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House of Lords

Wednesday, 27 January 2010.

3 pm

Prayers—read by the Lord Bishop of Liverpool.

Passports

Question

3.06 pm

Asked By ***Lord Marlesford***

To ask Her Majesty's Government whether they will require details of all non-British passports held by British passport holders to be registered with the Identity and Passport Service.

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): My Lords, British citizens who hold passports issued by other countries are not required to register those details with the Identity and Passport Service, as being a dual national has no bearing on the eligibility for a passport. While British passport applicants are asked to submit with their application any uncancelled passport, including foreign passports, this is simply to assist with identity verification.

Lord Marlesford: My Lords, I thank the Minister. Is it not absurd, at a moment when we are asking people to lose their lives in Afghanistan, in the words of the Prime Minister, to keep terrorism off the streets of Britain, that we are not doing everything that we possibly can in this country to protect ourselves here? Is it not dangerous, now we have this expensive e-borders system—belatedly, but it is now in place—that immigration officers are not able to know, when a British passport is swiped, that the holder may have switched, or may be about to switch, to a different passport for other trips while abroad? That is a real security risk, and I cannot see why the Government do not urgently make it mandatory for the Passport Office to know when passport-holders hold other passports as well.

Lord West of Spithead: My Lords, I know that the noble Lord has had a particular interest in this area. It seems at face value that there is a definite point to what he says, so I have looked into it. It is clear that, because of e-borders and because we are getting biometrics on all these things, that loophole is being closed.

Since the beginning of 2007 we have ensured that someone cannot have a certificate of entitlement for them to be in this country, which would be registered in their foreign passport, if they have decided that they wish to have a British passport; they can have either one or the other. So that has been done as well.

In the past there was the possibility of using different names to try to fool the authorities, but if the name, date of birth and so on are the same then there is no possibility of getting through. Once we have biometrics, which are coming in very fast, we can bowl these things out easily, and that is the way of getting around the problem. Trying to stop people getting another passport and trying to register it—on the day of registration they might not have a foreign passport, but the next day they might have one—is too complex. We are closing all the loopholes, and I believe that this has gone away. I hope that that satisfies the noble Lord, although I am willing to talk with him at greater length about this as I am aware of his concern and I have specifically looked into it.

Lord Dear: My Lords, in March 2008 the European Union Committee of your Lordships' House published a report on e-borders, in which it declared itself astonished that there was then no way in which the UK Borders and Immigration Agency could know who was in the country, since there was then no routine recording of entries into the UK or departures from it. One of the most basic requirements of a border control is the ability to count people in and out of the country. Was the Government's undertaking met—namely, that by December 2009 screening systems would be in place to deal with 60 per cent of all passenger and crew movements into the UK? Will their target of 95 per cent by December this year be met?

Lord West of Spithead: My Lords, I could not have put the initial part of that question better myself. This is something that we decided we would do; in the past, we did not check people out. This was done with the previous Administration, for whatever reasons. It is absolutely right that we check people in and out, so we know exactly who is here. On those precise figures, I shall have to come back in writing, because I am not sure exactly where we have got to on that. We are still aiming for 100 per cent in time for the Olympics, and we will be a lot more safe and secure.

With the pilot schemes that we have run, we have already bowled out an awful lot of people when there have been lost or stolen passports. Again, the noble Lord who spoke previously is very interested in that issue. We have been able to arrest those people who have been using them falsely.

Lord Naseby: About 18 months ago, I asked a question of the noble Lord considering the smaller, private airports and the fact that there was no official passport control in those situations. Will they be covered by the 100 per cent target?

Lord West of Spithead: My Lords, the intention is that they will be covered. Indeed, there are issues about boats going backwards and forwards across the Channel, and that sort of thing. There are some real complexities. Clearly, those will be the areas that are hit last; I have flown a number of times in a private jet and at Farnborough, in the private jet area, one is checked very admirably. The only difficulty is with making sure that the chaps are in uniform.

Baroness Falkner of Margravine: My Lords—

Baroness Neville-Jones: My Lords—

Lord Davies of Oldham: We have not heard from the Liberal Benches.

Baroness Falkner of Margravine: My Lords, last week we were told of the introduction of no-fly lists and other enhanced screening measures, including enhancing the watch list. Will the Minister confirm that the details of passport holders who have dual nationality are there to be cross-referenced against these new lists when they are set up? Could he also give us an estimate of how long it will take before all British citizens have biometric passports?

Lord West of Spithead: My Lords, I shall answer that in reverse order of sequence, starting with the fully biometric passport. Passports are slightly biometric obviously, through facial recognition, but they will have fingerprints as well by 2012. That will be a process from the beginning of that year—people will start getting fingerprints on their passports, and that is how that will be done. As for matching passports, people who come into this country through e-borders and getting their visas will have to give biometrics. There will be biometrics on our passports, so it will be impossible to have two names. You might have a passport under a different name, but it will immediately flag up, and that will be a reason to ask straightaway what is going on and to move forward and do something about it.

Baroness Neville-Jones: My Lords—

Baroness O'Neill of Bengarve: My Lords—

Lord Davies of Oldham: It is the turn of the Cross Benches.

Baroness O'Neill of Bengarve: Can the Minister tell the House what progress has been made in dealing with the land border with the Republic of Ireland, where we have a distinctive set of problems?

Lord West of Spithead: My Lords, the position there is that there are no controls for passports going across there. This is intelligence-based, and we have been doing more operations there on an intelligence basis, but there is nothing further on that. There was some debate in this House about the common travel area, and I think that that will have to move forward in a further Session.

Baroness Neville-Jones: Will the Minister say whether the Government have implemented the provision in the Identity Card Act 2006 which requires those applying for or renewing passports to be registered with the national identity register? If they have not done so, what is their intention?

Lord West of Spithead: My Lords, I am afraid that I do not have the answer at my fingertips. I shall come back in writing on that point, if I may. What is interesting with the identity card is that 3,500 people have them already and another 25,000 have applied for them. They are proving a huge success—there is a big rollout happening in London. I have one myself, and it is actually quite useful, I have to say.

Finance: Alternative Investment Market

Question

3.14 pm

Asked By ***Lord Lee of Trafford***

To ask Her Majesty's Government whether they will consider allowing shares listed on the Alternative Investment Market to be eligible for ISAs.

The Financial Services Secretary to the Treasury (Lord Myners): One of the qualifying conditions for the inclusion of a share in an individual saving account is that the share must be officially listed on a recognised stock exchange. Shares traded on AIM do not meet this definition. The wider UK tax system distinguishes between listed and unlisted shares for tax purposes, and not just in the area of ISAs. AIM shares are unlisted and have been ever since the market was established. AIM shares benefit from other tax advantages, including the enterprise investment scheme, the possibility of inclusion in venture capital trusts and advantageous inheritance tax treatment.

Lord Lee of Trafford: First, I declare an interest as the holder of a number of shares in AIM-quoted companies. I am rather disappointed with the noble Lord's reply. Surely, an ISA investor should be allowed to choose whether they invest in main-market companies or in AIM companies? Is it not nonsense that an ISA investor can buy an overseas stock, such as Kraft, to include in their ISA, or can invest in shares quoted on the Channel Islands Stock Exchange, yet be barred from the 1000-plus smaller-growth UK companies on AIM, which would appreciate ISA eligibility from a capital-raising point of view?

Lord Myners: Those with whom we regularly consult on the ISA rules and the treatment of the AIM market are very clear that if AIM shares were to be included in ISAs, and AIM shares were therefore to lose the advantages that they currently have under inheritance tax procedures and inclusion in venture capital trusts, they would prefer to remain with the existing arrangement. Nineteen million people have ISA accounts; that is a considerable achievement in terms of increasing investment and tax-protected savings.

Lord Northbrook: Why are AIM stocks not allowed in ISAs when they are allowed in self-invested personal pension schemes?

Lord Myners: I think that I have already answered that question.

Lord Newby: My Lords, the Minister may feel that he has answered the question, but I suspect that the majority of the House either did not hear his answer or did not understand it. It seems to some of us that there is an inconsistency in allowing these AIM shares to be eligible for SIPPs but not for ISAs. Can he explain why that is such a matter of principle?

Lord Myners: I apologise if my earlier answer was not clear. The distinction is between whether the shares are on a listed and regulated stock exchange or not. AIM is not judged to be a listed and regulated exchange. Therefore, companies listed on AIM do not qualify for ISAs. The rules for self-invested pension schemes include the ability to invest in one's own company, which is clearly a very different regime for an entirely different requirement.

Lord Hodgson of Astley Abbotts: Will the Minister not accept that, in the country at large, his remarks this afternoon will sound extraordinarily complacent? His Government's economic policies have brought this country to the edge of ruin, and small and medium-sized companies are finding it difficult and expensive to find bank borrowings to fund their expansion. The only way for them to fill that gap now is equities, and for small and medium-sized companies to have this extremely valuable source of equity shut off must surely be a mistake. It must be right for us to encourage investment and savings as a way of getting ourselves out of the hole we are in. Why cannot the Minister see this?

Lord Myners: I hope that I am never guilty of complacency over something as important as the performance of the economy, and the criticality of smaller businesses which are the lifeblood of a successful economy. That is why we have focused so much, through various schemes, on ensuring the flow of credit and finance to smaller companies. The noble Lord should recognise that AIM is a market for listed companies. At the time of listing, it is not in itself a source of new capital for investment. That takes place before, so buying a share of an existing company does not represent the flow of new funds into a business. There is a very clear distinction between the primary market and the secondary market.

Baroness Noakes: My Lords, the Minister said that shares could be treated as eligible either for ISAs or for the others reliefs that he described. In practice, the other reliefs have on the whole become less valuable, in particular the venture capital trust reliefs. It is important to ensure that there is a lively market providing finance to small and medium-sized enterprises. Will the Minister look at this again?

Lord Myners: My Lords, I am surprised that the noble Baroness says that venture capital trust tax incentives are in some way less attractive. It is possible for an individual to invest £200,000 per annum in a VCT for an up front income tax relief on investment of 30 per cent. I hope that in the Minister's—

Noble Lords: Oh!

Lord Myners: I am sorry, I am referring to myself. I hope that in the Minister's self-direction he both avoids complacency and at the same time remains open to ways in which we can further improve the system. One of the first things I did when I became a Minister was to ask officials to produce a report on the issue raised by the noble Lord's question. Without wishing to fall into the trap of appearing complacent, I was persuaded by the answers I was given.

Lord Northbrook: My Lords, how is it that figures from the Stock Exchange show that the amount raised by AIM-based VCTs has declined from £196 million in 2005-06 to only £6 million in 2008-09?

Lord Myners: The noble Lord is probably aware that these things happen during a bad market.

Lord Forsyth of Drumlean: My Lords, is the Minister not using a circular argument? Who decides what is a recognised exchange? Both AIM and the main Stock Exchange deal in listed shares. The Minister can change the rules quite easily. Why should one lot of quoted shares be treated differently from another?

Lord Myners: My Lords, the decision on whether an exchange is recognised will fall within the question of whether it meets the definitions set out in the European directive on prospectuses.

Northern Ireland: Cross-border Police Co-operation

Question

3.21 pm

Asked By ***Lord Cope of Berkeley***

To ask Her Majesty's Government what progress has been made in implementing the recommendations of the British-Irish Parliamentary Assembly of March 2009 about improving the ability of the Police Service of Northern Ireland and the Garda Síochána to investigate and prosecute crimes across the border.

Baroness Royall of Blaisdon: My Lords, work is at an advanced stage in the implementation of the recommendations relating to cross-border policing powers. Officials, police officers and public prosecutors from both sides of the border are meeting again tomorrow to consider the outstanding issues, including the draft procedural manuals.

Lord Cope of Berkeley: My Lords, I am grateful to the noble Baroness for that Answer and particularly to know that the procedural manual which was originally promised for last April is getting near production. We all agree that the policing relationships and the co-operation between the two police forces are absolutely excellent at all levels, but these legal and jurisdictional problems continue to make it much more difficult than it need be to investigate and prosecute crimes near the border. Can we expect progress tomorrow over, for example, the extension of the criminal jurisdiction Acts, so that money laundering, as well as murder and the other things on the list, can be tried in either jurisdiction?

Baroness Royall of Blaisdon: My Lords, first, I pay tribute to the noble Lord for his persistent questioning in the specific area of cross-border policing. Thanks to that questioning, the Government are making progress on those matters and in Northern Ireland. I am not entirely sure whether the criminal jurisdiction Acts are on the agenda for tomorrow. Work continues to establish

[Baroness Royall of Blaisdon]
which offences are not covered by the Criminal Jurisdiction Act 1975 and how best to fill the gaps. The Irish Attorney-General has confirmed that he is content that their own Act should be amended to include additional offences.

Baroness Harris of Richmond: My Lords, both the Garda Siochana and the PSNI would certainly agree with a five-mile buffer zone either side of the border to enable cross-jurisdictional handover during hot pursuits. Will the noble Baroness ensure that this is put on the agenda?

Baroness Royall of Blaisdon: My Lords, it is not for me to suggest what should be on the agenda, but for the parties participating; that is, the prosecutors and the police from Northern Ireland and the Republic. I will seek to find out whether it is on the agenda and inform the noble Baroness accordingly.

Lord Kilclooney: My Lords, does the Minister really believe that the people of the Republic of Ireland would support the involvement of a United Kingdom police force five miles inside the Republic of Ireland?

Baroness Royall of Blaisdon: My Lords, it is not a question of what I believe but of whether this is on the table for the talks. It is up to the people in the talks, who best know the people of the Irish Republic and of Northern Ireland, to decide whether to pursue this further.

Lord Glentoran: My Lords, I know that the Attorney-General recently visited the Province to try to sort out a lot of the bureaucracy in the prosecutor's office, and she assured me privately that she believed she was making progress. Is the noble Baroness able to tell me, when policing and justice are devolved—we hope they soon will be—where the authority, or responsibility, will reside for sorting out the problem of the collection of prisoners and criminals from either side and prosecution? Will it be devolved? Will it reside here or with a devolved Government in Stormont?

Baroness Royall of Blaisdon: My Lords, I, too, hope that there will be devolution of policing and justice in the very near future. In response to the noble Lord's question about responsibility for the transfer of prisoners, I do not wish to mislead him in any way. I do not have a definitive answer and I will respond to him in writing.

Lord Alderdice: My Lords, can the Minister clarify whether there is any legal difficulty in joint PSNI/Garda Siochana teams operating on either side of the border, with the relevant police officers sustaining their capacity to arrest and interrogate and being accompanied by a police officer from the other side of the border? Is there any legal difficulty about such joint teams operating?

Baroness Royall of Blaisdon: My Lords, there are limitations to the extent to which the police can operate outside their own jurisdiction. This is a consequence of the PSNI and AGS operating in different sovereign states under separate legislative provisions. The cross-border working group is currently examining this issue and will be looking at it at the meeting tomorrow. If there were a legal impediment to this happening, I cannot imagine that it would be on the agenda for that meeting.

Lord Swinfen: I think the noble Baroness misunderstood the last question. The noble Lord was asking about police officers acting in their own jurisdiction, accompanied by officers from the neighbouring state, so that each acts in its own jurisdiction. Could she enlarge on what she said?

Baroness Royall of Blaisdon: My Lords, I confess that I am totally confused now. As I said in answer to the earlier question, there are limitations to the extent to which the police can operate outside their own jurisdiction. Of course, the police can operate within their own jurisdiction accompanied by police officers from the other jurisdiction. There is absolutely no impediment to that.

Banking: Bonuses

Question

3.28 pm

Moved By ***Lord Dykes***

To ask Her Majesty's Government what steps they will take to ensure British and foreign-owned banks in the United Kingdom follow their guidance on curbing excessive bonuses.

The Financial Services Secretary to the Treasury (Lord Myners): Both domestically and internationally, the Government have led the field in reforming remuneration practices in the banking sector and have a structured reform agenda underway that will ensure bonuses are consistent with effective risk management.

Lord Dykes: My Lords, I thank the Minister and HMG for their commendable efforts to try to get a much more civilised regime here. We are now armed with a much more robust and alert FSA. We have the Walker proposals. We have the EU getting stuck in with its wider framework. We have Stephen Green of the HSBC and BBA with his interesting revelations on dodgy practices to have artificially structured bonuses. Then along comes Goldman Sachs with around 300 £1 million snouts in the trough—that is just the leading partners and leaves aside the traders and what they will get—completely undermining the official effort to get civilisation in this whole regime, and other bankers now, privately and with their cronies, the traders, once again quietly preparing to unleash excessive bonuses when the time comes—

Noble Lords: Question!

Lord Dykes: This is a very important matter. I know the Tories have different views. It is a complete free-for-all. They do not mind at all. Can the Government at long last persuade the big institutions in this country really to insist on proper behaviour?

Lord Myners: I am grateful to the noble Lord, Lord Dykes, for his pertinent and correct observations about many aspects of the culture of bonus payments in banks. I, too, was very struck by the comments of Stephen Green, the chairman of HSBC and the British Bankers' Association. He described inflated and distorted structures of bonuses and argued for lower and more rationally calculated figures in the future. The Government's perspective is that bonuses

must, first, be a matter for the shareholders, subject to the banks being adequately capitalised. Secondly, the bonus system should not contribute to unmanageable risk. Then it falls to the shareholders. I am afraid that the shareholders, notwithstanding the comments from their trade associations, appear to have been less than fully engaged with that matter.

I intend to write to the chief investment officers of the major UK institutions in the next few days, asking them to share with me the actions they have taken to ensure that boards of directors are aware of their position on the payment of bonuses. It seems extraordinary that, over 10 years, an investor in UK banks will not have had a positive return at all. Clearly, the traders and senior executives of these banks have earned huge amounts. This is a distortion of the consequences of trade to the employees, away from the owners. The owners need to be more concerned and the pension funds need to ask their fund managers, "What are you doing to stop this process?"

Lord Bilimoria: My Lords, the Government propose a co-ordinated global solution to the banking crisis. Recently, President Obama announced his reforms in the United States. It is reported that the Shadow Chancellor, George Osborne, agrees with President Obama's proposals for reform. Do the Government also agree with President Obama's reforms and do they intend to implement them?

Lord Myners: I always welcome the comments of the noble Lord, Lord Bilimoria, from the Cross Benches. I hesitate to correct him but last Thursday evening Mr George Osborne welcomed President Obama's statement and by Friday morning he had decided that he no longer welcomed it. We must tune in regularly to our wirelesses to ensure that we are up to date with the Tory thinking on this and so many other matters.

There are aspects of the Obama proposals which clearly make a considerable degree of sense for the American situation with large investment banks. There are also concepts around the levy which are commendable and on which we and other G7 countries are working to ensure that in the future the banking system is more resilient and, if there is failure, that failure is borne by the shareholders, the subordinated creditors and the management of the banks. However, the Obama proposal is not necessary in this country; we have already taken the appropriate actions.

Lord Clinton-Davis: What discussions have taken place between the Obama Administration and the Government to ensure that there is an international response to the banking crisis?

Lord Myners: Banking resilience, regulation and capitalisation are high on the agenda for the G20. We are in regular contact with G20 countries. I met officials from the Obama Administration on Monday to talk about this and other matters.

Lord Roberts of Conwy: Does the noble Lord agree that some of the banks have their priorities totally wrong? They give management top priority, deal last with the customer and God help the shareholder in between.

Lord Myners: The noble Lord says something very perceptive and correct. Last week I suggested in the House that banks which follow policies on bonuses that were perceived to be reckless would risk alienating their customers, who would choose to move their business. I urge UK banks, in particular, to be able to evidence that they have exercised real restraint and that bonuses reward smart decisions made by good people, with the overall prosperity of the franchise in mind, rather than rewarding reckless gambling or entirely fortuitous external circumstances.

The Lord Bishop of Chester: My Lords, is the Minister confident that those banks in which the Government have a very large shareholding have entirely complied in their own decisions with what he has said to us?

Lord Myners: The decisions about bonuses at Lloyds Banking Group and RBS have not been made but we have already been very clear that UK Financial Investments on behalf of the taxpayer will take a very active interest in this area. I am much encouraged by the comments of Mr Stephen Hester, who I think is doing a very good job at Royal Bank of Scotland, that he will not recommend or seek any bonus payments beyond those which he believes are absolutely necessary to protect the bank, and in so doing protect the value of the taxpayer's investment in his bank.

Lord Newby: The Minister has just said that the Government have already taken appropriate action in respect of the banks but yesterday, speaking to the Treasury Select Committee, the Governor of the Bank of England said:

"We cannot allow ourselves to be kept hostage to institutions that are so big",

and he appeared to support the Obama proposals. Why do the Government think the governor is wrong?

Lord Myners: The governor said many things yesterday with which we are in complete agreement and he is supporting the moves we are taking to improve the strengths of the banking system. There is no evidence that size in itself was the source of individual bank failures. Large banks failed, but so did small banks. We need to ensure that the totality of the banking system is strong and that will be addressed by higher capital, requirements for much higher levels of liquidity and the concept of living wills, which will require banks to put in place arrangements that will allow the failing part of a bank to be isolated and separated from the remainder of the bank without imposing consequential claim on the taxpayer. The taxpayer should never, ever again be expected to bail out the folly and mischief of bad decisions made by bankers.

Lord Burnett: My Lords—

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

Equality Bill

Committee (5th Day)

3.37 pm

Schedule 9 : Work: exceptions

Amendment 102

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

102: Schedule 9, page 167, line 2, leave out paragraph 8

Lord Lester of Herne Hill: My Lords, may I begin by declaring a professional interest and dealing with one or two other matters? I was counsel for the Equality and Human Rights Commission, intervening on its behalf in the case in which Age UK sought to challenge the default retirement age of 65. I need to declare that interest since I will refer to this judgment very briefly.

Secondly, I do not think I have to declare an interest about my age because my amendments would benefit only those below the age of 65 and, since the average age of this House is probably a bit above that, I doubt whether I need to declare any collective interest.

Thirdly, in order to curry favour with the Committee, I should say that I had one success that will appeal to every man here with a Freedom Pass. I did a case in Strasbourg where I established that it was discrimination against men to require them to wait till the age of 65 before they could get a Freedom Pass whereas women could get it at 60.

Noble Lords: Oh!

Lord Lester of Herne Hill: I am very glad that there are some who were young enough to benefit; I was not.

The purpose of my amendments is to remove the provisions that make it lawful to dismiss an employee on grounds of retirement and not to offer employment to a person where, at the time of the person's application, he is over the employer's normal retirement age, or over 65 if the employer does not have a normal retirement age. If my amendments were accepted, they would abolish the current default retirement age and related provisions from the time the Bill is brought into effect.

This matter has a longish history. As we want to get the Bill through and waste as little speaking time as possible, I will take this as quickly as I can. The object of my amendments is supported by the report on the Bill of the Joint Committee on Human Rights—noble Lords can see paragraphs 183-185, which I do not need to read—and by the Equality and Human Rights Commission. Many of your Lordships may not know that the matter was carefully considered by a committee of this House, chaired by the noble Lord, Lord Burns. The Select Committee on Economic Affairs report, *Aspects of the Economics of an Ageing Population*, wrote as far back as 2003, at paragraph 6.42:

"We also recognise the legitimacy of arguments for retention of a normal retirement age, but on balance we believe that any such retirement age may impose restrictions on the efficient functioning of the labour market in our ageing society. We believe it is for firms and their employees to devise their own retirement systems, and we further believe that these systems should be based on performance criteria rather than chronological age. … We therefore recommend that the Government should not permit the continued use of a normal retirement age by employers, whether at age 65 or 70 or 75, unless the employer can provide a reasoned and objective justification for the use of age rather than performance criteria in the determination of employability. We further recommend that the Government set an example of good practice by explicitly removing upper age limits in all public-sector employment in advance of the implementation of the forthcoming legislation on age discrimination".

In the case of Heyday in 2009, which I have just mentioned, objections were taken—on behalf of, I think, the Crown—to referring to that report on the grounds that it would breach parliamentary privilege for judges ever to read the reports of a Select Committee for the purpose of making choices about how to construe Community law. That objection, I am glad to say, was overruled and the High Court, in the form of Mr Justice Blake, looked at all the evidence before that Select Committee, some of which was relevant because it concerned what Ministers had told the committee. The court felt that it could not strike down the default age of retirement of 65 under Community law for reasons to do with what had happened when it came into force under the directive. However, at the end of his long judgment, Mr Blake said that if the relevant provision; that is, the default age of retirement,

"had been adopted for the first time in 2009, or there had been no indication of an imminent review, I would have concluded for all the above reasons that the selection of age 65 would not have been proportionate. It creates greater discriminatory effect than is necessary on a class of people who both are able to and want to continue in their employment. A higher age would not have any general detrimental labour market consequences or block access to high level jobs by future generations.

He continued:

"If the selection of age 65 is not necessary it cannot therefore be justified. I would, accordingly, have granted relief requiring it to be reconsidered as a disproportionate measure and not capable of objective and reasonable justification in the light of all the information available to government".

In other words, the learned judge was saying that, because there was an imminent review, he would not go any further but he regarded the present default retirement age of 65 as disproportionate and essentially against the public interest.

I have already quoted what happened with regard to the Select Committee on Economic Affairs but it might interest the Committee to know that the matter went further. Both officials and Ministers from the Department for Work and Pensions gave evidence to the Select Committee on behalf of the Treasury and the Department for Work and Pensions, all of which indicated that the direction in which they were heading was to abolish the compulsory retirement age of 65. The right honourable Andrew Smith MP, for example, as Secretary of State for Work and Pensions, and the official supporting him gave such evidence. The noble Lord, Lord Burns, asked whether it was expected that when we had the legislation against discrimination it would not be possible for companies to have a normal retirement age, even if they wished to have one, as that was going to become illegal. He asked whether he had understood that correctly. Mr Smith replied:

"There is an option in the consultation that you could retain an age limit of 70, but the basic answer to your question is yes, we would not be expecting to allow firms to operate at a lower

mandatory age limit than that. There could be other perfectly good reasons for terminating a contract but age would not be one of them".

Other interesting advice was then given by employers, trade unions and the Chartered Institute of Personnel and Development, which suggested that the idea that you needed a rigid age discrimination provision of that kind was old-fashioned.

Then, what used to be called the Department for Trade and Industry, led at the time, I think, by the right honourable Patricia Hewitt, won the argument against the Department for Work and Pensions, as a result of which it was decided that such a provision would be retained, as some of the employers had asked. So the predecessor but one or two of the noble Lord, Lord Mandelson, came to a conclusion, which no doubt still prevails among business Ministers, reflecting the views of some of the employers. That is the background, and I perfectly appreciate that there has been a consultation which will come to an end on, I think, 1 February.

With these amendments, I am not seeking to have freedom now. I appreciate that it is impractical to say that as soon as the Bill becomes law that is an end of the matter; there must be some breathing space to allow that to happen. At this stage, I am probing in the hope that the Minister will be able to say something positive other than that the matter is being looked at. I beg to move.

Baroness Turner of Camden: My Lords, these amendments, which I support, have been grouped with my own Amendment 104, to which I should also like to speak. As the noble Lord, Lord Lester, has indicated, this is a discussion about the default retirement age. This matter has been raised in the House on a number of occasions and the Government have indicated that it will be reviewed in, I think, 2011. However, the Bill gives an opportunity for the review to take place now, and there is no doubt that there is considerable pressure for that to happen.

Interestingly, *Saga Magazine*, which is devoted to the interests of older people, has produced a manifesto for older people which it says is based on considerable research. It calls for the end of the default retirement age. It says that this is in line with the demands of older people. Nine out of 10 people polled thought that it was unfair and said that they would have liked to continue working if they had had the chance to do so.

Forced retirement is seen as an anachronism from the past when life was shorter and rigid working patterns were the norm. The demand now is that flexible working arrangements should be available so that older people can continue in appropriate forms of work, which would be to their advantage. The employer will benefit from having older people with experience, skills and more commitment in the workforce. I emphasise that this should be a matter of choice for older people and should not be imposed on them as a result of poverty or because there are inadequate pension arrangements. However, the Government have an opportunity in this Bill to deal with the review in the way that has been suggested.

As regards Amendment 104, your Lordships may recall that some time ago we had a debate in this House about the employment rights of older workers, which was prompted by a number of issues. Obviously, we are all living longer, which is a cause for celebration, although it causes governments and private providers to reconsider pension arrangements. There was some evidence that when older workers became redundant they found it much more difficult to secure other employment. There were increasing concerns about the social care of older people, which caused everyone to consider their situation.

As I have said, there is a fair amount of agreement that we may all have to consider working beyond what is considered to be the normal retirement age. I and others feel that it could probably be dealt with now through the review that we have indicated. The Government clearly want a longer time before the state pension is paid. Of course, there are always likely to be occupations where it is advisable to have an early retirement arrangement; for example, on safety grounds, as in the construction industry. But many jobs could quite well be done by older people, perhaps with the benefit of their experience and their skill. However, there is not much point in extending the time in which people are expected to continue in work and therefore do not receive the state pension if no work is available for them and they simply switch to jobseekers' allowance instead of receiving the pension. Work of an appropriate kind must be available.

We are seeking a more flexible approach from many employers. Age discrimination should be firmly outlawed. Things have to change. My amendment seeks the introduction of what could be called "age auditing". Something similar is provided in the Bill in regard to gender. Why not do it for age? Demographic changes will make it necessary for us to reconsider many of our attitudes. I therefore urge the Government, even if they do not accept our wording, at least to consider the introduction of something along these lines. There are benefits in taking steps to encourage people who wish to continue in work to enable them to do so. There are health benefits—older people with a continuing involvement in an appropriate work environment are healthier and feel less isolated. Employers benefit from having an older, experienced and often very committed number of older people in their workforce. The profiling suggested in my amendment will generally assist towards that outcome. I commend the amendment to the Minister.

Baroness Morris of Bolton: My Lords, given the opening remarks made by the noble Lord, Lord Lester, I feel that I must declare that I am under 65, so if this proposal came in it would apply to me.

I listened with great interest to the noble Lord's speech, which has raised the important issue of the default retirement age. We are all aware that the state retirement age is 65. However, an ever-ageing population is calling this into question for a number of reasons, which are partly concerned with money. It costs the state a large amount of money to fund pensions from the age of 65 when many people are still willing and capable of working, and are likely to live for another two or, hopefully, three decades. The reasons are also tied into the different wants and needs of an ageing population. The increase in life expectancy means that someone aged 65 can still be at the top of their game

[Baroness Morris of Bolton]
and be an effective, able, competent, experienced and valuable worker. They may not want to retire this early. Your Lordships' House is a very good example.

Therefore, we on these Benches feel that we could support the removal of the default retirement age in principle. We have long believed that retirement should be a process and not an event. However, we believe that there are a great many complications with removing the default retirement age, especially in this time of very bad recession. We are worried that moves to remove the default retirement age might have a further detrimental impact on the large numbers of young people who are out of work at present. Also, under current law, if the default retirement age is removed it could be difficult for employers to ask older employees, who may not be as proficient at their jobs as they used to be, to leave, as the noble Baroness said, for reasons of safety. Under the current rules it is realistic to suppose that if an employer were to ask an employee to leave, that could result in disciplinary action or claims of wrongful dismissal, and that concerns us. That would also not be good for the employer or the employee. Perhaps some kind of mutual discussion regarding retirement would need to be instigated.

Many options need to be considered carefully and I know that the Government are reviewing this at the moment. In her winding—up speech at Second Reading, the Minister made it clear that the Government would not consider it,

"tenable to have a situation where the default retirement age was lower than the state pension age".—[*Official Report*, 15/12/09; col. 1510.]

Changes to the state pension age are not to be made by this Government until 2026. In contrast, we on these Benches have said that we will hold a review into bringing the increase in the state pension age forward but starting no earlier than 2016 for men and 2020 for women. I wonder whether the Government's policy regarding the state pension age changes also reflects their intention that there should not be any changes to a default retirement age until 2026 at the earliest. Perhaps the Minister will clarify that, although I see her shaking her head vigorously.

The point raised by the noble Baroness, Lady Turner, is valid. She has floated the possibility of raising the retirement age but, in so doing, it would also be worthwhile assessing what manner of work remained available for older people to do and what could be done to assist them. She has mentioned the possibilities of extra support directed towards the older worker or perhaps flexible working to allow them to remain comfortable in their jobs for a longer time. These are all interesting ideas and should be taken into consideration very seriously.

The noble Baroness, Lady Turner, has further suggested, with her amendment, that perhaps instead of a general review, it would be better for the Secretary of State to pass regulations which would allow a general audit of all companies employing more than 250 employees. I agree that there is a need for some form of assessment to be made but is this the way best way to go about it? The Government are already proposing to pass regulations to burden companies with gender pay audits and to add age to that could serve to make that load even heavier. I imagine that audits would be far more complex than just writing down the ages of all those in the company. To do a proper audit, which would aid assessment of what support older workers need, what changes would be needed to address their concerns and perhaps how to attract more older and experienced people to stay, would involve complex metrics and different questions. That might risk overburdening companies at a time when they most need support. I look forward to hearing the opinion of the Minister on this issue.

The Lord Bishop of Chester: I would like to make two points. The first has been made by the noble Baroness, Lady Morris, that the rights of older people have to be balanced against the rights of younger people in our society. It may be entirely proper to look at the way in which that is codified. One has to take a view of the whole of society and not just the individuals within it. I made that point strongly at Second Reading and it illustrates the point in this other area. I shall say no more about that.

Secondly, I suggest that this is an area which the church has already visited. Until 1975, there was no mandatory retirement age for clergy, and so we can bring experience to the debate. Clergy who were appointed to their posts before 1975 could stay in post until they died—and in one or two cases perhaps even beyond that. We introduced a retirement age of 70 in the Ecclesiastical Offices (Age Limit) Measure 1975. Prior to that measure, there was a problem with people staying in post too long without a proper review structure. People's performance in office does not deteriorate overnight: it deteriorates gradually, as was said. It is difficult to raise these issues with people unless there is a clear structure for doing so. Introducing a capability process would be a sledgehammer in these circumstances. Careful consideration is needed.

At the moment, the church has a default retirement age of 70, which society is moving towards. We have just reviewed our processes, as noble Lords will know, and while clergy are officeholders and not employees, we try to shadow the provisions in employment law. Under the new common tenure arrangements that will come into force in a year's time, the default retirement age of 70 will remain in place, but it will be open to a Bishop to license somebody on an annual basis thereafter—with strict limitations on rights beyond 70, but with the possibility of working beyond that age.

In going along with the spirit of what the noble Lord, Lord Lester, is proposing in his probing amendment, I ask whether he accepts that there would need to be a structure that prevented the rights of older people being individually exercised to the detriment of society as a whole, and whether that would take into account any gradual deterioration of performance, which would need to be done sensitively.

4 pm

Baroness Greengross: My Lords, I support the noble Lord's amendment, having campaigned for this since the 1970s, as does the Equality and Human Rights Commission of which I am a member. We cannot put

everyone of the age of 65 and over into one pot and say that they are all the same. We know that there are numerous people who are "over the hill" at the age of 35 and many others who are well over the default retirement age and who are active and capable of doing extraordinarily good work in whatever field they work. It is ridiculous now to assume that everyone is the same.

For many years, retirement age was seen as a form of kindness. It was part of the introduction of pensions and retirement as a concept, which was humane. It gave people a chance to have a little bit of leisure—not often very long—before they died. But longevity increasing all the time has made a big difference to that. We now have a new cycle of life and we must think again about what that means. It is terribly important that we stop patronising older people. That does not mean that everyone should be allowed to go on working whether they are good at their job or not: it means that much better management is necessary. Middle managers in this country are not always as talented as they might be. They must learn how to appraise people throughout their working careers, change people's jobs to suit their changing aptitudes and help them to move around within an organisation or in different organisations throughout their working lives. We cannot go on thinking the way we used to do about a lifetime's career.

I would hate to see any young person waiting for what is commonly called dead men's shoes. That would be appalling. In our anti-age-discrimination legislation, it is not possible for that to happen because we have a duty to look after young adults as well as old adults. It also assumes a pool of labour that is precise and does not change. Of course, that is not true. The labour market is not like that: it is much more flexible. Jobs appear where there is a need for a job and circumstances change all the time, as we heard on the radio and TV this morning, with employment beginning to pick up a little. This is not a fixed thing in our agenda: it changes and people change.

The EHRC supports the amendment because we believe that removing the default retirement age would put age discrimination legislation on an equal footing with the other equality strands. It would also make the law simpler and clearer both for employees and employers. It is a blatant form of age discrimination to say, "Yesterday, you could do your job, but it is your birthday today, so now you cannot". In this day and age, it is quite unacceptable to do that.

I understand that employers have grave worries about this. Many think that it will mean a lot more bureaucracy, red tape and legal claims. The guidance that the commission and other bodies, such as CIPD, will produce will make this easier for managers and employers and should help to make that adjustment easier to come to terms with. I learnt a lot about this from the United States, which has had legislation banning age discrimination since the 1960s. I have spent a lot of time with American employers, employees, future employees and trades unions. They have not found that the number of age discrimination cases rose; on the contrary, they fell when the mandatory retirement age was banned. They look after the older age group only in terms of age discrimination, but we look at both ends of the age scale. As we know, there are positive business and economic benefits if we can scrap the mandatory retirement age. It is not just the demographic situation that makes it essential that we do so, but that is something to think about. By 2021, there will be a further 4 million older people and 1 million fewer adults under 50, so it is inevitable that employers will have to rely on a more age-diverse workforce.

We must do something about this. We must remember that these amendments would not prevent forced retirement altogether. Employers could continue to operate mandatory retirement ages for certain jobs if they could be objectively justified. We could produce examples where it would be common sense to assume that at a certain stage in life the risk was greater than the benefit of staying in a job; for example, Boeing pilots aged 94. That would continue, as that is an objective reason for keeping a retirement age.

If these amendments are accepted, an employee who faced dismissal could bring an employment tribunal claim arguing that a mandatory retirement age was an unjustifiable exception to the general rule against age discrimination. I hope that noble Lords will support this amendment.

Baroness Howe of Idlicote: My Lords, I support this amendment. At Second Reading, I said that there is no reason for not getting rid of the default retirement age right now. I stick to that view. A mix of younger and older people is thoroughly desirable because you have experience and background and youth and vigour. In the past, executive company directors used to retire gradually. Their experience was available for their company to call on over a period of time. I see no reason why that sort of flexible working arrangement should not be made more available depending on what the individual and the company need as it progresses its jobs and vacancies.

We also need to remember that women have had less opportunity to earn a decent retirement. It would be a great pity if they were cut off from the period when they were looking after grandchildren or helping in other social work and voluntary activity for part of their time. I am entirely in favour of both amendments.

The amendment of the noble Baroness, Lady Turner, is very interesting and may provide an insight. I would not wish for that requirement for an age profile to be made mandatory at this stage. However, as a voluntary activity, it might set a good example of why one might want to join a particular company. I back that amendment also. I hope that the Minister will provide some encouragement. If we do not take this opportunity, when will the next one be?

We should pay more attention—I remember fighting on this issue with Lord Dearing, who, sadly, is deceased—to ensuring that there are more facilities to allow older people to re-train or to take up interests that they have wanted to do for most of their lives but have not had time. That would keep them young and flexible and they would not have been an additional cost to the NHS. I fully support the amendments.

Lord Pannick: My Lords, I, too, support these amendments, not just for all the reasons of policy and practice that have been so ably deployed on all sides of

[LORD PANNICK]
the Committee, but for reasons of principle. Paragraphs 8 and 9 of Schedule 9 offend the very basic principle of equality law and of the Bill, which is that people should be judged by reference to their individual characteristics, abilities, conduct and potential, not by reference to something over which they have no control and which has no necessary relevance to their ability to perform the job or other function. That is what is so objectionable about the present law.

These provisions will have the inevitable consequence of causing unfairness to tens of thousands of employees who have worked to very high standards and are being dismissed for a reason over which they have no control. I recognise the practical difficulties to which the noble Baroness, Lady Morris, referred. I hope that the Minister in her reply will tell the Committee that a sunset clause will be added to paragraph 8 whereby experienced and competent employees are no longer able to be consigned by their employers to a sunset home.

Lord Campbell-Savours: My Lords, I oppose the amendment, which I regard more as a probing amendment at this stage, and support the review. While I would not wish to appear reactionary, I wish to comment on the practical difficulties that should be firmly considered in the review. I recall debates on these issues in the early 1980s. I remember in the House of Commons that, repeatedly over a number of years, many speeches were made by Labour Members and others asking for early mandatory retirement as a way of resolving problems in the jobs market. Indeed, I remember that at that time the Conservative Government introduced the job release scheme. Its objectives were—if my recollection is correct—to take older people out of the jobs market and replace them with younger people. A Department of Employment survey at that time showed that only a quarter of the jobs released under the JRS went to young people.

Three-quarters of them went to workers in the middle range of age in conditions of high unemployment, particularly in the industrial regions of the United Kingdom. My former constituency, Workington, was an industrial seat. The attitude of industry was therefore very important in the consideration that I made at the time about the extent to which it ought to be taken into account.

Secondly, before going into Parliament in the 1970s, I built up, ran and subsequently sold out a manufacturing company. I remember my own experience at the time in this area with a couple of employees; we are going back over 30 years.

I am not completely opposed to the idea of removal. However, I hope that the review considers fully where in the jobs market a greater flexibility might be more suitable. I notice that the brief sent by Age Concern claims that:

"Business leaders sometimes claim that it is impossible to carry out succession planning without using a mandatory retirement age",

but it goes on to talk about the United States, Australia and Canada. It says:

"In the UK, many large business groups (including several members of the CBI) operate without recourse to a mandatory retirement age, including the following members of the Employers Forum on Age".

It goes on to list Asda Stores, Nationwide Building Society, B&Q, Centrica, Barclays plc, Marks & Spencer, Sainsbury's plc, the Co-operative Group, JD Wetherspoon and BT. What struck me about that list is that they are primarily high street names. I accept that there are certain parts of economic activity in the United Kingdom where the mandatory retirement age is not relevant and where it may well be that employees over the age of 65 can work quite safely in conditions where they can manage the strain or the taxing nature of employment—but what about shipbuilding? What about construction, the steel industry and heavy engineering? What about areas of maintenance or widespread areas of British manufacturing industry? What about vehicle manufacturing?

I would argue that when people are over the age of 65, working has all kinds of implications for health. When the review takes place, it might be that in certain sections of industry it could be considered impractical to give people the right to say, "I wish to stay", and stay. There are existing appeal procedures whereby you go to your employer at the age of 65—I would apply this to those sections of industry—and say, "I would like to keep my job. Will you consider me? I am still capable of working in that particular sector". The issue of capability is critical here. In those circumstances they should stay, but employers in parts of heavy manufacturing and certain other areas of industry should not be required to retain labour in the event that they feel that it is not in their interests to do so.

There are legal implications. If people say, "I want to work" but the employer then appeals because they still have a right to dismiss, the employer might find themselves in a difficult position legally and find it difficult to afford legal action so might, in those circumstances, simply concede and be required to hold that labour.

I am also worried, as I say, about the question of job-blocking for young people. In the debates that took place in the 1980s, it was argued all the time that retaining labour over a certain age meant that young people were not given opportunities in the labour market. That must inevitably be the case. Whereas then they were arguing that job-blocking was a problem, today we are arguing that job-blocking is not a problem, although the evidence must essentially be the same. Will that be considered in the review?

Finally, why 65? I understand that with the raising of the pension age an argument might arise, but why 65 and not 66 or 67? Is there some other consideration in mind that prevents us moving at this stage, perhaps as a proposal from the review, to lift the age by a year or two? We should not leave it open-ended, whereby industry, and the sectors that I have referred to in particular, is required to hold labour which it feels in the circumstances unable to do.

Lord Monson: My Lords, I shall pick up the point made by the noble Baroness, Lady Morris, from the Conservative Front Bench. I ask the noble Lord, Lord Lester, whether, if his amendment were to be adopted, it would be entirely illegal for employers to require older employees, over the age of 65, to undergo periodic aptitude tests so as to determine objectively whether they are still fully up to the job. Some people in their

late 60s or 70s, and even in their 80s, believe that they are just as efficient and on the ball as they were 20, 30 or 40 years earlier. In some fortunate cases, that may be so, as my noble friend has just pointed out—and good for them. Other people in their late 60s and early 70s also believe that they are just as good as they used to be but unfortunately are not; without realising it, they are slower, more forgetful, less able to lift heavy things, to drive in conditions of poor visibility, and so on. Unless some objective test is allowed to determine whether they are in fact fully up to it, I see endless scope for conflict and litigation, as the noble Lord, Lord Campbell-Savours, has just pointed out. If such tests were allowed, it would solve many problems.

The noble Baroness, Lady Morris, also mentioned flexible working. I can see that it might be possible for larger firms, but for a business employing one or two people it might be extremely difficult.

I should also like to ask the noble Lord, Lord Lester, about the Foreign Office, which requires diplomats to retire at 60, when they are at the height of their powers and experience and so on. What about the Armed Forces and the police? What about airline pilots? Surely there must be some occupations for which there has to be an age cut-off.

Baroness Howarth of Breckland: I was not going to intervene in this debate but I should just like to ask for a couple of points of clarification when the Minister replies and to add to the debate about the meaning of retirement and skills and ongoing appraisal. I should say to the noble Lord, Lord Campbell-Savours, that there is a real mismatch in this country between the skills required for jobs and the people available for jobs, so job-blocking is not about where people are sitting. Many of them are very young people who need to be in at the start and to have opportunities, which I believe that the Government are working hard to give. There are literally thousands of young people waiting for places on those programmes. I have been looking at that for an inquiry that I am undertaking for the EU Committee on the European Social Fund. There is an issue about job-blocking.

On whether people are fit for work and the kind of work that they do, the noble Baroness, Lady Greengross, made it absolutely clear that if employers undertook proper, ongoing appraisals, which all good employers should do throughout their employees' working career, at any stage they would discover whether they should move him to a different area of work, whether he was safe in what could become unsafe work, or whether he had the aptitude to undertake it. In another organisation for which I work, we have set up a new appraisal programme. We have some very good people working at age 70, but we find that some of the younger people are unable to carry out that task.

We know that the Government are engaged in Europe in discussing the proposed Council directive on implementing the principle of equal treatment, including in the area of age as well as in the areas of religion, belief, disability and sexual orientation. It is clear in the directive that different treatment connected with age may be permitted under certain circumstances if it is objectively justified. Do the directive and objective justification meet the requirement that you can be removed from your job and retired simply because you have reached 65? On that issue, I agree with the noble Lord, Lord Lester. As the Government are negotiating on this directive and I understand that the Equality Bill will be commensurate with it, will the amendment of the noble Lord, Lord Lester, meet the directive?

Lord Monson: Does the noble Baroness agree that while it may be possible for a large employer to move an older employee to a less demanding job, it will not be possible for a small firm which has only one, two or three employees.

Baroness Howarth of Breckland: I agree, and I know both small and large organisations. The issue is the same in that you have to treat an employee equally. Clearly, if an employee is in difficulties, in danger or has an aptitude that prevents him carrying out the job, one of the provisions under the directive is that they should be retired if there are not alternative jobs. That is an option at the end of the day.

Lord Campbell-Savours: Does the noble Baroness accept that it is extremely difficult to prove that a person is not capable in many circumstances?

Baroness Morris of Bolton: In response to the query of the noble Lord, Lord Monson, about smaller firms and flexible working, smaller firms are the original flexible employers; unless they were flexible with their workforces they simply could not exist. I speak as the daughter of a small shopkeeper.

Lord Mackay of Clashfern: My Lords, I appreciate the general problem that these amendments raise. It is important to have regard to many different types of circumstances. As I understand it, these amendments apply only to employment in the ordinary sense. However, they have implications for other situations, as the right reverend Prelate the Bishop of Chester has pointed out. The other day, Sir Sigmund Sternberg suggested that one of the difficulties of the banks had been that they did not have older and wiser people on their boards. I am not sure that everyone will agree that that experience was absent from the boards of the banks, but that was his comment. So there are situations in which age and experience may be of importance.

A relevant consideration is the age structure for the judiciary, which, in a sense, is based on principles not very different from those referred to by the right reverend Prelate the Bishop of Chester in connection with the clergy. My recollection—I may be wrong about this—is that when the noble Lord, Lord Pannick, raised a question about age in the judiciary, the noble Lord, Lord Lester of Herne Hill was against having older judges in the Supreme Court. For all I know, these principles may be reconcilable, but it escapes me as to what that reconciliation would be.

Lord Lester of Herne Hill: That is not quite right. It was the noble and learned Lord, Lord Mackay, who brought down the age of retirement for judges and then the noble Lord, Lord Pannick, wished it to be abolished or raised again because of a particular problem that had arisen. I made it clear that for special reasons, which I can explain, connected with the judiciary—and, I dare say, with the clergy and other command organisations of that kind—a fixed retirement age was a desirable

[LORD LESTER OF HERNE HILL]
feature. In the case of the judiciary, it was desirable to get diversity so that it did not become a gerontocracy of white men.

4.30 pm

Lord Mackay of Clashfern: I thought I was giving way to the noble Lord, Lord Lester; I had not quite finished what I wanted to say. The fact that the noble Lord, Lord Lester, explains it in this way shows that this is not a particularly easy problem. As he said, this is a probing amendment. The point is that the Bill contains a commencement provision, so that even if the amendment was agreed, it would be possible to postpone the date at which it became law. It does not necessarily mean that it must be brought in immediately because it is approved. However, this is a probing amendment and I look forward with great interest to hearing what the Government have to say about it.

Lord Lea of Crondall: My Lords, I think there is agreement in this debate on one broad point: the world is changing fast. I quote one paragraph from a very good report, *Working Better: The Over 50s, the New Work Generation*, published on Tuesday by the Equality and Human Rights Commission:

"A large number of older people would like to carry on working; this requires more supportive policies and practices from employers. Employers with experience of employing mature workers say they offer knowledge and experience as well as loyalty, maturity, productivity, reliability and empathy with the growing population of mature customers. Yet approaches to retaining older employees, where they exist at all, often tend to be piecemeal rather than comprehensive".

That has been coupled with another point that goes in a slightly different direction: comprehensive can mean "one size fits all". Several speakers—notably my noble friend Lord Campbell-Savours, but many others—have given some of the industrial reasons for saying that, but there is still a huge dilemma.

As a former employee of the TUC, I find it interesting that the TUC has two trains of thought at present. On balance, I think it is saying that it supports the approach of the amendment. I am sitting on the fence, which is a comfortable place to sit for a short time, but I strongly support the review. I do not think I am being chicken, but it is a question that we cannot decide finally today. Perhaps my noble friend the Leader of the House will be able to say that today's debate will be reflected and taken into account in the review. It is last knockings, but there has always been something of a difficulty in meshing together Parliament and reviews. However, this is a golden opportunity.

The noble Lord, Lord Lester, made it sound as though there was not much of a problem in deleting from the top of page 167 of the Bill the point about unfair dismissal. However, his problem is different from mine in that I do not think there is a magic solution in his approach or in the words of paragraph 8(1), as it stands. Does it mean that a default retirement age applies to everyone in a company; or is an individual able to say that he or she personally would do something different from the company arrangements? Is that what is being said?

In the present construction, the new concept of a tailor-made retirement age—the age after which you cannot go to a tribunal—takes us back to square one. It leaves us in a position where the employer can dismiss you without any reason other than that you have suddenly reached retirement age. I presume that the employer says, "Good afternoon, sit down; you are dismissed because you are now retired". The person might say, "You what?"—in the vernacular—but they are dismissed in line with the Bill. It defies the common-sense use of English to say, "You are dismissed because you are retired". What happens if I do not want to retire? I am dismissed, full stop. That will not go away and it is difficult to solve.

Perhaps the most reverend Primate the Archbishop of York would ask the Archangel Gabriel to have a go at this but I doubt whether he would succeed. We are all still left in a difficulty. The Equality and Human Rights Commission has a couple of paragraphs on this point but it does not solve the problem any more easily. It supports the amendment but states:

"It should be noted that these amendments would not prevent forced retirement altogether. In exceptional cases, particular employers might continue operating mandatory retirement ages for certain jobs, provided their practice could be objectively justified. However, individual employees facing dismissal would be able to bring an Employment Tribunal claim arguing that the mandatory retirement age was an unjustifiable exception to the general rule against age discrimination".

That does not totally solve the problem but it is an interesting line of thought.

I must not go on any further; it has been a long debate. To end, I add a totally different point about what is stated on line 24, page 167 of the Bill. I have met this before on other Bills. Halfway down the page, it says that the,

"reference to the normal retirement age is to be construed in accordance with section 98ZH of the Employment Rights Act 1996".

I thought I ought to read that, so I went to the Printed Paper Office to get hold of the Employment Rights Act 1996 but could not find it. I went to the Public Bill Office but the staff there could not find it immediately. After about 20 minutes, they realised that something like Butterworths online tells you that it was in a statutory instrument, passed by both Houses in 2006. I will not read that out but have a suggestion for my noble friend to consider with colleagues. Perhaps she could write to me about it and put a copy in the Library. When Acts such as this have statutory instruments attached one after the other, the Printed Paper Office ought to staple into the front cover a list of things which are now changing. Otherwise, we sometimes have no reason to know that there is something additional being added.

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, the intention of Amendments 102 and 103 is to abolish the default retirement age. Many noble Lords have, this afternoon, made a compelling case for doing this, but I am grateful to the noble Baroness, Lady Morris, and to my noble friend Lord Campbell-Savours for rightly alerting us to the practicalities. I was interested to hear the noble Lord, Lord Monson, talking about aptitude tests; I have worried fearfully about Members of this House and aptitude tests, I have to say.

Through the 2006 Employment Equality (Age) Regulations, this Government implemented, for the first time, a ban on age discrimination for the workforce.

The ban covers recruitment, training and promotion. In addition, all employees were given a new right to ask to continue working beyond their employers' retirement age. The regulations also extended protection from unfair dismissal to over-65s, except in the case of a genuine retirement. Prior to 2006, employees had no protection from age discrimination, employers were free to set an earlier retirement age and over-65s had absolutely no protection from unfair dismissal. The regulations have therefore improved the legal position of older workers.

The default retirement age was introduced as one part of this overall package, and in response to significant concerns expressed by stakeholders during the consultation. A default retirement age is very different from a forced retirement age, as I am sure all noble Lords realise. The principal aims of the default retirement age were to facilitate workforce planning practices that businesses told us were essential, and to avoid an adverse impact on the provision of occupational pensions and other work-related benefits, such as group health insurance. We considered that it would help fulfil other policy objectives, including: protecting the dignity of workers at the end of their working lives; improving the participation of workers in the 50-64 age group, and encouraging culture change. We will need to reconsider those issues through the review of the default retirement age.

The Government, of course, welcome the fact that more people want, and are able, to remain in the workplace for longer, and that many employers are already adopting more flexible approaches to retirement. We are seeking to encourage that through initiatives such as Age Positive, linking with influential stakeholders, key business leaders and directly with employers to encourage the recruitment, training and retention of older workers, and flexible approaches to work and phased retirement. As the noble Baroness, Lady Morris, said, retirement should be a process rather than an event. We should indeed take into account better appraisal, management and training.

In addition, we have announced a new national guidance initiative to provide help for employers to plan and implement flexible retirement and flexible working practices. Through the review of the default retirement age, we will consider what further can be done to provide support for flexible retirement; there is much potential for win-wins here. Last July, we announced that we would bring forward the review of the default retirement age from 2011 to 2010. Moving swiftly after the High Court's judgment on 25 September, we announced on 15 October last year a call for evidence to be submitted by 1 February to inform the review.

In his introduction the noble Lord, Lord Lester, said that the High Court had said that 65 was unjustified. We believe that much is being made, understandably, of the comments by Mr Justice Blake at paragraph 128 of the judgment. The judge expressed some reservations about whether a default retirement age of 65 was justifiable in 2009; he did not advocate abolition of the DRA altogether, yet I well recognise that his comments carry weight. While I am on legal issues, but on quite a different subject, the noble Baroness, Lady Howarth, asked whether the draft directive being negotiated now would allow removal from a job at 65. The new draft directive relates to goods and services only, and the existing framework directive allows an employer to objectively justify a retirement age.

I return to the review, which will consider not only whether the default retirement age is still appropriate and necessary, but these questions. How has the default retirement age operated in practice? What might the costs or unintended consequences of different policy options be, and how can they be mitigated? What more can be done to facilitate retirement planning and flexible retirement options? It is only through a proper review that these issues can be addressed. We believe it is right that policy decisions are based on evidence that is as robust, wide-ranging and detailed as possible. Of course, all the points raised by my noble friend will have to be taken into consideration.

4.45 pm

We need to include the Government's own survey of employers, policies, practices and preferences, which is about to begin its analytical phase and involves a sample of over 2,000 employers. We have always said that we would review the need for the default retirement age and that our aim is to encourage a culture change away from set retirement ages. If, having considered the evidence, our review shows that the default retirement age is no longer necessary, we will abolish it. Equally, there may be other policy options that would better achieve the aim of encouraging participation in the workforce and the widest possible opportunities for all age groups, and I pay heed to the point made by the right reverend Prelate about younger people.

I recognise that most noble Lords in the Chamber today wish us to act very swiftly. The review will need to analyse a considerable volume of evidence but I assure the House that the Government are not dragging their heels on the issue. We will need to reach a conclusion based on the evidence and consult on any proposals that flow from this. It is right that businesses are given time to prepare for potentially significant changes. We would, therefore, expect any changes resulting from the review to be implemented in 2011—not 2026 because that is quite a different issue. For that reason, while I understand why the noble Lord, Lord Pannick, mentioned the need for a sunset clause, I believe that would be rather a blunt instrument. It will be important to implement the findings of the review expediently but to have some sort of flexibility, and that is the best way forward rather than having a sunset clause.

Whatever the way forward, we do not need to make changes or take a power in the Equality Bill; we can rely on Section 2(2) powers. A review based on all the available evidence is a better way forward than summary abolition and we should be wary of unintended consequences caused by abrupt changes to the law with no opportunity to consider them.

Lord Low of Dalston: Before the noble Baroness leaves the review, might I ask her one more question about it? Will the review consider statutory retirement ages for bodies like tribunals? On 1 December, I asked the noble Lord, Lord McKenzie, this question and he

[Lord Low of Dalston]
was not able to answer it at that time. He said he would write to me. I declared an interest in that my wife had recently been obliged to stand down as a member of the Care Standards Tribunal on reaching the age of 70. It was explained to her that, notwithstanding regulations on age discrimination, this was as a result of statutory retirement ages which applied to bodies like tribunals. Is this a point that the review of the default retirement age will look at?

Baroness Royall of Blaisdon: It would seem a sensible way forward. I cannot give any commitment today but I will certainly communicate with the noble Lord in another letter. In answer to my noble friend Lord Lea, I will draw the attention of those undertaking the review to today's debate. In relation to statutory instruments, et cetera, the statute law database is being continually developed with the aim of providing access to up-to-date Acts of Parliament, showing amendments which have subsequently been made. I will now finish on the amendments tabled by the noble Lord, Lord Lester, and ask him to withdraw his amendment in the light of today's debate.

Amendment 104 tabled by my noble friend inserts a power into the Bill for the Secretary of State to require employers with more than 250 employees to provide an age profile of their workforce.

Lord Lea of Crondall: I am very sorry to intervene, but would my noble friend register the huge dilemma that exists given that an employer can say, "Goodbye, this is your retirement day. You are dismissed because you are retired". This is the first time the employee has heard of it and asks, "Who told me I was retired? Who says what the retirement age is? What about collective bargaining?". I am not asking my noble friend to solve this Catch-22 situation this afternoon, but I would be very grateful if she could register that this point above all can be quickly brought within the review. It is the key point in this whole debate.

Baroness Royall of Blaisdon: My Lords, I hear what my noble friend has said and the best thing for me to do would be to respond to him in writing.

I return to the amendment from my noble friend. I would agree with her aim of encouraging further increases in employment among the over-50s, however I am not convinced the proposal would achieve this. First, we must remember that age discrimination does not only affect older people. The Fair Treatment at Work Survey 2008, which gathered comprehensive data on perceived unfair treatment in the workplace, showed that 17 per cent of 16 to 24 year-olds believed that they had been treated unfairly at work compared with 11 per cent of those aged 50 and over. Requiring businesses to have particular regard to the number of over-50s they employ could risk unfairly disadvantaging the young.

Secondly, particular firms or industries may have different age profiles, not because employers are acting in a discriminatory fashion, but because the work involved is more attractive to older or younger workers or perhaps because of the nature of the work itself. We must of course challenge outmoded stereotypes, but businesses are themselves diverse, and there may well be legitimate reasons for them to have varying age profiles.

Thirdly, a reporting requirement on businesses will inevitably create additional costs. One could draw an analogy here with gender pay reporting, but the rationale for that policy rests on a very long-standing piece of law, the Equal Pay Act 1970. The EHRC has been working closely with business representative groups to develop voluntary reporting measures as outlined last week and we have said that we will consider introducing a statutory reporting requirement only if this does not happen voluntarily. The clear rationale, engagement with stakeholders and fully mapped-out process which exist for gender pay reporting do not exist for my noble friend's proposal and I am, therefore, unable to support it. I ask my noble friend not to move her amendment.

Lord Lester of Herne Hill: My Lords, I am extremely grateful to everyone who has taken part in the debate, although I am not going to reply to all the points. We on these Benches have been pressing for many years for the abolition of the default retirement age of 65, and it is core policy for us. However, we also have another overriding requirement, which is to get this Bill through, so we are trying—I may fail—to exercise great self-discipline in not speaking for longer than is absolutely necessary. I will reply extremely briefly, which will not do justice to all the points that have been raised.

First, I would like to say that the High Court which heard the case had the benefit of a vast amount of evidence. It was, of course, heard by an independent and impartial judge on the basis of the European directive and English law. What he said, in paragraph 130, was:

> "I cannot presently see how 65 could remain as a default retirement age after the review".

That statement by the judge, which was not appealed against, is of great force.

Secondly, there was another body that was independent and impartial; the committee of the noble Lord, Lord Burns. I commend to the House, and to those who have been asking interesting questions, the report of that committee in HL Paper 179. Noble Lords should read that report and the evidence that was given, all of which was read by the judge. The fact that that committee, presided over by no less than the noble Lord, Lord Burns, should unanimously have come to the conclusion all those years ago, that one could replace a rigid retirement age by flexibility and choice, partly for the reasons given by the noble Lord, Lord Pannick, must surely carry some force. All the practical issues that are being raised were considered then.

If, before Report, noble Lords decide to look at that paper, I also commend the memorandum put in by the Chartered Institute of Personnel and Development and its oral evidence, which distinguished between what it called command-type organisations, of which I respectfully regard the church as one and the judiciary as another, and different kinds of managerial style. The way in which it goes into it in paragraphs 258 to 260 and paragraphs 269 to 270 I suspect ought to give people further pause for thought.

On the issue of old versus young, of course, one does not want old, arthritic, hardening of the arteries at the expense of young blood. The European Court of Justice decided, only on 19 January, in a case with the unpronounceable name of Kücükdeveci v. Swedex GmbH & Co, that German law, which provided that employment before the age of 25 is to be disregarded when calculating service-related notice periods, breached the directive which governs us as well. That was an example of discrimination against the young which did not pass muster. The only reason why the UK succeeded in this issue in Luxembourg is because the Court decided that there was a wide margin of discretion open to the legislature to give effect to it.

I suspect the fundamental problem is that we do not take age discrimination as seriously as race discrimination or sex discrimination. Suppose the law said that a black person on reaching the age of 65 is automatically dismissed, no one in the House would say that that could conceivably be justifiable. The reason would be not only that colour and race are irrelevant but also that it violates the principle about which the noble Lord, Lord Pannick, spoke of individual merit on the basis of individual capacity. These days the same applies to gender. Few people would say that a retirement age of 65 for women but not for men could no longer pass muster because it was rigid and disproportionate and gender was not an automatic disqualification from employment. When one comes to age, unconsciously many people think that it is somehow more permissible because of the conflict between the old and the young. The Luxembourg court has made it quite clear that age discrimination is to be taken as seriously as the other forms of discrimination.

I have heard all the arguments and I am very impressed by the fact that in 2003 the Department for Work and Pensions and its Cabinet Minister thought that there was no problem at all in getting rid of the default retirement age of 65. That was six years ago and I am very heartened by what the Minister has said today; that the Government intend to get rid of it after further consultation, and no doubt other matters, by some time in 2011. That is a very important concession. I fully appreciate the need for a breathing space while that happens. All that divides me from the Government now are the words of Archbishop William Temple: "Whenever I travel on the Underground, I always intend to buy a ticket, but the fact there is a ticket collector at the other end just clinches it".

Although today I shall withdraw my amendment, on Report I shall return and, having listened to the noble and learned Lord, Lord Mackay of Clashfern, I shall seek to amend Clause 208, the commencement clause, to ensure that the Government's intentions will be carried out by the end of 2011. I thank the Government and the Minister—

Lord Monson: Perhaps the noble Lord would quickly answer my question about whether objective aptitude tests would be allowed. That would solve a lot of problems.

Lord Lester of Herne Hill: An employer is fully entitled to employ only those who are capable of doing the job. Of course, no one suggests that someone should be employed if they are not capable of doing the job. The point is that reaching the age of 65 is not by itself a measure of capacity or incapacity. I beg leave to withdraw the amendment.

Amendment 102 withdrawn.

5 pm

Amendments 103 and 104 not moved.

Schedule 9 agreed.

Clause 84 : Application of this Chapter

Amendment 105 not moved.

Clause 84 agreed.

Clause 85 : Pupils: admission and treatment, etc.

Amendments 106 to 106ZB not moved.

Clause 85 agreed.

Clauses 86 to 88 agreed.

Schedule 10 agreed.

Clause 89 agreed.

Amendment 106A

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

106A: After Clause 89, insert the following new Clause—

"Reserved teachers at schools with a religious character

(1) The School Standards and Framework Act 1998 is amended as follows.

(2) In section 58, after subsection (3) insert—

"(3A) The head teacher of such a school shall not, while holding the post of head teacher of the school, be a reserved teacher.""

Baroness Turner of Camden: I shall speak also to the other amendments in this group. Amendment 106A reinstates an important protection in the Schools Standards and Framework Act 1998 that was removed by the Education and Inspections Act 2006. Under the protection in the earlier Act, it was not lawful for voluntary controlled schools, of which there are some 3,000, to require a head teacher to be a reserved teacher. Such teachers need to be able to teach religious education, must hold the requisite belief and attend religious worship and their conduct needs to be compatible with the precepts of the religion.

The removal of this protection in 2006 represented an adverse change in employment affecting thousands of head teachers and teachers with hopes of promotion later in their career. Attempts to secure transitional provisions for them have failed. Indeed, the Church of England's National Society for Promoting Religious Education has made it clear that all VC head teacher posts under its control will automatically become reserved teacher posts, regardless of the injustice, and even hardship, that that may cause. I am advised that the removal of the protection afforded represented a regression in employment equality law that is in breach of EU Directive 2000/78/EC.

[Baroness Turner of Camden]

The other amendments in this group deal with a similar issue: the religious requirement that can be imposed on all teachers in voluntary aided faith schools. Why should such requirements be imposed on, for example, physical education or maths teachers when the same rules do not apply to charities or businesses with a religious ethos? I believe that this is also not in line with EU Council Directive 2000/78/EC. The directive seems to require that permitted discrimination can take place only when there is a genuine occupational requirement. The Bill, if unamended, allows discrimination against a large category of employees; namely, all teachers in most faith schools. I hope that the Government will agree that this is not acceptable and that steps should be taken to ensure that the Bill is fully in line with the EU directive.

We had some discussion about the EU directive earlier in this Committee, and I understand that the Government have already been told that they are in breach. I have a copy of the reasoned opinion from the EU Commission, and it is quite clear that the ruling is that this country is in breach. It is an important document, and I hope it can be left in the Library for noble Lords to read. It is important for the legislation we are introducing to be in line with the directive. If it is not, it means that people who feel that their rights have not been applied to them may seek to have them enforced by the courts. It would be better if, from the beginning, we have legislation that is fully compliant with the EU directive. I beg to move.

Baroness Morris of Bolton: My Lords, Amendment 106A is yet another attempt to limit the powers of governors and goes specifically against what was agreed in the Education Inspections Act 2006, when this House removed that prohibition. We on these Benches see no reason to limit the power of governors and the rights of faith-based schools to maintain the ethos they are pledged to deliver by their own terms of endowment. Amendments 124, 124 and 137 pursue this same line by attempting to undermine the ability of governors to maintain that ethos through appointments and dismissals.

I apologise to the noble Baroness, Lady Tuner, but we do not find these amendments helpful. We feel that they could well impair the excellent work done by so many faith schools, often in deprived areas. Yet again, these Benches wish to maintain the status quo in this area in order to support the excellent work of faith schools and to preserve that delicate balance between the right to hold differing religious beliefs and mutual tolerance.

The Lord Bishop of Liverpool: My Lords, the noble Baroness, Lady Turner, will not be surprised to learn that these Benches do not support her amendment. The diocese of Liverpool has more than 120 schools and three city academies. I declare an interest in that I have been personally involved in interviewing for the principals of each of the three academies. Those candidates were, indeed, required to share the Christian faith.

The Government welcome the role of the churches in education. I was very glad to hear the noble Baroness, Lady Morris, refer to the work done by the churches, especially in deprived areas. The work that we have done with our city academies has, indeed, improved the aspirations and achievements of young people in deprived areas. We are aware that not only do the Government welcome the Christian ethos in education in our church schools but that parents welcome it, given the number of parents who apply for their children to be admitted. The young people themselves—the pupils—make a significant contribution to the whole character of the school community by sharing that ethos.

The character of any institution and, indeed, of any school, flows directly from the character of its leadership. It would be very difficult indeed to fulfil the Government's endorsement of faith and church schools if the Bill removed the requirement that the principal or head teacher should embrace the ethos which they are called to promote. Therefore, we oppose this amendment.

Lord Alton of Liverpool: My Lords, I join my voice with those of the right reverend Prelate the Bishop of Liverpool and the noble Baroness, Lady Morris of Bolton, in opposing this amendment. I understand the position that the noble Baroness, Lady Turner of Camden, has put to the Committee. It is not a new position, it has been expressed before, and she has certainly been admirably consistent in voicing that opinion, but many of us in your Lordships' House feel that anything which is done to dilute the character and ethos of church schools would be a regrettable mistake. They contribute an enormous amount to the life of this country but also to specific communities of the sort that the right reverend Prelate has just described.

I am a governor of a church school and I send my children to church schools. In the distant past I worked in the voluntary-aided as well as the maintained sector of education, so I have seen these schools at first hand and know the contribution that they make. If you were to hold up a mirror to contemporary Britain today, you would probably see its diversity more clearly in church schools than anywhere else. In the schools that I visit regularly, I see a range of children from many backgrounds; immigrant backgrounds, almost by definition. In an average Catholic school you will see children from African, Asian, Filipino and Polish backgrounds as well as from indigenous British backgrounds, but often with Irish antecedents in them. These are places we should be proud of because here we are living out integration and tolerance. Indeed, the faith schools that the right reverend Prelate has done so much to promote in the city of Liverpool, and which have been such a remarkable achievement, also have an interdenominational character. In a city with a sectarian past one must see that as a remarkable achievement, of which we should be very proud.

Instead of celebrating the extraordinary contribution of schools with a religious ethos, over the years we seem to have had a sustained attempt to dilute their character. I remember the debate in which I took part in your Lordships' House where attempts were made to impose quotas on church schools. I am glad that the Government have resisted any attempt in this legislation to change the admissions' procedures in church schools.

The Government should be commended for that. The Education Acts of 1944 and 1988 are the Acts on which this builds in that respect. To alter the character of the church schools in this other respect by changing the regulations in regard to the employment of staff is inadmissible and we should not do it.

The noble Baroness cited regulations from Europe as justification for her amendments. But it is probably worth reminding the Committee of Protocol 1 of Article 2 of the European Convention on Human Rights. It provides that the state shall in exercising its functions in relation to education and teaching,

"respect the right of parents to ensure such education and teaching in conformity with their own religion and philosophical convictions".

It is impossible to see how they will be able to do that if the character of these schools is to be changed in the way in which the noble Baroness would wish.

In 1944, a historic bargain was made between the churches and the state. The Education Act 1944 still stands as testimony of one of the great pieces of legislation of the 20th century. It opened the door to people from the kind of background that I came from to have the opportunity of higher education. But it also provided the opportunity for the churches to give educational opportunities to children who were often from deprived and poor neighbourhoods.

As part of that historic bargain, the churches had to spend in those days three-quarters of the costs involved in the capital costs of building such schools. Even today it amounts to 10 per cent. The churches give the state this huge piece of collateral in order to help it in the education of children. That these schools are popular cannot be in dispute. Most neighbourhoods have waiting lists for such schools. It surely is not a coincidence that the former Prime Minister and the Leader of the Official Opposition both chose such an option. Indeed, it was recently reported that so has the Foreign Secretary. There is nothing to criticise about that. We should be asking why people make those choices. This is something from which we should learn and uphold. We should be proud of diversity in education.

The 1944 Act was part of the legislative programme of the national Government. RA Butler was Secretary of State for Education and Chuter Ede, Labour Member of Parliament, was his PPS. Consensus was reached before that legislation passed through both Houses of Parliament, which is probably why it has stood the test of time. Archbishop Griffin, the then Archbishop of Westminster, was in the Strangers' Gallery in the other place on the day the legislation achieved its Third Reading. He sent RA Butler a copy of *Butler's Lives of the Saints*. There are many parents in this country who would agree that the legislation has given their children many blessings. Anything we do to change the character of such schools would be an error.

Another reason why we should resist this amendment concerns the trust deeds of these schools and the responsibilities that they place, through charity laws, on the governors of such schools. We would be placing them in a position where they could not fulfil the obligations laid on them in those trust deeds if we were to accept these amendments. For those reasons, I hope that they will be resisted.

Lord Lester of Herne Hill: My Lords, we on these Benches, especially in the other place, strongly supported this range of amendments. I know that my colleagues in the other place would wish me to say that now and to pursue the matter. Frankly, I am not going to in the interests of the Bill as a whole. I have warned from the beginning that if we are not careful religion will ruin the Bill. Again and again religious questions will come up. They will take hours and will dwarf the overriding requirement, which is to get the Bill through. So I am not going to do what I should, which is to speak fully in support of the amendments of the noble Baroness, Lady Turner.

I just give one cautionary word about faith schools: when the original legislation on this matter was passed, I warned the noble Lord, Lord Adonis, who was then the Minister, that there were serious problems about admission to faith schools—which are not the subject of these amendments—because of a case I successfully argued in Privy Council, the Tengur case, involving the Bishop of Port Louis, Mauritius. A unanimous Privy Council held unanimously that you could have religious quotas, but had to admit pupils on merit. That is not what this amendment is about. Therefore, I fully support the amendment, but I shall not go into any of the arguments.

5.15 pm

Secondly, I have done something completely idiotic—I failed to move Amendment 105, which had been fully debated and accepted by the Government and dealt with teenage pregnancy in schools. I apologise to the Committee for that. I cannot believe that the procedures of the House are so inflexible that it is not possible for me now to seek to rectify this. If it were not possible—

A noble Lord: You have Report.

Lord Lester of Herne Hill: Provided we get a Report stage. If I can be guaranteed that we will, we can deal with my foolish mistake, but I thought that I ought to state it now, and I wear sackcloth and ashes.

Baroness Thornton: I apologise to the noble Lord in return. I can confirm that his amendment had been accepted by the Government. We made a bit of a boob by not inviting him to move it at the correct time. We shall ensure that it is included on Report.

I thank my noble friend Lady Turner of Camden for tabling the amendments, which allow me to clarify the situation. I hesitate to use "clarify" in the presence of the Lords spiritual who are out in force again, but I hope that, this time, harmony will prevail.

Faith schools are an important part of our education landscape and part of the educational choice open to parents. To maintain their religious character, they must be able, where appropriate, to appoint teachers of the same faith. The provisions in the School Standards and Framework Act that we are debating preserve a situation which has existed for virtually as long as we have had publicly funded schools in this country.

My noble friend's first amendment in the group, Amendment 106A, is distinct from the others, as she said, and deals with the situation in foundation and voluntary controlled schools with regard to reserved teachers. Where there are more than two teachers in

[Baroness Thornton]
these schools, at least one of them must be reserved; that is, they must be appointed taking account of their ability to teach religious education in accordance with the tenets of the religion of the school and with the intention that they should do so. I think that it is accepted that a school with a religious ethos would wish to maintain the traditions of that ethos, especially in the way that they teach religious education.

When the Education and Inspections Act amended the School Standards and Framework Act in 2006 to allow head teachers to be reserved teachers, it was done not to extend this exception but to help small and mainly rural schools. These schools often have to appoint head teachers who not only fulfil that role but also take on a variety of teaching roles. It was put to us that small schools were experiencing difficulties because their head teacher could not also be appointed to teach religious education, as the law did not allow this before 2006, so we amended the law to make life easier for those schools. We have no evidence that teachers' prospects were reduced by the Government's helpful amendment, but I invite my noble friend, if she needs to, to write to me if she has such examples.

The amendment was compatible with EC Directive 2000/78 because it simply applied an existing regime, which was applicable only to those specifically appointed to teach religious education, to those who were also head teachers.

The other three amendments mirror amendments laid in the other place during previous rounds of this Bill's scrutiny. The issue here is certain freedoms given to schools with a religious character and how they recruit and discharge their teaching staff. Nothing in the Bill will change the position of faith schools or diminish their ability to deliver an education in line with their religious character. However, I understand that there are concerns about the SSFA and what it may potentially allow faith schools—in particular, voluntary-aided faith schools—to do with regard to their teachers.

Sexual orientation, in particular, has been debated in this context. Let me be clear: discrimination because of a person's sexual orientation is unlawful and nothing in the School Standards and Framework Act would allow it; nor do the faith bodies which run most of our faith schools seek to discriminate on these grounds.

My noble friend Lady Turner asked about the compatibility of the Schools Standards and Framework Act provisions with the European directive. Article 4.2 of that directive provides that member states may maintain national legislation in force at the date of adoption of the directive. It also provides for future legislation to allow differential treatment on religious grounds where it reflects national practices and where there is a,

"genuine, legitimate and justified occupational requirement".

The wording of the directive was negotiated and agreed by the UK with precisely the circumstances covered by the SSFA in mind. In order for schools to maintain an ethos based on their faith, the Government think it is reasonable for them to be able to ensure that they have a strong and dedicated teaching staff who understand and identify with the religious ethos of the school. That is what these exceptions provide. The Government have done a great deal to enable faith-based schools to maintain their religious ethos. The quid pro quo is that we expect them to be scrupulous in their compliance with the relevant employment legislation.

Anxieties have also been expressed about how the School Standards and Framework Act may apply to the dismissal of teachers. We need to be clear about what the Act allows. Section 60(5) says that regard may be had, in connection to termination of employment, to a teacher's behaviour which is incompatible with the tenets of the relevant faith. It does not say that such behaviour can necessarily be taken as grounds for dismissal. Having had regard to whatever the conduct in question might be, it may be proper for a school to take disciplinary action but it may also be entirely improper. In those circumstances, nothing in the Act would prejudice a claim for unfair or constructive dismissal. The SSFA provisions must also, as I have already said, be read alongside other relevant employment legislation.

I assure my noble friend that, if the Government thought that a problem was caused by the provisions of the School Standards and Framework Act, we would do something to remedy it. At present, we are not convinced that there is any reason to do so, and I therefore ask my noble friend to withdraw her amendment.

Baroness Turner of Camden: My Lords, I thank my noble friend for that response and I also thank other noble Lords who have spoken in this debate. I say to my noble friend that I am completely and utterly in agreement with the Bill and its aim. It seeks to help groups of disadvantaged people who, without the Equality Bill, would continue to have discrimination practised against them. I agree with the noble Lord, Lord Lester, that it is very important to get this Bill on to the statute book as soon as possible.

However, during discussion on the Bill, the Government have made a large number of concessions to religious groups, which I do not think are always justified. People with no belief also have some rights. The EU directive simply says that respect should be shown to the religious ethos of religious employers by the employees. I agree, although in my view that does not include the necessity to become a member of the religion involved. I still believe that that is not a requirement—it is certainly not a requirement of the EU directive. Nor is it true that people who send their children to these schools always want to see that requirement, but I have been given evidence that parents are very concerned that teachers have these requirements imposed on them.

Furthermore, so far as I am concerned, teaching unions support the line of my amendment. However, I do not believe that there is any point in pursuing it at this stage. I shall read very carefully what my noble friend has said in relation to the Government's stance on the amendment and, in the mean time, I beg leave to withdraw it.

Amendment 106A withdrawn.

Schedule 11 agreed.

Clause 90 agreed.

Clause 91 : Students: admission and treatment, etc.

Amendment 106AZA

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

106AZA: Clause 91, page 58, line 10, at end insert—

"(2A) The responsible body of such an institution must not discriminate against a disabled person—

(a) in the arrangements it makes for deciding upon whom to confer a qualification;

(b) as to the terms on which it is prepared to confer a qualification on the person;

(c) by not conferring a qualification on the person;

(d) by withdrawing a qualification from the person or varying the terms on which the person holds it.

(2B) Subsection (2A) applies only to disability discrimination.

Baroness Royall of Blaisdon: My Lords, I will also speak to government Amendments 106AZB and 106AZC. These are purely technical amendments aimed at replicating existing provisions in the DDA, which were inadvertently omitted from the Bill. These provisions ensure that disabled people who are having qualifications conferred on them by a higher or further education institution and are not students of that institution are protected against discrimination, harassment and victimisation because of their disability.

I sincerely apologise for the omission in the Bill and the late arrival of these amendments. I am sure that noble Lords would agree that such protection that already exists needs to be maintained and on that basis I hope that the amendments are accepted. The noble Lord, Lord Low, will now speak to his amendments and I will respond at the end of the debate.

Lord Low of Dalston: My Lords, I had thought that the Minister would speak to her Amendment 106B, but perhaps she will come to that later. In the mean time, I will speak to Amendments 106AA, 106AB and 106C. They relate to a concern that I raised at Second Reading. The amendments are to Clause 96, which provides that qualifications bodies must make reasonable adjustments for disabled candidates such as a large-print exam paper for partially sighted candidates, extra time for dyslexic candidates or lip-speakers for deaf candidates in oral exams. It also provides that Ofqual or the Scottish or Welsh regulators can specify matters that are not subject to the reasonable adjustment duty and decide whether certain reasonable adjustments should not be made. Disabled people's organisations are concerned that the Bill permits the regulators to take these decisions too lightly and with the wrong factors in mind. I declare an interest as president of SKILL, the National Bureau for Students with Disabilities.

Qualifications are vital for disabled people no less than for non-disabled people. Having a qualification opens the door for disabled students to go on to further study or employment. It is therefore vital that the examination system is fully accessible to them. From that point of view, disabled people and their organisations have not had a happy experience. In 2005, the qualifications regulators withdrew much of the support available to disabled students in examinations on the basis that reasonable adjustments were unfair to those who did not need them. That led to cases where, for example, deaf students were forced to undertake oral components of exams without any support.

Disability charities successfully campaigned to reinstate the support and have since been working with the Government, qualifications bodies and regulators to encourage them to go further and make sure that all qualifications are fully accessible to disabled students. However, improvements are still needed to ensure access. In particular, the legal framework governing the powers and duties of qualifications bodies and regulators needs clarifying and strengthening to ensure that they fully implement the principles of disability equality with a view to ensuring that the mistakes made in 2005 are not repeated.

As stated, that legal framework is set out in Clause 96. Subsection (8) provides:

"For the purposes of subsection (7)"—

which disapplies the duty to make reasonable adjustments—

"the appropriate regulator must have regard to",

three factors. These are: the desirability of minimising the disadvantage to disabled students; the need to secure the reliability of qualifications; and the need to maintain public confidence in qualifications. These have caused concern on the ground, broadly, that they subordinate the needs of disabled students to the goal of maintaining public confidence in qualifications. The amendments seek to address that concern.

5.30 pm

Let me say straight away that I am grateful to the Government for tabling Amendment 106B which changes in paragraph (a) the "desirability of minimising" the disadvantage to disabled students to the "need to minimise" that disadvantage. Concern had been expressed that the language of the Bill gave rise to the impression that, whereas it was "necessary" to secure the reliability of qualifications and to maintain public confidence in them, it was only "desirable" to minimise the disadvantage to disabled students.

I have had constructive discussions with the Bill team, Ofqual and Iain Wright MP, the Minister in the other place with responsibility for this area of policy. I am grateful that they have responded so positively to my suggestion that they should put the three factors in Clause 96(8) on an equal footing whereby it is necessary for the regulator to have regard to them. In particular, I have had positive discussions with Kathleen Tattersall, the chair of Ofqual, who made it clear that Ofqual sees ensuring that the need for disabled students' qualifications to be fully accessible as being at the heart of its concern—more or less irrespective of the precise wording of the statute. However, that is no reason not to get the wording as right as we can. At the risk of appearing to look a gift horse in the mouth, which I certainly do not want to do, I am afraid that disability organisations, particularly Skill and the National Deaf Children's Society, have told me that they are still very unhappy that the wording of the paragraph, even with the government amendment, does not give disabled students the assurance or the protection they need. The problem is that they feel that their fingers

[LORD LOW OF DALSTON]
were badly burnt by the experience of 2005. A lot of work will be necessary to rebuild trust. For that reason, I very much hope that the Government will give serious consideration to the further changes that those organisations seek.

Before I mention the charities' specific concerns, I shall explain Amendment 106AA. It would change the obligation in Clause 96(8) for the regulator to "have regard" to the three factors to an obligation for the regulator to "have due regard" to them. That would align this provision with the wording of the integrated public sector equality duty, which incorporates the current disability equality duty. The EHRC believes that this would strengthen and clarify the regulator's duty under Clause 96(8), not least because case law already supports and interprets the meaning of "due regard".

Beyond that, the charities' concerns are twofold. First, they are concerned that the need to which the regulator should have due regard in paragraph (a), even with the Government's amendment, will only minimise the disadvantage to disabled students. That seems to accept that disabled students must suffer some disadvantage. The aim should surely be to avoid any disadvantage altogether. Hence, I have tabled Amendment 106AB, which proposes the need to,

"avoid any substantial disadvantage to disabled students",

and follows the language of "substantial disadvantage" used throughout the Bill in relation to reasonable adjustments.

Secondly, and most importantly, the organisations are worried about the reiteration of the public confidence objective in paragraph (c)—hence, I have tabled Amendment 106C, which would delete that paragraph. Why reiterate the objective of maintaining public confidence in qualifications specifically in the context of making reasonable adjustments for disabled students? Does this not have the negative implication that making reasonable adjustments for disabled students may somehow undermine public confidence in the qualifications conferred on them and on students generally? Does it not smack of the very mindset which was betrayed in 2005 when the regulator withdrew support on the ground that providing extra time for students who had physical difficulty with reading the exam paper or writing their answers, or an interpreter for a deaf student in oral exams, would be unfair to people who did not need this kind of support? At the very least, does it not appear to collude with such ill-informed assumptions? This is what organisations such as NDCS are worried about, and you can see their point.

You can especially see their point when it is not even necessary. What does the objective of maintaining public confidence in a qualification add to the objective of securing its reliability? If, in the language of the Bill—this is paragraph (b)—you have secured that a qualification gives a reliable indication of the knowledge, skills and understanding of the person upon whom it is conferred, what more do you need to do to maintain public confidence in the qualification—unless, of course, it is to make sure that it is not undermined by making reasonable adjustments for disabled students?

Ofqual already has the objective of maintaining public confidence in qualifications as one of its governing objectives in the legal framework establishing it—the Apprenticeships, Skills, Children and Learning Act, passed last year. It is hard to see why it should be reiterated here in the context of making reasonable adjustments for disabled students unless it is to counter the suggestion that making such adjustments is somehow incompatible with the objective of ensuring public confidence in qualifications. It would be better and would cause less anxiety and heart-searching all round if it was simply removed from the Bill at this point. After all, the Bill is about ensuring equality and not about the governing objectives of a body such as Ofqual. I understand that Ofqual would not have any difficulties with the amendments.

Baroness Wilkins: My Lords, I strongly support government Amendment 106B and the amendments in the name of the noble Lord, Lord Low. As he said, qualifications are vital to disabled people; they are the major gateway to gaining employment. Of those disabled people without qualifications, only 23 per cent are employed—which compares starkly with 60 per cent for non-disabled people—and yet disabled people are twice as likely as non-disabled people to have no qualifications at all.

Looking at the figures for educational achievement of deaf young people, I am struck by how many are failing to achieve their potential. Government figures show that in 2008, 72 per cent of deaf students failed to achieve the Government's benchmark of five GCSEs at grades A* to C, including English and maths. It is vital that we do everything we can to break down the barriers facing deaf and disabled young people, including those which exist in the examination system.

The Government have taken action in this area in the past few years to clarify the law, but there continue to be concerns and there are still reports of problems over exams. For instance, deaf students are not being provided with transcripts for video or radio tapes, or being given extra time to lip read instructions. A particular example involved a deaf student being asked in an English exam to describe how it felt to be a fan of a music group. The question completely threw him and lowered his confidence for the rest of the exam. When a complaint was made that the question was inappropriate and unfair, the examining bodies refused to accept that the question would disadvantage a student who had no experience of listening to music.

It is clear that disabled students are still being let down by the examining bodies and I hope that the Government will accept the amendments.

Lord Hunt of Wirral: My Lords, I will return to the important points made by the noble Lord, Lord Low of Dalston, and the noble Baroness, Lady Wilkins, but I will first respond to the Chancellor of the Duchy of Lancaster. I am very worried by what has happened here. I hope the noble Baroness will accept that, from these Benches, we have long wanted to see on the statute book an Equality Bill that codifies, consolidates and simplifies the law. We have said that on many occasions.

I recall that it is more than a year since I had the opportunity of speaking from this Dispatch Box on the Equal Pay and Flexible Working Bill when we had

not seen it. I pressed the noble Baroness, Lady Vadera, who said, "It's still in draft but we're going to publish it as soon as possible". We had to wait several more weeks. It was published in March and on 24 April 2009 had its First Reading. We are now at a point, eight months later, when the Bill has reached the Committee stage in your Lordships' House, having been through all the stages in the other place.

In her Second Reading speech the Chancellor of the Duchy of Lancaster informed us that she would have to disagree with all the concerns that we raised—there were many—about the lack of sufficient time for scrutiny in another place. The worry was that there would not be enough time here. I recall her saying that the Bill had had considerable scrutiny. It was therefore very worrying when we found, last night, that the Government had to table amendments the day before a Committee stage, when we were quite some way through that stage, and give notice of them late in the evening. This is not a surprise; it has happened before. I am further astonished when these amendments claim that they were,

"inadvertently omitted from the original draft of the Bill".

I am going to make several suggestions, but all I ask now is that the Minister will, in the light of these amendments, revise her position that the Bill has had more than enough scrutiny. I do not believe that it has.

We are, however, delighted that the omission being rectified has now at least been dealt with. We have made it clear throughout these debates that we support the need for every effort to ensure that inequalities between people with disabilities and non-disabled people are minimised as far as possible. For this reason, I declare firmly that we support the Government's Amendment 106B, which would strengthen the provisions already contained in the Bill so that disabled people are not put at a disadvantage.

To return to the inadvertent omission, I should like to hear a little more about how on earth this happened. It has been my experience that when such omissions occur, they are like an amber light on the Minister's radar. I used to have the privilege of scrutinising draft Bills. I understand that there were a number of drafts of this Bill and, no doubt, a number of instructions to parliamentary counsel. I am very worried that there may be other provisions in this absolutely critical Bill that have, sadly, been omitted. There is only one way that we can resolve this now. I am prepared to make this offer to the noble Baroness: if all the original drafts could be placed in the Library of the House, with the instructions to parliamentary counsel that were submitted, I will personally go through all those drafts to ensure that another mistake has not been made somewhere. We do not have much more time to get the Bill right. The one thing we can be sure of is that we will not get another opportunity in the immediate future, because it has taken so long for the Bill to reach us. I think it was first in the party opposite's manifesto in 2005, and we have had to wait so long. The Minister seems unashamed. Surely we can rely on Ministers carefully to scrutinise drafts to make sure that nothing has gone wrong. I do not want to say any more but I make that offer. I care so deeply, having wanted a Bill such as this for some considerable time, that I will do everything I can to make sure it is right.

As I have said all along, I want above all to see a simple, easy-to-understand Bill so that everybody knows where they stand. One of the problems I share with the noble Lord, Lord Lester of Herne Hill, is that we are both practising—he at the Bar and me as a solicitor. We know that this whole area is slightly uncertain at the moment. People have to see a lawyer to know exactly where they stand. Although I suppose that this is in my interest—

Lord Patten: Can my noble friend help me? As he well knows, I am neither a barrister nor a solicitor; I am a simple Back-Bench Peer. If the noble Baroness does not accept his generous and modestly put offer, how I can be assured that the Bill is in a fit state to be passed through the House?

5.45 pm

Lord Hunt of Wirral: There are only two points on which I disagree with my noble friend. First, he could never be described as a, "simple Back-Bench Peer", in view of his distinguished record in the Cabinet and elsewhere. That is another matter. Secondly, it is for the noble Baroness, the Chancellor of the Duchy of Lancaster, to respond to the point that he makes. I merely express worries and concerns. I know that the noble Baroness will do everything she can to reassure me. As the First Secretary of State said to me at Questions in the Chamber the other day, "Calm down, it is all going to be okay". That is all the reassurance I seek.

Going back to the key points raised by the noble Lord, Lord Low of Dalston, and strengthened by the remarkably important speech of the noble Baroness, Lady Wilkins, I agree that asymmetric treatment may be required to ensure that people with disabilities are not put at a disadvantage. To treat someone with disability in exactly the same way as a non-disabled person will not ensure equalities of outcome. As we have discussed throughout the debate, there may need to be extra, reasonable adjustments made to help counter the disadvantages posed to people as a result of their disability and so aid the progress of equality.

The noble Lord, Lord Low, made it clear that charities remain concerned that the needs of students with disability will not be given sufficient weight in the clause. They are particularly concerned that Clause 96(8)(c), which specifies that one of the regulator's main roles is,

"to maintain public confidence in the qualification",

may outweigh the needs of people with disabilities. I hope the noble Baroness will be able to inform us of the legal status of these subsections. As the noble Lord, Lord Low, argued, could paragraphs (b) and (c) outweigh the amended paragraph (a)? The Explanatory Notes to this clause state that,

"the appropriate regulator must have regard to the need to ensure disabled candidates are not disadvantaged, and the need to maintain the integrity and public confidence in the qualification".

Does the noble Baroness agree that while every effort must be made to take the needs of disabled people into account, this clause goes sufficiently far to address the issue?

I support the intentions of the noble Lord, Lord Low of Dalston. We have also consistently called for a regulator to restore public confidence in the examination

[LORD HUNT OF WIRRAL]
system. It is vital that standards of education are maintained, strengthened and improved. Of course this should not come at the expense of disabled people—indeed, it is very important to take their needs into account. For this reason, we support the amendment tabled by the noble Lord, Lord Low, which would mean that due regard must be taken.

We also support, as I have already said, Amendment 106B tabled by the Government, which would minimise the extent to which disabled people are disadvantaged from obtaining the qualification because of their disabilities. However, we cannot support the removal of paragraph (c). It is vital to ensure that a regulator has due regard to the absolute need to ensure that standards rise and to maintain public confidence in the examination system. We feel, therefore, that with Amendment 106B the clause will go far enough to ensuring that the needs of disabled people are met.

Lord Low of Dalston: Does the noble Lord accept that Ofqual already has the public confidence objective given to it as one of its governing objectives in the Apprenticeships, Skills, Children and Learning Act so that there is not really any necessity to reiterate it here in this context?

Lord Hunt of Wirral: I do not think we can reiterate it too often. It is vital that public confidence is maintained. I concede the truth of what the noble Lord has just said but I think there is an additional necessity to keep stressing that fact.

Lord Lester of Herne Hill: I apologise for not being here to hear the speech by the noble Baroness, Lady Wilkins. We support the object of the amendment and look forward to what the Minister will say. We closely ally with what the noble Lord, Lord Hunt of Wirral, has said.

Baroness Royall of Blaisdon: First, I will deal with the issue of the inadvertent omission from the Bill and the way in which the Government have dealt with this. I apologised in the first instance and I share the concern expressed by the noble Lord that it is only at this stage that those omissions have become obvious. Am I embarrassed? Yes. Am I angry? Yes. Am I frustrated? Yes. That does not mean that I do not think that the Bill was scrutinised in the other place. Clearly, there is something lacking in the scrutiny of the other place. That is not to say that they did not have enough time. I believe that quality rather than quantity is of importance. I am very proud in this House of the fact that we give qualitative appraisal and scrutiny of Bills. I apologise to all noble Lords. The noble Lord will not be surprised to hear that I will not be taking him up on his kind offer. However, I have asked the Bill team to toothcomb the rest of the Bill to ensure that we are not in a similar situation during later stages.

General qualifications, such as GCSEs and A-levels, are a core part of our education system. They recognise and reflect what young people have achieved and they help promote the skills and knowledge that are essential for future prosperity. It is vital that all young people are able to access qualifications to allow them to progress to further opportunities in learning and work. Therefore, the qualification regulators, which are given functions under Clause 96, must have equality as a priority and they will, of course, be covered by the public sector equality duty.

As the noble Lord, Lord Low, said in his, as usual, eloquent speech, of all aspects of equality it is access to qualifications for disabled people which can be a particular challenge. We need a system which will design qualifications and assessments which are as accessible as possible to those with disabilities. The statistics given by my noble friend Lady Wilkins were indeed shocking.

I am grateful to all noble Lords for their support on Amendment 106AZA, which was laid as a result of discussions with the noble Lord, Lord Low. My ministerial colleague, Iain Wright of DCSF, recently met the noble Lord, along with the EHRC and Ofqual, to discuss his concerns. At that discussion, the noble Lord made a compelling case that the Bill appeared not to give sufficient weight to the importance of access. That was certainly not the intention, so the Government accepted that this amendment should be made. It requires the regulators to have regard to the need to minimise the extent to which disabled people are disadvantaged.

We hoped that this amendment would satisfy the noble Lord, but he has tabled three further amendments, so he clearly still has concerns. His first amendment requires the regulators to have due regard to the three factors listed. Legally, there is no substantive difference between "regard" and "due regard". It is clear that the regulators have to take account of the three factors listed. The phrase "have regard" is the same as that used in the Act establishing Ofqual, so it seems appropriate that the same phrase should be used here.

His second amendment changes subsection 8(a) to refer to avoiding,

"substantial disadvantage to disabled persons".

We believe that the wording in the Bill is appropriate. It sends a clear and powerful signal about the importance of access. If the regulator could not demonstrate that it had minimised disadvantage, it could be challenged in the courts, so I am not convinced that this amendment makes any substantive difference.

His final amendment leaves out subsection 8(c), which refers to confidence. Confidence is the currency of qualifications. Of course, it must be informed confidence. No regulator would or should be guided by prejudice or whim. If it was, it would risk breaching its general equality duty. I heard what the noble Lord said about Ofqual's duty in respect of confidence, but I agree with the noble Lord, Lord Hunt. In the Government's view, the damage to disabled people if their qualifications were no longer trusted would be incalculable. If we accepted this amendment, we would be doing a disservice to many disabled people. Consideration of public confidence is unlikely to affect whether a regulator decides to specify areas where the duty to make reasonable adjustments does not apply, but it might affect which adjustments the regulator concluded were appropriate.

The noble Lord, Lord Hunt, asked whether subsections 8(b) and 8(c) outweigh subsection 8(a). The regulator would need to take all three factors into account and show that it had done so. The subsections need to be balanced against each other. No one factor is more important than the others. With that explanation, I hope that the noble Lord, Lord Low, will not move his amendments.

Amendment 106AZA agreed.

Amendments 106AZB and 106AZC

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

106AZB: Clause 91, page 58, line 13, at end insert—

"( ) a disabled person who holds or has applied for a qualification conferred by the institution."

106AZC: Clause 91, page 58, line 25, at end insert—

"( ) The responsible body of such an institution must not victimise a disabled person—

(a) in the arrangements it makes for deciding upon whom to confer a qualification;

(b) as to the terms on which it is prepared to confer a qualification on the person;

(c) by not conferring a qualification on the person;

(d) by withdrawing a qualification from the person or varying the terms on which the person holds it."

Amendments 106AZB and 106AZC agreed.

Clause 91, as amended, agreed.

Clauses 92 to 94 agreed.

Schedule 12 agreed.

Clause 95 agreed.

Clause 96 : Qualifications bodies

Amendments 106AA and 106AB not moved.

Amendment 106B

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

106B: Clause 96, page 62, line 36, leave out "desirability of minimising" and insert "need to minimise"

Amendment 106B agreed.

Amendment 106C not moved.

Clause 96, as amended, agreed.

Clauses 97 and 98 agreed.

Schedule 13 : Education: reasonable adjustments

Amendment 107

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

107: Schedule 13, page 182, line 36, leave out "requirement" and insert "and third requirements"

Amendment 107 agreed.

Amendment 107A not moved.

6 pm

Amendment 107B

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

107B: Schedule 13, page 182, line 36, at end insert—

"( ) For the purposes of this paragraph, the reference in section 20(3), (4) or (5) to a disabled person is to disabled persons generally."

Lord Low of Dalston: There is a lot I could say about this but I think we are all anxious to make more rapid progress with the Bill and so I shall truncate my remarks to the bare minimum.

In Committee on 19 January, the noble Baroness, Lady Wilkins, expressed concern that the reasonable adjustment duty in relation to education was not anticipatory; that is, owed to disabled people generally, not just to an individual disabled person. The Minister replied that the Government fully intended it to be anticipatory and that the Act as drafted made it anticipatory. She promised to write, setting out the legal analysis which would make that clear. The Minister has fulfilled her promise. She replied to the noble Baroness, Lady Wilkins, the following day and circulated copies of the letter to all the rest of us who took part in the debate, so the noble Baroness and I have had a flourishing correspondence in the past few days.

However, notwithstanding the Minister's letter, concerns still remain. The Act uses language in relation to services, transport and clubs or associations which makes it clear beyond any shadow of a doubt that the duty in respect of those things is anticipatory, but uses different language in relation to education, which, inevitably, to put it at its lowest, puts the matter in doubt. I have a detailed brief from the Disability Charities Consortium substantiating that point, but I do not want to trouble the Committee with all of that because, as I say, I am anxious, as we all are—I am sure the Minister is—to make progress. However, beside that brief, it seems to me that the Minister's letter looks more like ex post facto rationalisation than an open and shut case. In addition, the approach which the courts have recently taken to codes of practice, guidance and ministerial assurances in disability cases makes it plain that these can prove all too flimsy as a basis on which to found a legal duty.

I believe that at this point the best course would be if the Government could see their way to accept my amendments for the avoidance of doubt. That would mean that the reasonable adjustment duty in relation to education was anticipatory—the Government fully acknowledge that is their intention—and would greatly reassure disabled people. If the Government could undertake to look at this matter further, I would be happy to withdraw my amendments. I beg to move.

Lord Hunt of Wirral: We have just heard a brief but very important speech from the noble Lord, Lord Low of Dalston. As he explained, these amendments underline the fact that the duty to make reasonable adjustments in relation to education must be an anticipatory duty and not just a reaction to the particular circumstances of an individual person with disability.

[LORD HUNT OF WIRRAL]
In other words, I suppose the governing body of a school and the body in charge of the recreational or training facility should have to ensure, as a matter of practice, that the school, certain further or higher education courses and its recreational or training facilities should be created and maintained bearing in mind the need for accessibility for students with disability.

On these Benches, we would very much agree with the principle behind these amendments. We are concerned that as much as possible should be done to ensure that the disadvantages which disabled students may suffer as a result of their disability are minimised as far as possible. Every effort should be made to give disabled students an education that is equal to that of non-disabled students. That may require asymmetric treatment of a disabled pupil or student. Perhaps in some cases that does not happen to the extent that it should. In May last year, the Department for Business, Innovation and the Skills released a report which showed that inequalities in secondary education resulted in disabled 16 year-olds having lower GCSE attainment than those who are not disabled. Clearly, there are problems to be addressed.

Nevertheless, on these Benches we feel that the Bill as it stands already contains sufficient provision to ensure that education authorities anticipate the needs of disabled students and make reasonable adjustments in accordance with that. I saw in the Explanatory Notes constant reference to the duty to ensure that certain matters,

"do not place disabled pupils at a substantial disadvantage in comparison to non-disabled pupils".

That theme has been running through a number of our debates. Therefore, that duty is strong: it both allows and actively encourages education authorities to ensure that reasonable adjustments are made for people with disabilities. Of course, there are places where improvements could be made but, on the whole, we believe that the Bill contains sufficient provision in these areas. I now look to the Minister to reassure me that I am right.

Baroness Thornton: I shall speak to Amendments 107B, 108EB and 108GA in the name of the noble Lord, Lord Low. As the noble Lord explained, these amendments would make explicit the anticipatory nature of the reasonable adjustment duty; that is, when considering a particular reasonable adjustment, education providers need to consider the needs of disabled people more generally. I agree that the consideration of such duties needs to be anticipatory and they are already framed differently from the DDA.

In her letter of 20 January, my noble friend the Leader of the House has already explained that in detail to my noble friend Lady Wilkins in response to the matter raised in Committee on 19 January. The noble Lord, Lord Low, has received a copy of that, as he said, and it is available in the Library.

This is not a fundamental disagreement of policy or principle, as we and the noble Lord, Lord Hunt, agree that the reasonable adjustment duty should be anticipatory. There is simply a disagreement on drafting. The noble Lord, Lord Low, and my noble friend Lady Wilkins want it to be drafted differently in the Bill. I understand their desire to make that clearer and, therefore, we shall go away and consider whether anything further can be done to this part of the Bill. On that basis, I hope the noble Lord will withdraw his amendment.

Lord Hunt of Wirral: Will the Minister say a little more about when she anticipates being able to return to the House or reply in writing to noble Lords who have expressed these doubts? What sort of timescale are we talking about, now that she has very kindly agreed to go away and have a further look?

Baroness Thornton: I suspect that we will start discussing drafting probably within the next few days, so we can be ready for Report and reach some agreement either that the current wording works for everyone or that we need to do something to it. We will, of course, consult noble Lords about that in advance of Report.

Lord Hunt of Wirral: Could the Minister explain who she is going to consult, just to set it out clearly?

Baroness Thornton: The noble Lord, Lord Low, explained very clearly that we have discussed these issues with a range of stakeholders and noble Lords who are interested in these issues, such as my noble friend Lady Wilkins and other colleagues on other Benches. We shall continue to have that discussion.

Lord Lester of Herne Hill: To follow up the issue raised by the noble Lord, Lord Hunt of Wirral, it is extremely important that we have a Report stage, because many of the concessions or differences can be crystallised only at Report. The longer that we go on in Committee, the more difficult it becomes. One answer to the noble Lord, Lord Hunt, is that this will be done before Report, otherwise we will have been scrutinising carefully and with high quality but it will be a waste of time in the outcome, because the Bill will then leave this House without a Report stage and we will have that dreadful thing called "wash-up". We are very concerned that there will be a Report stage, where all this can be dealt with.

Baroness Thornton: I absolutely agree with the noble Lord, and we intend that this Bill should reach the statute books. However, it is not entirely—not even mostly—in the Government's hands. We are very appreciative of the co-operation that we are receiving across the House to expedite this Committee stage.

Lord Low of Dalston: The Minister has asked me to withdraw my amendments, and I am happy to do that—all the more so since she has agreed to take the matter away and look further at it. I, too, shall be more than happy to do that, to participate in the discussions and to be of whatever help I can be towards reaching a solution with which we are all happy. I beg leave to withdraw the amendment.

Amendment 107B withdrawn.

Amendment 108

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

108: Schedule 13, page 183, line 4, leave out first "the" and insert "each"

Amendment 108 agreed.

Amendments 108A to 108E not moved.

Amendment 108EA

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

108EA: Schedule 13, page 184, line 6, leave out "or third"

Amendment 108EA agreed.

Amendments 108EB to 108K not moved.

Schedule 13, as amended, agreed.

Clause 99 agreed.

Schedule 14 agreed.

Clause 100 agreed.

Clause 101 : Members and associates

Amendment 108KZA

6.15 pm

Moved by ***The Duke of Montrose***

108KZA: Clause 101, page 65, line 13, at end insert—

"( ) This section does not apply to financial charges imposed for different categories of membership within an association."

The Duke of Montrose: My Lords, I have not previously intervened in the passage of the Bill but I have come across issues that I feel must be addressed at this time. I realise that a number of similar issues were considered when your Lordships' Committee was discussing the provision of goods and services under Part 3 of the Bill. We now come to Part 7 and the question of associations. I have tabled the amendment at this stage because the Bill has seen fit to introduce a category in Part 7 which would mean that membership of an association cannot be regarded as quite the same thing as the supply of goods and services.

My concern focuses on sports clubs, especially golf clubs. I declare an interest as the owner and managing director of a golf club. It was in that capacity that the concerns of the Scottish Golf Union, the governing body of the sport in Scotland, were raised with me. My amendment addresses those concerns.

The exceptions provided in the Bill to the offence of discrimination, as they were discussed on the second day in Committee, focus on allowing businesses to provide distinctly different services to specified groups of people. My concern is to determine from the Minister whether the fact that in clubs, particularly in golf clubs, the same goods or services are offered to all but at a different price may entitle some members to feel that they are suffering discrimination and to call for a remedy under the Bill.

A particular focus is placed on the definition of the protective category of age. In golf clubs, there can be at least four distinct groups: the juniors, who are under 18, pay little in terms of subscription and are exempted under the scope of the Bill; those in tertiary education or who are just starting their careers—people aged between 18 and about 30—are estimated to have financial constraints, and so clubs can offer them up to a 70 per cent reduction in their subscription; those between the ages of 28 and 65 are in the group to which the full subscription applies; and those who have long membership—a similar point was made by my noble friend Lord Elton—and are over the age of 65 gain huge reductions, often of 50 per cent or more. The unusual thing about those in the latter group in a golf club is not that they will benefit less than others but that nowadays they obtain far more use of the course and its facilities because they have time. It would be easy for those in the middle group to feel that they are being discriminated against because there is such a big concession to those in the older group and they have less chance to benefit. This is an accepted part of golf club culture and my amendment would leave it clearly in the hands of the clubs to take whatever measures on pricing they prefer.

Can the Minister clarify whether the powers in the Bill as it stands will allow this situation to continue freely, or will the implementation of the Bill constitute some kind of regulation of these differentials? The situation would have been clearer if the Government had felt able to accept Amendment 57ZA to Clause 29, moved by my noble friend Lady Warsi on the second day in Committee, which sought to allow that a differential in the provision of services was permitted if,

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

The Government felt that this was unnecessary and so my amendment seeks to clarify the situation.

For golf clubs, this still leaves the issue contained in the other half of my noble friend's amendment—the ability to allow some differentiation for the characteristic of sex. In sports involving strength as well as skill, such as athletics and tennis—lo and behold, the Olympics will be here in another year and a half—there is not only the question of having separate changing rooms but it is felt proper to have designated times or separate competitions for women and men. It must be clear that there is no provision in the Bill for some brave young blade to insist that he is going to compete in the ladies' section, or that equality means that no separate provision can be made for a ladies' day at a golf club. The pace of progress around a golf course is different on a ladies' day than it is on any occasion reserved for gentlemen and, given the chance, this provides a benefit for each in turn. Members would regard it as detrimental if the provisions of the Bill were to interfere in these arrangements. I beg to move.

Lord Lester of Herne Hill: My Lords, I do not want to hold up the debate by explaining why I am against this amendment, suffice to say the background to this is set out extremely clearly on page 90 of the Explanatory Notes. When we were legislating on race discrimination, in the prehistoric times of the 1970s, we ruled out colour bars in clubs, including golf clubs. At that stage we did not deal with sex discrimination and for the

[LORD LESTER OF HERNE HILL]
subsequent period many golf clubs practised systemic discrimination against women by admitting them as members, taking their money and then treating them less favourably. This House has debated that again and again and it is wholly beneficial that we should deal with this in the way that Clause 101 does. One of the examples given on page 90 is where,

"A private members' golf club, which has members of both sexes, requires its female members to play only on certain days while allowing male members to play at all times".

This is an example of direct discrimination. The amendment would drive a coach and horses through Clause 101 and we would oppose it.

Lord Hunt of Wirral: I think the noble Lord, Lord Lester, has demonstrated why my noble friend the Duke of Montrose was quite right to raise these issues, there is widespread misunderstanding. I very much hope that the Minister can throw some light on this and reassure my noble friend.

Baroness Howe of Idlicote: We have debated the different approaches that can be made by groups of particular ages, Saga for example, and it would be very helpful if the Minister could explain these differences.

Baroness Thornton: My Lords, I am very happy to reassure the noble Duke, the Duke of Montrose, and explain what is meant by this clause. This Bill will not prevent private clubs from setting differential membership rates as long as each category of membership is open to all regardless of their protected characteristics. Clubs will still be able to offer different types of membership at different prices or on different terms, such as peak or off-peak, playing membership of a golf club, or full and associate membership. Indeed, age-based concessions and benefits are an important means of ensuring that all people can participate more fully in society, in the economy and in clubs which play such an important part of many people's lives, as long as they will be permitted to continue when the provisions prohibiting age discrimination by clubs are brought into force in 2012, along with the services provisions relating to age. This will allow us to ensure that appropriate exceptions are in place to allow age-based concessions to continue. Those regulations will do precisely that. I hope the noble Duke will accept that.

The issue of women was also raised. I would like to reassure noble Lords that Clause 193 of the Bill provides an exemption which allows men and women to be treated differently in any sport or game, or other activity of a competitive nature where the physical strength, stamina or physique of the average woman puts her at a disadvantage compared to the average man. This exception will be maintained.

Clause 101 simply requires that private clubs apply the same terms and conditions for membership equally to people regardless of their protected characteristics. This would mean, for example, that men and women who are charged the same price for each category of membership to a golf club will have the same access to club facilities, such as the bar.

Private clubs hold an important place in our society and we do not think it is right for them to treat some of their members or associates as second-class citizens. That is why we have taken the opportunity, through this Bill, to extend the existing prohibitions on private clubs to stop them from discriminating against their current and potential members, associates and guests. Protection will be provided for the first time in relation to sex, religion or belief, age and gender reassignment. Existing law already provides protection because of a person's race, sexual orientation and disability.

In the past, we encouraged private clubs to address the issue of discrimination, particularly against women, voluntarily, but people continue to complain that they are experiencing discrimination. For example, some female members of golf clubs state that they are still not able to vote as full members of the club, they are only able to play on certain days and their access to certain facilities, such as the club bar, is restricted. I attended a golf club annual dinner not long ago with my brother-in-law and some of the women members explained that they were very proud that their club no longer did those things. It made the club a much healthier place to be. We believe that such restrictions are unacceptable and that is why we decided to legislate.

I hope that my explanations about how freedoms are already protected within the provision will reassure the noble Duke and that he will withdraw his amendment.

Baroness Byford: I apologise to the Committee for being late and arriving after my noble friend had already started. The question is not so much about women and men having equal rights. This applies to golf clubs much more than tennis clubs. There are certain days and certain times within the day that are set aside for ladies or men. I want to make sure that that is not jeopardised in this section of the Bill.

Baroness Thornton: I think that the explanation that I gave about the competitive nature of sport and the recognition of the different strength and stamina required covers the point about ladies' days. The point is to ensure that nobody is being discriminated against in terms of their participation.

Lord Hunt of Wirral: Would the Minister please revisit that point because I am not sure that she has dealt with it as fully as she might? It may be that we shall return to it at a later stage, but it would be helpful if the Minister could clarify the position for us.

Lord Lester of Herne Hill: Is this the right position? The Sex Discrimination Act always contained an exception whereby women or men on average in a particular sport were not equal in their abilities. That leads to discrimination against me when I try to play golf because women are allowed to have a golf tee about 100 yards nearer the hole than me, even though any woman I know can drive further than I can. That discrimination is allowed under the Bill on the assumption that women, poor things, are not able to drive as far as me. It is completely wrong but that is the assumption. It means that you are then allowed to have all these separate ladies' days, gentlemen's days and so forth. Of course, as women advance, they become equally as good as men and one day the difference will disappear, but meanwhile we work on the assumption that men are better, physically, at golf than women and therefore differences of treatment are still permitted. I think that that is the basic assumption.

Baroness Thornton: I think that that is right, but women are just more elegant at it. I think that I was correct in saying that so long as there is also a men's day, there is no reason why there should not be a ladies' day.

The Duke of Montrose: My Lords, I thank the Minister for stating so clearly the answers to some of my questions. I also thank the noble Lord, Lord Lester, for recounting so much of the history of golf to us and the battles that have been fought. They may not be entirely won at the present time. My amendment did not in any way presuppose that there would be any discrimination against anyone: it was to do with the application of equal opportunities for all at all stages—that those who requested different treatment might be allowed to do so at a different price. In the light of all that we have heard, I beg leave to withdraw the amendment.

Amendment 108KZA withdrawn.

Clause 101 agreed.

Clauses 102 to 105 agreed.

6.30 pm

Amendment 108KA

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

108KA: After Clause 105, insert the following new Clause—

"Information about diversity in range of candidates etc.

(1) This section applies to an association which is a registered political party.

(2) If the party had candidates at a relevant election, the party must, in accordance with regulations made by a Minister of the Crown, publish information relating to protected characteristics of persons who come within a description prescribed in the regulations in accordance with subsection (3).

(3) One or more of the following descriptions may be prescribed for the purposes of subsection (2)—

(a) successful applicants for nomination as a candidate at the relevant election;

(b) unsuccessful applicants for nomination as a candidate at that election;

(c) candidates elected at that election;

(d) candidates who are not elected at that election.

(4) The duty imposed by subsection (2) applies only in so far as it is possible to publish information in a manner that ensures that no person to whom the information relates can be identified from that information.

(5) The following elections are relevant elections—

(a) Parliamentary Elections;

(b) elections to the European Parliament;

(c) elections to the Scottish Parliament;

(d) elections to the National Assembly for Wales.

(6) This section does not apply to the following protected characteristics—

(a) marriage and civil partnership;

(b) pregnancy and maternity.

(7) The regulations may provide that the information to be published—

(a) must (subject to subsection (6)) relate to all protected characteristics or only to such as are prescribed;

(b) must include a statement, in respect of each protected characteristic to which the information relates, of the proportion that the number of persons asked to give the information to the party bears to the number of persons who provided it.

(8) Regulations under this section may prescribe—

(a) descriptions of information;

(b) descriptions of political party to which the duty is to apply;

(c) the time at which information is to be published;

(d) the form and manner in which information is to be published;

(e) the period for which information is to be published.

(9) Provision by virtue of subsection (8)(b) may, in particular, provide that the duty imposed by subsection (2) does not apply to a party which had candidates in fewer constituencies in the election concerned than a prescribed number.

(10) Regulations under this section—

(a) may provide that the duty imposed by subsection (2) applies only to such relevant elections as are prescribed;

(b) may provide that a by-election or other election to fill a vacancy is not to be treated as relevant election or is to be so treated only to a prescribed extent;

(c) may amend this section so as to provide for the duty imposed by subsection (2) to apply in the case of additional descriptions of election.

(11) Nothing in this section authorises a political party to require a person to provide information to it."

Baroness Royall of Blaisdon: My Lords, I shall speak also to government Amendment 108Q, government Amendment 134A, government Amendment 135B, and government Amendment 136ZE.

The aim of Amendment 108KA is to increase public accountability and act as an incentive for political parties to identify and remove barriers which cause or contribute to the under-representation of certain groups in the political life of this country. It will require registered political parties to publish information on the diversity of their candidate selections at particular elections, in accordance with regulations made under the power contained in this provision. The amendment responds to a recommendation by the Speaker's Conference, which over the past year has considered the issue of under-representation in the other place. It is intended to encourage broader representation and increased involvement of all groups in the democratic process.

It also responds to an amendment tabled on Report in the other place and supported by honourable Members from all three main parties. In their evidence to the Speaker's Conference, the leaders of all three main political parties expressed their openness to the principle of publishing diversity data in relation to candidate selections. This is an important indication of their commitment to the promotion of fairer representation in Parliament and to the gathering and publication of information about candidates and potential candidates as a means of achieving this.

The Solicitor-General wrote to the vice-chairman of the Speaker's Conference, copied to Liberal and Conservative party leaders, on the Equality Bill in advance of tabling this amendment. Ministers are writing to the leaders of the main parties, and also to the Scottish National Party and Plaid Cymru, seeking further views and reassuring them that political parties will be fully involved as the scope and detail of the regulations to be made under this provision are developed.

[BARONESS ROYALL OF BLAISDON]

Amendment 108KA applies to registered political parties. It and the regulations made under it will require those that field candidates at relevant elections, which may include parliamentary elections and elections to the European Parliament, the Scottish Parliament and National Assembly for Wales, to publish certain information about the protected characteristics of their candidates and prospective candidates. The regulations will specify the protected characteristics on which parties must publish information. These may include age, disability, gender reassignment, race, sex, sexual orientation, religion or belief. Those are all the protected characteristics covered in Clause 4, with the exception of marriage, civil partnership and pregnancy.

Nothing in this provision will require or oblige political parties to require individuals to disclose any personal information that they do not wish to, nor does it require parties to publish personal information about individuals from which they can be identified. It is important to stress that point. The regulations will set out which elections are relevant elections for the purposes of this provision. They will also establish who is required to publish the information. For example, it may be that only those parties which field candidates for a certain number of seats will be required to do so. They will set out when and for how long the information is to be published, and the form and manner in which it must be published. For example, that might be on the internet with the data broken down in particular ways.

Amendment 135B ensures that the regulations will be subject to affirmative procedure and that the Government will consult about the detail of what they require before laying them before Parliament. We are particularly keen to involve the Equality and Human Rights Commission, the Electoral Commission and the parties themselves in ensuring that the scope of the requirements are both proportionate and effective. We want them to result in the collection and publication of meaningful and useful data that will help people identify more clearly where the gaps are and what barriers some individuals may face throughout the selection process.

Amendment 108Q prevents requirements imposed under Amendment 108KA from being enforced through the courts. Instead, the Equality and Human Rights Commission will ensure compliance under its existing powers. Amendment 136ZE amends Schedule 26 to establish this.

There is clear statistical evidence that women and people from minority-ethnic communities are underrepresented as Members of Parliament and of other elected institutions. There is also likely to be underrepresentation of disabled, lesbian, gay and transgender people, but we do not know that because the information is not available. There is a strong argument that increasing participation by all groups in civic and political life will lead to a stronger and more cohesive society, and to the strengthening of our democracy. We see transparency and openness by political parties in relation to their candidates as an important way of achieving that aim.

Amendment 134A amends Schedule 24 to insert a reference to Amendment 108KA. Schedule 24 lists all the exceptions to the harmonisation provisions in Clause 196. Clause 196 applies to provisions which may need amending to reflect changes in European law. Amendment 134A makes it clear that the diversity reporting duty contained in Amendment 108KA would not be subject to any regulations under the harmonisation power, since the provision is not within the scope of European jurisdiction. I beg to move.

Baroness Morris of Bolton: My Lords, in his evidence session to the Speaker's Conference, my right honourable friend David Cameron accepted the principle of reporting candidate data and explained that our determination to make progress on the diversity of our candidates means that we monitor closely their gender, ethnicity and any declared disability. However, my right honourable friend made it explicit that we do not ask our candidates about their sexual orientation.

When I was vice-chair of the Conservative Party with special responsibility for candidates, I had a number of highly emotional discussions with candidates on whether they should disclose their sexual orientation. Often, their own families did not know, which caused real anguish. I know that the new clause makes it clear that no individual is required to provide information and that the data will be anonymised. That is fine for large categories such as gender and ethnicity, but the more one goes down the list of required data, one sees the numbers becoming smaller. Our fear, particularly with gender reassignment and sexual orientation, is that some candidates may not wish to disclose it, leaving a small number of candidates who are happy to answer. I can well imagine the media and certain other people then going out to find who those candidates may be. Something that is designed to help might have a negative outcome.

I understand that many companies collect these data. However, that is for internal use, whereas these data will be in the public domain. We are also concerned about asking such direct and sensitive questions. My right honourable friend Theresa May had a useful meeting this week with Ben Summerskill at Stonewall, who said that considerable work has been done to ensure that questions are asked sensitively. I would welcome assurance from the Minister that the regulations will respect these personal issues, call for sensitivity and, above all, preserve privacy.

I have two questions. Why was it decided to make only marriage and civil partnerships and pregnancy and maternity protected characteristics? Will new subsection (5)(a) apply to candidates for parliamentary elections in Northern Ireland?

While we agree in principle with the amendments, we think that the collection of data is useless unless there is a culture and ethos to promote diversity. My own party has been innovative and determined in this area. Whatever the outcome of the next general election, we hope that our efforts will be there for all to see.

Lord Lester of Herne Hill: My Lords, in speaking on this delicate matter, I should make it clear that I have no clue as to what my party said at the Speaker's Conference, so what I am about to say may be politically incorrect, in which case I shall probably be corrected by my noble friend Lady Northover, who knows much more about these things than I do. I agree with what

has been said by the noble Baroness, Lady Morris of Bolton, and the Minister. This is a very sensitive issue, because we are concerned with personal privacy. When I did my own Private Member's Bill, I treated sexuality and religion differently from the other strands, because anything that involves monitoring and asking people about their sexuality, religion or lack of it may invade personal privacy. For that reason, we try to deal with it in a different way.

I am all in favour of positive action, especially to ensure that both halves of the human race are properly reflected in our elected parliamentary and other bodies. As a short or medium-term measure, I support positive action to achieve that, including, for example, women only shortlists. One reservation that I have about treating this subject across the board is not only personal privacy but also that we do not want our elected Parliament to become like the United Nations. In other words, we do not want to start having quotas in which each interest group, whether ethnic or religious or not religious, gay or straight, or old or young are able to clamour for equal representation—quite apart from what Edmund Burke would have said about that to the electors of Bristol about the duties of a Member of Parliament to all her or his constituents. It is undesirable and divisive to divide people up into herds or groups and then start saying that this is about group rights, and so on.

I am not saying in any way that I am opposed to these amendments. I am simply saying that the matter is very sensitive and I would hope that the kind of remarks that the noble Baroness, Lady Morris, has made and I have made reflect also the views of the Government in their approach to these amendments.

The Archbishop of York: My Lords, I align myself with the sentiments expressed by the noble Baroness, Lady Morris, and the noble Lord, Lord Lester. What puzzles me in the drafting of this amendment is what is almost a duty in subsection (2). It says "must" and refers to,

"regulations made by a Minister of the Crown",

and says that the party must,

"publish information relating to protected characteristics of persons who come",

and so on. Subsection (11) of the new clause then says:

"Nothing in this section authorises a political party to require a person to provide information to it".

How is it going to do it? On one hand it must and on the other it cannot. For me, the drafting does not help.

Secondly, human rights accrue to humans because they are human beings; they do not accrue to groups. It would worry me if a particular party seemed to have information that showed that it had a particular group of a protected category in large numbers so that you could then say that the party that did not have the same number was a party that did not welcome anybody. This is a charter for those who always want to cause grief. Some people actually want to remain private in their particular ways of saying things. It would be difficult to ask someone what their religion was, because the person might say, "It's none of your business—why are you asking me?" Must we really reduce our individual persons to declaring always who they are, where they come from and where they belong, their ethnicity and agenda and sexual orientation? Some of those things may matter in terms of discrimination, if you want to tackle it; but if this kind of information becomes available, like it or not, some people will misuse it. For the sake of all our candidates, I think that this is ill conceived.

6.45 pm

Lord Lester of Herne Hill: My Lords, I have one further thing to ask. Does the Minister agree that what is really important is to eliminate direct and indirect discrimination in all the political parties with regard to the selection of candidates? If that is properly followed through, these provisions will become less important.

Lord Graham of Edmonton: My Lords, I shall be quick; I appreciate the time factor. I think the Minister will understand that this is a major advance in a range of fields, not least regarding transparency, which the electorate understands. We all know the rumours, allegations and snide and derogatory remarks about the general make-up of candidates in a party, so I congratulate the opposition Front Bench for having so clearly told us that the principle that is enshrined in this amendment, if not the detail, is endorsed by their party leader. That is based on his sensitivity to the charge that may be made, as it may to any party, that within that party there is an element that is undesirable.

The most reverend Primate has indicated that this could be a charter for causing grief. That is always possible; at the moment, without any aspect of legislation, grief can already be created.

Other than the nitpicking that might occur regarding one aspect or another, the principle that the public are entitled to have as much information as possible about the make-up of candidates—not individually, no names to be published, no ability for people to be identified—the general principle is sound. The Government ought to be congratulated on bringing forward the amendment.

Lord Alton of Liverpool: My Lords, like the most reverend Primate and the noble Lord, Lord Lester of Herne Hill, I enter a cautionary note before the amendments are incorporated into the Bill. I am pleased to see the noble Lord, Lord Wallace of Tankerness, in his place; when we served in the other place, I served as Chief Whip of the old Liberal Party and the noble Lord was the Deputy Chief Whip. In that capacity I was chairman of the party's candidates committee.

Like the noble Lord, Lord Lester, I had anxieties about the failure to provide sufficient candidates of a variety to show the make-up of society as a whole, but unlike him I did not come to the conclusion that we therefore needed all-women shortlists, any more than I believe in all-men shortlists. I was able to change the rules at that time so that candidate lists of three would always include one person of the opposite sex, whatever that might be. I felt that that moved towards the idea of a more representative balance of candidates while avoiding some of the problems of quotas. Ultimately, merit should surely be high on the agenda, and we should be choosing people who will serve in both Houses of Parliament.

[Lord Alton of Liverpool]

I have enormous admiration for the noble Lord, Lord Graham of Edmonton—we served together in another place—and I know that it was as a result of his experience on the ground that he was such a tremendous voice for people from difficult backgrounds because he himself understood those backgrounds very well. I sense that we have created in Parliament a class of people who may represent the Westminster village but often do not represent life in the world outside. Maybe that is one of the reasons why organisations like the BNP have been attracting support. We must be careful that we do not so organise ourselves as to tick so many boxes that Parliament itself becomes unrepresentative of the nation. People should be chosen on the basis of merit.

I argued in your Lordships' House, in a short debate that I initiated a couple of weeks ago, in favour of the single transferable voting system. The reason why I did so was that when you draw up lists of candidates under STV, it is impossible for a political party to put forward a list that is entirely drawn from one particular background. Sometimes we do not go for the more fundamental solutions, but look for the cosmetic answers to issues.

I hope that we will look more deeply at that question, rather than rely on something that in itself may distort the picture. As the noble Baroness, Lady Morris, rightly said, people will be free not to give information if they do not wish to do so. The noble Lord, Lord Lester, referred to that when he said that privacy is an important issue. If they do not give such information—someone may have a religious affiliation and may change later—it makes a mockery of the data that have been collected. The data would not then be accurate and would make all sorts of judgments on the basis of things that are not necessarily true.

The most reverend Primate also spoke about the balance that has to be struck between privacy and openness. It is strange that things which one would imagine should be open in society often are kept secret and things to which people should have access often are concealed. Many times these concern grave issues of public policy. However, issues that are legitimately private are trawled across the front pages of national newspapers. Sometimes, rather than peering into people's souls or under their bed-clothes, it would be better to look at the type of matters in which Parliament should be involved, which affect the lives of people every day.

As I have suggested, religion is particularly difficult to assess. Not only do people sometimes change their religion by converting from one to another, there are so many religions and denominations within religions that it would be very difficult to measure. Do the Government need to make sure that 0.7 per cent of Labour candidates, for instance, are Jedi in line with the results of the 2001 census? What about local concentrations? In Brighton and Hove, the Jedi make up 2.7 per cent of the population according to the census, whereas the population of Easington has just 0.2 per cent. Is Brighton more likely therefore to get a Jedi MP? I make the point for obvious risible reasons. We are in grave danger sometimes when we go down this route of constantly looking to try to make sure that every group is represented in a particular way, but we end up with something that is not representative at all. At a time when there is great cynicism about Parliament and people feel very disillusioned about the political process, I hope that we will do nothing to reinforce that.

Lord Monson: My Lords, following the noble Baroness, Lady Morris, not only are there no doubt a number of candidates who would much rather not reveal their sexual preferences to anyone, even if the answers are anonymous, there are surely a number of candidates who are disabled in some way which is not visible to third parties who also want to keep quiet about it. In view of proposed new subsection (11) under Amendment 108KA, which would permit candidates to refuse to reply to a question, does the noble Baroness agree that the statistics which will eventually be published, will not be entirely accurate?

Baroness Morris of Bolton: My Lords, I turn to something which the noble Lord, Lord Alton, said when he was talking about the Jedi and candidates. I am accepting of this in principle, but the raw data are often not enough to change things. For example, I often had candidates who did not want to be categorised. They fiercely wanted to be Conservatives, which was all that they wanted to be. They did not want to be pigeon-holed anywhere.

One could say that each party should have so many minority ethnic candidates, but quite often whether we are changing mainstream society and getting our candidates into mainstream seats is as important. To have candidates who are elected where there is a large minority ethnic community is not the same as getting minority ethnic candidates elected where there is a small minority ethnic community. These things are important as well. I am not sure that the raw data will give the whole picture. The Minister is right. Each party has to work on this unceasingly.

Lord Alli: My Lords, I think that I concur with what many have said in terms of the sensitivity relating to sexuality. However, there is a difference in terms of public representation between those people who are gay and those who are openly gay. There is a real differentiation to make when monitoring those people in public life who stand up and say, "I am gay", and those who have to hide their sexuality. I am not sure that people who are hiding their sexuality, for whatever reason, wherever they sit in terms of their parties, particularly represent me, as a gay man, in their party if they cannot bring themselves to say that they are gay. An issue that I would like the Minister to reflect on is that when we look at the categories that we are monitoring, there is a difference between being openly gay and being gay, for the purposes of candidates.

Baroness Howe of Idlicote: My Lords, as noble Lords know, I have never been keen on women-only shortlists, but I have gradually changed my position, and I suspect that that has been the case for quite a number of your Lordships. This is a step in the right direction. We are gradually changing and it would be good to have some facts and figures, however much they may be distorted, inaccurate and so on. We

change our position on religion or whatever it happens to be several times in our lifetime. It is the thrust of the movement that is important.

I applaud the approach of the noble Baroness, Lady Morris, which she put very well indeed. These are sensitive areas, and it is right that people should not be forced to say what they are not prepared to say. However, if we have facts and figures, it will, as the noble Lord, Lord Alli, said, encourage people to be more open about their gayness and the other issues that we are talking about. I want a more representative Parliament and more representative local authorities. Like the noble Baroness, Lady Morris, I think it will be splendid when we get to the time where we do not blink when a minority candidate is elected in an almost totally white constituency. I think this is right, and I hope we do it.

Lord Wallace of Tankerness: My Lords, the most reverend Primate the Archbishop of York contrasted subsection (2), which is a "must do" requirement to publish, with subsection (11), which is "cannot do" provision that states that a political party cannot require a person to give it the information. How is the duty to be enforced? I am sure noble Lords on all sides would admit that the strength of our respective parties varies in different parts of the country. In my own party, the seat of Edinburgh West has recently gone through a selection process to replace my honourable friend John Barrett, who is standing down. There were numerous applications. It is a well run local party, and I am sure it is quite capable of giving the information to party headquarters to meet this obligation, so far as the candidates provide the information.

I can also think of constituencies that, in party parlance, we call "black hole seats" where, when an election comes along, we are only too pleased to find enough people to sign the nomination paper and where, far from there being enough applications for nomination for a selection, we are delighted to find one person who might want to stand there. At the end of the election, there is a sigh of relief if we have managed to save the deposit, and the local people disappear again. Given some of the financial requirements in legislation, local parties are required to submit returns, but will they be required to submit returns to their national party for onward transmission? Is pressure going to be brought to bear on people who do their bit at election time and are quite happy to retreat into the background at other times? Will the Minister give some indication of where this duty will land and how it is intended to enforce it?

7 pm

Baroness Royall of Blaisdon: My Lords, what a lot of lovely questions and quite rightly, too, as this is a rather important debate. As I mentioned in my introduction, this amendment is being brought forward—yes, it is a government amendment and it is a government Bill—as a consequence of the deliberations and agreements which were made in the Speaker's Conference. It comes from all parties working together under the aegis of the Speaker, who established the conference to consider and make recommendations on how to improve the representation of women, the disabled and minority ethnic people in the House of Commons so that it better reflects society. The conference could also agree to consider other associated matters. It is a government amendment but it comes with the authority—if I may put it like that—of the other political parties, although I accept the comments of the noble Baroness about the views of the right honourable David Cameron about sexual orientation and so on.

This is not to do with quotas. We do not want the sort of quotas referred to by the noble Lord, Lord Alton. What we are attempting to do, as was said by the noble Baroness, Lady Howe, is to have a better view of the people who are representing us. All parties involved in the Speaker's Conference believe that to have a healthy democracy we need healthy representation, which involves representation from all sections of our society. In many ways we do not know, at present, who our representatives are because we do not have the data. This is a means of collecting that data. We do not have all the fine details; they have to be worked out with the political parties, the Electoral Commission and the Equality and Human Rights Commission. It is very early days but I can assure noble Lords that we will involve all these individuals and bodies when bringing forward the regulations. The collected raw data are not enough to change things, of course. I accept entirely that we have to change the culture. However, we need these data to be catalysts for change.

Noble Lords have spoken about the statistical accuracy of the data, and I draw their attention to the provision in subsection (7)(b) which is designed to ensure that the statistics published are not distorted by the number of people who decline to provide information. I stress this point—individuals do not have to provide the information; it is purely voluntary. This responds to the very important points about sensitivity made by the noble Baroness, Lady Morris. We must be sensitive toward those individuals who do not wish to provide the information, but we must also be sensitive in the way in which we use the information. The experience that the noble Baroness has in these issues is valuable and we could use it to our benefit. I hope that we can have a dialogue and the noble Baroness will work on this issue, so that we can use her experience when drawing up the regulations.

Lord Lester of Herne Hill: I am very grateful to the Minister. I am not making trouble—I promise—but what worries me is the principle not of collecting the data but of what they are used for. Let us assume that the House of Lords were reduced to 400 Peers—not a bad idea—and let us assume we then had to decide, on an appointed or elected basis, who should be here. Let us think, for example, about my own ethnicity. I am a Jew, but not a religious Jew. Would we then count that there are 300,000 Jews in the population—which there are—and there are six times as many Muslims—which there are? Would we then decide how many Jews and how many Muslims would be representative in this place? That is not a great idea, and it is that principle which I am trying to understand. God forbid that I should ever question anything that has been agreed by the Speaker's Conference, which includes members of my own party. I would like us, however, to reflect on that principle, or lack of it.

Baroness Royall of Blaisdon: Noble Lords are right to reflect on the use of data but I cannot imagine that they would be used as the basis for any quotas, as the noble Lord suggests. It would be up to us all, as participants in our political parties, religious organisations or whatever, to be vigilant and ensure that the regulations are drawn up in such as a way that they could not be used for that purpose.

Lord Alton of Liverpool: Was there any discussion about a lighter-touch approach to this? These data surely could be collected anyway. *Dod's Parliamentary Companion* is already available to answer many of the questions that many of us know the answers to anyway through the use of our own eyes when we look at this place, another place and other elected chambers throughout the United Kingdom. Was there no discussion between the political parties about simply doing this anyway without the need for legislation, which seems to be a very dirigiste approach?

Baroness Royall of Blaisdon: I cannot, in all honesty, answer the noble Lord's question. I know that the basis for the Government's amendment was discussions, not just within the Speaker's Conference but around the amendment tabled by one of my honourable friends in the other place, which had the support of many other parties.

I am going to answer as best I can some of the points made this evening. I am then going to take back the Government's amendment and reflect on various aspects of it. It will not necessarily be changed a great deal when I bring it back but I will reflect on it further.

I wish to make one or two other points. We have talked about whether prospective candidates should have to declare their sexuality. My noble friend Lord Alli made an interesting and important point about whether there should be a category of those who are gay and openly gay. All these things need to be reflected on. I concur with the noble Baroness, Lady Morris, about the discussions that have taken place with Stonewall, which is very sensitive to these issues. Stonewall agrees with the Government and the right honourable Theresa May that the non-mandatory monitoring of sexual orientation in Parliament is important. With careful safeguards in place to protect people's identity, Stonewall believes it is the right step, and it is the body that is most sensitive to these issues.

Baroness Northover: Does the noble Baroness agree that it is worth bearing in mind what the noble Baroness, Lady Howe, said about the importance of information and the need for transparency, and about ensuring that, when this information is available, pressure is put on all the relevant political parties to make sure that they are producing diverse people for election?

Baroness Royall of Blaisdon: Both noble Baronesses are right to make the points that they do. I also agree with the noble Lord, Lord Lester, that the primary task of political parties at the moment must be to ensure that there is no direct or indirect discrimination in their selection processes.

Let me answer a couple more questions. I was asked about ensuring the anonymity of data. Any data provided voluntarily would be aggregated nationally and there would be a requirement for data to be reported in such a way that individuals cannot be identified. On whether political parties will be breaching the Data Protection Act by publishing diversity data, the answer is no. While the data in question amount to sensitive personal data under the Data Protection Act, it is envisaged that parties will obtain explicit consent from candidates for the data to be collected and published in an anonymised form. The Data Protection Act already places that obligation on the party collecting data. I am sensitive to the points made by the noble Lord, Lord Wallace, and I can imagine some local parties finding it difficult to provide the information. I am not sure what is envisaged, but we will come back to that at a later stage in our proceedings. Northern Ireland is not governed by this provision, because equality is a devolved matter under the Northern Ireland Act.

I was asked why we are not requiring parties to collect data on marital status and pregnancy. The exclusion of marriage and civil partnership is consistent with the fact that they are protected characteristics in respect of the employment provisions in the Bill only; the rationale for the exclusion of pregnancy and maternity is the relatively temporary nature of such characteristics.

As I say, I shall take back my amendments but bring them forward in some shape or form at the next stage of the Bill, having taken into consideration some of the points made in this debate.

The Archbishop of York: When the noble Baroness goes away to think about it, could she take seriously the last intervention of the noble Lord, Lord Lester? It is the principle; you gather all those data, so that—what? If you do not resolve that principal question, a time will come when the Labour Party will be accused of not having enough of this kind, the Conservative Party will always be seen as the Church of England at prayer, or whatever, and the Liberals will be accused of being totally Methodist and nothing else, so I am worried.

What would happen if Parliament suddenly showed that, after one particular election, it was 99 per cent made up of black people? What would we then say about the next election? am worried about creating silos in which we are not going to be free, so the principle has to be established. It is not just about the collection of data but about eliminating indirect or direct discrimination within the parties themselves.

Baroness Royall of Blaisdon: My Lords, I take very seriously all points that have been made in this debate, including those on data collection and how those data are used. It is important also to note the point that the noble Lord, Lord Alton, made: that it would sometimes appear that our elected representatives are, indeed, unrepresentative of the people whom they represent. This is a means of trying to ensure, not by means of quotas, that our elected bodies in the United Kingdom really reflect the people that they represent. It is about finding a way to ensure that that happens.

Lord Lester of Herne Hill: I am not completely convinced about excluding,

"marriage and civil partnership … pregnancy and maternity",

on the basis of what has been said. Had I not, completely negligently, failed to move the amendment on teenage pregnancy in schools, we would have had that already included. I quite appreciate the point about employment and the rest, but here we are concerned with the political parties. It seems odd to me that if they are doing this properly, we are not looking at, for example, marriage and civil partnership. I would have thought that we should, but as I do not understand the principle I simply repeat that I do not understand why it should be in or out.

Baroness Royall of Blaisdon: My Lords, I shall respond to those things in due course.

Lord Alton of Liverpool: My Lords, I should like to reinforce the point just made by the noble Lord, Lord Lester. If there are to be questions, people would be interested in how many people are bringing up children, for instance, with all the strain and stress which that can entail, or how many people are over retirement age, and so on. The questions will be endless once we start this process, if we are to start it at all. I hope that the noble Baroness will think really carefully about that; I know that she has the wisdom to do so.

Amendment 108KA withdrawn.

Clause 106 agreed.

7.15 pm

Schedule 15 : Associations: reasonable adjustments

Amendments 108L to 108P not moved.

Schedule 15 agreed.

Schedule 16 agreed.

Clauses 107 to 112 agreed.

Clause 113 : Jurisdiction

Amendment 108Q not moved.

Clause 113 agreed.

Clauses 114 and 115 agreed.

Schedule 17 agreed.

Clauses 116 to 118 agreed.

Clause 119 : Jurisdiction

Amendment 108R

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

108R: Clause 119, page 75, line 28, at end insert—

"(8) In subsection (1), the references to Part 5 do not include a reference to section 60(1)."

Amendment 108R agreed.

Clause 119, as amended, agreed.

Clauses 120 to 122 agreed.

Clause 123 : Remedies: General

Debate on whether Clause 123 should stand part of the Bill.

Lord Hunt of Wirral: My Lords, in considering whether Clause 123 should stand part of the Bill I referred to the Explanatory Notes. These explain that the clause,

"sets out the remedies available to employment tribunals hearing cases under the Bill".

As the law stands, tribunals can make recommendations to the respondent regarding the outcome of a particular case for the benefit of an individual claimant. As we are informed by the Government, the clause would extend this provision so that the recommendation would not have to be applicable only to an individual claimant but could be designed to impact on the wider workforce so as to benefit more people. We have tabled this clause stand part debate because we would like to hear the Government's thinking on a number of issues.

First, will the Chancellor inform the House whether there have been any other changes to the nature of the recommendations other than the scope of their application? It seems that there may be differences in the way that these recommendations are made, or in the way that they are operated and enforced, when the recommendation is expanded from being to benefit only one claimant to benefiting a much larger group, and perhaps even a whole workforce. It would be useful to hear the Government's thinking on this subject.

Secondly, the Explanatory Notes state that where a recommendation has been made for the benefit of an individual claimant only and it has not been complied with, the tribunal can award compensation or increase any that has already been given. What provision has been made for enforcement if a recommendation applying to the wider workforce has not been complied with?

Of course we believe that the provisions must be enforceable. If an organisation has been acting illegally and subverting the equality provisions, it should have to obey the recommendations. These recommendations are what will allow the company to fix itself and that is the outcome it is important to ensure.

Perhaps at this point we should underline the fact that we think that the outcome is the important part of this recommendation. The crucial element is that a company that has been acting illegally will implement the recommendations and as a result it will become a better employer. The tribunal will be fully aware of the desired outcome. But it may not be fully aware of the different ways in which different companies operate and how best to achieve that overarching aim. We on these Benches think that it is therefore important to ensure that sufficient flexibility is retained in the recommendations and I reiterate that they should concentrate more on the outcome and less on the process, allowing companies the freedom to adapt their operations to achieve the shared outcome.

In another place, the Solicitor-General stated that it would be difficult to mandate an outcome because a company may not be able to achieve it. That is a fair point, but does the Chancellor of the Duchy of Lancaster also acknowledge the need not to make recommendations that require rigid attention to processes but guarantee nothing in terms of the outcome? Will she confirm how detailed the specifications in these recommendations will be and how closely companies will be expected to

[LORD HUNT OF WIRRAL]
conform to each detailed specification? Does she accept what I said about the outcome being the most relevant part—not the process—and that the process may necessarily vary from company to company in ways to which any tribunal would find it difficult to adjust? This is a complex area and it would be useful to hear the Minister's thoughts.

Baroness Royall of Blaisdon: My Lords, I certainly agree with the noble Lord, Lord Hunt, that the outcome not the process is important in respect of this particular clause as it is in most of the rest of the Bill. Outcomes affect the lives of people and the working conditions of employees.

Clause 123 is necessary because it sets out the remedies available to the tribunal in discrimination cases. These are a declaration regarding the rights of the complainant and/or the respondent, compensation, including damages for injury to feelings, and recommendations. All of those remedies are available under existing discrimination law, except for the power to make wider recommendations, which we are introducing through this Bill.

The noble Lord asked about enforcing wider recommendations. This power is not about penalising employers: it is about enabling them to comply with discrimination legislation in the future. In the case of recommendations that benefit an individual claimant, it is appropriate to order more compensation to be paid to the claimant for an employer's failure to comply with a recommendation. However, where the recommendation benefits the wider workforce rather than just the individual claimant, to award further compensation to the claimant for that failure would clearly amount to a windfall.

The noble Lord also asked whether there had been any other changes to the recommendation power other than the extension. The only difference is that the enforcement mechanism has been amended so as not to apply wider recommendations. Instead, they can be taken into account in any future cases involving the same employer. I hope that that makes sense. If it does not, I will write to the noble Lord.

We recognise that strong and effective enforcement is necessary to make a reality of legal rights. That is why we are extending the power of tribunals to make recommendations, so that recommendations can be made for the benefit of the wider workforce as well as the individual claimant. Allowing tribunals to make recommendations that benefit the wider workforce will help employers to understand what they need to do to comply with the law and reduce the risk of future discrimination against other employees. It should in consequence help to tackle systemic discrimination and therefore reduce the number of claims which individuals have to bring before a tribunal. That is a very important outcome.

Currently, in more than 70 per cent of cases brought before a tribunal a claimant is no longer working for the employer at the time of the hearing. Therefore, in a large majority of cases, tribunals cannot make a recommendation, because it would not benefit the claimant. This clause ensures that the wider workforce can benefit when an individual claimant brings a successful discrimination case, by allowing a recommendation to be made regardless of whether the individual claimant is still employed by that employer.

Employment tribunal chairs have significant expertise in discrimination law cases. Having heard the evidence in a case, they will be in a position to assess whether the discriminatory action was a one-off incident or evidence of systemic discrimination. This will enable them to recommend the type of action that it may be appropriate for the respondent to take.

When making a recommendation an employment tribunal chair will need to set out clearly the steps a company must take in order to comply with that recommendation as well as a timeframe in which those steps should reasonably be undertaken. This is made clear in subsection (3) of the clause.

Examples of recommendations which tribunals currently make include the following: to introduce an equal opportunities policy; to provide training to managers; or to introduce transparent and fair promotion criteria. We expect recommendations under the extended power to be broadly similar.

The extended recommendation power will be used in conjunction with the existing remedies available to the employment tribunal, such as damages. However, this clause makes it clear that in cases of unintentional indirect discrimination the tribunal may award damages only after considering whether any other order would dispose of the case. That is because damages may not be the most appropriate remedy in cases where an employer inadvertently operates a discriminatory procedure.

Lord Lester of Herne Hill: We strongly support this clause. The Minister has explained why. One of the problems about the existing order of things is that individual proceedings deal only with individual problems and yet often they relate to systemic problems which require systemic solutions. It is very important that the tribunal which has heard all the evidence is able to make recommendations on a wider basis. The Equality and Human Rights Commission will, of course, have strategic law enforcement as part of its functions. This ensures that in an individual case the tribunal does not order but recommends in ways that will obviate the problems that have arisen and, in my view, that will cut down litigation, cut down the excessive importance given to individuals and deal with the systemic problems. I hope that that reassures the noble Lord that this is an admirable clause.

Clause 123 agreed.

Clauses 124 to 127 agreed.

Clause 128 : Time limits

Amendments 108RA to 108RD not moved.

Clause 128 agreed.

Clauses 129 to 147 agreed.

House resumed. Committee to begin again not before 8.29 pm.

Northern Rock plc Transfer Order 2009

Motion to Resolve

7.29 pm

Moved By ***Baroness Noakes***

That this House regrets that Her Majesty's Government have not provided Parliament with financial details relating to the Northern Rock companies affected by the Northern Rock plc Transfer Order 2009 (SI 2009/3226) and have so arranged the restructuring that the negative procedure has been used, thereby avoiding the scrutiny of an affirmative instrument.

Relevant Document: 4th Report from the Merits Committee.

Baroness Noakes: My Lords, the House is indebted to the Merits of Statutory Instruments Committee of your Lordships' House for the sterling work that it does on the huge quantities of secondary legislation that emerge from the Government. In the case of the Northern Rock plc Transfer Order 2009, which was made by the Government on 8 December 2009, the committee reported its findings in just one week, on 15 December. It is the committee's fourth report that provides the basis for the Motion that I have tabled. I apologise to the House in advance for the length of my remarks; the more that I looked at the order, the more I was troubled by loose ends and unanswered questions.

The split of Northern Rock into a good and a bad bank has been well flagged for some time, and there is no surprise that this has been done. In broad terms, we on these Benches support the restructuring of Northern Rock in the interests, in particular, of privatising an unwelcome addition to the stock of government assets. While we were not surprised by the fact of the order, the surprise has come in the manner of the underlying transaction and the apparent determination of the Government to keep Parliament and taxpayers almost completely in the dark about it. Indeed, it is not only Parliament and taxpayers that have been sidelined by the Government's obsessive secrecy; creditors and other interested parties in Northern Rock have been ignored as well.

There are several issues that I wish to raise with the Minister about the order. I will start with the general issue of providing information to Parliament about the split of Northern Rock into a good and a bad bank. The Explanatory Memorandum to the order provides the bare minimum of information about how the order works. Paragraph 10.2 merely notes, as foreshadowed in the ministerial statement that was made on the day that the order was made, that:

"The Government intends to provide Parliament with details of the financial support provided to support the restructuring of Northern Rock in January 2010".

That begs the question of why the Government could not have provided the information to Parliament at the time when the order was made. It is clear from the sentence that I have just quoted that the Government had already agreed to provide the financial support when the order was made and must have known what that entailed. Can the Minister offer any credible reason for keeping Parliament in the dark?

The Merits Committee, in its measured way, observed at paragraph 7 of its report that:

"The House may feel that it would have been better placed to consider this Order if details of the financial package had been made available at the time the Order was made".

The House has not been given any chance at all to consider this order properly.

Two days ago the Treasury finally gave some information to Parliament by way of a Written Ministerial Statement some 25 days after the order came into effect. We learn that a further £3 billion of capital is being put into the good bank, now called Northern Rock plc, as well as £2.5 billion of loans into the bad bank, now called Northern Rock Asset Management plc. So behind the order is another £5.5 billion of taxpayers' money going into the Northern Rock black hole, and it took until Monday of this week for that fact to emerge.

Financial support, however, is only part of the picture. There is nothing in the document laid before Parliament that shows what the transaction actually involves. In order to get an inkling of what is involved, we have to go to the Treasury's website where various documents may be found. There is an 81-page Northern Rock plc transfer administration agreement, together with Appendix A of 21 pages and Appendix B of 96 pages. There are also two so-called "related documents", which together amount to 380 pages. If we work through all these documents, we can finally glean from page 68 of the transfer administration agreement that the interim figures for assets and liabilities transferred from the old Northern Rock to the new one are £11.7 billion and £20.3 billion respectively. The difference between the two—some £8.6 billion—is due to be paid from the old Northern Rock to the new Northern Rock. This is the figure of £8,581 million referred to in paragraph 3. These figures may give an idea of what is in the new Northern Rock—the good bank—but they tell us absolutely nothing about what is left behind in the bad bank. This lack of information about the way in which significant assets acquired with taxpayers' money are being scattered around is nothing short of shocking.

I now move to something equally shocking concerning the Banking (Special Provisions) Act 2008. Some noble Lords will recall that that Act was rammed through Parliament at huge speed in order to nationalise Northern Rock. This order is made under Section 8 of the Act, which allows the transfers covered by the order. That is not the issue. The issue is that, by virtue of Section 13 of the Act, orders made under Section 8 are generally to be carried out by the negative procedure unless the order makes provision for determining the amount of consideration payable by a transferee—under Section 8(6). If subsection (6) were involved then the order would be subject to the affirmative procedure. The Treasury has so constructed the transfers covered by this order that they have included no provision for determining consideration and have hence squeezed the order within the negative procedure, as was pointed out by the Merits Committee. That seems to be the Treasury at its most cynical: first, to draft the affirmative requirements of the Act in an obscure way and then to maximise its use to avoid parliamentary scrutiny.

[Baroness Noakes]

Unfortunately, I was out of the country nursing a broken arm when the Banking (Special Provisions) Act was passed but I know that the opportunity for scrutiny of the Bill was restricted. I could find no trace of the Government explaining that the implications of Sections 8 and 13 combined meant that parliamentary scrutiny of subsequent transactions would be easily sidestepped. An ordinary expectation would have been that any significant transfer, such as the one covered by this order, would have involved consideration being determined and hence would have been subject to the affirmative procedure.

This order says that ACo—the old Northern Rock company—is to pay the £8.6 billion I referred to earlier to BCo—the new Northern Rock company. An innocent reader of the order might conclude that that was the end of the story but that is far from the truth. The legal documents on the Treasury website, to which I have referred, show that this sum is only the preliminary estimate of the difference between the book values of the assets and liabilities being transferred. There is every intention and extensive legal provision for these preliminary figures being firmed up and changed before the final figure for the transfer is arrived at. The transfers took place under this order on 1 January 2010 but the transfer administration agreement was dated 7 December 2009. Hence the figures which netted out to £8.6 billion had to be illustrative figures, extracted from a balance sheet before that, or dreamt up by the lawyers solely for the purposes of the transfer administration agreement. The final figures will be as at 1 January 2010, presumably extracted from the audited accounts of 2009.

It was fully in contemplation at the time of the order and the transfer administration agreement that adjustments to the £8.6 billion would be needed. Yet, the only reference to this is in a small-print footnote in the Explanatory Memorandum, which is at pains to say that such adjustments, which could be considerable, are not "consideration", and the order does not say how the adjustments are to be determined. This is all convenient for avoiding the affirmative procedure. Can the Minister say how the adjustments will be effected? The order is clear as to the payment of £8.6 billion but unclear as to any adjustments. Can the Minister say whether the Treasury intends to use the power of modification in paragraph 22 of the order to achieve the final effect, as foreshadowed by the transfer administration agreement?

That brings me to the modification power in paragraph 22 of the order. This was also covered by the Merits Committee in its fourth report. Paragraph 22 allows the two Northern Rock companies to make a modification instrument. This is subject to Treasury consent. The Merits Committee said in paragraph 5 of its report that,

"as both companies are wholly owned by the Treasury, the House may have a view on how much of a safeguard this would provide".

I suggest that the House should have a very dim view of the safeguard involved. Furthermore, the Treasury's relentless desire to marginalise Parliament is also evidenced in paragraph 22. This provides for publication of the modification instrument in newspapers and online, but there is no mention of laying it before Parliament or any other mechanism for ensuring that Parliament is kept up to date.

I turn now to the impact of the transfer order on certain creditors of Northern Rock. I want to explore with the Minister whether the Government have behaved properly in relation to all those who were creditors of Northern Rock before the transfer order came into effect. The Merits Committee, in paragraph 6 of its report, drew the attention of the House to the lack of consultation on the order. Consultation was undertaken only with Northern Rock, the Financial Services Authority and the Bank of England, which is, I submit, so inward as to amount to no genuine attempt to carry out consultation at all. The Explanatory Memorandum notes merely:

"It was not considered appropriate",

to consult beyond that, but no reasons were given. I hope that the Minister will be more forthcoming this evening in the light of the comments that I am about to make.

The Merits Committee said in paragraph 6 of its report that,

"the House may wish to satisfy itself that the restructuring is in the public interest".

It pointed out that some former Northern Rock shareholders are unhappy that they have received no compensation for their shares. I do not wish to revisit the issue of compensation to shareholders, but I will concentrate on creditors, who have to be paid before there could be any question of return to shareholders. The Explanatory Memorandum to the order in paragraph 3.4(i) says that because of the way that the transfers were made,

"ACo will be no worse off than it is currently".

That is an arguable statement but, more importantly, it does not address the question of the creditors of ACo and whether they are worse off.

Some creditors of Northern Rock did not benefit from government guarantees given to Northern Rock when it ran into difficulty. Broadly, the Government guaranteed the retail depositors of Northern Rock, but not all of its wholesale liabilities. These guarantees have been rolled over into the two new companies by guarantees issued at the same time as the transfer order. Before the transfers, the creditors were creditors of the old Northern Rock company, which was a mixture of good and bad assets. After the transfers, some creditors will be creditors only of the company now known as Northern Rock Asset Management—that is, the bad bank.

I wish to raise with the Minister whether the Government have disadvantaged those creditors by isolating them in a vehicle which has only undesirable assets. How can it be reasonable to isolate the creditors in this way, especially as they have not been consulted? Can the Minister explain how the Government see the end game of the bad bank? What is the prognosis for the creditors of the bad bank? Do the Government believe that the creditors of the bad bank will have any losses to bear at the end of the day? In the light of that, can the Minister explain why the transfer order makes no provision for any good-will value to be attributed to the value of the business which is transferred to the new Northern Rock company by this order?

I assume that the ongoing business which was owned by the old Northern Rock company has a value. If it had no value, there would have been no reason for the Northern Rock name to be kept in the new Northern Rock company. If the business had no value, it would have been wholly improper for the directors of the Northern Rock company to have agreed to pay £10 million to its local, but not particularly successful, football team in order to promote the Northern Rock name.

7.45 pm

As neither the transfer order nor the transfer administration agreement deals with a value or good will, the old Northern Rock company has, in effect, given the Northern Rock business to the new Northern Rock company for nothing. Will the Minister say whether it is fair to the creditors left behind in the bad bank? I cannot see that it is. Will the Minister explain why this transaction, effected by the transfer order, does not amount to a preference either for the creditors transferred to the new Northern Rock company, which will include the Government, or to the shareholders of Northern Rock, who are also the Government? The Minister will be aware of the duties which apply to directors of insolvent companies. Can he say how it is that the transfers avoid the dangers of undue preference, which would almost certainly have arisen had we been dealing with transactions which arise in the private sector?

My last area of concern also relates to a creditor, although a rather different one, from the bondholders and similar, which might have been prejudiced by the transfer order. This concerns the pension scheme. I understand and look to the Minister to confirm that Northern Rock's pension scheme has been left in the bad bank. The pension scheme has a significant defined benefit section, which now appears to have been stranded in a company which may not pay all its creditors. I understand that there is a deficit in the scheme on an actuarial basis of some £60 billion. My source for this figure is the Minister's honourable friend Mr Frank Field who knows a thing or two about pensions. Mr Field has raised questions of whether this transfer to the good bank should have recognised the liability being left in the bad bank. He has concerns that the Government plan to dump any residual liability in the bad bank into the Pension Protection Fund, which is funded by employers generally and not the Government. Hence, there is a real issue of public policy at stake. I hope that the Minister can explain the position.

I have taken a long time to explain my concerns with this order. I have big concerns about the way in which the Treasury has treated Parliament, so that we are unable to scrutinise what is an important transaction properly. I have substantive concerns about whether the Government and Northern Rock have treated creditors fairly in the process.

We should seek to welcome the fact that the Government are trying to maximise the value of Northern Rock, so that some or even all the taxpayers' money can be recouped in due course. I hope that the Minister will agree that the principle of taxpayer value should not be used to ride roughshod over the interests of other parties. I beg to move.

Lord Newby: My Lords, I congratulate the noble Baroness on raising this issue and on having penetrated the depths of the Treasury website and read and understood the voluminous documents there. There is sometimes a view in Government that simply putting something on a website is informing the world about it. Unless one has the tenacity and the forensic skills of the noble Baroness, the fact that those documents are on the Treasury website is of very little relevance to most people because they simply have neither the time nor the facility to spend the effort, which she has clearly spent, in making sense of them.

Like her, we do not necessarily object to the principles under which the Government are operating. They are clearly trying to get a return from their investment in Northern Rock. Splitting it into a good bank and a bad bank is a perfectly reasonable way of doing it. However, as the noble Baroness said, it is unacceptable that the Government injected £5.5 billion, which, until 18 months ago, was a reasonable amount of money, into Northern Rock in such a way that, but for her interest, I doubt whether anyone would know that it had happened. Unless I am mistaken and I have not read every newspaper assiduously in the past 48 hours, the fact that £5.5 billion has been injected into the two Northern Rock banks has hardly been reported. Through negligence, or simply because of the methods that have been used, this huge further commitment of government funds has happened without notice or comment.

The noble Baroness reminded us of the passage in the Banking (Special Provisions) Act under which Northern Rock was nationalised. She said that there was very little time for scrutiny, and I was very surprised that the Minister shook his head slightly as she said that. My recollection is that the whole scrutiny process in Committee took place in one long and intensive parliamentary day. There certainly was not a chance to go into huge detail. There simply was not time to have thought through the issue that the noble Baroness raised. However, where I think she is wrong—although I may be underestimating them—is in the way that Sections 8 and 13 combined operate. To the extent that they were thought through by the Treasury, it almost certainly did not consider that 18 months later they could be to put together enabling something to be slipped through under the negative resolution procedure. My recollection is that that was not the air in which the Bill was brought forward and certainly was not the air in which it was considered. It was a panic measure. In our view, the Government waited far too long before nationalising Northern Rock, and when they did, they had to do it in a greater rush than would otherwise have been the case.

Somewhat typical of the way the Government are treating this business is their plan that, when the instrument is modified, it will appear on the website of the bank and in two newspapers. As we know, depending on the newspapers and when you put something in them, it creates public interest or does not. The fact that this order was laid just before Christmas, within a few days of the House rising for the Christmas Recess, is an example of how timing really matters in terms of the extent to which there is public understanding of what the Government are up to.

[LORD NEWBY]

The Merits Committee is again to be congratulated on pointing out the issues raised by this instrument. One area where I cannot agree with the committee is in its suggestion, in raising the interests of the shareholders, that just because some shareholders are still dissatisfied, that is at all relevant. The truth is that from the moment the Bill became an Act, because of the phraseology of the Act and the subsequent secondary legislation, it was clear that the shareholders were not going to get a penny. My concern is that the procedure that was followed—having valuations theoretically done—merely gave false hope to shareholders who were never going to get a penny. I am afraid nothing can be done about that.

The issue that interests me, which is raised only obliquely by this order, is what happens next. For example, is it the case, as was reported at the weekend, that the Government intend to merge the bad bank remainder of Bradford & Bingley with the bad bank of Northern Rock to make a very bad bank? If so, what is the timetable and strategy behind that? Secondly, in terms of the new good bank, the Government say they intend to start seeking a private sector purchaser. Can the Minister say something about the timetable that he has in mind? Our concern about seeking private sector purchasers has been that, partly in order to maximise their short-term revenue, the Government would, if not effect a fire sale of that part of the bank, do it on a shorter timescale than would maximise the return to the taxpayer. We would be most grateful if the Minister could give us some indication of what the Government's plans are for the good bank as well as the bad.

Lord Bates: I support my colleague on the Front Bench, my noble friend Lady Noakes, who has done the House a great service by tabling this order and moving it so ably and in such forensic detail. However, the events to which the order refers have already occurred on 1 January for the reasons that the noble Lord, Lord Newby, referred to. The Government should have learnt their lesson about acting in haste and avoiding consultation on this issue. The telephone numbers dealt with in this banking rescue package behove a greater level of parliamentary scrutiny. I associate myself with the concerns of my noble friend Lady Noakes about the treatment of creditors and the concerns of members of the pension scheme—both current and future beneficiaries. There will be quite a bit of anxiety about where this fund will end up. There will also be a great deal of concern among shareholders who are currently undergoing the independent assessment for compensation.

I am torn between two distinct emotions when I see this order before us this evening. The first is real excitement and enthusiasm. The prospect of a phoenix of a great north-eastern institution rising from the ashes of the great recession enthuses me greatly. One of the reasons why I believe we can have a degree of confidence in the new venture is that it has some outstanding leaders. There is a lot of talk, often ill informed, about bankers being the villains of the piece and about there being no such thing as a good banker. I want to inform the House that there is. One of them, Gary Hoffman, happens to be running both parts of Northern Rock—the plc and the asset management. He, his senior management team and the entire 4,500 strong workforce have done an outstanding job over the past 12 months in incredibly difficult circumstances to turn the bank around, to identify the true level of risk and to start rebuilding a tarnished reputation. During that time we have seen some of the original loan repaid to the Government at a faster rate than was anticipated. We have seen depositors returning to Northern Rock, with deposits doubling. We have also seen the very welcome prospect of Northern Rock re-entering the mortgage market at a time when that was greatly needed, doubling the amount made available for lending.

At the other end of the spectrum, I am reminded of my deep sense of anger and injustice at the way Northern Rock was handled in the period between August 2007 and September 2007. Indeed, it continued through the period while the Government dithered over whether to nationalise the bank, which led right up to February. Between Friday 14 September and Monday 17 September 2007, we saw the first run on the deposits of a UK bank for 140 years. Centre stage, we now know, were three elements which conspired to create a perfect storm and signal the onset of the recession for the UK economy. These failures were highlighted in the Treasury Select Committee report in another place which found that the directors of the Northern Rock, especially senior management, were the principal authors of the difficulties that the company faced. It went on to say that the failure of Northern Rock, while being a failure of the board was also a failure of the regulator. In the case of Northern Rock, the FSA appears to have systematically failed in its duty as regulator. However, it was not just the FSA that failed; according the Select Committee, the entire tripartite arrangements seemed to have failed between the FSA, the Bank of England and the Treasury for the financial supervision of the City, which had been put in place with considerable hubris by Gordon Brown as his first act in government. The Select Committee said that,

"for a run on a bank to have occurred in the United Kingdom is unacceptable, and represents a significant failure of the Tripartite system".

Then there was the publicising—the leak, by accident or design, of 13 September that Northern Rock had been granted emergency financial support, which led directly to the queues of investors around Northern Rock branches on the morning of 14 September. Those pictures were sent around the world in a matter of seconds and did immense damage to the reputation of UK financial services and of north-east England, with which Northern Rock is so closely associated. Just to be clear, it was this Government who set the regulatory environment; it was the regulatory environment, along with management, which failed; and the disclosure of sensitive market operations between the Bank of England which destroyed depositor confidence and shareholder value. We now know that there were potential buyers for Northern Rock in July and August 2007, but mixed signals, founded on a fear of competition rules set out by the Government, discouraged people from taking part and pursuing those interests further. We also know that emergency funds from the Government

were considered, but it was felt that this too may fall foul of EU rules concerning state aid. Mervyn King, governor of the Bank of England, told the Treasury Select Committee investigation that:

"I had still hoped and indeed pressed strongly for the ability to conduct a covert operation, but in the end strong legal advice amongst the tripartite authorities was that this could not be done".

That was September 2007; but one year later, in September 2008, of course they discovered that it could be done, and when HBOS got into difficulties, an emergency acquisition by Lloyds TSB was allowed. Bradford & Bingley had its retail operations sold to Grupo Santander, and the remaining part of the business was nationalised. The Government took a controlling stake in Royal Bank of Scotland and it was only a year later that they revealed by the Bank of England had made loans of £61.5 billion to these institutions. They had delayed that information from coming out for a year; if only they had done that with Northern Rock, there would have been a very different picture. The pain that was felt by the 2,000 employees who lost their jobs, the concern and anxiety felt by the depositors, and the loss of value for so many individual shareholders will be indelibly placed on the record of this Government.

Given this track record, the Minister will understand why there is scepticism bordering on cynicism on this side of the House that again we see a new approach presented for Northern Rock in this setting. It is a new way that has not been tried before. Of course, we do not know whether it will or will not work, but neither do the Government—yet it is Northern Rock that is again the institution being experimented on in this respect.

The Government, the Chancellor of the Exchequer who announced the tripartite regime, and now the Prime Minister are centre stage. Now, the same bodies—the Treasury, the regulator and the Bank of England—who failed in 2007 are the ones to come forward to tell us that we can trust them—it will be all right and they will get it right this time. The people of the north-east will wait and see.

Lord Davies of Oldham: My Lords, we are all grateful to the noble Baroness for giving us the opportunity to have this debate. However, we noticed that the Conservative Front Bench in the other place did not provide such an opportunity. If there is to be a debate in the other place, it will be on the initiative of a Back-Bencher. That should put into context just how much anxiety there is about this order and what the Government are seeking to do.

At the beginning of his speech I was somewhat grateful to the noble Lord, Lord Bates, because at least he started to put the order and the reconstruction of the bank into the context of the events that led up to the crisis in Northern Rock two years ago. But I was somewhat disappointed when he continued by saying that this was yet another experimentation on Northern Rock. We are not about experimentation. He must know above all, as his former constituents were greatly involved and threatened at the time, that the queues at Northern Rock were because the bank was in very serious trouble.

There was no experiment by the Government. The measure received the most lukewarm endorsement from that side of the House, as we prepared to take what were effectively emergency measures with regard to the bank. We did that both for the bank and, I hasten to add, the deposit holders in the bank at that time. Because it was the first bank to be affected, the Government were quite rightly anxious that were that bank allowed to fail, the problems in the banking sector and for the wider British economy would have been profound.

Lord Bates: In the light of the Treasury Select Committee report that I was quoting from, will the Minister acknowledge what it found—that, in the case of Northern Rock, the Government, the regulator and the Bank of England got it wrong?

Lord Davies of Oldham: If the noble Lord is going to apostrophise the British Government as getting regulation wrong at that time, what about the collapse of banks in Germany? What about the threat to banks in France or the American crisis, where one of the largest banks in the world collapsed in the United States? Is he somehow suggesting that this is a little local difficulty produced by mismanagement by the British Government?—of course not.

The noble Lord certainly ought to be aware of that. I know he is, with his usual acumen. The noble Baroness is certainly aware. I know that she was not able to participate in our debate on the Bill at that time, which was a great misfortune and we sorely missed her on that occasion. I am not so sure that she should strive to make up for her inability to participate at that time by engaging us in debate today, but she has the option to do that. But the noble Lord will recognise, I am quite sure, that emergency action was taken at that time.

The noble Lord, Lord Newby, indicated how hard we had to work on legislation over a very short period of time to deal with this, because the crisis was upon us. Is it contended on the other side that somehow the Government ought not to have acted in this way? These are somewhat misplaced criticisms of the Government's strategy, which I will develop in a moment in response to questions about how the Government intend to set out the future for Northern Rock. One has to face the fact that Northern Rock was nationalised at a period of very great crisis. It will not do for the noble Lord to abstract from our position that the problems of Northern Rock at that time were not part of a much wider issue.

The Government acted with dispatch and, I should add, with success. We are now moving to the stage whereby restructuring is necessary to maximise the company's capacity for new lending and protect taxpayers. We said at the time that we certainly wanted to protect depositors—lenders to the bank—and those with mortgages. We needed to protect the ordinary citizen and restore a degree of confidence in the wider financial system. However, we said all along that the other great objective was to protect the taxpayers' investment in Northern Rock. This is the next stage in which we seek to do that.

I appreciate that these are significant sums and that therefore they should be the concern of Parliament. However, the Government are acting entirely properly. It is part of a wider government policy to encourage and support a well functioning mortgage market, whereby

[Lord Davies of Oldham]
lenders lend responsibly and borrowers have access to a wide range of mortgages that they can afford to repay. The sooner that we are able to restore that confidence in mortgages and their supply, the greater the pace of economic recovery will be. That will also benefit our citizens, because we should not underestimate the stresses and strains of people's inability to obtain mortgages at the level that they would like.

The restructuring of the bank successfully took place on 1 January 2010 and, as a result, two companies are 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, as well as the government loan. Everyone knows that our long-term objective is to restore these companies to the private sector when they are a position to command a price which safeguards taxpayers' interests. Both entities will continue to be wholly owned by the Government and will operate at arms' length from them on commercial principles. I am grateful to the noble Lord, Lord Bates, for indicating that he takes a keen interest in the management of Northern Rock, for whom he has considerable regard. UK Financial Investments has taken on the management of the Government's shareholdings in the two companies.

As regards the restructuring, I understand the criticisms of the noble Baroness, who is right to test the Government on this order, but I hope that I am able to refute them. Her speech would have been rather better if she had recognised that the decisions are good news for Newcastle, the north-east region and the wider UK banking sector. They are important for Northern Rock and its staff, because 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, Northern Rock will offer savings and mortgage products, increase competition in the sector and provide consumers with more choice. I should have thought that there would be universal rejoicing in the House at that development, but noble Lords opposite have concentrated overwhelmingly on the down side.

With the restructuring process now complete, the bank and its team can move forward towards playing a full role in supporting the recovery of the economy. We should all note that the recovery successfully began in the last quarter of last year. The Government have made it clear that they want to see a well functioning mortgage market, where lenders lend responsibly and borrowers have access to a wide range of affordable mortgages. The successful launch of the new Northern Rock is a significant step towards meeting those aims. As we have stated, our objects are quite clear: we want to see Northern Rock flourish, to support financial stability, to protect depositors' money and, in due course, to protect the interests of taxpayers and to repay them. In the White Paper, *Reforming Financial Markets*, the Government announced that the conditions for the eventual sale of Northern Rock would be that it must promote competition for retail services, secure the best possible return to taxpayers and ensure that Northern Rock continues to lend to home owners.

8.15 pm

In his Written Ministerial Statement on 8 December, my right honourable friend the Chancellor said that the Government will provide full details of the financial support provided by them to support the restructuring in January. One charge from the noble Baroness was: why was that not spelt out in detail in the order? Something like 40 or 50 pages would have been needed for the order to spell out all the details which the noble Baroness suggested should be in it. The Government have made clear what the order involves but I do not think that it is appropriate criticism to suggest that a parliamentary order would have been of that dimension. The Government have made it clear that they have provided Northern Rock with exactly £1.4 billion of capital support in order that the company can meet its Financial Services Authority regulatory capital requirements. The Government have also provided a commitment to the FSA that up to £1.6 billion of additional capital support would be provided to Northern Rock (Asset Management) should the need arise in order for Northern Rock (Asset Management) plc to continue to meet its regulatory capital requirements. Those amounts are within the £3 billion of capital support announced by the Government in August 2008. The Government have been perfectly open and clear about those matters. The outstanding government loan owned by Northern Rock (Asset Management), as at 31 December 2009 stood at approximately £14.3 billion. This loan increased on 4 January 2010 by £8.5 billion, taking the outstanding loan balance to £22.8 billion. It is suggested that all that could have been provided in advance. I make two comments about those figures. First, it will be recognised that there is market sensitivity about government commitments and resources of this kind until the order is through and action has been taken.

Baroness Noakes: My Lords, it is often too easy to cite market sensitivity as a reason for not giving information to Parliament. As I was asking only for information about how these transfers were being affected and what the Government's commitment was—the Minister was at pains to say that this was somehow within the envelope of money which had been described at an earlier stage—could he describe the market sensitivity in a little more detail?

Lord Davies of Oldham: My Lords, I want to emphasise that the Government have acted entirely properly in regard to this order; they are giving the facts and making the sum involved clear as soon as they are able to do so. The problem with regard to the position before 1 January was obvious enough; namely, that it is not clear what the total figures will be on the commitment in these terms. After all, it will be recognised that there is a constant flow of assets both ways as regards the company. Consequently, the Government have to be in a position where they can give quite definitive figures. That could not be done in December. The noble Baroness will recognise the reasons for that. The Government have acted entirely properly and have made clear what the figures involve.

The suggestion has also been made that the issue has been wrongly presented as far as being an order is concerned. I am of course aware of the Merits

Committee's anxieties—the noble Baroness identified some of them—and its concerns about the procedure adopted for the order. I want to address that point. The Banking (Special Provisions) Act 2008, in whose passage the noble Baroness participated and where we had rather more time for debate than we did on Northern Rock, provides that where a transfer order of this kind includes provision for determining the amount of any consideration payable by the transferee for the transferred property, the affirmative procedure applies. If that situation had obtained with Northern Rock, the Government would certainly have followed the normal form with an affirmative order.

If part of the business of Northern Rock was being transferred to a third party purchaser who was paying the purchase price of that transfer, and it was necessary to provide a process by which that price was to be determined, which would of course have involved a valuer, the affirmative procedure would have applied. However, that was not the case here. The value of the assets and liabilities being transferred to the new company is matched. The new company is not paying any consideration or price for the assets and liabilities being transferred to it, which is why it was entirely proper to consider this under the negative procedure.

I also highlight the obvious fact that the Joint Committee on Statutory Instruments has now considered the transfer order and did not consider it appropriate to draw it to the attention of the House, so I reject this issue of the procedures that the Treasury has been involved in and that the Treasury somehow had something to hide. It is clear that the Treasury has acted entirely appropriately, and we have the negative procedure because that was appropriate. However, there is the opportunity for a prayer to be heard against it, and we have the advantage of that in the noble Baroness's prayer this evening.

The noble Lord, Lord Newby, asked several important questions. I cannot at this stage give a timescale for when Northern Rock will emerge from its position into a situation where it can be ready for the market, but that is the Government's objective. As the noble Lord, Lord Bates, indicated, we have trust in the management making good progress with putting the bank on a very secure basis. The noble Lord, Lord Newby, was anxious also about the order, and mentioned that it might have been laid just before the Recess to avoid parliamentary scrutiny. I hasten to tell him that the order was laid well within time—21 days elapsed before it came into force—so it was entirely proper in this instance; I hope that he will accept that.

The noble Lord also asked whether there was any question of Bradford & Bingley and Northern Rock merging. That is certainly an option; the noble Lord would not have raised it if he did not think it a possibility. However, no decision has been taken either that it should happen, or regarding any possible timetable if the decision were that that was in the nation's interest.

The noble Baroness, Lady Noakes, asked about the creditors in the Northern Rock (Asset Management) position. Northern Rock (Asset Management) is going through an orderly wind-down, just like Bradford & Bingley, and all creditors will indeed be paid in full as and when liabilities mature. There is no question of creditors being sold short in those terms; nor would the Government be party to any position where that could possibly be so.

I am conscious that I have spoken for a considerable period and that, given the plethora of questions that I have been asked, I have not answered every single one. However, I hope that the noble Baroness will give me credit in two respects. Process was one dimension of the Motion. The Government are confident that they have addressed process and information entirely appropriately. We are conducting with Northern Rock a restructuring which honours our initial undertakings when it was nationalised; namely, that we act properly and in the nation's interest so far as the bank, its creditors, its depositors and those who hope in due course to borrow from it are concerned. We are acting entirely appropriately, as we were two years ago. We shall take the slings and arrows of somewhat outrageous criticism that come from opposition Benches, knowing full well that, when the two years have elapsed, following the degree of success which has attended the nationalising of Northern Rock, we shall see the prosperity also of the institutions.

Baroness Noakes: The Minister said that he had not managed to answer all my questions. In fact, I asked him relatively few questions. There is one that I would like him to answer before I conclude, which relates to the pension fund. The Minister responded in respect of creditors globally, but I raised some specific questions about the pension scheme and the defined benefit element of it. Mr Frank Field has said in an article in *Pensions Week* that the pension scheme has been left in the bad bank and that the only destination for it will be the pension protection fund, with the potential for less than full pensions being payable, because the PPF does not guarantee by a long way full payment of pensions. Is that so?

Lord Davies of Oldham: My Lords, when the noble Baroness looks at *Hansard* tomorrow, she will see the number of questions that she raised, which I manfully but probably unsuccessfully sought to answer as fully as I was able. However, I thought that I had perhaps failed to answer her question on pensions through my deficiency in handling my papers. Such is the complexity of the issue, I am not in a position to respond now, but I shall of course write to her.

Baroness Noakes: My Lords, I thank the noble Lord, Lord Newby, and my noble friend Lord Bates for their important contributions to the debate. As the Minister knows, I was keen to raise issues related largely to process and whether Parliament had been given a proper opportunity to consider the order. I remain unconvinced by the Minister's answers. At one stage, I think that he suggested that if a certain number of pages had to be included in the paperwork that came with an order it would make it unacceptable or too detailed. That rather misses the point of the role of Parliament. As the noble Lord, Lord Newby, was kind enough to point out, we should not have to go devilling around websites looking for several hundred pages of information and to interpret them ourselves.

I remain concerned at the Government's saying that selling something to a third party would be a consideration and might require an affirmative order, but if one

[Baroness Noakes]
transfers to something that is not a third party—although as between two companies, they are third parties—it is simply mathematics and it is not paying a price. However, it is a price and it could be argued that it was a consideration which should have received an affirmative order. I shall not pursue that line further today. In addition to the process orders, where I think the Minister has not answered, I raised some substantive issues. I hope that he will write to me on the pension scheme. If necessary, we will debate that further in the Chamber.

I was interested to hear the Minister say that in the orderly wind-down of the bad bank, all the creditors would be paid in full in Northern Rock (Asset Management). I would like to study further in *Hansard* what the Minister has said, because it is an extremely interesting statement which may result in further discussions in your Lordships' House. I beg leave to withdraw the Motion.

Motion withdrawn.

Equality Bill

Committee (5th Day) (Continued)

8.30 pm

Clause 148 : Public sector equality duty

Amendment 108S

Moved by ***Baroness Young of Hornsey***

108S: Clause 148, page 94, line 9, at end insert "take such steps as it reasonably considers appropriate and necessary to"

Baroness Young of Hornsey: My Lords, my noble friend Lord Ouseley offers his apologies for not being able to attend this evening to move this amendment. He has asked me to do so instead.

The public sector equality duties under existing legislation are groundbreaking. They require public authorities to have due regard proactively to eliminating discrimination and promoting equality of opportunity in the design of all their policies and practices. These duties have been invaluable in bringing about a culture shift in such organisations. However, the duty has failed to achieve the coherent, broad, systemic and co-ordinated culture change which is needed to eliminate discrimination, or at least mitigate its impact; and to effect equality of opportunities and outcomes.

The duty in Clause 148 of the Bill, which closely follows the models in existing legislation, could go even further by making it clear that public authorities must not only have due regard to equality considerations, but take action. A key benefit of the existing duties is that public authorities are required to think about equality in everything they do, not just those activities which are most obviously relevant to equality, such as employment. This has been useful in bringing attention to the more subtle causes of inequality and the proposed amendment in no way alters this, retaining the requirement that a public authority should have due regard to equality considerations in everything it does. However, the duty would be improved if public authorities were required not only to have due regard to equality but to take steps that they reasonably consider appropriate and necessary to the achievement of equality.

Public authorities would be required to identify and take steps which are appropriate, and those which are necessary. Necessary steps are those without which equality of opportunity is impossible; appropriate steps are those which, while not strictly necessary, are desirable and proportionate in the circumstances, having regard to their importance and a range of key considerations, including, for example, cost. At present, public authorities on the whole pay lip service to this duty and are able to avoid taking the meaningful action that can lead to equality outcomes and being held accountable for their actions or inactions.

The amendment also seeks to ensure that there is no regression from the level of protection afforded to disabled people by the existing disability equality duty. Therefore, the Bill should be amended to reflect the duty under the Disability Discrimination Act, which requires public authorities to take account of people's disabilities, even where that involves treating disabled people more favourably than others. This is important to draw public authorities' attention to the distinction between more favourable treatment which is permitted under the Bill, such as positive action, and that which is obligatory for disabled people under the Bill. It is essential that the duty under the Bill should fully recognise that true equality for disabled people will not be achieved if they are simply treated in the same way as others.

Cases on the existing public sector equality duties have been important in establishing that they have teeth. To meet the duty, a public authority must have regard to equality considerations before a decision is made in relation to a policy. It must do so rigorously and with an open mind.

Compliance with the duty is not a question of ticking boxes. Rather, regard to equality must be integrated into public authorities' core functions and is a continuing duty requiring attention throughout the development and implementation of a policy. However, the courts have been equally clear that the duty,

"is not a duty to achieve a result, namely to eliminate unlawful racial discrimination or to promote equality of opportunity and good relations … it is a duty to have due regard to the need to achieve these goals".

The distinction is vital.

The overwhelming lesson to be learnt from our experience of equalities legislation over the past 40 years is that we need systemic reform, not solely individual redress. Now is the time to build on the success of the current equality duties by making them more effective. The amendments provide the opportunity to make this clause effective to achieve the impact and outcomes intended. I beg to move.

Baroness Coussins: I rise to speak to Amendment 110A in my name, supported by the Discrimination Law Association and the Disability Charities Consortium, representing the views of 12 organisations.

Clause 148 is one of the most important clauses in the Bill. Its potential impact is huge so it is vital that it states clearly what Parliament expects of public bodies and others carrying out public functions. My amendment ensures that public authorities take action to meet their duties and do so in a transparent way. The key difference between my amendment and the ones in the

name of the noble Lord, Lord Ouseley—spoken to by the noble Baroness, Lady Young—is that mine focuses on the demonstration of compliance rather than a more closely defined duty in itself. All these amendments are complementary; mine simply goes one step further and could arguably subsume the others.

The extra step on demonstrating compliance is needed because the track record to date on compliance with the public duty in the various existing laws is, as the noble Baroness, Lady Young, said, far from perfect. Some of the 40,000 relevant public authorities have taken action: changing policies and practices, training staff and involving service users in making changes. Sadly, this has not been the case in all authorities. Far too many have barely begun to consider their functions from an equality perspective, or at most have produced a form of words on paper and little more.

The basic requirement in Clause 148 as drafted is that due regard must be had to the three matters listed in paragraphs (a) to (c) of subsection (1). Having due regard to equality should not merely be the setting of aspirational goals, showpiece displays or events but direct and concrete actions within all relevant functions of a public body. Due regard does not mean, for example, that race equality is less important when the ethnic minority population is small. Neither does it mean that an authority can claim that it does not have the resources needed to meet the duty.

One way I expect the duty to be fulfilled in line with my amendment is, for example, if a primary healthcare trust became aware of higher infant mortality rates among certain ethnic mortality groups in its area. To comply with the duty, I would expect the trust to identify the particular needs of women in those communities and the gaps in their services in order to make suitable and effective ante-natal and post-natal provision, including if necessary increasing or reallocating resources.

I am looking for something similar to the existing disability equality duty and there are many examples where that has made a significant difference. An example provided by the Disability Charities Consortium is the complaint from a local group against a large metropolitan authority which had not produced an equality scheme, saying instead that it had included relevant actions in various parts of its business plan. The local group was unable to understand precisely what the authority was doing specifically to improve services for disabled people. The disability equality duty requirement meant that the DRC was able to insist on a clear statement with all the details being asked for. Without this it would have been enormously resource intensive and difficult to evaluate the authority's actions.

The aim of my amendment is simply to set a similar statutory minimum standard for compliance with the public sector equality duty to ensure transparency and accountability. I believe that with such a standard in place, the bodies responsible for enforcement or monitoring would have a clearer and more effective basis to track progress and to challenge bodies with poor evidence of compliance.

The Government are rightly concerned to promote evidence-based policies and this mechanism would deliver the means to do just that. I ask the Government to agree to think again between now and Report about how best to put in the Bill an acceptance that minimum compliance standards with the public duty must be explicitly required if this section of the Bill is to stand any chance of fulfilling its rich potential and not be just a token gesture.

Baroness Campbell of Surbiton: My Lords, I would like to begin by speaking to my amendments while I still have the puff. Then I would like to make a few comments on the other amendments in this group. The noble Baroness, Lady Wilkins, will assist me, as the usual channels have agreed, and we will see how far I can get.

I am extremely pleased to speak to Amendments 109CA and 109CB. They address what is for me the holy grail of the Equality Bill—the public sector equality duty. They provide that, in having due regard to the need to advance equality of opportunity, a public body must give consideration to the fact that meeting the needs of disabled people may, in particular, involve taking steps to take account of their disabilities. This specific requirement is missing from Clause 148 as it stands, giving rise to well-founded fears of potential regression in the rights of disabled people.

I should explain that this amendment is the product of lengthy discussions between me, the Disability Charities Consortium and our legal advisers on the one hand, and the Government on the other. Together we have spent a great deal of time working out the best way of avoiding any regression from the disability equality duty on this vital point. I am delighted to say that there has been a meeting of minds and that this amendment is supported by the Equality and Human Rights Commission, the disability lobby, including the disability discrimination experts, and the Government. Yes, it can happen. I am therefore very hopeful that the Government will accept this amendment. It is a huge breakthrough and I extend my sincere thanks to all involved.

I hope that the Committee will allow me to explain in more detail why the amendment is so vital and what it will mean in practice. Clause 148, as drafted, requires public authorities to have due regard to meeting the needs of different groups and says that this may involve more favourable treatment, but only to the extent permitted by other parts of the Bill. However, this makes no explicit mention of the differentiation between the approach to disability and the approach to the other protected characteristics. What is required in meeting the needs of disabled people is vastly different from what is required for other groups.

For example, a deaf user of British sign language who requires a sign language interpreter cannot have his or her needs resolved through alternative means, in the way that, for example, a hearing person with limited English could, by taking English lessons to resolve the problem. A blind person cannot learn to read standard print to access information. A wheelchair user cannot use transport in the way that a non-wheelchair user can. Because of this, the law currently requires public authorities to have due regard to the need to take account of disabled persons' disabilities, even where that involves treating disabled people more favourably.

[Baroness Campbell of Surbiton]

Tonight I have a table. It suddenly appeared from nowhere. This is because I have a special requirement because I cannot hold papers. I do not think that anyone else requires that; it is specific to my disability. So thank you, the House.

As I have repeatedly explained to all those I meet, equality does not mean treating everyone the same; it means providing an environment where we can all access life's opportunities equally. Reasonable adjustments tailored to our particular disability-related needs lie at the heart of disability equality. Without them, we are marginalised at the fringes of society.

Baroness Wilkins: I shall continue my noble friend's speech from her notes on her behalf. Without amendment, Clause 148 would mean that when a public body is faced with the needs of disabled people, it could tend to take the same approach that it takes for other protected characteristics, such as religion or belief, where there is no provision or reasonable adjustments as such and where scope for more favourable treatment is narrower. It could result in public bodies thinking that they need to do less to take account of the needs of disabled people than they do under the current disability equality duty, and the consequences of that would be disastrous.

The amendments avoid that danger by reminding public authorities that a distinctive approach is required for disability, involving close attention to the needs relating to our particular disabilities. Those needs may require more favourable treatment and, of course, often demand reasonable adjustments. The amendments achieve this without in any way disturbing the provisions for addressing disadvantage faced by other groups.

I turn to the other amendments in this group. First, there were the amendments in the name of the noble Lord, Lord Ouseley, spoken to by the noble Baroness, Lady Young. While I am sympathetic to the aim of Amendment 108S, it could, as drafted, weaken the equality duty. It says that public authorities can do what they consider reasonable, appropriate and necessary. That would give them a larger degree of discretion and therefore greater scope for doing nothing.

Baroness Campbell of Surbiton: I do not support Amendment 108T. While I support the notation behind it, inserting this vital principle as a separate limb would divorce it from the overarching duty to advance equality of opportunity. I worry that this would mean that public bodies would not need to do anything to remove or minimise the disadvantages that we face.

I support Amendment 110A in the name of the noble Baroness, Lady Coussins. It would ensure the continuing transparency of public authorities in delivering equality, and therefore their accountability to disabled people—a major feature of the current disability duties.

I am truly delighted at the progress that we have made on this issue. I am confident that these amendments enable us to press on with delivering an effective new general equality duty for the public sector without the threat of regression on the disability equality duty—a regression that many of us feared.

Lord Lester of Herne Hill: My Lords, we fully support the amendments of the noble Baroness, Lady Campbell, for all the reasons she has given. We cannot support the amendment of the noble Baroness, Lady Coussins, as we believe it goes too far in imposing an obligation to prove negatives.

Lord Hunt of Wirral: My Lords, this is such an important debate. It is a little sad that it is all grouped together because there are a number of different issues. As we have just heard from the noble Baroness, Lady Campbell of Surbiton, there are agreements and disagreements across the group. I have listened with great interest to the speeches of the noble Baronesses, Lady Young and Lady Coussins, and it is good to know of both the sympathy and support of the noble Lord, Lord Lester of Herne Hill. We have also received a briefing from the Equality and Human Rights Commission about this whole area and have done our best to consider its content very carefully.

Everyone is in agreement that the success of the proposals in the public sector equality duty rely on how effective it is and how much impact it has on reducing inequalities. We all want to ensure that the seemingly vague duty that is laid down in the Bill does not just result in some form of box-ticking exercise that will burden businesses for very little gain in reducing the inequalities it is supposed to tackle. For this reason, I feel that all the amendments in this group have sense at their heart and I understand that the intention behind them is to ensure that not only should due regard be paid to eliminating discrimination but that there should be a much more proactive element. The amendments try to ensure that public authorities cannot just take into account the need to reduce disadvantages between different groups, meet the needs of different groups and encourage participation in areas where it is low. They attempt to enshrine in legislation the necessity for real action to be taken rather than simply paying lip-service to having taken certain factors into account.

Nevertheless, having said that, and, I hope, having expressed sympathy with the intention behind the amendments, I am not sure they are the best way of ensuring the success of the measures. The requirement to "take account of" and "take such steps" seems already to be included under the duty. I am not clear, therefore, what these amendments would add. They would have the effect of requiring public authorities to identify and take which steps are "appropriate" and which are "necessary". This can obviously be flexible and with reference to the specific authority concerned. However, the object is that the commission should be able to take action against organisations which,

"fail to identify strong enough measures to promote equality and if they fail to take such measures".

Does the Minister agree that the most important factor is to assess the outcomes of such measures rather than involve the commission too heavily in the process of identifying targets for each authority? Thanks goodness some of my noble friends are not here as I have some responsibility for the concept of targets, I have to admit. I always felt that at least they were a way to point people in the right direction. But I have now learnt that there are some drawbacks to this process. It risks merely increasing the bureaucratic burden on businesses and organisations while not addressing the real issue, which I still believe, and I think everyone agrees, is achieving the right outcomes.

The second issue contained in this group—

The Lord Bishop of Liverpool: The noble Lord said that he was not sure what the amendment would add to the Bill. I was particularly struck by the point made by the noble Baroness, Lady Campbell. She said that the Equality Bill was not about equality of opportunity, but equality of access. That point was powerfully made when a report about disability was brought before the General Synod of the Church of England. There was a fine debate and one of the most compelling points was about the equality of access. The clarity that is added by this amendment is that it emphasises the importance of access to services and not just equality generally.

Lord Lester of Herne Hill: Before the noble Lord concludes, I wonder whether he will consider that one of the other virtues of the amendment moved by the noble Baroness, Lady Campbell, is that it emphasises—as did Aristotle and Aquinas after him—that like cases should be treated alike and unlike cases treated differently? What is being emphasised here is that you cannot treat the disabled exactly like everybody else because they have special needs. Highlighting that in these amendments brings home to public authorities the importance of that principle.

Lord Hunt of Wirral: I thank the right reverend Prelate the Bishop of Liverpool and the noble Lord, Lord Lester, for making points that are very effective in their own right rather than being questions to me. I never like having questions that I cannot answer, so let me pay tribute to them as effective points in their own right.

The right reverend Prelate the Bishop of Liverpool made a strong point. How on earth could I disagree with the point about access? I remember well that some of my early service was spent in assisting at the Royal Liverpool Children's Hospital at Heswall, as it then was. As well as fighting to prevent it from closing, I remember being educated in the whole area of special needs. It is such a good phrase because it encapsulates all that we are seeking to identify. But how do we ensure that those special needs are taken properly into account? That is what the debate about.

I understand why some of the amendments are designed to ensure that there is no regression from the existing disability equality duty contained in the Disability Discrimination Act, where public authorities must take account of people's disability even when that involves treating disabled people more favourably than others, as the noble Lord, Lord Lester, has just examined very carefully with the rest of us. I understand that that duty would be included under Clause 13. The Minister must correct me if I am mistaken. However, certainly from these Benches, we are keen to ensure that there is no regression from the Disability Discrimination Act in the public sector equality duty. That is absolutely at the heart of all that is necessary and must be protected. I now look forward to hearing a positive response from the Minister.

The one lesson I have learnt over the years is that the word "equality" does not mean treating everyone in the same way. To treat people with disability in the same way would mean that they would never have any opportunity to achieve equality. It would be useful to hear from the Minister the Government's reasoning for the fact that the duty is not explicitly stated here. That is one of the key questions I wanted to put, but I will be very interested in the Government's response to all the points that have been made in this important debate.

9 pm

Baroness Thornton: With the leave of the Committee, I will speak first to Amendments 109CA, 109CB and 108T, the first two being in the name of the noble Baroness, Lady Campbell of Surbiton, and the third being in the name of the noble Lord, Lord Ouseley, and spoken to by the noble Baroness, Lady Young of Hornsey.

Clause 148(1) requires public bodies to think about meeting the needs of people from all protected characteristics. Clause 148(5) makes it clear that, in some circumstances, complying with the duty might mean treating some people more favourably than others. We recognise that the needs of disabled people are different from the needs of persons who share one or more other protected characteristics and we have sympathy with the argument that the lack of explicit reference to disability may, in practice, lead to public bodies thinking that they need to do less than they are required to do under the existing disability equality duty. This is why we have been engaged in discussions with the noble Baroness, Lady Campbell, and others. Under no circumstances would we want public bodies to misinterpret the new duty as imposing lesser requirements than the existing disability duty. I am not going to go into any more detail about the reasons for that because they have been eloquently and adequately described by the noble Baroness, Lady Campbell of Surbiton. We are happy to accept her amendments and I thank her for tabling them.

I assume that Amendment 108T is intended to achieve the same effect as Amendments 109CA and 109CB. I regret that the amendment does not achieve its intended effect because it distinguishes having due regard to the need to advance equality of opportunity from taking account of the disabled person's disabilities, the effect of which is to imply that having regard to the need to take account of a disabled person's disabilities does not involve removing or minimising their disadvantages, meeting their needs or encouraging them to participate in public life. The noble Baroness, Lady Campbell, and other noble Lords, have recognised that problem with the amendment, so I am going to ask the noble Baroness, Lady Young, not to move it.

I will now speak to Amendments 108S, 109A, 109B, 109C, 109D and 109E, tabled by the noble Lord, Lord Ouseley, and Amendment 110A, tabled by the noble Baroness, Lady Coussins. The equality duty, as currently drafted, requires public bodies to have due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity, and to foster good relations where they exercise their functions. We believe that these amendments are impractical and will actually make the Bill worse. They will disturb the balance that has been achieved by the current wording of the equality duty. My notes say, "Let me explain what

[Baroness Thornton]
"due regard" means". I hesitate, being faced by the two noble Lords opposite, but I will do my best. It means that the weight public bodies give to the need to eliminate discrimination, to advance equality of opportunity and to foster good relations should be proportionate to its relevance to a particular function.

The purpose of the equality duty is to oblige public bodies to consider equality issues in respect of all their functions. However, the amendments would require public bodies to take such steps as they reasonably consider necessary to eliminate discrimination, advance equality and foster good relations in respect of all their functions. As well as being very confusing, and leading to potentially huge amounts of box-ticking work for public bodies, in the current financial climate it could add further unavoidable burdens on public bodies and others. The impact of these amendments is that many public bodies would feel obliged to take legal advice every time that they exercised their functions to establish what would be a reasonable step. This would clearly be an unreasonable encumbrance in the context of certain duties such as legal requirements to pay subscriptions, make returns, and keep financial accounts and certain records.

I appreciate that what is at the heart of these amendments is a concern that, despite having a duty to consider matters such as the need to promote race equality, some public bodies have nevertheless arrived at decisions that have affected certain racial groups in a manner that has not received universal approval. However, we feel that public bodies should be required to consider equality issues when they are relevant, and that the weight given to such matters should be proportionate to its relevance to a particular function.

I turn to the comments made by the noble Lord, Lord Hunt. First, on the problem of targets, our proposals for specific duties will require public bodies to consider the evidence and then set equality objectives and take action towards achieving them. This approach will ensure that the bodies will set the appropriate objectives, having listened to the views of service users, and focus their action on the most effective way to deliver the equality outcomes. We could perhaps discuss whether that is a target or not.

The noble Lord also asked why the disability element of the duty was not in Clause 13. I am not sure that I understood that point correctly. Clause 13 sets out the asymmetrical nature of disability protection, which allows more favourable treatment for disabled people. Also relevant is Clause 20, which sets out the duty to make reasonable adjustments. Clause 148 sets out the positive duty on public bodies not only to eliminate discrimination but to advance equality of opportunity. In the case of disability, that can involve taking positive steps to take account of disabled people's disabilities, particularly now that we have accepted the noble Baroness's amendment.

On the issues raised through Amendment 110A, tabled by the noble Baroness, Lady Coussins, I am pleased to tell the noble Baroness that they will be covered by secondary legislation. On 25 January, we published a policy statement in response to a consultation exercise on our proposals for specific duties. The structure of a general duty underpinned by specific duties to assist better performance of that duty has worked successfully for the current duties, and we now want to build on that success. In relation to compliance, the enforcement of the equality duty is a remit of the EHRC. The general equality duty can be enforced through judicial review by an interested party or by the commission; the specific duties can be enforced by the commission, which has the power to serve compliance notices and to apply to the relevant court in the event of non-compliance of such a notice. This provides an adequate process in place to ensure that public bodies comply with the requirements of the duty.

The noble Baroness asked whether the equality duty should place at least the same requirements to be transparent about compliance as well as the current disability duty. It will do so. Our proposals for specific duties, which will support the better performance of the equality duty, include the requirements to report annually on key equality employment data and to publish annually information about progress towards achieving their equality objectives. We propose to require public bodies to demonstrate how they have taken equality into account in the design of key policies and services and what difference that has made to the outcomes in all those areas. Therefore, I ask the noble Baroness to withdraw her amendment.

Baroness Young of Hornsey: I thank the Minister for her considered remarks. I have to perform a set of mental gymnastics now as I try to separate myself out from the noble Lord, Lord Ouseley. Obviously I cannot second-guess what he might wish to say here, but I am pleased that the amendment put forward by my noble friend Lady Campbell of Surbiton has been accepted because it is, one might say, a somewhat stronger version of the amendment that the noble Lord had proposed.

I take to heart the remarks that were made by the noble Lord, Lord Hunt of Wirral. He made a number of important points around the consensus we now have that we are all trying to make it better, and that to make it better you need to make it work. It is in that spirit that the amendments were put forward to try to sharpen up some of the wording around the public sector equality duty with due regard. I take the legal interpretation on board, but it is important for us to have clarity about how sharp the clause is going to be. I beg leave to withdraw the amendment.

Amendment 108S withdrawn.

Amendment 108T not moved.

Amendment 109

Moved by ***Baroness Hanham***

109: Clause 148, page 94, line 16, leave out subsection (2) and insert—

"( ) Subsection (1) will also apply to a person who is not a public authority but who exercises public functions except in relation to matters of employment."

Baroness Hanham: I am joining the Front Bench for a fleeting moment, which requires me to declare an interest in that I am a member of a local authority, which under these terms would be a public body.

We have dealt a lot with Clause 148(1), but Clause 148(2) states that:

"A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1)".

We agree with this subsection. We think it is right that a public authority that has subcontracted part of its public sector duties to an alternative organisation must ensure that the other organisation provides services compliant with the public sector equality duty.

It is interesting that the subsection starts with "a person". I am assuming, therefore, that the services, which is what this is all about, can be contracted to a person or that "a person" can be construed as a company, as a voluntary organisation or as any other body that is carrying out the services on behalf of that public authority. We need to be clear that the definition of "a person" is covered. Whoever "a person" is, it is right that the services should be delivered to the highest ideals that the public sector equality duty brings in.

We also welcome the fact that subsection (2) states that organisations to which services have been subcontracted have to comply with the duty only,

"in the exercise of those functions".

We would, however, welcome some clarity from the Minister in this regard. Will she confirm that the intention of the Bill is that the public sector equality duty should apply only to those organisations in the exercise of those specific functions and not in any other capacity? In other words, the company's or voluntary organisation's own internal functions and processes will not be affected by the contract—only the contract will be affected, and other processes are exempt.

We believe that it is important that a private company or voluntary organisation is not made subject to the higher demands of the public sector equality duty across the whole gamut of the company simply because it has been contracted to perform a service for a public authority. We should not forget that these companies are already subject to the anti-discrimination legislation as well as equality provisions in the private sector. We are not at all arguing that private companies should be excluded from equality legislation, merely that in their everyday functions, which are over and beyond those that public bodies are contracted to, they should not be made subject to a duty that is designed to apply only to public bodies. I hope that the Minister will be able to reassure us on that.

9.15 pm

We have tabled Amendment 109, which would leave out subsection (2) and insert a requirement that the public sector equality duty should apply to someone who exercises public functions except as regards employment. This amendment has been tabled to probe the Minister further on the extent to which the public sector equality duty applies in these circumstances to these organisations. We do not wish to remove subsection (2); we agree with it. This is a probing amendment about the duty that will apply in practice to organisations—I think specifically of small organisations—or, indeed, to individuals who have duties contracted to them. We are concerned that small organisations which are performing subcontractor services should not have to obey the provisions of the public sector equality duty in respect of its employment law. Will the Minister confirm whether that would be the case? We hope to ensure that these companies are subject to the same provisions of employment law as their non-public counterparts. We very much hope to minimise onerous burdens on potentially very small organisations.

I hope that the Minister will lay out for the Committee the detail of how the application of a single duty only to certain parts of the organisation might work. In other words, how do the Government envisage the mechanics of applying this public sector equality duty only to subcontracted functions, which is what I have been talking about all the way through? That is what we all think is going to happen, and what we desire, but we would be interested to see how that division is designed to work in practice, although, of course, companies already work on behalf of public bodies and have some responsibilities in that regard under the law, but I think this measure widens them substantially. I beg to move.

The Lord Speaker (Baroness Hayman): I have to tell the Committee that, if this amendment is agreed to, I cannot call Amendment 109A by reason of pre-emption.

Lord Harries of Pentregarth: I wonder whether the noble Baroness, Lady Hanham, could give one or two examples of what she means by this very important exception,

"except in relation to matters of employment",

because it seems to me that this Bill focuses more sharply on employment issues than on almost any other. That phrase,

"except in relation to matters of employment",

seems to me a key phrase which might provide an opt-out for anybody who wished to avoid the impact of this Bill altogether. Can she spell out in examples what she is getting at here?

Baroness Hanham: My Lords, I was speaking very much off the cuff, but I think that all these organisations and companies are already covered by employment law. They already have to conform with that. However, we are not talking about employment law but all these other aspects that have been brought in under subsection (1).

Lord Lester of Herne Hill: My Lords, I do not want to prolong the debate and I am anxious to hear the Minister's explanation. However, it is vital that Clause 148(2) remains as it is and that it covers more than employment. It should cover the whole range of public functions performed by a body that is private in form but exercises functions of a public nature. Exactly the same problem arises under the Human Rights Act which covers public authorities in the strict sense but also covers bodies that are private, as I say, but act in place of the state.

As I understand it, this measure ensures that bodies which are genuinely exercising a public function of a particular kind must have regard to the matters in Clause 148(1). If that were not the case, there would be a most regrettable gap because, apart from employment,

[LORD LESTER OF HERNE HILL]
it would mean that in all the other provision of public services the duty to have regard to the need to eliminate discrimination and to advance equality of opportunity would not apply. That would be regressive and would certainly drive a coach and horses through this part of the duty. Therefore, we hope that the Minister will be able to explain better than I have done why the measure is needed.

Baroness Howe of Idlicote: My Lords, I wonder if I might press the indulgence of the House a little. At an earlier stage of the Bill I probably missed an opportunity to raise this point, but it is one which the Young Equals organisation is very concerned about. It asks the Government to confirm how public service providers will be supported in implementing the age element of the public sector equality duty, as it relates to children. It also asks that guidance should set out how public services can implement the age element of the duty in relation to children; and offer practical information on how to identify age equality issues for children, relevant case studies and other such things. Also, what information will be provided to children and young people on the age provisions of the Bill? Young Equals feels that it is essential that guidance on the Equality Bill is fully accessible to children and young people—of the right age, obviously—and relevant to those who work with them. Young Equals thinks it would be useful to produce a document that sets out the age provisions of the Bill for children and young people within this public service duty.

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, Amendment 109, tabled by the noble Baronesses, Lady Warsi and Lady Morris of Bolton, would represent a major extension of the duty into the private and voluntary sectors, where bodies in those sectors exercise public functions, and require them to comply with the equality duty in the exercise of all their functions except employment functions, regardless of whether they are discharging a public function.

I reassure noble Lords that Clause 148(2), as drafted, would require bodies that exercise public functions, other than the public authorities listed in Schedule 19, to comply with the equality duty whenever they exercise such public functions. The provisions in the Bill would not require such bodies to comply with the duty when they exercise any of their functions that are not connected to the exercise of a public function. Amendment 109 would require such bodies to comply with the duty whenever they exercise their other functions, such as the performance of any activities that are unrelated to the performance of their public functions—for example, conduct of their core business; any activities on their purchasing functions; and, in short, everything, apart from employment.

The amendment would affect many organisations, and do so in a very arbitrary way. Some organisations would be covered simply because they happened to be carrying out a public function, such as the running of a private prison, perhaps for a short time, while others would not. It might even deter some private or voluntary organisations from taking on public functions if, as a result, the duty would then extend to all their other functions and activities bar employment. Given that employment is singled out by these amendments as a function which should not be subject to the duty, I will address this specific point.

Employment functions have not been explicitly excluded under the existing equality duties, and this has not created any problems. A private body carrying out public functions will not be subject to the duty in respect of any of its functions of a private nature, such as the employment of staff whose duties are not connected to the exercise of the public function. A private body should retain the right to decide who to employ. However, such a body will need to consider the technical abilities of the people deployed to discharge its public functions and the training that they require to perform their duties. For example, an organisation contracted to manage a prison would need to consider whether the skills of the staff charged with delivering the service or the training that they receive satisfactorily address its requirement to promote equality of opportunity.

Several specific questions were asked. The noble Baroness, Lady Hanham, asked: who is the person referred to in Clause 148(2)? This will apply, as she suggested, to a natural person as well as legal entities, such as companies and statutory bodies. The noble Baroness also asked if the duty applied to internal functions. As I said, the duty will apply only to the activities of the organisation concerned with the delivery of the public function. The noble Baroness was concerned about small and medium-sized enterprises. The Government recognise the real concerns of SMEs interested in competing for public sector work. In accepting the recommendations of the Glover review, we have committed to increasing the access of all government contracts to SMEs. The development of a best-practice approach to promoting equality through procurement and a national equality standard may assist in the process. We look forward to hearing the views of stakeholders and industry on this subject.

The noble Baroness asked about public/private functions and internal/external activities. In simple terms, employment will be caught where integral to the performance of a public function. For example, where a contractor runs a prison it will need to comply with the duty in relation to its employees working in the prison but not those involved in other work such as collecting cash from a bank.

The noble Baroness, Lady Howe of Idlicote, asked what the duties meant for children. Although under-18s are excluded from age discrimination protection in services and public functions, children will, as the noble Baroness recognised, benefit from the age aspects of the public sector equality duty. Guidance on the duty will give practical assistance to public service providers on how they can implement the age provisions for children. The Equality and Human Rights Commission's code of practice and guidance will cover this and will be easily accessible to those organisations concerned. Following that explanation, I trust the noble Baroness will consider withdrawing her amendment.

Baroness Hanham: I thank the noble Baroness for her response. I made it clear from the outset that we were not opposing Clause 2; we were looking for

explanations. Those have been clear tonight and having them in *Hansard* will make things much easier. I beg leave to withdraw the amendment.

Amendment 109 withdrawn.

Amendments 109A to 109C not moved.

Amendments 109CA and 109CB

Moved by ***Baroness Campbell of Surbiton***

109CA: Clause 148, page 94, line 25, at beginning insert "take steps to"

109CB: Clause 148, page 94, line 29, at end insert—

"( ) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities."

Amendments 109CA and 109CB agreed.

Amendments 109D and 109E not moved.

Amendment 110

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

110: Clause 148, page 94, line 37, at end insert—

"( ) A public authority must collect and publish annually data showing, in the exercise of its functions, the extent to which it has succeeded in meeting the requirements of subsection (1)."

Lord Hunt of Wirral: While we have discussed some of the issues related to the mechanics and functions of the public sector equality duty, we have not discussed the importance of the effect of what we are seeking to do. The measure of this clause will lie not in the high ideals which it invokes but the effectiveness of the results it produces on the ground.

For this reason, Amendment 110 would require a public authority to collect and publish data on an annual basis that would demonstrate how the authority had met the requirements of the public sector equality duty in the exercise of its functions. Within this group, we are to debate Amendment 114A and we look forward to hearing the noble Baroness, Lady Young of Hornsey, who I understand will be speaking to it. Her amendment addresses the same issue but from a different perspective and would mean that an outside agency would assess the extent to which the requirements under Clause 148(1) had been met.

We on these Benches are in favour of doing everything we can to ensure that the public sector equality duty lives up to the ideals contained in the clause. I suppose that, as has happened in the past with the policies of this Government, we see a legislative approach which calls for high ideals but lacks the mechanics within the Bill to make that happen.

9.30 pm

The importance of this clause will, I contend, stem not from its lofty aspirations but from real and measurable outcomes on the ground. If there is one message that I want to get across today, it is to keep stressing outcomes because we believe that the measure of the target is in its success. For this reason, we would argue that there ought to be some form of systematic reporting which spans the sector and shows where and how successful outcomes are occurring, and what should be changed in order to make the duty even more effective. As the legislation stands, the public sector equality duty is very vague; we would welcome some more clarity here. Indeed, I hope that the noble Baroness the Chancellor of the Duchy of Lancaster will be able to provide some when she responds to this debate.

Each business is, however, different and each will have its own way of doing things as it believes works best in the particular circumstances relevant to that organisation. The public sector equality duty therefore has to be sufficiently flexible to adjust to each specific need. Here, just for a moment, I give the Government the benefit of the doubt. I am sure that they must have a system in place here, but it would be very useful to hear what that is because it is not laid out in the Bill. One hopes that the Government accept this key point: that the outcomes and not simply the aim, however commendable, will be the important result of this legislation. I beg to move.

Baroness Young of Hornsey: My Lords, I shall once again speak to an amendment tabled by my noble friend Lord Ouseley, who is unable to be here this evening. Amendment 114A seeks to ensure appropriate and meaningful assessment of public authorities' performance with regard to the public sector equality duty, and I am grateful to the noble Lord, Lord Hunt of Wirral, for having laid out some of the questions —he has saved me from having to do that—and for providing a context. Once again, the two amendments are somewhat complementary. A number of bodies are perfectly well equipped to carry out such reporting within the system of assessing local authorities, but I would guess that there is a sense that many of those bodies and agencies, when they undertake performance and inspections, are not necessarily reporting adequately or consistently on a public authority's equality duties.

This amendment would require those agencies to undertake appropriate assessments to determine and report on how a public authority is advancing equality and good relations as part of its programme of assessment, inspections and performance reviews. This is about consistency; the issue of how good and bad practice is recognised and dealt with, in one way or another, is an important part of that. However, the bodies and agencies which currently exist can carry out that assessment of performance.

Baroness Royall of Blaisdon: My Lords, I shall speak first to Amendment 110. The new equality duty will follow the same structure as the current race, disability and gender duties, with specific duties sitting underneath the general duty to help public bodies to better perform the equality duty. Those specific duties will be introduced through secondary legislation and will include the steps outlined in the policy statement published earlier this week, on 25 January. Copies of that have been placed in the House Libraries; they may well also be in the Public Bill Office.

Noble Lords will see from the document that we want the public bodies that will be subject to the specific duties to report annually on their progress against their equality objectives. We also want public bodies to publish their gender pay gaps and BME and disabled employment rates in such a manner that citizens can track progress and compare public bodies.

[Baroness Royall of Blaisdon]

The noble Lord, Lord Hunt, mentioned the need for flexibility. We believe that secondary legislation is the right place to set out these detailed procedures, since it gives us greater flexibility to change specific requirements if necessary. For example, we may need to make small changes to reporting timescales or the format of the data that we have required public bodies to report.

Amendment 110 would set out in primary legislation process requirements that are better suited to secondary legislation. Further, the amendment would impose data reporting requirements on all public authorities listed in Schedule 19. It would include, for instance, small organisations such as parish councils, on which the reporting requirements could impose disproportionate additional burdens. When we prepare the regulations that contain the specific duties, we intend to consult closely bodies that are likely to be affected.

One of the main drivers behind the design of the new suite of specific duties was a move away from processes and towards outcomes. Our proposals for reporting requirements achieve this aim. Just like the noble Lord, we want the outcomes to live up to the ideals to which we all aspire in this Equality Bill.

The noble Lord asked whether the process would achieve equality outcomes. The answer is yes. The specific duties will require the setting of equality objectives in the light of evidence, the taking of action towards achieving them and reporting on progress. By these means, we will ensure that the process that we prescribe in the regulations will deliver the outcomes.

Lord Hunt of Wirral: Perhaps I may ask about timing. Given the document published earlier this week, are the regulations yet in draft and when are we likely to see them? What is the timescale? There is a momentum behind the Bill which we all greatly welcome, as I welcome what the noble Baroness has just said about outcomes. However, in order to deliver the right outcomes, we must know what the process will be and what timescale is envisaged to bring about the results that she referred to.

Baroness Royall of Blaisdon: My Lords, much of this is a consultative process. We have put out our policy statement. I understand that we will publish draft regulations, on which I hope that we will be able to consult well before the summer. However, we are convinced of the need to consult along the way, so all noble Lords will be able to have an input as well as other organisations. I therefore ask the noble Lord to withdraw the amendment in the name of his colleagues.

On Amendment 114A, tabled by the noble Lord, Lord Ouseley, and moved by the noble Baroness, Lady Young of Hornsey, I make it clear that regulators and public sector inspectorates are subject to the existing duties and will be to the new one. It may be helpful for me to explain to the Committee how the equality duty will apply to these bodies. We are not suggesting any changes to the regulators and expect the extent to which they have due regard to the existing duties will continue to apply to the new equality duty. The equality duty will apply to the inspection functions of the public sector inspectorates, which means that equality and action taken to advance it should form one of the indicators of performance which inspectorates develop and assess against. If there is insufficient evidence of action being taken to tackle inequality, it can be highlighted. We are clear that inspectorates should not take on the role of enforcing compliance with the duty because they are not resourced or trained to do so. That is the sole responsibility of the Equality and Human Rights Commission. Furthermore, it would be unworkable and confusing to allow two sets of organisations with potentially conflicting views to enforce the duty. However, it is clear that the roles of the inspectorates and the Equality and Human Rights Commission with regard to equality performance by public bodies are complementary. We encourage their work on developing close working relationships; for example, through Memoranda of Understanding. I ask the noble Baroness not to press the amendment.

Lord Harries of Pentregarth: From the standpoint of the Cross Benches, perhaps I may say how delighted I am and how wonderful it is that there should be such unanimity and consensus on this issue. I cannot help noting how far we have moved since 1789, when egalité seemed to be championed by only one section of society, and that the noble Lord, Lord Hunt, is pressing so hard for tangible outcomes from this, whereby it is not simply window dressing. That is very encouraging.

Lord Hunt of Wirral: I greatly welcome what the noble and right reverend Lord has said and I thank him. It is important that we make progress in this area. Although he had a different historical vista, when I look back over the 34 years during which I have been in Parliament, we have not made the progress that I had always hoped for. We still have a long way to go. That was said to me by the noble Baroness, Lady Howe of Idlicote, 15 years ago. I am not sure that we have made rapid progress since then. It is good that we are establishing this consensus. I thank the Chancellor of the Duchy of Lancaster very much indeed for the positive response that I have received, and I beg leave to withdraw the amendment.

Amendment 110 withdrawn.

Amendment 110A not moved.

Amendment 111

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

111: Clause 148, page 95, line 3, at end insert—

"but subsection (1)(b) does not apply to the protected characteristic of religion or belief."

Lord Lester of Herne Hill: My Lords, I spoke much about this issue at Second Reading at col. 1416 when I explained my great concerns about the way in which religion and belief are treated in the same way as the other characteristics protected in Clause 148(1)(b). I have been warning about this for a long time. For those who live the kind of sad life that involves reading a lot of stuff, I wrote an article in 2008, *Extending the Equality Duty to Religion, Conscience and Belief: Proceed with Caution*. In that article I explained my concerns.

Essentially, I seek to make sure that only workable duties are imposed on public authorities and that those duties do not create division, but encourage cohesion. The most reverend Primate the Archbishop of York has already referred to the danger of encouraging silos. I am very concerned that once one deals with religion and belief as though they are the same as race or gender, one raises problems regarding free speech, for example—which the noble Lord, Lord Hunt of Wirral, will remember that we grappled with when we dealt with race-hate speech and whether the law should be extended to cover religious-hate speech. There was a movement, especially among British Muslims at that time, for religious-hate speech to be treated in exactly the same way as race-hate speech. The noble Lord, Lord Hunt, and I managed to achieve a victory, whereby religious-hate speech was treated differently from race-hate speech.

We had a similar problem with blasphemy. The antique common-law offence of blasphemy gave rise to demands that it should be extended to protect Islam against insults. That was a dangerous idea, and we dealt with it by abolishing blasphemy. To use that disgusting simile, we shot the fox and got rid of the problem.

The problem with Clause 148(1) is that in paragraph (a) public authorities must

"have due regard to the need to … eliminate discrimination, harassment, victimisation and any otherconduct that is prohibited by or under this Act".

That is admirable. It includes religion and belief, or lack of belief, and that is fine.

9.45 pm

Clause 148(1)(c) refers to the need to:

"foster good relations between persons who share a relevant protected characteristic and persons who do not share it".

That means promoting good relations between persons of particular faiths and those of no faith. There is everything to be said in favour of doing so. Clause 148(3) builds upon that by requiring due regard to be placed on advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, in particular the need to remove or minimise disadvantages, meet needs, encourage people, and so on.

My concern is that religion and belief are extremely important, but we do not want thin-skinned or zealot-minded people to start attacking public authorities because they represent particular sectors and say that the authorities are not advancing equality of opportunity—whether they are scientologists, Muslims, Jews, atheists, humanists—and that as they do not share the same characteristics as others, they will judicially review the authorities if they do not do so.

The problem is that if my amendment is accepted, it would be said by some that I am creating some kind of hierarchy by taking religion and belief out and leaving in all the other protected characteristics. I am not creating a hierarchy; I am seeking to recognise that religion and belief cannot simply be treated identically for the reasons I gave about cohesion and the wish to avoid divisiveness. One person's religion is, unfortunately, another person's blasphemy, and there is no way in which those can easily be reconciled.

I am very pleased that, at this late hour, I am in the presence of the most reverend Primate the Archbishop of York for this reason, among many others: the only way in which my amendment can, in the end, succeed is—if I can put it this way—if he and his colleagues liberate us and allow us to do so. If the position of the Church of England were that in some way it wished this to remain as it is, I expect that the Conservative Party—although not always correctly described as the Church of England in politics or the other way round—would probably not support getting rid of Clause 148(1)(b).

I hope that in this debate, at the least, my concerns might lead others to say that they have concerns and that might lead the Minister to say that she will go away and think about this again. I do not seek to do any more than that, but if I could accomplish that this evening, so that we can all think about this more, I would think we had done something really important at this late hour. I beg to move.

The Archbishop of York: My Lords, I never believed that the noble Lord believes that the Church of England has such authority, certainly, the Lords Spiritual do not see it that way but, if he does, he is probably assuring our future in this House for a very long time.

The trouble with the subsection about which the noble Lord, Lord Lester, is concerned is that Clause 4 defines nine protected characteristics, including religion and belief and Clause 10 gives a peculiar definition of religion. It states:

""Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief".

You are really opening a huge can of worms. The amendment would disapply the advancement of equality of opportunity in relation to the duty of public sectors in the cause of religion and belief. I believe the noble Lord, Lord Lester, is of the view that the duty specified would open doors to giving protection to a plethora of beliefs, religions or lack of them. I have always worried when legislators pass laws in matters of belief where courts might be invited to interpret the doctrines. Courts should be left out of all of that because it is so complicated and difficult.

I have some shared concerns with the noble Lord on this issue, mainly over its likely chilling effect for public authorities in their dealings with religious organisations, with people of different beliefs and those of no beliefs at all. I am concerned it could be used to set up all sorts of religions, beliefs or lack of them. People will then say they are being neglected and not having equal opportunity.

There are those who worry that if we remove this public duty in relation to religion and belief from the Bill we portray religious freedom as a lesser liberty than others. Is there a way in which we could stop this chilling effect? Perhaps this amendment does not properly address the problem. There are already nine protected characteristics; would the best thing be to simply delete that whole section? Are we setting up a hierarchy?

When it comes to religion in terms of immigration, I would sound a caution over whether you would meet the test of the human rights convention. It is very difficult, because I could say tomorrow that I believed in nothing and then claim I believe in a mighty angel

[The Archbishop of York]
that appeared to me in the night, simply because I want to be protected. This is a very wide net. The Church of England is supposed to be a very wide boat, but we do not want to cast the net so wide that we forget there is no more ocean out there.

Can the Minister say how we would maintain the protected characteristics without creating this chilling effect for local authorities? Perhaps it needs to be in the words of the noble Baroness, Lady Campbell, about meeting "a need" instead of this equality of opportunity, which is so vast I do not know what it is. I have grave anxieties and I can see local authorities having to be monitored because someone somewhere has claimed that their opportunities are not being met because they have no belief. Then the courts would have to adjudicate. Can the Minister please help us on this?

Lord Harries of Pentregarth: The case for retaining the words of the Bill is that both internationally and in this country religion is increasingly a marker of identity. Religion is not just a disembodied, wispy, platonic idea; it is embodied in people who have particular physical characteristics and those are seen by the wider public as having an identity. All sociologists would now recognise that one of the major features of the modern world is the way that religion has become a marker of identity, and therefore that is a strong argument for retaining the words in the Bill.

The Archbishop of York: When the noble and right reverend Lord looks at Clause 10, he will see that it says:

"Religion means any religion and a reference to religion includes a reference to a lack of religion".

That is a problem. It goes on:

"Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief".

It is no longer about identity; it has gone on to somewhere else. That is the problem. I agree with him that religion is important, but this thing is cast so wide that a chilling effect is coming over me.

Baroness Young of Hornsey: I support the amendment of the noble Lord, Lord Lester—I think. It was interesting listening to the first part of the most reverend Primate the Archbishop of York's comments, and the chilling vision of what might happen in a local authority. Suddenly, a vision of the Jedi versus the Thetans flashed before me: chilling indeed.

Seriously, there is a whole debate about the issue of identities, which is not about identity being physically fixed and absolutely straight down the line. Identity is much more fluid and subject to change, particularly in a globalised world with globalised cultures, but I do not want to get into that. I understand what the Government are trying to do by including the phrase "lack of belief", but it makes it slightly unwieldy. I speak as a humanist and somebody who feels it is important to put down a marker for people who do not have a particular religious affiliation.

This is a very difficult juggling act. We are not only trying to bring together all those different pieces of legislation, but to bring all those different identities together. As we have said before, you cannot treat all those different aspects of identity the same: that is not what we mean by being equal. This is why I support the amendment of the noble Lord, Lord Lester. The insertion of "religion" clouds the issues in an ineffective way.

Baroness Butler-Sloss: I do not mind which of the noble Lords will be speaking, but perhaps I may ask how one is going to cope with this position. I very well understand how the most reverend Primate the Archbishop of York sees the chilling effect. However, since he has raised this, I also look at Clauses 4 and 10. Clause 4 in particular sets out the key concepts of equality and protected characteristics. It seems difficult to exclude it from the advancement of equality, under the "Public sector equality duty". Almost all the other protected characteristics, with the exception of gender reassignment, are to be found in Clause 148, and that may well be why the Government have kept it in this particular clause. Taking it out may also create certain difficulties where it is included in the key concepts throughout the rest of the Bill. How we are going to deal with this is worrying.

The Archbishop of York: I began with that: I said that the difficulty with the amendment of the noble Lord, Lord Lester, is that it removes the two key characteristics which are already outlined, and it may look as if there is a hierarchy. I did not like his amendment, but his arguments are very convincing. For me, it is a matter of drafting.

Lord Lester of Herne Hill: I will explain to the noble Baroness. I have not removed it from Clause 148; I have removed it only from Clause 148(1)(b). In other words, the duty in relation to religious discrimination et cetera, and promoting good relations, applies across the piece to all the protected characteristics. All I am seeking to do is to apply it differently in relation to Clause 148(1)(b), and I have tried to explain the reasons for that.

Baroness Butler-Sloss: Forgive me, and if I am wrong I apologise for wasting the time of the Committee, but in Clause 148, one talks about advancing equality for protected characteristics. The protected characteristics which are the basis of Clause 148 are described in subsection (6). You could not go back to subsection (4) because you would be tied to the exclusion of religion or belief in Clause 148. That may well be the reason why the Government have included this. I would be very worried that the general concepts would be excluded in religion or belief because there is no other definition of "protected characteristics" for the purpose of this clause. That is the problem for me at least.

10 pm

Lord Hunt of Wirral: Listening to the debate, I feel a little like a spectator. I know that the noble Lord, Lord Lester, feels passionately on this subject and I have shared many a platform with him arguing the sort of issues we are now debating. I completely agree with the most reverend Primate in recognising that there is this chilling effect, about which we have to be

really careful. I found myself agreeing with every word of the noble and right reverend Lord, Lord Harries of Pentregarth, who put forward a common-sense view as to why this was in the Bill. I am a little confused by the words of the noble and learned Baroness, Lady Butler-Sloss. I listened with interest to the clarification of the noble Baroness, Lady Young of Hornsey. Above all, I am concerned that we may be creating an anomaly. I can hardly wait to hear the Minister's response. I think that we have been standing side by side on the touchline, but now it is her turn to come on the pitch.

Baroness Thornton: My Lords, I will speak first to Amendment 111 and, secondly, to Amendment 112, which is a different type of amendment about a separate issue. The equality duty is to get public bodies to think about the discrimination that individuals may be suffering or may be likely to suffer and then consider whether there is anything that they can or should do to tackle it. We know from the evidence available through the Equality and Human Rights Commission, and the equalities review, that some people with religious beliefs—for example, Muslim women—or without religious beliefs are suffering disadvantage or have different needs. If we talk about different needs, some people with a particular religion or belief who engage with public services may have certain needs—for example, dietary requirements, or they may not be able to sit exams on holy days. Advancing equality of opportunity involves thinking about whether the service you provide is one that everyone is able to make use of, not just those people who fit into a traditional mould. It should mean more sensitive, personalised services from which everyone can benefit. I think we would all agree about that.

The problem with this amendment is that we suspect that it might create and build a hierarchy of inequality into the duty, which would send a completely wrong message. It could suggest that we do not consider disadvantage linked to religion or belief to be as bad as other forms of disadvantage. But we also understand that competing demands may occur. If they do, an integrated duty that embraces all strands provides the best legal framework for considering how decisions affect all groups, and not just some groups. We also believe that the guidance to the equality duty, which would have to be carefully drafted, could cover and make clear the responsibilities of public bodies in relation to promoting equality of opportunity for religion or belief.

However, I have listened carefully to the noble Lord, Lord Lester, the most reverend Primate the Archbishop of York, the noble Baroness, Lady Young, and the other contributors to this debate. The noble Lord, Lord Lester, and the most reverend Primate in particular made compelling arguments, which led me to believe that the best thing we can do at this stage is to take this away and think about how we can best achieve what we want to achieve. I take on board very much the concerns expressed in the debate. I ask the noble Lord to withdraw the amendment on that basis.

Amendment 112 would not require immigration authorities to take the equality duty into account as far as age and race are concerned, but they would be required to have due regard to the need to advance equality of opportunity between people who share a religion or belief and those who do not share such religion or belief. We want our borders to be secure from certain individuals whose religious beliefs are so strong that it would not be in the public interest to allow them to enter or, in some circumstances, to remain in this country. For that reason, the duty to have due regard to the need to advance equality of opportunity on the ground of religion or belief may not always be compatible with the essential functions of the UK Border Agency to provide effective immigration control that is consistent with government policy and public safety. We also do not want to open ourselves up to meaningless challenges, as other noble Lords have said.

This exception is not designed to be a blank cheque to permit the immigration authorities to evade their responsibilities. It is intended to ensure that, where necessary, they can exercise the essential functions in these respects without the possibility of hopeless and irrelevant challenges, so I request the Lord to withdraw the amendment.

Lord Lester of Herne Hill: I am extremely grateful to everyone who has spoken, especially the most reverend Primate and the Minister. I want to make two points. I have not spoken to my Amendment 112 on immigration, but I want to refer to it now. It illustrates how the notion of one size fits all is not applied by the Government themselves and shows how they treat religion differently. It is worth looking at because I am not sure that I agree with paragraph 2(1) on immigration. I am not sure that anyone will have focused on the strange thing that is happening here. The provision says:

"In relation to the exercise of immigration and nationality functions, section 148 has effect as if subsection (1)(b)"—

the one that I am concerned with—

"did not apply to the protected characteristics of age, race or religion or belief; but for that purpose 'race' means race so far as relating to—

(a) nationality, or

(b) ethnic or national origins".

That means that the Home Office is taking a new power to exclude someone from entering the country on the basis of their religion or belief, or on the basis of their race defined as,

"nationality, or … ethnic or national origins",

but not colour. We cannot turn someone away because they are black. We can turn someone away because of their nationality—quite right. We can turn someone away because of their ethnic or national origin in certain circumstances—again, quite right—and now we can turn them away because of their religion or belief.

In that provision the Government are creating a hierarchy. They are allowing discrimination on the basis of religion or belief and taking it out of Clause 148(1)(b), which shows that the notion of no hierarchy is not even consistently applied by Her Majesty's Government themselves.

If noble Lords turn to the Explanatory Notes, where the explanation for this is admirably well on pages 124, 125 and 126, they will see that examples are given about how Clause 148 will apply. The first

[Lord Lester of Herne Hill]

example is about ethnic minorities. The second is about disabled people. The third is about a black women's refuge. The fourth is about transsexual staff and non-transsexual staff. The fifth is about age. The sixth is about homophobic bullying. However, the only one dealing with religion or belief in the examples is this one. It states:

"The duty could lead a local authority to introduce measures to facilitate understanding and conciliation between Sunni and Shi'a Muslims living in a particular area, with the aim of fostering good relations between people of different religious beliefs".

I accept that that is in Clause 148(1)(c) and should remain there, but no example is given here to justify including religion and belief in Clause 148(1)(b).

I mention those things for further thought. I am grateful to the Minister for taking this away and I understand the points about hierarchy and all the rest of it. On that basis, and thanking everyone again, I beg leave to withdraw the amendment.

Amendment 111 withdrawn.

Clause 148, as amended, agreed.

Schedule 18 : Public sector equality duty: exceptions

Amendments 112 to 114 not moved.

House resumed.

House adjourned at 10.10 pm.

Grand Committee

Wednesday, 27 January 2010.

Child Poverty Bill

Committee (4th Day)

3.45 pm

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

Clause 8 : UK strategies

Amendment 31

Moved by ***Lord Freud***

31: Clause 8, page 4, line 21, at end insert ", including parenting skills"

Lord Freud: My Lords, my amendment would ensure that, in the focus on further education and the training of parents, which is a very important aim, sight is not lost of a different sort of skill that would immeasurably improve the life of a child living in that household. Much of the disjunction between income and material deprivation measures relates directly to personal choices. It is a tragic but undeniable fact that many parents do not have the necessary skills to make the best choices for their children. There are, of course, terrible cases when a parent wilfully abuses or harms a child in their care. There are severe penalties for that sort of behaviour, but in many cases the harm is done through ignorance, not malice.

We have spoken a little about factors such as child obesity, which can lead to severe health problems for the rest of a child's life as well as potentially triggering bullying and self-esteem issues. In most cases, the obesity is not caused by insufficient household income, as healthy food need not be expensive. The condition could be caused simply by a lack of understanding of what a healthy diet is or of its importance. With the high rate of teenage pregnancy, it is sadly true that many parents have barely left their childhood. It is no surprise that many young parents find themselves faced with responsibilities that they never imagined taking on and with no support system to turn to for help. I hope that the Minister will agree that any strategy must involve actively seeking out and helping these parents. I beg to move.

Baroness Walmsley: My Lords, I wonder whether the noble Lord can explain the difference between "parenting skills" and "skills of parents", as they would both appear on the same line.

Lord Freud: Yes, I am pleased to answer that. The skills of parents are general skills; as I read it, they refer to the general level of education and skills of people who happen to be parents. Parenting skills are directly related to the relationship between the parent and child and the parent's ability to look after the child to the highest possible level.

Baroness Butler-Sloss: I spend a lot of time suggesting that words can mean something different; I did so several times in our debate on the Equality Bill on Monday. I share the view of the noble Baroness. Speaking perhaps as a lawyer rather than as a Member of the House, I do not see that there is any real difference between the two. I entirely support parenting skills for obvious reasons.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): My Lords, I thank the noble Lord, Lord Freud, for his amendment, which suggests that parenting skills be explicitly added to subsection (5)(a) so that they are included when considering the development of the skills of parents. I welcome the amendment's intention but, as with other amendments that we will debate today, we consider that the issue is already covered by the broad area set out in the Bill. I agree with the noble Lord that it is not encompassed specifically within subsection (5)(a), which is designed to focus on the employment and progression prospects of parents to move on and into work. Parental skills do not fall within that, but we believe that they are encompassed within the other provisions, particularly in subsection (5)(c). I say that in response in part to the noble Baroness, Lady Walmsley, and the noble and learned Baroness, Lady Butler-Sloss. If one wants to interpret subsection (5)(a) more broadly, in a sense it does not matter, as the issue is covered.

I agree that there is a strong evidence base that demonstrates that policies aimed at increasing parenting skills could have large intergenerational effects on the well-being of children. It is for this reason that, in the past three years, thanks to government action, there has been a massive expansion of the support that families and parents can receive in their local areas.

I have two examples. *The Children's Plan Two Years On* recognises that support for parents results in a direct improvement in their children's lives. There are now more than 3,000 Sure Start children's centres, which offer integrated services to more than 2.4 million under-fives and their families. Children's centres offer health services, parenting advice and support, early education and childcare, as well as training and employment opportunities. Since the start of the year, Sure Start children's centres have been established as a legally recognised part of universal services for children, mothers, fathers and grandparents. Funding for Sure Start children's centres has been guaranteed in 2011-12 and 2012-13.

The families and relationships Green Paper, which was published last Wednesday, highlights the significant investment that has been made in parenting programmes in the past few years. In fact, more than £170 million has been provided to local authorities between 2009 and 2011 to implement Think Family reforms. These include provision for family intervention projects, the Parenting Early Intervention programme and funding for parenting experts and practitioners.

[Lord McKenzie of Luton]

We are aware of the need to offer parents support and the opportunities to develop their parenting skills. It is for this reason that an abundance of support is currently being offered. I see no particular benefit in accepting the amendment because what it suggests is already provided for in the Bill. There is therefore no need for this requirement to be made explicit in the Bill, although it should be considered as part of a child poverty strategy. On that basis, I hope that the noble Lord will not press his amendment.

Lord Freud: My Lords, I thank the Minister for coming to my aid, somewhat to my surprise, in interpreting subsection (5)(a) against the most formidable two ladies—the noble and learned Baroness, Lady Butler-Sloss, and the noble Baroness, Lady Walmsley—who rather effectively put me in my place on this one. I am therefore delighted that I had the Minister's support when he said that he shared my interpretation of subsection (5)(a), although I think that I lost the point that he was making when he said that this was already included in the subsection.

I tabled the amendment because parenting skills have been provided slightly slowly. I am conscious of some fascinating new experiments and developments in Southwark, for example, where self-help parenting structures are being built. I do not think that I need to declare an interest, but my sister has been spearheading one of those efforts, so I know a little about this area and wanted to raise the issue. The amount of provision in this country may fall short in an area that is more vital than this Government have realised. I urge us, particularly when we look at child well-being, to worry more about parenting skills. I am delighted to hear that we will do so under subsection (5)(c) and that it will be up to the Secretary of State at the time, whoever he or she is, to interpret that in the widest possible way and as the Minister has encouraged us to do. On that basis, I beg leave to withdraw the amendment.

Amendment 31 withdrawn.

Amendment 32

Moved by ***Baroness Massey of Darwen***

32: Clause 8, page 4, line 22, at end insert "and family and friends carers who take on the care of a child for more than 28 days in the following circumstances—

(i) where the child comes to live with the carer as a result of plans made within a child protection enquiry under section 47 of the Children Act 1989,

(ii) where a child comes to live with the carer following an investigation under section 37 of the Children Act 1989,

(iii) where a carer has secured a residence order or special guardianship order to avoid a child being looked after, and there is professional evidence of the impairment of the parents' ability to care for the child,

(iv) where the carer has a residence order or special guardianship order arising out of care proceedings, or

(v) where the carer has a residence order or special guardianship order following the accommodation of a child"

Baroness Massey of Darwen: My Lords, the purpose of these amendments is to highlight a pocket of child poverty that is often hidden. It happens when family or friends take on the care of children when the natural parents cannot, because of death, imprisonment, substance misuse or other reasons. There are at least 250,000 such children.

My amendments take up an issue that is not new. Much good work was done on family and friends carers in the Children and Young Persons Bill two years ago. Concern was shown on all sides of the House during the passage of the Bill, and some of those involved are here today. The Minister knows these issues well. He has been involved in many discussions, particularly about grandparents, in a very helpful way. Since those discussions, we have learnt much more about the plight of family and friends carers. We have seen more action, research and reports. I am particularly grateful to the Family Rights Group and to Grandparents Plus, which have done excellent work in this area. I was delighted to see measures on family and friends carers in the Green Paper on families and relationships that was published last week. All this is good news. The numbers of children living with family and friends carers may seem small, but it is significant. We need to know precisely how many children are involved and what the problems are.

My first amendment is about financial support for family and friends carers. The second seeks to ascertain the numbers involved and the third seeks to clarify the numbers involved. The fourth aims to ensure that child poverty needs assessment includes children who are being raised by family and friends carers. I shall say more as I go through the amendments.

I will first clarify who the carers are. This is dealt with in Amendment 71. A family or friend carer is a person who is raising a child who is not living with his or her parents, while the family or friend is related or otherwise connected to the child—for example, an aunt, a grandparent, a godparent or another friend. As I said, there are at least 250,000 children living with family and friends carers. However, there are no official statistics. My amendment would require this to be improved. Many such carers are at risk of poverty and of passing on this poverty to the children for whom they care. Some care for more than one child. One grandparent whom I have met has cared for three children, aged between one and 10, since her daughter died from a drugs overdose.

Only 6,800 children are termed looked-after children, who qualify for a right to be supported. Family and friends placements for children are more stable than unrelated care placements. The outcomes for such children, both social and academic, are better. Nevertheless, three out of four family and friends carers experience financial hardship; one-third are lone carers; three out of 10 have a chronic illness or disability; and one in three lives in overcrowded conditions. Many are older—for example, grandparents who take on the child of a son or daughter because of imprisonment, substance abuse or death. The vast majority of local authorities do not have a written or even unwritten strategy to best serve family and friends carers. How much better the outcomes could be for children if more support were in place.

The situation is confused and confusing, both for family and friends carers and for the professions who work with them. There is a range of legal options for a child living with family and friends carers: a private arrangement with no legal order; a residence or special guardianship order; or the child is looked after by the local authority. I will not go into the details and intricacies of these arrangements, as they are very complex and too confusing. We know that private arrangements and residence orders do not attract entitlement to support. The local authority has discretionary power but is not required to pay. With special guardianship, there is no support, but the carer can claim child benefit and child tax credit. Other support is entirely discretionary. If the child has been placed by the local authority with a family member or friend because of concerns about the child's welfare, the carer should be assessed, approved and paid accordingly.

Only one in six local authority foster placements is with family and friends carers. Many of those carers are paid less than a related foster carer. Grandparent carers have told me that they would not seek local authority sanction for caring, as it is a lengthy process full of hazards and risks to the child, including the fear of the child being taken into local authority care, which is something that family and friends carers want to avoid. The cost of applying for a legal order when applying for a residence or special guardianship order can be between £3,456 and a massive £38,000. This is completely beyond the means of family and friends carers and few get any financial help. I have met such carers who have had to remortgage property or borrow money, so desperate are they to see the best done for their grandchild or young relative. The Family Rights Group freedom of information survey of local authorities found that 85 per cent lack explicit eligibility criteria stating which family and friends carers of children outside the care system are eligible for financial support and at what rate. That is something that we should look at.

Noble Lords will perceive the dilemmas and risks of poverty to family and friends carers and the children in their charge. The Fostering Network found that the cost of caring for a foster child is 50 per cent higher than the cost of caring for a birth child. The cost of raising a child in residential care has been calculated at 9.5 times that of a kinship care placement. Family and friends carers are saving the state a huge amount of money, but out of love for the child they often have to make enormous financial, emotional and physical sacrifices with little or no help and support.

The Family Rights Group, on behalf of the Kinship Care Alliance, has produced recommendations for kinship care that include the collection and publication of statistics on family and friends carers, enabling more children to be raised within family networks, including the use of family group conferences as mentioned in the Green Paper; the assessment of family and friends carers where children are listened to; systems to meet the short-term and long-term needs of children and carers regardless of legal status; financial support through an allowance; assistance with the tax and benefit systems; legal support; and an end to financial discrimination against family and friends carers who are foster carers.

My amendments seek to clarify some of the problems associated with family and friends who care for children. They look for action that will enable children to get the best possible care without the threat of poverty. I beg to move.

4 pm

Baroness Walmsley: My Lords, it was with pleasure that I added my name to these amendments introduced by the noble Baroness, Lady Massey, who has been tireless in campaigning for these carers. Most kinship carers do a very good job for the children whom they take on. As she said, such carers are the most needy. Compared with other carers, they spend more time alone and are more overcrowded; more have a disability and more face financial hardship, which is sometimes severe. However, we know that these placements are more stable and certainly at the moment are a great deal cheaper than a child going into normal care. Even if financial help were to be given to these carers, it would still be considerably cheaper than the cost of up to £40,000 a year to place a child in another kind of foster care.

What is important from the child's point of view is that he settles down more quickly because he already knows the person who is going to be caring for him. Often he can carry on at the same school and keep the same friends. What is crucial is that these carers provide the child with love and affection, which money cannot buy. Importantly, they also provide a link to family, identity and culture. Uncertainty about identity can cause an awful lot of problems, including mental health problems, and can affect self-confidence as well as general well-being.

Why should we help financially? Many kinship carers have to reduce their working hours to have the time to look after the child or even give up work altogether. As the noble Baroness, Lady Massey, said, the Fostering Network claims that it costs more to bring up a foster child than a birth child. Certainly there are initial costs that come all at once instead of being met gradually over the years, as happens with birth parents. You buy a bed and a desk for the child to do its homework; extra clothes and whatever the child needs are also bought, and it all happens gradually. But for kinship carers, the cost all comes at once. It is essential that kinship carers are given help immediately and do not have to go through the hoops of formal fostering first. As the noble Baroness said, many of them are not prepared to go through those hoops anyway, because of the fear of losing the child.

It is important that kinship carers get other support and advice, too. Just because there is a loving relative or friend willing to take care of the child, that does not mean that these children have not gone through the same range of terrible traumas that children who go into other placements have experienced. They are often just as badly damaged as any other child taken into care. The carers may need special training or mentoring. They need a shoulder to cry on or somebody to turn to for advice if the child proves to be more

[Baroness Walmsley]
difficult than they had anticipated. This quite often happens and, indeed, is quite likely if a child has been very badly treated.

It is time that we sorted this out once and for all. The 1989 Act said that kinship care must be considered if it is in the child's best interest. The 2008 Act, which the Minister and I both worked on, said that it should be considered first. I am not convinced that this is happening. Anyway, the lack of certainty about financial help is undoubtedly discouraging potential carers from coming forward, which costs the taxpayer more in the end.

It is important that we collect the data, as proposed in this group of amendments, so that we know the extent of the problem. We then need to ensure that family group conferences, which are good for every placement situation but particularly these, are available in every area rather than the patchwork provision that currently exists. The wider family need to be given information about what help is available, so that they are more likely to volunteer to help.

The Family Rights Group found that 85 per cent of authorities lack explicit eligibility criteria for financial support for these carers, so it is a real lottery. Sixty-two per cent of the authorities in the same survey did not even mention criteria for non-financial support. We do not know if it is happening at all, least of all whether there is a postcode lottery in any individual area. Certainly, the friends and family of parents from whom children have to be taken for one reason or another just do not know what they are letting themselves in for. You can hardly blame them, willing though they might be otherwise, for saying, "I really do not think I can do it". If we could sort this out and they could have some certainty, I am quite sure that a lot more would come forward.

Baroness Hollis of Heigham: My Lords, I, too, was delighted to add my name to this amendment. I congratulate my noble friend Lady Massey and the noble Baroness, Lady Walmsley, on pushing at this in such a way that all the political parties now recognise that a family need not be exclusively parents and children but may be older parents or three generational. That wider approach to the concept of family and the need for family support is very welcome, as reflected in the Government's latest Green Paper. I am sure that the parties opposite share this view.

When I was involved with the CSA, one was often trying to get feckless, young, sometimes chaotic single fathers to pay maintenance. They would often do so only if they had had contact and bonded with the child. As these were 22 year-olds who were mostly living at home, the only way to make that work was for the mother—the paternal grandmother—to support, nag and encourage her somewhat chaotic son into bonding with that child. Often, that was the way in which the young man grew up into adulthood.

Many of us were very aware of children rotating between the parental and the grandparental home, often when there was a breakdown of relationships through the mental ill health of the mother. One tried to boost and reconfigure, with the full support of DWP, the guardian's allowance, which was then designated only for physical orphans—children whose parents were perhaps killed in a car crash. It seemed an appropriate, flexible benefit to extend for children who were effectively moral orphans—whether because the mother was on the game or on drugs, or the dad was in jail—and as a result were dependent on the support of other members of the family. We have modified the allowance somewhat—it now applies for two years rather than five years in prison—but we still have some way to go to allow it to fill a very necessary space.

It was also clear, when working on lone parent policy, that often the only childcare that was acceptable to a lone parent, because she trusted it, was that offered by her mother. As a result, the lone parent was willing to go into work without guilt and hung on in work in a way that she might not have done if she regarded her childcare arrangements with more suspicion, so that they broke down too easily and too frequently, pulling her back out of the labour market.

Again, we could not get support—understandably perhaps—for paying the childcare tax credits to grandparents, because of the extra cost, but I was delighted when my noble friend and the Treasury agreed that grandparent carers looking after children for more than 20 hours a week were at least able to get national insurance contributions. Although they might not get payment, they none the less were not penalised through their pension. I was delighted when that happened.

I am delighted that both parties understand—as I am sure my noble friend does above all—that for children whose own parents may be chaotic, fragile, incompetent, on the game, in jail, with poor mental health or addicted, the grandparents may be the only stable loving adults in their life. We have to do all that we can to allow willing grandparents to keep such a family afloat, particularly, as the noble Baroness, Lady Walmsley, said, as that child may be troubled and difficult in the formal care system and find their foster parent relationships breaking down time after time, because of the baggage of disadvantage that is brought to that new relationship. Grandparents hang on in when foster parents may not feel able to do so. In the process, as the noble Baroness rightly said, they give those children continuity with their roots. Often those children may love their hopeless mothers deeply and feel simultaneously protective and resentful of the situation that they are in. Loving grandparents can help those children to negotiate a complicated, ambivalent relationship with their natural parents.

The advantage of grandparent care, as both my noble friend and the noble Baroness, Lady Walmsley, said, is that it is flexible, informal, reliable and swift. You do not have to go through the bureaucratic hurdles of taking your child into a looked-after relationship, nor is it so threatening, so definitive and so labelling. In all these ways, it avoids the stigmatising of the child and the stigmatising of the family and is, therefore, a much more welcome approach in many situations.

Obviously, as the amendments say, we need data and we need consultative conferences to get the best outcome for the children. However, we also—and above all—need cash. It is quite simple. What often

stops many willing grandparents continuing to support grandchildren is shortage of cash, particularly if they themselves are on a pension or have had to drop out of the labour market.

What sort of cash do they need? Often they will need, as the noble Baroness said, instant cash. I would like to see a right, under Section 17 of the Children Act, as amended in 2008, for grandparents to go for a community care grant from the Social Fund for instant access to £200 or £250 to produce the bunk beds, the sheets and the spare clothes that that child, who may have come the day before, may need. That is the first port of call.

Secondly, I would like to see non-conflictual help in resolving the issue of the benefit book, because the child benefit book is the passport to all other child-related benefits, including childcare tax credit. Perfectly sensibly, normally you do not change it within eight weeks; otherwise you will often find estranged husbands having it after two weeks because they were looking after a child for the summer holidays. We are trying to avoid that situation. The problem is that many biological mothers, particularly if they are addicted and so on, are extremely reluctant to hand over an obvious source of cash, while the grandparent, equally understandably, is reluctant to take them through the court procedures to get the benefit book restored to them, because that would break down whatever fragile bonds of trust there may be.

Therefore, you need not only family conferences but an alternative route to give the financial support to grandparents. That, I think, could be a beefed-up guardian's allowance, which at the moment is about £14 per week. There is no reason why it should not be beefed up to something like £50 a week. Alternatively, we could use as a temporary measure the care allowance that we give to carers. That would be particularly useful in those cases not where the child is long term with the grandparents but where there is a revolving door, as may happen when the mother is in poor mental health. The mother may break down and the grandparents take over for six weeks or 16, after which the mother is well enough and the children go back home; then, six months down the road, it happens again. In that case, a flexible guardian's allowance, without fussing about the benefit book and so on, would allow the grandparents to have a carer's or a guardian's allowance to help them to manage the additional financial costs that fall to them in such a revolving, fluctuating situation.

4.15 pm

Finally, if grandparents are carers for the long term, we should give them proper financial support. Local authorities often find it very hard to find foster parents who will take on large sibling groups, mixed-race children or children with a disability, because they do not necessarily have the appropriate experience. Equally, the child may already be in his early teens, resentful and hard to handle, even for experienced foster carers, who may find him truculent and awkward for very obvious reasons.

We know how hard it is to find such foster parents; there is a national shortfall of something like 10,000. I was privileged to spend a couple of days with one of the best private foster carer organisations, which charges £800 a week for a foster child. It was doing admirable work with the children whom the local authority found hard to place, but I suspected that in some cases, had there been more efforts to find kinship care, the child could have had a more family-friendly placement at a fraction of the cost and with potentially better outcomes.

That very good organisation said that its biggest hurdle, despite recent changes in the law, was getting head teachers to accept children into schools as looked-after children ahead of other children. It told me, as have other organisations—I hope that this is not the case and that, if it is, my noble friend will resolve it—that academies are given a three-year pass on taking looked-after children in order to avoid implications for their results and the like. I very much hope that my noble friend, and perhaps other Members of your Lordships' Committee today, can run with that and correct it if that is indeed the situation.

I appreciate that all this could have some financial repercussions, but there would be savings in the direct foster care bill and huge savings in the longer-term outcomes for children. It is the right thing to do. We should not simply rely on exploiting middle-aged women to pick up the slack in the system, although they do so with grace and generosity. Rather, we should fund them, support them and help them as they should be helped.

Baroness Walmsley: Before other noble Lords intervene, I would like to pick up on a point that the noble Baroness made. I did not want to stop her flow earlier and I hope that she will forgive me. She mentioned sex workers twice. Does she agree that, although many children of sex workers are not in an ideal situation in a household where the parent is a sex worker, their parents care for them very deeply? Indeed, some of them claim to do that sort of work to provide what they would like to provide for their children and do not, for many reasons, feel that they can do so another way. I am sure that many of us wish that they could do so another way, but not all children of sex workers are abused or neglected. I am sure that she would agree with that.

Baroness Hollis of Heigham: I absolutely agree. Clearly some women who are on the game are admirable mothers. The trouble, as we all know, is that they may be on the game because of drug abuse and drug reliance. That, or a mental health problem associated with it, may be what produces the troubled background for children.

Baroness Butler-Sloss: My Lords, I support these amendments and strongly support the speeches of the previous speakers. It is quite clear that, unlike with the previous amendment, the subject of these amendments is not covered by the Bill. It should be. As has been said, research has shown that those who care in this group are significantly disadvantaged compared with those who are foster parents and that, if you were to pay them less than you pay foster parents, you would save money on foster parents, particularly with children who are difficult to place.

[Baroness Butler-Sloss]

I will tell the Committee about one family. The godmother is a friend of mine. She took over the permanent care of a nine year-old girl, who is now 11, from the mother, who has significant difficulties with drink and drugs. She keeps in regular touch with the mother and grandmother. She has managed to keep working, but with difficulty. She was asked by the local authority to take over the care of the child. She offered to be a foster parent but was persuaded not to be. Of course, she does not get a single penny from the local authority. She has now, at my suggestion, become a special guardian, but she still gets no money from the local authority. Her situation is not exceptional.

I should have declared an interest: I am president of the Grandparents' Association. However, it is not grandparents about whom I will speak, because they have been adequately and eloquently covered. I will speak about other carers such as godparents and other friends of the family, who take over the care of these children at very short notice. We are talking not just about people in their 40s but about people in their late 50s and 60s, who have to readjust their lives for the sake of a little girl or boy to whom they are not naturally related but for whom they feel an obligation, as this friend of mine does. She is doing a wonderful job with her goddaughter.

There is no shortage of people who do not take on the task because they cannot afford to, as has been said. What is very sad is not only that the child does not have a family or friend whom he or she knows, but that they go into care. The child is then moved from place to place. One appalling thing about the care system—it is not the fault of the system but the result of children going into care—is that children move two, three, four, even 10 times. I know of one child who moved 40 times before he ended up in an institution for severely traumatised children. Just think of it.

The grandparents or other carers of these children should be able to have some financial relief. Most of them are seeking not a foster parent allowance but some lesser support. If a little work was done by government departments to see what might be satisfactory for grandparents and other genuine related or connected carers—as Amendment 71 sensibly says—they might find that the cost would not be greatly in excess of what it would be otherwise. Short-term foster parents have to be paid, as do the long-term foster parents of a child who has been through a totally unacceptable situation. I urge the Government to look again—and very sympathetically—at these amendments.

Lord Northbourne: My Lords, I congratulate the noble Baronesses, Lady Massey, Lady Hollis and Lady Walmsley, on the powerful and accurate presentations of the problem that they gave. I hope that the Minister and his department will read and reread them. Perhaps I might dare to suggest that this is a subject not only for the DWP but also for the children's services. I wonder whether a joint consultation might be a possibility.

Given what everybody has said, there can be no iota of doubt that the need is there. The problem is money. The noble Baronesses have said that they can see ways in which a more enlightened view would save money. Surely the time has come for somebody—maybe the Government or maybe a consortium of the charitable bodies in this area—to get an independent assessment and make some estimates, perhaps two or three projections of what would happen if local authorities were either encouraged to find the funds by greater efficiency or given the funds that they need. At the moment, the problem is that local authorities are struggling not to pay these allowances. One hears stories of children being brought by social workers to their grandmother's door at 2 am, with the grandmother being told, "Either you take the child or we will put it into care", and the kindly grandmother cannot bear the idea of the child going into care. In the morning she realises that, because she has taken in the child, she is not entitled to any allowance. That is an absurd situation. We should look into the financial issues to see whether we can prove that some of these things would be worth doing.

Lord Freud: My Lords, I have a great deal of sympathy for these amendments and I congratulate the previous speakers, the noble Baronesses, Lady Massey, Lady Walmsley and Lady Hollis, the noble and learned Baroness, Lady Butler-Sloss, and the noble Lord, Lord Northbourne. I confess that I regret that my name is not also on the amendment, as it is smack on the nose.

Some powerful speeches have been made. I shall not go over the same ground, as I want to come at the issue from a slightly different angle. In the pursuit of individualism, we have built up the individual at the expense of extended families. The vacuum that we have created has in many cases been filled bureaucratically. Families and friends are often disempowered from helping themselves by that bureaucracy. How much better it would be to have systems that reinforce natural family networks and kinship patterns. Our party has been making the point that we have developed a system in which bureaucratic processes take control and actively disempower the natural support networks that we relied on in the past and which other societies rely on to this day—and they are the happier for it.

I would like the amendment to be accepted. Clearly a process will go on today, but I shall be interested to see what we do with it at the next stage. It is entirely likely that, if the amendment were assessed on a real cost return basis, it would save the state money. I am interested to hear the Minister's views on the real costs, if any, or on the real savings, which I suspect that there would be.

4.30 pm

Lord Martin of Springburn: I, too, congratulate the noble Baroness on the amendment. I am reminded of my days as a young councillor in the 1970s on Glasgow Corporation, which had a magnificent reputation for looking after its children. The children could not always be fostered with families within the boundaries of Glasgow and so were placed with families all over Scotland. Every summer, the committee, the convenor and the shadow convenor, Labour and Conservative, would be given an allocation to visit foster homes throughout Scotland to see how the children were

being looked after and to check that the social workers employed by the corporation were placing the children with good families. I was always amused by the old-fashioned language used. People would say, "Councillors are invited to visit fostered and farmed-out children". I do not know why they used that word, which is an old Victorian term.

I remember being greatly impressed when visiting a household in Dumfries, well outside the city of Glasgow. The lady there had fostered children all her married life. She said, "You're from Glasgow and you've turned up in a big limousine. The last time that happened, I wasn't at home and the limousine went to the school, looking for the children. The headmaster said, 'I want the Glasgow children to meet the councillors'. The following day, I marched up to that school and told the headmaster, whom I had known since he was a boy, that under no circumstances were those children ever to be described as the 'Glasgow children'. They are children living in my home and they are my children". That impressed me. On those visits I also met men and women looking after not only young children but sometimes young adult men and women with educational difficulties. Some of them were in their 30s but were still regarded as people being fostered and looked after in families.

Can I make a point to the Minister? One of my worries is that, while it is ideal if grandparents and aunts can look after these children, it should be remembered that in many cases the aunt or grandparents will be living in a different local authority area from where the child is being looked after in care. Sometimes that leads to disputes between authorities. While it is recognised that the aunt or grandparents should be given some financial support, arguments arise over whether it should be paid by, say, Liverpool, Glasgow, Edinburgh or Newcastle.

I remember a case where a child in care with a local authority south of the border had an aunt in my constituency, when I was an MP. The child said that it would be lovely if they could stay with the aunt. A phone call was made to the aunt in the middle of the night asking if she would take the child. The aunt said that of course she would, but that she had financial commitments with a mortgage and children of her own and so would need some financial support. She was told that it would be all right. However, in the end, that verbal agreement made over the phone was not adhered to. The child was being very well looked after in Glasgow and no discrimination was made between that child and the others in the family, but there was a dispute. As the local MP, I went to the Minister at the time, Paul Boateng, and the matter was resolved. My worry is that we have to be careful that we do not have local authorities that are strapped for cash arguing about who should meet these commitments.

Lord McKenzie of Luton: My Lords, I thank my noble friend Lady Massey for these amendments and pay tribute to her for the enormous amount of work that I know she has done, and continues to do, in this area. I also thank all other noble Lords who have spoken on this group of amendments. It has been a very powerful session, and it is therefore with some trepidation that I have to respond to the debate.

I start by saying that we are not here this afternoon to construct the strategies that will evolve from this Bill. We are seeking, from a child poverty perspective, to see that the framework which is provided for within this legislation covers all the bases effectively and gives us the opportunities to focus on the things that we need to. I readily accept the key points that have been made. The noble Baroness, Lady Walmsley, spoke about the importance of the stability of the arrangements that kinship carers can provide. A number of noble Lords, including the noble Baroness, Lady Massey, herself, and the noble Baroness, Lady Hollis, spoke about the importance of data and resources in that, and they clearly have an impact on child poverty. The task is to see whether the Bill provides the framework for us to be able to address these issues.

The amendments seek to ensure that sufficient support is given to those carers through the child poverty strategy, and that we have a good understanding of the number of such children who live in poverty. We all share a commitment to improve the support available to those who care for children, including relatives and friends, and to ensure that the needs of this group are taken into account by Government and by local authorities. The evidence points to care by family and friends being the best approach for many children who cannot be looked after by their birth parents, and we want to recognise fully the additional support needs of this group, as well as the contribution family and friends carers make to the life chances of vulnerable children. To this end, we are already taking measures to help encourage children's upbringing by their families, and help ensure that family and friends carers receive the appropriate financial and practical support they need.

We recognise in particular that grandparents are playing an ever-increasing role in family life, both in supporting parents and caring for children. They are a crucial provider of full-time kinship care for those children whose parents are unable to care for them themselves. Many grandparents also play an important role in providing flexible and affordable childcare, often in the context of wraparound care between school and more formal childcare settings. The measure announced in Budget 2009, referred to by my noble friend Lady Hollis, that grandparents and other family members with significant childcare responsibilities will be eligible for national insurance credits, firmly recognised the value that grandparents add to family life.

However, while we recognise the noble intention behind these amendments—to ensure that children raised by family and friends carers receive adequate support—I do not believe that they are necessary. Amendment 32 seeks to ensure that the child poverty strategy considers measures of financial provision for specified categories of family and friends carers, as well as for parents. Amendment 71 follows on from this by adding a definition of "family and friends carers" to Clause 19. This definition is very wide, and the term "otherwise unconnected" is not totally clear. The definition is broader than that of "relative" in the Children Act 1989, which is,

"a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or [by marriage or civil partnership)] or step-parent".

The noble Baroness looks as though she is going to—

Baroness Butler-Sloss: What about the godparents though? That is why I told the godparents story and asked the Minister. The current definition would not include a godparent.

Lord McKenzie of Luton: I understand that point; perhaps I can come back to it in a moment.

I was going to go on to say that the definition of "parent" in the Bill goes further than just parent, and includes any individual who has parental responsibility for a child under the Children Act 1989. This includes many of the persons described in paragraphs (i) to (v) of this amendment: they are already included as parents under the definition in the Bill. It specifically includes parents, step-parents, persons appointed as guardians, persons with residence orders and persons with special guardianship orders. Therefore, we are not convinced that it is necessary or appropriate to extend the Bill provisions to people who do not have parental responsibility within the meaning of the Children Act 1989. Using the definitions in the amendments tabled would encompass private foster carers and very distant relatives, although I acknowledge that it would also encompass godparents. However, that does not mean that their circumstances do not have to be taken into account.

Noble Lords will also wish to note that family and friends carers are already able to access a range of support under existing legislation. Section 17 of the Children Act 1989 places a general duty on local authorities to safeguard and promote the welfare of children in need in their area through the provision of a range and level of services appropriate to fulfilling those children's needs. This includes providing services to any member of the child's family, which includes persons with whom the child has been living even if they do not have parental responsibility. The services provided can include financial support. The Children and Young Persons Act 2008 amended Section 17 of the 1989 Act to make it easier for local authorities to provide regular and long-term financial payments to families caring for children where they assess this to be appropriate.

As with any other family, family and friends carers will be entitled to a range of financial support, such as child benefit and child tax credit, both of which are unaffected by any payments made under Section 17 of the Children Act 1989. They may qualify for other benefits on broadly the same terms as parents, and if they are bringing up a child on their own and are unable to work they may claim income support on the same basis as other lone parents.

In addition to the range of support available under existing legislation for family and friends carers, we recognise also the need to ensure that adequate support is provided for all children through the child poverty strategy. The Bill sets out the main policy areas that the strategy will address in broad terms: promoting the employment and skills of parents and carers; providing financial support for households with children; improving family services; and achieving a good local environment.

I reassure noble Lords that although family and friends carers are not specifically mentioned in the building blocks, except to the extent that they are covered by the definition of "parent", the measures in the strategy will have to address their needs in order to meet the 2020 income targets. One of the main objectives of the strategy, as stated in Clause 8(2)(b)—we had an interesting debate on this earlier in the week—is to ensure that, as far as possible, children in the UK do not experience socio-economic disadvantage.

In developing a strategy to meet this objective, the needs of vulnerable groups, and the specific measures required to meet these needs, will be cross-cutting issues across all the main policy areas. The Bill avoids being too prescriptive about the strategy, both as regards the content of specific policy measures and the specific groups that need to be targeted, because it needs to respond to changing circumstances between now and 2020. However, we envisage that the analysis will consider the evidence on which groups are most at risk of poverty on all the measures. The strategy will then consider whether specific measures are needed to meet the needs of the most vulnerable groups of children, as well as of their parents and carers.

I turn now to Amendment 63. Our view is that this should be resisted because of practical difficulties in measuring the number of children who are cared for by family and friends and who are experiencing the different types of poverty defined in Clauses 2 to 5. The practical difficulties arise both because the survey used to measure child poverty does not distinguish between children who are living with family or friends carers and those who are living with parents; and because the relatively small numbers of these children—although I accept that there is some disagreement about how small is small—would mean that it would not be possible to produce reliable estimates of the numbers involved. However, discussions are under way with stakeholders to consider how current data collections might provide information on the number of children living with relatives. To include reporting requirements based on households below average income surveys, which drive other targets, would not be possible because the surveys do not produce that data. Even if they did, the survey sample might produce some difficulties. However, that is not to say that there is no recognition of the need for more data. Work is under way to try to get the data, but not specifically by those means and for that purpose.

4.45 pm

Finally, I turn to Amendment 71. We similarly appreciate the intention behind it, which is to ensure that the needs of children living with family and friends carers are properly taken into account by local authorities when conducting needs assessments in preparation for producing their local child poverty strategies. The purpose of the amendment is to require the Secretary of State to include the number and needs of children living with family and friends carers in the matters that must be considered by local authorities. There is currently nothing to prevent the Secretary of State making provision in the local child poverty needs assessment regulations on how the needs of children living with family and friends should be considered. The intention is that the regulations will set out those matters which a responsible local authority must consider

in its child poverty needs assessment, while giving the authority flexibility to consider other matters that are appropriate.

The amendment therefore adds little to the Bill as local authorities can include these considerations in their local needs assessments under Clause 21 as currently drafted. Noble Lords will be aware that we have circulated draft regulations on the needs assessment and I commit to looking at those again to see whether something more specific might be included to beef up the necessity and desirability of engaging local authorities in focusing on this. It is enabled by the Bill as it currently stands.

In addition, because the definition of family and friends carers in these amendments is very wide, it is unclear exactly which children would be included in the requirement. I say this with some trepidation but I hope that my comments illustrate the value that the Government place on the role of family and friends carers and the support that is already in place to enable them to fulfil that role. I reassure noble Lords that the Government will continue to work closely with the organisations representing family and friends carers to address their concerns about the support available to this important group.

The recent grandparents' summit and grandparents' reception provided a valuable opportunity for the Government to meet and hear the views of grandparents, a number of whom are caring full time for their grandchildren. In addition, Ministers recently met groups representing family and friends carers, including the Family Rights Group, the Grandparents' Association and Grandparents Plus, to discuss their concerns, which the Government are carefully considering. In particular, concerns have been expressed about the difficulties experienced by some family and friends carers if they have to go to court to secure their care of a child and the complexity of the support available to them. We heard that graphically this afternoon. We are concerned that some grandparent families in particular are not getting the support to which they are entitled and we want to understand more about the barriers to this.

The Government will explore with stakeholders how best to identify these families and help them to access the support that they need. The views of family and friends carers have informed the Government's families and relationships Green Paper, which was launched on 20 January. It sets out a broad cross-government strategy on supporting families and relationships, including where children are living with relatives or friends. It addresses the need for local authorities to have an effective framework for supporting family and friends carers and for fostering services to be clear about the support that they should provide where a child is cared for by a relative or friend within the care system. The Green Paper also announces a support pack for relatives who are caring for children because of a parent's drug or alcohol misuse and to ensure that future developments in family and friends care are informed by best practice. It also announces that the Government are commissioning an updated study of the evidence on family and friends care, which will build on work undertaken by Professor Joan Hunt in 2003.

I am reminded that I did not deal specifically with godparents. Notwithstanding that godparents may not be included in the definition of parents for the purposes of this Bill, it does not preclude a focus on their work as kinship carers in the broader analysis of tackling socio-economic disadvantage. Part of that may be a focus on the monetary support that is available to them.

Baroness Butler-Sloss: My Lords—

Lord McKenzie of Luton: A lot of points have been raised on this issue and I understand the power behind them, particularly about the additional financial support that kinship carers should have. That may well be something which emerges from the strategies that the Bill will produce. They may also emerge from other work that is going on across the Government, as I have explained. However, I do not believe it is necessary to amend the Bill in the way proposed in order to achieve that outcome.

I was about to deal with one or two additional points that were raised in the debate, but if the noble and learned Baroness wants to come back on the point about godparents now, I will deal with it.

Baroness Butler-Sloss: No, it was something else.

Lord McKenzie of Luton: My noble friend Lady Hollis asked specifically about academies and whether they have a three-year pass on responsibilities for looked-after children. I cannot answer that question. It would be a bit grim if that were the case, but I will certainly find out and get back to my noble friend. Local academies normally do really good work, but I want to understand if that is the case. A number of noble Lords focused particularly on resources and the role of local authorities. The noble Lord, Lord Martin, gave us the benefit of his experience in Glasgow and picked up on the issue of the different approaches taken by local authorities. The framework within the Bill for local authority needs assessments and the necessity to work with partners will be one route towards achieving a better focus.

The noble Lord, Lord Freud, asked about the cost benefits of this approach. I am sure he will understand that it is difficult to establish the costs and benefits of increasing financial support for particular families when a number of them enter into purely private arrangements and may not come to the attention of the local authority unless the child is in need. However, I think we would agree that in terms of investment in prevention and tackling child poverty, whatever the timeframe of the benefits, they are always a good investment.

Baroness Walmsley: Am I not right in thinking that private fostering arrangements have to be registered with the local authority? Surely the authority would know about the situation.

Lord McKenzie of Luton: Yes, I think that is right. I have just been helped by the Box. The reference was not to private fostering arrangements but to other, purely private arrangements. I am sorry if I did not make that clear.

Lord Freud: I thank the noble Lord for giving way. This is an important and central point. We are talking about some of the most vulnerable children with the worst outcomes of all children, and therefore this is not an issue one would want to dodge in a Child Poverty Bill. Putting jibes about Christmas trees to one side, this is a really important issue. I would like to request the Minister to ask the relevant department to make a swift, rough and ready assessment—or in the famous words of the noble Baroness, Lady Hollis, a "quick and dirty" assessment—preferably before the Report stage, of the expenditure implications of these amendments and whether overall cost savings might be achieved. It could be done on a spreadsheet with a range of assumptions, but we need a basis on which we can look at this. I ask this because my strong instinct suggests that there are very considerable savings to be made, so I would be interested to know what the first instinct of the department is.

Lord McKenzie of Luton: Let me say first that nobody is seeking to dodge this issue. The point I have been trying to make is that the extremely valid and powerful points that have been made are effectively already encompassed in the framework of the Bill. They should be addressed as part of the strategies and nothing needs to change in the wording of the Bill for that to happen. That is the import of the Government's response on this. We are not saying that it is not important; of course it is.

Baroness Walmsley: I am so sorry to interrupt the Minister again, but we know that a lot of these good things can already be done. Local authorities are already enabled to support kinship carers financially and in other ways, but the fact is that they do not do it. That is why the noble Baroness, Lady Massey, feels so strongly that she has to keep bringing this up Bill by Bill, wherever there is a little niche to get it in. It is not happening. The noble Lord, Lord Martin, also made it very clear that sometimes when it does happen they fight over who is going to pay. We need clarity and certainty.

Lord McKenzie of Luton: Those points are very well made. My response is that the framework of the Bill and the requirements for the need assessments and the local strategies should drive people to address that. More than that, we are going to issue guidance around all this, so it should be very clear to local authorities what their responsibilities in this matter are.

I was trying to deal with the point made by the noble Lord, Lord Freud, about a cost-benefit analysis. He will understand that if part of the strategy that emerges is the need to make better additional provision for kinship carers, issues will arise about how much that should be and what should be the baseline. Until all the detail of that is worked through, any cost-benefit analysis would be at best very crude.

I come back to the point that the Bill is not about writing the strategies. It provides the framework within which the strategies should be developed and driven. Until those strategies are developed and refreshed every three years and evaluated on the basis of annual reports, some of the information that the noble Lord would quite reasonably like to see cannot really be provided in the terms that he asks for.

Lord Freud: I thank the Minister for that response, but I must point out that if I were still sitting in an investment bank, which six or seven years ago I was—I am a reformed character now, I assure him—I would get a decent-looking spreadsheet on this overnight, which would give the rough order of magnitude of cost and expenses that we were talking about and would give a framework in which to look at the issue. It is clearly an issue of immense importance. I cannot understand why we cannot have a rough spreadsheet with three or four basic assumptions so that we can just look at it informally. You can tell from the debate that there is a very strong group of Members who feel that the state should support this. I anticipate that this will come back in quite powerful form at later stages. Such a spreadsheet would be an immensely valuable stepping stone to allow us to take a sensible approach to this later.

5 pm

Baroness Hollis of Heigham: My Lords, before my noble friend responds, I hope he will permit me to speak. I am sure we all very much welcome the completely consensual approach in the Committee today in seeking how best to respond to the problem. The difficulty is that the stats do not exist. Even my noble friend Lady Massey and the noble Baroness, Lady Walmsley, who have been working with colleagues in Grandparents Plus and the Grandparents' Association, do not know whether we are talking about 200,000 or 300,000 or 100,000 or 500,000 grandparent and kinship carers of these children, and for how long, and at what cost, and at what age, and so on. The problem is that we cannot start on that building block. Most of the panel surveys do not pick this stuff up. Perhaps we have not asked the right questions. It is then very hard to go on to do a spreadsheet outcome, although I would dearly love to see it. That is why this amendment is asking that, if we cannot do quick and dirty because we do not have enough stats, can we at least build up appropriate stats over time? That is why I hope that my noble friend will think about an amendment to ensure that we identify this as an issue that the commission has to take on board. I think that would satisfy us.

The second point that I wanted to ask about was that my noble friend made an interesting comment in response to the noble Baroness, Lady Walmsley, about local authorities. He seemed to suggest, if I heard him correctly, that he was going to write to local authorities to get them to clarify their response and their relationship. Until we have the hard stats on which we can develop a well founded policy, I think I understood him to say that local authorities are going to be required to ensure that kinship placements, even of children who have not come into the formal, looked-after care system, will none the less get a degree of appropriate financial support. I understand the burden on local taxpayers and the like, but none the less they should have a degree of appropriate financial support to allow those children to remain in—I shall not call it the black care

system—the informal care system that family members often represent. Can my noble friend help us on that so that we know that some of us can go back to our local authority and say, "You are going to do this, chums"? They will need to start collecting the data and thinking about strategies to provide appropriate support for children who do not need to go into the full bureaucracy and the high costs of the full, looked-after care system.

Baroness Butler-Sloss: To save the Minister getting up and down, I wonder whether I might add my two cents' worth. I wanted to ask him about two points. The first is in relation to data. It seems to me that it will be impossible for local authorities or the Government to be able to deal with informal arrangements between parents and kinship relations or other carers. Nobody could ask them to do that. However, the majority of the cases that we are talking about today have come through the local authority going to a member of the family, godparent or other friend and asking them to look after a child in need under Section 17 of the Children Act 1989, on which I want to ask a second question. That will be a record in the local authority. That information is available. The authority may need to scrabble through its documents, but I do not see why that would do any harm. The government department would then have the data on every child placed with a kinship family in the past five years, say. That information is available to be obtained and I would have thought that those behind the Minister would say that that could be done. That would give some very valuable data. Local authorities, under the social workers, will have it in their records.

Secondly, I was profoundly disturbed to hear that the Minister had been fed with Section 17 of the 1989 Act, under which the local authority has responsibility for children in need. I would like to know whether the Minister has any evidence that any local authority anywhere within England and Wales has ever paid a kinship carer under Section 17 of the 1989 Act. I would like to bet £5, if that is not improper, that they have not done so.

Lord McKenzie of Luton: My Lords, on the latter point, I cannot give an answer off the top of my head. However, I will ask the team to go away and see if we can lose the noble and learned Baroness's £5, although she did make a fair point.

I will try first to unpick the issue of data. I will deal with the data on which the targets that form part of the Bill are based, namely the households below average income surveys. As I tried to explain, the surveys do not differentiate who the adults are in the family when the data are collected. Therefore, it is not possible to look at the surveys in the same way as we do for measuring targets, and identify kinship care arrangements: it does not flow from the data. There is a separate point about the general need for data: one recognises that. Work is under way, as I have said. I am happy to reflect on my noble friend's suggestion about whether we could do anything more specific in the Bill to drive that more formally. I cannot commit to that, but I take the point. However, I would separate it from relying on the households below average income survey, which produces the targets, and assuming that it will provide this source of data; because, without significant amendments to the survey, it would not. I do not know whether amendment of the survey is possible: it would certainly be costly, and there may be other implications. I hope that I have explained the issues around data.

Local authorities are enjoined to produce local strategies. They are required to undertake a needs assessment. One would expect them to be in a strong position to assess the needs of children in poverty in their area. I hope that I have said that, as part of the process, regulations and guidance will be issued to local authorities in this area. We need to see how that guidance might be used to focus on the issues that have been raised this afternoon, so that when local authorities devise their strategies and act on them, these things are at the heart of the strategies. That was the purpose of those comments: there was no suggestion of writing to local authorities in the interim on the basis that my noble friend suggested.

I am not sure about the scope of the investment banking activities of the noble Lord, Lord Freud, or about what he did with the spreadsheets that he produced on what seemed to be a fairly broad-brush basis. Perhaps it was practices like that which led us into the financial crisis that has beset us across the globe. However, the point here is one that my noble friend Lady Hollis touched on. We do not have the data for the numbers involved; and even if we did, we have no detailed work on what sort of rate per week would be appropriate as a payment to kinship carers, and on what other considerations might be taken into account. The work that is being done as a result of the Green Paper on family relationships and support, and the further studies that I referred to, would be the basis on which to produce that information. Producing a few figures on a few pieces of paper in the short term would not help us very much. I hope that we share the broad principle that addressing poverty and making sure that all children are able to flourish and have decent living standards is a sound investment for government. That is at the heart of the Bill.

Baroness Massey of Darwen: My Lords, I am not sure where to begin. I thank all noble Lords for their speeches in what has been a very moving debate. I also thank the Minister for his valiant responses. I know that he is not a dodger, because I have worked with him before on this issue and he has shown great interest and met many grandparents.

This Bill is about child poverty. Two things seem to be going on. One is about what local authorities know, or should know, about how many people are involved in this. I agree with the noble and learned Baroness, Lady Butler-Sloss, that they must have some information, and many will have a lot of information.

They should know what the problems are if they are to address this pocket of child poverty. I know that the organisations that support family and friends carers are becoming more and more organised and determined to get something done. I should be surprised if some of them do not run out of this debate and try to do some work on the figures—maybe even before our good people behind us can get to grips with it.

[Baroness Massey of Darwen]

The noble Lord, Lord Freud, was not on the list of movers, because I thought that he would be the noble Baroness, Lady Morris.

Lord Freud: I can only say that I am honoured.

Baroness Massey of Darwen: We have all worked so closely with the noble Baroness, Lady Morris, on this that I assumed that she would be taking it forward, but we are delighted to have the noble Lord here, despite the spreadsheet ideas.

When we debate the issue of family and friends carers it sometimes gets clearer but sometimes it is more confusing. It certainly gets more passionate and we have to realise, as the noble Lord, Lord Martin, said, that in all these local authority manoeuvrings vulnerable children and families are in the middle of all this. For example, if a grandparent takes over a child who has lost his or her parents, the child and the grandparent will be grieving and there may be all kinds of behavioural difficulties. There is no money. One grandparent said to me, "When I should be reading my grandson a bedtime story I am filling in the bloody forms from the local authority". It simply is not good enough.

Some local authorities—Nottinghamshire is one—have at least a part-time worker who will help the kinship carer to fill in the forms, tell them where to get support and generally help them to get the money. The problem is that many local authorities do not have such workers and they do not come up with support, financial or otherwise. It depends on where you live, which is not good enough either. I have met quite a lot of family and friends carers and they all say that the local authority is a point of contact and sometimes they are absolutely useless but sometimes they are really helpful. I know that there is guidance about, but the problem with guidance is that no one has to follow it. I do not think that that is stringent enough to deal with vulnerable children.

Maybe the Minister and his officials could meet a group of us to come up with one overarching amendment that is simpler than this one. I am encouraged to ask this because there has been widespread support across all parties. We have to move forward in some way on this issue. I am not entirely happy with some of my noble friend's responses, although I know that he supports it, but I think that we could come up with something that is more solid and much shorter so that this important issue on child poverty is addressed. I beg leave to withdraw the amendment.

5.15 pm

Lord McKenzie of Luton: Would my noble friend permit me to speak in relation to the guidance? Technically I am advised it would be statutory guidance, but that only half answers the point. I am more than happy to commit to a meeting together with officials. I stress that the issue for me is whether you need anything more specifically set down in the Bill in this regard.

Nothing that has been debated and argued for this afternoon is precluded under this Bill. These things should be addressed as part of local authority and UK-wide strategies. If we are apart, it is on the necessity of adding further words to the Bill to achieve that, but I am more than happy to meet to see if we can close that gap.

Baroness Massey of Darwen: Maybe we could all follow that up in some way.

Amendment 32 withdrawn.

Amendment 33

Moved by ***Lord Freud***

33: Clause 8, page 4, line 23, at beginning insert "physical or mental"

Lord Freud: My Lords, Amendment 33 is short and simple, it is not quick and dirty. I tabled it to emphasise that any measures taken in the UK strategy must take account of the range of potential health problems that might be impacting on the welfare of a child.

Mental health concerns remain, unfortunately, underdiagnosed and undertreated. Also unfortunately, but not surprisingly, they are more likely to appear in people struggling in lower income brackets. Failing to address a health concern in a child at a young age can lead needlessly to lifelong problems.

It is also not just the physical and mental health of the child that the Secretary of State must concern himself with. The Minister is well aware of the impact on employment prospects a physical or mental health problem has. Even where this is not the case, children growing up in a household with a parent with a health problem are often forced to take on the role of carer themselves. Not only are these children at risk of being brought up in a workless household, they must also struggle to fit their lives around the needs of their parents. I beg to move.

Baroness Butler-Sloss: My Lords, perhaps I could support this amendment. It is very important that one recognises that mental health problems, both for themselves and for their parents or other carers, are among the problems that children in the poorest families have. To have the word "health" here rather assumes physical health. Of course, technically a description of health would include mental health, but it does tend to be overlooked. It is a wise precaution to have it in here, in order to alert those who will be dealing with strategies to have in mind the mental health both of the children, and particularly, as the noble Lord, Lord Freud said, of the families. One of the elements of poverty is the very considerable mental health problems of the carers, often induced by drugs or drink.

Baroness Walmsley: My Lords, may I simply observe that when we become a society that does not feel it necessary to specify that health includes mental health as well as physical health, we will have become one that gives mental health the appropriate attention and resourcing that it deserves.

Lord McKenzie of Luton: My Lords, I thank the noble Lord, Lord Freud, for his amendment. I am going to sound a bit like a broken record in my response.

As he is aware, we have deliberately set out the main areas of policy in broad terms in Clause 8(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 the specific measures which are needed in each area.

As many noble Lords have pointed out, there is an important link between health issues, particularly mental health issues, and the causes and consequences of child poverty. Health and employment in particular are fundamentally linked; the noble Lord made that point. Health has an impact upon an individual's ability to enter, remain in and return to work and can affect a parent's ability to provide for their family. Equally, work, or the lack of it, can have an impact on an individual's health. There is good evidence that living in a workless household has a measurable adverse impact on later mental health and individual resilience.

The Black review of the health of Britain's working-age population was published in March 2008. Dame Carol estimated that the annual economic cost of ill health in terms of working days lost and worklessness was, according to the spreadsheets, over £100 billion. The economic costs in terms of the waste of human potential are matched by the personal cost to the health and well-being of individuals and their families. The government response to the Black review, published in November 2008, launched a package of initiatives aimed at improving the health in work of Britain's working-age population. The initiatives are designed to create new perspectives on health and work, improve workplaces and support people into work.

In relation to mental health specifically, recently we asked three experts in the field of mental health—Rachel Perkins, Paul Farmer and Paul Litchfield—to carry out a review into the ways in which we might be able to reduce the high levels of worklessness among people with a mental health condition. The findings of the review, entitled *Realising Ambitions, Better Employment Support for People with a Mental Health Condition*, was published in December 2009. We will consider those recommendations and respond in due course. The amendment asks for the inclusion of health in subsection (5)(c) to be broken down into physical or mental health. It is our view that the amendment is unnecessary, because as has been recognised in a powerful way by the noble Baroness, Lady Walmsley, "health" is already wide enough to cover physical and mental health. As I have already said, the building blocks are broad areas for consideration when preparing the strategy, and we should avoid being too prescriptive in the wording.

Again, we are not apart on the need to address mental health as part of these strategies. The noble Lord suggested that not enough had been done in relation to mental health. I will not take the time of the Committee to run through a great deal of work that has been done in recent times and the investment that has been made, but I do not think that we are apart on the need to see this as part of the strategy, only the need to include it in specific terms in the Bill. On that basis, I hope that the noble Lord will not press the matter.

Lord Freud: I thank the Minister for that response. I should assure him that this amendment is not trying to get employment for psychoanalysts. I am most grateful for the observations of the noble and learned Baroness, Lady Butler-Sloss, and the noble Baroness, Lady Walmsley. The noble and learned Baroness in particular put some of the arguments better than I managed to myself.

Good work is going on. Dame Carol Black and Rachel Perkins have produced work that meshes together well. It is for that reason that I am slightly disappointed, rather than baffled, that the Minister finds it worthwhile to resist this rather minor change. The reason I think it is a valuable change, and why I think that he would consider it of value, is that mental health is not a marginal issue in the community we are talking about; it is a substantial part of the problem. In the community of people on invalidity benefit and employment support allowance, which comprises around 2.6 or 2.7 million people, it should be noted that 42 per cent entered the category for mental health reasons. There are estimates that very many of those people who go to IB without it end up with some mental problems because it is actually a rather depressing existence—depressing and worse being on IB. We are talking about well over half of that very substantial group of people affected by mental health. As the noble and learned Baroness, Lady Butler-Sloss, and Baroness, Lady Walmsley, said, when you use the word health it is not appreciated that mental health is encompassed in it. It is just not normally thought of immediately.

This is a very simple amendment which is designed to reinforce a very important point which affects a large number of people who are directly in the category that a child poverty Bill is involved with.

Lord McKenzie of Luton: I do not want the noble Lord to finish without making it clear on the record that I hope nothing I said could or should be interpreted as saying that I think this is a minor issue. Mental health is a very important issue, which is why a lot of investment has gone on in it. It is one that clearly has an impact on child poverty and will need to feature prominently in the strategy. I think we just depart on whether it needs to be specifically mentioned. It is an important issue.

Lord Freud: I thank the Minister for that intervention. I absolutely do not want to say that he was saying that it is a minor problem, because I know perfectly well he knows that it is not a minor problem; it is a major problem. This, however, is a declamatory Bill in a lot of its aspects. I do not mean to be rude—do not take that in the wrong way—it is trying to say that child poverty is important. In that sense, it is a Bill that is trying to make a point and shift perceptions generally. In that context, it would also appear to be absolutely appropriate to take "mental health" out, and make clear that it is vital in that context. So it is an incredibly small change in the sense that it is just perceptions and one can interpret health to be mental health—people do—but you are making a statement about the importance of mental health in this area and I think that is valuable in the context of an attempt to deal with child poverty.

[LORD FREUD]

With those observations, for the time being, I beg leave to withdraw the amendment.

Amendment 33 withdrawn.

Baroness Crawley: This may be a convenient moment for the Committee to adjourn during pleasure for 15 minutes.

The Deputy Chairman of Committees (Baroness Harris of Richmond): The Committee will adjourn for 15 minutes and we will recommence at 5.43 pm.

5.28 pm

Sitting suspended.

5.43 pm

Amendment 33A

Moved by ***Baroness Thomas of Winchester***

33A: Clause 8, page 4, line 23, after "health" insert "and nutrition"

Baroness Thomas of Winchester: My Lords, with the leave of the Grand Committee, and at the request of the noble Earl, Lord Listowel, I will move Amendment 33A in his name. He very much regrets that he cannot be here today.

As the Minister has grouped a later amendment with this one, this is the right place to have a short debate about the whole subject of free school meals and milk for children whose families receive working tax credit. We have a lot of sympathy with the first two amendments and wholeheartedly support the Government's amendment, which increases free school meals and milk to primary school children whose families receive working tax credit.

The first amendment, Amendment 33A, would insert the words "and nutrition" after "health", which would mean that the Secretary of State had to consider what, if any, measures ought to be taken in the area of health and nutrition, as well as other matters, in preparing a UK strategy. The second amendment, Amendment 41A, would add another paragraph:

"In preparing a UK strategy, the Secretary of State must consider the desirability of extending eligibility for free school lunches and milk to secondary school pupils in the UK whose parent or parents are in receipt of working tax credit".

I freely admit that there are no accurate costings in any of this, although we think that they might be in the region of £1 billion as a maximum. At this stage, no one is advocating that the Secretary of State should do anything other than look at the merits of this proposal. However, the more I think about the amendment, the more taken with it I am. Not only would free school meals for this cohort of children be good for their health, but other benefits would flow. A lot more children would be eligible for free school meals and this proposal would not stigmatise those who at present are reluctant to be singled out for fear of being labelled poor. I gather that there is a real problem of take-up in many areas on that ground and I can quite understand why. According to the Child Poverty Action Group, more that 350,000 children do not claim free school meals who are entitled to do so.

School meals are now prepared according to the Government's new healthy eating guidelines for secondary schools, which were introduced in September 2009, thanks in part to Jamie Oliver, I believe. We all heard a few weeks ago about the unhealthy lunchboxes that many children bring to school. According to research carried out in Leeds, less than 1 per cent of school lunchboxes meet the Government's healthy eating guidelines. That is across all socio-economic groups. I hope that the noble Lord, Lord Freud, knows what I mean by that. Poor nutrition for children leaves a legacy of ill health in adulthood, such as the increased risk of cardiovascular disease and diabetes. Many parents are probably at their wits' end to know what food to give their children at lunchtime. Should it be convenience food that they know will be eaten, such as crisps, or should it be healthy food, which might be left? In any case, for children to be offered a hot and nutritious meal, particularly in the middle of a freezing winter such as this, must be a good thing.

Another benefit is the increased concentration of well nourished children. In one secondary school in Norfolk, teachers reported a marked improvement in afternoon learning, behaviour and attendance at school clubs when children had eaten a school lunch. This is an important finding and must be factored into the whole debate. Here I pay tribute to the West Norfolk Women and Carers' Pensions Network and in particular Alexandra Kemp, the chief executive, who has done a lot of interesting and important work on this issue.

Many other benefits flow from a much larger cohort of children having school lunches prepared on the school premises. The local economy would be boosted by more local sourcing of meat, vegetables and fruit, leading to an environmentally friendly reduction of food miles. There would be the potential for upskilling more kitchen staff, which could lead to many of them studying for NVQ level 2 in catering, as has happened in schools where more of them have prepared their own food. A lot more part-time and therefore family-friendly local jobs would be provided with the school holidays free.

There would be a need for people with computer skills to help to use the relevant computer software that checks nutritional standards and there would be a need for proper nutritional advice and so potential for career advancement for catering staff. It is worth noting that private companies can charge £200 a day for such advice, which, of course, most schools cannot afford. There is scope for the Future Jobs Fund to cover extra staffing costs and training—I would be interested in the Minister's comment on that. As for the reduction in costs to the NHS because of the potential for improved health outcomes, this might be over the longer term, but it should not be overlooked.

In West Norfolk, a case study was carried out with extremely beneficial results. Children were involved in helping to create menus; local suppliers and farmers had increased business; the school had more autonomy

in making nearly everything from bread rolls and pizzas to meat pies; and, most important of all, the children liked the meals.

To sum up, we believe that the way in which we nourish our children has a major bearing on child poverty. There is a great deal of merit in this amendment, which we believe should be considered. I beg to move.

Lord Taylor of Holbeach: My Lords, I start by declaring an interest. It is unusual when I am wearing my Work and Pensions hat that I have to declare that I am a farmer and grower, but I suppose that I have a particular interest in this subject. I thank the noble Baroness, Lady Thomas, for picking up the amendment, because I think that it is an interesting one on which the Committee will find itself largely united in support.

We welcome the amendments and entirely support the noble Baroness in her concern for proper nutrition at all ages. We discussed at length the enormous impact that maternal nutrition has on the health of the unborn child. I am mindful of the interesting contributions to that debate made by the noble Baroness, Lady Finlay, who is not in her place, and the noble Lord, Lord Rea; they added much to the Committee's knowledge on the subject. I am glad that we now have the opportunity to look at similar effects later in the child's life.

A great deal of academic and government research is available on this topic. The results are clear: eating a nutritionally healthy meal at school improves the child's behaviour and education results. This appears to be true at all ages. The School Food Trust's studies last year indicated that children in both primary and secondary school were more likely to concentrate and be engaged and alert in the classroom when changes were made to the food and dining room. The comments of the noble Baroness, Lady Thomas, about the West Norfolk experience reinforced this work.

Following Jamie Oliver's campaign to make school meals healthier, the Institute for Social and Economic Research at Essex University issued a report showing the statistically significant improvement in key stage 2 exam results. It seems clear that, where school meals are done well, they are enormously beneficial to children. This is equally if not more true for the subset of children eligible to receive free school meals, who are even less likely to receive sufficient or proper nutrition at home. I therefore welcome the Minister's decision to allow for the extension of free school meals to a wider group of lower-income households.

I have some questions. The School Food Trust's studies indicate that there is still a low take-up of free school meals. For example, 16 per cent of primary school pupils are eligible, but the take-up is only 13 per cent. The statistics are even worse for secondary schools, with only 9.5 per cent out of a possible 13 per cent taking up free school meals. Will the Minister comment on these statistics? Are the Government seeking to improve take-up? Has sufficient funding been made available to deal with a 100 per cent take-up of free school meals?

It is not just lunch. Research indicates that breakfast can also be enormously important in giving children, especially those from chaotic families, a good start to the day. The alternative is hungry, distracted pupils who are unable to concentrate for half their lessons. Of course free school meal provision is largely a matter for local authorities, but do the Government intend to undertake any more pilots or research in this area?

Baroness Hollis of Heigham: Is my noble friend the Minister proposing to speak twice, first on his amendments—Amendment 80 and so on—and then at the end of the debate? I want to speak to the earlier amendments in the light of what he has to say about the government amendments, so I invite him to double up, so to speak.

Lord McKenzie of Luton: If the Committee is happy for me to do so, I propose to speak to the government amendments, give my view on the opposition amendments and then wind up my remarks.

I thank the noble Baroness, Lady Thomas, for moving Amendment 33A in the absence of the noble Earl, Lord Listowel, whose commitment to supporting children I acknowledge. As I said, I will speak to Amendments 41A and 33A and propose government Amendments 80, 81A and 82.

Although I support the thrust of what the opposition amendments propose, I cannot accept them. The Government recognise that making the transition into work can be difficult and, to help families to make this move, the Government want to extend free school meals to primary school pupils in working families with an income of up to £16,190 in England from September 2010. This was announced in the Pre-Budget Report in December 2009. The extension will be staged, with the first rollout to up to 50 per cent of eligible primary school pupils from September 2010 and the rest by September 2011.

This extension will provide valuable support to low-income families and improve incentives for parents to work. Around 500,000 children will benefit once it is fully rolled out. Although the Secretary of State proposes to make an order that will extend eligibility to children of primary school age, starting with those at key stage 1 or younger from September 2010 and rolling out to those at key stages 2 and 3 from September 2011, it will be possible to make further orders at some point in the future to extend eligibility to secondary school-age children if it is felt that this is necessary. That will not need further primary legislation; the change enables it to be done by secondary legislation.

The current legislation—the Education Act 1996—outlines entitlements to free school meals and allows us to change entitlement only on the basis of the benefit receipt of the parent, rather than the age of the child. It is therefore not possible to use an existing order-making power to extend the entitlement to the primary school-age children of parents who are entitled to working tax credits but not to any secondary school-age children in the same family. We therefore wish to amend Section 512ZB of the Education Act 1996 to extend the order-making powers to enable eligibility for a free school meal to be extended to a child if he or his parent is entitled to a tax credit and the child meets certain prescribed conditions. This will allow the Secretary of State to make an order extending eligibility to free

[Lord McKenzie of Luton]
school meals to a child if he or his parent is entitled to the working tax credit and the family has a household income of up to £16,190. It will also allow the Secretary of State to prescribe the age of the child. The Education Act 1996 extends to England and Wales, and the change will also apply to Wales. However, it will be a matter for Welsh Ministers to determine whether they wish to use this power to make an order in relation to Wales.

Noble Lords may ask why these changes are being made through the Child Poverty Bill. My response is twofold. First, the extension of the free school meal entitlement will assist in the reduction of child poverty by supporting low-income families and improving incentives to work. Once fully implemented, it will lift up to 50,000 children out of poverty. Secondly, it is essential to do this now, as otherwise we will not be able to meet the commitment set out in the PBR that 50 per cent of primary school pupils from low-income families will be eligible by September 2010.

Lord Kirkwood of Kirkhope: I understand the need for urgency and I am in favour of the policy, but I cavil at the fact that the Minister is using a United Kingdom Bill, which also covers Scotland, to deal with matters that relate to England and Wales as distinct from what happens in Scotland. It is much easier to understand these bits of legislation, particularly in relation to such things as free school meals, if the education Bills north and south of the border are distinct. This is a United Kingdom Bill, but it imports English legislation in a way that does not cover Scotland.

6 pm

Lord McKenzie of Luton: I understand the point that the noble Lord makes. Perhaps I may come on to the position in Scotland in a moment. The mechanism for dealing with these matters in England and Wales is the Education Act as it is and that is the Act that we need to amend. This is an opportunity to do so. If we did not take this opportunity, I am not sure how we would be able to move forward quickly.

Amendments 81, 81A and 82 are consequential amendments. Amendment 81 amends Clause 28, which is the provision of the Bill dealing with extent. As the new provision on free school meals extends to England and Wales only and is being included in Part 3, we need to amend Clause 28 to give effect to this. Amendments 81A and 82 amend Clause 29, which deals with commencement. We are proposing that the provision on free school meals will come into force two months after Royal Assent, along with the other provisions in Part 2.

Amendment 41A seeks to ensure the extension of eligibility for free school meals to secondary school children whose parents are on working tax credit in the UK. As I have said, the amendment does not preclude the Government from making further changes at a later date if it is thought necessary. However, as set out in the Pre-Budget Report, the Government believe that early intervention is vital. Therefore, extending eligibility to primary age children is the right way to proceed.

While I am sympathetic to the result that this amendment ultimately wants, the cost of including secondary school children across the UK is of real substance. When fully rolled out in England alone, extending eligibility to primary school children in low-income families will cost over £200 million a year. Agreeing to this amendment would put significant additional new pressures on school budgets, which would have to be met by potentially reducing other school services that are already committed.

The Government chose to focus the available resource on primary school children rather than secondary school children to maximise efficiency. This is consistent with the strategy that early intervention has more impact. We know that the parents of young children face the greatest barriers to returning to work. Therefore, by focusing efforts here, allowing parents to return to work and not be penalised by losing their children's free school meals eligibility, there is the potential that 50,000 children will be lifted out of poverty. Also, the focus on primary school children means that good healthy eating habits will be learnt from an early age and so be likely to be carried on independently at secondary school.

With regard to the rollout across the UK, the provision of free school meals is a matter for the devolved Administrations. We are seeking powers in this Bill to extend free school meals to primary school children in the legal jurisdiction of England and Wales. Provision beyond that is a matter for the other devolved Administrations.

Finally, Amendment 33A, which was tabled by the noble Earl, Lord Listowel, is similar to Amendment 33 in that it seeks to specify a particular aspect of health that should be taken into account in developing the child poverty strategy. As with the previous amendment, it is our view that Amendment 33A is unnecessary because "health" is already wide enough to cover issues around healthy eating and nutrition. The building blocks listed here are broad areas for consideration and, if we keep subdividing the list of issues at subsection (5), we will end up with a very long list indeed.

Notwithstanding that and given our previous debate, we are minded to take away the issue of specifically adding "mental health". However, we would not wish to make the list overly extensive by adding "nutrition" to it. We believe that it is covered. It is not that the issue is not important, but it does not need to be specified in the Bill. I do not wish to imply that we do not recognise the importance of good nutrition, particularly for developing children, and of course we recognise that living in poverty can impact on the ability of parents to provide a nutritious diet for themselves and for their children. We have taken significant steps to ensure that all families have a nutritious diet and recognise the importance of healthy eating.

Perhaps I may give some examples. We published *Healthy Weight, Healthy Lives* in January 2008, which set out how the Government will support everyone in society to maintain a healthy weight. That is supported by £372 million of funding over three years. School food has improved enormously. All school meals must now meet standards that help children to get the

nutrition that they need to grow up fit and healthy. This is being supported by an additional investment of over £650 million between 2005 and 2011.

It is particularly important that children from our poorer families eat well in schools, as school lunch can be their most important meal of the day. The amendments that we are proposing to this Bill will increase eligibility of free school meals. We are also prioritising maternal nutrition, making a health in pregnancy grant of £190, as we referred to in our earlier debates.

I hope that I have assured the noble Baroness on behalf of the noble Earl that the Government attach great importance to ensuring that people of all ages are well nourished. We do not see it as necessary, however, to include the word "nutrition" in the Bill. We have given consideration to extending free school meals to secondary schools—

Baroness Thomas of Winchester: My Lords, what about the Future Jobs Fund?

Lord McKenzie of Luton: Indeed, I was going to come on to the noble Baroness's points. However, I gather that my noble friend will wish to speak and perhaps I will deal with that and other points when I wind up.

As I said, we do not believe that "nutrition" adds anything to the Bill. We have given consideration to secondary school children but, as there is a potentially significant cost attached to that, we believe that it is right to focus the investment on primary school children. I commend the government amendment.

Baroness Hollis of Heigham: My Lords, first, I congratulate my noble friend on government Amendment 80 on primary school children, which I think is great and terrific. I accept every argument that he has made. Everything else that I want to go on to say in no way seeks to prioritise a different group of children over primary school children. The second thing that I am delighted about is that my noble friend has made it very clear today that, as resources permit and with political will, we can extend this in due course to that same cohort of children, possibly, as they go on into secondary school, where they can take this with them. That is admirable.

Let me just challenge some of the assumptions behind the arguments in favour of primary school children but ignoring secondary school children altogether. Arguments in favour of secondary children have perhaps been neglected. Let me suggest some. My noble friend said, absolutely rightly, that this is part of trying to ensure that people, especially lone parents, but also couple families, can make the transition into work without having a double hit, not only of work costs but of school dinners. That happens when they move from being on benefits with child tax credit to being on working tax credit and child tax credits, when they get cut out irrespective of their income levels simply because they are claiming WTC.

What my noble friend will also know—it was his legislation, after all—is that we are bringing lone parents who until a year or so ago did not have to enter the labour market until the youngest child was 16 into the labour market when the child is seven, with work preparation from three. I absolutely, fully and 100 per cent support all my noble friend's endeavours in that field.

What that means, however, is that we have a cohort of lone parents who have children under 16 but above 10 or 11—it first came down to 12—who will be coming into the labour market over this year and next year and so on, and who will face the same barriers to making work pay as other people. This is a cohort of lone parents for whom, in the space of two years or thereabouts, the threshold will change from their youngest child being 16 to the youngest child being seven. Therefore, if the argument about trying to overcome barriers to work applies to lone parents with children of five, six or seven, it would equally apply to that cohort of lone parents coming on to jobseeker's allowance for the first time.

My second argument is a different one. It comes from the IFS research and from the department's own research, which shows that it is older children who are more costly and who keep families below the poverty line. That is also associated with a number of those who have a child over 10, and especially over 14, which is likely to add considerably to the equivalence scale costs of those parents. If you look across the poverty line, for example, you see that a lone parent with two children under 14 is likely, thanks to the improvements that the Government have made in benefit levels, to be at or even above the poverty line on benefits, which is terrific. However, if she has two children and one of them is over 14, she may not be. The same is true if there are three children: if one of them is over 14, the lone parent is not necessarily likely to reach the poverty line, which she would do if the children were younger. I fully accept that this is a point about the equivalence scales. The same is even more dramatically true for couple families: the deficit on benefits between having children under 14 and over 14 virtually doubles in terms of the poverty line.

Why is that the case? There may be a point about equivalence scales—I think that the noble Lord, Lord Freud, was quite right on this. However, it is also the fact that in this country, unlike the rest of Europe, our support for children is based on front-end loading it for the earlier children, rather than back-end loading it. This includes child benefit, although obviously the tax credit is the same for all children. In most of Europe, partly because of natalist policies wanting to encourage larger families, tax credits support later children more generously and, on the equivalent, older children. We do not. Almost everyone agrees that we should at some point rebalance tax credits, because half of all poor children live in larger families, and larger families are more likely to have children who are over the ages of 10 or 15 and therefore come below the poverty line. It is a circle that reinforces itself.

The free school dinners scheme for those children is a very good proxy for failing to rebalance the tax credit line, which we should do if we are to ensure that, irrespective of family size and ages, families on benefit have equal relationships as of right to the poverty line, at 60 per cent. At present they do not.

[Baroness Hollis of Heigham]

I absolutely accept the financial arguments of my noble friend. It is a big-ticket item, which is why I am delighted to hear that we can do it without requiring primary legislation in future; it gives us all a lot of head space. However, before he comes back on Report with whatever he may seek to do on any of this discussion, will he take on board the fact that the financial need is greatest for older children? This is reflected in all the stats that we have on poverty lines. The need is also greatest where there are larger families—again, that tends to be families with older children. These are the children who are not going to be getting the benefit of free school dinners at the very point in time when we are requiring the lone parent in particular to enter the labour market and suffer all the disadvantages of entering into work. Will my noble friend reflect on these issues and see whether he can help us any further on Report?

Lord McKenzie of Luton: My Lords, my noble friend, as ever, is challenging. I will certainly reflect on that and come back on Report. Perhaps before then we should have a discussion. I see the point that she is making, particularly about the change in the lone parent obligations that has progressively come into being. Part of my answer will be that the issue is not only barriers to work but the importance of early engagement with young people, such as helping to get them into healthy eating habits and the benefits that can flow from that—

Baroness Hollis of Heigham: I accept all that.

6.15 pm

Lord McKenzie of Luton: That was only part of the Government's response and I think that my noble friend is entitled to a more detailed response.

The noble Baroness, Lady Thomas, and the noble Lord, Lord Taylor, referred to the take-up of free school meals. This is a hugely important issue. School lunch take-up is one of the indicators in the child health PSA and the national indicator set. Increasing take-up of school lunches is vital to increasing healthy eating in schools and to the financial viability of school lunch services. It is also a priority for the School Food Trust, which is supporting schools through its Million Meals and teenage campaigns. The results of its fourth annual survey of take-up of school meals for 2008-09 were announced in July last year. Overall figures for 2008-09 should not be compared directly with published national take-up figures for previous years for a number of reasons. However, comparisons can be made for a subset of local authorities. These show that the change in take-up was 0.1 per cent in primary schools and 0.5 per cent in secondary schools—not huge, but at least heading in the right direction.

Now, for the first time, we have a truly comprehensive picture of school lunch take-up across the country. The trust did a tremendous job in collecting usable data from 145 local authorities at primary level and 139 local authorities at secondary level. We are pleased to see that in those local authorities where it has been possible to make a comparison there have been increases in take-up at both primary and secondary levels.

The noble Baroness referred to removing the stigma of free school meals, which is a hugely important issue. Some children and families may feel precluded from taking advantage of their entitlement because of the way in which the scheme is administered and the stigma that is attached to it. Following a Cabinet Office study and report that called for a minimisation of the involvement of school staff in free school meal issues, the DCSF has worked closely with other government departments to develop a free school meals eligibility checking system, known as the Hub. The Hub enables local authorities to simultaneously check data from the DWP, Home Office and HMRC in order to ascertain whether a parent qualifies for free school meals. It represents a significant achievement in reducing bureaucracy and costs for local authorities and is a vital plank in our drive to improve school food by encouraging more parents to sign up their children for free school lunches. The Hub is currently being extended to allow parents to check their own eligibility and apply online for free school meals. A number of schools and local authorities have also put in place swipe cards and other systems that, as well as reducing queues in the canteen, help to ensure that children who receive free school meals are not identified. There is progress on that.

The noble Baroness raised the possibility of enhanced opportunities for free school meals under the Future Jobs Fund. That is absolutely right and it gives me the opportunity to remind noble Lords that this is a £1 billion project. I do not have the up-to-date numbers of the take-up to hand, but it has been a significant issue in helping to keep down unemployment rates among young people.

The noble Lord, Lord Kirkwood, said that this is a UK Bill that focuses only on England and in part on Wales. It is not entirely fair to describe this as a UK Bill, because certain sections involving targets and strategy are UK-wide. However, Part 2 is England only. For the record, as the noble Lord will be aware, eligibility for free school meals in Scotland is similar to that in England, except that, in addition, families can claim free school lunches for their children if they receive both maximum child tax credit and maximum working tax credit and if their income is under £6,420 in 2009-10, as assessed by HMRC. Discussions are taking place in Scotland with a view to agreeing an extension to free school meals eligibility for pupils in the early years of primary school. This is part of moving Scotland towards a universal policy of healthy, balanced and nutritious free school lunches for all pupils in the first three years of primary school. Once the details of an extension have been agreed, it is expected that this will be implemented from August 2010.

I hope that I have dealt with the points that noble Lords raised. I am conscious that I owe my noble friend a more detailed and considered response to the important point that she raised. On that basis, I hope that the noble Baroness will not press the amendments on behalf of the noble Earl, Lord Listowel, and that noble Lords will feel able to support the Government's amendments.

Baroness Thomas of Winchester: My Lords, I thank both the noble Lord, Lord Taylor, and the noble Baroness, Lady Hollis, for their support for this amendment. I also thank the Minister for his reply. It is the right way round to make sure that primary school children have any extra free school meals that are going, so that good health and eating habits are laid down when they are young. However, what is significant is the research that has been done—the noble Lord, Lord Taylor, mentioned it—that showed a statistically significant improvement in the exam results of children who had had a nutritious meal in the middle of the day. That is extremely important. I am grateful to the noble Baroness, Lady Hollis, for her new take on the problem and for her points about lone parents and the fact that families with older children are those most in poverty. That is an important point.

Will the Minister make sure that the DWP reminds local authorities that there is a possibility of using the Future Jobs Fund to train staff for important, flexible part-time local jobs? Eventually, we could kill a lot of birds with one stone. I was glad to hear that rolling this out for secondary school children would not need more primary legislation. That is important.

I am sure that the noble Earl, Lord Listowel, will read the debate before Report and we will study it to see whether we should bring the matter back. In the mean time, I beg leave to withdraw the amendment.

Amendment 33A withdrawn.

Amendment 34 not moved.

Amendment 35

Moved by ***Lord Northbourne***

35: Clause 8, page 4, line 25, at end insert—

"( ) the promotion of increased engagement of parents and families to help eradicate child poverty and socio-economic disadvantage;

( ) the promotion of children's wellbeing and equality of opportunity through long-term parental commitment and strong and supportive family relationships;

( ) the facilitation of a reduction in the number of under-age and unwanted pregnancies;

( ) the provision of education in schools on parenting and parent-child relationships;

( ) the provision in pre- and post-natal services of guidance on parenting;

( ) guidance on the role and responsibilities of parents under the Children Act 1989 and subsequent case law relating to parental responsibility"

Lord Northbourne: My Lords, one of the deepest forms of poverty that a person can experience is isolation and not being loved. What I have already said will have made it clear why I believe that the engagement of parents—and, when appropriate, of other members of the family—must be an essential ingredient in any serious attempt to address child poverty. I shall quote from the Minister's colleague, the noble Lord, Lord Layard. In *A Good Childhood,* written recently for the Children's Society, he states:

"Children need above all to be loved. Unless they are loved they will not feel good about themselves, and will in turn find it difficult to love others".

In the afterword to the report, the most reverend Primate the Archbishop of Canterbury writes that,

"we are in the territory of changing hearts. We need to develop a culture in which people are not only interested in their right to have a child but also in how they guarantee the conditions in which a child can be brought up in security and emotional confidence".

As has been mentioned several times, the Government recently published a Green Paper, *Support for All*. Page 2 states that,

"the evidence is clear that stable and loving relationships between parents and with their children are vital for their progress and well-being".

Research shows, too, that stable, loving relationships and a strong, supportive family life are key factors in the well-being of children, and strong weapons in the fight against child poverty. This fact is so important that it should be acknowledged in the Bill.

I turn to the proposed new subsections in my probing amendments, which attempt to determine how this could be done. I hope that the noble Lord caught my last point; that the importance of loving relationships is an issue that should be acknowledged in the Bill. The first proposed new subsection in Amendment 35 would be one way to do this. The second emphasises the importance of long-term parental commitment and strong, supportive family relationships. The fourth and fifth emphasise the case for education and guidance on the subject of relationships and parenting, both in schools and to prospective parents around the time of the birth of their first child. They should be delivered alongside education and information about parenting.

My third proposed new subsection draws attention to the need for effective measures to reduce unwanted teenage pregnancies. This is no new theme, and has been the policy of the Government for some time. Sadly, outcomes so far have been disappointing. There may be a case for bringing new thinking to bear on the subject.

Finally, my last suggested subsection would define more clearly, for the benefit of parents and professionals, what our society expects of parents in bringing up their children. On this point, Scottish law is quite clear, simple and reasonable. The Children (Scotland) Act 1995 says:

"Subject to section 3(1)(b) and (3) of this Act, a parent has in relation to his child the responsibility ... to safeguard and promote the child's health, development and welfare ... to provide, in a manner appropriate to the stage of development of the child ... direction ... guidance ... to the child ... if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and ... to act as the child's legal representative, but—

there is a qualification—

"only in so far as compliance with this section is practicable and in the interests of the child".

That is a remarkably simple statement that is easy to understand and is probably what we all believe is the role of a parent in our society today.

[Lord Northbourne]

The Minister is not responsible for this, but in 2008 and 2009 the Government resisted all my attempts to get this form of words into English law. At present, we have to make do with Section 1 of the Children Act 1989, which is strong on rights but vague on parental responsibilities. Its interpretation is very dependent on case law. We need some guidance that clarifies the Government's intentions on this issue. If we want parents to play their part in reducing child poverty and socio-economic disadvantage, surely our starting point must be to tell them clearly what is expected of them. Many fathers are not at all clear about their responsibilities today. If we cannot have the definition in law that the Scots have, let us at least have clearly articulated guidance on the Bill from the Government. I beg to move.

Baroness Walmsley: My Lords, I suspect that the Minister will tell the noble Lord, Lord Northbourne, that his amendment is not necessary; these things are in this Bill, in another Bill, in a strategy or in a government initiative, and are all being dealt with. I might even put a Lady Butler-Sloss bet on it. However, it would be nice to see a reference to parents somewhere in the Bill, because there is no question that there is nothing more important to how happily, comfortably and healthily a child grows up than its parents. It is not for the Government to substitute for parents, except in extremis and to protect the child. No Government can give a child the love and care that caring parents can, and nor should they try.

However, there is an enormous difference between the abilities of one set of parents and another to bring a child up healthily and happily. In the case of two families with exactly the same income—let us say, £15,000 a year—the outcome of family A may be totally different from the outcome of family B, and the factors that affect that are many and complex. Family A may live in a very high-cost housing area and have less money to spend on the child, and family B might live in a very remote area of the country and have to spend a lot of money on transport, but the factor that probably has the most effect is the knowledge, understanding and skills of the parent as to how best to bring up the child: knowledge and understanding of child development, child nutrition, the need for a child to learn by playing, the communication skills to help them to interact well with the school—lots of things of that nature. Here, Governments can help. They can help and support parents and ensure that, in schools, teenagers, before they ever become parents, get to know a good deal about the responsibilities and the skills that are needed to become a good parent. It happens in many of the best schools, although not all.

There is a role for the Government, particularly when looking at the specific issue of the poverty in which too many children are growing up. I would like to hear from the Minister how he is going to make sure that the Bill recognises the importance of the role of parents in ensuring that children grow up happy, healthy and able to fulfil their potential.

6.30 pm

Baroness Meacher: My Lords, I support this amendment. My noble friend Lord Northbourne has made his case powerfully and there is little I want to add beyond one or two points. The fourth of the proposed new subsections,

"the provision of education in schools on parenting and parent-child relationships,

goes a long way towards achieving what is sought in the first three proposed new subsections. If children at school had any idea of the impact of a baby on their lives, and any idea of the impact on children of family break-up, the loss of the father and so forth, I think we could expect radical change. Surely we could expect to see the increased engagement of parents, long-term parental commitment and a reduction in the number of underage and unwanted pregnancies. There is a tremendous case for doing something on the education side in relation to parenting.

I have to say that I find it quite remarkable that we have been teaching geography, history, biology and so on for all these years, but we do not teach parenting. All these subjects are important, but are they actually more important than the ability to parent a child? Clearly, they are not. We now have social and emotional health education in schools, but what do those classes focus on? They concentrate on sex, tobacco and alcohol. Again, these are important issues, but none in my view is as important as parenting. I know that the Bill is not about the curriculum, but nevertheless an effort of some kind to allude to the importance of these matters in the Bill is absolutely essential.

I warmly welcome the amendment on the basis that poverty does not depend only on the amount of money coming through the door, as the noble Baroness, Lady Walmsley, rightly said. It probably depends even more on the ability of the parents, first, to stay together so that there might be two incomes coming in, and secondly, to manage their resources in a warm, loving relationship and to run an effective household. So I strongly support the commitment of the noble Lord, Lord Northbourne, to the notion that we need parenting to be included in the Bill. It is fundamental to the partnership of sufficient money and good parents. If, before the Report stage, we could sit down and think about how this amendment might be reframed to achieve the objective we seek, that would be wonderful. I know that the noble Lord, Lord Northbourne, would be more than happy to have such a discussion.

Lord Freud: My Lords, before I comment on the amendment, I want to preface my remarks with two other points. First, I thank the Minister for giving an indication in our last debate that the word "mental" in terms of health might be looked at. I am grateful for that. Secondly, I would like to observe that we began to see a little bit of causation creeping into the Bill in the last set of amendments, some of which were government amendments, in terms of nutrition, so we are now beginning to look at what causes poverty rather than just the measurement of poverty—

Baroness Hollis of Heigham: Certainly many of the arguments we are making turn on how poverty causes poor nutrition because the money is not available to pay for school meals that we would all like to see. I really do not accept how the noble Lord seeks to turn it the other way around.

Lord Freud: I am sure that in practice it works both ways because a child whose nutrition is poor is likely to have a worse outcome than one whose nutrition is good. I think that we can afford to have an all-encompassing definition.

The amendment moved by the noble Lord, Lord Northbourne, fits in closely with several of the amendments that we have tabled. The proposals on supporting and monitoring the relationships of parents chime closely with the non-financial targets amendment that I withdrew earlier. It ties in closely with the intention behind my amendment last week of renaming the Child Poverty Commission in a way that stressed the importance of families and parents. It also chimes with the amendment on adding parenting skills to the mix of the important things required.

It is clear that parents are and should be the central pillar to ensure child well-being. We rely on parents to do the job yet many find it difficult to fall naturally into the role and need support. That support has been pretty skimpy although some excellent services are now being developed. It is, however, far from being a universal service. It is worth stressing the central importance of stable and committed relationships. They produce the best outcomes for adults and children. As the Centre for Social Justice stated in its excellent Green Paper last week:

"Children do best when living with both biological parents".

It continues:

"If you have experienced family breakdown as a child you are more likely to experience family breakdown as an adult".

The shape of families is of immense import to the state. The cost of break-up of relationships is enormous at many different levels and most importantly in the damage done to children. So the state has a very material interest in supporting parents in their commitment to each other. This is of course why my party is committed to recognising marriage—the highest form of commitment—in the tax system and getting rid of the material couple penalty in the tax credits system. According to the Centre for Social Justice:

"The Government's Working Tax Credit actually undermines stable families by disincentivising two-parent family formation. As a result of the 'couple penalty' approximately 1.8m low-earning couples are materially worse off than their single parent counterparts, losing an average of £1,336 a year because they live together. Just three of the 26 OECD countries have larger couple penalties than the UK".

I remind noble Lords that family breakdown is concentrated disproportionately in deprived areas. We have heard a lot about social engineering. It is, of course, impossible to draw simple lines of causation in this area where various factors such as poverty, joblessness and family breakdown form a toxic brew. But the introduction of such a large incentive to stay apart or break up is likely to have a real impact. It is heartening to see that the Government have at last realised the central importance of families and, just before an election, have published their own Green Paper—the first for 11 years. I was amused to read Ed Balls, the Secretary of State for Children, Schools and Families, justifying the long silence in an article in the *Sunday Times*. He said:

"Because we knew it was complicated we ended up not talking about families and talking about children instead. One of the things that we lost a little bit is that actually, while supporting children is very important, adult relationships are very important, too".

I like the "a little bit". I would call a material couple penalty of £1,336 a year more than a little bit. I would call it a built-in snub to family relationships in the state support system and a signal of how little this Government have cared for stable, committed, two-parent families.

Baroness Hollis of Heigham: Does the noble Lord not agree that his remarks are completely at odds with his previous amendment on the disparities in the equivalence scales, which suggest that couples are over-provided for and single-parent families are under-provided for? That was the noble Lord's own argument.

Lord Freud: I do not accept that. This is a material couple penalty. It has been found that if you move apart or if you go together, that is the loss.

Let me go on and quote Frank Field, who put it so eloquently in 1999:

"Why marry a fellow—supposing an offer is there—when a benefit claim as a single parent results in more money proportionately than by marrying, particularly if the boyfriend also claims his welfare cheque, together with housing benefit, and sub-lets his flat while living with his girlfriend?"

I assure the noble Lord, Lord Northbourne, that we strongly support his amendments. They are central to strategies to put the role of parenting in the central place in which it belongs for the well-being of our children.

Lord Martin of Springburn: My Lords, I congratulate the noble Lord, Lord Northbourne, on his amendment and the sub-headings within it. I was interested to hear what the noble Lord, Lord Freud, had to say. As someone who has been very happily married for 42 years, I have no argument against marriage, but I know that it is not always the case that when there is a married couple with children, those children are always happy. There are some situations, which we know through our own families, in which, because the couple stay together, the children are very unhappy indeed, because there can be family arguments and all sorts of tension within the house. Children at a very young age can pick up the tensions within the household, even if the arguments take place after the children go to bed.

So we have to watch what we say when we suggest that with married couples everything is fine, but with unmarried girls and single parents, that is not so good. I had cases when I was a Member of Parliament. Often a girl would come to me and talk about housing and what a bad time she was getting from the husband, who was a bully and a rascal. Sometimes, the bullying is not necessarily about lifting their hand to a woman. Sometimes it is verbal bullying.

Lord Freud: I am grateful for the point that the noble Lord is making. I want to make absolutely clear what I am saying. What are valuable to children are stable, committed relationships. Unstable, uncommitted,

[LORD FREUD]
difficult relationships are clearly not in the category to support. We are not even supporting the desirable relationships at the moment. That is the point that I was trying to drive home.

Lord Martin of Springburn: We are at one. It has got to be a happy relationship within the home to be of benefit to the children. The first paragraph in the amendment comes back to socio-economic disadvantage. I can think of a couple sitting in their house saying, "Anna, why is it that we don't have two ha'pennies to rub together?"
I cannot imagine Anna saying, "Well, it's because we're in a socio-economic state of disadvantage". At one time, the late Charles Dickens did a job in here as a *Hansard* writer. They serve us very well. When I think of language like that being used, the chapter about Mr Micawber explaining poverty to young David might have been different and it would not have been so interesting.

6.45 pm

I am interested in the first paragraph of the amendment, about,
"the promotion of increased engagement of parents and families to help eradicate child poverty and socio-economic disadvantage".
There is something that worries me greatly. There are housing estates in Glasgow that were built with very good intentions and provided excellent houses, right from the days of John Wheatley, when he was a Minister and allowed local authorities to build good council housing. Some of that council housing is still standing today, under the provisions that John Wheatley made as housing Minister. When Margaret Thatcher said that we were going to sell every council house in the land, a lot of the John Wheatley houses were the first to go up for sale and are still standing.

The difficulty with the housing estates that I know is that in the 1950s, and before that even in the 1930s, there were big factories adjoining them. That is why the housing estates were built. Therefore, you had a working population. You had a social mix. You had the foremen and the managers living in the community; you had the doctors and the teachers living in the community and in those housing estates. If you think of going into a village with 400 households, there would still be the doctors, lawyers, accountants and other people. Young children, including those in poorer households, could look at them and think, "I want to be like that lawyer or that accountant".

In Glasgow, which I know—it will be the case throughout the country—there is a fantastic amount of kindness, goodness and willingness to help neighbours on the housing estates. I do not like to criticise public leaders, but that is why I was disappointed when that little girl from the estate got kidnapped and it then turned out that a parent was involved and it was not really a kidnap. Every night, the men and women in that estate and their children—I have never visited there, but I watched the newsreel—were out looking for that wee girl while she was reported missing. There was an unfortunate remark and an apology has been made about that housing estate. People are too quick to judge the housing estates, because they do not see the kindness that goes on in them.

I shall give an example. In one deprived housing estate that I know of, a lady who was involved in a marriage breakup stayed in another part of Glasgow. The situation was so bad that she could not afford a removal van. She got her bits and pieces on to public transport and had to make three, four or five journeys from her old house to her new one. When her new neighbours found out about it, they decided to join her on the public transport and help her to do her removal in such poor circumstances. She says, "I never forgot that and I have stayed in this community, poor as it is, with all its difficulties, for the past 15 years and my children, and now my grandchildren, are staying here". That is the goodness that is there.

I turn to the reason I have risen to speak. One of the difficulties with so many of the housing estates where terrible poverty exists is that those who are prepared to help and to engage parents will come into the community and then go back out again. No-one is staying in the community with the people who have these hardships, with the exception of the religious clergymen and women—in my case, the Church of Scotland and the Catholic Church. They often stay within their communities 24 hours a day. Even the police, good as they are, need a phone call before they come in for any difficulty that arises. We have all these serious problems, and people need help. We have to find a way of trying to get those who are seeking to help to engage in the community seven days a week and 24 hours a day. It has to be done before we can make any impact and help them.

It is not going to be easy. Take a nice suburb on the edge of a city: if a social worker is needed there, they are going into a nice area. In some of these housing estates, there are drug problems, or dogs that are trained to be the first line of defence if police officers are going to raid a house. It is very hard for a social worker to go into a home like that.

We have heard of cases where children have been terribly neglected. In almost every case there is a dog in the house, and sometimes more—two or three. Yet as a society we do nothing about it. In fact, if a local authority says, "Let's keep dogs under control", because they attack postmen and other people who come in to help the community, right away you will find a journalist saying, "That's terrible, people aren't being allowed to keep their pets". But there are pets, and there are wild animals. This is one of the difficulties that children have in some of these communities: pit-bull terriers are there because of criminal elements, while these children and their families try to rise above it. If we are putting adverts on national television about getting social workers to help, we have give those social workers back-up and allow them to get into these estates freely. They are not always able to do that.

I am very supportive of the amendment, but to engage with people we must find ways of getting into the community, and not just staying there from 9am to

5pm and then going away again. We have to find a way of covering these communities, particularly at weekends, when all sorts of difficulties take place.

Lord McKenzie of Luton: My Lords, I thank the noble Lord, Lord Northbourne, for his amendments, my response to which has been anticipated by the noble Baroness, Lady Walmsley—I would have been safe to put a fiver on it.

Let me start with the noble Lord, Lord Freud, and the couple penalty. We had a debate about this last time. We do not accept the noble Lord's analysis, and when we asked him last time about how costs featured in that analysis he was unable to answer. Also, his party has a commitment to introduce some transferable married couple's allowance, which was costed at something like £4.9 billion. None of the benefit of that will go to people on low incomes who are not in the tax system; most of it will go to people who are on higher incomes.

Baroness Hollis of Heigham: And third marriages.

Lord Freud: The Minister will expect me to make an observation on that, and I thank him for giving way. Clearly, our policy is not to give a full transferable at any particular rate; it says we will recognise marriage in the tax system. However, we also have a commitment to get rid of the difference in the tax credits system, which is much more material.

There has been a lot of mealy-mouthed use of the word "correlation" in this Committee, rather than "causation". The Government like the word "correlation". I went to find what the causation effects are in terms of the effect on poverty of marital splits. This is not the worst type of split—

Lord McKenzie of Luton: Is this the noble Lord's observation on my observations, or is it another contribution to the amendment?

Lord Freud: I am defending the point about the importance of marriage that the Minister attacked. I am willing to drop the point.

Lord McKenzie of Luton: I will make it clear that I never—

Lord Northbourne: The amendment is not about marriage. If noble Lords want to talk about marriage, I have another amendment coming up—on which I shall not be supporting the noble Lord, Lord Freud.

Lord McKenzie of Luton: The noble Lord is quite right. My comments were focused on proposals for a tax allowance related to marriage, which would give people who are married an extra tax benefit. My question was: how would that help the poorest and how would that help child poverty, which is what the Bill is focused on?

The amendment requires the Secretary of State, in preparing his child poverty strategy, to consider what, if any, measures ought to be taken in a range of additional areas relating to parental engagement, including guidance on the roles and responsibilities of parents and on the reduction in underage and unwanted pregnancies.

We have today debated a number of possible additions to the list of building blocks in Clause 8. As I said in response to the other amendments, it is not necessary or appropriate to specify in the Bill the types of proposal referred to in the amendment. Clause 8 already makes clear the intention of the strategy to look at a range of issues. I reassure noble Lords that the work under way to develop the first child poverty strategy is considering support for parental skills, as required by subsection (5)(c). As I said in response to Amendment 31, support for vulnerable parents and families, including education in parenting skills, is one of many factors that we will consider in preparing our child poverty strategy.

The Government are committed to strengthening parental engagement, and there is a range of help available to support parents in developing better parenting skills and stronger relationships. The Government fund a wide range of support for parents that can be accessed in different ways. For example, the significantly expanded parenting and family support offered through the relaunched Family Information Direct programme aims to deliver support to parents when and where they want it, and in a form that suits them. Parents can ring a telephone helpline, go online for personalised advice, join a social network, watch online videos or read articles in newspapers and magazines. Under Family Information Direct, 12 key third and private sector organisations are working to provide a co-ordinated programme of 14 different services, which have supported more than 2.5 million parents since April 2008. Parenting information and support is also available through print and video channels, which have reached more than 20 million adults over the same period.

At the same time, we are clear that firm and effective action must be taken to challenge poor or inadequate parenting, which has serious consequences for children and communities. The national roll-out of Think Family is supported by more than £170 million in funding over 2009-11, which will enable local authorities to roll out a programme of targeted interventions that address poor parenting and improve parenting skills, including family intervention projects in every area to support the most chaotic families using whole-family intensive support.

As has been acknowledged, last week we published a Green Paper on families and relationships that focuses on enabling families to help themselves through a range of support measures. We believe that this must be pursued in ways that fit with the reality of family life today. This means, for example, that the crucial role that fathers play in their children's lives must be recognised.

The Green Paper specifies that the bounty packs that are given to newly pregnant women will also now include materials that are specifically designed for fathers. This new scheme has been launched to approach fathers at an early stage, which is key to engaging them later on. The dad's guide, among other issues, will cover birth registration, parental responsibility, key health issues, communicating with and keeping the

[Lord McKenzie of Luton]
baby safe, financial advice, keeping a good relationship with mum, and signposting to wider family support services.

7 pm

Another example is the commitment through the 21st Century School Parent Guarantee to involve parents in their children's learning and to ensure that they are told if something is going wrong. This includes easier access to children's services when they are needed, such as health and social care; and access to lots of services to help parents as well as their children, including parenting advice, adult learning and training opportunities, access to childcare and help into work.

The noble Baroness, Lady Walmsley, and the noble Lords, Lord Freud, Lord Martin and Lord Northbourne, focused on the importance of parenting. We agree that parents have the biggest influence on their children's development. Parental involvement and aspiration shape children's achievements.

The noble Lord, Lord Northbourne, absolved me of responsibility when it came to his previous attempts to get a more specific definition of parental responsibility into legislation. I plead guilty because we also debated this when we considered the Child Maintenance and Other Payments Bill. Let me be clear that we believe it is the parents' duty to act in the best interests of their children at all times. We know that the home environment and the parents' influence are the most important factors in determining children's aspirations and outcomes. The Government expect all parents to provide a stable and nurturing home environment and to be responsive to every physical, emotional and material need. We expect mothers and fathers to act as the primary role models for their children and to instil positive standards of behaviour. Should any of these responsibilities prove to be too burdensome, we reasonably expect parents to seek appropriate advice and to ensure that the problems that some parents face do not affect their children's well-being and life chances.

Section 3 of the Children Act 1989 clearly sets out what is meant by parental responsibility. Parental responsibility means all the rights, responsibilities and authority that a parent of a child has. The concept encapsulates all the legal duties and powers that exist to enable a parent to care for a child and to act on his behalf. These include the duties and powers relating to material needs and healthcare, the manner of a child's education, his religious upbringing and the administration of his property. Some of the specific responsibilities covered by the section are providing a home for the child, having contact with the child, protecting and maintaining the child, disciplining the child, and determining and providing for the child's education.

We are also clear that these responsibilities apply to fathers as well as to mothers. All evidence demonstrates that their involvement in the lives of their children is vital, whether or not they live with them. We have sought to promote the responsibilities of fathers in several ways and enable them to perform those responsibilities better, from paid paternity leave to the right to request flexible working for parents of disabled children and children under six. The assumption that mothers are the primary carers needs to be updated in favour of an expectation that fathers will play an equivalent role in a parental partnership. The families and relationships Green Paper sets out what we are doing to tackle this assumption and to support fathers to fulfil their parenting responsibilities.

The noble Lord, Lord Northbourne, asked why we cannot issue guidance to parents. We are issuing guidance on parental responsibility to local authorities, not to parents. We cannot issue it to each individual; parents have different roles and different views.

The noble Lord, Lord Freud, said that we had just woken up to the issue of parents, and that this was all some sort of pre-election gimmick. Let me take him back a few years. We published guidance in 2006 to encourage local authorities to develop a parenting strategy that should set out their intention to plan, to develop, to commission and to deliver parenting and family support that is based on the needs of parents and families locally. The work that we have done includes: the National Academy for Parenting Practitioners, which was established in November 2007 to train and support the practitioners to whom parents turn for advice, training and information on parenting skills so that they can ensure that their work is based on research evidence of what really works; and the Parenting Early Intervention Programme, which aims to support parents of eight to 13 year-olds who are at risk of negative outcomes and to ensure that they receive an earlier co-ordinated package of parenting support and increased parenting provision through the delivery of evidence-based parenting programmes.

Lord Freud: There may have been specific measures, but the Green Paper, *Support for All*, admits in the first sentence of the introduction:

"It is a little over 11 years since the last Government Green Paper about families was published".

While measures may have been taken on families in the interim, what the Government are admitting in this statement is that there has not been an overall strategic look at the issue within the process of a Green Paper, a White Paper and legislation since the beginning of their time in office. The Secretary of State, Ed Balls, admits that he feels that the Government have dropped the ball about families in the mean time.

Lord McKenzie of Luton: To suggest that nothing has happened since the last Green Paper simply is not right. In the past 12 years, the Government have introduced new legislation, developed groundbreaking new policies on children and families and invested very significant public funds in improving support. I mention, for example, that leave entitlements for parents have been transformed and many more families now have access to high-quality childcare. The Every Child Matters programme has been embraced in every area across government.

The noble Baroness, Lady Meacher, talked about the importance of education. I agree with that. The Government believe that all young people should receive a comprehensive programme of sex and relationships education. The provision of SRE should be a partnership between parents and schools, with parents leading on instilling values in their children. However, schools

have a clear role to play in giving young people accurate information and helping them to develop the skills that they need to make safe and responsible choices.

Baroness Meacher: Perhaps I may make a brief intervention to say that the point that we are trying to make is that an understanding of good parenting is absolutely critical to child poverty and, therefore, it is valid to make some reference to it in the Bill. We understand that there are lots of other laws and provisions, but that is the point that I hope the Minister will take into account when he concludes his remarks.

Lord McKenzie of Luton: Perhaps I may pick up specifically on that. There is some suggestion that no reference is made to parents in these provisions. Clause 8(5)(a) makes two references—

Lord Northbourne: I should point out to the noble Lord that the references in that paragraph relate only to parents as financial animals. It is about getting them into work and how much money should be given to them. It is not about engaging them.

Lord McKenzie of Luton: The noble Lord is right on that point, but one of the other key building blocks in paragraph (c) is,

"health, education, childcare and social services".

If those service areas do not encompass parents, I am not sure what would. As in so many of our debates, no one is saying that these issues are not important to the development of the strategy; the issue is whether the structure of the Bill requires them to be specifically stated. We would say that that is not necessary because they are otherwise encompassed.

I hope that I have shown that the Government are committed to continuing to promote increased parental engagement. The noble Baroness, Lady Walmsley, and my noble friend Lady Hollis pointed out on Monday that we need to be careful that we continue to focus on the primary aim of the Bill, which is to provide a framework for tackling child poverty. We must try in our debates in Committee not to lose focus. As I have outlined, there are other pieces of legislation, strategies and programmes of work that look at the important issues raised by this amendment. For those reasons, I urge the noble Lord not to press his amendment. I know that he would not do that in the Moses Room, but I hope that he will accept that we are in agreement with the thrust of what he is seeking to achieve.

Lord Northbourne: My Lords, I am terribly sorry to disappoint the Minister but, if I may say not unkindly, his reply shows a complete failure to grasp the essential nature of the amendments that I tabled. That is undoubtedly my fault for not setting them down right. Perhaps I had better briefly explain what I was trying to do and what I shall try to do on Report. I have had a good deal of trouble getting notes about this, but I shall try to encapsulate what I am trying to say.

I recognise that the Government are doing lots of things to parents and for parents. They are supporting them and there are initiatives and so on. However, if we want this child poverty thing to work, we have to work with parents as partners. That is what is lacking in the Bill. There is a small amount about what the Government will do to parents and the Minister has made cross-references to other legislation. On that question, I am afraid that I would put Green Papers, statements of intent and so on into the waste-paper basket. We need the commitment to be in the Bill. We are here to approve or disapprove this Bill and, even if it is only in one sentence, I want the Bill to recognise the importance of engaging with parents.

The Minister referred to health education, childcare and social services. That is fine—the Government are doing wonderful things—but that is not saying to parents, "We have to work together on this child poverty business". Neither the Government nor parents can do it alone. If we are working with someone else, we have to show them a bit of respect. To fail entirely to show respect to parents is a grave error. That is why I have moved this amendment and will move others coming up. That is all that I have to say. I hope that the Minister will be prepared to have a meeting when we can try to cobble something together that says what I mean and what might be acceptable to the Government. We are not getting anywhere on this argument.

Lord McKenzie of Luton: I am always happy to meet the noble Lord, but I must stress that this is not only about doing things to parents but about doing things with parents. We understand and share that aspiration. I do not believe that it needs to be expressed in those terms in the Bill, but let us have a meeting to see who can convince whom on that.

Lord Northbourne: That is where we differ. I shall see what I think as we proceed. The Minister made an interesting and important point on the question of the responsibilities of parents. He said that the Government expect all parents to do this and that—I was unable to get it down. Where is it written in simple form where parents can see it, understand it, ask questions and get advice? That is what I like about the Scottish legislation, which is clear and can be quoted.

I have taken a lot of trouble with the Children Act, as the Minister can imagine, as I have been working on this for more than two years. The Minister quoted several sentences but, when we get down to it, it depends on case law. I tabled a Question about a year ago to the relevant Minister when I asked whether the Government could give me the necessary references to the case law. The Answer was that it was far too complicated and it would be far too expensive. If that is the case, it would be unfair to argue that the position is entirely clear for the ordinary parent to understand. I want something that they can understand. On that basis, I beg leave to withdraw the amendment.

Amendment 35 withdrawn.

7.15 pm

Amendment 36

Moved by ***Lord Freud***

36: Clause 8, page 4, line 25, at end insert—

"( ) In preparing a UK strategy, the Secretary of State must consider the impact any measure taken will have on other people in poverty."

Lord Freud: My Lords, the purpose of this amendment is to prevent the targets creating perverse effects through the economy. There are already signs of this beginning to happen. The issue is that if disproportionate resources are concentrated on families with children, it may be at the expense of other groups such as single people, childless couples and pensioners, many of whom will be equally vulnerable. However, these groups will not have the benefit of the protection of a statutory target, whereas households with children will.

It is worth pointing out that many single people and childless couples will go on to have children. There are two issues around that. We discussed one, which is that women in poverty who do not have adequate nutrition because they are too poor may pass on poor effects to their foetuses at a very early stage of their development. As we heard on Monday from the noble Baroness, Lady Finlay, support must go in very early in pregnancy: it is no good having it later.

The second impact of this is that if the single people and childless couples have been allowed to remain in poverty until that point, it is likely that the child will be significantly disadvantaged, because one does not eradicate years of poverty with a sudden wave of the fiscal—or indeed any other—wand. This is the weakness of conflating two concepts into one, in order to conjure up the snappy concept of child poverty: poverty in general, as it affects everyone in the economy, and child well-being, which we discussed earlier in the week. There are already worrying signs of distortion in the support system as a result of the Government's strategies to meet the targets over the past decade. I would not be surprised to learn that recent measures will stretch the figures still more, when we have had the chance to examine their effect in the round.

In 2007-08, the minimum support for a childless couple was 32 per cent below the poverty definition used in the Bill—which, as noble Lords know, is 60 per cent of the median income. This compares with a figure of 4 per cent for households of a lone parent with one child. A single individual would stand at 22 per cent below the poverty line on the same basis, while a couple with two children would do somewhat better at only 15 per cent below the line. I am using the revised figures prepared by the House of Commons Library.

It is noteworthy that independent commentators are saying that we are coming to the end of this process of stretching. The Rowntree report entitled *Monitoring Poverty and Social Exclusion 2009* asked how much further the Government can go with their policy of increasing child tax credit and child benefit well in excess of inflation. It found that the rises in child tax credit and child benefit have,

"completely altered the pattern of support provided by Social Security".

This year, the maximum income support for two children is about £130 per week—£30 more than for a working-age couple. Ten years ago, two children would have got only 81 per cent of the couple's figure. The report finds that,

"strictly speaking, children in workless households are now in poverty because adult benefits are too low".

The report concludes:

"As far as we can tell, the argument for the much bigger rises in child benefits acknowledges no external point of reference other than the need to progress towards the child poverty goal as 'cheaply' as possible".

Given the historically unprecedented differential between child and adult benefits that now prevails, this is no longer enough. Instead, we must look at the system of social security benefits in the round and decide how their values should stand in relation to one another. This is the issue that my amendment seeks to address. I beg to move.

Lord McKenzie of Luton: My Lords, I shall speak briefly to this amendment, which requires that in preparing the UK strategy, the Secretary of State must consider the impact that any measure taken will have on "other groups" in poverty. It is assumed that by "other groups", the amendment is intended to cover groups such as childless households and pensioners.

It cannot be the remit of the child poverty strategy itself to consider the impact of any proposed measures on other groups that may be living in poverty. However, the Secretary of State will not be able to take policy and spending decisions on measures to prevent and tackle child poverty in isolation. Such decisions will be taken in the round and through prioritisation at key fiscal events, including the Pre-Budget and Budget Reports and departmental spending reviews. In addition, Clause 15 requires the likely impact of any measure on the economy and fiscal circumstances, and the likely impact of implementing any proposed measure on taxation, public spending and public borrowing, to be taken into account by the Secretary of State when preparing a UK strategy and by the commission when considering any advice to be given to the Secretary of State or the devolved Administrations. The effect would be to require the commission and UK, Scottish and Northern Ireland Ministers to have regard to budgetary constraints and value for money in developing and advising on strategies. This will necessarily need to balance the impact of any measures on other policy areas and priority groups. I hope that the noble Lord is reassured by this.

This is the Child Poverty Bill and is about helping children out of poverty. As to distortions, I think he was almost referring to distortions within child poverty groups. Under this Bill, we have to meet all the targets, as the noble Lord is aware. If the issue is whether there will be distortion of those groups in aggregate with other groups in society, the way to settle that is through the normal budgetary discussions on the PBR and at the Budget where the implications of resources are properly analysed and debated.

Lord Freud: I thank the Minister for giving way. I just want to make clear what I am worrying about here. I am concerned about a process that says we have got to hit our child poverty targets. That is pushed to the extent that it is done through income transfers towards child benefit and so on, and thus to households with children. That leaves singles such as NEETs, who we are very worried about and who have just been children, to come out and be plunged to 22 per cent below the poverty line, whereas if they have a single

parent they would be 4 per cent below it. I am worried that we are going to create peculiar poverty effects among the poor as a whole in our efforts, as the Rowntree Foundation said, to look after child poverty as cheaply as possible.

Lord McKenzie of Luton: I understand the point being made by the noble Lord, but I would say that seeking to address what might be said to be the potential distortions of an approach of tackling child poverty in the Child Poverty Bill is not appropriate. This Bill is focused on child poverty and how we tackle it within the context of Clause 15 and clearly within the context of all the decisions the Government have to make about resources and the impact of the application of those resources across society as a whole.

Lord Freud: I thank the noble Lord for giving way again. That is not an appropriate response. I do not mean that it is inappropriate; I mean that it is not the correct response. I do not know which is the more rude. I shall stop digging; I shall find some turf and stand on it. Where there is a statutory target in the Bill, it would seem appropriate to put the defences against abuse of that statutory target or distortions created by it into the Bill, not into other legislation that may or may not exist. There ought not to be another law which says, "By the way, we must look after singles". That is where the problem could arise and where the protections should be.

Lord McKenzie of Luton: I simply disagree with that position. I do not see how you could possibly, in drawing up a strategy, have regard to, within that strategy, all the consequences that the allocation of resources to meet those targets would have elsewhere in government. It is the job of the Government to balance those calls on resources and the implications of the allocation of resources. It is also a requirement under the strategies to make sure that they are sustainable, so that any distortions—to use the noble Lord's term—that might seem to be short-term fixes et cetera are outwith the concept and thrust of this Bill.

Lord Freud: I thank the Minister for that response, which of course disappoints me. As I said in the last discussion, the purpose is not to allow distortions to develop, but it seems on the surface, given the figures that we have, that we already have significant distortions among the poor, probably because of the child poverty targets and the attempts to get as close to reaching them as possible. I do not understand where the protection from the continuation of that invidious process of distortion would be if it was not here. Therefore, I am disappointed that this has had such short shrift from the Minister. I beg leave to withdraw the amendment.

Amendment 36 withdrawn.

Baroness Crawley: My Lords, this may be a convenient moment for the Committee to adjourn until Monday 8 February at 3.30 pm.

Committee adjourned at 7.28 pm.

Written Statements

Wednesday 27 January 2010

Energy: Oil Fields

Statement

The Financial Services Secretary to the Treasury (Lord Myners): My right honourable friend the Chancellor of the Exchequer (Alistair Darling) has made the following Written Ministerial Statement.

The Government recognise the importance of the UK oil and gas industry to our economy and the dependable foundation it provides for the UK's energy security.

Whilst we are trying to reduce our dependence on fossil fuels we must and do recognise that this will be a long transition and our oil and gas reserves will continue to play a vital role in supplying our energy needs for many years to come.

We must ensure that the UK taxpayer receives a fair return from the extraction of our national resources. We are, however, committed to maximising the economic production of the UK's reserves, for the fuel this delivers, for the contribution this makes to our economy, and for the jobs and skills the industry supports and develops.

For these reasons, today I am announcing secondary legislation that is to be laid before the House of Commons in due course and, subject to approval by the House, will support the development of remote gas fields in the West of Shetland region. The area to the West of the Shetland Islands is the last major area in the UK continental shelf to be developed and infrastructure is critical to fully unlocking the gas potential of the region. It is estimated that the area contains around 20 per cent of the UK's remaining oil and gas reserves.

The legislation, if approved by the House, will extend the field allowance, announced in Budget 2009, to remote deep water gas fields, which are found in the West of Shetland area. The field allowance works by exempting an amount of income from the supplementary charge. All profits generated by qualifying fields are still subject to ring fence corporation tax.

The legislation is to be introduced by Order and it is our intention that it will be effective from the day after the day on which it is made. Full details of this measure, including the proposed legislation, will be issued on HMRC's website in due course when the legislation is laid before the House of Commons.

Equality

Statement

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My right honourable friend the Minister for Women and Equality (Harriet Harman) has made the following Statement.

Today the Government have published their official response to the National Equality Panel's report, *An Anatomy of Economic Inequality in the UK*. The National Equality Panel's report, which has also been published today, and the full Government response document can be found online at www.equalities.gov.uk, and I have placed copies in the Library. Printed copies of the NEP report and the Government's response are available upon request from the Government Equalities Office.

To build a modern, prosperous society, we have to tackle the barriers that unfairly hold people back and give everyone the opportunity to succeed.

Equality matters in the modern world:

for individuals, who are entitled to fairness and to have the opportunity to fulfil their potential and achieve their aspirations and not be held back;

for the economy, because the economy that will succeed in the future is one that draws on the talents of all; and,

for society, because an equal society is more cohesive and at ease with itself.

That is why I commissioned the National Equality Panel in 2008, chaired by Professor John Hills, to undertake an in-depth analysis of economic inequality in the UK today. The panel has examined how a range of factors—including gender, race, disability, social background and where you live—are associated with and influence how people fare at school and at work, their earnings, income and wealth.

The panel's report sets out the scale of the challenges that will need to be addressed if we are to effectively tackle inequality in the UK. The National Equality Panel's report confirms our strongly held view that public policy intervention can and does make a difference to economic inequalities.

We welcome the panel's groundbreaking report. We have made progress over the past 13 years. Some of the widest gaps in outcomes between social groups have been reduced, and trends reversed in the last decade. For example the attainment gap between black and white pupils fell from 18 per cent in 1997 to 6 per cent in 2008. The pay gap between men and women has also narrowed. But we are also determined to build on this and achieve more to create a fairer and more prosperous society. It is unacceptable that social background and other factors make so big a difference to the ability of people to fulfil their aspirations and potential.

The Government will continue to make the choices that prioritise fairness and aspiration.

Equality Bill

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 outlaw unjustifiable age discrimination against adults aged 18 or over in the provision of services and the exercise of public functions. It also

includes powers to make exceptions from the ban, so that we can make clear the beneficial and justifiable age-based practices which will be allowed to continue.

On 29 June 2009, we issued the consultation document *Equality Bill: Making it work—Ending age discrimination in services and public functions* inviting views on our developing policy for exceptions from the age discrimination ban and when the ban should be implemented. The consultation ended on 30 September 2009. Today we have issued *Equality Bill: Making it work—Ending age discrimination in services and public functions. A Policy Statement*. This document summarises the consultation responses and sets out our plans for specific exceptions from the ban.

We want the legislation to have the same effects in health and social care as in other sectors, that is:

to eradicate harmful discrimination; and

to permit service providers to treat people of different ages differently where this is beneficial or justifiable or for good public policy reasons;

and to ensure that

when services deal with individuals, they focus on the individual, taking account of his or her age where it is appropriate to do so, and where this helps to offer a personalised service.

In doing this, we will act in accordance with the relevant recommendations of the recent review *Achieving age equality in health and social care*.

we will create a specific exception to allow financial service providers to treat people of different ages differently, but only where this is proportionate to risks and costs. Prices can still be varied by age, where this genuinely reflects risk or costs and is not an arbitrary decision;

we will improve transparency by requiring financial service providers to publish aggregate data in respect of certain products that anyone can check;

we will improve access by requiring the providers of certain insurance products to operate a signposting and referrals system. Where this requirement applies and an insurer does not provide the service to a person because of their age, they will be required to refer the person to a supplier who can meet their needs or refer them to a dedicated signposting service;

alongside the provisions relating to healthcare and financial services, we will enable any service provider in the public or private sector to use age as a criterion to determine the eligibility for concessions or benefits, where the purpose of the concession is to benefit the age group to which it applies;

we will provide an exception from the ban on age-discrimination to allow specialist group holidays to continue to be provided for people in particular age groups, provided that the age range for the holiday is clearly stated in the promotional material.

if holiday accommodation providers still use age limits then they will need to be able to objectively justify them;

we will explore the issues further before deciding the way forward on vehicle hire where we had not proposed an exception for age limits given firms ability to vary premiums in line with costs relating to insurance premiums.

These exceptions will be set out in an Order made under the power in clause 195 of the Bill. We intend to consult on the draft Order in autumn 2010, giving people a further opportunity to comment before the exceptions are debated by both Houses of Parliament. We are placing copies of the document in the Libraries of both of the Houses. Copies will also be available on the Government Equalities Office website at www.equalities.gov.uk.

Libel

Statement

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My right honourable friend the Lord Chancellor and Secretary of State for Justice (Jack Straw) has made the following Written Ministerial Statement.

In response to concerns about the possibility that our libel laws are having a chilling effect on freedom of expression, the Government have set up a working group to examine issues relating to the substantive law on libel.

The terms of reference of this group are "to consider whether the law of libel, including the law relating to libel tourism, in England and Wales needs reform, and if so to make recommendations as to solutions". A list of members of the working group is attached.

The scope of the group's considerations will extend to all aspects of substantive libel law in England and Wales, but will exclude issues relating to costs in defamation proceedings, where work is already underway. The working group is intended to have an intensive, short term focus and has been requested to make recommendations by mid-March.

Working Group on Libel—List of Members

David Banks (media law consultant);

Sir Leszek Borysiewicz (chief executive of the Medical Research Council);

Tracey Brown (managing director, Sense About Science);

Desmond Browne QC (barrister, 5 Raymond Buildings);

Rod Christie-Miller (partner and chief executive at Schillings, solicitors);

Robin Esser (executive managing editor, *Daily Mail*);

Jo Glanville (editor, *Index on Censorship*);

Jonathan Heawood (director, English PEN);

Tony Jaffa (head of the media team at Foot Anstey, solicitors);

Sarah Jones (head of litigation and intellectual property, BBC);

Marcus Partington (chair of Media Lawyers Association, and legal director, Mirror Group Newspapers);

Gillian Phillips (director of editorial legal services, the *Guardian*);

Gavin Phillipson (professor at Durham Law School);

Mark Stephens (partner at Stephens Finer Innocent, solicitors);

Andrew Stephenson (partner at Carter Ruck, solicitors);

Paul Tweed (senior partner at Johnsons, solicitors); and

John Witherow (editor, *Sunday Times*).

The working group will be chaired by Rowena Collins-Rice, Director-General, Democracy, Constitution and Law and Chief Legal Officer at the Ministry of Justice.

National Victims' Service

Statement

The Attorney-General (Baroness Scotland of Asthal): My right honourable friend the Lord Chancellor and Secretary of State for Justice has made the following Written Ministerial Statement.

On behalf of the Home Secretary, the Attorney-General and myself, I am today announcing details of the new National Victims' Service as the next stage of reforms aimed at ensuring the justice system is firmly on the side of the law abiding citizen. Its aim will be to provide clear, universal entitlements to all victims of crime and to the most vulnerable.

The £8 million National Victims' Service guarantees victims of crime and anti-social behaviour referred from the police more comprehensive and dedicated support. The service will be rolled out in two phases, beginning in March, helping families bereaved by murder or manslaughter, and will provide intensive support, care and attention, tailored to their individual needs, beyond the conclusion of any investigation or trial. Each person will be given a named, dedicated support worker, who will meet with them regularly to identify their needs and liaise with the authorities on their behalf. The individual may need immediate practical assistance—for example with security, or childcare, or making bill payments—and will be helped through all of this.

Emotional support and expert assistance will also be offered where needed—counselling, for instance, or legal and financial advice. This support will not stop when the criminal justice process comes to a conclusion.

From 1 April we will begin to roll out the National Victims' Service for all victims of crime across England and Wales.

The most vulnerable victims will be entitled to:

fast contact to establish their support needs, seven days a week;

a one-to-one caseworker responsible for pulling together public sector agencies and third sector providers to respond to their needs, across housing, health, employment, social services and other areas; and

quick referral to—and/or the commissioning of—specialist support from other agencies and third sector organisations when needed.

In addition, all victims of crime who are in need of specific assistance no matter where they live or what offence committed against them will receive a better service targeted to their needs. They will be entitled to:

immediate emotional support from a trained support worker;

an in-depth health check of their practical, emotional, health, security and housing needs;

an individually tailored support plan;

support not just 9 to 5, but seven days a week; and

tailored information about what is likely to happen in their case, and practical advice.

From July this year, all victims of crime who need it will also be entitled to a caseworker who will guide them through the criminal justice process and give them help and assistance as long as they need it.

This provision will be complementary to the work which the police and Crown Prosecution Service (CPS) do already in support of victims and bereaved victims. Following the implementation of the 1999 Lawrence inquiry report, a comprehensive national system of police family liaison officers has been in place in homicide cases, which has proved very effective and helpful.

Prosecutors can also now speak to victims and witnesses directly, something unheard of and indeed once prohibited. The CPS has consolidated this by providing targeted support to the community through the introduction of community prosecutors.

The new National Victims' Service is a key part of the Government's wider strategy to protect core public services which the public depend on, while at the same time making them more personalised to meet individuals' needs. Today's announcement also builds on the wide range of measures the Government have introduced over the past 13 years for victims of crime, including a victims' champion, victim personal statements, a victims' advisory panel and the trebling of funding for victims' services in the voluntary sector.

The establishment of the National Victims' Service is another key milestone in rebalancing the criminal justice service. It will make sure that victims across England and Wales are given consistent personal support throughout the criminal justice process and beyond. If victims need help, we will continue to be there for them—for as long as they need it.

Copies of *The National Victims' Service: An initial response to the Victims Champion's report* document have been placed in the Libraries of both Houses. Copies of the document will also be available on the Criminal Justice System website at www.cjsonline.gov.uk.

Planning

Statement

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): My right honourable friend the Minister for Housing and Planning (John Healey) has made the following Written Ministerial Statement.

Today I am announcing measures to give local authorities powers to manage better the quality and supply of private rented accommodation in their areas and to promote better balanced communities in local

neighbourhoods. The private rented sector has an important, and growing, role in the housing market. This Government want to support the private sector. But, as well as a bigger sector, we want a better sector with standards that meet the needs of those who depend on private rented accommodation.

Local authorities need to be able to plan for the right housing mix and deal effectively with problems as they arise. Such problems can include anti-social behaviour, poorly maintained and dangerous properties, and pressures on community services.

The Government recognise the important contribution houses in multiple occupation (HMOs) make to the private rented sector. They provide housing to meet the needs of specific groups and households and make a contribution to the overall provision of affordable housing stock. However, localised problems caused by high concentrations of HMOs have been highlighted as concerns in some towns and cities across the country

Following research to look at the issues we set out a number of options to deal with this problem in a public consultation paper, *Houses in multiple occupation and possible planning responses*.

In the light of the responses to this consultation I have decided to amend the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order) to provide for a specific definition of a HMO. Planning permission will then be required, where a material change of use occurs, to change the use of a property from C3 (dwelling house) to a HMO.

At the same time as amending the Use Classes Order, I will amend the Town and Country Planning (General Permitted Development) Order 1995 (as amended) to provide that a change from a HMO back to the C3 class (dwelling house) will not require planning permission.

The consultation responses and research work have indicated that good practice alone cannot solve the problems encountered in a number of communities. This measure is strongly supported by responses to the consultation and it will enable local planning authorities to identify new HMOs with more certainty and act in particular neighbourhoods where there is concern about the mix and balance of communities and concerns about standards of conversion and maintenance of properties, to improve community balance.

I intend to introduce the necessary secondary legislation in time for it to come into force on 6 April 2010.

A summary of responses to the consultation, which includes a statement of the Government's intention, is being published today.

I can also announce the publication today of a short consultation on potential changes to the consent regime for discretionary licensing schemes under the Housing Act 2004. The licensing provisions under the Housing Act 2004 represent another local power available to local authorities in tackling problems associated with HMOs and other privately rented accommodation. I propose the introduction of a general consent, enabling local authorities to introduce discretionary licensing schemes without seeking approval from my department. I believe it is right that these local decisions should be made by those who know their area best and who are directly accountable to local communities. The consultation will close on Friday 12 March, and any future general consent will come into affect from the common commencement date of 6 April 2010.

I am also publishing today the second part of research undertaken by the Building Research Establishment (BRE) for the department in 2008 into the implementation of HMO licensing following the 2004 Housing Act. This shows emerging evidence of improvements to the condition and management of properties as a direct result of HMO licensing, although it also indicates that local authorities have still to complete the task of licensing all HMOs subject to mandatory licensing. I am therefore reviewing the support available to local authorities in relation to regulation of the private rented sector, including publishing draft guidance on licensing provisions, and will put in place any changes before the commencement of the new powers I am announcing today. This work is part of our programme of reform and support for the private rented sector. We consulted last summer on a comprehensive package of proposals aimed at improving quality and professionalism in the sector and ensuring the best possible deal for tenants.

The proposed national register for landlords is a key element of the measures that we plan. By allowing local authorities to pinpoint private rented housing, the national register will give important support to local authorities seeking to use existing powers, including licensing, in a strategic and proportionate way.

The national register will also provide a mechanism by which landlords and tenants can be kept properly informed of their rights and responsibilities and by which tenants will, for the first time, be able perform basic checks on potential landlords. More broadly, I want to ensure that all tenants have easy access to clear advice, and know where to turn when things go wrong.

I will be making a more detailed announcement on these and other proposals for the private rented sector shortly, including a summary of responses to our summer 2009 consultation following the Rugg review.

I am placing a copy of the consultation document for discretionary licensing schemes, the HMO summary of consultation responses, the BRE report and the draft guidance in the Library of the House.

Questions for Written Answer: Correction

Statement

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): An error has been identified in part of the Written Answer I gave to the noble Baroness, Baroness Stern, at *Official Report*, 5 October 2009, col. *WA 472*. The first paragraph should have been as follows:

As of 9 September 2009, 1225 prisoners who were serving an indeterminate sentence for public protection in custody were recorded as having a tariff of two years or less and were past tariff. This was from a population of 1955 IPP prisoners past tariff. This figure excludes those who have been released and who were subsequently recalled following the revocation of

their IPP licences. The average amount of time this group has been held in prison beyond the expiry of their tariff is 486 days.

Taxation: Information Exchange Agreements

Statement

The Financial Services Secretary to the Treasury (Lord Myners): My right honourable friend the Financial Secretary to the Treasury (Stephen Timms) has made the following Written Ministerial Statement.

Tax information exchange agreements (TIEAs) were signed with Antigua and Barbuda, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines in London on 18 January 2010.

The text of each TIEA has been deposited in the Libraries of both Houses and made available on HM Revenue and Customs' website. The texts will be scheduled to draft Orders in Council and laid before the House of Commons in due course.

Terrorism: Finance

Statement

The Financial Services Secretary to the Treasury (Lord Myners): My honourable friend, the Exchequer Secretary to the Treasury (Sarah McCarthy-Fry), has today made the following Written Ministerial Statement.

The Supreme Court has today delivered its judgment in the case of HM Treasury v Ahmed and Others. The case concerns the UK's implementation of United Nations obligations to freeze the assets of terrorists and those associated with Al-Qaida and the Taliban.

UNSCR 1267 (1999) established a UN asset freezing regime against Osama bin Laden and persons associated with Al-Qaeda and the Taliban. UNSCR 1373 (2001), adopted shortly after 9/11, requires states to take a range of measures to deal with terrorism, including freezing the assets of those involved in terrorism.

The UK has implemented these obligations through Orders in Council made under Section 1 of the United Nations Act 1946. Section 1 of the UN Act authorises the Government to make an Order in Council to give effect to any decision of the UN Security Council where such provision appears to be "necessary or expedient for enabling those measures to be effectively applied".

The Supreme Court has decided that the Terrorism (United Nations Measures) Order 2006 and the Al-Qaida and Taliban (United Nations Measures) Order 2006 are beyond the scope of the power provided by section 1 of the UN Act 1946 and it has quashed both Orders. The court will consider tomorrow whether to stay the judgment for a period.

The Government made the Orders in Council in good faith based on their belief that Section 1 of the United Nations Act was an appropriate legal vehicle and that it provided the most effective and timely way of implementing UN terrorist asset freezing obligations.

The Government are committed to maintaining an effective, proportionate and fair terrorist asset freezing regime that meets our United Nations obligations, protects national security by disrupting flows of terrorist finance, and safeguards human rights.

In light of the court's decision and the ongoing significant threat from international terrorism, the Government intend to bring forward fast-track primary legislation to restore the UK's terrorist asset freezing regime. The Government also intend to bring forward affirmative procedure regulations under Section 2(2) of the European Communities Act 1972 to ensure that enforcement provisions are in place to implement fully EC Regulation 881/2002 in respect of measures against Al-Qaeda and the Taliban.

Written Answers

Wednesday 27 January 2010

Afghanistan

Question

Asked by ***The Earl of Sandwich***

To ask Her Majesty's Government how many times Ministers have visited Afghanistan in the past 12 months to see (a) the work of Her Majesty's Armed Forces, and (b) development projects; how much time they spent examining development projects; and what steps they took to publicise such visits to development projects. [HL851]

Lord Brett: Details of ministerial travel, including the purpose of visits, is published annually. Information for previous years is available in the House Library and on the Cabinet Office website http://www.cabinetoffice.gov.uk/propriety_and_ethics/ministers/travel_gifts.aspx.

Information for the current year will be published as soon as it is available. Details on specific programmes and steps taken to publicise each visit are not centrally held. To provide additional information would incur disproportionate costs.

Agriculture: Dairy Farms

Questions

Asked by ***Baroness Byford***

To ask Her Majesty's Government what were the levels of (a) imports, and (b) exports, for United Kingdom dairy industry products for each year from 2003 to 2009. [HL1406]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): The Answer to the Question is given in the tables below. The latest information available is up to October 2009.

Table 1

UK trade in liquid drinking milk (pasteurised or UHT), 2003 to Oct 2009

Million litres

	2003	*2004*	*2005*	*2006*	*2007*	*2008*	*Jan to Oct 2009 (Prov)*
Exports	193	251	485	512	423	457	377
Imports	37	55	47	84	88	134	75

Table 2

UK trade in milk products, 2003 to Oct 2009

		2003	*2004*	*2005*	*2006*	*2007*	*2008*	*Jan to Oct 2009 (Prov)*
Exports	Butter	44	35	45	36	32	24	22
	Cheese	90	93	96	104	97	88	87
	Condensed Milk	20	18	4	6	6	3	4
	Cream	114	81	93	94	78	62	51
	Milk powders	173	186	102	96	105	98	60
Imports	Butter	118	114	129	147	103	81	74
	Cheese	316	335	353	378	403	422	342
	Condensed Milk	20	25	33	45	41	39	31
	Cream	15	15	30	37	43	55	54
	Milk powders	45	68	78	51	61	66	67

Source: HMRC

Asked by ***Baroness Byford***

To ask Her Majesty's Government how many (a) dairy farmers, and (b) dairy cows, there were in each year from 2000 to 2009. [HL1407]

Lord Davies of Oldham: Changes in the number of farmers and dairy cows are just two elements of the structural changes that have taken place in the sector. The long-term trend in dairy production is towards fewer, larger and more productive herds. The table below provides the fuller picture on the structural changes in the sector and shows how the decline in the number of dairy farms and farmers has been offset by an increase in average herd size and milk yields.

The number of principal farmers on dairy holdings is not yet available for 2009, so the most recent data cover up to 2008. The 2009 data will be released in March 2010.

The decrease in the numbers of dairy farmers in England between 2000 and 2008 (-26 per cent) is less than the fall in the number of holdings with dairy cows between 2000 and 2009 (-36 per cent). This

reflects a rise in the average number of farmers per farm over the period as the average farm size has increased.

However, the number of dairy cows has decreased by less (-24 per cent), reflecting a rise in the average herd size.

	Number of dairy farms		*No farmers [(a)] on dairy holdings*		*Number of dairy cows (thousands)*	
	(b)	*(c)*	*(b)*	*(c)*	*(b)*	*(c)*
2000		15,219		31,418		1,576
2001		14,293		30,178		1,490
2002		14,537		30,425		1,462
2003		13,770		28,918		1,435
2004		13,264		28,057		1,374
2005		12,918		26,168		1,311
2006	11,522	11,079	22,483	25,706	1,259	1,290
2007	10,907		21,082		1,236	
2008	10,331		20,122		1,199	
2009	9,805	--	--	--	1,163	
% change between 2000 and 2009(e)		-36%		-26%		-24%

-- not yet available

(a) Farmers are defined as principal farmers, partners, directors and spouses if working on the holding.

(b) Sourced from the Cattle Tracing System (CTS). Defined as the number of holdings on 1 June each year with more than 10 dairy cows in the milking herd. CTS became the main source of cattle data from 2006 onwards. Results prior to this were sourced from the June Survey of Agriculture but are not directly comparable.

(c) Sourced from the June Survey of Agriculture. Defined as the number of holdings with dairy as the predominant farming activity.

Asked by ***Baroness Byford***

To ask Her Majesty's Government whether they hold statistics on the market value of female dairy animals sold in English livestock markets. [HL1409]

Lord Davies of Oldham: Statistics on the market value of dairy animals sold in English livestock markets are held by the Agriculture and Horticulture Development Board. These statistics are provided to Defra on a monthly basis, split into 13 categories by age and pedigree or non-pedigree status. The information is then published on the Defra website at https://statistics.defra.gov.uk/esg/publications/amr/default.asp.

Agriculture: Wildlife

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government what measures they are considering to ensure that farmers preserve and enhance wildlife on their land. [HL1370]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): Many of our wildlife species and best habitat sites are already protected by legislation, and individuals should be free to manage wildlife within the law with government intervening only when necessary.

The Government provide funding (£2.9 billion) to farmers and land managers through agri-environment schemes under the Rural Development Programme for England for the effective environmental management of land to meet scheme objectives including conservation of wildlife (biodiversity).

Environmental stewardship, in particular entry level stewardship (which covers more than 5 million hectares), is the main delivery mechanism for promotion of farmland bird recovery, including as part of the campaign for the farmed environment to recapture the benefits of former set-aside. Higher-level stewardship is a major deliverer for achieving favourable condition of sites of special scientific interest (SSSIs).

Recommendations from a review of progress of environmental stewardship have been incorporated into the scheme in time for the first renewals of entry-level stewardship; more than 26,000 agreements expire in 2010-11. A new training and information programme to assist farmers in targeting options appropriately on their land and ensuring best environmental practice is due to commence in February.

Armed Forces: Health

Question

Asked by ***Lord Astor of Hever***

To ask Her Majesty's Government what proportion of the 16,000 service personnel deemed unfit for battle are overweight. [HL1476]

The Minister for International Defence and Security (Baroness Taylor of Bolton): I refer the noble Lord to the Answer given in the other place by my honourable friend the Minister for Veterans on 14 December 2009, (*Official Report*, Commons, col. *820W*) in response to a Question by the honourable Member for Portsmouth South (Mr Hancock).

Armed Forces: Senior Staff

Questions

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government what active service each of the 47 senior officers of the ranks of Vice-Admiral, Lieutenant-General, Air Marshal and above have been involved in. [HL1017]

The Minister for International Defence and Security (Baroness Taylor of Bolton): All officers that reach the ranks of Vice-Admiral, Lieutenant-General, Air Marshal and above have undertaken a number of challenging, demanding and varied roles both within an operational environment and in direct support of it.

In addition, all will have undertaken postgraduate training through the Defence Academy and will have attended the advanced staff course. Furthermore, many will have also attended the Royal College of Defence Studies, involving close engagement with current international issues. To determine which training each officer received would require a manual search of personal records incurring a disproportionate cost.

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government how many senior officers of the ranks of Vice-Admiral, Lieutenant-General, Air Marshal and above there were in (a) 1945, (b) 1960, (c) 1970, (d) 1980 and (e) 1990. [HL1022]

Baroness Taylor of Bolton: Information on the number of Vice-Admirals, Lieutenant-Generals, Air Marshals and above for the years requested is not held as a management information system report. The following table has been reproduced from entries made in the Navy List, the Army List and the Air Force List for the respective years.

Year	*No. of Officers*			
	Total	*Naval Service*	*Army*	*Royal Air Force*
1945	112	36	62	14
1960	79	30	29	20
1970	56	23	23	20
1980	57	19	17	21
1990	51	17	18	16

Aviation: Air Traffic Control

Questions

Asked by ***Lord Fearn***

To ask Her Majesty's Government what plans they have regarding air traffic control. [HL1389]

The Secretary of State for Transport (Lord Adonis): On 8 December the Government published the *Operational Efficiency Programme: Asset Portfolio*.

The portfolio includes a section on NATS which notes that, in light of the impending expiry of the restrictions on the transfer of shares for NATS, it is appropriate for the Government to engage with other shareholders who are likely to consider the shareholding options available to them.

No decision has been made by the Government with regard to reducing their shareholding. Any options considered would be required to best meet the needs of the company and its workforce, as well as of shareholders.

Asked by ***Lord Fearn***

To ask Her Majesty's Government whether the 20-year European Union plan to improve air traffic controls is still in place; and, if so, what stage it is at. [HL1390]

Lord Adonis: The single European sky initiative was first launched in 1999 and is still in place. The first package of measures under the initiative has led to the separation of service provision from regulation to improve the interoperability of air traffic control equipment, as well as common approaches to the certification of service providers and to the charging of users in this field.

A second package of measures was agreed by the Council of Ministers and the European Parliament on 4 December 2009 to reinvigorate the initiative. This will see the introduction of a Europe-wide performance scheme to incentivise better air traffic management by 2012 and better co-ordinated management of the network. It also imposes a deadline of 2012 for the introduction of functional airspace blocs within which groups of EU member states will co-ordinate their air traffic management. The UK and Ireland have led the way in this area, concluding the first functional airspace bloc in July 2008.

SESAR (Single European Sky ATM Research) is the single European sky project to develop the technology needed to modernise air traffic management across Europe. It was launched on 12 July 2009 as a partnership between the European Commission, Eurocontrol (the intergovernmental organisation for air traffic control in Europe) and 15 industry partners, including NATS and a consortium that includes BAA amongst its membership.

Aviation: Security

Question

Asked by ***Viscount Waverley***

To ask Her Majesty's Government what responsibility they have for the security of flights coming to the United Kingdom from JFK airport in New York; what assessment they have made of security checks on passengers and hand luggage at JFK airport for flights coming to the United Kingdom; and what assessment they have made of security checks, including scanning of shoes, at JFK airport on staff going airside to United Kingdom-bound flights. [HL1400]

The Secretary of State for Transport (Lord Adonis): The security of flights inbound to the United Kingdom is subject to the principle of host state responsibility, under which each state is responsible for the security of flights departing from its territory. This is governed by international law as set down by the International Civil Aviation Organisation (ICAO). The responsibility for aviation security at JFK is therefore a matter for the US.

UK aviation security officials visited JFK airport last year to observe the security afforded to UK airline operations. It would not be appropriate, for obvious reasons, to comment further on the security measures in place.

Banking: European Central Bank

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government whether the United Kingdom will be required to make a contribution to the cost of building a proposed new headquarters for the European Central Bank in Frankfurt. [HL1208]

The Financial Services Secretary to the Treasury (Lord Myners): No. The European Central Bank will finance the cost of the new headquarters from its own funds.

Banking: Iceland

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government further to the Written Answer by Lord Myners on 13 January (*WA 154*), what were the criteria used to decide that all Icesave retail depositors with the United Kingdom branch of Landsbanki should have their deposits returned in full; what was the cost of doing so; what legal powers were used to do so; and whether they are likely to recover that money. [HL1417]

The Financial Services Secretary to the Treasury (Lord Myners): Under the EU banking consolidation directive, firms with permission in their home EEA states to perform deposit-taking activities may establish branches in the UK. However, in order to exercise this passport right, a firm must have satisfied the conditions set out in Schedule 3 to the Financial Services and Markets Act 2000. These conditions include the requirement for the FSA to have received a consent notice from the firm's home regulator that it has given consent for the firm to establish a branch in the UK. Landsbanki satisfied these conditions and exercised its passport right to establish a branch in the UK, where it carried on deposit-taking business.

The EC deposit guarantee schemes directive (94/19/EC) sets the minimum terms on which depositors are protected throughout the European Union and European Economic Area (EEA). All EEA member states are required to ensure that the deposit guarantee schemes directive is adequately implemented in their territories.

Under the directive, depositors at branches in a host state are covered by the guarantee scheme of the home state. Depositors with the UK branch of Landsbanki were therefore eligible for compensation (for deposits up to €20,887) from Iceland's Depositors' and Investors' Guarantee Fund (DIGF).

Where a bank's home state scheme provides a lower limit of compensation than the UK FSCS, or the scope of protection is less than the FSCS's, the bank may choose to join the FSCS to top up the level of protection offered by the home state scheme.

Landsbanki chose to exercise this top-up option, meaning that depositors with the UK branch are protected to the FSCS limit per depositor and therefore may claim from the FSCS for the amount of their deposits above the DIGF limit to £50,000 (the FSCS limit).

Landsbanki, the Icelandic bank, is authorised and regulated by the financial services regulator in Iceland. Landsbanki's UK branch is subject to limited regulation by the UK Financial Services Authority (FSA).

On 8 October 2008 the FSA announced that the UK branch of Landsbanki was in default for the purposes of the FSCS. The Chancellor announced that all retail depositors with the UK branch of Landsbanki would receive their money in full. The Government's objectives in taking action in relation to the UK branch of Landsbanki were to maintain financial stability and to minimise the exposure of, and costs to, taxpayers.

In total, around £4.5 billion has been paid. It is estimated that this includes £2.35 billion compensation that the UK Government paid out to depositors on behalf of the Iceland Depositors' and Investors' Guarantee Fund (DIGF), £1.4 billion paid out by the FSCS for deposits above €20,887 and below £50,000, and £800 million paid out by the UK Government in respect of deposits above £50,000.

In guaranteeing UK retail depositors of the Icelandic banks, the Treasury acted under its common law powers. The statutory authority for the Treasury to incur this expenditure was provided by Section 228 of the Banking Act 2009 (retrospectively).

We expect that the FSCS and HM Treasury will make significant recoveries of the compensation paid to depositors through the winding up of Landsbanki. In relation to the compensation paid out on behalf of the DIGF, on 5 June 2009, the UK Government reached agreement with the Icelandic authorities on a process to ensure the UK is refunded. The terms of the loan arrangements are set out in my letter to the House of 13 January (*WA 154*). They include a state guarantee which, under Icelandic law, must be authorised by the Icelandic Parliament in order to take effect.

A Bill was passed in August to this effect but with a number of conditions introduced by the Icelandic Parliament. Following further negotiations, the loan agreement was amended to take account of these conditions. On 30 December, the Parliament in Iceland endorsed the loan arrangement and agreed a state guarantee. However, on 5 January 2010 the Icelandic President announced that he would not sign the Bill that the Parliament had approved, and instead proposed a referendum. A referendum has been scheduled for 6 March 2010.

The UK Government have received assurances from the Icelandic Government that they remain committed to meeting their legal obligations under EEA law and intend to repay the loan in full.

Banks: Taxes

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government whether they will consider introducing taxes similar to a capital levy on banks in receipt of public money, similar to the proposals of the Government of the United States. [HL1340]

The Financial Services Secretary to the Treasury (Lord Myners): The United States has announced a levy to recoup $117 billion that it expects to lose from interventions under the troubled asset relief programme. We believe that UK losses from banking sector interventions will be minimal at worst. The need for a similar levy therefore does not apply. The UK is, however, leading a global debate on how to ensure that banks, not taxpayers, support the financial sector in respect of any future emergencies.

Benefits: Attendance Allowance

Question

Asked by ***Lord Lipsey***

To ask Her Majesty's Government in the last year for which figures are available, how much in total was paid to recipients of attendance allowance who first received the allowance in that year. [HL1202]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): £183 million was paid to new recipients of attendance allowance in 2008-09 who had not previously received the benefit in the past six years.

Bovine Tuberculosis

Question

Asked by ***Baroness Byford***

To ask Her Majesty's Government whether they will introduce a compensation scheme for bovine tuberculosis which varies payments according to the value of cattle. [HL1408]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): Compensation for cattle affected by bovine tuberculosis (TB) in England is determined each month, primarily using table valuations based on contemporaneous sales prices. The 47 different cattle categories are based on the animal's age, gender, type (dairy or beef), and status (pedigree or non-pedigree).

A judicial review of the compensation system accepted Defra's submission that the true value of any animal affected by TB is the salvage value of its carcass, and there are no plans to introduce any substantial changes to the current system.

Carers: Tax

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government whether they are considering introducing tax breaks for long-term carers with definite commitments. [HL1372]

The Financial Services Secretary to the Treasury (Lord Myners): The Government keep all areas of tax policy under review. At the 2009 Pre-Budget Report, the Government announced an improvement in the tax arrangements for carers looking after vulnerable individuals under a qualifying "shared lives" scheme (also known as adult placement carers). From 6 April 2010, shared lives carers will receive a tax-free allowance for their caring income similar to the current foster care relief.

The Government also took action to ensure, from the date of the Pre-Budget Report, that there is no loss of capital gains tax private residence relief where adult placement carers use part of their home exclusively for the accommodation of an adult in care.

In addition, to help carers balance work with caring responsibilities, the *Building Britain's Recovery* White Paper (published in December 2009) announced that the Government will carry out a consultation on how we can help individuals meet their caring responsibilities while remaining in employment. It also announced raising the earnings limit within the carer's allowance from £95 a week to £100 a week to increase work incentives for carers.

The Government also published a revised national carers strategy in June 2008. Key components of the new strategy will ensure that carers have increased choice and control, and are empowered to have a life outside caring. They are investing over £255 million to ensure that the new strategy is implemented.

Crime: Suspicious Activity Reports

Questions

Asked by ***Lord Marlesford***

To ask Her Majesty's Government further to the Written Answer by Lord West of Spithead on 16 December 2009 (*WA 16*), what steps are taken to ensure that persons subject to suspicious activity reports (SARs) made anonymously or by unknown persons are checked before the SARs are recorded on the Elmer database of the Serious Organised Crime Agency; and how they will ensure that anonymous SARs which may have been made maliciously do not result in individuals being entered on to the Elmer database. [HL1154]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): All suspicious activity reports received by the Serious Organised Crime Agency are recorded on the Elmer database. SOCA does not take steps to establish whether an unknown or anonymous reporter's suspicions are unfounded before the information is recorded on Elmer. A SAR can be used in combination with other sources of intelligence to contribute towards a particular law enforcement investigation. If a SAR had been submitted maliciously, this fact would become apparent in the course of an investigation, when the information was cross-checked with other forms of intelligence.

In these circumstances, and where a SAR is submitted electronically, the relevant local enforcement agency can attach an appropriate flag to the SAR to indicate

no further action. Procedures on the handling of SARs may be revised depending on the outcome and recommendations of the forthcoming Information Commissioner's review.

Asked by ***Lord Marlesford***

To ask Her Majesty's Government whether they will continue to allow local authorities direct access to the Elmer database of the Serious Organised Crime Agency; and what guidance has been given to local authorities about the purposes for which they should access Elmer. [HL1156]

Lord West of Spithead: No local authority has direct access to the Elmer database. However, accredited financial investigators at some local authorities have access through terminals housed in local police units. The Serious Organised Crime Agency provides guidance material to users and all users are required to attend training delivered by the National Policing Improvement Agency (NPIA) or SOCA before accessing the database.

Future access to Elmer by local authorities and other potential end users will be subject to review in 2010, as indicated in the action plan in the SARs annual report 2009.

Crown Dependencies

Questions

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government what is the form and financial equivalent of the current annual voluntary contribution each of the Crown Dependencies makes to the costs of their defence and international representation by the United Kingdom. [HL985]

To ask Her Majesty's Government through what procedures the size and shape of the voluntary contributions each of the Crown Dependencies makes to the costs of their defence and international representation by the United Kingdom are agreed. [HL986]

The Financial Services Secretary to the Treasury (Lord Myners): The UK is responsible for the defence and international relations of the Crown Dependencies, Jersey, Guernsey and the Isle of Man. Jersey and Guernsey surrender hereditary revenues of the Crown to the Consolidated Fund in accordance with the Jersey and Guernsey (Financial Provisions) Act 1947. The last such payment from Jersey was for an amount of £225,000 in November 2008 and the last payment from Guernsey was an amount of £7,910,000 in February 2003.

The Isle of Man makes contributions in accordance with the Contribution Agreement 1994. The most recent contribution was £2,559,278.55, made in February 2009. The amount is initially calculated by the chief accountant of the Isle of Man Government Treasury Department, and then agreed with the UK Government.

Democratic Republic of Congo

Question

Asked by ***The Earl of Sandwich***

To ask Her Majesty's Government what is their estimate of the numbers displaced by the conflict in the north-east of the Democratic Republic of Congo; and what assessment they have made of the capacity of the United Nations agencies, including peace-keeping forces, to respond. [HL911]

Lord Brett: The United Nations (UN) estimates that over 1.5 million people are currently displaced as a result of the conflict in the north-east of the Democratic Republic of Congo (DRC). There are approximately 2 million internally displaced people across the DRC.

The Government consider the UN's capacity to respond, including that of the peacekeeping force, to be reasonable. Major loss of life due to displacement has been averted.

Disabled People: Leonard Cheshire Report

Question

Asked by ***Lord Morris of Manchester***

To ask Her Majesty's Government what is their response to Leonard Cheshire Disability's report *Disability and the downturn*; and what action they will take on its findings. [HL1290]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): The department welcomes the report and is aware of the difficulties that disabled people may face in a recession. The Minister for Disabled People met with Leonard Cheshire on 19 January to discuss the report and its annual review. However, the department will not be publishing a formal response to the report.

We believe no one should be left behind on benefits or in poverty. We have a range of programmes designed to help disabled people overcome barriers and obstacles and move into and retain employment. Pathways to Work is available to everyone claiming incapacity benefits and employment and support allowance in Great Britain, and we have a range of specialist provision, including Access to Work, for those with greater needs.

Education: NEETs

Question

Asked by ***Baroness Verma***

To ask Her Majesty's Government what action has been taken to reduce the number of persons not in education, employment or training (NEETs); and what steps they have taken to re-engage those young people who are in the NEETs category. [HL1243]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): The Government have taken decisive steps to strengthen existing provision and put in place new support to reduce the proportion of young people who are not in education, employment or training. In December 2009, the Department for Children, Schools and Families, the Department for Business, Innovation and Skills and the Department for Work and Pensions jointly published *Investing in Potential*, our strategy to increase the proportion of 16-24 year-olds in education, employment or training.

Through the September guarantee, we offer all 16 and 17 year-olds a suitable place in learning. In 2009, almost 96 per cent of 16 year-olds and almost 90 per cent of 17 year-olds said that they wanted to continue in learning and received a suitable offer through the guarantee. We are building on this with a January guarantee in 2010, which will offer all 16 and 17 year-olds who are not in education, employment or training this month a place in entry-to-employment provision.

We will invest a total of £8.2 billion in 2010-11 to fund learning for 1.6 million young people, the highest ever number of young people participating in education and training in our country's history, and we will increase 16-19 funding by 0.9 per cent in real terms in 2011-12 and 2012-13 to continue our commitment to the September guarantee. We are also investing more than £650 million in 2009-10 in financial support for 16-18 year-olds, including education maintenance allowance, care to learn and discretionary learner support funds, to help young people overcome financial barriers to participation.

Through our 14-19 reform programme, we are transforming the range of qualifications on offer to ensure that there are options available to suit every young person's needs.

Apprenticeships are one of these key routes and we are creating an additional 35,000 apprenticeship places in 2009-10, including 21,000 in the public sector. By March 2010, the National Apprenticeship Service will provide 5,000 subsidies to employers to support them to take on 16 and 17 year-olds as apprentices.

The young person's guarantee will ensure that 18-24 year-olds still unemployed after six months will be guaranteed access to a job, training or work experience. This will be supported by more time with their personal adviser.

We are widening participation in higher education to ensure that all those with the potential and merit to benefit are able and willing to do so. We have created the Graduate Talent Pool, which has offered over 12,000 vacancies for graduate internships since its launch at the end of July 2009. For those new graduates who cannot find work, the graduate guarantee ensures that those still unemployed at six months will have access to an internship, training or help to become self-employed.

Together, these measures represent a clear and substantial offer of support that will continue to prevent young people becoming NEETs and help those who are not in education, employment or training to re-engage.

Embryology

Questions

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 14 January (*WA 170–1*) regarding multiple inquiries from the media about the use of eggs under research licence R0152, what specific information was sought from the Human Fertilisation and Embryology Authority's press office, rather than requested under the Freedom of Information Act 2000; and what were the details of each response provided to those requests at the time. [HL1375]

Baroness Thornton: The Human Fertilisation and Embryology Authority has advised that its press office receives hundreds of queries every year, a large number of which are over the telephone, and it is not, therefore, possible to put together a comprehensive record of the information requested by the noble Lord.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government further to the reply by the Minister of State for the Department of Health, Gillian Merron, on 12 January (*Official Report*, Commons, col. 552), why there is to be an internal governance review of the Human Fertilisation and Embryology Authority's performance instead of an externally led inquiry. [HL1376]

To ask Her Majesty's Government further to the reply by the Minister of State for the Department of Health, Gillian Merron, on 12 January (*Official Report*, Commons, col. 552), what arrangements are in place to ensure that all appropriate information will be provided to the Human Fertilisation and Embryology Authority's internal governance review. [HL1377]

To ask Her Majesty's Government whether they will place in the Library of the House a full copy of the documents regarding the Human Fertilisation and Embryology Authority faxed to the office of the Minister of State for the Department of Health, Gillian Merron, by Dr Evan Harris on 12 January. [HL1378]

Baroness Thornton: The Human Fertilisation and Embryology Authority (HFEA) has advised that it determined it unnecessary for the review to be undertaken by an external person. The purpose of the review is to assess the adequacy of the Authority's revised governance arrangements in relation to the threshold between administrative enforcement of its powers and the sphere of criminal law. The HFEA consider this internal review to be the right way to look critically at what happened and to ensure changes made since then, to its processes and procedures, provide it with adequate governance arrangements.

The senior officer undertaking the review has devoted many months to reviewing the extensive documentation held by the HFEA. The senior officer will shortly contact those involved inviting them to contribute.

A copy of the HFEA internal memo provided to the office of the Minister for Public Health by Dr. Evan Harris MP on 12 January 2010 has been placed in the Library.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government further to the reply by the Minister of State for the Department of Health, Gillian Merron, on 12 January (HC Deb, col. 552), what was the cost to public funds of the Human Fertilisation and Embryology Authority's investigations of Dr Mohamed Taranissi's Assisted Reproduction and Gynaecology Centre; what was the outcome of those investigations; in what capacity were any staff of the Authority involved in the inquiry subsequently employed by the Department of Health; and whether individuals associated with the inquiry had their salaries reduced as a result. [HL1410]

Baroness Thornton: The Human Fertilisation and Embryology Authority (HFEA) has advised that it understands that by the term "investigations" resulting in costs to public funds, the noble Lord is referring to the settlements paid to Mr Mohamed Taranissi in relation to two judicial reviews. The first involved the quashing of a warrant and the second involved setting aside a Licence Committee decision. Those costs totalled approximately £770,000.

In 2006, the HFEA had concerns that Mr Taranissi was not complying with the statutory regulatory scheme that all licensed clinics in the United Kingdom have to follow. A number of outcomes followed, including legal challenges and a protracted licensing process. Mr Taranissi was granted a new three-year licence for the Assisted Reproduction and Gynaecology Centre in April 2009 and was offered a new one-year licence for the Reproductive Genetics Institute on 5 January 2010.

One member of HFEA staff subsequently went on secondment to the Department of Health from 1 October 2007 to 30 September 2008, and subsequently completed a one-month's fixed term appointment with the department from 1 October to 28 October. Both the secondment and the fixed term appointment were in the role of Director of Public Health Performance and Delivery.

No individual's salaries were reduced as a result of the inquiry. Information on HFEA salaries is outlined in its annual report and accounts, which have already been placed in the Library.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government whether they will place in the Library of the House a copy of each document in file *CPO 2/10—David Alton Bill to reduce time limit on abortion to 18 weeks*, held by the Department of Health. [HL1412]

To ask Her Majesty's Government whether they will place in the Library of the House a copy of each document in file *CPO 2/10—David Alton Bill to reduce time limit on abortion in other countries*, held by the Department of Health. [HL1413]

To ask Her Majesty's Government whether they will place in the Library of the House a copy of each document in file *CPO 2/22 S OF S AND PS(H) Meeting With David Alton 04/12/1991, and Follow Up Papers*, held by the Department of Health. [HL1414]

To ask Her Majesty's Government whether they will place in the Library of the House a copy of each document in file *CPO 2/23 S OF S Meeting With David Alton Feb 1996 And Follow Up Papers*, held by the Department of Health. [HL1415]

Baroness Thornton: It is an established convention that Ministers of one Administration cannot see the documents of a previous Administration. I am therefore unable to provide the information requested.

Eritrea

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government how the €122 million allocated by the European Development Fund for Eritrea for 2009–2013 will be spent. [HL403]

Lord Brett: The European Commission's support for Eritrea between 2009 and 2013 will help the Eritrean people reduce poverty and improve their prospects for economic and social progress. Projects will focus on improving food security (€70 million), rehabilitating infrastructure (€34 million), and strengthening governance (€10 million). The remaining funds will be earmarked for programmes to preserve the national heritage, support non-state actors and establish a Technical and Cooperation Facility.

Finance: Lending

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government whether they will take action against companies seeking to induce consumers to incur excessive interest charges on short-term loans agreed over the internet. [HL1338]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): I will write to the noble Lord and a copy of the letter will be placed in the Library of the House.

Food: Trans Fats

Question

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government whether they will introduce measures to eradicate artificial trans-fatty acids from the British diet, as recommended by the Faculty of Public Health and the Royal Society for Public Health. [HL1365]

Baroness Thornton: The Government notes the reports by the Faculty of Public Health and the Royal Society for Public Health regarding the banning of artificial trans fats from foods.

The Food Standards Agency (FSA) carried out a comprehensive review of the health impacts of trans fats in 2007, and reported that voluntary action taken by the food industry to reduce the levels of trans fats in foods in the United Kingdom has been successful in achieving the reduction in dietary intakes to 1 per cent of food energy. The Scientific Advisory Committee on Nutrition (SACN) recommends that trans fats should contribute no more than 2 per cent. of food energy. Given this, the Government believe that further action including legislation would be unlikely to deliver any additional health benefit. The FSA continues to monitor the intakes of trans fats.

The FSA is currently focussing effort on reducing intakes of saturated fat where there is clear evidence that the UK population is consuming more than public health recommendations, which increases the risk of coronary heart disease.

Gary McKinnon

Question

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government in the light of the decision of Mr Justice Mitting on 13 January 2010 to allow an application for judicial review of the Home Secretary's decision on the extradition of Mr Gary McKinnon, whether they will initiate a debate on the floor of the House on this case. [HL1350]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): As this case is before the courts it would not be appropriate to hold a debate on it in Parliament.

Genetics and Insurance

Questions

Asked by ***Lord Walton of Detchant***

To ask Her Majesty's Government what is their response to the recommendations of the UK Forum for Genetics and Insurance report on the genetics and insurance moratorium; and whether there will be a period after the potential end of the moratorium during which individuals who have taken a specific genetic test will not have the result of that test taken into account by insurers. [HL1383]

To ask Her Majesty's Government whether they will discuss with the Association of British Insurers whether a special life insurance scheme can be developed for individuals with highly predictive adverse genetic results. [HL1384]

Baroness Thornton: The Government will consider these matters when they undertake their scheduled review of the concordat and moratorium on genetics and insurance in 2011. This and other reports will inform the Government and the Association of British Insurers when considering a long-term agreement about the use of genetic test results for insurance purposes.

Government Departments: Bonuses

Question

Asked by ***Baroness Northover***

To ask Her Majesty's Government for each of the last three years for which figures are available, how many people were eligible for performance bonuses and special bonuses in the Department for International Development and its agencies, by Civil Service band; how many people received each type of bonus, by Civil Service band; what the average payment was for each type of bonus, by Civil Service band; and what the maximum payment was for each type of bonus, by Civil Service band. [HL43]

Lord Brett: Department for International Development (DfID) Senior Civil Service (SCS) members are eligible for a non-consolidated performance award. Awards are intended to reward delivery of personal business objectives during the reporting year or other short-term personal contributions to wider organisational objectives. In considering SCS members for an award, line managers are asked to take into account:

performance against agreed priority business objectives or targets;

total delivery record over the year;

relative stretch (ie the challenge of the job compared to that of others); and

response to unforeseen events that affected the performance agreement.

Awards are funded within existing pay bill controls, have to be re-earned each year against the pre-determined criteria above and, as such, do not add to future pay bill costs.

The annual size of the non-consolidated performance pay pot for the SCS is based on recommendations by the independent Senior Salaries Review Body (SSRB).

Staff in grades below the SCS (Al and below) are eligible for a non-consolidated performance award. Awards are intended to reward both the delivery of personal business objectives during the reporting year and demonstration of DfID's values.

Non-consolidated performance related payments for all staff are paid at the year end. DfID does not operate a special bonus scheme.

The three tables below show by Civil Service band; the number of staff eligible for a non-consolidated performance payment; the number of staff who received a non-consolidated performance payment; the median payment; and the maximum payment.

Financial Year: 2007-08[1]

Grade	No. of staff eligible for non-consolidated performance payments	No. of staff who received non-consolidated performance payments	Average (median) payment (£)	Maximum payment (£)
Director General [2]	*	*	*	*
Director	12	9	£5,750	£12,500
Deputy Director	73	52	£5,750	£12,500
A1 (G6)	238	131	£365	£1,150
A2(G7)	426	250	£365	£1,150
A2(L) (SEO)	142	100	£365	£1 150
B1 (HEO)	272	168	£365	£725
B2(EO)	264	171	£365	£725
C1(AO)	231	134	£365	£520
C2 (AA)	30	13	£365	£520

Financial Year:2008-09[1]

Grade	No. of staff eligible for non-consolidated performance payments[3]	No. of staff who received non-consolidated performance payments	Average (median) payment (£)	Maximum payment (£)
Director General[2]	*	*	*	*
Director	14	10	£8,282	£20,685
Deputy Director	80	59	£6,350	£14,612
A1 (G6)	0	0	£0	£0
A2 (G7)	0	0	£0	£0
A2(L) (SEO)	0	0	£0	£0
B1 (HEO)	0	0	£0	£0
B2 (EO)	0	0	£0	£0
C1 (AO)	0	0	£0	£0
C2 (AA)	0	0	£0	£0

Financial Year: 2009-10[1]

Grade	No. of staff eligible for non-consolidated performance payments	No. of staff who received non-consolidated performance payments	Average (median) payment (£)	Maximum payment (£)
Director General [2]	*	*	*	*
Director	14	10	£7,003	£12,500
Deputy Director	79	54	£5,497	£10,000
A1(G6)	238	181	£495	£750
A2(G7)	433	359	£495	£750
A2(L) (SEO)	128	73	£495	£750
B1(HEO)	245	183	£495	£750
B2(EO)	238	189	£495	£750
C1(AO)	198	167	£495	£750
C2(AA)	30	23	£495	£750

1 Payments made are for the financial year indicated but relate to performance achieved in the previous reporting year.

2 Information not provided on grounds of confidentiality (less than five members of staff).

3 DfID did not operate a non-consolidated reward scheme for staff below the SCS.

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 (HC Deb, col. *390W*), what was the average purchase price, excluding value added tax, of a 500 sheet ream of white A4 80 gsm photocopier paper paid by (a) the Equality and Human Rights Commission, and (b) the Government Equalities Office, in the latest period for which figures are available. [HL1174]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): The current purchase price for a 500-sheet ream of white A4 80 gsm photocopier paper paid by (a) the Equality and Human Rights Commission was £1.96 and (b) the Government Equalities Office was £2.17.

Greece

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government whether the United Kingdom would be required, although not a member of the eurozone, to make a financial

contribution to any financial rescue of Greece and any other member country of the eurozone; and, if so, why. [HL1207]

The Financial Services Secretary to the Treasury (Lord Myners): Membership of the European Union does not impose any obligation on the UK to contribute to any financial rescue, or accept the debt obligations, of any EU member state. There has been no request for UK support. Any such requests are considered on their individual merits.

Health: Expenditure

Questions

Asked by ***Lord Warner***

To ask Her Majesty's Government what the National Health Service and Department of Health combined expenditure was on (a) pharmaceuticals, and (b) influenza and other vaccines, in cash and real terms in (1) 1996-97, (2) 2003-04, (3) 2005-06 and (4) 2008-09; and what the estimated expenditure is in 2009-10 for those items. [HL1344]

Baroness Thornton: Pharmaceuticals (drugs) expenditure includes National Health Service expenditure in primary care and the Hospital and Community Health Service (HCHS). The primary care expenditure reflects amounts paid to pharmacy and appliance contractors and amounts authorised for dispensing doctors and personal administration in England. This includes expenditure on the seasonal influenza and adult pneumococcal vaccines, which are procured and administered by general practitioners and other contractors.

Table 1 provides details of NHS expenditure on drugs in cash and real terms (2008-09 base year).

Table 1: NHS expenditure on drugs

£ million	NHS drugs expenditure	
Year	Cash	Real Terms
1996-97	4,735	6,323
2003-04	9,271	10,541
2005-06	9,979	10,837
2008-09	11,378	11,378
2009-10 (April to September primary care)	3,796	3,722

Sources:

Prescription Pricing Division of the NHS Business Services Authority, England, Department of Health Finance Division, Foundation Trust year-end accounts.

Notes:

1. Government accounting policy changed in 2000-01; as a result, figures prior to 2000-01 are not strictly comparable to figures thereafter. Expenditure prior to 2000-01 represents the amounts paid between April to March for medicines and appliances and relate to prescriptions dispensed between March and February. This is due to the delay in prescription processing and payment calculations. From 2000-01, figures represent the actual cost of the prescriptions for medicines and appliances dispensed in the period April to March.

2. Year-to-date primary care figures have been provided for 2009-10. We do not have HCHS figures, which are sourced from accounts information available at year-end only. Primary care drugs expenditure is approximately 70 per cent of total NHS drugs expenditure.

3. Real-term calculation uses GDP deflator series at January 2010, 2008-09 = 100.

Additionally, the department provides centrally purchased vaccines for the NHS routine childhood immunisation programme and catch up programmes, vaccines against anthrax, rabies, smallpox, and the swine influenza vaccination programme 2009-10. The department is not able to divulge expenditure on swine influenza vaccine as it would violate confidentiality clauses in the contracts with the manufacturers. The available information about the department's expenditure on vaccines for England (not including swine influenza vaccine) is given in Table 2 in cash and real terms (2008-09 base year).

Table 2: Department of Health expenditure on vaccines

£ million	Vaccines	
Year	Cash	Real Terms
1996-97	-	-
2003-04	88	101
2005-06	107	116
2008-09	229	229
2009-10 (April to December)	160	157

Notes:

1. Where relevant, figures for England have been calculated as 84 per cent. of expenditure on vaccines for the United Kingdom. Childhood vaccines and smallpox vaccine are purchased for the UK. Anthrax and rabies vaccines are purchased for England and Wales.

2. Year-to-date figures to December 2009 have been supplied for 2009-10.

3. Real-term calculation uses GDP deflator series at January 2010, 2008-09 = 100.

The vaccines provided for NHS programmes have changed over the period of time shown in the table. For example, the higher level of expenditure in 2008-09 partly reflects the addition of human papillomavirus vaccination against cervical cancer.

Information about vaccine expenditure in 1996-97 is not available. It has not been possible to confirm whether or not records of vaccine expenditure for 1996-97 have been retained centrally by the department and there is no obligation for such records of this age to be retained.

Asked by ***Lord Warner***

To ask Her Majesty's Government how much was spent on public health and health promotion combined in (a) 1996-97, and (b) 2008-09, in cash and real terms. [HL1345]

Baroness Thornton: The department does not collect detailed expenditure information in these areas since, subject to delivering national targets, there is local discretion on how the funding is spent. However, for public health and prevention, a report by Health England shows (mostly using end of year information) expenditure in England on public health and prevention

for 2006-07. See Table 3 in the Report: Health England Report No 4. *Public Health and Prevention Expenditure in England 2009*, which is available from: http://healthengland.org/health_england_publications.htm.

Table 3 in that report is replicated here as follows, entitled Table 1, and provides a breakdown of spending based as closely as possible on Organisation for Economic Co-operation and Development (OECD) definitions

Table 1: Detailed Prevention Expenditure in England 2006-07

	Primary prevention	*Secondary prevention*			*Total £m*
		Screening	*Other*	*Medication*	
Total prevention and public health services	1,771	1,482	482	1,337	5,072
Maternal and child health; family planning and counselling	840	21	0	0	861
Maternity services	618				618
Family Planning Clinics	101				101
Contraceptives	66				66
Health Visiting Group Services	53				53
Neonatal audiological screening		14			14
Quality and Outcomes Framework (1)	2	6			9
School health services	44	0	115	0	159
School-based Children's Individual Health Services			115		115
School-based Children's Group Health Services	27				27
Healthy Schools Programme (2)	17				17
Prevention of communicable diseases	284	0	0	0	284
Immunisation (2)	238				238
Other infectious diseases (2)	24				24
Quality and Outcomes Framework	19				19
Reducing MRSA incidence (2)	3				3
Prevention of non-communicable diseases	206	1,461	348	1,337	3,352
Pharmaceuticals				1,337	1,337
Dental check-ups		937			937
Quality and Outcomes Framework	28	41	348		417
Screening programmes		275			275
Sight tests		208			208
Obesity/diet/lifestyle	116				116
NHS Stop Smoking Services	56				56
NICE Public Health Guidelines	4				4
CJD surveillance (2)	2				2
Occupational health care	4	0	0	0	4
Occupational Health for Dentists	4				4
Quality and Outcomes Framework	1				1
All other miscellaneous public health services (1)	394	0	19	0	412
Health Protection Agency	248				248
NHS Blood and Transplant (2)	53				53
Publicity for prevention activities	34				34
Charitable expenditure on prevention	33				33
National Biological Standards Board	25				25
Public Health in Prisons (2)			19		19

Source:

Health Inequalities and Partnership, DH (Health England Report No 4. *Public Health and Prevention Expenditure in England 2009*)

Notes:

1. Figures may not sum due to rounding

2. Refers to expenditure from the central budget, data available only for 2006-07

The expenditure on pharmaceuticals is included as its primary aim is prevention. Nevertheless, strictly, expenditure on pharmaceuticals is not included in the OECD prevention and public health category. Hence, for comparison with other countries using OECD data, these medication figures should be excluded. Excluding pharmaceuticals in line with OECD methodology gives a total expenditure on public health and prevention of £3.7 billion. If pharmaceuticals were included, the overall total for 2006-07 would be £5 billion.

Total health expenditure for England for the same period was approximately £93.5 billion. This suggests that about 4 per cent of health expenditure is directed towards prevention (using the figure without pharmaceuticals and without health-related expenditure, so that this can be compared with other OECD countries). This share indicates that England is above the average of other OECD countries, where prevention was only 2.8 per cent of total health spending in the same period.

A decade ago, the share of total health spending going to prevention and public health stood at only 1.8 per cent in the United Kingdom, which was below the OECD average at that time.

Asked by ***Lord Warner***

To ask Her Majesty's Government what the expenditure was on adult social care in cash and real terms in each year from 1996-97 to 2008-09 inclusive; what the percentage increase was in real terms in each year; what was the real terms increase in NHS expenditure in each of those years; and what adult social care expenditure was in each of those years as a percentage of NHS expenditure. [HL1346]

Baroness Thornton: Table 1 shows the total gross current expenditure on social services for adults aged 18 and over in England for the period 1996-97 to 2008-09, in both cash and real terms.

Table 2 shows the real terms increase in National Health Service expenditure in England for the period 1996-97 to 2008-09.

Table 3 compares the difference in spend between adult social care and the NHS by showing the percentage of adult social care expenditure of NHS expenditure for the period 1996-97 to 2008-09.

Table 1: Gross Current Expenditure [1, 2] on Social Services for Adults aged 18 and over, 1996-97 to 2008-09

England			*£ millions and percentage*
	Gross Current Expenditure (Cash)	*Gross Current Expenditure (Real Terms3)*	*Percentage increase (Real Terms3)*
1996-97	7,049	9,414	
1997-98	7,609	9,902	5
1998-99	8,196	10,447	6
1999-2000	8,928	11,160	7
2000-01[4]	9,628	11,878	6
2001-02	10,106	12,197	3
2002-03[5]	11,312	13,224	8
2003-04[6]	12,480	14,190	7
2004-05	13,492	14,927	5
2005-06	14,345	15,578	4
2006-07	14,893	15,710	1
2007-08	15,275	15,660	0
2008-09[7]	16,066	16,066	3

PSS Ex1

Notes:

1. Gross current expenditure includes income from client contributions but excludes certain income items which count as expenditure from elsewhere in the public sector, such as contributions from primary care trusts (PCTs). This is to avoid double counting within the aggregate public sector accounts of the money involved.

2. 1996-97 to 2006-07 figures include estimated Service Strategy and Asylum Seekers Assessment and Care Management apportioned to Adult Services and Children and Families Services using proportions calculated using 2007-08 data. From 2007-08 this information was collected separately.

3. Real term figures have been converted from cash terms using the Gross Domestic Product (GDP) deflator.

4. From the 2000-01 financial year, the PSS EX1 replaced the Chartered Institute of Public Finance and Accountancy (CIPFA) Actuals return, which was discontinued after 1999-2000.

5. The figures from 2002-03 include the cost of residential and nursing placements for adults and older people with Preserved Rights; councils took over responsibilities for those people in April 2002.

6. Expenditure funded from the Supporting People (SP) grant that councils have classified as social services expenditure rather than housing expenditure was introduced from 2003-04 onwards.

7. Data for 2008-09 are provisional. Final data for 2008-09 are expected to be published by the NHS Information Centre in April 2010.

Table 2 - Total Net NHS Expenditure in England, 1996-97 to 2008-09

Year		*Net NHS Expenditure [4] £ billion*	*% increase*	*% real terms increase [7]*
1996-97	Outturn	32.997	3.2	-0.5
1997-98	Outturn	34.664	5.1	2.4
1998-99	Outturn	36.608	5.6	3.4
1999-2000	Outturn	39.881	8.9	6.8
Resource Budgeting Stage 1[(2)]				
1999-2000	Outturn	40.201	-	-
2000-01	Outturn	43.932	9.3	7.9
2001-02	Outturn	49.021	11.6	9.1
2002-03	Outturn	54.042	10.2	6.8
Resource Budgeting Stage 2[(3)(5)]				
2003-04	Outturn	64.173	-	-
2004-05	Outturn	69.051	7.6	4.7
2005-06	Outturn	75.822	9.8	7.8
2006-07	Outturn	80.561	6.3	3.2
2007-08	Outturn	89.261	10.8	7.7
2008-09	Estimated Outturn	94.522	5.9	3.3

Notes:

1.Expenditure pre 1999-2000 is on a cash basis

2.Expenditure figures from 1999-2000 to 2002-03 are on a Stage 1 Resource Budgeting basis

3.Expenditure figures from 2003-04 to 2010-11 are on a Stage 2 Resource Budgeting basis

4.Figures are not consistent over the period (1971-72 to 2010-11), therefore it is difficult to make comparisons across different periods

5. Figures from 2003-04 include a technical adjustment for trust depreciation

6. Expenditure excludes NHS (AME)

7. GDP deflator 4 January 2010

8. Total expenditure is calculated as the sum of revenue and capital expenditure net of non-trust depreciation and impairments. This is in line with HMT Guidance

Table 3 - What adult social care expenditure was in each of those years as a percentage of NHS expenditure

	Proportion of Spend % (1)
1996-97	22%
1997-98	23%
1998-99	23%
1999-2000	23%
2000-01[4]	23%
2001-02	21%
2002-03[5]	22%
2003-04[6]	20%
2004-05	20%
2005-06	19%
2006-07	19%
2007-08	18%
2008-09[7]	18%

Note:

(1) This proportion is based on gross current personal social services expenditure (cash) as shown in table 1, of total net NHS expenditure as shown in table 2.

Health: Kidney Disease

Questions

Asked by ***Earl Howe***

To ask Her Majesty's Government what action they are taking to publicise the availability of home-based kidney dialysis from the National Health Service and to encourage informed choice for kidney dialysis patients as to the location and the manner in which they may be dialysed. [HL1398]

To ask Her Majesty's Government what assessment they have made of the relative costs and benefits to the National Health Service and the wider economy of hospital-based and home-based kidney dialysis. [HL1399]

Baroness Thornton: The National Institute for Health and Clinical Excellence published technology appraisal guidance—*Guidance on home compared with hospital haemodialysis for patients with end-stage renal failure*—in September 2002. This recommended that all suitable patients should be offered the choice between home haemodialysis or haemodialysis in a hospital/satellite unit. The department is currently considering how to extend patient choice for people on dialysis.

In addition, the improvement organisation, NHS Kidney Care, has recently published a specification for the commissioning of peritoneal dialysis as a comprehensive guide to best practice, offering greater choice and flexibility for patients.

Immigration: Asylum Support Office

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government what steps they will take to establish the new European Asylum Support Office approved by the European Council last autumn. [HL1196]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): The setting up of the European Asylum Support Office will fall initially to the European Commission, but the Government will co-operate closely with the Commission to ensure that the office is able to start work in its host country of Malta as soon as possible.

Immigration: FRONTEX

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government when they expect the new Frontex plans for regular use of chartered joint return air flights for extraditions to be functioning. [HL1198]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): There are no arrangements in place for Frontex to use chartered joint return flights for extradition purposes, nor are there any plans to do so.

Immigration: Tinsley House

Question

Asked by ***Baroness Stern***

To ask Her Majesty's Government whether they have modified the education provision for children at Tinsley House immigration removal centre since HM Chief Inspector of Prisons noted it was "inadequate". [HL1127]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): As we are not currently holding children at Tinsley House for more than 24 hours, planned education provided by a trained teacher is neither appropriate nor practicable.

Where children are to be held for longer than 24 hours, they are transferred to Yarl's Wood immigration removal centre, where comprehensive education provision is available for children of all ages, delivered by qualified nursery nurses and teachers.

India: Orissa

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether the Department for International Development is supporting projects in the Kandhamal districts of Orissa State; and, if not, where their nearest project which is benefiting members of all faiths is operating. [HL611]

Lord Brett: The Department for International Development (DfID) is providing £10 million for community development in four districts of Orissa, including Kandhamal. The Orissa Tribal Empowerment and Livelihoods Programme (OTELP) which runs

from 2004-10, aims to increase incomes, reduce malnutrition and improve water and sanitation for over 375,000 tribal men and women of all faiths.

Insolvency: Football Clubs

Question

Asked by ***Lord Greaves***

To ask Her Majesty's Government which professional and semi-professional football clubs have been issued with petitions for insolvency by Her Majesty's Revenue and Customs in each of the past 10 years; and what was the outcome in each case. [HL1318]

The Financial Services Secretary to the Treasury (Lord Myners): HM Revenue and Customs is under a strict, statutory duty of confidentiality and cannot comment on the tax affairs of individual businesses.

Kenya

Question

Asked by ***Lord Steel of Aikwood***

To ask Her Majesty's Government whether, following reports by the World Bank, all Department for International Development resources pledged to assist primary education in Kenya have been fully accounted for. [HL1305]

Lord Brett: A recent Kenyan Ministry of Finance internal audit report, supported by the World Bank, provided evidence of the misappropriation of both Government and donor funds totalling over Ksh 100 million (£800,000) in the month of June 2009.

Department for International Development (DfID) resources for education in Kenya (primary and secondary) have been frozen since these allegations, pending a satisfactory response by the Government of Kenya. This would need to include the reimbursement to donors of all funds lost through fraud if the allegations are found to be correct.

NHS: Race and Equality

Question

Asked by ***Lord Ouseley***

To ask Her Majesty's Government whether the Equality and Human Rights Commission or its predecessor bodies in recent years initiated investigations into alleged or actual discriminatory activities by the National Health Service; if so, when those investigations commenced; when any were discontinued; and why. [HL1004]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): The Equality and Human Rights Commission (EHRC) has initiated investigations into the NHS for breaches of the equality duties. The commission's predecessor bodies, the Commission for Racial Equality and the Disability Rights Commission, had published investigations into the Department of Health shortly before their closure regarding compliance with the race equality duty and fitness standards, respectively. With regards to the fitness standards, some follow-up work was undertaken by the EHRC.

The commission had decided initially to undertake a formal assessment under Section 31 of the Equality Act 2006 of the Department of Health's compliance with the public sector duties, but has since held discussions with the department about reaching an agreement on this matter, the details of which are still under negotiation.

As for cases that have been discontinued, the commission is prevented from disclosing information on reasons why they were discontinued under Section 6 of the Equality Act 2006.

Northern Ireland Office: Equal Pay

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government whether staff in the Northern Ireland Office will be eligible for compensation under the proposed equal pay settlement in the Northern Ireland Civil Service; if so, what is their estimate of the cost; whether the compensation will be taxable; and from what source funding for the settlement will come. [HL1059]

Baroness Royall of Blaisdon: The equal pay settlement for staff in the Northern Ireland Civil Service department does not apply to staff in the Northern Ireland Office (NIO).

The Northern Ireland Public Service Alliance has indicated that it would like to discuss this matter with NIO management and a meeting has been arranged. The NIO has its own pay and grading arrangements and does not accept that there are similar equal pay issues to be addressed in the department. This will of course be a matter for discussion with the Northern Ireland Public Service Alliance.

Northern Ireland: Justice

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government further to the Written Answer by Baroness Royall of Blaisdon on 14 December 2009 (*WA 184*), when they instructed the Public Prosecution Service in Northern Ireland and the Crown Prosecution Service not to pursue outstanding extradition proceedings against convicted fugitives appearing to qualify for early release under the terms of the Northern Ireland (Sentences) Act 1998; by what means they issued those instructions; and whether the policy was subjected to an equality impact assessment in Northern Ireland. [HL1061]

Baroness Royall of Blaisdon: Neither the Public Prosecution Service of Northern Ireland nor the Crown Prosecution Service has any role in respect of

the extradition of individuals who have already been convicted, whether or not they would appear to qualify for early release under the terms of the Northern Ireland (Sentences) Act 1998.

The general policy on extradition requests was subject to equality screening as part of the Northern Ireland Office's initial screening of policies following its designation as a public authority under Section 75. This screening found that no impact assessment was necessary. The decision not to pursue the extradition of convicted fugitives appearing to qualify for early release involved consideration of the public interest in relation to a limited number of specific cases and was not subject to an equality impact assessment.

Official Secrets Acts

Questions

Asked by ***Lord Laird***

To ask Her Majesty's Government what advisory committees covered by the Official Secrets Acts there are in the Department for Environment Food and Rural Affairs; who are the members of each such committee; and why they are required. [HL1298]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): None of Defra's advisory bodies is explicitly identified in the Official Secrets Act legislation.

Were Defra's advisory NDPBs to handle information on security and intelligence, defence or international relations then that advisory body's members would be bound by the provisions of the Official Secrets Act 1989, as these apply whenever office-holders handle those categories of official information.

Asked by ***Lord Laird***

To ask Her Majesty's Government what advisory committees covered by the Official Secrets Acts there are in the Northern Ireland Office; who are the members of each such committee; and why they are required. [HL1299]

Baroness Royall of Blaisdon: The Northern Ireland Office does not sponsor any advisory committees covered by the Official Secrets Act.

Palestine

Question

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what reports they have received from the World Bank concerning the development of economic enclaves in the occupied West Bank of Palestine. [HL815]

Lord Brett: We have received no reports from the World Bank specifically addressing the development of economic enclaves in the West Bank. The World Bank has, however, produced a number of reports assessing the impact of Israeli movement and access restrictions on economic development in the Occupied Palestinian Territories. Full details of these reports are available on the World Bank website (www.worldbank.org).

Prisoners: Rights

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether there is any law whereby prisoners may be obliged to wear identity cards or an arm-band; if not, why the practice is carried out in HM Prison Wakefield; and what assessment they have made of the effect of the practice on prisoners' rights to exercise and to attend religious services. [HL1397]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): There is no legal requirement for prisoners to wear identity cards. However, prisoners at Wakefield high-security prison and some other prisons are issued with identity cards. Prisoners at Wakefield, when leaving their residential unit, are expected to display the identity card on the outer layer of clothing using an armband. This enables staff throughout the prison to readily identify any prisoner. For security reasons, where a prisoner declines to wear his identity card he will not be permitted to leave his residential unit.

Railways: Corby

Question

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government what assessment they have made as to the use being made of the new railway station at Corby; and how the level of use differs from that which was forecast before the station was built. [HL1457]

The Secretary of State for Transport (Lord Adonis): The Department for Transport is currently reviewing station usage against that which was originally forecast for the 40 stations that have opened in England, Scotland and Wales over the past 10 years. This includes Corby station which opened on 23 February 2009. The study will be reporting in April 2010.

Railways: France

Question

Asked by ***Lord Berkeley***

To ask Her Majesty's Government whether they have made an assessment of the impact of the Government of France's new tax on rail passenger vehicles operating in France but not registered in France, coupled with a partial abolition of an asset-based tax applicable to vehicles registered in France, on the ability of United Kingdom operators to

introduce competitive open access services in France; and, if so, whether they will make representations to the Government of France and the European Union regarding this development. [HL1362]

The Secretary of State for Transport (Lord Adonis): We estimate the impact on the wider Eurostar business to be in the region of €7 million per annum. We have not made any assessment of the impact on other specific operations. The proposed taxe sur le material roulant needs to be seen in the context of a wider restructuring by the French Government of taxe professionnelle and the introduction of other carbon taxes. Nevertheless the UK Government are concerned about the potential burden this tax represents on a green form of transport at a time when we and our European partners are seeking to grow and develop international rail markets and competition. I have written to the French Government to convey these concerns. The UK, along with a number of other member states, has also made representations to the European Commission.

Railways: Rolling Stock

Question

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government what progress has been made in providing 1,300 additional carriages for the railway system by March 2014, as stated in the high-level output statement; and whether that figure has been adjusted to allow for the growth in passenger traffic. [HL1458]

The Secretary of State for Transport (Lord Adonis): I refer the noble Lord to my Written Statement of 14 December 2009 (*Official Report*, cols. *WS 213-4*).

Renewable Transport Fuel Obligation

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government whether they are considering amending the renewable transport fuel obligation to lessen the effect of deforestation on sensitive rainforests. [HL1371]

The Secretary of State for Transport (Lord Adonis): The Department for Transport is currently in the process of amending the renewable transport fuel obligation to incorporate the mandatory sustainability requirements set out in the renewable energy directive. Following these changes, biofuels will only be awarded a certificate if suppliers can demonstrate that the biofuels they supply achieve at least 35 per cent greenhouse gas emissions reductions, and also that they did not either come from converting high-carbon stock land, including forests, or have other negative environmental impacts, including upon biodiversity.

Royal Mail: Bicycles

Questions

Asked by ***Lord Berkeley***

To ask Her Majesty's Government whether Royal Mail has considered investing in freight bicycles to enable cycling postal workers to carry more weight; if so, what conclusions were reached; and for what reasons. [HL1465]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): Decisions regarding its delivery operations are matters which are the direct responsibility of Royal Mail's senior management team.

I have therefore asked the chief executive of Royal Mail, Adam Crozier, to respond directly to my noble friend and a copy of his reply will be placed in the Library of the House.

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what assessment Royal Mail has made of the effects on health, road safety and the environment that would arise from its plan to switch deliveries from bicycles to vans. [HL1466]

Lord Young of Norwood Green: Decisions regarding its delivery operations are matters which are the direct responsibility of Royal Mail's senior management team.

I have therefore asked the chief executive of Royal Mail, Adam Crozier, to respond directly to my noble friend and a copy of his reply will be placed in the Library of the House.

Royal Society for the Prevention of Accidents

Question

Asked by ***Baroness Scott of Needham Market***

To ask Her Majesty's Government what assessment they have made of the impact of the 35 per cent reduction in the grant to the Royal Society for the Prevention of Accidents for 2010-11. [HL1315]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): We value the partnership that we have with the Royal Society for the Prevention of Accidents (RoSPA) and the work that it does to provide advice and help to people to make their lives safer. The £166,050 grant in 2009-10 from BIS represents only a small proportion of the total funding that RoSPA receives from government.

Given the current pressures on the public finances, the Department for Business, Innovation and Skills has to take difficult decisions on the programmes that it continues to support, and needs to ensure that work supported is aligned with the department's priorities.

Safety in the home is now part of the work carried out by other government departments—for example, the Department for Children, Schools and Families—and the £18 million Safe at Home scheme is run by RoSPA and targets support for vulnerable families.

The Department for Business, Innovation and Skills has worked closely with RosPA over the past months to see where its expertise might better match the needs of the department but the evidence is not there to justify continuing the grant at its previous level. We will be meeting with RosPA shortly to discuss the detail of its 2010-11 work programme.

Schools: Teachers

Question

Asked by ***Baroness Verma***

To ask Her Majesty's Government what action is being taken to recruit more science, technology, engineering and mathematics teachers in primary schools. [HL1242]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): Teachers are recruited directly by schools and local authorities according to their needs, but the Government specify the content of initial teacher training, and for this all primary trainees must have a grade C or above in GCSE (or equivalent) in mathematics, science and English. Primary school teachers are trained to teach across the whole range of curriculum subjects rather than as specialists, but before they can qualify they must have gained, or already have, a first degree (or equivalent) and have passed professional skills tests in numeracy, literacy and information technology.

Although teachers are not given initial training to be science specialists, this department is encouraging greater use of practical work and other enhancement and enrichment activities in science lessons in both primary and secondary schools. As part of this, the Association for Science Education has been contracted to run a support programme to improve the use of practical work in science in schools.

To meet the Williams review recommendation that every primary school should have access to a mathematics specialist teacher to champion maths and act as the nucleus for achieving best pedagogical practice, there is now a two-year professional development programme for current primary teachers to develop their subject knowledge, subject-specific pedagogy and ability to mentor and coach colleagues. As well as their generalist teaching duties, mathematics specialist teachers work with colleagues to improve mathematics teaching across the school and increase pupil engagement, confidence and achievement in mathematics. The first cohort of the programme began in January 2010.

Swine Flu

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what is the cost to date of immunisation against the spread of swine flu; what estimate they have of recovery of funding from the sale or return of unused vaccines; how many people died from the disease in the last year; how many died from other influenzas in the same period; and whether they received any epidemiological advice contrary to that which was followed. [HL1418]

Baroness Thornton: We are not able to give details of the cost of the swine flu vaccine due to confidentiality clauses in our contracts with the manufacturers. We are unable to return vaccines that have already been delivered. The options for handling the anticipated surplus of vaccine are currently being explored with the manufacturers. We will be seeking to minimise the overall cost to the British taxpayer.

The Chief Medical Officer has carried out a confidential investigation of swine flu-related deaths since the pandemic began. As of 21 January 2010, there had been 279 swine flu-related deaths in England. There has been no significant circulation of seasonal influenza in England in this same period.

The Health Protection Agency has a long-term established system to monitor excess deaths (deaths in excess of what would normally be expected for the time of year) based on data from the Office for National Statistics. Influenza is one important contributory factor to excess deaths each year. In the period April to December 2009, no excess mortality has been observed.

Throughout the swine flu pandemic, we have been advised by a wide range of experts from all relevant disciplines. Our decisions have been based on the information we had about swine flu; at the beginning there was very little information available but our knowledge about the disease has increased with time. The epidemiological advice we followed reflected the consensus view of the scientists who provided that advice.

Swine and Avian Flu

Questions

Asked by ***Lord Willoughby de Broke***

To ask Her Majesty's Government what was the Chief Medical Officer's forecast of the number of deaths from swine flu; and how many deaths to date are attributable solely to swine flu. [HL1401]

To ask Her Majesty's Government what was the Chief Medical Officer's forecast of the number of deaths from bird flu; and how many deaths to date are attributable solely to bird flu. [HL1402]

Baroness Thornton: The department has never made forecasts of the number of deaths from swine flu or avian flu. Planning assumptions about a pandemic's course were used to inform preparedness planning, recognising that the precise characteristics and impact of a pandemic flu virus would only become apparent as the virus emerged.

The national framework for pandemic flu (*Pandemic flu: a national framework for responding to an influenza pandemic*) has already been placed in the Library and can be found at:

http://www.dh.gov.uk/en/publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_080734

It was published in 2007 and set out a number of assumptions for planning purposes which gave a range of possible scenarios. These assumptions were for an influenza pandemic of any kind, including the potential for a human virus evolved from current avian flu.

The department and Cabinet Office issued revised guidance to planners as information about the characteristics of swine flu became available. The assumptions were revised as more information became available and regular updates were issued to ensure United Kingdom planners were equipped with the most up-to-date information. We have been clear that the planning assumptions have never been a prediction of what would happen; they simply set out the reasonable worst-case scenario for planning purposes.

The Chief Medical Officer (CMO) was not involved in drawing up the figures given in the planning assumptions, which were based on the advice of the Scientific Advisory Group for Emergencies.

The CMO has carried out a confidential investigation of swine flu-related deaths since the pandemic began. As of 21 January 2010, there had been 279 swine flu-related deaths in England. Of these, approximately 20 per cent had no pre-existing diseases or underlying medical conditions.

Further detail is available in a report in the *British Medical Journal*, "Donaldson U, Rutter PD, Ellis BM, Greaves FEC, Mytton OT, Pebody RG and Yardley IE. Mortality from pandemic A/H1N1 2009 influenza in England: public health surveillance study. BMJ 2009;339 b5213."

UNICEF

Questions

Asked by ***Baroness Miller of Chilthorne Domer***

To ask Her Majesty's Government how the new UNICEF Strategy will benefit children living or working on the street. [HL769]

Lord Brett: The Department for International Development's (fID's) new three-year institutional strategy with UNICEF supports the implementation of UNICEF's own medium-term strategic plan. We want to support UNICEF's work for all vulnerable children including street children. UNICEF's plan includes work on the protection of children from violence, exploitation and abuse. This includes collecting and analysing data to improve understanding of the conditions of marginalised and vulnerable groups, and also work to ensure the views of children are captured in the policies and programmes that affect their lives.

Asked by ***Baroness Miller of Chilthorne Domer***

To ask Her Majesty's Government what is their response to recommendations by non-governmental organisations and the International Development Committee that specific street children indicators should be adopted in the new UNICEF strategy; and what representations they made to UNICEF about the recommendations. [HL770]

Lord Brett: The Department for International Development (DfID) is committed to reducing child poverty and reaching particularly vulnerable groups of children.

In developing our new institutional strategy with UNICEF, our concern was to support UNICEF's work for all vulnerable children, including street children. DfID does not have a specific policy focus on street children above other vulnerable children. Children usually live on the streets because of poverty in their communities and therefore our priority is reducing child poverty.

Our approach is to draw on UN agencies' own targets and commitments wherever possible. UNICEF does not have a specific target in its strategic plan on street children. However, our UNICEF strategy target on vulnerable children provides an opportunity to raise street children in our policy discussions with UNICEF.

Working Time Directive

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government whether the European Commission is considering ending the opt-out from the working time directive; and what their estimate is of the cost to the United Kingdom's economy and the effect on personal incomes if the opt-out is ended. [HL1438]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): Loss of the individual's right to opt-out of the 48-hour maximum working week (as set out in the working time directive) would cost billions in terms of lost pay to individuals, which is one reason why this Government would not support the end of the opt-out. Over 3 million employees choose to make use of this flexibility and we believe that it is right that they should be able to do so if they wish, provided the choice is voluntary.

There is no Commission proposal to remove the opt-out.

We have always accepted, however, that other issues on the directive remain since the negotiations failed, in particular the need to address two ECJ judgments on treatment of residential on-call time and compensatory rest that continue to cause problems for many member states. We would be happy to engage with new Commission ideas on those issues but our view on the opt-out has not changed.

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