post-emergency reconstruction, which we fully expect to attend. Leading multilaterals will also attend the Montreal meeting and the United Kingdom will be represented by the European Union delegation.

Going forward, it is clear that Haiti will need grant assistance and development support for the foreseeable future and on terms consistent with its future debt sustainability. The United Kingdom has already cancelled all debts owed by Haiti as part of the heavily indebted poor countries initiative in June 2009. We will continue to play our part in responding to the short-term and long-term needs of the Haitian people.

Identity Cards

Statement

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): My honourable friend the Minister of State for Borders and Immigration (Phil Woolas) has today made the following Written Ministerial Statement.

I am pleased to announce a further extension of the national identity service following a successful implementation of the introduction of voluntary identity cards, from 30 November 2009, in Greater Manchester and at Manchester and London City airports and, from 4 January 2010, to the rest of north-west England.

From 8 February 2010, young people aged between 16 and 24 who are resident in Greater London will be able to apply for a voluntary identity card at a fee of £30 at the relevant Identity and Passport Service office.

In addition, from 8 February 2010, anyone resident in the United Kingdom aged 16 and over who has registered an interest in identity cards, or registers their interest by 30 June 2010, on the Identity and Passport Service website at: https://info.ips.gov.uk/ipscw/reg may also apply for an identity card at the Identity and Passport Service offices in London and in north-west England.

Initially, these further rollout groups will cover British citizens who hold either a valid United Kingdom passport or one that has expired at any time since 1 January 2009.

Low Pay Commission: National Minimum Wage

Statement

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): I am pleased to announce that the Government have submitted their economic evidence on the national minimum wage to the Low Pay Commission. The commission will take this and all the other evidence received into account when preparing its next report on the minimum wage, which will be submitted to the Government by the end of February 2010.

The economic evidence addresses recent trends in economic and labour market performance, as well as the impact of the national minimum wage on pay, employment and younger workers.

Copies of the Government's economic evidence have been placed in the Libraries of both Houses and will be available from the BIS website at www.bis.gov.uk.

The Government submitted their evidence on non-economic issues to the commission in October 2009.

Sale of Trust Ports

Statement

The Secretary of State for Transport (Lord Adonis): My honourable friend the Parliamentary Under-Secretary of State for Transport (Paul Clark) has made the following Ministerial Statement.

In its guidance note "Modernising Trust Ports", second edition, issued in July 2009, the department strongly encouraged the major trust ports in England and Wales to analyse their corporate structure and keep it under review, with a view to identifying opportunities to enhance their efficiency and get value from their assets, and to report their conclusions to the department by April 2010.

The Government's operational efficiency programme set out a policy framework to guide decisions on how activities using public assets will be delivered. This recognised that, in seeking to deliver services more effectively with limited resources, there may be advantages in some cases to adopting alternative forms of ownership.

In considering the appropriateness of sale of an asset, the Government will consider a range of factors. The following Statement sets out the factors that the Government currently consider likely to be particularly relevant to consideration of the appropriateness of sale of a major trust port.

The factors applying to sales in general include:

whether it is possible to ensure continued delivery of high-quality services and other policy goals (such as supporting economic competitiveness and growth) with a different form of ownership;

whether there is or could be a satisfactory degree of competition if the service were provided in the private sector;

the extent to which the sale could be expected to increase investment, potentially through reduced constraints on borrowing, or enhance efficiency or quality; and

the feasibility of sale in terms of market appetite and the value for money likely to be achieved.

Other factors applying equally to the sale of trust ports include:

the desirability of giving all bona fide prospective purchasers a fair and equitable opportunity to make an offer;

the desirability of encouraging disposal of equity to managers and employees of the port; and

whether the sale could be expected to help to deliver reliable and efficient transport networks.

The department has issued a guidance note concerning the procedure for the voluntary sale of trust ports. I have placed a copy in the Library of the House.

Written Answers

Monday 25 January 2010

Afghanistan and Iraq: Friendly Fire

Questions

Asked by ***Baroness Quin***

To ask Her Majesty's Government what lessons have been learnt from casualties caused by "friendly fire" in (a) Afghanistan, and (b) Iraq, in order to reduce such instances in the future. [HL1063]

To ask Her Majesty's Government what common causes have been identified in "friendly fire" incidents in Afghanistan and Iraq. [HL1064]

The Minister of State, Department for Business, Innovation and Skills and Ministry of Defence (Lord Drayson): The Ministry of Defence (MoD) deeply regrets each death or injury caused by "friendly fire" or fratricide. After every such incident we carry out a thorough investigation as we would for any other death in service, initially led by the local commander and subsequently by the military chain of command. We also take careful note of the recommendations of service inquiries and coroners' inquests, and track their implementation through a single service or joint lessons register.

Additionally, the MoD maintains a Combat Identification Steering Group which meets every six months to ensure that all three services have coherent procedures and equipment to reduce fratricide.

The common causes identified in friendly fire incidents are:

Mistakenly identifying friendly forces for enemy—in the confusion of battle, the ground commander can sometimes mistake friendly forces for enemy forces and call for fire support (fast jets, helicopters, heavy weapons and artillery) against them.

Procedures not followed correctly—our Armed Forces have very effective procedures for minimising fratricide when calling for fire support. When these are not followed fully then errors can be made e.g. when the map reference of the location to be fired on is not confirmed with the ground forces before firing. Research is currently under way into the human factors which cause such errors.

Loss of situational awareness—in the confusion of a battle, fire support elements can lose track of where enemy and friendly forces are positioned (in military parlance, their situational awareness). To counteract this, fire support will be "talked on" to their target by friendly forces involved in the battle with a verbal description of the target. Some incidents of fratricide result from a misunderstanding of the verbal description provided.

The key lessons learnt are in three major categories:

Collective training and multinational interoperability—many fratricides occur when unfamiliar units are suddenly forced to work together. This usually arises from necessity, as when troops come under fire and call for close air support. In this situation the nearest available air asset will be directed to assist and thus the pilot may not immediately recognise the friendly force.

To minimise the risk of fratricide from such incidents our Armed Forces place considerable emphasis on joint training at every level before deployment, and on familiarisation with the equipment and procedures of coalition allies both prior to deployment and in theatre.

For the occasions when unfamiliar forces must work together, the UK is actively engaged with our NATO partners on developing equipment and procedures for combat identification. To test candidate technical solutions, the UK participated in a multinational combat identification exercise in October and November last year involving ground troops and fast air support from 12 nations.

Time lag of data in tactical communications and information systems—due to technological limitations, real time flow of information can never be achieved: there is always some delay (known as latency) in the transmission or refreshing of the information available to our forces, which could contribute to "friendly fire" incidents.

Shared situational awareness—the three services (and our coalition partners) have different requirements for information about the tactical situation which lead to different amounts of delay between an entity being reported at a particular location and the report of that position being received. UK ground and air forces therefore use different systems to display information about the current tactical situation. Some fratricide incidents have occurred which may have been caused by differences in the information available to the various parties. The MoD is putting significant effort into supplying near-real time force tracking information to tactical operations rooms and has made considerable progress in the last three months. The upgrade of Bowman in Afghanistan next year will also help to ensure that ground forces have a common and up-to-date understanding of the tactical situation.

Alcohol

Questions

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government what impact the introduction of a policy of minimum pricing for alcoholic drinks would have on revenues to HM Treasury. [HL1227]

To ask Her Majesty's Government what amount is collected by HM Treasury from each penny of duty on a pint of beer; and what assessment they have made of the level of duty beyond which HM Treasury would begin to lose revenue. [HL1230]

The Financial Services Secretary to the Treasury (Lord Myners): A minimum pricing policy for alcoholic drinks would not be achieved through increased duties; therefore no explicit assessment has been made of the effect on revenues.

The indicative level of duty on a pint of beer is given in table 6 of the tax ready reckoner available at www.hm-treasury.gov.uk/d/pbr09_taxreadyreckoner.pdf, as 39 pence.

No assessment has been made of the level of duty beyond which HM Treasury would begin to lose revenue.

Armed Forces: A400M

Questions

Asked by ***Lord Gilbert***

To ask Her Majesty's Government how much would be due from Airbus to the Government or vice versa, under the contractual conditions applying on 31 December 2009, should they cancel their order for the A400M. [HL1096]

The Minister of State, Department for Business, Innovation and Skills and Ministry of Defence (Lord Drayson): The arrangements for contract cancellation on the A400M programme are complex and are determined by the contract agreed between partner nations and the prime contractor.

The precise contractual arrangements and costs that would apply should a decision be made by one or more partner nations to withdraw from the A400M programme would be determined by the particular circumstances surrounding that decision, and are commercially sensitive.

The contract does not permit Airbus Military to cancel for convenience; if it elected to terminate, it would be breach of contract. In such a case, the amount for which it could be liable would depend on the particular circumstances surrounding that decision, and is commercially sensitive.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government what assessment they have made of how many skilled, semi-skilled and unskilled workers would find further employment within three months if their order for the A400M was cancelled. [HL1097]

Lord Drayson: The Government have made no such assessment.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government whether they have discussed with Boeing or Lockheed the availability of C17s or C130s should they decide to cancel their order for the A400M aircraft. [HL1107]

Lord Drayson: My department has been in contact with Boeing and Lockheed Martin Aeronautical Systems throughout 2009 on the potential availability of additional C-17 and C-130J aircraft respectively. An additional (7th) C-17 is now on contract and we would expect to continue this dialogue whilst we consider the way forward for the A400M programme with our international partners.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government whether they have discussed with the Government of the United States how Her Majesty's Government could satisfy their airlift requirements, should they cancel orders for the A400M aircraft. [HL1180]

Lord Drayson: The department keeps its current and future airlift requirements under constant review, and is undertaking work to study the fallback options for alternative air transport capability solutions.

While discussion takes place with the US at working level on a range of airlift issues, no formal discussions have taken place with the US on the purchase of alternative airlift solutions in the event that the UK orders for A400M aircraft do not proceed.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government what type of mission or capability the A400M aircraft will be used for that cannot be satisfied by a combination of C130s and C17s. [HL1181]

Lord Drayson: C-130Js and C-17s are both able to perform in-theatre tactical airlift and strategic deployment into theatre, although for UK purposes C-130J is more ideally suited to tactical tasking and C-17 for strategic deployment. Nevertheless, the load capacity of C-130J significantly limits its ability to carry a wide range of vehicles. While C-17 could be used to carry these loads tactically, we assess that this would lead to significant growth in support costs. A400M is ideally suited for such tactical taskings and would also contribute significant strategic airlift capability, effectively providing a swing-role capability.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government whether they have asked the United States Air Force how it performs the roles that Her Majesty's Government envisages being performed by the A400M aircraft. [HL1182]

Lord Drayson: The US air transport requirement is satisfied by various marks of C-130, C-17, C5 and the recently introduced C27J aircraft. While the MoD has not undertaken detailed analysis of the US fleet mix, our understanding is that the capabilities we envisage A400M will provide are largely met through use of C-130s and C-17s, albeit using C-17.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government whether their defence procurement policy takes account of the production lines of both the C130 and the C17 still being open. [HL1183]

Lord Drayson: The department considers a number of factors when deciding policy, including supplier production capabilities.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government when is the next occasion for a decision by the consortium of participating countries to cancel the A400M aircraft. [HL1184]

Lord Drayson: The next occasion that such a decision could be taken is 31 January 2010, when the current "standstill" period agreed between A400M partner nations and Airbus Military comes to an end, although consensus amongst the nations would be required to exercise this option.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government whether they will publish any representations they have received from other members of the consortium on the possible cancellation of the A400M aircraft. [HL1185]

Lord Drayson: There have been continuing discussions with partner nations on this topic, but it would not be appropriate to disclose any details of them.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government whether they have had any enquiries from any other members of NATO as to the possibility of buying the A400M aircraft. [HL1244]

To ask Her Majesty's Government whether they have had any enquiries from any other members of the Commonwealth as to the possibility of buying the A400M aircraft. [HL1245]

To ask Her Majesty's Government whether they have had any enquiries from any other members of the European Union as to the possibility of buying the A400M aircraft. [HL1246]

To ask Her Majesty's Government whether they have had any enquiries from any countries who are not members of NATO, the Commonwealth of the European Union as to the possibility of buying the A400M aircraft. [HL1247]

Lord Drayson: The A400M programme is managed by Airbus Military which also takes the lead for any potential sales beyond existing members of the programme, however, the UK, alongside the other partner nations, would support potential sales. The UK Government have received no approaches concerning the sale of A400M.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government what proportion of the order for the A400M aircraft had been cancelled as of 31 December 2009. [HL1248]

Lord Drayson: None of the aircraft ordered as part of the A400M launch contract has been cancelled to date.

As you may be aware, South Africa recently cancelled its order for eight A400M, however, these were additional aircraft and not part of the development of the core A400M programme, which is unaffected by this decision.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government how many orders they expect to be placed for the A400M aircraft in 2010 from countries who are not part of the manufacturing consortium. [HL1249]

Lord Drayson We cannot provide a forecast of orders, this is the business of Airbus Military, but nations have agreed to support Airbus in its export drive.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government for how many months they forecast the Royal Air Force will run a three aircraft fixed wing transport fleet, should the order for the A400M aircraft continue. [HL1300]

Lord Drayson: After the C-130K goes out of service in 2012, the RAF's air transport requirements will be primarily met by the C-130J and the C-17, which have forecast out of service dates of 2030 and 2031 respectively, until A400M comes into service. FSTA, TriStar, VC10, BAe 146 and BAe 125 can also be used in a transport role. With a working assumption that A400M will be in service until 2045, under current planning assumptions the RAF would operate a three aircraft fixed wing fleet dedicated to the transport role from around 2014 to 2030.

Asked by ***Lord Gilbert***

To ask Her Majesty's Government how much degradation to the original specifications of the A400M aircraft would cause them to reduce their financial contribution to the programme. [HL1303]

Lord Drayson: There is no contractual mechanism for varying payments should the specification fall short, but nations would be able to reject aircraft failing to meet specified performance guarantees. All performance guarantees are expected to be met.

Armed Forces: Costs

Question

Asked by ***Lord Lawson of Blaby***

To ask Her Majesty's Government what was the gross cost to the United Kingdom taxpayer of the British military presence in (a) Afghanistan, (b) Iraq, (c) Falkland Islands, (d) Northern Ireland and (e) Cyprus in each of the most recent three financial years; and what is the budgeted expenditure for the current year. [HL1444]

The Minister for International Defence and Security (Baroness Taylor of Bolton): I refer the noble Lord to the Answers given to the noble Lord Marlesford on 5 January 2010 (*Official Report*, col. 4W) and 18 January 2010 (*Official Report*, col. 201W).

Armed Forces: Helicopters

Question

Asked by ***Lord Ashcroft***

To ask Her Majesty's Government whether they plan for new Chinook helicopters to be given clearances with limited evidence, allowing them to be in service quickly. [HL1221]

The Minister for International Defence and Security (Baroness Taylor of Bolton): The Chinook Mk3R helicopters are just being brought into service and are at present operating with 12 clearances with limited evidence (CLE) for a number of subsystems. It is anticipated that four of these CLE will be uplifted to full clearances within two months, and the others will be uplifted as soon as possible.

Banks: Lending

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government what assessment they have made of the level of lending by the United Kingdom retail banking sector to small and medium-sized enterprises; and what steps they will take if they conclude it is not lending enough. [HL1255]

The Minister for Trade and Investment (Lord Davies of Abersoch): SME lending data collected by BIS show that while it is true to say that demand for finance remains subdued and new lending is down comparatively with 2007, the large majority of SME applications for finance are successful.

The Government continue to monitor the situation closely, for example the experiences of both lenders and borrowers are discussed regularly at the Small Business Finance Forum.

While continuing to encourage lending to viable SMEs, the Government have agreed lending commitments with RBS and Lloyds. Lending Commitments will also be in place for next year up to March 2011.

In addition, over £750 million of loans have been offered to SMEs through the enterprise finance guarantee, which has been extended to 31 March 2011, and the Government are working to establish a growth capital fund which will supply risk capital to established SMEs of between £2 and £10 million.

Bonuses

Question

Asked by ***Lord Morris of Aberavon***

To ask Her Majesty's Government when the practice of paying bonuses to civil servants began; and what was the total paid in each year since 1997. [HL1282]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): Civil Service reward systems have evolved over time and have featured performance-related payments for at least the past 20 years.

Non-consolidated performance payments (e.g. payments for outstanding delivery on particularly stretching objectives) became a common feature of Civil Service pay in 1996.

Information on the level of non-consolidated performance payments across the Civil Service is not held centrally and could be provided only at disproportionate cost.

Chief of the General Staff

Question

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government to what public posts Sir Richard Dannatt has been appointed since his retirement as Chief of the General Staff. [HL955]

The Minister of State, Department for Business, Innovation and Skills and Ministry of Defence (Lord Drayson): Sir Richard Dannatt has not been appointed to any public body since his retirement.

Child Tax Credit

Question

Asked by ***Baroness Verma***

To ask Her Majesty's Government why the take-up of child tax credits for nursery provision is at its current level. [HL1241]

The Financial Services Secretary to the Treasury (Lord Myners): There is no child tax credit specifically for nursery provision.

Help with the costs of registered or approved childcare for working families (including but not limited to childcare provided by nurseries) is provided through the childcare element of the working tax credit.

The number of families benefiting from the childcare element has increased by over 80 per cent since new tax credits were introduced in 2003, and was 478,000 as of December 2009. There are now twice as many families benefiting from it as from the childcare tax credit in the working families tax credit, the predecessor system, and over 15 times as many families as were benefiting from the childcare disregard in family credit in 1997.

The latest figure for the number of families benefiting from the childcare element is regularly published in table 4.4 of the HM Revenue and Customs publication *Child and Working Tax Credits Statistics*, available at http://www.hmrc.gov.uk/stats/personal-tax-credits/cwtc-dec09.pdf.

Estimates for the take-up rate of the childcare element are not available, due to the absence of an estimate of the number of families eligible for the childcare element.

Children: Childcare Places

Question

Asked by ***Baroness Verma***

To ask Her Majesty's Government how 600,000 childcare places for two year-olds will be funded. [HL1240]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): We are committed to rolling out a free entitlement to two year-olds, stage by stage. By the end of March 2010 it is expected some 20,000 two year-olds from the most disadvantaged backgrounds will have access to a free early learning and childcare place each year.

Funding allocated to support the free early learning and childcare offer to two year-olds over 2009-2011 is £137 million, delivered through the Early Years, Extended Schools and Childcare Grant (EYESCG).

Decisions regarding the pace of future rollout will need to be taken in light of wider fiscal considerations as part of the next spending review.

Credit Cards

Question

Asked by ***Lord Newby***

To ask Her Majesty's Government what action they are taking to ensure that when a customer makes a payment against their credit card debt it is allocated to the debt attracting the highest rate of interest first. [HL1279]

The Minister for Trade and Investment (Lord Davies of Abersoch): The Government are concerned about the practice of allocating payments to the cheapest debt first and the extent to which consumers understand this, and its implications for their personal finances. We are therefore considering what action may be required as part of the current review of the regulation of credit and store cards which is being undertaken by the Department for Business, Innovation and Skills. Among other things, our consultation examines whether we should reverse the allocation of payments to ensure that expensive debts are paid off more quickly, as a very small number of lenders already do. We published a consultation document seeking views on potential reforms in October 2009. The consultation closes on 19 January 2010. The Government will issue final recommendations in the spring.

Department for Business, Innovation and Skills: Legislation

Questions

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what Bills were introduced by the Department for Business, Innovation and Skills and its predecessors in each session since 2005. [HL1425]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): The following Bills were introduced by the Department for Business, Innovation and Skills and its predecessors:

2004-05 Session

Consumer Credit Bill Equality Bill.

2005-06 Session

Companies Bill [HL];

Consumer Credit Bill;

Equality Bill [HL];

Wireless Telegraphy [HL] (Consolidation Bill); and

Work and Families Bill.

2006-07 Session

Consumers, Estate Agents and Redress Bill [HL].

2007-08 Session

Employment Bill;

Energy Bill;

Regulatory Enforcement and Sanctions Bill [HL]; and

Sale of Student Loans Bill.

2008-09 Session

Industry and Exports (Financial Support) Bill; and

Postal Services Bill [HL].

2009-10 Session

Digital Economy Bill [HL].

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what criminal offences have been created by Acts of Parliament promoted by the Department for Business, Innovation and Skills and its predecessors since 2005. [HL1426]

Lord Young of Norwood Green: The information requested has been placed in the Library of the House.

Energy: Carbon Emissions

Question

Asked by ***Lord Greaves***

To ask the Chairman of Committees further to his Written Answer on 23 October 2009 (*WA 100*) on carbon emissions, whether he will write the letter referred to in the Answer. [HL1455]

The Chairman of Committees (Lord Brabazon of Tara): The November meeting of the Administration and Works Committee to which I referred in my Answer was postponed to 19 January 2010. I shall write to the noble Lord shortly.

EU: Economy

Questions

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

To ask Her Majesty's Government what proposals they have to promote competitiveness and economic growth in the European Union over the next 10 years. [HL1073]

The Financial Services Secretary to the Treasury (Lord Myners): Building on the Prime Minister's letter to the Swedish Prime Minister ahead of the October 2009 European Council, the Government on 19 January launched their plan for a new EU compact for jobs and growth. The paper sets out the need for strong, sustainable, and balanced growth to continue to raise the prosperity and improve the standard of living of Europe's citizens, and is available at: www.cabinetoffice.gov.uk/media/329788/compact-jobs-growth.pdf.

It outlines six areas where action is needed, with policy proposals in each area:

fiscal policy that protects the recovery and supports sustainable growth;

creating new jobs and equipping our workforce with skills for the new economy;

growing the innovative industries of the future;

supporting business to take advantage of the single market;

opening up global markets to trade and investment; and

a robust and competitive financial services sector.

It also proposes a compact between the President of the Commission and the President of the European Council that would serve as a framework for harnessing Europe's policies, such as those set out in the UK Government's paper and the European Commission's EU 2020 proposals, to deliver jobs and growth.

The UK Government have also outlined their priorities for EU economic reform in a paper *The Future of EU Competitiveness: From Economic Recovery to Sustainable Growth*, published in June 2009 and available at www.berr.gov.uk/files/files51732.pdf. This sets out key areas where EU action can have the greatest impact to ensure EU businesses can compete in a global marketplace, and highlights the importance of an integrated approach to EU industrial policy and the future of the single market.

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

To ask Her Majesty's Government what conclusions they have drawn from the European Union Lisbon Strategy for economic growth regarding better economic co-operation in future European Union growth programmes. [HL1074]

Lord Myners: The Lisbon strategy for growth and jobs has played an important part in promoting economic reform across Europe by providing: political impetus for EU and national policies; a toolkit for reform based on learning from the best performers in Europe; and co-ordination in areas where action or inaction in one member state would impact on citizens in another. As such, it was a factor in rising employment rates and productivity across Europe.

But the EU and its member states did not make enough progress quickly enough, and the progress that they did make has been set back by the economic crisis. The EU needs a new strategy that provides a coherent, high-profile framework for the steps needed at international, EU, national and regional levels to ensure that Europe plays its part in generating strong, sustainable and balanced growth.

The EU 2020 initiative provides an opportunity to develop such a strategy. Building on the Prime Minister's letter to the Swedish Prime Minister ahead of the October 2009 European Council, the Government on 19 January launched their plans for a new EU compact for jobs and growth.

The paper sets out the need for strong, sustainable, and balanced growth to continue to raise the prosperity and improve the standard of living of Europe's citizens, and is available at http://www.cabinetoffice.gov.uk/media/329788/compact-jobs-growth.pdf.

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

To ask Her Majesty's Government what targets they have proposed to European Union states for economic growth in the European Union in the next ten years. [HL1075]

Lord Myners: Building on the Prime Minister's letter to the Swedish Prime Minister ahead of the October 2009 European Council, the Government on 19 January published their plans for a new European compact for jobs and growth, available at: www.cabinetoffice.gov.uk/media/329788/compact-jobs-growth.pdf.

The paper argues that Europe should agree a compact that brings together EU institutions and member states in a common cause of generating strong, sustainable and balanced growth. The starting point for delivering this ambitious agenda should be a set of clear and measurable objectives around:

strengthening Europe's long-run growth potential;

ensuring growth within Europe and its Member States is balanced;

increasing employment and labour market participation;

raising labour and capital productivity; and

facilitating investment.

Member states should define and establish measurable national targets that contribute to meeting these EU objectives, and be held publicly accountable for progress towards these targets through intergovernmental peer review.

Within this framework the paper proposes specific targets for action at the member state and EU-level:

national targets to reduce child poverty supported by greater cohesion between employment policy and social protection;

promoting greater participation and equality of women in the workplace by ensuring a new EU gender road map which includes agreement of targets to close the gender pay gap and increase the participation of women in public and private sectors; and

a target for all homes and businesses to have access to broadband at 2 Mb per second by the end of 2013.

The paper also suggests that an annual economic summit of EU leaders should be established to review progress against the objectives on the basis of reports from the Economic and Financial Affairs Council (ECOFIN) and the European Systemic Risk Board (ESRB).

EU: Taxation

Questions

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government whether there are proposals by the European Commission to introduce a common tax base for business; and, if so, whether they support such a measure. [HL1076]

The Financial Services Secretary to the Treasury (Lord Myners): To date, the European Commission has not brought forward a legislative proposal to establish a EU Common consolidated corporate tax base.

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government whether proposals to introduce a common tax base for business would require a unanimous vote of the Council of the European Union. [HL1077]

Lord Myners: An EU legislative proposal to establish a common consolidated corporate tax base among the 27 EU member states would require a unanimous vote in the Council of the European Union.

Finance: Bonds

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government what is their assessment of the level of participation in the latest auction for long-term Government bond purchases. [HL1254]

The Financial Services Secretary to the Treasury (Lord Myners): The auction of £2,250 million (nominal) of 4¼ per cent Treasury Gilt 2049 on 13 January 2010 was covered 1.81 times, which is slightly higher than the cover ratios at the previous two auctions of long-dated conventional gilts (the £2,000 million (nominal) auction of 4½ per cent Treasury Gilt 2034 on 4 November 2009 was 1.53 times covered and the £2,250 million (nominal) auction of 4¼ per cent Treasury Gilt 2039 on 2 December 2009 was 1.74 times covered).

Finance: Equity Release

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government further to the Written Answer by Lord Myners on 2 April 2009 (*Official Report*, House of Lords, col. 1173) on equity release, what steps they have taken since then to promote the measures set out in the question; and whether they issue guidance that such schemes should be underpinned by independent legal advice and that accurate and adequate advice must be conveyed before any legal agreements are entered into. [HL1278]

The Financial Services Secretary to the Treasury (Lord Myners): The Government have made it clear in previous statements to Parliament that equity release products are complex financial products, and consumers considering equity release should consider seeking independent financial advice. However, the decision on whether to seek independent financial advice remains a decision for consumers, and some consumers may decide that they do not require such advice.

The Government have put in place Financial Services Authority (FSA) regulation of equity release products. The FSA's regime provides important protections for consumers, including requirements that information provided by regulated equity release providers must be clear, fair and not misleading. The FSA publishes a consumer guide to equity release products, which states that consumers uncertain about equity release should seek independent financial advice. This is available in hard copy from the FSA, or on the FSA's website at http://www.moneymadeclear.fsa.gov.uk/tools/publications/publications.html.

Government Departments: Electronic Data

Question

Asked by ***Baroness Byford***

To ask Her Majesty's Government which departments hold personal information in electronic form on archive; and what rules govern extracting such information from an archive or moving it between archives. [HL1436]

Baroness Crawley: Information on which departments hold personal information in electronic form within archives is not held centrally by the Cabinet Office. The nature of the personal information held by each department would only be known by each department and be recorded on individual departmental information asset registers.

In June 2008, the Cabinet Secretary published the data handling report (DHR) on the security of cross-government data handling procedures. The DHR deals with specific measures that departments must take in order to improve the security of personal data including its storage and transit. A full copy of the report is available at www.cabinetoffice.gov.uk/reports/data_handling.aspx.

In addition, personal information held by government departments is governed by the Data Protection Act 1998 and each government department is responsible for ensuring that it complies with the Act when carrying out any processing including extracting and transferring personal information.

Government: Office Equipment

Question

Asked by ***Lord Bates***

To ask Her Majesty's Government further to the Written Answer by the Parliamentary Under-Secretary of State for Communities and Local Government, Barbara Follett, on 9 December 2009 (*Official Report*, 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) Buying Solutions, (b) Her Majesty's Revenue and Customs, (c) the Valuation Office Agency, (d) the Government Actuary's Department, (e) the Commissioners for the Reduction of the National Debt, (f) the National Audit Office, and (g) HM Treasury, in the latest period for which figures are available. [HL1029]

The Financial Services Secretary to the Treasury (Lord Myners): The National Audit Office is accountable directly to Parliament and is not the responsibility of HM Government.

The UK Debt Management Office (which carries out the functions of the Commissioners for the Reduction of the National Debt) does not purchase white A4 80 gsm photocopier paper.

The table below summarises the information requested for the remaining organisations for an estimated average price paid in the latest complete year for which figures are available for a 500 sheet ream of this specification of paper.

Organisation	*Estimated average price paid in 2008-09*
HM Treasury	£1.71
Buying Solutions	£2.23
HM Revenue and Customs	£1.70
Valuation Office Agency	£1.82
Government Actuary's Department	£2.60

The cost of white A4 80 gsm photocopier paper will vary according to the finished quality. Each organisation may select different volumes and qualities of paper even where they are using the same Buying Solutions framework. The average price per organisation reflects these selections.

Gross Domestic Product

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government further to the Written Answer by Baroness Crawley on 19 January (*WA 236–7*), what proportion of United Kingdom gross domestic product was represented by manufacturing in 1997. [HL1439]

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, Survey and Administrative Sources, Office for National Statistics, to Lord Stoddard, dated January 2010.

The Director General of the Office for National Statistics has been asked to reply to your recent Parliamentary Question asking what proportion of United Kingdom Gross Domestic Product (GDP) was represented by Manufacturing in 1997. 1 am replying in his absence. (HL 1439)

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 and thus the percentages calculated would not add to 100%

In current (nominal) price terms for the calendar year 1997 Total Manufacturing is estimated to have made up 20.3 per cent of Total GVA.

Human Rights

Questions

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government what assessment has been made of the impact of the proposed revisions to the Export Credits Guarantee Department's business principles and ancillary policies on the protection of social and human rights, including protection against the use of child workers and forced labour abroad. [HL1363]

To ask Her Majesty's Government why the current public consultation on proposed revisions to the Export Credits Guarantee Department's business principles and ancillary policies does not contain information about the estimated impact of such revisions upon the protection of social and human rights, including protection against the use of child workers and forced labour abroad. [HL1364]

The Minister for Trade and Investment (Lord Davies of Abersoch): The Government have included in their public consultation on ECGD's business principles a proposal that ECGD should adopt a policy of following OECD agreements related to the environment, sustainable lending and bribery, and not, in future, separately operate and additionally create policies which go beyond those agreements. The consultation document stated that the effect of this proposal would be that certain exports, being those involving credit terms of less than two years or an UK export value of less than SDR 10 million (circa £10 million) would no longer be subject to environmental and social impact due diligence, including human rights impacts. This would be consistent with the system of protection on such matters that members of the OECD consider appropriate as set out in the relevant international agreement (the OECD recommendation on common approaches on the environment and officially supported export credits).

No assessment has been made of the potential impact of such a proposal on the protection of social and human rights, including protection against the exploitative use of child workers and the use of forced labour overseas, because ECGD does not know, and cannot estimate, the level of future demand for support for exports falling into the above category. Without such prior knowledge, ECGD cannot estimate the proportion of those within that category that might have possible environmental and social impacts, including on human rights, or determine the classification between A, B or C impacts and whether such impacts would satisfy international standards as specified in the OECD recommendation on common approaches and, therefore, be eligible in principle for ECGD support.

Inquiries Act 2005

Questions

Asked by ***Baroness Miller of Chilthorne Domer***

To ask Her Majesty's Government further to the Written Answer by Lord Bach on 8 December 2009 (*WA 112*), whether they will publish for consultation a draft protocol on when to hold an inquiry instead of an inquest. [HL1055]

To ask Her Majesty's Government further to the Written Answer by Lord Bach on 8 December 2009 (*WA 112*), what is their proposed timetable for the publication of the protocol setting out when an inquiry will be established instead of an inquest. [HL1056]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): The Government are consulting the senior judiciary to settle the terms of the protocol, which we aim to finalise as soon as possible. It is not intended that the Government will consult formally on the protocol before it is published and brought into effect.

Licensing: Live Music

Question

Asked by ***Lord Clement-Jones***

To ask Her Majesty's Government how many applications there have been for live music under the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009; and how many of these applications have been granted. [HL1360]

Lord Davies of Oldham: The minor variations process came into force on 29 July 2009. Official statistics on its use are not yet available. We hope to be able to include data about minor variations in the next Statistical Bulletin on *Alcohol, Entertainment and Late Night Refreshment Licensing*, which we expect to be published in autumn 2010.

The Government have asked the Local Authorities Co-ordinators of Regulatory Services (LACORS) to request information from licensing authorities about minor variations applications that relate to live music.

LACORS has informed the department that, although it has not conducted an exhaustive survey, it is aware of six examples of applications being made that include requests to add or extend authorisation for live music. There were three requests for the easing of conditions relating to an existing authorisation for live music, and three for new authorisations for live music. All these applications were granted. LACORS is not aware of any minor variation application relating to live music that has been refused.

Ofqual

Question

Asked by ***Baroness Walmsley***

To ask Her Majesty's Government when Ofqual will be established; and what was the legal authority for making the Chief Regulator of Qualifications and Examinations Order 2009 (SI 2009/3208). [HL1289]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): Our intention is to commence the provisions in the Apprenticeships, Skills, Children and Learning Act 2009 which establishes Ofqual on 1 April 2010.

Her Majesty the Queen, on the advice of the Privy Council, has by order appointed Kathleen Tattersall OBE as the first Chief Regulator of Qualifications and Examinations from that date. The order, dated 9 December 2009, was made under paragraph 2(1) of Schedule 9 to the Apprenticeships, Skills, Children and Learning Act 2009. Section 13 of the Interpretation Act 1978 allows statutory powers of appointment to be exercised before the commencement of the provision under which the appointment is made.

Parking

Question

Asked by ***Lord Lucas***

To ask Her Majesty's Government what guidance they have issued to officials at the Traffic Enforcement Centre at Northampton County Court who make court orders accepting or rejecting out-of-time statements of truth and statutory declarations; and whether they will place a copy of any such guidance in the Library of the House. [HL1293]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): No guidance has been provided to officials on this matter.

Paragraph 5 of the practice direction supporting Part 75 of the Civil Procedure Rules 1998 sets out the procedure for dealing with applications to file statutory declarations and witness statements out of time.

The practice direction makes it clear that a copy of an application must be sent to the relevant local authority seeking representations in the first instance. It also provides that where the local authority accepts the application, it is treated as an in-time statutory declaration and the court registration is cancelled.

Where the local authority rejects the application, the practice direction provides that a court officer must make a decision on the evidence presented about whether the application should be granted or refused. The evidence might be for example, if a respondent was unable to comply with timescales because he or she had been out of the country at the relevant time. Both parties are then informed of the decision.

Rule 75.5A of the Civil Procedure Rules provides that any party may subsequently apply for a decision of a court officer to be reviewed by a district judge. This review is limited to the decision to refuse the application for further time and cannot consider the validity of the notice of the amount due or any order.

Q-Fever

Question

Asked by ***Lord Patten***

To ask Her Majesty's Government what action they are taking to prevent the outbreak of Q-Fever amongst goats in the Netherlands from reaching the United Kingdom. [HL1262]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): There is currently no definite evidence to suggest the Dutch Q-fever outbreak has been caused by a different strain of the organism that causes Q-fever to that already found endemically in the UK.

Defra requested that the Dutch Q-fever outbreak be considered by the Human Animal Infections and Risk Surveillance (HAIRS) group at its meeting on 6 January 2010. The HAIRS group is a mufti-disciplinary group chaired by the Health Protection Agency (HPA) with members from the HPA, Department of Health, the Food Standards Agency (FSA), Defra (including representatives of the key Defra agencies: the Veterinary Laboratories Agency and Animal Health) and participants from each devolved Administration. The meeting considered the one published paper suggesting the possibility that the organism responsible for the Dutch Q-fever outbreak may be of a different strain, but considered this to be speculative not conclusive.

Therefore Defra continues to follow the guidance of the Veterinary Laboratory Agency's (VLA) small ruminants (sheep and goats) expert group, part of Defra's scanning surveillance network within the VLA. This group has concluded there are currently no reasons for the UK to stop the importation of goats or sheep from the Netherlands. In fact there are very few consignments of sheep and goats imported from the Netherlands annually (14 in 2008). Furthermore the heightened Dutch controls restricting movements of animals from farms found to be infected with Q-fever will also serve to restrict imports from the Netherlands.

Retirement Age

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government what response they will send to organisations advocating an end to compulsory retirement ages. [HL1316]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): The UK does not have a national compulsory retirement age. The Employment Equality (Age) Regulations 2006 introduced a default retirement age of 65 which allows employers to use retirement at 65 as a tool for workforce planning. Employers do not have to retire employees once they reach 65. They are free to continue to employ them as long as they like, and employees are entitled to request to continue working beyond 65.

We are bringing forward the review of the default retirement age from 2011 to 2010 and have asked stakeholders to submit evidence to inform the review by 1 February. The review will consider whether the default retirement age is still appropriate and necessary and will be based on evidence that is as robust, wide-ranging and detailed as possible. As set out in *Building a Society for All Ages*, any changes resulting from the review would be implemented in 2011, giving businesses enough time to prepare.

Schools: Reading

Questions

Asked by ***Baroness Verma***

To ask Her Majesty's Government how they respond to the comments made by the Communications Champion Jean Gross that many children lack the vocabulary skills to ensure future employment. [HL1238]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): The Government have published an action plan *Better Communication*, backed by £12 million investment, which included appointing a communications champion. Jean Gross has been appointed as the communications champion and is playing a key role in promoting the importance of communication skills to children and in helping us to make a success of the commitments set out in the action plan.

The pupil guarantee, on which we are consulting, includes a commitment that all learners should get the chance to develop functional skills, including English. Functional English specifically covers oral communication and its applicability in the world of work. The changes to the secondary English curriculum which are already under way will secure this. Functional Skills is a key component of foundation learning, being developed as part of the 14-19 reforms to focus on the needs of learners at entry level and level 1.

Asked by ***Baroness Verma***

To ask Her Majesty's Government why they have yet to respond to the recommendation of the Independent Review of the Primary Curriculum by Sir John Rose about introducing synthetic phonics in schools. [HL1239]

Baroness Morgan of Drefelin: The Government accepted all of the recommendations made by Sir Jim Rose in the final report of the independent review of the primary curriculum, published on 30 April 2009.

The report did not recommend introducing synthetic phonics in schools.

Sir Jim Rose's *Independent Review of the Teaching of Early Reading*, 2006, recommended systematic phonic work as the prime approach for teaching beginner readers. This recommendation was implemented in schools in 2007-08.

Taxation: Income Tax

Question

Asked by ***Lord Howarth of Newport***

To ask Her Majesty's Government how much income tax was paid by writers on the sale of their archives in (a) 2006–07, (b) 2007–08, and (c) 2008–09. [HL1114]

The Financial Services Secretary to the Treasury (Lord Myners): The information requested is not available, as there is no requirement for individuals to identify specific sources of income when making a tax return.

World Heritage Sites

Question

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government what parliamentary committees and authorities were consulted over the 2008 extensions to the Westminster World Heritage Site. [HL1281]

Lord Davies of Oldham: The 2008 extension to the Westminster World Heritage Site was a commitment in the management plan published in 2007. This plan was agreed by the Westminster World Heritage Site Liaison Steering Group, of which the Parliamentary Estates Directorate is a member.

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