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House of Lords

Wednesday, 7 April 2010.

3 pm

Prayers—read by the Lord Bishop of Gloucester.

NHS: Dog Attacks

Question

3.05 pm

Asked By ***Baroness Verma***

To ask Her Majesty's Government how many hospital admissions in 2009 were as a consequence of attacks on people by dogs.

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): My Lords, in the financial year 2008-09, the latest year for which data are available, there were 5,221 hospital inpatient admissions in England where the cause of injury was recorded as being bitten or struck by a dog. The figure does not include people attending only accident and emergency departments for treatment or those attending their general practitioner.

Baroness Verma: My Lords, I thank the noble Baroness for her Answer. Given that the majority of dog owners are responsible people—and I declare an interest as a past dog owner—it is extremely disappointing that the Government have failed to ensure that irresponsible dog owners are held to account for the increasing numbers of attacks by aggressive dogs. The public need to be reassured. Are dog owners to be issued with ASBOs if their dogs cannot be issued with DOGBOs? Are there any data to identify which breeds are more prevalent in the attacks, and if so, are the Government using these data?

Baroness Thornton: I am the health spokesperson here, so I may not be able to answer those questions as fully and adequately as my noble friend from Defra might. However—

Earl Ferrers: May I ask—

Noble Lords: Order!

Baroness Thornton: The Government launched a review of the Dangerous Dogs Act on 9 March and it will finish on 1 June. The noble Baroness is right that the legislation covering, for example, a person bitten in someone's private home is currently covered only by the Dogs Act 1871. We intend to review that because it does not provide for redress. I am very happy to go into the details of which dogs are covered if the noble Baroness wishes me to—

Noble Lords: No!

Baroness Thornton: But I sense that the House does not.

Baroness Morris of Bolton: My Lords, I will ask a health question. I am sure the Minister will agree that, at the other end of the spectrum, for many people, especially the elderly, a dog or a cat is a friend, and often a great mainstay in their lives. Can she say what consideration is being given to animals that help to keep people fit and healthy, especially if they have to go into hospital or long-term care?

Baroness Thornton: The noble Baroness asks a very important question, and she is absolutely right. In many care homes and sheltered housing locations for the elderly the rules have changed over the past few years as people have recognised that having a cat, a dog or even a bird can be of assistance and provide company for people who are ill and possibly lonely.

Baroness Barker: My Lords, I declare an interest as somebody who bears the scars of an Alsatian. Can the noble Baroness say whether the Government are likely to follow the Scottish legislation, where dog control notices can be issued against people who have failed to control their animals? The notices require them to take a number of measures, such as keeping their animals on a lead or muzzled when they are in public, in order to stop accidents taking place.

Baroness Thornton: I am aware that there is different legislation in the devolved Administration, and indeed there is a Private Member's Bill in front of the Scottish Parliament at the moment. A number of the ideas being put forward in that Bill, such as dog control notices, have been mentioned in the consultation that we have launched and will be considered during that process.

Baroness Masham of Ilton: Is the Minister aware that some dogs get jealous of children? Responsible sellers of dogs should pass this information on to new owners.

Baroness Thornton: Some 25 per cent of such admissions to hospital involve children under 15, so the noble Baroness makes a very good point indeed.

Lord Elton: Further to that point, surely it is new parents, rather than new dog owners, who need to be warned.

Baroness Thornton: The noble Lord makes an even better point.

Lord Harris of Haringey: My Lords, there have been a number of discussions with the medical profession about the importance of doctors in accident and emergency departments referring cases to the police when they feel that there has been a knife or gun attack. The General Medical Council has gone through a series of consultations on this subject. Have there been similar discussions about cases where dogs have clearly savaged individuals? Does the medical profession feel that such cases should be reported to the police?

Baroness Thornton: One of the reasons for our reviewing the Dangerous Dogs Act is the increase in the number of complaints about people being savaged by dogs. That is one of the issues being raised in the consultation process.

Baroness Gardner of Parkes: Tragedies in which very small children have died in such cases are obviously not included in the Minister's statistics. However, can she tell us whether the damage done to adults and children in such cases is just of a traumatic type, or is there any lingering transmission of disease from the dogs which necessitates longer hospitalisation?

Baroness Thornton: One of the major issues facing someone who has been bitten by a dog is that they must have the wound cleansed immediately. There are diseases that can be transmitted by all animal bites.

Royal Mail

Question

3.12 pm

Asked By ***Baroness Wilcox***

To ask Her Majesty's Government what is their assessment of the level of Royal Mail's pension liability.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): My Lords, the Royal Mail pension liability is a matter for the company and the trustees of the pension plan. I understand the parties are currently working together to complete the ongoing March 2009 triennial plan valuation, which is scheduled to be finished by June of this year. The previous valuation in 2006 showed a deficit of £3.4 billion.

Baroness Wilcox: I thank the Minister for that Answer. The Government have failed to provide the legislative framework for the Hooper review, which would have provided reassurance for thousands of Royal Mail workers worried about their pensions, before a general election. How could the Government have been in power for 13 years and left such a mess and such insecurity for Royal Mail workers?

Lord Young of Norwood Green: My Lords, I am struggling to come to terms with this new-found compassion for Royal Mail, which has not always been expressed in that manner by the Opposition. In relation to what the Government have tried to do, we have a good track record of investing heavily in Royal Mail. We have committed ourselves to universal mail provision. We have not held back in our support for Royal Mail. For example, in 2007 we provided some £850 million towards a £1 billion escrow account to support the pension plan, and we made available a further £1.2 billion for the company to fund modernisation.

Lord Razzall: My Lords, I fear the Minister is being somewhat obfuscatory in his answer. Only last week or the week before, many of us received a letter from Adam Crozier, the chief executive of the Royal Mail, indicating that the pension liability was £10 billion, not the £3 billion to which the Minister referred. I am sure he is aware of that. I am sure he is also aware that when the Postal Services Bill was going through your Lordships' House, the noble Lord, Lord Mandelson, indicated that the Government were not prepared to do anything about the liability for the pension fund unless the necessary reforms to Post Office working were put in place. Is the Minister satisfied that Adam Crozier's letter set out appropriate measures to put those reforms in place? If so, do the Government stand behind the liability?

Lord Young of Norwood Green: My Lords, I was not being obfuscatory, I was factually reporting the position as it is. However, it is true that in the recent interim accounts published in December 2009, Royal Mail expected the deficit to be in the order of £10 billion.

Noble Lords: Oh!

Lord Young of Norwood Green: That has not yet been fully validated because this matter is going through the proper valuation process with the trustees. We believe that the pension scheme is a matter for the company and the trustees to work out between them. We made clear our view that if we were going to take on that liability, it would have to be as a part of the Hooper review recommendations. They are threefold, as I am sure the noble Lord remembers, including external investment and the modernisation programme. The good news is that, as we speak, an agreement has been reached between the CWU and Royal Mail and a ballot will take place this week on the modernisation agreement, so there has been progress in the right direction.

Lord Campbell of Alloway: May I ask the noble Lord—this question has not been answered—whether the Government stand behind this liability? Could he answer that question?

Lord Young of Norwood Green: My Lords, I believe that I have answered that question. It is not a question of saying whether the Government stand behind it. We believe that this is a matter for Royal Mail and the trustees. They are working to find a way forward. They have until June of this year and can apply to the Pensions Regulator to extend that deadline if necessary. We have proved that we support Royal Mail through the generous funding that we have given to the pension scheme and the modernisation programme. Nevertheless, we believe that at this point the obligation is on the company and the trustees to find a solution to this problem.

Lord Hunt of Wirral: Does the Minister agree that among the wreckage that this Government are leaving behind, one of the great missed opportunities has been the failure to reintroduce the Postal Services Bill?

He has already been asked a question about it that he has not answered. According to the First Secretary of State, that Bill was much improved and strengthened in this House and was the best chance of securing the universal postal service while protecting Royal Mail pensions. Why has he not reintroduced that Bill?

Lord Young of Norwood Green: The First Secretary of State made it quite clear why we felt that we could not proceed at the time. We did not believe that the investment scenario was the right one to attract the necessary investor in the scheme and we do not believe that that situation has changed. We refute the political hyperbole of the noble Lord's use of the term "wreckage". Royal Mail has very recently concluded a modernisation agreement with the Communication Workers Union. We believe that to be a fundamental step forward in ensuring a modernised Royal Mail which will provide a successful universal postal service.

Lord Christopher: My Lords, does my noble friend agree with me that the steps the Government have taken in relation to the recession have probably restored the value of the pension fund by around 20 per cent, owing to the recovery that has taken place in the stock market?

Lord Young of Norwood Green: My noble friend makes a very valid point.

Lord Elton: The Minister said that the deficit figure given by the Liberal Democrat Front Bench was based on an expectation of some time ago. Can he say on what the figure he gave the House a moment ago is based, and whether that is a firm figure or an expectation?

Lord Young of Norwood Green: I have already answered that question but I will do so again. In the recent interim accounts published in December 2009, Royal Mail expected the deficit to be in the order of £10 billion.

Lord Tebbit: My Lords—

Lord Elton: My Lords—

Noble Lords: Order!

Lord Hunt of Kings Heath: My Lords, I think we should hear the next question from the noble Lord, Lord Tebbit.

Lord Tebbit: My Lords, is the Minister aware that his replies will have given great comfort to a number of shyster employers and owners of companies with huge pension deficits who could follow the Government's example and simply walk away if the employees do not do what they would like them to do?

Lord Young of Norwood Green: That is a very florid interpretation by the noble Lord, Lord Tebbit. No, I would not agree with that. We have provided some £850 million towards a £1 billion escrow account to support the pension scheme and a further £1.2 billion for the company to fund modernisation. If you can find other companies that are doing that and walking away at the same time, I would be interested to hear of them.

Lord Tomlinson: Does my noble friend agree that it is rather unfair of the noble Lord, Lord Tebbit, to be talking about shyster employers, unless he is talking about those who keep coming out of the woodwork to support the Conservatives in the most partisan way during this election campaign?

Lord Elton: If the noble Lord has difficulty in answering that question, can I again ask him to answer my question about his statement?

Lord Young of Norwood Green: I think that the noble Lord, Lord Elton, is getting overenthusiastic this afternoon, which is unlike him. I do not think that I can add any more to my noble friend's analysis.

Employment Relations

Question

3.21 pm

Asked By ***Lord De Mauley***

To ask Her Majesty's Government what plans they have to improve employment relations.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): My Lords, the Government's approach to employment relations will continue to be guided by three key principles: fairness aimed at providing the necessary protection for workers; flexibility aimed at providing choice and opportunity for individuals, combined with the freedom for businesses to create wealth and employment; and partnership aimed at increasing the number of workplaces where there is mutual trust and well informed co-operation, which is surely the best foundation for solving business problems.

Lord De Mauley: My Lords, I thank the Minister for that Answer. His right honourable friend the Schools Secretary says that it is not enough to protect front-line services, but that every aspect of every public sector employee's job should be sheltered from the effects of Labour's great depression. Does he agree?

Lord Young of Norwood Green: No, is the short answer. I know that the noble Lord, Lord De Mauley, would seek to imply that somehow this Government are responsible for what has been widely accepted as a worldwide recession. We have already made clear our attitude towards public sector pay, for example.

Lord Howarth of Newport: Does my noble friend believe that drastic, doctrinaire cuts in public spending and deflation of a fragile economy would tend to improve employment relations?

Lord Young of Norwood Green: I think that there was a touch of irony there from my noble friend. No, of course that would not help the situation. We value the public services. We know that they have a vital role to play in the future. We have made clear our commitment to front-line public services. Some financial savings will have to be made and we have indicated where those will take place.

Lord Razzall: Does the Minister not accept that there is a problem for this Government in presiding over an improvement in employment relations in the UK, when they are so dependent on funding the forthcoming general election with trade union money, particularly from the trade union Unite?

Lord Young of Norwood Green: I had hoped that we might get through this debate without political point-scoring.

Noble Lords: Oh!

Lord Young of Norwood Green: I suppose it was a vain hope. I would say only this to noble Lords: we have made absolutely clear our attitude towards the recent round of industrial disputes. However, the real analysis—if the noble Lord is interested in that—is a success story, because the number of working days lost this year remains very low by historical standards. In the 1980s, 7.2 million days on average were lost. I reject the view that somehow this Government are in hoc to the trade unions. We believe in a responsible approach to employment relations which encourages both sides to resolve their problems.

Lord McIntosh of Haringey: My Lords—

The Earl of Onslow: My Lords—

Lord Hunt of Kings Heath: My Lords, it is the Conservatives' turn.

The Earl of Onslow: Can the noble Lord tell me, now that £11 billion-worth of public sector waste has been identified by the Chancellor of the Exchequer, how many public sector jobs will be cut?

Lord Young of Norwood Green: No, my Lords, I cannot—that is the straight answer.

Lord Morris of Handsworth: My Lords, does the Minister agree that industrial relations would be greatly improved if members of the party opposite accepted that they were wrong to oppose the national minimum wage, which has done so much to lift so many out of poverty?

Lord Young of Norwood Green: Of course my noble friend is absolutely right: they were wrong to oppose it and absolutely wrong in their prediction that millions of jobs would be lost as a result of its introduction—but that is collective amnesia for you.

Lord Forsyth of Drumlean: My Lords, will the Minister explain how it helps employment relations to reduce the size of people's pay packets by increasing national insurance charges, as the Government propose?

Lord Young of Norwood Green: My Lords, what we as a Government have tried to do is to act responsibly by indicating that in dealing with the deficit, some difficult decisions will have to be taken. Our record on unemployment is that we have created maximum employment over many years—it reached its height at something like 29 million, which is as near to full employment as one can get—and we do not believe that an increase in national insurance will have the effect that the noble Lord has predicted. Our main point is that we have been absolutely honest in saying that as we recover from the deficit, we will have to make difficult choices. I wish that the Opposition could arrive at the same conclusion.

Lord McIntosh of Haringey: My Lords, has the Minister observed, as some of us behind him have, that the three Questions that have been asked so far from the opposition Benches have all been supplied by central casting in such a way that all the questioners asking supplementary questions have had to resort to scripts?

Lord Tebbit: Not so.

Lord Young of Norwood Green: I do not think that I should enter into that debate.

Lord Hunt of Wirral: Would the noble Lord accept that one reason why the number of industrial disputes fell in the 1990s was because of laws introduced by the noble Lord, Lord Tebbit, which the party opposite opposed? I was proud to serve as his junior Minister. Will he get the facts right? Compared to 1997, the number of working days lost last year showed a substantial increase. It has risen again this year in what many people describe as a simmering spring of discontent.

Lord Young of Norwood Green: My Lords, I was wondering when the seasonal analysis would emerge. I thought preparation would be helpful, so I will quote from the *Economist* on 3 April, which stated:

"A quick look at the numbers confirms that modern fears are overblown. Despite the odd conspicuous walkout, industrial relations have been serene for nearly two decades ... Official statistics going back to 1891 suggest that strikes have never been less frequent".

Unfortunately, this is not just due to the noble Lord, Lord Tebbit, but to a generally improved climate in employment relations, with fair and balanced legislation.

Media: Foreign Ownership

Question

3.28 pm

Asked By ***Lord Dykes***

To ask Her Majesty's Government what measures they propose to ensure non-European Union nationals owning British print media publications conform to national regulations and the Press Complaints Commission's Editors' Code of Practice.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): My Lords, I had thought of asking whether I could deal with the Questions en bloc, but I did not think it was procedurally acceptable—and as the Lord Speaker is here, I thought that I had better not.

The Government do not propose any new measures to regulate non-European ownership of British print media publications. The press is self-regulated, having adopted a voluntary code of practice which imposes requirements relating to accuracy and balance in reporting. Complaints are handled by an independent Press Complaints Commission.

Lord Dykes: I thank the very industrious Minister. In the mean time, does he feel that the famously flabby Press Complaints Commission has the true grit necessary to do effective monitoring over the election campaign period in order to ensure that the oligarch-owned monopoly area free newspapers do not dish out a relentless series of election news stories of a hardline capitalist nature to the detriment of the Liberal Democrat Party and other progressive parties?

Lord Young of Norwood Green: My Lords, on the question of regulation, we strongly believe that a press free from state intervention is fundamental to a strong democracy. Of course, with that freedom comes responsibility, as well as an obligation to abide by the law. All newspapers, including foreign-owned ones, sign up to a self-regulatory code of practice covering accuracy and balance of reporting which is enforced by the Press Complaints Commission.

Lord Dubs: My Lords, we all accept the need for a free press but does my noble friend agree that there is something slightly the matter with foreign owners living abroad and with no loyalty to this country being able to control the editorial policies of our leading papers? Does he further agree that this is something that the Government should look at very seriously after the election? It is not democracy and it is not sensible.

Lord Young of Norwood Green: We would not agree with everything that my noble friend says in relation to that issue; nor would we be able to say that we are opposed to any foreign investment in British newspapers. Whether the next Government will look at this issue is best left to them.

Lord Soley: Will my noble friend consider a more innovative approach to this problem? Given that the press is such a keen supporter of the Freedom of Information Act, will he consider extending such an Act to the press itself?

Lord Young of Norwood Green: I thank my noble friend for that intervention.

Lord McNally: My Lords, is there not a great danger of our press being extremely vulnerable? We are told that the economics of the printed press are now extremely fragile. Do we have defences in place to stop major titles falling into the hands of foreign owners, in the way that our football clubs have done, without any proper check on the responsibility of those buying up such titles?

Lord Young of Norwood Green: My Lords, the Secretary of State has powers to intervene and could do so if he believed that the merger might give rise to concerns relevant to the media public interest consideration, the need for accurate presentation of news and free expression of opinion in newspapers, and the need for a sufficient plurality of views in newspapers in the UK or a significant part of it. Therefore, where we feel that there is an undue monopoly, the Secretary of State has the ability to intervene. I quote a recent example although it happens rarely. The media plurality powers have been used only once so far—in relation to the proposed acquisition by BSkyB of a significant shareholding in ITV. That was a slightly different situation because it cut across the media rather than relating to just one aspect.

Lord Borrie: My Lords, is it not time that any acquisition of British media from abroad should be made conditional on compliance with EU regulations and the Press Complaints Commission editorial requirements, and that that condition should be enforceable by law so that the problems adverted to by several Members this afternoon would be avoided?

Lord Young of Norwood Green: My Lords, to my knowledge they are subject to those regulations. The problems referred to so far have been of concern. There has been concern about the takeover of a couple of newspapers by one foreign owner, but that is all that has been mentioned so far. Therefore, they are obligated to subscribe to and observe the rules, both voluntary and compulsory, that currently apply.

Lord Hughes of Woodside: My Lords, is there not something incongruous about national newspapers which trumpet in banner headlines that they know how the Government should run their business, and condemn them for how they do so, when they own businesses are in such a parlous condition that they have to sell newspapers such as the *Independent* for a pound to a foreign oligarch?

Lord Young of Norwood Green: My Lords, I am not sure that I totally agree with that analysis. I think that running a newspaper in the current environment is not easy, given that we are talking about the electronic media as a whole.

Lord Wallace of Saltaire: My Lords, is the Minister aware that the newspapers which most strongly support the Conservative Party are either substantially controlled by non-domiciles or are controlled in offshore tax havens such as Bermuda which minimises their tax contribution to the United Kingdom? Is there not a contradiction between their vigorous support for British national sovereignty and the determination of those who control them to avoid paying British tax?

Lord Young of Norwood Green: My Lords, I absolutely agree with the noble Lord.

Lord Tebbit: My Lords, does the noble Lord recollect whether Lord Beaverbrook was a Canadian? I think he was. Can he further say whether he regards a KGB man to be an appropriate person to ensure that the press is free, open and unbiased?

Lord Young of Norwood Green: My Lords, perhaps I may slightly correct the noble Lord: "former KGB" might be appropriate. I know he is a stickler for accuracy. We shall have to judge this takeover by what happens in practice. I repeat the point I made previously: all newspapers, including foreign-owned newspapers, sign up to a self-regulatory code of practice covering accuracy and balance of reporting, which is enforced by the Press Complaints Commission.

Business of the House

Motion on Standing Orders

3.36 pm

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

That Standing Order 41 (*Arrangement of the Order Paper*) be suspended until the end of the Session so far as is necessary to give Her Majesty's Government the power to arrange the order of business; and that Standing Order 47 (*No two stages of a Bill to be taken on one day*) be suspended for the same period.

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, the Motion standing in my name on the Order Paper is customary at this point in a Parliament. It suspends two of our Standing Orders so that, before Parliament is prorogued later this week, the House may consider the items of business set out yesterday by my noble friend Lord Bassam of Brighton. I hope that the Motion will find favour with this House.

Given that one of the amendments to my Motion is about the Constitutional Reform and Governance Bill, it may be helpful if I make it clear that, following discussions between the main parties, agreement has been reached that Clause 53 of the Bill, which would have ended hereditary by-elections, will be withdrawn. The Government will also withdraw Clause 56, which would have made provision for the resignation of Members of this House.

In relation to the transitional provisions on the tax status of Members of your Lordships' House, an amendment has been tabled to provide for a three-year cooling off period before a former Member of this House can take a seat in another place. The Government will also withdraw Part 3 of the Bill, which would have provided for a referendum on voting systems. I understand that my noble friend Lord Bach will also be in a position to offer concessions on some other matters as we progress this evening.

I realise that some noble Lords will be disappointed, but we have acted in good faith to achieve a consensus and, following those concessions, I believe that there is significant cross-party agreement for the provisions in this Bill. I beg to move.

Amendment to the Motion

Moved by ***Lord Tyler***

Leave out "Standing Order 47 (*No two stages of a Bill to be taken on one day*)" and insert "Standing Orders 47 (*No two stages of a Bill to be taken on one day*) and 49 (*Amendments on Third Reading*)".

Lord Tyler: My Lords, the amendment suspends Standing Order 49, which says that no amendment can be moved to a Third Reading of a Bill unless notice has been given to the Clerk no later than the day before and in time for it to be printed and circulated.

Obviously, the reason for tabling this amendment is that some of the Bills scheduled for later today, including the Constitutional Reform and Governance Bill, and tomorrow might need to have amendments tabled to them after Report, in time for Third Reading, so that we can avoid the dangers of rushing our process. Mistakes and errors of judgment can so often occur in the wash-up stage. I have experienced that in the past.

For brevity, I shall concentrate on one Bill, but from what I hear from several Benches, other Members of your Lordships' House may wish to contribute in regard to other Bills scheduled for today and tomorrow. At the outset, I wish to make one point clear: the Leader of the House said that the "main parties" agreed to the deletions in the Constitutional Reform and Governance Bill, but that does not include my noble friends on these Benches, nor do I believe it includes the Cross Benchers, nor any Back Benchers. I shall return to that point. We believe that the key clauses in the Bill should not have been struck out as part of the unholy alliance between the Government and the Conservative Front Benches. This casual and cavalier treatment of important issues does nothing for the reputation of your Lordships' House.

I was led to believe when I joined your Lordships' House that we were self-regulating, that we sought to be transparent and accountable, less partisan than the other place and that consultation was much more effective at this end of the building. Yet, on these negotiations, all the Back-Benchers, the Liberal Democrats and the Cross-Benchers have been excluded. This is not a wash-up, it is a stitch-up, and a squalid little stitch-up. It was conceived and speed and in secrecy behind closed doors. I would like to think that the Leader of the House and the Government Chief Whip did their best to ensure that the interest of your Lordships' House were represented in the negotiations. The facts suggest otherwise. It looks as if this was entirely dictated by Downing Street—either by the Prime Minister himself or the Commons Government Chief Whip.

In brief, our interests in your Lordships' House have been completely overruled. Why? Because the full reform of your Lordships' House has not taken place, and therefore the other place feels that they can slap their fingers at our interests. There has been plenty of time to bring forward proposals. The past 13 years have amounted to a missed opportunity. I want to concentrate on the issue of the continuation of the hereditary principle. Ninety-one weeks ago, a White Paper was produced, negotiated between the parties. At about the same time, there was a reference to electoral reform. Today, the Prime Minister is proposing a double referendum on those issues—13 years after the commitment was first made. Why should we believe this manifesto commitment when all the previous ones have been so clearly ignored?

This House deserves carefully managed stages to discuss the Bill and revisit all the Minister's previous promises on the issues; hence our amendment. There is a whole catalogue of commitments made in Labour manifestos and publications over the past 13 years. Starting in 1996, Mr Tony Blair stated in his personal credo, which he titled, *New Britain: My Vision of a Young Country*, that he would bring,

"an end to hereditary peers sitting in the House of Lords, as a first step to a proper directly elected second chamber, and the chance for the people to decide after the election the system by which they elect the Government of the future".

Then, the 1997 manifesto stated:

"The House of Lords must be reformed. As an initial, self-contained reform, not dependent on further reform in the future, the right of hereditary peers to sit and vote in the House of Lords will be ended by statute".

The 2001 manifesto stated:

"We are committed to completing House of Lords reform, including the removal of the remaining hereditary peers, to make it more representative and democratic".

At the last election in 2005, the Labour Party was quite sure, stating:

"In our next term we will complete the reform of the House of Lords so that it is a modern and effective revising Chamber".

On 10 June last year, Mr Gordon Brown seemed to think that Labour had succeeded in that aim. He told the Commons:

"In the last 12 years, we have … ended the hereditary principle in the House of Lords ".—[*Official Report*, Commons, 10/6/09; col. 797.]

In the interminable debates on the Bill introduced by my noble friend Lord Steel, supported on all sides of the House, most notably by the noble Lord, Lord Norton of Louth, my noble friend reiterated the determination to dispose of this anachronism. Ministers have agreed on every occasion on its urgency and importance. Only a few days ago, on Second Reading of the Constitutional Reform and Governance Bill, the noble Lord, Lord Bach, repeated that commitment as being urgent. He said,

"we think strongly that the time has come to end the farce of these elections"—[*Official Report*, 24/3/10; col.1051.]

Yet when it comes to the crunch, they take the earliest opportunity to capitulate to the dinosaurs on the Conservative Front Bench.

After 13 years of dither, delay and downright deceit, why should anyone believe another Labour promise on reform of the Lords? With Mr Brown, it is always jam tomorrow, but tomorrow never comes. Labour manifestoes have been fantasies, and the one that Labour will publish in the next few days looks as if it will be just the same again.

3.45 pm

I turn to the Conservatives. The noble and learned Lord, Lord Howe of Aberavon, with whom I enjoy debating, participated in an exchange of views on the electoral system and the coming election at a meeting at the British Academy on 10 March. He argued most persuasively that the only change that should take place in the forthcoming campaign should be a change of Government and that after that there should be no other change whatever. That sits slightly uncomfortably with the Cameron campaign slogan, but I thought at the time that he was taking a characteristically independent line. I am not sure now; it might have been prophetic. The Conservatives are going to make the most serious sticking point of this wash-up process keeping things in this House precisely the same. "No change" seems to be the new Conservative slogan. So much for "Vote for change". They will go into the election fighting in the last ditch to protect the hereditary principle in your Lordships' House, and they want to make certain at the same time that the public have no role whatever in deciding how our democracy should be reformed. Back to the future with the dinosaurs.

Where was that notable advocate of radical change in the composition of your Lordships' House, the noble Lord, Lord Strathclyde, who has argued so persuasively for this major reform? Did he take part in these dubious discussions between the Front Benches in the carve-up that has taken place in recent days?

It need not have been like this. We could have had a full Bill soon after the July 2008 White Paper on Lords reform. There was no progress because the Government were split. We could have had effective control against big money buying British politics in the Act in 2009. Was it not extraordinary to hear the Prime Minister at Prime Minister's Questions today twice refer to the problems caused by the noble Lord, Lord Ashcroft, and the investment of foreign, off-shore funds in British politics to buy seats? Was it not extraordinary to hear him referring to that when he and his Government have done nothing about it? How are they going to deliver it now if it is not in the Bill when it could have been? Similarly, on electoral reform, there was a complete failure to act on the promise and on the Jenkins report.

Whatever happened to the Prime Minister's promise to surrender or limit the prerogative powers, not least the power to decide when to go to the country, to hold an election? Today, he says he is in favour of fixed-term Parliaments. That is a fat lot of use in the last few days of this five-year Parliament. What an extraordinary promise to make now. Why did he not process it when he could have done?

All these missed opportunities could even now be achieved if Ministers really care. The 1997 precedent, to which I made reference in the House yesterday, gives a mechanism for Ministers, if they so wish, to make serious progress on issues where there is cross-party agreement, not necessarily complete consensus around the House, but at least enough to carry the day in the normal democratic way in the Division Lobby.

This morning the noble Lord, Lord Mandelson, tried to pin the blame for yet more postponement of reform on these issues on the Conservatives. He asked us to believe that the 13-year delay had been caused simply by waiting for the right moment. With mind-boggling cheek, he said, "This is the beginning of reform". This is not even the beginning of the end, it is not even the end of the beginning; we have not started. This is a sad, bad day for your Lordships' House. The Government are treating us as pawns in their electoral game. As so many Members of your Lordships' House have been saying in the past 24 hours, this is no way to do serious business. My noble friend Lord Shutt yesterday put it so well,

"the wash-up is a wash-out".—[*Official Report*, 6/4/10; col. 1369.]

[LORD TYLER]

At the very least, there should be some mechanism by which the whole House is involved in discussions in the open with due time to assess priorities and practicalities. In the mean time, we are determined that there should be a proper process allocated for the limited changes that will be available to us in the Constitutional Reform and Governance Bill and in other Bills this evening and tomorrow. That is the purpose of our amendment. However, if the two other Front Benches are determined to defend the hereditary principle to the death—or perhaps I should say beyond—let them at least do it in full debate today, after this business Motion, rather than skimming over it at the bitter end, the fag-end of this Parliament. I beg to move.

Lord Stoddart of Swindon: My Lords, I should like to support—

Noble Lords: Oh!

Lord Stoddart of Swindon: Is there a problem? I believe that this is a debatable Motion and therefore I shall start debating it.

I was shocked to hear that the only people who have been involved in discussions on this so-called wash-up have been the Government and the Official Opposition.

Lord Campbell of Alloway: My Lords—

Lord Stoddart of Swindon: The other opposition parties, independents and Cross-Benchers were not consulted at all, let alone all other Members of the House—

Noble Lords: Order!

Lord Stoddart of Swindon: There is no need to shout.

Lord Campbell of Alloway: I am not objecting; I am just asking why we are not dealing with the amendment in the name of my noble friend Lord Trefgarne.

Lord Bassam of Brighton: My Lords, when the noble Lord, Lord Stoddart, rose, I was going to intervene to suggest that for the convenience of the House and to progress business we might usefully and valuably hear from the noble Lord, Lord Trefgarne.

Lord Stoddart of Swindon: Now that I understand the position, I will wait for the noble Lord, Lord Trefgarne, to move his amendment, after which I shall speak to both amendments.

Lord Trefgarne: My Lords, I was not proposing to trouble your Lordships with my thoughts on my amendment at this stage. I thought that it might be preferable for your Lordships to listen to the noble Lord, Lord Tyler, and to consider, discuss and dispose of his amendment before we moved on to mine. However, I am in the hands of the House and will do whatever the House prefers. It seems from the various nods that I can see that your Lordships would like to hear from me now and I will formally move my amendment in a while.

The Earl of Onslow: My Lords, I suggest to your Lordships that the first instinct of the noble Lord, Lord Trefgarne, was right. What the noble Lords, Lord Tyler and Lord Trefgarne, want to do are two separate things, so I think that it would be wise for the amendments to be discussed separately.

Baroness Royall of Blaisdon: If it is the will of the House, I will respond to the points made by the noble Lord, Lord Tyler. We can then do whatever the noble Lord, Lord Tyler, wishes to do, after which we can move on to the amendment in the name of the noble Lord, Lord Trefgarne. In response to the noble Lord, Lord Tyler—

Lord Stoddart of Swindon: I do not wish to be difficult, but things seem to have changed somewhat. I understood that these were two separate amendments and I was speaking to the first of them. Then the government Chief Whip intervened to say that it had been agreed that both amendments should be taken together, which I accepted. However, the noble Lord, Lord Trefgarne, has now said that he had not accepted that the amendments should be taken together. As he rightly said, the amendments are totally different; they are about different things. I wish that we could get this cleared up, because I want to say one or two more things about the amendment in the name of the noble Lord, Lord Tyler. Are we taking them together or are we taking them separately?

4 pm

Baroness Royall of Blaisdon: My Lords, this is a self-regulating House. It seems to be the will of the House that, first, we take the amendment from the noble Lord, Lord Tyler, to which I think that the noble Lord is going to speak. When we have disposed of that, we will move on to the amendment from the noble Lord, Lord Trefgarne.

Lord Stoddart of Swindon: I thank the noble Baroness very much. I am glad we have got that clear. As I was saying before I was interrupted, the noble Lord, Lord Tyler, has made many good points in support of his amendment. But I am shocked that the discussions have been so narrow and between only the Government Front Bench and the Official Opposition Front Bench. I should have thought that in matters of this sort, there should be a wider discussion involving the Liberals and the Cross-Benchers. As an independent Labour person, I would not expect to be consulted, but it would be very nice if others could be consulted as well.

For those reasons, I support the amendment by the noble Lord, Lord Tyler. I will say no more on his amendment, but I shall speak on the amendment in the name of the noble Lord, Lord Trefgarne.

Lord Rooker: My Lords, I have no difficulty whatever with my noble friend's Motion and I disagree very much with a lot of what the noble Lord, Lord Tyler, has said. This is not the first time that this situation has arisen. There is a precedent; namely, every general election. It is not a satisfactory way to make law. What worries me—it has happened in the past, but this is the first time I have had the opportunity to say so in either House—is that the laws we will pass will go before the

courts and perhaps a fellow citizen will be disadvantaged because of poor drafting or an intention which was wrong.

No one ever goes back and says, "How on earth did Parliament pass this?" and someone then says, "Hang on a minute, it was done in wash-up". I say that things are agreed between both sides in a very general term because of one good example that I always use; that is, the very first child support legislation in the 1990s. Everyone agreed that it was a good idea, but it was never properly scrutinised. As those who were Members of Parliament in the other place know, it was an absolute disaster and it was unwound because of the lack of scrutiny.

I have a suggestion. We are not very good at post-legislative scrutiny anyway and pre-legislative scrutiny has only just started. The consequence of not having fixed-term Parliaments is that we will always have a situation whereby there will be a great deal of legislation that we do not want to waste. Substantial effort has been put into a lot of it, although not all of it. It would be ludicrous beyond belief to waste it all. I shall make no point about any particular part of the legislation.

However, not all of that legislation is properly scrutinised. I think that there would be a case for institutionalising that this House—jointly preferably, but this House is the revising Chamber—should systematically say that an ad hoc committee of the House should look and monitor the wash-up package after six months and 18 months. It should get a report from the Clerk, the Clerk in the other place and the relevant department on how that legislation has worked. If defects are caused by the lack of scrutiny, the committee should find an institutional way to put them right before they become a disaster.

That would not need a lot of resources or cost a lot of money. Nor would it stop the difficulties and the rows that we will have now. But it would stop our fellow citizens being disadvantaged by laws being passed that have not been properly scrutinised and challenged. In a way, it would give this House a chance to get off its knees regarding scrutiny and revision relative to the other place. It would be a golden opportunity for us, while we still have our powers of scrutiny and revision, to say, "Look, we will do the wash-up, but by heavens we will monitor its effects on the public". I think that that would be good for law-making in the future because it would mean that each wash-up would be a bit more efficient than the one before.

This would not solve the problem of the noble Lord, Lord Tyler, although I think that his suggestions are completely impractical, but for those of us who want to strengthen both this place and Parliament, this is an opportunity for us to say to the two Front Benches: what about having a look at monitoring wash-up legislation afterwards?

4 pm

Lord Alderdice: My Lords, will the noble Lord clarify whether he is suggesting a format such as the introduction of an amendment to each of the Bills going through in the wash-up with the proposal that such a monitoring exercise might be instituted, or does he have another proposal? It seems to be such a valuable proposition that it should in some way be institutionalised, but it is hard to see how that might be done without the possibility of introducing amendments at Third Reading.

Lord Rooker: I am not proposing this for today, but for after the election. When we come to set up our structures, there is no reason, whatever the fallout of the election, why this House should not look at how to progress through the next Session. I have suggested periods of six and 18 months. You cannot look at the legislation straightaway because it may not come into operation directly after Royal Assent.

This needs thinking about, but the wash-up today is not the time. That is my point on the suggestion, but I thank the noble Lord for his obvious support.

The Earl of Onslow: My Lords, funnily enough, I have some sneaking sympathy for the noble Lord, Lord Tyler, which I know is probably quite an unpopular thing to say from the Tory Benches at this moment. But I say it because had the noble Lord been in the smoke-filled room, he could not have got out of the consequences, which now he can.

The noble Lord is right when he says that an enormous number of the things the Government said they were going to do have not been done, and that makes it even worse that everything is coming through right at the end during the wash-up period. I am going to go on saying this tonight again and again because I feel so strongly about it. Things that would take a two-thirds majority of American states and a similar majority of the Senate to get passed are going through in our Bills without even being looked at in the Commons, let alone here. That is a completely and utterly disgraceful way to deal with legislation.

If we are going to have a wholly appointed House, I would accept that there is no need for hereditary Peer by-elections. As I have conceded several times in your Lordships' House, I am the first to say that the reason I am allowed to boss you about is because one of my forebears got drunk with Pitt or Walpole—a form of "Thank you very much for that last bottle of port"—but that is not acceptable in a modern state. However, we were left here quite specifically to make sure that the House was not an appointed Chamber. My noble friend Lord Cranborne said, certainly privately to me and probably on the record, that he did not trust anybody to go to stage two because a fully appointed House would be too convenient for the occupiers of those smoke-filled rooms. That is why the Liberals have got it wrong about hereditary peerage by-elections. I know that I am in a minority in this opinion, but the dottier the system, the more it forces people to consider an at least partially elected second Chamber. That is what we have to have so that we can use our very considerable powers properly.

On the noble's point about the referendum on voting, that was a choice of one rather than between all the different kinds of proportional representation. It was a sort of galloped-at fence, hoping that nobody would notice, as well as being a sop to the Liberal Cerberus. It has not worked because they have whipped the sop away.

Baroness Royall of Blaisdon: My Lords, I hope the noble Earl will forgive me for intervening briefly to say that the issues he is raising in this debate relate to policy. Later on, when the constitutional reform Bill is before us, there will be many opportunities to debate policy. At the moment, however, we are speaking specifically to the Motion I moved and to the amendment moved by the noble Lord, Lord Tyler.

The Earl of Onslow: My Lords, I was trying to make it exactly relevant to the points made by the noble Lord, Lord Tyler, but I concede that what the noble Baroness says, as is often the case, has some wisdom in it. I will allow myself to end on that little note.

Baroness Royall of Blaisdon: I shall respond to two or three issues that have been raised. In response to the amendment to suspend Standing Order 49, I understand the arguments that the noble Lord has put. However, that has not been customary in recent wash-ups and we have done very well without the suspension of that standing order, so I would personally prefer not to suspend it today.

With regard to the process of the wash-up, as my noble friend Lord Rooker and others have said, it is a tried and tested procedure that has been going on for decades.

Lord McNally: The Chief Whip used the word "tradition" about four times yesterday, and now the noble Baroness is using the term "tried and tested". What she and both sides have to realise is that this system of wash-up is washed up. It has no credibility.

The reason why I am intervening, and I hope that I am being constructive, is that I wish I had said what the noble Lord, Lord Rooker, said. We are going through this process now, but this has to be the last wash-up of this kind. If the noble Baroness has any sense—I hope that the Bench opposite her has as much sense—she will listen to what he says and act on it to ensure that this never happens again.

Baroness Royall of Blaisdon: The noble Lord had not finished listening to what I was going to say. I was going to say two things. The first was a bit cheeky: in government, we have understood for many years how wash-up works, and perhaps it is because the Liberal Democrat Benches have not been in government for some time that they are not aware of these procedures. However, that is a rather cheeky thing to say.

The Earl of Erroll: I have watched some bad things go through in wash-up; there have been mistakes, which have been acknowledged and have had to be tidied up later. My recollection of wash-up is that it is non-controversial things that go through, not highly controversial issues. This is a misuse of the wash-up process.

Baroness Royall of Blaisdon: My Lords, if the noble Earl wished, I could seek information that detailed a number of very controversial Bills that have been subject to the wash-up process in the past.

I was going to say in response to my noble friend Lord Rooker that he made some very good points. This is a process about which many people clearly feel uneasy, if I might put it like that, and so perhaps we should be looking at it. However, now is not the time to do that. We are where we are. Today I have an obligation, as Leader of this House and Leader of the government Benches, to get our legislation through. I am delighted that we have found a consensus with noble Lords opposite—

Lord Tebbit: Will the noble Baroness give a little thought to the proposition that over the years, instead of the wash-up procedure applying to a small number of Bills, a larger number of Bills have been subjected to it? There is great resentment about that.

The only point on which I would disagree with the noble Lord, Lord Rooker, is that he referred to the mischiefs that arise because we do not have a fixed-term Parliament. On this occasion, it was a fixed-term Parliament—everyone has known that it was going to end round about now—and it really was not sensible of the Government to bring forward so much controversial legislation so late.

Baroness Royall of Blaisdon: My Lords, I understand what the noble Lord is saying. He would not expect me to agree with him on every point he makes, but I accept what he says. As I say, following this election, we should all, as legislators and Members of this House, perhaps in discussion with the other place, seek better ways of engaging in the wash-up process. That, though, is for then. Now we have the Motion in front of us that I have moved, and an amendment from the noble Lord, Lord Tyler, with which I fundamentally disagree.

With regard to issues relating to the reform of this House, which will be dealt with later on in today's debate, I would point out that this Government have done more than any other Government in 100 years to reform this House.

A noble Lord: What about life Peers?

Baroness Royall of Blaisdon: And life Peers, forgive me. We have done a jolly good job, not just from the government Benches but with the agreement of all Benches in this House.

Lord Lawson of Blaby: As is common on all sides of the House, I have the greatest respect for the noble Baroness. However, she admits that this is a highly unsatisfactory process and that we should seriously look at changing it in the new Parliament. If it is highly unsatisfactory, we should not go along with it now in the way she would like us to.

I have been a Member of one or other of the Houses of Parliament for 36 years—I realise a number of noble Lords have been here longer—which is a reasonable amount of experience. I have never known the wash-up process to be used on this huge scale, which is quite exceptional and undesirable. When I say "huge scale" I mean in the light of the criteria which

are normally used and the substance of what is being washed up. As my noble friend Lord Tebbit said, this procedure gives an incentive for a Government to introduce a swathe of contentious legislation at the last moment in order that it may be rushed through in the wash-up without adequate scrutiny. That is clearly an undesirable precedent and we should not go along with it.

The wash-up is needed. I was involved in a wash-up before the 1979 election when the Labour Government introduced a finance Bill which, for practical and legal reasons—including the income tax laws and the Provisional Collection of Taxes Act—had to be rushed through. That is one category that has to go through. There were meetings between the noble Lord, Lord Healey—

Lord Campbell-Savours: Is the noble Lord asking a question or making a speech?

Lord Lawson of Blaby: It is a long intervention. The noble Lord, Lord Healey, the noble and learned Lord, Lord Howe, the noble Lord, Lord Barnett—I am anxious to hear what the Leader of the House has to say—and I took part in those meetings and we agreed on that Bill. Other legislation which has been given a great deal of scrutiny in both Houses reasonably needs to be completed, and legislation of an emergency nature—such as terrorism legislation—also needs to be rushed through.

I shall conclude briefly. The Constitutional Reform Bill is a major constitutional measure which has not been adequately or properly scrutinised and should not be part of the wash-up.

Baroness Royall of Blaisdon: The noble Lord is making valid points but he is trying the patience of the House; at this stage we need to move on. However, I should say three things to the noble Lord. I did not say that this is an unsatisfactory procedure; I said that many people feel uneasy with it. That is why, after the election, we should look at it; it is not an unsatisfactory procedure. I should also say to the noble Lord that the scope of the wash-up has not changed. I hear what he says about the Constitutional Reform Bill, but that has not changed. During wash-up, Governments do not put matters into Bills; they take them out. With that, I shall sit down and turn to the noble Lord, Lord Tyler.

Lord Campbell of Alloway: My Lords—

Noble Lords: Tyler!

Lord Tyler: I have never been so popular, my Lords. I hope all Members of your Lordships' House will recognise that this modest amendment simply says that we can improve the process. It is not suggesting that we should throw it out, that we should stop or go on all night; it simply seeks to ensure that we put on record the needs of this House—not of anyone else—for a better process. That issue has been reflected in all the contributions that have been made, except, of course, from the Government Front Bench. The noble Lords, Lord Rooker, Lord Tebbit and Lord Lawson, have all expressed anxiety about the process. It is a simple amendment, a simple suggestion; I wish to test the opinion of the House.

4.14 pm

Division on Lord Tyler's amendment to the Motion

Lord Tyler's amendment to the Motion disagreed.

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4.27 pm

Amendment to the Motion

Moved by ***Lord Trefgarne***

At end to insert "except in its application to the Constitutional Reform and Governance Bill".

Lord Trefgarne: My Lords, the second amendment to the Motion in the name of the noble Baroness stands in my name. As this is a manuscript amendment and has not therefore appeared before today, I hope that your Lordships will forgive me if I read it. It is to the effect that we should add, at the end of the noble Baroness's Motion, "except in its application to the Constitutional Reform and Governance Bill".

I am not opposed to the principle of a wash-up process. It is right, is it not, that when Parliament comes to an end, particularly in slightly unexpected circumstances—as it did, for example, in 1979—there should be an orderly process of bringing important and uncontroversial legislation to the statute book, particularly where it has far advanced its legislative process. However, I put it to your Lordships that the Constitutional Reform and Governance Bill does not fall into that category. It is a major constitutional measure by any standards. It has not even been fully considered by the other place. When it was introduced there, there were some 50-odd clauses; it now has 94 clauses. More or less half of the Bill has not been properly considered by the other place and was introduced by the Government only in the very last stages of its consideration in that place.

Now it comes to your Lordships' House. We have had a Second Reading; we are invited now to have a Committee stage to ram through the Bill, not only in Committee but in all its other stages, later today. This is a major constitutional Bill. A large part of it is to do with the Civil Service. I have no serious difficulty with what is proposed there, but we have been talking about legislation to regularise the Civil Service for 20, 30 or 40 years. It is not urgent that that goes through now. It could easily be in another Bill, properly considered in another Parliament. There are many other important clauses of the Bill with which I would not have any great difficulty. The noble Baroness referred to the provisions about non-domiciled taxation for Members of your Lordships' House and of the other place. There are also provisions about whether Peers can leave the House if they are not prepared to comply with those conditions.

The noble Baroness has said that she intends to remove from the Bill the provisions relating to the ending of the hereditary Peer by-elections. Frankly, I do not feel terribly strongly about that. Although I am a hereditary Member of your Lordships' House and had the benefit of being elected here back in 1999, I am one of a minority of Members on my side of the House who are in favour of Conservative Party policy—a largely elected House—on this matter. I recognise that

there is wide body of opinion which takes a different view from that. I am careful not to press my view too loudly in Conservative quarters on this side of the House.

In due course, no doubt, there will be legislation to deal with the by-elections and, perhaps, with the hereditary Peers. Last year there was a Bill from the noble Lord, Lord Steel, which would have ended the by-elections for hereditary Peers. I think it was the noble Lord, Lord Hunt, who, speaking from the government Front Bench on that occasion, gave me an assurance that the by-elections were part of the deal done back in 1999 and would remain in place until the whole of House of Lords reform was completed. I was very pleased to receive that assurance. I am therefore even more pleased to hear from the noble Baroness this afternoon that the proposals in the Bill to end the by-elections are to be removed.

This is a major constitutional Bill by any standards. It is not right that it should be whizzed through your Lordships' House on a Wednesday afternoon, with all the remaining stages compressed into one and the Bill not properly considered. We will regret what we pass today if we follow that process. I beg to move the amendment in my name.

Lord Neill of Bladen: My Lords, I support this amendment. We are belittling ourselves and lowering the reputation of the House by indulging the thought that we may look at 45 pages of amendments to a major constitutional reform Bill, running through the evening and the night, and try to bustle them through. It seems so obviously out of place in whatever the wash-up procedure may be that, by any definition, we ought not to attempt any such posture.

We have quite often in this House criticised what has happened in the other place, such as the absence of a proper Committee stage on Bills. There have been Bills that have scarcely been considered properly in the other place. We have criticised that and said, "That it is not the way things should be done; we will do a proper job here". That is, in my experience, what we do to the best of our ability, apart from during this wash-up process. I therefore strongly support the amendment. We should simply drop this constitutional reform Bill and decide that it will not be part of the package that is considered later today.

Lord Campbell of Alloway: My Lords, very briefly, I support this amendment. I am not against the wash-up in principle, but this—I am told by my friends from all parties in the other place—is an abuse of the process. There has never been anything like this before. The noble Lord, Lord Rooker, as a rule, puts his hand straight on the point: there just is not time to discuss anything. That is the desperate sadness of today.

This Bill creates a most astonishing situation. I was a member of the Joint Committee. The evidence of the noble and learned Lords, Lord Irvine of Lairg and Lord Falconer of Thoroton, was that they would never have let this Bill be presented to Parliament as a draft Bill because it lacked conformity with the rule of law and with constitutional principle. Yet here it is today. How did it get there? It was because the Government destroyed the entitlement of the Lord Chancellor to withdraw, or amend substantially, a Bill for those reasons. They did it by setting up in 2007 the combined appointment of Lord Chancellor and Secretary of State for Justice, with the result that the governance of Britain triology that had never been anywhere near Parliament was pushed around with a lot of glossy paper. It had never been through Parliament and had never been discussed. It could then be implemented. Why? It was because there was no Lord Chancellor to advise the Government. Certainly, not even Homer could advise himself. So then you got in the position that the Government could govern by decree—and they did—and we are now in that situation with this Bill. I do not want to go back over abolishing the office of Lord Chancellor—we know all about that—but what has happened could not have happened if the Government had not abolished it. They did not do it by statute—it was not abrogated—they imposed this entitlement into abeyance, and there it is—in limbo.

One looks at the number of amendments on this Bill. There is certainly one to which I shall not speak, which proposes that if you have been here for about 30 years, you have to go—you are turfed out because you are too old. That is a matter for other people to decide, certainly not me. That matter is not perhaps so important but there are many amendments here that are. You cannot deal with the mass of these amendments. I wish to support all the amendments of my noble friend Lord Marlesford, but there is no time even to get up and talk to them. Frankly, one way or another, this Bill has to die. It cannot go through. We cannot go on past 10 o'clock to two or three in the morning as we did in the old days. When I first came here we went on all night, but there is no use in doing that. We cannot do it anymore. This Bill should just slumber and be taken away.

Lord Goodlad: My Lords, I rise very briefly to support my noble friend's amendment and concur wholeheartedly with the words of the noble Lord, Lord Neill. Your Lordships' Select Committee on the Constitution produced a report on this Bill that was referred to by many speakers in the Second Reading debate. I am, as always, extremely grateful to the Minister, the noble Lord, Lord Bach, for his response, but time has precluded the normal debate on the report.

I shall cite two brief passages. First, we said:

> "It is inexcusable that the Government should have taken so long to prepare this Bill that it has effectively denied both Houses of Parliament—and especially this House—the opportunity of subjecting this important measure of constitutional reform to the full scrutiny which it deserves".

The committee went on to say:

> "In any event, we consider it to be extraordinary that it could be contemplated that matters of such fundamental constitutional importance as, for example, placing the civil service on a statutory footing should be agreed in the 'wash-up' and be denied the full parliamentary deliberation which they deserve".

Last year, the Select Committee on the Constitution published a report on fast-track procedures and said that it was a fundamental constitutional principle that proper consideration should be given to the scrutiny of Bills, even to the extent of taking multiple stages in one day. As my noble friend Lord Lawson said, this is not a trivial and uncontentious Bill; it is highly contentious. I agree, as always, with an enormous amount of what

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the noble Lord, Lord Rooker, said. The Bill is highly contentious and of fundamental constitutional importance. It should not be dealt with late at night. It should be put over into the next Parliament.

Lord Rodgers of Quarry Bank: My Lords, with permission and to my surprise—

Noble Lords: Cross Bench!

Lord Armstrong of Ilminster: My Lords, I follow the noble Lord, Lord Goodlad, who reminded us of the observations of the Select Committee on the Constitution on this Bill. I agree with the comments in that report. I should therefore be supporting the amendment of the noble Lord, Lord Trefgarne, but I, my noble friends and successors in office in the Civil Service want the Civil Service provisions to take statutory force. They are not perfect, but they are 95 per cent or 97 per cent perfect, and there may be chances at another time to make the small improvements that we seek. However, if the noble Lord, Lord Trefgarne, seeks to divide the House, I shall not be content with his amendment because I want Part 1 to go through. If the Government choose to be as ruthless as they like with other parts of the Bill, I shall be wholly content.

The Earl of Onslow: My Lords, 162 amendments to the constitutional renewal Bill have been tabled. How many days do we normally provide for 162 amendments? Is it three or four? How many days do we provide for a Report stage with 162 amendments? Probably another two days. I sound almost as if I am in support of the noble Lord, Lord Tyler, in his previous amendment. It is a quarter to five and we have not yet started to debate that Bill. We have another Bill to consider between now and then.

Noble Lords: Four!

The Earl of Onslow: All right; we have four Bills before then. That makes it worse, does it not? Are we mad? This cannot be the way to consider constitutional Bills. I agree with the noble Lord, Lord Armstrong; we need a Civil Service Bill, but I agree with the noble Lord, Lord Trefgarne—that we have been saying this. I think that Harold Wilson—bless his memory—was saying this. Nothing happened then. Throughout my life I remember editorials in newspapers occasionally saying that we need a Civil Service Bill. Is it absolutely essential that we consider a Civil Service Bill which, as the noble Lord, Lord Armstrong, says, could do with some revision and gallop through it at God-knows-what time tonight? The principle of this procedure is so wrong that I will happily support the noble Lord, Lord Trefgarne—not because, as others have said, that I necessarily disagree with things in the Bill. There is a lot of good in the Bill relating to the Civil Service, but there is also a lot of waffle about treaties. I see the arguments about hereditary by-elections, but that issue is linked with general reform of your Lordships' House—and we know how easy it will be to get that through, because every noble Lord has a different view about how we should proceed. That is one reason why nothing has been done since my great-grandfather talked about it to Lord Salisbury in the 1880s.

There is nothing new in these problems. Therefore, let us not abuse the system, which is what this is—abuse of the system by a Government who do not show Parliament the respect that it deserves. It is up to us to stand up for Parliament as a whole, to hold Ministers to account and very occasionally to say to them: "No, you cannot have your way. You have had your hands in the sweetie pot for too long and you will not get this sweetie because it is bad for you".

4.45 pm

Baroness O'Loan: My Lords, there is general agreement on the significance of the content of the Bill, including the schedules and the amendments that we have received. I have come but recently to this House and am learning about the process of wash-up. I am trying to understand what is going on and why the process exists. However, I find it shocking that we should even contemplate this abrogation of duties—because that is how I would see our conduct if we were to pass the Bill through the wash-up process. We have a duty to ensure that when we make major constitutional change, we do so in a considered and proper manner.

Lord Grenfell: My Lords, I wish to be consistent with what I said at Second Reading, when I warmly supported the conclusion of your Lordships' Select Committee on the Constitution. The committee was right to say that this is no way to carry through constitutional reform. I still believe that. I will make one point in addition to what I said the other day. There is much cross-party agreement that most of the content of the Bill is entirely acceptable to your Lordships. If that is the case, what is the problem with waiting until the next Parliament? Whichever party comes into power, there should be no problem, after the Bill has been properly scrutinised, in finding agreement on these points.

I take the point made by the noble Lord, Lord Armstrong of Ilminster, for whom I have the greatest respect. I understand from many of my friends in the Civil Service that they want this to happen. Well, let us see it happen early in the next Parliament. If there is that degree of agreement on all sides of the House that the content of the Bill is largely right, I do not see the necessity to push it through now. We can wait until whichever Government is in power after the election, when it will command the support of all sides of both Houses.

The Earl of Erroll: My Lords, if we were company directors trying to push something through like this on the governance of the company, we would be prosecuted, imprisoned and disbarred as directors: it is as simple as that. Therefore, I agree with the noble Lord, Lord Grenfell, that there should be no problem with either party presenting what will be substantially this Bill to the next Parliament.

Lord Stoddart of Swindon: My Lords, I support the amendment tabled by the noble Lord, Lord Trefgarne. To try to push through in the wash-up a constitutional Bill of 93 clauses, 133 pages and 15 schedules is a constitutional outrage. I sincerely hope that noble Lords on all sides of the House will support the amendment.

At Second Reading, Members who spoke in the debate were overwhelmingly critical of the Bill. I will quote one remark made by the noble Baroness, Lady Boothroyd. She made a very good speech. She asked,

"how many constitutional Bills have gone through … in wash-up in the past 10 years?".—[*Official Report*, 24/3/10; col. 964.]

The answer by the noble Lord, Lord Bach, was "none". In fact, the noble Baroness, Lady Boothroyd, said that she could not remember a more flagrant example of mismanagement of a constitutional Bill during her very long experience in public life. I believe that the House should take note of the comments of a very experienced, senior parliamentarian who was the Speaker of another place. If that is her view, all noble Lords should take it very seriously.

The noble Lord, Lord Armstrong, made the very valid point that many parts of the Bill—particularly the one concerning the Civil Service and the setting up of the Civil Service Commission—are wanted. However, I think that the noble Lord, Lord Grenfell, answered that by saying that a Bill could quickly be introduced in the next Parliament. There is of course another alternative: the four, not just the two, Front Benches should go away during the debates on the four Bills that are to be dealt with before the Constitutional Reform and Governance Bill to see whether they can thrash out something that will be acceptable to most people in this House. Going back to the noble Lord, Lord Armstrong, perhaps there are matters within the clauses dealing with the Civil Service that can be amended and the Bill improved. Therefore, I hope that noble Lords will support the amendment of the noble Lord, Lord Trefgarne, if he puts it to a vote.

Lord Campbell of Alloway: My Lords, before the Government reply, perhaps I may deal briefly with the question raised by the noble Lord, Lord Armstrong. In the committee's report, we recommended that the Civil Service aspect should be dealt with in a single Bill. In his evidence, the noble and learned Lord, Lord Irvine of Lairg, said that that was the only part of the Bill that was of importance. The Government are making a series of concessions on the amendments. If they were prepared to make a concession in accordance with the recommendation by the committee on which the noble Lord, Lord Armstrong, served, that could deal with his concerns. I do not know anything about the Civil Service but it is very important that people who do should be listened to.

Lord Mackay of Clashfern: My Lords, in view of the observations that the noble Lord, Lord Armstrong, made about the part of the Bill dealing with the Civil Service and in view of the long history of waiting for such a Bill, I would be extremely sorry to see that part disappear. Will the Leader of the House consider whether that part should be allowed to proceed and the rest of the Bill, some of which at least is highly controversial and certainly very constitutional in its character, be withdrawn?

Lord Campbell-Savours: My Lords, perhaps I may ask the noble Lord, Lord Strathclyde, a question before he comes to speak. In the event that the Trefgarne amendment was approved, proceedings on the Constitutional Reform and Governance Bill would effectively close. Can he assure the House that in those circumstances a Conservative Government, if by any chance they were elected, would give priority to a constitutional reform Bill, recognising that there are sections of the Bill that have to go through because the Commons needs them—in particular, the sections dealing with the parliamentary standards authority?

Lord Howarth of Newport: My Lords, or better, could the noble Lord assure us that, if he were to have the opportunity, instead of reintroducing a vast portmanteau of constitutional miscellaneous provisions, as this Bill effectively is, a new Government would follow better practice and introduce discrete legislation to place the Civil Service on a statutory footing and discrete legislation to deal with the IPSA? Would they also enable Parliament to look at those extremely important issues with proper care and not try to steamroller a whole bundle of things through together?

Lord Marlesford: My Lords, I strongly support the amendment in the name of my noble friend Lord Trefgarne. This is all very disappointing. Although I have enormous regard for the Leader of the House, I stand on the basis of our duty as a House of Parliament—to some extent a sovereign House of Parliament. Last week, there was a parliamentary Question about a pageant for Parliament and I asked the Leader of the House whether we could not be proud of the House doing its job properly and scrutinising legislation put forward by the Executive. The Leader of the House replied as follows:

"My Lords, that is what we do day in and day out. This House in particular is extremely good at it".—[*Official Report*, 29/3/10; col. 1184.]

I say, "Hear, hear" to that, but I am sorry that this appears to be a day out.

Whatever anyone says, this Bill has not been scrutinised; we cannot pretend that this very important Bill has had anything like the scrutiny that it needs. The point made by the noble Lord, Lord Rooker, was interesting, but, quite frankly, I am not sure that it is sensible to pass legislation on the basis that it is possibly deeply flawed and will need correcting in 18 months' time. The noble Lord, Lord Rooker made the point that we must not waste the time that has already been spent on scrutinising it, but it would be much better to build on that time in a Bill in the next Parliament, rather than pass this Bill and then have to undo it all, which would take a great deal longer and would be much more untidy.

I have looked at some of the precedents. The Library has produced a very useful note of all the previous wash-up periods. It is absolutely true, as others have said, that we have moved into a new level of importance of Bills included in the wash-up. This is a crucial one. There is quite a good precedent in March 1997, the tail end of the Conservative Government. There was an attempt by the late Lord Ackner to omit the Crime (Sentences) Bill from the wash-up. I read the debate on that and the noble Baroness, Lady Williams of Crosby, said:

"The agreement that has been reached in another place is in no way binding on this House, which did not reach that agreement itself.

She went on to say:

"There can be almost no example more harsh of the power of the Executive than an agreement made between the two Front

[LORD MARLESFORD]

Benches without adequate consideration of the much wider considerations which cover this Bill".—[*Official Report*, 18/3/97; col. 779.]

The late Lord Ackner moved his amendment, which was narrowly defeated by the then Conservative Government, who, at that time, had some 800 hereditaries still in the House. This is so clearly an important constitutional Bill and there is absolutely no reason to think that this Government, if returned, or the Conservative Government, if elected, would lose significantly by putting forward this Bill early in the next Parliament. I hope that noble Lords will agree with the amendment of my noble friend Lord Trefgarne.

Lord Elton: My Lords, it seems to me that the issues are crystallising very clearly. It is all about the content of the constitutional reform Bill. If the Government are prepared to accept the proposal that the IPSA and the Civil Service are the only parts which remain in what should be the Civil Service Bill, it would be possible for my noble friend to withdraw his amendment and for us to proceed. If not, I fear that we are here for a very long time.

5 pm

Lord McNally: On that point, we are flying blind at the moment. I would like to pursue the suggestion made the noble Lord, Lord Stoddart. We on these Benches would be willing to contribute to discussions to see whether parts of the Bill can be rescued. I say to the noble Earl, Lord Onslow, that actually the Civil Service Bill pledge is 140 years old: it was made by Gladstone. As I often remind this House, it is 100 years since we first looked at Lords reform, so suggesting that parts of the Bill are a bounce stretches the term.

I offer to contribute the not inconsiderable talents of my noble friend Lord Tyler to any discussions. I put it on record, so that it will save his speech, that my noble friend Lord Rodgers shares many of the misgivings about the constitutional Bill.

Lord Trimble: Further to earlier comments about what the constitutional reform Bill should be cut down to, there seems to be consensus on the Civil Service bit and the IPSA bit. I also mention non-doms. If we had those three things together, we would be happy.

Baroness Gardner of Parkes: I must first declare an interest as a non-dom, and draw attention to the fact that when it came out in the open that I was not fully legally here, the Government promised that they would pass the legislation before the general election. Therefore, the point that the noble Lord just raised is of great personal interest to me as, without retaining the non-dom provision—I will not be the only one affected, there will be others—I understand that I will not even get a Writ for the next Parliament, which would be very disappointing after 30 years here.

Lord Strathclyde: I cannot possibly resist the invitation by the noble Lords, Lord Campbell-Savours and Lord Howarth, to respond about the intentions of a future Conservative Government—particularly when they failed to ask the same questions of those on their own Front Bench, clearly not expecting them to have a glorious fourth term. It has taken us a long time to get here, and far longer than I had anticipated. Indeed, I was preparing for the wash-up in October 2007. If we had dealt with it then, we would have had two and a half years of glorious Conservative government.

None of that changes the fact that this Parliament has only a few hours left to run. A large number of substantial Bills await completion. That is not a satisfactory position, as many noble Lords, including the noble Lord, Lord Rooker, have said. After 13 years in office, there is no need for last-minute legislation being made up on the hoof. After 13 years of experience, there was no need to overload a short fifth Session of Parliament, but this Government's bad habits continue to the very last minute of the last hour, and we are now where we are.

In the Bills before us there are good ideas, bad ideas and, as in most Bills, unnecessary ideas. Parliament is faced with the dilemma of how to deal with them. The noble Lord, Lord Richard, standing in my place in 1997, told the House:

"It is right … that an opposition should co-operate with the Government in trying to succeed in providing a sensible ending to the Government's legislative programme. That we have done … I do not think that it is possible to unravel the package that has been agreed".—[*Official Report*, 18/3/97; col. 779.]

We have sought to be as constructive as the Opposition were in 1997 and, indeed, as we were at the end of the Parliaments in 2001 and 2005. We have reached an understanding of measures that we believe can reasonably be recommended to your Lordships. There is a long established precedent referred to by the noble Lord, Lord Richard, in 1997, that this House should try to bring business to a reasonable conclusion in a seemly and agreed way in the last days of a Parliament. I think that we should stick to that. But—and this is reflected in the amendment moved by my noble friend Lord Trefgarne—while the content of the other Bills as amended is far less controversial, we recognise that the Constitutional Reform and Governance Bill is in a different category. It is shameful that Parliament finds itself in this position on the Bill. What humbug when we hear from the Prime Minister today that constitutional reform is his top priority. The Bill was introduced into the House of Commons in July 2009. It had a Second Reading there last October and had two days in Committee before being carried over with a view to getting it here early in this Session. Committee stage in the Commons did not start again until 19 January: 76 days after the previous Committee sitting. Nearly four weeks then elapsed between Committee and Report in another place and three weeks before it was given a Second Reading after introduction here. There is no reason, beyond the wish or the incompetence of the Government and Mr Straw, why we are now right up against the wire, so let no one criticise this House for looking twice at the Bill.

It is in many respects a highly controversial Bill covering a huge range of subjects with a Long Title that runs to 26 lines and fills a whole page. It is also the worst offender of all when it comes to being cobbled together as it went along, with measures such as electoral change being shoved in at the very last minute. In the Constitutional Reform and Governance Bill

there are complex and far-reaching issues that would normally receive the fullest consideration in both Houses. There are also a number of issues that affect your Lordships. It is not satisfactory that these should have been pushed through so late and now so fast. Your Lordships' Constitution Committee was right to warn of the dangers of the Bill as a whole being passed in the so-called wash-up. Before the Government's press release machine starts to operate, let us remind ourselves that the Constitution Committee of your Lordships' House includes the former Leader, the noble Baroness, Lady Jay of Paddington, the noble and learned Lord, Lord Irvine of Lairg, and the noble Lords, Lord Hart and Lord Pannick, who are some of the greatest luminaries of this House. It is not a Conservative Party stitch-up.

Significant areas of the Bill that was examined by the Committee have now been set aside, including plans to impose large-scale architecture for retirement without proper consideration by the House. It was quite wrong that your Lordships should not have full time to consider such proposals. Changes to the electoral system have also gone—quite rightly, I believe—but what is now proposed should remain and I believe it has broader support. There is, for example, the Civil Service part of the Bill where those of your Lordships, such as the noble Lord, Lord Armstrong of Ilminster, who have served at the highest level of the service have advised us that, on balance, it should go through. There are arrangements for parliamentary scrutiny of treaties, with which we have no difficulty, and we would support them if the Government continue to seek progress for them. I should also tell the House that in the event of a Conservative Administration after the general election most of the clauses in the Bill would not be a priority for us. That would include the Civil Service clauses. It is important that we should agree them in this Parliament.

If the House none the less feels that there is need for more time, I hope that what is not put at risk are two core areas of the Bill that have the widest cross-party agreement. The first is the provisions relating to the exclusion of non-doms from active membership of the House. I have expressed the view that, however difficult it was to draft it correctly, those who make UK laws should pay UK taxes. That is agreed by all the party leaders, and, with all respect to those who have honestly and faithfully served this House, I hope that these provisions will pass into law. The second vital area is the provision relating to the IPSA. These clauses affect the other place only. They were extensively discussed there and are wanted by all parties in another place in time for the start of the new Session.

Lord Campbell-Savours: The noble Lord says that those clauses affect the other place only, but how does a referendum on AV affect us? Does it not affect the other place only? What possible justification can the Official Opposition have for blocking a referendum that was carried by a two to one majority in the elected House?

Lord Strathclyde: The noble Lord simply does not understand where we now are. There are only a few hours left of this Parliament. If the Government continue to leave the clauses in, not only will we not get this Bill but we will not get any Bills, because the issue is so controversial, not least among people in the noble Lord's party. The party of government has quite rightly decided to drop the clauses on proportional representation to save the rest of the Bill. I support the Government on that. There are also one or two minor parts—although I am sure that my noble friend Lady Gardner of Parkes does not think that they are minor for her—with which we would agree. For our part, we are alive to the mood and the will of the House, as I hope the Government will be, too.

Lord Lawson of Blaby: My Lords, my noble friend says that he is alive to the mood of the House. The noble Lord, Lord Trimble, said a moment ago that there are three aspects of the Bill with which it is reasonable that we should agree—the Civil Service provisions, the IPSA provisions and the non-dom provisions—and that everything else should be dropped. Does my noble friend agree that that seems to be the will of the House? The will of the House might be tested on that, but that might be a sensible outcome.

Lord Strathclyde: My Lords, that might very well be a sensible outcome, but I wish to hear from the Government first, because they must have an opportunity to consider the debate that has taken place in the House this afternoon. After all, we will not be dealing with the legislation for a few more hours yet.

Because of everything that I have said, I hope that by now my noble friend will have realised that I cannot support his amendment, as it would frustrate the passage of what will be a truncated Bill, which we and the Government have in good faith agreed and recommended. I hope that, after the Leader of the House has spoken, my noble friend will withdraw his amendment so that we can finish this Parliament as quickly and in as seemly a way as possible and look forward to a new Government and a new Parliament, where I hope that we will legislate a little less and a little better.

Baroness Royall of Blaisdon: My Lords, interestingly enough, I think that this has been a good and useful debate. I will answer one point that has been made before I get to the crux of the matter. I hold the noble Lord, Lord Goodlad, and the work of his committee in the greatest esteem. This is clearly not a trivial Bill; it is a very significant Bill. However, I think that most noble Lords are concerned about the process, not the contents, of the Bill. I hear what the noble Lord, Lord Strathclyde, says about the process. I listened to and read the Second Reading debate and I am acutely aware of the discontent around the House about the process of the Bill. However, it has become clear in this afternoon's debate that there is consensus around three or four parts of the Bill—

Noble Lords: Three.

Baroness Royall of Blaisdon: No, my Lords, I would say three or four. Let me enumerate them. I am talking about the Civil Service clauses, the IPSA clauses, the non-dom clauses and the clauses that are of special importance to the noble Baroness, Lady Gardner of Parkes. That is four issues. I think that we could find consensus around those four specific issues.

[Baroness Royall of Blaisdon]

This is a government Bill, but of course it is not my Bill. As noble Lords would expect, it is my duty to go back to my right honourable friend the Secretary of State and Lord Chancellor to discuss with him how he would like to proceed. I will suggest to him that we have a meeting and that we have discussions of course with the noble Lord, Lord Strathclyde, for whose co-operation I am grateful, the noble Lord, Lord McNally, and the noble Baroness, Lady D'Souza.

A noble Lord: Hey!

Baroness Royall of Blaisdon: The noble Lord says "Hey". Cross-Benchers, such as the noble Lord, Lord Armstrong, are playing a key role in this Bill. When we look at the Civil Service provisions, we should look at the enormous expertise of people such as the noble Lord, Lord Armstrong. That is why I suggest that we also listen to the noble Baroness, Lady D'Souza. I am not saying that this is a precedent—

5.15 pm

Lord Maclennan of Rogart: Before the Leader of the House comes to a conclusion, and while welcoming what she has said about further discussion, will she bear in mind that this debate has not expressed the views of all those who have remained silent? It has been dominated by those who for a miscellany of reasons would like the Bill to make no further progress. The fact is that most of us agree with her that the procedure which has been followed was unsatisfactory. But most of us believe, notwithstanding that, that large parts of the Bill were considered by the Joint Committee, and other parts of the Bill were brought forward because of the sheer necessity of restoring trust in Parliament. That part of the mood of the House should not be overlooked in any further discussions.

Baroness Royall of Blaisdon: My Lords, the noble Lord makes an excellent point. I completely agree with him that—to use a mixed metaphor—the voice of the silent majority should not be overlooked. I totally understand where the noble Lord is coming from. It may be that there can be even broader agreement in relation to other parts of the Bill. I do not know. These things need to be explored.

At this point, I would echo the views of the noble Lord, Lord Strathclyde, and I, too, would ask the noble Lord, Lord Trefgarne, to withdraw his amendment and allow us to go back to have discussions with my right honourable friend the Secretary of State for Justice to see how we can proceed. Many elements of this Bill are of the utmost importance. We have heard from the noble Lord, Lord Strathclyde, that, should there be an incoming Conservative Government, the Civil Service would not be at the top of their legislative list.

A huge amount of work has gone into, for example, the Civil Service parts of this Bill. There has been detailed scrutiny of that part of the Bill. I would agree that that perhaps was not in this House, but in other parts of Parliament. I certainly—

Lord Elton: My Lords, I should like to make a procedural point of considerable importance. In sitting down, the noble Baroness is inviting my noble friend to either withdraw or insist on his amendment. He is being asked to do so before we know what the answer of her right honourable friend will be when he comes back. Surely, the proper procedure is to adjourn this debate, continue with other business and return to it when we have the answer.

Baroness Royall of Blaisdon: My Lords, at the moment we are debating a Motion which I tabled. The noble Lord tabled an amendment. It is correct procedurally that we follow that procedure. I am trying to facilitate the will of the House in saying that we will come back later. Indeed, in my opening speech I said that I understand that my noble friend Lord Bach will also be in a position to offer concessions on some other matters as we progress this evening. In many ways, I am coming full circle and returning to the spot where I started. With that, I will sit down.

Baroness Butler-Sloss: Perhaps I may ask the Minister a rather practical question. If the noble Lord who moved the amendment wishes to divide the House, what on earth are we to do? We do not know the outcome. The situation is exactly what the noble Lord, Lord Elton, has said. Perhaps I may respectfully support him because I would wish to support the noble Lord, Lord Trefgarne, unless I am satisfied that only the four points mentioned are those that will go forward. If there are going to be more than four points, I would prefer to support the amendment from the noble Lord, Lord Trefgarne.

Baroness Royall of Blaisdon: My Lords, it would be improper for me to say exactly what position we will come to later. It is entirely reasonable that I have discussions with my right honourable friend; that is the proper thing to do. I have given the House my assurance that I will do my utmost to ensure that, when we come back later this evening, it will be to discuss those parts of the Bill on which there can be the broadest consensus around the House. I am afraid that the noble and learned Baroness will have to make her mind up on that basis.

Lord Mackay of Clashfern: My Lords, perhaps I may suggest, as a way of dealing with the procedural difficulty, that the noble Baroness could alter her Motion so that it excludes the Constitutional Reform and Governance Bill in the mean time. Later, at the beginning of the Bill's Committee stage, the Motion could be renewed as it applies to the Bill. That is my suggestion.

Baroness Royall of Blaisdon: My Lords, that is an interesting suggestion from the noble and learned Lord, for whom I have an enormous amount of time. But time is pressing. As the noble Lord, Lord Strathclyde, has said, we have hours left in this Parliament. We want parts of this Bill and we want other Bills, so we must proceed. I cannot accept the invitation.

The Earl of Onslow: My Lords, if the noble Baroness wants time, she should accept what my noble friend Lord Elton has said, and then we can get on with the rest of the business. She would come back to say either yea or nay, and we would proceed from there. If she

says yes, an enormous amount of time will be saved. Surely that is what everyone thinks would be a sensible way forward.

Baroness Royall of Blaisdon: My Lords, I am not going to say yes. I have listened to the will of the House and I think that I have encapsulated the will of the majority of noble Lords. This is now for the noble Lord, Lord Trefgarne.

Lord Trefgarne: My Lords, I must say that I am in a very nasty dilemma. As several noble Lords have said, the noble Baroness is not able to give an assurance that the Government will now confine the Bill to the four elements that a number of noble Lords have said they would approve, and at a pinch, I would too. If the noble Baroness is prepared to say that she will recommend to her right honourable friends that we proceed only as proposed, I guess that I would be content. But she is not even prepared to say that. The noble Baroness is the Leader of your Lordships' House and a member of the Cabinet, but she is not prepared even to give her recommendation.

Baroness Royall of Blaisdon: I am sure that the noble Lord listened carefully to what I said earlier. I think that I have moved a huge amount. I have had no conversations with my right honourable friend the Secretary of State for Justice, and I think that I have gone as far as I can go.

Lord Trefgarne: I do not think I can accept that. I am extremely sorry.

Noble Lords: Oh!

Lord Strathclyde: My Lords, just before my noble friend makes his final decision, perhaps I may suggest that if he withdraws his amendment and we agree the Motion moved by the Leader of the House, we will continue with the business. But when the Motion is called to go into Committee on the constitutional Bill, if at that stage my noble friend is not satisfied, he can call his vote.

Lord Trefgarne: My Lords, I am obliged to my noble friend for that intervention. Let me summarise the position. There are four aspects of the Bill which are likely to attract the support of most noble Lords. I am a bit stretched, but I, too, will accept the consensus if that is the view of your Lordships' House.

I will say now that I hope and expect the noble Baroness to come back in an hour or so, having persuaded her right honourable friend to that course, and then we shall be content. But if, as my noble friend anticipates, we get to the Committee stage of this Bill later tonight and such an assurance is not forthcoming from the noble Baroness, I am afraid that your Lordships are going to be here all night. On that basis, I beg leave to withdraw the amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Financial Services Bill

Committee (3rd Day)

5.29 pm

Clause 5 agreed.

Clause 6 : Enhancing public understanding of financial matters etc

Amendment 38

Moved by ***Lord Davies of Oldham***

38: Clause 6, page 4, line 13, leave out "2(2)" and insert "2 (the FSA's general duties)—

(a) in subsection (2)"

Lord Davies of Oldham: My Lords, it will be appreciated that this Bill has been the subject of considerable discussion and the government amendments reflect the discussions that we have been able to enjoy with the opposition. These issues have also been the subject of considerable consideration elsewhere.

Amendments 38 and 39 require the FSA, when discharging its general functions, to have regard to the desirability of enhancing public knowledge and understanding of financial matters, including the financial system. The amendments place a new obligation on the FSA that complements the education body's remit to lead the financial education agenda. This outcome-focused provision also complements the more operational requirement in Part 1 of the new Schedule 1A to the FSMA to ensure that the new body is capable of exercising its consumer financial education function. It also provides a clearer framework for collaboration between the body and the FSA.

Amendment 40 requires the FSA, when discharging its consumer protection regulation objective, to have regard to information provided by the education body to the FSA as part of the consumer financial education function. This expands on the FSA's obligations to protect consumers, set out in Section 5(2) of the FSMA, whereby it must already consider the differing degrees of risk to consumers of various kinds of financial transaction, and consumers' information and advice needs. Along with Amendments 36 to 39, this will further strengthen the framework for collaboration between the FSA and the new body.

Amendment 59 will ensure an independent board that is made up of suitably qualified and informed individuals, while avoiding any unintended constraints on the board's composition. It allows sufficient flexibility for a variety of different people to be appointed to the board.

The government amendments include authorised persons, those who represent the interests of consumers and those with knowledge of education. Amendment 68A and 68B require that the consumer education body must specify in the annual plan how it will measure the success of its objectives, including both annual and long-term objectives. This is a response to concerns raised in debate and in discussions with stakeholders.

[LORD DAVIES OF OLDHAM]

Amendments 75 to 77 and 80 provide for fees to be collected by the FSA from firms authorised by the FSA under the Financial Services and Markets Act 2000. However, payment service providers are regulated by the FSA under the Payment Services Regulations 2009. As such, the Bill does not give the FSA the power to levy these firms to contribute towards the costs of the consumer education body. These are therefore technical amendments that are designed to correct this minor lacuna in the Bill. I beg to move.

5.30 pm

Baroness Noakes: My Lords, we have said from the outset that we support the work that is planned for the consumer financial education body. The FSA's own research has shown what a shockingly low level of financial capability exists in the UK, and the sooner that a proper co-ordinated start is made on that, the better. On that basis, we are content for Clause 6 and Schedule 1 to remain in the Bill, as amended by the Government's amendments. My noble friend Lord Eccles had given notice of his intention to oppose Clause 6 and Schedule 1. I confirm that he will not be opposing stand part today.

Our support for these parts of the Bill does not mean that we regard the way in which the body is being created as perfect and there is scope for scepticism as to whether the money guidance project, which is waiting to be rolled out by the new body, will raise standards of financial capability. I am sure that it will do some good, but whether financial capability will be raised is a moot point.

The Minister will know that my noble friends and I had together tabled more than 40 amendments to Clause 6 and Schedule 1 and we regret that we will be unable to debate our concerns today. Some of our concerns are met, in part, by the Minister's amendments, but others will remain undebated. I hope that if my party is elected in a few weeks' time we will have an opportunity to revisit this part of the Bill when we bring forward legislation to implement our vision of the future of the FSA.

Amendments 38 and 39 are, in effect, a government U-turn, and Amendment 40 builds on the rather touching idea in Clause 6 that this new body should be educating the FSA about the benefits and risks of financial dealing. The amendments do no harm, a category into which I would also place Amendments 75, 76, 77 and 80. Amendments 68A and 68B respond to concerns that lay behind one of our amendments—that the planning cycle of the new body was too short term and insufficiently focused on measuring success or failure. We welcome the Government's amendments.

That leaves only government Amendment 59, which responds in part to amendments which both I and my noble friend Lord Hodgson had tabled concerning the make-up of the board of the new body. I regard Amendment 59 as vague. It does not seem to move the argument much forward and could be regarded as positively dangerous because it could sanction a board comprised solely of academics who specialise in consumer financial education and awareness. It also provides no obvious place for someone who does not have that background but could provide a sense of challenge from a diverse perspective. If we had reached government Amendment 59 in Committee in the ordinary course, I had planned to oppose it for the reasons I have just given, although I would have given them at greater length. However, we are not in the ordinary course and I shall let it pass.

Lord Oakeshott of Seagrove Bay: My Lords, I rise from the substitutes' bench to lead for the Liberal Democrats on the remaining stages of this Bill because our star striker on it, my noble friend Lord Newby, is abroad. I declare an interest as a pension fund investment manager for the past 34 years and, specifically, as a director of an investment management firm which is regulated by the FSA.

We support the amendments and the provisions in the Bill. The noble Baroness referred to the low standards of financial education—I would say financial illiteracy—as a serious problem in this country. Heaven knows, more education is needed. Automatic enrolment into NEST is rapidly coming down the track and there is a considerable danger that a serious accident is waiting to happen. Given the detailed provisions in the Bill, we need to get across to people how serious the problem is, particularly if you are saving for a pension and expecting returns of, perhaps, 6 or 8 per cent a year. There will now be a 2 per cent skim-off from the front of all contributions in NEST while, at the same time, many people will be paying debt interest rates of 20 or 25 per cent on their credit card bills. Getting across that message and that integrated advice will be exceptionally important.

If the Conservatives win the election—indeed, this is already causing some problems—staff of the FSA who operate in these and other areas could be left in the kind of limbo of not knowing the plans for the future. However, obviously that part of the Bill is no longer there and so, with those points, I support the amendments.

Lord Hodgson of Astley Abbotts: I shall say a few words about Clause 6 stand part and Schedule 1 stand part. Even at this late stage, I think that the Government have got wrong the shape of what they propose. I hope that I can convince them that there is a reason for reassessing their approach to this important topic. Before I do so, I declare an interest: I am a non-executive of a company which provides compliance training and fund management services to independent financial advisers. The Committee should be aware that it is directly in the area which we are discussing today. The company is regulated by the FSA and I am an authorised person.

Clause 6 is headed:

"Enhancing public understanding of financial matters etc".

With that, no one could disagree; it must be a very good objective. However, once one moves from the strategy, as expressed in that strap line, to the means by which it should be carried out, one becomes very much more doubtful.

As my noble friend Lady Noakes said, I, she and others on this side of the Chamber tabled a number of specific amendments to address these points which we have been unable to discuss. However, I should like the Government to take on board three or four major points in relation to their approach.

The first is my long-standing concerning about the title, "consumer financial education council". "Consumer" conveys the wrong basis for the terms of trade in this important area. The Minister's people will no doubt look up the definition of "customer" and "consumer" in the dictionary and say that they are very similar, and that it is a distinction without a difference—I can almost see the speaking note from here. But—and it is a very big "but"—there is a difference in the real world between customers and consumers. A consumer has a very short, transitory relationship—you consume toothpaste or soft drinks, for example. A customer has, or expects to have, a longer-lasting relationship, based on trust, professional standards and delivery of a service over time. You are not a consumer of the services of a law firm; you are a customer. Paragraph 10 of the Explanatory Notes to the Bill emphasises the need for and importance of a long-term relationship. To make this shift, to effect a subtle but important change of public attitudes towards this sector of the market, we need to change the terms of trade.

The Minister will be aware of the enormous amount of work that the FSA has done on the Retail Distribution Review, or RDR. That very worthwhile piece of work, which has been a long time in gestation, will be endangered, even have a stake driven through its heart, by the proposals before us. At its heart, RDR proposes the creation of a new profession of financial advisers, with levels of competence and ability demonstrated by the passing of examinations. The scope will range from simple advice focusing on basic needs, perhaps given by a single person, to complex, multidisciplinary advice, available only from a firm employing different specialists. Just as one does not expect a single solicitor to be available to advise on property, contracts, estates and wills, and litigation, so one should not expect a single person to be able to advise on inheritance tax planning, pensions, mortgage protection and so on. These firms will have customers and long-lasting relationships. They cannot and should not properly be described as consumers.

There is the other side to the coin: we need to find ways to attract new, younger blood to the financial advisory profession. It is well known that the average age of IFAs is the mid-50s. It is expected that between 20 per cent and 30 per cent of them will be unable or choose not to achieve QCA level 4 by 2012, when, under RDR, it will become obligatory. We will therefore have a shortage of advisers at a time when saving will never have been so important for the reasons that the noble Lord, Lord Oakeshott, mentioned.

Why has this been so? It has not been seen as an attractive profession for a younger person to work in. Using and continuing with the consumer-type terminology does not help to create that profession. We need to assist in the transformation of this IFA industry, creating a new profession that attracts competent, dedicated people to work in it, with proper career prospects, so giving confidence to investors and savers so they will be well looked after. That is my first problem with what the Government propose.

My second problem is that the tasks of the new body are wrongly defined. New Section 6A(2) in Clause 2 says:

"The consumer financial education function includes, in particular … promoting awareness of the benefits of financial planning … promoting awareness of the financial advantages and disadvantages in relation to the supply of particular kinds of goods or services … promoting awareness of the benefits and risks associated with different kinds of financial dealing".

All that is perfectly and properly worth while, but to use an educational comparator, this is an A-level syllabus. As my noble friend Lady Noakes made clear, we need to start at least in parallel at a much more basic approach, which is what we were going to try to encourage the Government to do in our amendments that we never got to discuss in Committee, because it was cut short. We need to discuss the management of debt, the control of personal spending, living within an income and protection against disaster; all those things need to form part of the council's remit. At the moment, it is starting at far too high a level and is not going to tackle the really important part of the market.

A couple of years ago I talked to the chief executive of a major life insurance company who said that at the height of the boom, the persistence of a pension scheme—that is, the time that it lasted, usually a pension scheme and associated life insurance—was four years. People were putting money into a pension and then deciding what they should do, taking it out and putting it into a holiday, extending their house, moving or whatever else. Those are the sorts of issues that we should be tackling, because nobody can possibly have a satisfactory investment in a pension if they think that they are going to roll it out after four years. It is a long-term investment. Nowhere in the terms of reference of this body do I see sufficient attention to the basics. I see lots of stuff about much more sophisticated arrangements but nothing about the real hardcore of basic financial knowledge and education for people. Instead, we have castles in the air.

On the body itself in Schedule 1, I recognise that the Government have tabled some amendments, for which I am grateful. However, despite what I see—and maybe the Minister can reassure me on this—the FSA continues to have apparently untrammelled powers of appointment to the consumer financial education body, with the exception of the chair or chief executive, which requires Treasury approval. While Amendment 59, referred to by my noble friend, has some relevance, there is nothing there about geography. This could be a very M25-centric body, unless we had people drawn from the regions. There is nothing about the type of experience that people should have and nothing to ensure that this is a sufficiently broad-based body, which will command and give consumer confidence and confidence within the industry.

If the Government read through the Financial Services and Markets Act and looked at Clause 9 on the practitioner panel, they would see it lay down the sorts of people whom the authority must appoint—in this case, the FSA, including,

"individuals who are authorised persons … persons representing authorised persons … persons representing recognised investment exchanges, and … persons representing recognised clearing houses".

There is a much clearer way of ensuring that the body is able to represent and make an effective contribution. It goes further in Clause 10, on the consumer panel, which requires that:

"The Authority must secure that the membership of the Consumer Panel is such as to give a fair degree of representation

[LORD HODGSON OF ASTLEY ABBOTTS]
to those who are using, or are or may be contemplating using, services otherwise than in connection with businesses carried on by them".

So a great deal needs to be done on the structure of how the panel is set up. Finally, there is the question of reviewing the work of the body itself. I am disappointed that the Government have not written into the Bill the need for it to adhere to the principles of good regulation: that it should carry out its work—as the Better Regulation Task Force manuals say—in an efficient, effective and economic way.

5.45 pm

To summarise, I understand what the Government are driving at with Clause 6 and Schedule 1. I support the broad brush but, as shown by the title, it is the wrong approach and will not help with enforcing and carrying through the RDR. It has inappropriate terms of reference and, potentially, an unbalanced structure within the body itself. The approach needs a lot more work to make it effective. I hope—not with much confidence—that the Government might, even at this late hour, think again about how this body could be made better, because it is so important for the future creation of an effective savings culture in this country.

Lord Davies of Oldham: My Lords, I am grateful for the contributions to this short debate and I note that the noble Baroness accepted with great generosity the government amendments, which were meant to be responsive to the points made by the Opposition and the anxieties they expressed. I heard her reservation about Amendment 59, but we do not need to interpret that as being unduly restrictive. After all, her noble friend from the Back Benches, the noble Lord, Lord Hodgson, has emphasised how much the issue of financial education needs to be addressed with the greatest care. With Amendment 59, we are quite clearly insisting that the necessary relevance to the consumer financial education function is contained in the appointment. That seems to me to be absolutely right.

We are dealing here with what the noble Lord, Lord Hodgson, accurately identified as an area that needs very great and considerable attention; he was buttressed by the contribution from the noble Lord, Lord Oakeshott, particularly on pensions. We all appreciate greatly how much that issue has to be embedded in the public consciousness, so that short-term decisions on such long-term considerations can no longer be the basis on which anyone acts on the pensions position. We particularly all appreciate the extent to which personal and private provision will play such an important part in the future. I do not think that Amendment 59 does anything but specify what is absolutely necessary, but I am grateful to the noble Baroness for indicating that she will not oppose it on this occasion and that she accepts the other amendments in the spirit in which they were given—of contributing to a joint position on this part of the Bill.

I very much appreciate the concern and, indeed, the expertise of the noble Lord, Lord Hodgson, on this issue. He will forgive me if I chide him a little. At one moment, he was saying that it just will not do that we have the wrong phraseology in this title, while at the end he was saying that the important thing is that we must insist upon consumer confidence—which is exactly what we have expressed in the Title of the Bill. His own speech indicated that the extent of the interchange on the concepts of customer or consumer ought not to detain us a great deal.

I feel that we may be dancing on the head of a pin here; after all, he says that there is no such thing as a short-term relationship for a customer. Well, I hate to say this but in one day's travel on a train you are likely to hear the rail company referring to you as a customer. I recognise that you may be lucky if you have a short-term acquaintance there, as the journey is often more protracted than one had expected. Nevertheless, the noble Lord will recognise that these terms are close to being interchangeable, and not ones that ought to concern us in legislation.

Lord Hodgson of Astley Abbotts: I am grateful to the Minister. It is a fact that the rail companies and Tesco use the word "customer" because it is seen as a more prestigious title than "consumer".

Lord Davies of Oldham: That may be, but we ought not to be governed by these contemporary fads and fancies. I have known the reaction of many people who regard themselves as passengers on the railway and other forms of transport. The distinction between "consumer" and "customer" in the effectiveness and efficiency of the service that is delivered has largely escaped me. Therefore, although the noble Lord has made some very important points, this issue of nomenclature is not that significant. On the noble Lord's more general point, I agree with him entirely.

Lord Oakeshott of Seagrove Bay: I am not sure I understand the difference between "consumer" and "customer". In our business we like to call them clients, if that helps.

Lord Davies of Oldham: We are in danger of indulging in an English language hierarchy, which I would hesitate to speak on with authority from this Dispatch Box. I was going to say how much I agreed with the noble Lord, Lord Hodgson, about the importance of financial education. We should recognise that there is a nuts-and-bolts dimension to this. Noble Lords will appreciate the extent to which the Government share this viewpoint. That is why we have, over this past decade, put a great deal of emphasis on financial education in schools. The basis of understanding must be communicated to schoolchildren. When they become adults they will find themselves with responsibility for their futures, in which it is very important that they understand the basics of how they save and make dispositions of their resources in the financial sector.

However, the representations in these debates by the noble Lord, Lord Hodgson, will certainly be taken on board by the body. Its task will be to increase the level and perception of financial education in this country, and it will be judged on how effectively it does so. The Government position on this is clear. This is an important function of the FSA and it is important that it is in the Bill. I am grateful that the Opposition have worked and fought hard over the

nature of the financial education. What we have now is a package that provides the FSA with the necessary role that it must play in this very important area. I am grateful for noble Lords' contributions today. I commend Amendment 38.

Amendment 38 agreed.

Amendments 39 and 40

Moved by ***Lord Davies of Oldham***

39: Clause 6, page 4, line 14, at end insert ", and

(b) in subsection (3) (matters to which FSA must have regard in discharging its general functions), after paragraph (g) insert—

"(h) the desirability of enhancing the understanding and knowledge of members of the public of financial matters (including the UK financial system)""

40: Clause 6, page 4, line 15, at end insert—

"( ) In section 5(2) (the protection of consumers), after paragraph (b) insert—

"(ba) any information which the consumer financial education body has provided to the Authority in the exercise of the consumer financial education function;"."

Amendments 39 and 40 agreed.

Clause 6, as amended, agreed.

Schedule 1 : Further provision about the consumer financial education body

Amendment 59

Moved by ***Lord Myners***

59: Schedule 1, page 52, line 31, at end insert—

"( ) The Authority may appoint a person to be a member of the board only if it is satisfied that the person has knowledge or experience which is likely to be relevant to the exercise by the body of the consumer financial education function."

Amendment 59 agreed.

Amendments 60 to 68 had been withdrawn from the Marshalled List.

Amendments 68A and 68B

Moved by ***Lord Myners***

68A: Schedule 1, page 54, line 28, at end insert—

"(ab) how the extent to which each of those objectives is met is to be determined;"

68B: Schedule 1, page 54, line 32, at end insert—

"( ) In sub-paragraph (4) references to objectives for a financial year include objectives for a longer period that includes that year."

Amendments 68A and 68B agreed.

Amendments 69 to 74 had been withdrawn from the Marshalled List.

Amendments 75 to 77

Moved by ***Lord Myners***

75: Schedule 1, page 56, line 1, at end insert "or payment service providers"

76: Schedule 1, page 56, line 4, after "persons" insert "or payment service providers"

77: Schedule 1, page 56, line 5, after "person" insert "or payment service provider"

Amendments 75 to 77 agreed.

Amendments 78 and 79 had been withdrawn from the Marshalled List.

Amendment 80

Moved by ***Lord Myners***

80: Schedule 1, page 56, line 15, at end insert—

"( ) "Payment service provider" means a person who is a payment service provider for the purposes of the Payment Services Regulations 2009 as a result of falling within any of paragraphs (a) to (f) of the definition in regulation 2(1)."

Amendment 80 agreed.

Amendments 81 to 86 had been withdrawn from the Marshalled List.

Schedule 1, as amended, agreed.

Amendments 87 to 102 had been withdrawn from the Marshalled List.

Clause 7 agreed.

Clause 8 : Promotion of international regulation and supervision

Amendments 103 to 107 had been withdrawn from the Marshalled List.

Debate on whether Clause 8 should stand part of the Bill.

Lord Myners: My Lords, we seek to remove from the Bill the clauses relating to the FSA's international remit. The Council for Financial Stability—Clauses 1 to 4—the FSA's international remit—Clause 8—and the provisions relating to collective proceedings—Clauses 18 to 25—were casualties of the wash-up process. In order to secure the passage of the remainder of the Bill, the Government have agreed to withdraw these provisions from the Bill. That is why I have provided notice of my intention to oppose Clause 8 standing part of the Bill and lay government Amendments 322A and 332B, which make necessary consequential changes to Clauses 30 and 38. I will, in a moment, do the same for Clauses 18 to 25. Tomorrow, on Report, I will withdraw the Government's support for Clauses 1 to 4 relating to the Council for Financial Stability.

I should point out that the Government continue to believe that all these provisions are necessary, sensible and desirable. However, in the interests of securing other important elements of the Bill on which greater consensus exists, the Government have agreed to withdraw them. I therefore urge noble Lords to support these government amendments.

Clause 8 disagreed.

Clause 9 : Executives' remuneration reports

Amendment 108

Moved by ***Lord Myners***

108: Clause 9, page 7, line 11, leave out "The first"

Lord Myners: It is clearly appropriate for full parliamentary scrutiny to apply in instances where the regulations placed on firms will be strengthened. Similarly, it is appropriate for Parliament to scrutinise fully any efforts to reduce the regulatory requirements placed on firms, particularly where such regulations are designed to prevent excessive risk taking. We believe it is very unlikely that any future Government would wish entirely to remove the reporting requirements in this clause. However, in order to ensure that this cannot happen without adequate scrutiny, Amendments 108 and 109 will require the affirmative resolution procedure to be used for any and all regulations made under these powers. I do not believe that it is necessary for sunset clauses to apply in these cases for two main reasons: first, because these clauses are designed as permanent rather than temporary enhancements to the regulatory regime; and, secondly, because they do not prescribe the specific content of regulation—instead, they provide enabling powers. These are designed precisely in order to allow for further subsequent consultation on the detail and to enable future international standards and agreements to be built into these requirements.

Sunsetting these clauses would cause confusion and a lack of clarity about the regulatory requirements the industry is expected to meet. In light of this and the strong international commitment to many of these clauses, and given that much of their detailed content will be specified in FSA rules and subject to further consultation, I do not consider that it would be appropriate to sunset these provisions.

Baroness Noakes: My Lords, I will speak to the remuneration clauses together. The noble Lord has spoken to Amendment 108, which affects Clause 9. It is perhaps as well that we are dealing with these remuneration clauses in wash-up as I had envisaged that we would have several interesting and lengthy debates on the clauses had we discussed them in an ordinary Committee.

I hold no candle for bankers' bonuses but I share the very real concerns that the financial services sector and others have raised about the powers in Clause 11 in particular, which, inter alia, have no parliamentary oversight. An excess of regulatory zeal when implementing these powers—and, indeed the disclosure regulations under Clause 9—could be damaging to the UK. I shall not labour the point but say merely that whatever Government are in power after May will have to monitor how these powers are used and their impact on the international competitiveness of our financial services sector.

Clauses 9 to 11 would, I believe, benefit from the sunset clause that the noble Baroness, Lady Valentine, has tabled, and to which I hope she will speak in a moment. On an ordinary Committee day, the noble Baroness's amendment would have received our enthusiastic support. The clauses would also have benefited from the report after three years, proposed by the amendment we had tabled, but that amendment has fallen by the wayside.

I turn to the amendments tabled by the Government. We of course have no problem with Amendments 108 and 109, given that we tabled similar amendments in the first instance to which the Minister had added his name. Indeed, the Marshalled List still shows that that is the case as regards Amendment 109, although not Amendment 108. It is right that all the regulations made under Clause 9, not just the first, are subject to the affirmative procedure.

6 pm

Baroness Valentine: I speak to Amendment 336 which would apply sunset clauses to the clauses of the Bill relating to remuneration, living wills, short selling and the FSA's disciplinary powers. I must declare my interest as chief executive of London First—a not-for-profit business membership organisation.

As set out on the website of the Department for Business, Innovation and Skills, sunset clauses are particularly appropriate when proposals are made based on a particular set of market conditions in an area characterised by fast-moving events. The financial services industry is characterised by its fast-moving nature, and the turbulent economic circumstances that currently prevail make it important to revisit this legislation, once stability has returned.

I regret that this Bill has been pushed into wash-up and hence that time has not been available for adequate consultation and scrutiny. The complexity of this legislation and the volatile economic climate lead me to suggest the application of sunset clauses. I do not intend to divide on my amendment, but I support the recommendations made earlier by the noble Lord, Lord Rooker, on a review in due course of wash-up legislation, which would, in part, deal with my concerns.

Lord Oakeshott of Seagrove Bay: My Lords, we have some sympathy with the arguments of the noble Baroness, Lady Valentine, on sunset clauses, but not with those in relation to disclosure of remuneration—the point that the noble Baroness, Lady Noakes, touched upon. If I heard her correctly, the noble Baroness is concerned about an excess of regulatory zeal in dealing with well paid bankers' remuneration packages. If only. There has been precious little sign of that so far. There is plenty of room for more. There would be no danger of damaging the UK's competitive position. What has damaged that is the lack of dealing with such packages and the wild operations in the City of London that have done much damage to Britain's reputation as a place to do business. We support the Government on this amendment.

Lord Hodgson of Astley Abbotts: I support the noble Baroness, Lady Valentine. She made some extremely sensible points about the need for a sunset clause. As she rightly pointed out, legislation that is rushed through in response to a particular set of events may well prove to be outdated and unnecessary. If Parliament as a whole has a chance to examine the efficacy of the

provisions some years hence, sufficient time will have elapsed to see how the dust has settled and how the new architecture, whatever it may be, has taken shape. The noble Baroness's amendment is entirely sensible.

Lord Myners: My Lords, I express appreciation from these Benches for the gracious approach of the noble Baroness, Lady Noakes. I fully agree that all issues of regulation need to be tempered by tests of reasonableness and proportionality. We must have regard to competition. However, we must have regard to competition which is responsible and does not place the financial system—and thereby the taxpayer—at risk.

In response to the points on a sunset clause eloquently made by the noble Baroness, Lady Valentine, and supported by the noble Lord, Lord Hodgson, these clauses are not designed as short-term fixes which might be removed once stability has returned. Rather, they are designed fundamentally to improve the regulatory regime and its effectiveness. Improved remuneration practices and robust contingency plans, for example, are crucial regulatory requirements that should become a permanent feature of our strengthened regulatory regime. We are undoubtedly moving towards much greater stability, but we should not be seduced into believing that the restoration of stability means that the problems of the past will never revisit us. The powers contained in these clauses are designed to empower the regulatory bodies with appropriate measures, and shareholders with appropriate information, whereby they may fulfil their right and proper functions in terms of contributing towards the abatement of any risks to financial stability.

I also note the support given to these clauses by the noble Lord, Lord Oakeshott, who is speaking as a substitute on this occasion, but who is evidence of the considerable strength in depth on the Liberal Benches on these issues.

Amendment 108 agreed.

Amendment 109

Moved by ***Baroness Noakes***

109: Clause 9, page 7, line 13, leave out subsections (7) and (8)

Amendment 109 agreed.

Clause 9, as amended, agreed.

Amendments 110 to 154 had been withdrawn from the Marshalled List.

Clauses 10 and 11 agreed.

Clause 12 : Rules made by FSA about recovery and resolution plans

Amendment 155

Moved by ***Lord Myners***

155: Clause 12, page 12, line 30, at end insert—

"( ) An authorised person may provide information (whether received under subsection (6) or otherwise) that would otherwise be subject to a contractual or other requirement to keep in confidence if it is provided for the purposes of anything required to be done as a result of section 139B or 139C or this section."

Lord Myners: The amendments in this group are technical and aim to clarify in the Bill the position of an "authorised person" or a "skilled person" with regard to certain information that would otherwise be subject to a contractual or other requirement to keep in confidence. The current crafting of new Section 139E(6) creates a gateway for other parties to provide confidential information relevant to the preparation of a recovery or resolution plan to an authorised person or a skilled person under specified circumstances. The amendment to new Section 139E makes clear that an authorised person may, for example, include such information in its recovery or resolution plan and submit it to the FSA without having to seek the consent of a third party.

The amendment to Schedule 2 addresses the same point, but relates to a skilled person appointed under Section 139E(2). A skilled person under the new provision is to be treated under Section 348 of the FSMA in the same way as a skilled person appointed to make a report under Section 166, and would accordingly be subject to restrictions on disclosure. A corresponding amendment will need to be made to the table in Part 1 of Schedule 1 to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 to provide the necessary gateway for the skilled person to disclose information to the FSA. I beg to move.

Baroness Noakes: My Lords, we shall not oppose the Minister's amendments, although we are always wary about statutes overriding the need to keep information confidential. That will have to be a debate for another day. We shall also not oppose Clause 12 standing part of the Bill because we agree with the principle that banks ought to prepare living wills. However, I should place on record our concerns about Clause 12, because we shall not have the opportunity to debate the several amendments that we had tabled.

We had been advised that this clause was not actually necessary to enable the work currently being undertaken under the auspices of the FSA's requirements for resolution and recovery plans. The sheer breadth of the new powers and the fact that they can be used by the FSA to go way beyond the large banks at which the clause is clearly aimed in the first instance has concerned other parts of the financial services industry. We are less than clear about the role of the Treasury in these new powers and we do not understand why the use of the powers is mandatory for all time. The Government normally pray in aid flexibility by using "may" for drafting requirements, but they have drafted these new powers in the "must" form.

The sunset clause proposed by the noble Baroness, Lady Valentine, in Amendment 336 applied also to Clause 12 and I regret that we shall not have the opportunity to include that in this Bill. This underlines the importance of the Government of the day, whoever they are, keeping the impact of this sweeping clause under review. What is right for today may not be right in a few years' time.

Lord Oakeshott of Seagrove Bay: My Lords, we on these Benches have no objections to the clause. However, following the remarks of the noble Baroness, Lady Noakes, perhaps I could ask the Minister, although

[Lord Oakeshott of Seagrove Bay]
the main provision here is for dealing with banks, what other institutions it is intended that the provisions should cover.

Lord Myners: My Lords, I am grateful to the noble Baroness, Lady Noakes, and to the noble Lord, Lord Oakeshott, for their comments. The noble Baroness questioned whether Clause 12 was necessary. I agree with the noble Baroness that the clause is drafted widely and should be used with care. It is the sort of clause that should be kept under review when it comes to implementation. However, there can be no doubt that the experiences and the pain of the past two years have shown us that we must ensure that financial institutions are structured in a manner that means that they can never again place such extraordinarily large calls on the taxpayer and society.

In answer to the noble Lord, Lord Oakeshott, there is no intention that these powers should be used more broadly than to regulate banks. However, in the early stages of the financial crisis, in late 2008 and early 2009, our concerns were not limited to banks. Other major financial institutions were beginning to excite concern and were the subject of regular meetings between myself, my officials and representatives of the FSA. That experience taught me that the powers proposed here would be a valuable addition to the regulatory responses available in order to protect the interests of savers, those with insurance policies and those with other forms of investment. It is with that in mind that the clause has been drafted.

Amendment 155 agreed.

Clause 12, as amended, agreed.

Clause 13 : Power of FSA to prohibit, or require disclosure of, short selling

Amendment 167A

Moved by ***Lord Myners***

167A: Clause 13, page 14, line 25, at end insert—

"( ) The Authority must, when making short selling rules, have regard to any international agreement as to measures to be taken in respect of short selling."

Lord Myners: Amendment 167A will require the Financial Services Authority to have regard to any internationally agreed measure on short selling when making its own rules. Amendment 179A ensures that the supplementary powers in relation to the production of information and documents that are currently set out in Section 175 also apply where the FSA is seeking information under Section 131E. Amendment 180A is a consequential change extending the FSA's enforcement power. Amendment 181 proposes a limitation period of three rather than four years. I beg to move.

Baroness Noakes: My Lords, we welcome Amendment 167A, which deals with the need to have regard to international conformity. We had raised the issue in an amendment that we have now withdrawn. We have no problems with the other amendments in the group. I shall say no more today on the subject of short selling. However, many people will be watching carefully to see whether the FSA uses the powers in Clause 13 wisely and reasonably.

Amendment 167A agreed.

6.15 pm

Amendment 179A

Moved by ***Lord Myners***

179A: Clause 13, page 16, line 32, at end insert—

"131EA Power to require information: supplementary

(1) If the Authority has power under section 131E to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.

(2) If a document is produced in response to a requirement imposed under section 131E, the Authority may—

(a) take copies of or extracts from the document; or

(b) require the person producing the document, or any relevant person, to provide an explanation of the document.

(3) In subsection (2)(b) "relevant person", in relation to a person who is required to produce a document, means a person who—

(a) has been or is or is proposed to be a director or controller of that person;

(b) has been or is an auditor of that person;

(c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or

(d) has been or is an employee of that person.

(4) If a person who is required under section 131E to produce a document fails to do so, the Authority may require the person to state, to the best of the person's knowledge and belief, where the document is.

(5) A lawyer may be required under section 131E to provide the name and address of the lawyer's client.

(6) A person ("P") may not be required under section 131E to disclose information or produce a document in respect of which P owes an obligation of confidence by virtue of carrying on the business of banking unless—

(a) P is the person under investigation or a member of that person's group;

(b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group; or

(c) the person to whom the obligation of confidence is owed consents to the disclosure or production.

(7) If a person claims a lien on a document, its production under section 131E does not affect the lien."

Amendment 179A agreed.

Amendment 180 had been withdrawn from the Marshalled List.

Amendments 180A and 181

Moved by ***Lord Myners***

180A: Clause 13, page 16, line 38, at end insert "or 131EA"

181: Clause 13, page 17, line 6, leave out "four" and insert "three"

Amendments 180A and 181 agreed.

Clause 13, as amended, agreed.

Clauses 14 and 15 agreed.

Clause 16 : Performance of controlled function without approval

Amendment 184A

Moved by ***Lord Myners***

184A: Clause 16, page 20, line 5, after "that" insert "(a)"

Lord Myners: Clause 16 enables the regulator to impose a penalty on a person who is performing a controlled function without the necessary FSA approval. Amendments 184A, 184B and 186A change that drafting so that the FSA will be able to impose a penalty only where it is satisfied that the person concerned knew or could reasonably be expected to have known that they were performing a controlled function without approval. The noble Baroness, Lady Noakes, tabled similar amendments, for which I express my appreciation.

A limitation period applies to the FSA's enforcement action. Currently, the FSA must begin proceedings against an individual within two years. The Bill increases this limit to four years because the current two-year limit does not give the FSA enough time to investigate the most complex cases. In addition, cases against individuals are usually hard-fought, and the FSA suspects that individuals are often deliberately unco-operative as a delaying tactic to frustrate enforcement action. Individuals can therefore deliberately obstruct an investigation in order to run down the clock and evade disciplinary action. This is clearly wrong. However, I am also mindful of the concerns expressed in another place and by the noble Baroness, Lady Noakes, who tabled amendments to this part of the Bill. Amendments 194 and 204 reduce the proposed increase in the limitation period from four to three years. I believe that this strikes the right balance between providing the FSA with enough time to conduct a proper investigation and addressing the concerns of the Opposition Front Benches here and in the other place.

Amendments 200, 201 and 202 ensure that the FSA must have regard to a number of factors when determining both the level of a fine and whether it should be imposed in the first place on an individual who has performed a controlled function without approval. The Bill states that the FSA's policy on penalties must require it to have regard to the conduct of the individual and the length of time during which they performed a controlled function without approval. Amendments 200, 201 and 202 would ensure that the FSA's policy would have regard to two additional factors when determining whether to impose a fine, and the level of that fine: first, the extent to which the individual could reasonably have been expected to know that they were performing a controlled function without approval; and secondly, whether it is appropriate to take enforcement action against the individual as opposed to, or in addition to, the firm. The amendments also require the FSA to set out the sorts of circumstances in which it would reasonably expect an individual to know that they were performing a controlled function. This provides a comprehensive set of safeguards. I beg to move.

Baroness Noakes: My Lords, Clause 16 is not without difficulty. I regret the fact that the wash-up process has prevented us from debating the need for additional disciplinary powers in Clauses 14 to 17. That aside, we welcome Amendments 184A and 184B, which deal with the burden of proof in the use of the unusual new power in Clause 16 to go after people who perform controlled functions without approval. The Minister referred to the amendments that we tabled, but I believe that his amendments are somewhat better. We similarly welcome Amendments 201 and 202 as providing further protection to people caught up unwittingly in Clause 16.

Amendment 194, as the Minister explained, reduces the limitation period from four years to three years. We regard this as a move in the right direction, but of course it does not go as far as our own amendment. That would have reduced the period to two years, which we continue to believe is more reasonable. We have a similar view on Amendment 204 in relation to Section 66, but this is half-loaf time and so these amendments get a half-welcome.

Lastly, we welcome Amendment 205, which enables the publication of details of decision notices. It does not go as far as the amendment that we had tabled; none the less, it is welcome on consumer protection grounds.

Lord Oakeshott of Seagrove Bay: I can give the amendments a warmer welcome than that and say that they seem sensible to us. The idea of committing a crime without realising that you are being a criminal is obviously very difficult. It is sensible that that is recognised in these amendments and we support them.

Baroness Valentine: I speak to Amendment 186. As I set out in respect of Amendment 336, I believe that a time limit on this clause would be beneficial, given the unique environment in which this legislation is being drafted.

Lord Hodgson of Astley Abbotts: I seek information from the Minister. One issue that has concerned some people in the City is where a statement of case is made against someone but is not then proceeded with particularly quickly by the FSA, which sometimes quotes a shortage of resources in relation to carrying out the investigation. Although I understand and appreciate that trying to run down the clock, as the Minister put it, to evade the consequences of justice is wrong, there is also, on the grounds of equality of arms, a requirement for the FSA to proceed reasonably and ensure that the case is heard quickly. The person under investigation is in a state of suspended animation, with his or her career being damaged. Does the Bill provide a requirement for the FSA to proceed with due haste?

Lord Myners: My Lords, first, I thank the noble Baroness. Even a half-welcome is warmly appreciated from these Benches. I express with sincerity our appreciation to the noble Baroness and her colleagues for their help in drafting and developing our thinking in respect of these clauses.

[Lord Myners]

I note the contribution from the noble Baroness, Lady Valentine, to which I think I spoke earlier regarding our belief that these powers are not just for the moment but are there always to help us to address the need to avoid future risk. I appreciate the supportive comments of the noble Lord, Lord Oakeshott.

The question of how long is required is interesting. I have no difficulty at all in expressing my personal agreement with the views aired by the noble Lord, Lord Hodgson, on the damage that can be done by unnecessarily delaying the process. Having discussed this matter with the FSA, I can say that it has an interest in moving as expeditiously as possible, as the quality of evidence can sometimes deteriorate with time and the ability to call witnesses and so on can be affected by delay. Therefore, I think that there is a symmetry of interest here between the wish of the FSA to promote an action as expeditiously as possible and the need to avoid someone being exposed to unnecessary, and possibly in due course unjustified, anxiety as a result of FSA action. On that basis, I hope that noble Lords will join me in supporting these amendments.

Amendment 184A agreed.

Amendment 184B

Moved by ***Lord Myners***

184B: Clause 16, page 20, line 6, after "approval," insert "and

(b) at that time P knew, or could reasonably be expected to have known, that P was performing a controlled function without approval,"

Amendment 184B agreed.

Amendment 185 had been withdrawn from the Marshalled List.

Amendment 186 not moved.

Amendment 186A

Moved by ***Lord Myners***

186A: Clause 16, page 20, leave out lines 8 to 14

Amendment 186A agreed.

Amendments 187 to 193 had been withdrawn from the Marshalled List.

Amendment 194

Moved by ***Lord Myners***

194: Clause 16, page 20, line 25, leave out "four" and insert "three"

Amendment 194 agreed.

Amendments 195 to 199 had been withdrawn from the Marshalled List.

Amendments 200 to 202

Moved by ***Lord Myners***

200: Clause 16, page 21, line 6, after "determining" insert "whether a penalty should be imposed and"

201: Clause 16, page 21, line 9, at end insert—

"(ab) the extent to which the person could reasonably be expected to have known that a controlled function was performed without approval;"

202: Clause 16, page 21, line 13, at end insert—

"(2A) The Authority's policy in determining whether a penalty should be imposed on a person must also include having regard to the appropriateness of taking action against the person instead of, or in addition to, taking action against an authorised person.

(2B) A statement issued under this section must include an indication of the circumstances in which the Authority would expect to be satisfied that a person could reasonably be expected to have known that the person was performing a controlled function without approval."

Amendments 200 to 202 agreed.

Clause 16, as amended, agreed.

Clause 17 : Approved persons guilty of misconduct

Amendment 203 had been withdrawn from the Marshalled List.

Amendment 204

Moved by ***Lord Myners***

204: Clause 17, page 22, line 31, leave out ""four" and insert ""three"

Amendment 204 agreed.

Clause 17, as amended, agreed.

Amendment 205

Moved by ***Lord Myners***

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

"Publication of decision notices

(1) Section 391 of the Financial Services and Markets Act 2000 (publication) is amended as follows.

(2) In subsection (1) (which prevents the FSA and the person to whom a warning or decision notice is given or copied from publishing the notice or any details concerning it), omit "or decision notice".

(3) After that subsection insert—

"(1A) A person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the Authority has published the notice or those details."

(4) In subsection (4) (duty of FSA to publish information about a final notice), before "final notice" insert "decision notice or"."

Amendment 205 agreed.

Amendments 206 to 284 had been withdrawn from the Marshalled List.

Clause 18 : Collective proceedings orders

Debate on whether Clause 18 should stand part of the Bill.

Lord Myners: As mentioned previously, we have agreed to remove certain clauses from the Bill at this stage. This grouping seeks to remove Clauses 18 to 25—namely, those that deal with the new class action procedure or collective proceedings. I urge noble Lords to support the removal of these clauses from the Bill.

Lord Whitty: My Lords, I wish to register my complete dismay at this whole swathe of the Bill being deleted in this arbitrary way by agreement between the Front Benches. As we move into an election phase, politicians of all parties will be going up and down the country meeting individuals and businesses who feel very badly let down by the banking system in particular. It will be difficult to explain why, of all elements of this Bill, the one that sought to redress the balance between consumers and the banking system should have been picked out for deletion by the Conservative Party and why the Government succumbed so easily to that proposition.

I declare an interest as chair of Consumer Focus. With all due respect to the noble Lord, Lord Hodgson, this subsumes customers, clients, depositors, borrowers and so on in the financial system. This part of the Bill would have been a very popular and effective way of restoring the balance between the financial sector, which has so let down this country, and a lot of individuals and businesses. Seeing it deleted from the Bill in this way is a source of deep regret to me, as it will be, I think, for many people up and down the land.

6.30 pm

Baroness Noakes: My Lords, I completely understand the unhappiness of the noble Lord, Lord Whitty, with the deletion. Perhaps I may take a minute to explain the position of my party. At Second Reading, my noble friend Lord Henley set out our concerns with Clauses 18 to 25. They do not enshrine the principle that court proceedings should be a last, not a first, resort. We felt that important safeguards were missing from the clause and we were concerned at the degree of secondary legislation necessary to implement that. Secondary legislation, as the noble Lord, Lord Whitty, knows, has a minimal involvement of either House of Parliament.

We also thought that it was unclear how the various remedies available to consumers in different parts of the Bill, and other Bills, would fit together. When we discussed that with bodies which represented those who would be on the receiving end of collective actions, our concerns were increased rather than reduced. We had tabled nearly 40 amendments in order to debate some of the issues, but we recognised very early on that, despite the very enthusiastic support from consumer groups—I certainly saw that from the groups which the noble Lord, Lord Whitty, represents and others—that the time is not right for this rather piecemeal approach to the remedies available for consumers in this one area.

However the election turns out, we do not regard that as the end of the story on collective proceedings. We fully support further work on collective actions for consumers, but we believe that that should be on a holistic basis across the whole range of consumer redress and not simply on financial services. We also believe that we need to entrench firmly the principle that the courts are the last, not the first, resort in any final result. I thought it was worth explaining our position.

Lord Oakeshott of Seagrove Bay: My Lords, earlier we had quite a discussion and expressed concern about the carve-up that has taken place in this wash-up. That was as a result of agreement between the Conservative and Labour Front Benches, and it was not, as we pointed out, just the Liberal Democrat Benches or the Cross Benches that were not involved, but also the Back Benches. The noble Lord, Lord Whitty, has very properly made his concern clear now.

We are also concerned that all this section has been lost. As the noble Baroness says, we accept that it is complicated. I speak from my own experience of being asked for advice on things like the split-capital investment trust scandal. That was a shocking scandal, which, years ago, the FSA did not get to grips with properly. Clearly, one sometimes sees firms of solicitors which perhaps do not have the best interests of customers at heart and I have certainly said, "The odds do not look very good in this case". That is fairly topical. Only the other week, I had a letter from someone who had lost money in one of the former building societies which had been nationalised, asking whether he should join in the class action. Clearly, it is quite a complex situation, but we believe that consumers should have the right to seek redress and that it should be made easier. We are sympathetic with the general points made by the noble Lord, Lord Whitty, and we are sorry that all these clauses have been lost.

Clause 18 agreed.

Clauses 19 to 25 disagreed.

Clause 26 : Consumer redress schemes

Amendment 285

Moved by ***Lord Myners***

285: Clause 26, page 32, line 41, at end insert—

"404CA Applications to Tribunal to quash rules or provision of rules

(1) Any person may apply to the Tribunal for a review of any rules made under section 404.

(2) The Tribunal may—

(a) dismiss the application; or

(b) make an order (a "quashing order") quashing any rules made under section 404 or any provision of those rules.

(3) An application may be made only if permission to make it has first been obtained from the Tribunal.

(4) The Tribunal may grant permission to make an application only if it considers that the applicant has a sufficient interest in the matter to which the application relates.

(5) The general rule is that, in determining an application, the Tribunal is to apply the principles applicable on an application for judicial review.

[LORD MYNERS]

(6) If (or so far as) an application relates to an example set out in the rules as a result of section 404A(1)(b), the Tribunal may determine whether the example constitutes a failure to comply with the requirement in question.

(7) If (or so far as) an application relates to a matter set out in the rules as a result of section 404A(1)(c), the Tribunal may determine whether the matter should be taken into account as mentioned in that provision.

(8) In the case of an application within subsection (6) or (7), the Tribunal's jurisdiction under that subsection is in addition to its jurisdiction under subsection (5).

(9) A quashing order may be enforced as if it were an order made, on an application for judicial review, by the High Court or, in Scotland, the Court of Session.

(10) The Tribunal may award damages to the applicant if—

(a) the application includes a claim for damages arising from any matter to which the application relates; and

(b) the Tribunal is satisfied that an award would have been made by the High Court or, in Scotland, the Court of Session if the claim had been made in an action begun in that court by the applicant when making the application.

(11) An award of damages under subsection (10) may be enforced as if it were an award made by the High Court or, in Scotland, the Court of Session.

(12) In the case of any proceedings under this section, the judge presiding at the proceedings must be—

(a) a judge of the High Court or the Court of Appeal or a judge of the Court of Session; or

(b) such other person as may be agreed from time to time by—

(i) the Lord Chief Justice, the Lord President or the Lord Chief Justice of Northern Ireland (as the case may be); and

(ii) the Senior President of Tribunals.

(13) Section 133 does not apply in the case of an application under this section, but—

(a) Tribunal Procedure Rules may make provision for the suspension of rules made under section 404 or of any provision of those rules, pending determination of the application; and

(b) in the case of an application within subsection (6) or (7), the Tribunal may consider any evidence relating to the application's subject-matter, whether or not it was available at the time the rules were made.

(14) If—

(a) the Tribunal refuses to grant permission to make an application under this section, and

(b) on an appeal by the applicant, the Court of Appeal grants the permission,

the Court of Appeal may go on to decide the application under this section."

Lord Myners: The Government have carefully considered points made in another place and by the industry about the ability to review rules made by the FSA establishing a consumer redress scheme. The Government have accepted that the Bill should expressly set out a means of challenging rules, rather than requiring parties to rely solely on the judicial review process. Amendment 285, therefore, provides that any person may apply to the upper tribunal—the successor to the Financial Services and Markets Tribunal—for a review of the rules made by the FSA under Section 404. The new clause provides for the review to be carried out by the upper tribunal.

Although the new clause generally makes provision for the tribunal to apply usual judicial review principles, in two specific cases it provides for the tribunal to review provisions of the rules on their merits. First, the tribunal will be able to determine whether examples given by the FSA of things that are to be regarded as a failure to comply should in fact be regarded as such a failure. Secondly, the tribunal will also be able to review on their merits matters which the FSA has required firms to take into account or steps that the FSA has required firms to take for determining whether they have failed to comply with the relevant requirement and, if they have failed to comply, whether that failure has caused loss or damage to customers. Furthermore, in the light of industry concerns about the use of the power, we have also agreed to change the commencement of this clause so that it must be commenced by order rather than automatically on Royal Assent. Amendment 332C, therefore makes this change. I beg to move.

Baroness Noakes: My Lords, Clause 26 radically changes the existing FSMA powers for consumer redress and gives the FSA sweeping powers with virtually no oversight or protection for those who could be brought within its ambit. The justification for the abandonment of parliamentary oversight has never been satisfactorily explained.

The Government did not carry out a detailed consultation on these changes before the Bill was published and that accounts for a certain degree of shock in the financial services sector when it saw what was proposed. There was considerable concern about the lack of an appeal or challenge process built into the new arrangements, other than judicial review, which deals with substance and not merits and, therefore, is seen as inadequate. We had tabled around 50 amendments to Clause 26 so that the various concerns were debated and, in particular, those concerned the appeal mechanism. We regret that we are not able to debate them fully in the context of this Bill.

Government Amendment 285 introduces an appeal mechanism involving the tribunal, but it is largely conducted on judicial review grounds and, hence, represents no substantive advance over judicial review proper—at least, that is the view of those who are affected by it. If that judicial review lookalike was all that was on the table, we would have had difficulty with Clause 26 remaining part of the Bill.

Government Amendment 332C, which removes the immediate commencement of the clause so that the Government must make a positive decision to bring it into effect, ameliorates that position. We see that as allowing an incoming Government, of whatever hue, to decide on the basis of consultation and further deliberation whether Clause 26 can be safely implemented on the basis of the clause plus the amendment just proposed by the Minister, or whether it will require a further amendment. I am inclined towards the latter view, but we shall see how that turns out.

Amendment 285 agreed.

Clause 26, as amended, agreed.

Clause 27 agreed.

Amendment 301

Moved by ***Lord Whitty***

301: After Clause 27, insert the following new Clause—

"Restrictions on appropriation of payments

(1) The Consumer Credit Act 1974 ("the CCA 1974") is amended as follows.

(2) After section 81(2) insert—

"(3) Where a debtor or hirer is liable to make payments in respect of a regulated agreement where more than one interest rate applies, on making a payment in respect of the agreement which is not sufficient to discharge the total amount then due under the agreement, the sums so paid by him shall be appropriated towards the satisfaction of the amounts outstanding in the order of those which bear the highest rate of interest.

(4) A consumer credit business who does not act in accord with section 81(3) commits an offence."

(3) In Schedule 1 (prosecution and punishment of offences), after the entry relating to section 80(2) insert—

"81(4) Breach of restrictions on provisions of credit limit increase.

(a) Summarily.

(b) On indictment.

The statutory maximum. A fine."

(4) An offence under section 81(4) of the CCA 1974 is to be treated for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (civil sanctions) as contained in the CCA 1974 immediately before the day on which that Act of 2008 was passed."

Lord Whitty: My Lords, as my last intervention indicated, I regret the removal of substantial parts of this Bill which would have favoured consumers. I am hoping that similar unanimity between the Front Benches will at least agree that we should restore some small elements of greater protection for consumers in the three amendments in this group. They deal with two different issues. The first one deals with the rate of interest on credit cards, which was covered by a consultation, conducted recently by BIS, in which the Government indicated their intention to do exactly what Amendment 301 proposes.

At the moment, if you have a credit card due to be paid off monthly and you do not pay off the full amount at the end of the month, the debts that are removed are those with the lowest rate of interest—in other words, the highest rate of interest remains due in subsequent months and thereafter. The new clause is intended to reverse that and to require that where such a situation applies, the card holder will benefit from the amount with the highest interest rate being regarded as that being repaid on the outstanding balance.

The Government have been sympathetic to that in the past, and I hope that the House will therefore be sympathetic to the amendment. If my noble friend cannot agree to it in the Bill, at least perhaps he—and, perhaps, Opposition spokespeople—could indicate support for it appearing in secondary legislation or a lending code, as the present situation is certainly a serious abuse of consumers.

The other two amendments relate to a wider issue, which is the way in which the FSA conducts its regulation. Most regulators, when they are investigating a company, put its name into the public arena. They indicate that there are issues with the company, so customers are at least warned that a company is being looked at, until the end of the investigation. That is not the case for the FSA. In fact, the FSA is required not so to do. Those two amendments would partially alter that: it would not be a full-scale naming and shaming exercise; only where the FSA's judgment was that it was in the interests of its consumer protection objective would the name of an investigated company be in the public arena. There would therefore be a pretty substantial hurdle before that happened.

The first amendment would allow the FSA to disclose any information that it finds in the course of its supervisory work, provided that it is in the interests of the consumer protection objective to disclose it. The second relates specifically to the point where the FSA issues a warning notice. At that point, almost all regulators put the name of the firm concerned into the public arena. The firm will already have gone through substantial investigation by that point.

I hope that the Government will be prepared to consider and accept those amendments, which go some way to ensuring that the public understand in detail how the FSA is conducting its regulatory function. I beg to move.

Lord Oakeshott of Seagrove Bay: The noble Lord, Lord Whitty, asked opposition parties to indicate whether they supported his amendments in principle. I do not know whether the noble Baroness, Lady Noakes, will speak, but I am happy to make clear from these Benches that we support them. Appropriation of payments may sound technical, but it is actually a rather nasty, dirty little secret for too many banks and credit card companies, which are only too happy quickly to take the money from the account where it costs the customer most. I pay particular tribute to the Nationwide, which does not do that and has taken a lead on that, and to other banks which do the same. We support the noble Lord's amendments.

Baroness Noakes: My Lords, as the noble Lord's amendment did not form part of what we expected to pass into the Bill today, I do not come with a specific assurance to give him, but let me say that he makes a very good case. It has been widely known for a long time that consumers are not well treated by the allocation processes. Not everyone can afford to pay off their balance monthly, and those people do not understand how it works. Although I cannot give the noble Lord a specific assurance, we are very sympathetic to some way being found to deal with that. Perhaps a code is the best way to start, with legislation following if necessary.

On the noble Lord's other two amendments, the Minister's amendment to Clause 17 in part deals with the increased disclosure that the noble Lord seeks. We supported what the Minister produced, and I do not think that it is necessary to go quite as far as the noble Lord suggests.

6.45 pm

Lord James of Blackheath: I am happy to support the new clause moved by the noble Lord, Lord Whitty, in all its major respects, but with the rider that I regret very much that the opportunity has been missed to

[LORD JAMES OF BLACKHEATH]
clear up another of what the noble Lord, Lord Oakeshott, called dirty little banking secrets. One has escaped the net. Nothing is being done to bring about better control of settlement figures by banks on early settlement of loans, where there is a profound problem of long-standing duration arising from the versatility or variety of the formulae by which banks calculate their settlement and—this is where the dirty trick is—the fact that they attribute a disproportionately high quantity of everything paid to them in the early stages to having been an interest payment so that they can claim at the end of the day that there is no interest left to repay, but only capital, because the interest has been paid upfront. That is a usurious sin and should have been eliminated long ago by either the Consumer Credit Act 1974 or by something else since. In supporting the amendments tabled by the noble Lord, Lord Whitty, I make a plea for any future Government to give urgent attention to correcting that appalling state of affairs.

Lord Myners: My Lords, it will come as no surprise to the House that my noble friend Lord Whitty has made such a powerful and trenchant contribution at this point of our debate. My noble friend's commitment, vigour and energy on consumer issues is well known to the House and much respected by those who work with him in Consumer Focus and others who take an intense interest in protecting the affairs of consumers and customers.

I hope that my noble friend took considerable encouragement from the sentiments expressed by the noble Baroness, Lady Noakes, as endorsed by the noble Lord, Lord Oakeshott. There are undoubtedly issues here deserving of continuing attention, and I am sure that they will receive that attention from the next Government. Many of the issues that he has raised might best be addressed through some form of code or agreement with the banking industry, rather than being prescribed in law. I will certainly follow up with the chief executives of our major banks the points he has made in today's debate.

I share my noble friend's concerns in this area. The Government were equally troubled by the practice of credit card companies of allocating partial payments to the cheapest debt first, thus prolonging the period over which borrowers must pay interest on the more expensive part of their loans. This practice is counterintuitive and not well understood by consumers, many of whom were unaware that that was what would happen when they made a payment. That very issue was reviewed by the Government in our recent consultation on the regulation of credit and store cards. As a result, lenders have acknowledged that the current situation regarding the allocation of payments needs to change.

On 15 March, the Government and the credit and store card industry jointly announced five new rights for consumers, including what we have called the right to repay. That right explicitly states that all consumer payments will be put against their higher interest rate debts first. All credit and store card companies have agreed to implement that change by the end of this year—something that we shall be very carefully monitoring. The change will need to be included in cards' terms and conditions, therefore making them enforceable by law. The requirement will also need to be incorporated into the Lending Standard Board's lending code, as well as that of the Finance & Leasing Association. Together, those two codes of practice cover the lending behaviour of all credit and store card companies in the UK.

In addition, the Government intend to put the broader agreement, which includes a wide range of changes in lending practice, on a statutory footing. I hope that, in the light of my assurances that the Government have already acted on the allocation of payments, and that the consumer credit industry is committed to reversing the practice as quickly as possible on a voluntary basis, my noble friend will feel able to withdraw his amendment.

With regard to Amendments 330A and 330B, I appreciate my noble friend's concerns about ensuring that consumers are made aware of events that might cause them detriment. However, I believe that government Amendment 205 addresses that concern thoroughly and that that view was echoed by the noble Baroness. This new clause widens the circumstances under which the FSA should disclose details of its enforcement actions against authorised firms and individuals so that the FSA is required to disclose information relating to decision notices as it considers appropriate. Currently, the FSA can disclose only information relating to a final notice, which follows any appeal to the tribunal, rather than a decision notice, which is issued after a firm has had the opportunity to make representations to the FSA but before the firm has had an opportunity to appeal. This new clause provides earlier transparency before any appeal has been heard but, importantly, after the FSA has heard the firm's view and concluded that there is a clear case to answer. Consumers will therefore now be able to benefit from earlier disclosure, and the FSA will retain its existing consumer protection tools, including the ability to vary a firm's permission if its continuing behaviour poses a threat. Therefore, while I sympathise with my noble friend's concerns, I believe that they are already met.

The noble Lord, Lord James of Blackheath, raised an issue that he described as a "dirty trick" relating to settlement processes. These are issues on which I will familiarise myself. I doubt whether they are likely to be embraced within the Financial Services Bill before the Committee this evening, but I will pursue the matter. The noble Lord, Lord James, will no doubt be aware that the Office of Fair Trading has said that it is looking at issues relating to investment banking and banking with a view to considering whether it wants to launch a more formal review. It is precisely the sort of argument that has been laid before the Committee by the noble Lord, Lord James, that excites a continuing belief that the banking industry needs to be subject to careful scrutiny because its behaviours in the past have so often run counter to treating customers fairly. That is clearly unacceptable to all sides of the Committee. With those closing comments, I beg my noble friend to withdraw his amendment.

Lord Mackay of Clashfern: In relation to the agreement reached with the credit card industry about the appropriation of payments, will the agreement affect

existing credit card agreements, or is it an agreement only to change the rules for the future in relation to new agreements?

Lord Myners: I can express with a fairly high degree confidence that it relates to existing agreements. There is a large stock of credit and store cards in existence and while it would be a step forward to have new procedures for the flow of new cards, many of these agreements and cards have been in place for many years and I imagine that it would affect all agreements.

Even as I stand here, my confidence that it affects all agreements has increased dramatically, and I will not now need to write to the noble and learned Lord, Lord Mackay of Clashfern, confirming that fact.

Lord Whitty: I am gratified by the breadth of support for my first amendment. In normal circumstances, I would expect the next move to be for the Committee to adopt it by acclaim. However, I understand where we are. I am grateful to the Minister for indicating the action that has already been taken both voluntarily within the industry and by looking at the codes, and I hope that that will succeed. I will therefore be happy to withdraw Amendment 301 on the understanding that, whoever is in power, if it does not work, we will come back to the issue.

On Amendment 330A, I accept that government Amendment 205 probably goes further than it appears to do at first sight. However, it does not quite deal with the FSA being able to name the company before it reaches the decision point, if it feels it is in the consumer interest to do so. I shall obviously not press that tonight, but it may be something that future Governments will have to look at to put the FSA on the same basis as other regulators.

I beg leave to withdraw Amendment 301.

Amendment 301 withdrawn.

Amendment 302

Moved by ***Lord Marlesford***

302: After Clause 27, insert the following new Clause—

"Central register of credit card holders

(1) The Treasury shall by order establish a central register of credit card holders.

(2) The register shall include the names and addresses of all holders of credit cards issued by UK financial institutions.

(3) The register shall be such as to enable a UK financial institution considering issuing a credit card to an applicant (A) to determine—

(a) whether A holds a credit card already,

(b) the credit limit on any card already held by A, and

(c) whether A is aged under 21 at the time of the application.

(4) The register shall also record details of any special circumstances which make it permissible under subsection (2) of section (Credit cards: conditions of issue to applicants aged under 21) for more than one credit card to be issued to a person aged under 21.

(5) No details of individual financial transactions on any credit card shall be recorded in the register."

Lord Marlesford: I shall speak also to Amendments 303, 304 and 305. These amendments insert new clauses that come quite neatly after the amendment tabled by the noble Lord, Lord Whitty, because they are concerned with improving the safety of the credit card system. Before I refer briefly to what they say—I think they are quite clearly set out in the Marshalled List—I should say why I think they are necessary. They are necessary because they will deal with the future only because the present is so unsound and dicey. I have raised the question of credit card debt on a number of occasions, and the Minister has been kind enough to write to me a number of times. His latest letter is dated 1 April, and in it he confirms the high level of outstanding debt on credit cards in the United Kingdom. According to Bank of England figures, there is a debt of some £61.5 billion on which interest is being paid. The interest charged on credit card debt varies greatly—this is relevant to what the noble Lord, Lord Whitty, was saying—between about 12.5 per cent and 35 per cent. The Bank of England's estimate of the average rate of interest on credit card debt is slightly under 18 per cent. That means that the existing stock of credit card debt is incurring interest at the rate of approximately £900 million a month, which is an enormous sum.

We must ask how sound is that debt because most of it is on the banks' balance sheets. A certain proportion of it—some £9 billion last year—was securitised. I use that word deliberately because the Minister said it was incorrect, but I have checked, and it is a correct use of the term because the banks have handed over that amount of debt to debt collectors and that is effectively—I have checked carefully with a very distinguished source—a form of securitisation. However, that is, in a sense, beside the point. The point is that there is a great deal of outstanding debt in banks in the United Kingdom, certainly some £50 billion. The credit card debt was securitised, or handed over to the debt collecting companies, at a rate of between 10p and 20p in the pound. Therefore, if that is the value of credit card debt, there is a very large, potentially toxic, supply of debt in our banking system, which could be very serious.

I had hoped that the Minister would be able to tell me how much that has been written down to, but although he has written me a helpful letter, it does not reveal what it has been written down to, which clearly varies from one bank to another, which is the problem. I am not sure whether the FSA, which he consulted, has a handle on this. The fact is that in any one year at present, only about £200 million a month is being added to borrowings—this is partly because there has been a turndown in the use of credit cards—but that is only about £2.4 billion a year, and therefore an increase of some £8 billion of credit card debts during 2009 indicates that some £6 billion was added mainly in the form of unpaid interest. Again, that indicates the fragility of the level of credit card debt. There is an accident waiting to happen.

7 pm

My new clauses seek to remedy the situation for the future. Some of this is perfectly easy to do, although of course I do not expect the Government to accept the amendments tonight. First, credit card companies need to take a great deal more care and trouble before they give out credit cards. There should be a central

[LORD MARLESFORD]
register of credit card holders. I am advised by the credit card industry that this in practice already exists, but I believe that it should be put on a statutory basis. That is the purpose of Amendment 302. It would not indicate the amount of debt but it would require someone who was asking for or being offered a credit card to state what credit cards they already had. The credit card company would then be able to check whether they were telling the truth. As we saw with the sub-prime mortgages in America, much of the problem arose from the fact that borrowers made false statements of their creditworthiness, which resulted in the creation of a lot of unsound, toxic credit. The requirement is that the credit card companies should have carried out due diligence on the people to whom they are giving credit cards.

My new clauses would also require credit card holders to pay off their balance periodically. What the period should be is a matter for discussion and negotiation, but there should be a periodic requirement for the debt to be paid off. At that stage, if the debt is not paid off as it should be, no further credit would be given. One of the great dangers is that people get into a muddle and are unable to repay not only the principal but probably even the interest. The thing mounts up and has a macroeconomic effect as well as a disastrous effect on the personal lives of these unfortunate people, who often have had credit cards irresponsibly offered to them.

There should also be careful scrutiny of young people—I suggest people under 21—who, unless there is a special reason, should not generally be given more than one credit card. The credit card company would be able to check that from a central register. I do not believe in regulations that require a lot of bureaucracy, so my solution is, I think, quite simple. I suggest that a credit card company that incurs debt and has not fulfilled the obligations set out in these new clauses, such as the due diligence that is needed and all the rest of it, would not be able at law to reclaim the credit from the debtor.

I hope that the Government and my party, if it forms the next Government, will consider bringing in such a scheme to ensure that the present risky and dangerous situation can be contained for the future. I beg to move.

Baroness Noakes: My Lords, my noble friend is aware that his amendments will not be accepted this evening and I am grateful to him for recognising that. I should also say that, as drafted, his amendments appear to contain a spending commitment and, on that basis, I could not support them. However, I pay tribute to my noble friend, who has consistently raised his concerns about the availability of credit cards, high interest rates and the possibility of bad debt lurking behind the credit card statistics. He did not disappoint us today with his overview of those matters. I shall encourage him to return to these issues with renewed vigour after the election, when I hope that he will find a party in power that will take them seriously.

Lord Oakeshott of Seagrove Bay: The noble Lord makes good points about the dangers of credit card debt. In many cases, credit cards are toxic. They suck people into debt that they cannot afford. That debt is by its very nature unsecured. The rates of interest are high and have been edged steadily higher over the past year to 18 months by all the banks, not least the banks that we have rescued and in which we have majority or substantial shareholdings. I was horrified a few years ago when my children were at university and at one stage it seemed that, with almost every post, offers of credit cards were made to them. That was a gross form of mis-selling. We think that the noble Lord makes good points, even though the exact detail of what he suggests should be done needs further work. However, I pay tribute to the way in which he has highlighted these dangers.

Lord James of Blackheath: My Lords, I support my noble friend Lord Marlesford, whose concerns I share, but I have a few comments of expansion and anxiety. This is a huge problem. There is a big correlation, which I think that we have missed, between these amendments and the amendments tabled by the noble Lord, Lord Whitty. The credit card companies have been deliberate in where they have applied the highest interest and where they have found the most profitable areas to manage. People were using one credit card to draw down cash to pay off their liability on another card. Therefore, the companies introduced a penal rate of interest on the cash drawdown value of their cards. A simple means of controlling this to prevent it from getting worse would be to introduce legislation to stop credit cards being used as a cash drawdown facility, which is where the toxic element begins to take off seriously.

My second concern relates to the due diligence that my noble friend Lord Marlesford mentioned. One point that is missed is that the companies often do not bother to do due diligence because they have done a tie-in deal with a body such as the Royal Society for the Protection of Birds. If you happen to be what I believe is called a twitcher, you get a credit card. I cannot see what being a twitcher possibly does to your credit rating to make you desirable to a credit card company. These things should be stopped. The tie-in is where the toxic element grows. The noble Lord, Lord Oakeshott, is entirely right about the toxic element.

I end with a big warning. There is a huge risk that, in seeking a cure and trying to clear up the credit card system, we bring about a catastrophe that would go right to the core of the banking system and create a new mega-disaster for the banks, because they are the owners and backers of these cards.

Incidentally, I have it on pretty good authority that the portion that was securitised was limited to those who had failed to pay even the minimum payment for three months in a row, so perhaps 10p in the pound was a very generous offer.

Lord Myners: My Lords, one of the great strengths of the House is the expertise that Members bring to issues either by virtue of their past or parallel careers, or because they become doggedly interested in a subject and persistent in their search for understanding. That certainly applies to the noble Lord, Lord Marlesford, in respect of credit cards. I think that we can rest assured that, as the noble Baroness said, this matter will not be left to drop by the noble Lord, whom I

expect with a high degree of confidence to see seated in his usual place on the Benches opposite after the general election and continuing to press these matters. Indeed, I expect to see the noble Lord, Lord James of Blackheath, similarly in his customary place.

The amendments tabled by the noble Lord, Lord Marlesford, would set up a central register of credit card holders and introduce restrictions on access to and use of credit cards, with particular provisions relating to those under the age of 21. The Government sympathise with the noble Lord's concerns about the minority of people who become seriously indebted through credit cards. But this is not the experience of most customers of this product. Data provided to the BIS review show that the vast majority of consumers pay back their credit card borrowing within a reasonable period. Only 3 per cent make the minimum payment for 12 consecutive months.

However, we very much recognise the concern that credit cards should not be used for long-term borrowing and that there has been considerable consumer appetite for a change in the terms on which credit cards are offered. That is why we announced on 15 March the agreement that we have reached with the credit and store card issuers to introduce a number of new rights for card holders designed to prevent and reduce overindebtedness.

These new rights were secured in an agreement between the Government and the credit and store card companies negotiated in the light of feedback from thousands of customers to a government consultation on credit cards. This will mean that the most expensive debt is paid off more quickly. New cards will encourage better repayment practice by having a higher minimum payment, a ban on credit limit and rate increases for people at risk of financial difficulty and a right to 60 days to reject interest rate increases. The key changes will be introduced by the industry this year and given statutory force as soon as possible.

Amendments 302 and 303 would place the Government under a duty to create a central register of credit card holders and require credit card issuers to check the register before issuing a card. But it is difficult to see what a statutory register would add to the information that is readily accessible by lenders. The three main credit reference agencies already hold data about consumers' credit commitments, including mortgages, overdrafts and loans, as well as credit cards. All credit card companies already consult CRA data before advancing any new credit.

This would already give them a picture of the number of cards that the consumer has, and the limits and balances on each of those cards. Moreover, credit card lenders are improving the data that they share in order to identify customers at risk of financial difficulties who should not have credit extended to them. They are committed to sharing behavioural data, including whether someone is making only the minimum payment or whether they withdraw cash, both of which are regarded by the industry as indicators of risk. The consumer credit directive, which comes into effect shortly, will make checking a borrower's creditworthiness a statutory requirement and a new OFT irresponsible lending guidance note issued on 31 March will create new requirements to check that credit is affordable for the consumer.

Amendment 304 would introduce severe restrictions on the use of new credit cards which would totally undermine the flexibility and value of credit card products, converting them in effect to a series of short-term personal loans. It would undermine the existing business model for card lending and would completely kill the product. We believe that new OFT requirements, coupled with the approach we have taken in the agreement with the credit card issuers, represent a more proportionate response.

While much hazard is associated with credit cards, I think most of us are aware that a credit card is a very simple and effective way of making payment and most of us would struggle if we did not have use of that piece of plastic in our wallets to make regular settlements. We should be careful not to damn something which for the vast majority of the population has had considerable utility and which they greatly value.

The OFT's new irresponsible lending guidance requires a credit card company, for example, to have regard to the borrower's ability to pay off the maximum amount of credit available over a reasonable period of time. The guidance specifies that, in the case of credit cards, the borrower should be able to repay the credit on a timeline at least akin to that used for other forms of unsecured lending, such as fixed-sum personal loans, made for an amount equivalent to the credit limit. The fact that a borrower may be able to "service a debt" over many years simply by making minimum repayments does not, in the OFT's view, equate to being able to pay off a debt in a reasonable period of time. On 15 March we announced an agreement with the credit card industry to introduce a number of new rights designed to prevent or reduce overindebtedness. One specific element of the new agreement with the credit card companies is that they will increase minimum payments for new accounts to help prevent a build up of excessive debts and will send letters to consumers at risk warning about the consequences of making very low repayments.

The new clause introduced by Amendment 305 would impose a duty to verify whether a person under 21 at date of application already holds a credit card and prevent issue unless the issuer considers that there are special circumstances making the issue appropriate and to record the special circumstances in the proposed register. Effectively, it identifies under-21s as being at much higher risk than other credit card users, but this is not necessarily the case.

7.15 pm

The Government consider a better approach is to focus on the risk of the individual. The new requirements that I have already mentioned under the consumer credit directive and the irresponsible lending guidance issued by the OFT are relevant here. Together, these measures mean that lenders have to take a responsible approach to lending to this group of consumers. On average, it is likely that under-21s will already have less access to credit than older consumers given their shorter credit history and lower earnings.

[LORD MYNERS]

I hope that the recent announcement of the new rights for credit card holders, together with the explanation that I have given about the significant statutory protections that we are putting in place for borrowers, will give some assurance to noble Lords that the Government have established a tough but proportionate approach to tackling irresponsible lending. Our primary focus continues to be that we should be regulating the lender rather than the borrower, which has been manifest in a number of announcements we have made, including in respect of mortgages.

The noble Lord, Lord Marlesford, again raises the valuation that banks are placing on consumer credit debt. I can assure him that the FSA forms a view on the adequacy of the marking of all assets by regulated banks to ensure that they represent a true and fair view of the recoverable amount from the credit card borrower in respect of the issues that he raised. Of course, the FSA also makes use here of peer review to attempt to ensure consistency across the industry.

The noble Lord, Lord Oakeshott, referred to the fact that credit card debt is unsecured, but we also had the noble Lord, Lord Marlesford, referring to securitisation. Here we have again the complexity of the banking industry which securitises the unsecured. I continue to hold my view that packaging for disposal to someone interested in recovery represents a placing of a debt within a security structure or package. But securitisation is a term which is normally used in creating a tradable instrument. However, I believe that the noble Lord, Lord Marlesford, and I can both go away from this evening's debate content that our understanding is correct and that we are both using the term correctly, albeit to describe something rather different.

I also note the contribution made to the debate by the noble Lord, Lord James of Blackheath. I was for a while a director of a company which issued credit cards. The noble Lord asked whether twitchers represent safer credit exposure. I imagine that they probably do: the people who are drawn to the rural habits of sitting and watching birds are probably likely to be the type who are more diligent in meeting their obligations than some of those who specialise in other sports or recreational activities.

Lord Oakeshott of Seagrove Bay: Perhaps the noble Lord might like to apply for a Liberal Democrat credit card, as I have here. It is an excellent product.

Lord Myners: The noble Lord, Lord Oakeshott, referred to the fact that his children were being inundated with offers of credit cards. My own children are being inundated with offers to support the local Liberal candidate in the constituency in which they live in south-west London, which just goes to show that we should regard anything which comes through the letterbox with some caution and scepticism. However, I would ask the noble Lord to withdraw his amendment. I praise his attention to and focus on this issue and do so in the knowledge that he will come back to it if he is not happy as the story unfolds, regardless of which side of the House he may be joining the debate from.

Lord Marlesford: I am most grateful to the noble Lord for his very full answer, which I shall study carefully. I beg leave to withdraw the amendment.

Amendment 302 withdrawn.

Amendments 303 to 305 not moved.

Amendments 306 to 310 had been withdrawn from the Marshalled List.

Clause 28 agreed.

Clause 29 : Power to require FSCS manager to act in relation to other schemes

Amendment 311

Moved by ***Lord Myners***

311: Clause 29, page 40, line 29, at end insert—

"(9) This Part applies to cases where the manager of the relevant scheme is the Treasury or any other Minister of the Crown as it applies to cases where that manager is any other person."

Lord Myners: Clause 29 inserts new sections into the FSMA Act 2000 to allow the FSCS to act on behalf of another scheme or authority, including a foreign compensation scheme. The purpose of the measure is to ensure that compensation can always be made quickly and effectively to claimants in cases where the FSCS is not responsible for paying the compensation itself. A crucial requirement is of course that acting for another scheme should not impose additional costs on the FSCS and its levy payers. Clause 29 therefore includes a number of provisions to ensure that the FSCS will take on minimal financial risk.

These include provisions that allow the FSCS to decline to act for another scheme if it is not satisfied that additional costs would be reimbursed or that it would not receive the assistance it needs from the other scheme. Government Amendment 311 is a minor technical change to put beyond doubt that these provisions will not apply to the FSCS if it is asked to act on an ad hoc basis for the Treasury or another government department, and therefore ensures that the FSCS would not have any more exposure in such cases than if it was acting on behalf of a foreign scheme. I beg to move.

Amendment 311 agreed.

Amendments 312 to 322 had been withdrawn from the Marshalled List.

Clause 29, as amended, agreed.

Clause 30 : Information relating to financial stability

Amendment 322A

Moved by ***Lord Myners***

322A: Clause 30, page 46, leave out lines 18 to 20 and insert—

"(5) In this section "the financial system" includes—

(a) financial markets and exchanges;

(b) activities that would be regulated activities if carried on in the United Kingdom; and

(c) other activities connected with financial markets and exchanges.""

Amendment 322A agreed.

Amendments 323 to 329 had been withdrawn from the Marshalled List.

Clause 30, as amended, agreed.

Clauses 31 to 36 agreed.

Schedule 2 : Minor and consequential amendments

Amendment 330

Moved by ***Lord Myners***

330: Schedule 2, page 63, line 31, at end insert—

"25A In section 348(5)(d) (restrictions on disclosure of confidential information by Authority etc), after "a person appointed" insert "to collect or update information under section 139E or"."

Amendment 330 agreed.

Amendments 330A and 330B not moved.

Amendments 331 and 332 had been withdrawn from the Marshalled List.

Schedule 2, as amended, agreed.

Clause 37 agreed.

Clause 38 : Commencement

Amendment 332A

Moved by ***Lord Myners***

332A: Clause 38, page 50, line 16, leave out "sections 1 to 5" and insert "section 5"

Lord Myners: As I explained earlier the Government, following discussions with the Opposition via the usual channels, have agreed to remove a number of clauses from the Bill. Amendments 332A to 334 make necessary consequential amendments to these removals. The amendments simply delete from the Bill some references to the clauses that have been removed. I beg to move.

Amendment 332A agreed.

Amendments 332B to 334

Moved by ***Lord Myners***

332B: Clause 38, page 50, line 20, leave out "8 to" and insert "9 and"

332C: Clause 38, page 50, line 21, leave out paragraph (e)

333: Clause 38, page 50, line 33, leave out second "to" and insert ", 26,"

333A: Clause 38, page 50, line 34, leave out first "to" and insert "and"

334: Clause 38, page 50, line 42, after "20," insert "25A,"

Amendments 332B to 334 agreed.

Amendment 335 had been withdrawn from the Marshalled List.

Clause 38, as amended, agreed.

Amendment 336 not moved.

Clause 39 agreed.

House resumed.

Bill reported with amendments.

Debt Relief (Developing Countries) Bill

First Reading

7.26 pm

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

Appropriation Bill

First Reading

7.26 pm

The Bill was brought from the Commons, endorsed as a money Bill, and read a first time.

Crime and Security Bill

Committee (and remaining stages)

7.27 pm

Clause 1 agreed.

Amendment 1

Moved by ***Lord Marlesford***

1: After Clause 1, insert the following new Clause—

"Power to search for firearms

If a police constable has reason to believe that a person or persons in a particular area may be carrying firearms, he may arrange—

(a) for that area to be sealed off; and

(b) for the searching for firearms of any people or vehicles in that particular area, by whatever means he considers appropriate."

Lord Marlesford: My Lords, this proposal is not new. I brought it forward on 9 October 2006 as an amendment to the Police and Justice Bill. It was voted on and very nearly accepted, having received support from all parties, particularly the Liberal Democrat party. The result of the vote was contents 93 and not-contents 101. The essence of the proposal is to make it absolutely clear that the police have the right

[LORD MARLESFORD]
to get guns off the streets of our cities and towns. They already have many powers, as has been referred to in previous debates on this subject, but the point of this amendment is that it would make it unequivocally clear to everyone that the police have that right.

Since October 2006, when I last raised the issue, the need for this legislation has become all the more important. Sadly, the extent of gun crime has not really reduced, while in many areas knife crime has actually increased. This amendment is not being put forward on the basis of knife crime, but the same methods by which the police would ensure that guns are not on the street—the use of non-intrusive metal detectors, whether they be arches set up in the street in an area that the police wish to check through which everyone has to pass, or hand-held metal detectors—would be the same. Unlike drugs, which are hard to find without using much more intrusive and controversial methods of searching, it should be possible to make it almost as risky to carry a weapon such as a gun or a knife on the streets as it would be for any of us to attempt to take these objects through an airport and on to an aeroplane in this country. The technology exists, and what is needed is the expectation that it is risky to carry a gun in this country, with the corollary being that of carrying a knife.

There have been so many tragic cases reported since October 2009. One of the most recent, of which all noble Lords will be aware, was that poor young person who was knifed to death outside Victoria station. I am not saying that my proposal would instantly end all such crime, but if it were possible for the police to search without having to go through the other, elaborate legislation that in many circumstances allows searches to be made, and if there were a blanket provision and it were used sensibly, sensitively and intuitively, using good intelligence, I believe that it would be possible greatly to reduce the extent to which people took the risk of carrying a gun or a knife. That is why I recommend it to your Lordships.

I intended to bring this amendment forward had we had a longer opportunity to discuss this important Bill, but it is none the less desirable that we should consider it today. I beg to move.

7.30 pm

Lord Mayhew of Twysden: My Lords, I have supported my noble friend in this amendment on more than one occasion, and I do not believe that any of the circumstances—and they were very powerful ones—that justified that support have diminished in the intervening period. It is important that we should do whatever we practically can to stimulate public confidence in the criminal justice system, and this amendment ought to be carried.

Baroness Hamwee: My Lords, we congratulate the noble Lord, Lord Marlesford, on the efforts that he has put into bringing this issue to your Lordships. I was not the holder of my current portfolio on the previous occasion, but my noble friend Lord Thomas of Gresford congratulated him on,

"his fight to widen the security and safety of the ordinary citizen",

and on,

"clearly having pushed the Government along the road to a certain degree".

My noble friend went to say that at that time, during the proceedings on the Serious Crime Act 2007,

"We on these Benches are, for the moment, happy with the position that the Government have reached due to his efforts".—[*Official Report*, 24/10/07; col. 1113.]

I have not had an opportunity to talk to my noble friend today, but having congratulated the noble Lord as I have done, and sharing his concerns about gun crime, I have a number of concerns about the proposed new clause, which seems to be wide. The term "police constable" could mean any officer, while having "reason to believe" and,

"a person … in a particular area may be carrying firearms"

are also wide.

How much of what the noble Lord provides in his amendment is not possible now? Paragraph (a) provides for the area to be "sealed off". I am not quite sure what that means, but one has frequently observed that the police block roads when they need to do so. I am not sure what the implication of that wording is. Paragraph (b) talks of,

"searching … by whatever means he considers appropriate".

Again, I am not sure what that might encompass—it seems to be wide. Both people and vehicles are searched now, and we have had many debates on the issue.

While expressing the concerns that I have, I ask the noble Lord if he can tell the Committee what, within the points that he raises, is not possible now.

Baroness Neville-Jones: My Lords, my noble friend is pursuing an important point and we wish to seek clarity on it. My queries are much the same as those that the noble Baroness, Lady Hamwee, has just raised. Some of the powers that the amendment would bring should be ones that the police already have. We would be grateful if the Minister could clarify what he believes the position to be and confirm whether that is the case.

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): My Lords, we believe that the amendment is unnecessary as the circumstances described are already covered by the powers in Section 60 of the Criminal Justice and Public Order Act 1994. An amendment to Section 60, made by the Serious Crime Act 2007, extended the powers to add a further circumstance in which they can be used—namely, where a serious violent incident has occurred, the police believe that the weapon used in the incident is being carried in the locality and it is expedient to give an authorisation to find the weapon.

Notwithstanding the good intentions of the noble Lord, Lord Marlesford, I also have to say that we consider his proposal to be rather sweeping, as the noble Baronesses, Lady Hamwee and Lady Neville-Jones, have touched on, and lacking in the appropriate level of safeguards for those who might be searched under the power. There is also the issue of the area being covered, as well as a number of other items. On the basis that the powers sought by the noble Lord's

amendment are already largely available to the police, and due to our other concerns, I ask him to withdraw his amendment.

Lord Marlesford: My Lords, that is exactly the response that I expected. It is the response that I got last time; indeed, even the same legislation was referred to. I said then, and I repeat now, that one of the problems—this is made clear on the Home Office website—is that gun control law is extremely complicated. I seek a simple general provision.

In answer to the noble Baroness, Lady Hamwee, of course there are important considerations to be taken into account about how that provision would be used, but then that is something that police officers and others responsible for maintaining law and order have to do every day. All I want is, mainly, to persuade the public that there is provision for any detectable weapon that is carried.

The noble Baroness asked me about the method. I said in my opening remarks that the main method that I envisage is metal detectors, a non-intrusive way of checking. I was asked about sealing off streets. Sometimes that would mean sealing off areas; sometimes not. The sort of thing that I imagine would be practical is that if there were a club in which it was felt that people might have weapons, the police could check everyone coming out of it and then, if people had become aware that this was happening and had left their weapons behind, there could be an appropriate search to pick them up. They could open the lavatory systems, for example, and if someone had taped a gun in there, that would be a plus.

I am seeking to provide for the police—using the common sense, sensitivity and imagination that I believe they have—the facility to do this in a way that the public were aware that they had the right, and would expect them, to do. As I said at the beginning, my main objective is to make it a great deal more risky for people to carry such weapons on the streets in this country.

Having said that, of course I did not expect at this stage, during the wash-up, that the Government would be able to accept this amendment. I hope to return to it in due course, but meanwhile I beg leave to withdraw it.

Amendment 1 withdrawn.

Clauses 2 to 13 agreed.

Amendment 2

Moved by ***Baroness Hamwee***

2: Before Clause 14, insert the following new Clause—

"Retention, destruction and use of fingerprints and samples

For section 64 of the Police and Criminal Evidence Act 1984 (destruction of fingerprints and samples) there is substituted—

"64 Destruction of fingerprints and samples

(1) Unless provided otherwise in this section, where fingerprints, impressions of footwear or samples are taken from a person in connection with the investigation of an offence, the fingerprints, impressions of footwear or samples or any DNA profile may not be retained after they have fulfilled the purposes for which they were taken and shall not be used by any person except for purposes related to the prevention or detection of crime, the investigation of an offence, the conduct of a prosecution or the identification of a deceased person or of the person from whom a body part came.

(2) In subsection (1) above—

(a) the reference to crime includes a reference to any conduct which—

(i) constitutes one or more criminal offence (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or

(ii) is, or corresponds to, any conduct which, if it took place in any one part of the United Kingdom, would constitute one or more criminal offences; and

(b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.

(3) A DNA sample must be destroyed—

(a) as soon as a DNA profile has been derived from the sample, or

(b) if sooner, before the end of the period of six months beginning with the date on which the sample was taken.

(4) Any other sample to which this section applies must be destroyed before the end of the period of six months beginning with the date on which it was taken.

(5) Fingerprints, impressions of footwear and DNA profiles are not required to be destroyed if they were taken from a person convicted of a recordable offence.

(6) Where any fingerprint, impression of footwear or sample has been taken from a person who is arrested for or charged with a sexual offence or violent offence, the fingerprint, impression of footwear or DNA profile shall not be destroyed—

(a) in the case of fingerprints or impressions of footwear, before the end of the period of three years beginning with the date on which the fingerprints or impression were taken, such date being the "initial retention date"; or

(b) in the case of a DNA profile, before the end of the period of three years beginning with the date on which the DNA sample from which the DNA profile was derived was taken, such date being the "initial DNA retention date"; or

(c) if an application is made to the court under subsection (7), until such later date as may be provided by subsection (8) or (10) below.

Provided always that if the person is convicted of a recordable offence, subsection (5) shall apply.

(7) On application made by the responsible chief officer of police within the period of three months before the initial retention date or the initial DNA retention date as the case may be, the Crown Court, if satisfied that there are reasonable grounds for doing so, may make an order amending, or further amending, the date of destruction of the relevant fingerprint, impression of footwear or DNA profile.

(8) An order under subsection (7) shall not specify a date more than two years later than—

(a) the initial retention date in relation to fingerprints or impressions of footwear, or

(b) the initial DNA retention date in the case of a DNA profile.

(9) Any decision of the Crown Court may be appealed to the Court of Appeal within 21 days of such decision.

(10) A fingerprint, an impression of footwear or a DNA profile shall not be destroyed where—

(a) an application under subsection (7) above has been made but has not been determined;

(b) the period within which an appeal may be brought under subsection (9) above against a decision to refuse an application has not elapsed; or

[BARONESS HAMWEE]

(c) such an appeal has been brought but has not been withdrawn or finally determined.

(11) Where—

(a) the period within which an appeal referred to in subsection (9) has elapsed without such an appeal being brought; or

(b) such an appeal is brought and is withdrawn or finally determined without any extension of the time period referred to in subsection (8);

the fingerprint, impression of footwear or DNA profile shall be destroyed as soon as possible thereafter.

(12) Subject to subsection (13) below, where a person is entitled to the destruction of any fingerprint, impression of footwear or sample taken from him or DNA profile, neither the fingerprint, nor the impression of footwear, nor the sample, nor any information derived from the sample, nor any DNA profile shall be used in evidence against the person who is or would be entitled to the destruction of that fingerprint, impression of footwear or sample.

(13) Where a person from whom a fingerprint, impression of footwear or sample has been taken consents in writing to its retention, in the case of a fingerprint or impression of footwear or the retention of any DNA profile—

(a) that fingerprint, impression or DNA profile as the case may be need not be destroyed;

(b) subsection (12) above shall not restrict its use; provided that—

(i) no DNA profile may be retained on any child under the age of 10 years; and

(ii) consent given for the purposes of this subsection shall be capable of being withdrawn by such person upon making written application to the responsible chief officer of police or person authorised by the Secretary of State for such purpose whereupon such fingerprint, impression of footwear or DNA profile shall be destroyed as soon as possible following receipt of such written application.

(14) For the purposes of subsection (13), it shall be immaterial whether the consent is given at, before or after the time when the entitlement to the destruction of the fingerprint, impression of footwear or DNA profile arises.

(15) In this section—

"DNA profile" means any information derived from a DNA sample;

"DNA sample" means any material that has come from a human body and consists of or includes human cells;

"the responsible chief officer of police" means the chief officer of police for the police area—

(a) in which the samples, fingerprints or impressions of footwear were taken; or

(b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken;

a "sexual offence" or "violent offence" shall mean such offences of a violent or sexual nature as shall be set out in any order made by the Secretary of State with reference to this section.

(16) Nothing in this section affects any power conferred by paragraph 18(2) of Schedule 2 to the Immigration Act 1971 or section 20 of the Immigration and Asylum Act 1999 (c. 33) (disclosure of police information to the Secretary of State for use for immigration purposes).

(17) An order under this section must be made by statutory instrument.

(18) A statutory instrument containing an order under subsection (17) shall not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.""

Baroness Hamwee: I shall speak also to the amendments grouped with this one and to our objections to Clauses 14 to 23 standing part.

With this amendment we come to the subject of DNA. In the first debate in which I spoke on the Home Affairs portfolio, I said that for Liberal Democrats, civil liberties are in our DNA. The Minister protested that they were in his too, and I do not for a moment doubt it. Unfortunately, although they might be in his DNA, they are not in this Bill.

The current law on DNA retention has been held by the Grand Chamber of the European Court of Human Rights to breach the European Convention on Human Rights. The "blanket and indiscriminate nature", to use its words, of the law under which the police may retain indefinitely the DNA of the person arrested, whether or not convicted or even charged, failed to,

"strike a fair balance between the competing public and private interests".

Following the case of S and Marper the Government have got to do something. However, what they are choosing to do in this Bill is only a marginal improvement. Those arrested but not charged or convicted will still have their DNA profile kept on the national DNA database for at least six years. In our view, the retention of the DNA profile of an innocent person for six years is six years too long.

I spoke at Second Reading of the importance of the presumption of innocence over guilt holding in our technologically advanced world; of arrest not being confused with conviction; and of the stigma attached to DNA retention. Evidence of that was debated not only in this House but in the Commons and given to the Home Affairs Select Committee, which has recently published a report on the matter.

The Home Office has relied on research which itself relies on the flawed premise that arrest is an indicator of the risk of offending—arrest not conviction—and it measures the risk of offending by the risk of rearrest. So it appears that two arrests are evidence of criminality. I could go on but I shall not do so because I am aware of how much business the House has to get through—I was going to say tonight but perhaps I should say before we start business again tomorrow.

Members of the Commons discussed the matter at length—they went on because they had more opportunity—and the Conservative Member Mr Brokenshire said that,

"the measure fails to take account of one of the fundamental principles of our liberal democracy: the presumption of innocence before the law unless one has been proven guilty. That principle should be an important guiding factor in framing the debate on retention, rather than being an inconvenient anomaly, as the Government appear to view it, given their historical approach to DNA retention".—[*Official Report*, Commons, 8/3/10; col. 41.]

He said that when introducing an amendment that is exactly the same as the amendment we have tabled. I do not often flatter the Conservatives—either sincerely or insincerely—but they will recognise the imitation on this occasion.

I made it clear at Second Reading that the amendment is a compromise. The Scottish model, which this is—or, one might say, the model of my noble friend Lord Wallace of Tankerness—self-evidently is more proportionate than the provisions in the Bill. Innocent

people are treated as innocent but there is an allowance for a three-year retention of data in the case of those suspected of sexual or violent offences. I have flattered the Conservatives and now I shall quote the noble Baroness, Lady Neville-Jones. At Second Reading—which seems a long while ago—she said:

"In the absence of a much better put together case than the assertions that we heard this afternoon, the Scottish system has shown that it is capable of delivering. It is the reason why we on these Benches prefer that model. We believe that the state should not retain the DNA profiles of those not convicted of an offence, except in circumstances where the charges relate to a crime of violence or of a sexual nature".—[*Official Report*, 29/3/10; col. 1234.]

That is quite right.

In winding up for the Conservatives, the noble Lord, Lord Skelmersdale, said:

"Suffice it to note that both the Joint Committee on Human Rights and your Lordships' Constitutional Committee doubt whether Clauses 14 to 21 really are Human-Rights-Act-proof".—[*Official Report*, 29/3/10; col. 1268.]

He said that predicting what would happen with the Bill was above his pay grade, although it was obvious from his speech that he expected it not to see Royal Assent. I therefore trust that the noble Baroness will not now support the Government in view of her own and her party's clear position previously. I await to hear her views with interest, but if she tells the House that this is a matter for review and if her party finds itself in a position to conduct a review it will do so, why not on the basis of the Scottish model rather than the regime which her party and she have condemned and which may well be—following high legal costs and much emotional agony—condemned by the European court? I beg to move.

7.45 pm

The Earl of Onslow: My Lords, I am a member of the Joint Select Committee on Human Rights; I shall leave it the day after tomorrow, or whenever Parliament rises, because I have done my four years. The committee looked at this issue and did not think it would pass the Human Rights Act hurdle. When you take a horse racing, it is silly to put up an overscoped fence so that it falls flat on its face, and then put up another fence which is too big for it and, bang, down it comes again. That is an exact parallel to what the Government are doing in this case.

DNA is one of the greatest aids we have had in modern times to assist in solving crimes, particularly unpleasant and nasty ones—I totally concede that. However, we must never lose sight of the liberties of the subject. That means that the DNA collected from innocent people who volunteer to give it in a murder inquiry should automatically be destroyed; the DNA of people who have been arrested but against whom charges have not been brought should be destroyed; and the DNA of people who are charged and acquitted should also be destroyed. I do not know whether the amendment goes far enough or whether it is comprehensible—I looked at it, tried to read it but could not understand it—but I was efficiently briefed by Liberty. I believe that that sums up Liberty's position, as well as I can remember it, and also the position of the Joint Committee on Human Rights. We were unanimous on this issue, as we are on quite a few matters, and there was no question of any split or vote on it.

When a case is lost in the European Supreme Court, it is stupid of the Government, instead of accepting that the case is lost, to produce legislation which will lead to them losing again. I fear that the provisions in the Bill will produce another fall at the second hurdle. The amendment should at least be taken seriously, if not accepted.

Baroness Kennedy of The Shaws: My Lords, I, too, support the amendment. I can always be relied upon to be consistent on this issue. From the point where the law was changed to allow the retention of the DNA of those who were arrested but subsequently not charged, I have opposed that retention. People feel quite seriously that there is a stigma attached to the retention of DNA. If they have been arrested and no subsequent charge follows, its retention on the database makes them feel that a terrible wrong is being done to them by the state. That might be different if everyone were on the database from the word go, but it is not the situation that we are currently facing.

I was saddened that the Government did not accept, in light of the European Court's decision, that there were breaches of human rights principles. While I was not particularly accepting of the Scottish formula, I felt that it was a compromise that the Government should have willingly accepted. It is a great regret to me that they have not done so. I, too, shall support the amendment. It seems to me that a case will go up through the courts, and it is very likely that it will be found that the Government's new formulation will, like the old one, offend against human rights standards. I would have thought that this was a moment to say, "Enough. Let's reflect on this over the next period and see what a new Parliament, in whatever form it is, might feel about all these matters in a fresh dawn".

Lord Judd: My Lords, having spoken on this subject at Second Reading, I feel compelled to say that I have a good deal of good will towards the drift of the amendment put forward by the Liberals. I find it very sad that, at the end of this Parliament, we should be endorsing the erosion of one of the fundamental principles of justice in this country as I have understood it, which is the presumption of innocence.

There will be those for whom there is no question of their presumption of innocence; there will be some who have a qualified presumption of innocence because their name is on a register or record even though they have not been found guilty of any crime. This is not an acceptable situation. I also find it very sad that we should at this stage be dragging our feet not only on what our own Joint Committee on Human Rights and Select Committee on the Constitution have said but on what the European Court has been so firm about.

The issues of proportionality, too, are central to our whole tradition of justice, and this is what has raised anxiety. I would have liked to feel at this stage that we were in the vanguard of defending these principles. I am really concerned about the erosion of everything that we have understood to be the cornerstones of our system of justice.

I am sorry to have to say these things this evening, but, having spoken at Second Reading, I think that it would be pretty feeble just to walk away and not put

[LORD JUDD]
on record my feelings about the amendment. I shall be very sad if my noble friend is not in some way able to meet them, because I have the highest regard for him and all the responsibilities that he carries so cheerfully and willingly on our behalf. I regard myself as one of the firmest supporters of the Government, but I can put it no other way than to say that I am very sad to find myself in this predicament this evening.

Lord Avebury: Your Lordships might be interested to hear a story which I am about to tell of a person who had his DNA taken when he had no criminal record. Having gone through the immigration process at Heathrow Airport—he was a British citizen—he was stopped by Special Branch on the land side, taken aside, detained and made to give a sample of his DNA and fingerprints. When I was asked to assist him in getting the samples removed from the database, I wrote to the relevant Minister in the Home Office and was told there was a procedure whereby one could appeal to the relevant chief officer of police for a special review. I wrote to the chief officer of the Metropolitan Police; I gave him the details of what had happened and asked him to conduct a review. After a while, he wrote back and said that he was not the chief officer concerned because he did not deal with Special Branch cases. I therefore had to write another letter to a different chief officer of police.

To cut a very long story short, it took 14 months for that review to take place, during which the man concerned had, as noble Lords have said, a stigma hanging over him because his samples were taken on the database. People would say, "Well, surely he must have been guilty of something if they felt so certain that the DNA was required to be kept in this way". I subsequently discovered that only three people had been successful in making a special appeal and getting DNA samples removed from the database. Everything that has been said about the violation of our human rights and the ignoring of the European Court is reinforced by what one knows about these cases.

I sincerely hope that the Minister will pay close attention to the amendment and, if not agree to it, at least guarantee that we will take steps to bring ourselves into conformity with our commitment to European human rights legislation.

Baroness Neville-Jones: My Lords, the retention, destruction and use of DNA samples have been the subject of much debate over several years. The controversy has centred on the indefinite retention of the DNA profiles of those who have committed no crime or who have been cleared of allegations against them, which has been found to be illegal. We on these Benches, with others, have successfully pushed the Government to end the permanent retention of innocent people's DNA. Hence we now have these government proposals in the Bill.

I said at Second Reading that we still preferred the Scottish model, under which the state would retain for a limited period of three to five years the DNA profiles of those not convicted of an offence only in circumstances where charges relating to a crime of violence or of a sexual nature had been brought. The Home Secretary says that the police in Scotland do not think that their model works well; the Minister said the same thing when we last debated this matter. However, this is not borne out by the evidence, which shows that the Scottish system has a higher detection rate than that in England and Wales. Moreover, Labour Members of Parliament supported the Criminal Procedure (Scotland) Act 1995 which put that system in place. I therefore beg leave to take issue with those who claim, as the Home Secretary has done, that to take the Scottish system seriously is not to take the issue seriously.

The problem is that we are out of time for proper discussion, so we have to look at the essentials. First, we now have cross-party acceptance of the principle that the indefinite detention of the DNA profiles of those who are innocent is wrong and ineffective. We need to get this principle into law. It is also a requirement of the ECHR's judgment, which we agree with and respect. Secondly, the legislation offers some control over one of the other most obnoxious features of current system, which is the postcode lottery involved in getting off the database the profiles of those who should not be on it.

At this late stage, the Liberal Democrat Benches have put forward an amendment which in some respects travels back from the rather uncompromising position that they have taken hitherto. Sadly, it is too late for proper discussion. Were we able to have that, there would be a number of changes that we would want to try to make. The amendment fails for instance to provide for getting on to the database the profiles of those who have been convicted of criminal offences but who have never been put on it. There are a significant number of people who should now be on that database, if we regard the database as being a way of usefully detecting crime.

The position of my party is absolutely clear. We do not resile from the view that the entire system needs to be overhauled, not piecemeal but systematically. A Conservative Government if in office will do the following: they will legislate in the first Session to make sure that the DNA database includes permanent records only of people who have been convicted of an offence and, for a more limited period, those charged with sexual or violent offences. Secondly, we will focus efforts on collecting the DNA of all existing prisoners, those on probation, on licence or in prison or under the supervision of the criminal justice system, which the Government have failed to do. Thirdly, we will introduce new guidelines so that those wrongly accused of minor crimes and who have volunteered their sample have an automatic right to have their DNA removed from the database—one thing that this House most strongly objects to. It is not about one party being soft on crime and one party being tough on crime, as the Home Secretary said; that is absolute nonsense. We all agree that DNA is an important and useful tool. The issue is one of creating a DNA database that works and that has public trust, given that detections have fallen although the number of profiles has ballooned. This is a point that should not be missed. In fact, the prison system is not working very well because, although we have increased numbers put on it, the actual number of detections is falling.

Systematic reform is needed and a new approach focused on the guilty and on those who pose most risk. This is a fundamental root and branch change that we will not achieve today but which must be achieved by a new Government. For now, we take the view that it is important that we have in law acceptance of the proposition that the indefinite retention of innocent people's DNA is unacceptable and illegal.

8 pm

Lord West of Spithead: My Lords, I certainly did not understand wash-up before, and I am still not sure that I do understand it. However, it seems to me to be an agreement between the main parties about finding a way ahead, so I was rather taken aback by the noble Baroness, Lady Neville-Jones, listing a great long list of proposals for what is intended to be done. My understanding was that it was only because of an agreement that this has come through—but clearly I have been taken flat aback on that one and do not understand what is going on. But that was my understanding of it.

In any event, as has been said, the proposed amendments would replace our proposal with a variant of the Scottish retention model. It was discussed, of course, in the other place, where it was pressed to a Division and defeated by some 79 votes. As the Committee will be aware, Scotland has a very different approach to the retention of fingerprints and DNA from the one that the Bill proposes. The Scottish model is that DNA samples and resulting profiles must be destroyed if the individual is not convicted or granted an absolute discharge, and DNA may be retained for those not convicted only if they are suspected of certain sexual or violent offences, when it may be retained for three years. That can be extended at perhaps two years at a time with the approval of a sheriff. While there was some support for the Scottish retention model during the Bill's earlier stages in the other place, it should be noted that the Scottish Executive, as with so many other things that the Scottish Executive do, arrived at their model with no research whatever. It was just plucked out of the air. The model also has significant operational limitations. As the noble Baroness, Lady Neville-Jones, says, it is not just the Government's view that the Scottish model poses problems for the police; the Scottish Association of Chief Police Officers said in February 2008:

"Our position is that we should move into line, after discussion with Scottish Government, with England and Wales and DNA samples should be taken and retained under strict guidelines from offenders. We are in favour of mirroring any legislation in the UK Parliament allowing the taking and retention of DNA samples from persons arrested for an offence".

It is interesting to note the talk about higher detection rates in the Scottish example. That is not the case. The Scottish DNA database does not have a higher success rate. The figures quoted on one occasion look at 2005-06 figures and do not compare like with like. The latest like-for-like data, from 2008-09, show that the England and Wales database has a 13 per cent higher success rate than Scotland, so the Scottish Association of Chief Police Officers is correct and our system is somewhat better.

More significantly, consideration also needs to be given to the underlying principal question in this amendment of whether the biometric data of those not convicted of an offence should be treated differently depending on the nature of the offence under investigation. Potentially, that could create different levels of innocence, depending on what it is that someone has not done. We propose a single retention period regardless of the seriousness of the offence for which a person has been arrested. The best available evidence indicates that the type of offence for which they are first arrested is not a good indicator of the seriousness of the offence that he or she might subsequently commit. The Scottish model, proposed in the amendment, therefore risks missing many detections of serious offences due to the nature of the offence originally under investigation. For example, in 2008-09 alone, there were at least 79 rape, murder or manslaughter cases in England and Wales that were matched to the DNA database from DNA profiles that belong to individuals who had been arrested but not convicted of any crime. Of that number, in 36 cases the matches were found to have had a direct and specific value to the investigation. If we had applied the Scottish retention regime and retained DNA profiles only from those arrested but not convicted of a serious crime, at least 23 victims of the most serious crimes, and of course their families, could have been denied justice last year alone.

In the light of the above, and as the retention of DNA is not punitive but a measure to facilitate the detection of future offences, we believe that a single retention period is the correct way forward. Indeed, on the point of it not being punitive, a number of speakers have talked about being on the database as being a stigma. I believe that it is a stigma only if people know that someone is on the database. I personally have no concern about being on it. Almost nobody knows that someone is on the database. It is a stigma only if someone knows that you are there.

On the Motions that Clauses 14 to 23 should not stand part of the Bill, I point out that if these Motions were carried we could be no further forward than we were at the beginning of last year. We would still be in breach of the European Court's ruling, as a number of noble Lords have said, and we would not have a legislative framework for the retention of DNA profiles and fingerprints. We consider that our DNA retention proposals represent an appropriate balance between public protection and protecting individuals' rights and liberties, based on the best available research. We also believe that it will meet ECHR requirements and the ECHR judgment. While some have criticised elements of our research evidence, I remind your Lordships of the key points that the evidence points us to. We can justify retaining the DNA of people who have been arrested but not convicted while the risk of offending is higher than that of the general population. Our analysis suggests that that risk, as measured by the risk of rearrest, is higher than the general population for six years following the first arrest. While arrest is only a proxy indicator of the risk of offending, the nature and volume of data currently available to us mean that a more precise arrest/conviction analysis is likely to be less reliable. Yes, we can do more work, but at least we have done some analysis, unlike under the

[LORD WEST OF SPITHEAD]
Scottish system. The precise length of time to equalise the risk may vary in either direction due to the uncertainties in the analysis and data. On balance, these uncertainties are more likely to extend the time that it takes for these risks to be equal, which would argue in fact for a longer retention period. But we must do analysis and look at this in much more detail.

The noble Earl, Lord Onslow, referred to samples being taken from volunteers. Those samples can and must be removed from the database on request, and DNA from a volunteer is put on the database only in very exceptional circumstances, at the explicit request of the volunteer.

Ultimately, the evidence can only go so far to answering the question of what is an appropriate retention period. When there are statistical uncertainties around the estimate, the final decision must be one based on judgment—it is not precise yet—and not evidence alone. But we are trying to build up more evidence to get a better database. That is how we arrived at a retention period of six years, the point at which our research tells us that the risk of rearrest returns to the risk of arrest in the general population. We consider that our proposals are a cogent and considered package and represent a huge change from the situation as it stands, as was touched on by the noble Baroness, Lady Neville-Jones, taking us from a blanket indefinite retention, whereby innocent and guilty are treated alike, and whereby DNA profiles are kept as long as DNA profiles—two finite periods based on research and differentiating between different categories of individual. We further believe that the safeguards outlined in Clause 23 relating to the national DNA database strategy board provide sufficient scrutiny and oversight of the process and will result in clear and consistent guidance being issued in future on the destruction and deletion of profiles. A number of speakers touched on that point.

I am particularly disappointed that, after all the consensual work done in the other place to put into place a new role for the strategy board, noble Lords wish to remove Clause 23. I also put on record my gratitude to the official Opposition for agreeing, as part of the wash-up, that our proposed retention framework should be put on the statute book. That agreement means that we can bring an end to the somewhat protracted process of responding to the judgment of the European Court, giving some certainty to both the police service and the public at large that biometric data will be held under a specific and detailed statutory regime. On that basis, I ask that Amendment 2 be withdrawn and that Clauses 14 and 23 should stand part of the Bill.

Baroness Hamwee: My Lords, I am very grateful to those noble Lords who have supported my amendment and my opposition to certain provisions in the Bill. I hope that they will forgive me if, in the interests of time, I do not go through all the points that they made. The Minister said that he still does not understand wash-up; he had thought that only what was agreed went forward. He said that after listening to the noble Baroness, who seemed to be opposing the Government's proposals. All I would say is: indeed.

On having no research of the Scottish model, the Home Office research, by all accounts, seems to have been—what can I say?—a bit dodgy. It is certainly not as substantial or as useful as those looking for a solution to all of this would want to find. I understand, of course, that the police want the most extensive tools possible. The Minister talked of detection rates; my response is that the Home Affairs Select Committee, in one of its conclusions to the report that it published only recently, on 8 March, said:

"It is currently impossible to say with certainty how many crimes are detected, let alone how many result in convictions, due at least in part to the matching of crime scene DNA to a personal profile already on the database, but it appears that it may be as little as 0.3%".

It went on that,

"we note that the reason for retaining personal profiles on a database is so that the person can be linked to crimes he/she commits later".

Yes, the Government are proposing a single retention period—but one which is too long.

The noble Lord gave examples of where DNA has been used to solve crimes. We all know about hard cases and bad law. As I have said, the general view is that there is a poor evidence base for what is proposed. He said that if the clauses do not stand part of the Bill, we will be no further forward in responding to the European court. Indeed, that is absolutely my point; it would then be necessary to reconsider the matter.

For the Conservatives, the noble Baroness says that we are out of time for proper discussion, that it is too late for that and, in effect, that the amendment—she did not use this word—is inadequate. I thought that I could have done no better than using the Conservatives' own amendment. If it is inadequate—in my view it would be a compromise, but one which I hoped would take the noble Baroness and her troops with us—better to start from the inadequate than the bad. The Conservatives, if they do not support these Benches on these amendments, must accept responsibility along with the Government for the bad. I wish to test the opinion of the House.

8.14 pm

Division on Amendment 2

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Amendment 2 disagreed.

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8.25 pm

Clauses 14 to 33 agreed.

Clause 34 : Grant of injunction: minimum age

Debate on whether Clause 34 should stand part of the Bill.

Baroness Hamwee: My Lords, I have given notice that from these Benches we oppose Clauses 34 to 39 standing part of the Bill. We gave notice that we also oppose Clause 38 but somebody seems to have dropped it from the Marshalled List in hope. The Minister will not be surprised that I am speaking against all these clauses as a group.

At Second Reading the noble and learned Lord, Lord Lloyd of Berwick, spoke powerfully against what he called,

"a parallel system of criminal justice … using the civil courts".—[*Official Report*, 29/3/10; col. 1240.]

He was talking about little bits of criminal law which apply only to the individual who is the subject of an injunction, and not universally, and drawing your Lordships' attention to the fact that breach of the injunction could lead to imprisonment. This would follow an injunction granted only on the civil standard of proof and created by magistrates and judges sitting in civil courts, with little idea of how what an injunction says relates to the criminal law as a whole.

The gang injunction provisions were introduced in the Policing and Crime Act 2009, which received Royal Assent less than five months ago—only a week before this Bill was introduced in the Commons, extending the provisions to those aged under 18. Clauses 34 to 39 must have been drafted well before Royal Assent of the 2009 Act. However well that legislation for those aged over 18 was thought through, there has not been an opportunity to consider its application, assess practice or review the results. There are, I understand, similar injunctions in place and available in the United States, but I am told that they have been ineffective or even counterproductive there, leading to discrimination and stigmatisation of innocent minority ethnic young people. It is not possible even to begin to consider the position here in practice given the very swift movement of

[Baroness Hamwee]
events. Indeed, I do not believe that there was even public consultation in 2009. The gang injunction provisions were not included in the Policing and Crime Bill as originally introduced.

An injunction may be granted if the court is satisfied on the civil standard of proof that a person is engaged in, or encouraged, or assisted group-related violence—in other words, he may never have been convicted of an offence. If he has, he will have been punished for that offence. During the passage of the 2009 Act, the Minister recognised that,

"Changing the law to enable the courts to use injunctions for under-18s would involve a major change in how civil law interacts with minors".

Quite so. A child cannot be imprisoned, so the powers are for supervision or detention orders on breach of an injunction, though it can have the effect of amounting to house arrest for up to eight hours a day, or up to three months in youth detention accommodation.

The Home Office impact assessment said that an injunction will serve the purpose of preventing acts of serious violence, breaking down gang culture and preventing younger members' behaviour from escalating, providing the opportunity for local agencies to engage with gang members and develop effective strategies for them to exit the gang. I do not quarrel with those objectives for one moment but I do quarrel with the means—yet more legislation miraculously curing society's ills. It cannot do it by itself. A child—I emphasise "a child"—involved in gang activities should be dealt with by children's services and, if necessary, the family courts, as a child in need of protection or at risk of harm. We have a specialist youth justice system. A child accused of offending behaviour should be dealt with not in the ordinary adult court but in a forum with appropriate procedures. A civil detention order goes against the UK's obligations under the United Nations Convention on the Rights of the Child that custody should be a last resort only. Short-term custody for under-18s normally includes a rehabilitative element—training as well as detention.

Many people have worked hard for many years on seeking ways to deal with young offenders. We see none of that experience coming through in what is proposed in the Bill. What is the necessity for this? There are already many civil and criminal justice measures to tackle criminal behaviour among young people and there is safeguarding legislation which can be used to protect them. Therefore, we believe that these clauses are unnecessary and not thought through. They blur the distinction between the civil and criminal law and criminalise children. They are bad. We oppose the clause.

8.30 pm

Lord Lloyd of Berwick: My Lords, I rise to support the measure proposed by the noble Baroness. She referred to the observations of the Minister in the other place in which he said that to include the under-18s in the 2009 Bill would have involved a major change in the relationship between the civil courts and those under 18. Yet here we are, less than a year later, being asked to make just such a major change without any consultation of any kind in the mean time.

I suggest that the Government had their opportunity to include the under-18s in 2009. They did not take that opportunity for reasons which seemed good to them then and it is far too late for them to have a second bite at the cherry now. On that simple ground, I support the noble Baroness. But there is, of course, a wider ground on which I must touch. It was touched on earlier in the day and made memorable by the speech of the noble Lord, Lord Rooker, although I am not sure that I entirely agreed with his solution. The question is whether it can ever be right to include provisions such as these in the wash-up. I think we all agree that there may well be cases where the wash-up serves a very useful purpose. It may yet prove to have served a very useful purpose in relation to the constitutional reform Bill if Part 1 can be salvaged, as I hope that it will be. We are told that the wash-up has been around for 100 years, but things have changed since then. What has changed above all is the scale on which the wash-up is now used. The noble Lord, Lord Tebbit, touched on that point. In the old days, the wash-up covered perhaps one or two single-purpose Bills. Now it covers three or four multi-purpose Bills. In those circumstances, it simply does not work. I submit that it is a misuse of the whole process, which could easily degenerate into something a great deal worse.

The wash-up should never be taken for granted, as happily it has not been in relation to the constitutional reform Bill. I submit that we should reject it altogether in relation to the provisions on gang-related violence as they in effect—if not in name—are creating new criminal offences consisting of the breach of an injunction imposed by a civil court. That is especially worrying when the effect of these clauses will be to expose 14 year-olds to the possibility of serving up to three months' detention in a young offender institution. These are both matters on which Cross-Benchers might have been expected to have strong views, and possibly even to have something helpful to offer, but they have not been able to do so because they are not consulted. They play no part in the wash-up. If this Bill is enacted, it will be said that it has been,

"ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal".

But the Cross-Benchers have not been consulted on these provisions. I suggest to the noble Lord that it is quite wrong at this stage that they should be included in the Bill.

The noble Baroness the Leader of the House said earlier that the wash-up does not necessarily involve the whole and every part of every Bill and that it is possible for it to leave parts of a Bill out. I suggest that it would be altogether suitable for Clauses 34 to 39 to be left out and that they should be brought back before us in the new Parliament.

Baroness Neville-Jones: My Lords, I am sure that I have the agreement of the House when I say that all of us wish to see a reduction in gang violence and gang-related violence, which makes the daily life of so many people such a misery. The police need to be freed up and given powers to deal immediately and effectively with gang incidents, which increasingly blight our towns and cities. Most of the people who attend this

House do not have to live in parts of towns where this occurs, but it certainly causes misery for those where it does.

It is a sad fact that a significant number of gang members are under the age of 18. This is a real problem. I certainly have sympathy with those who do not wish to see us go down the road of criminalising children, but some young people do very wicked things.

These clauses give sanctions to civil courts, including youth custody—just mentioned by the noble and learned Lord—which were previously reserved for youth courts. The youth justice system should not be bypassed, but we also take the view that it is increasingly insufficient.

Today we shall not oppose these provisions because the Minister previously gave an assurance that they will be used only as a measure of last resort. We obviously hope that that undertaking will be stuck to, and, rather like the noble and learned Lord who referred to the increasing practice of using the civil courts as a route through which criminal penalties can be imposed, we would, if given the opportunity in government, wish to scrutinise this. We see it becoming a form of hybrid law that is not known to this country and is not desirable. We would wish to do something about that.

I understand that the Government also intend to test the provisions through pilot schemes. This is an important idea. The results need to be reported to Parliament before there is a wider rollout. If these pilots are not successful, it follows that the provisions should not be implemented countrywide. It is on that basis that we are willing to support the measures today.

Lord Dholakia: My Lords, I shall be very brief. Perhaps I may say how much I support the contributions of my noble friend Lady Hamwee and the noble and learned Lord, Lord Lloyd of Berwick.

I find it difficult to understand why the Government are in such a hurry about this matter. This is not the first time that we have discussed it, particularly in relation to extending gang injunctions to under-18s. When that was first discussed under the Policing and Crime Bill last year, we raised objections, but we also said that we should review within three years the operation of gang injunctions for adults. Yet, hardly any time has passed before another provision has come from the Government in relation to those who are 14 or over.

The noble Baroness, Lady Neville-Jones, talked about getting an opportunity at some stage to scrutinise the route through the civil courts. If that is the case, perhaps I may ask her why she does not object to this matter now, for the simple reason that the measure that we agreed relating to adults has not yet had an opportunity to be put into operation. Why should we therefore be in a rush in relation to children and how they may be affected? I ask the Minister: what sort of research have the Government undertaken which brings them to the conclusion that the civil courts are the right way to take this matter forward?

Did the Government take any account of the briefing from the Standing Committee for Youth Justice? It said that it did not believe that the measure would be effective at addressing the root causes of problematic behaviour. Many young people involved in gangs often have limited choice as to whether to join them, and their parents are not aware of the implications of their involvement. The standing committee came to the conclusion, therefore, that it opposed the new provision to extend to those aged 14 and over the application of injunctions for gang-related violence.

I wish to put another point of view to which I ask the Minister to give some thought. There is a danger that by using such measures, we tend to criminalise our young people at a very young age. The implication of that criminal process in their adult life is very considerable. Has he ever considered the implications for many in our diverse communities? I share the concern that he expressed when he previously talked about stop and search. Here is another method by which we are criminalising gangs of young people. Perhaps we should be looking at alternative ways of dealing with this matter, as has been explained by the Standing Committee for Youth Justice. It would be very helpful if the Minister cited some evidence of why this provision is required given that the main provision for over-18s has not yet been implemented.

8.45 pm

Lord West of Spithead: My Lords, I have some sympathy with the views of the noble and learned Lord, Lord Lloyd, and indeed some other speakers, about wash-up, but I have no intention of veering off-track into the minefield of trying to change the rules for wash-up. That would be foolhardy of me. We are where we are.

Gang injunctions for 14 to 17 year-olds are needed because, unfortunately, this age group has shown itself to be vulnerable to the temptations of the gang lifestyle and as violent as their older peers—unbelievably violent at times. The Home Office report *Monitoring Data from the Tackling Gangs Action Programme*, produced in May 2008, found that the average age for the first conviction of young gang members was 14. Briefing from the Metropolitan Police Service received last week shows that of the recorded "gang" flag-marked offences in London, 45 per cent of accused are under 16 years of age and 42 per cent are aged between 17 and 23. There is a clear operational need for these injunctions to apply to 14 to 17 year-olds as a tool to prevent these violent offences and to help the young people out of the gang lifestyle.

Secondly, under-18 gang injunctions are needed because injunctions work. During the debates on the Policing and Crime Act, Jackie Russell from the gang team in Birmingham wrote to the department about the use of Section 222 Local Government Act injunctions against over-18 gang members. In her letter she said:

> "Injunctions were able to reduce serious harm offences by 15%, robbery by 12.5% and violent crime by 6%".

We are being asked to create these powers by our operational colleagues—those who know best what is needed to manage these violent individuals. Detective Chief Superintendent Paul Richardson, head of the Matrix Unit in Merseyside, wrote to me on 15 June last year stating that the injunctions in the Policing and Crime Act must be applied to under-18s. His view

[Lord West of Spithead]
was echoed by Maureen Noble, head of Manchester CDRP, and Councillor Jim Battle from Manchester City Council during their evidence before the Public Bill Committee on this Bill in another place.

We fully understand the need to protect the rights of young people who will be served with these injunctions. That is why we included a range of safeguards from the outset of the Bill, and we have strengthened these in response to debate in the other place. This point was raised by the noble Baroness, Lady Hamwee, the noble Lord, Lord Dholakia, and others. The safeguards include: engagement of the youth offending team, who are experienced in dealing with young people, at the earliest stage and throughout the process; a mechanism for punishing breach, aimed at removing the individual from the gang lifestyle—a point referred to by a couple of speakers—and stating in the Bill that detention can be used only when no other sentence is appropriate and that the judge must give his reasons in open court for imposing detention.

We also propose, as the noble Baroness, Lady Neville-Jones, has said, to pilot these injunctions in a single area to assess how they work and the impact that they have before taking a decision on national rollout. That is extremely important and will give us some data from which to work.

We are providing a new tool to police forces and local authorities to manage the violent young gang members whom they identify as a huge problem and whom they are struggling to manage. The recent tragic case in Victoria train station shows how relevant such a power is. I urge noble Lords to agree that Clauses 34 to 39 should stand part of the Bill.

Baroness Hamwee: My Lords, much as I would like to debate the aspects of wash-up, perhaps that is not for now: it is almost 8.50 pm and there is a lot more to get through today. I say to the noble and learned Lord, Lord Lloyd, who said that his colleagues were not consulted, that neither were mine.

I am glad that the noble Baroness, Lady Neville-Jones, is concerned about the development of what she called hybrid provisions—the merging of civil and criminal law. They are an extremely serious development, which goes far beyond this issue.

In view of the time, I will simply pick up on the words of the Minister when he talked about helping young people out of their lifestyle. It is the view of these Benches that criminalising children does not help them out of their lifestyle. The Standing Committee for Youth Justice, to which my noble friend referred, has no doubt told many of your Lordships about its concern that the Bill threatens children's safety, compromises their welfare and risks inappropriately criminalising them. The committee therefore opposes the Bill in so far as it affects children and young people in trouble with the law. We share that concern and oppose the clause standing part of the Bill.

8.50 pm

Division on Clause 34

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Clause 34 agreed.

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9 pm

Clauses 35 to 44 agreed.

Clause 45 : Offences relating to electronic communications devices in prison

Debate on whether Clause 45 should stand part of the Bill.

Lord Marlesford: I have a small point on Clause 45. I wish to express regret that the Government did not take the opportunity to do something as regards passports, which the noble Lord, Lord West, knows I have an interest in. It would have been a good opportunity for the Government to require that passports of those persons serving custodial sentences be invalidated while they are serving their sentences. I have tabled Parliamentary Questions on the subject for some time.

At the moment, there is a danger that such passports could be misused by others in the criminal fraternity. Under the new electronic passport system, it should be perfectly possible and easy for a passport to be made invalid for the necessary period. Therefore, the requirement should be that the prison authorities report to the passport and immigration agency who they have in prison and, if that person is on the agency database as having a passport, that passport would then be invalidated until the person is released from custody. That is the only point I wish to make under Clause 45.

Baroness Neville-Jones: My noble friend makes a strong point.

Lord West of Spithead: My Lords, although the noble Lord raises a very interesting issue, I do not believe that the substance of his query has any impact on the merits of the decision before us now. A number of safeguards are in place. Perhaps I could write to the noble Lord and let him know what they are. If he wants to look at a policy review, it would be better for him to write to the Home Secretary and the Secretary of State for Justice, setting out the issues that he has raised. Some protections are in place and it is not quite as easy as it may seem at first glance to use such passports. On that basis, I beg to move that Clause 45 stand part of the Bill.

Clause 45 agreed.

Clauses 46 to 55 agreed.

Clause 56 : Persons subject to control order: powers of search and seizure

Debate on whether Clause 56 should stand part of the Bill.

Lord Lloyd of Berwick: Having had a glance at the hour, I shall be very brief. I say at once that I do not intend to divide the House. The Conservatives have said that, if they win the election, they will carry out a review of control orders as part of a wider review of terrorist legislation. The noble Lord, Lord West, has said that the Government will do the same if they win the election. My simple question is: what conceivable purpose is there in amending the 2005 Act now to add to the sanctions which can be imposed on those subject to control orders?

The police and the security services have said that they need the power to search those subject to control orders when moving them from one area to another—or relocating them, as it is called. Everybody agrees that relocating is a barbarous process anyway—when I say everybody, I have in mind in particular Justice, Liberty, the Joint Committee on Human Rights and the House of Commons Home Affairs Committee. In any event, the police have done without the power to search since July 2009, and the sky has not fallen in. I do not see how anybody can seriously argue that by leaving out Clause 56 we will be putting the public at risk. I hope that we will not hear those words from the noble Lord, Lord West, when he replies. The Government have not made out a case for Clause 56, unless the police are always to have whatever they ask for. The Government have not made out a case for amending the 2005 Act now, just prior to the election.

Baroness Kennedy of The Shaws: My Lords, I support the question that the clause should not stand part of the Bill. I say immediately that I am directly involved in such cases from time to time as counsel. It came as a great shock to me that we introduced the idea of relocation. It is a form of internal exile. The only place where I had ever come across it before was when I went to Chile for the first election after the end of Pinochet and found that many people did not have

[Baroness Kennedy of The Shaws]
their vote because they had been moved internally and forced to live away from their places of origin. The idea that we are doing that to British citizens in the United Kingdom is absolutely shocking. I agree with the noble and learned Lord, Lord Lloyd: the business of searching has not been necessary in any of the cases in which I have been involved. It really is unnecessary. The requirement being sought by the police derived from one particular case. I urge the Front Bench to reconsider. It seems to me, as the noble and learned Lord said, that it is as if the police have only to ask for something and immediately the Government jump over that hurdle. This is not needed. I say that with some force as someone acting in such cases.

Baroness Hamwee: I add the support of those on these Benches to what the noble and learned Lord said. We have made very clear our opposition to control orders. Like him, we look forward to a very speedy review and radical alteration of the system. We continue to oppose control orders; we would not like to be seen to be saying anything that might be considered to be in support of them tonight.

Lord West of Spithead: My Lords, the recent judgment confirms that, at present, the police have no enforceable power to undertake a search in the circumstance of someone wishing to move to another area from where he has been moved. Where it is not appropriate to refuse the controlled person permission for the journey, the options left are, first, to allow him to be outside his boundary without an escort. We have had the debate about control orders—and, yes, we want to look at them in future—but the whole reason for them is that these people are seen as a great risk. That option is unacceptable. Alternatively, we can allow the journey on an escorted basis, but relying on his co-operation to agree to a search. Of course, he could be carrying a mobile phone or some other method of making contact with someone—a whole raft of means. That is part of the reason for those controls being put on him. Or we could require him to travel in the back of a police van, if he refuses to agree to a search. That is hardly an ideal solution. Alternative police search powers, such as those under PACE or the Terrorism Act, are not generally appropriate in this case.

While we and the police are doing our best to manage these problems on an operational basis, the need for a legislative solution is clear, and the noble Lord, Lord Carlile, endorsed taking early action to add such a power in his fifth report on control orders, which was published on 1 February. With the best will in the world, if one is looking for something to happen, whoever is in government next time round, nothing would be coming in until December or beyond. That is the realistic timescale.

In addition, the powers contained in subsection (2) of this clause provide powers of seizure and retention for use as evidence in a trial or for forensic examination of items that have been removed from a controlled person's premises during a police search when the police subsequently have reasonable grounds to believe it is or contains evidence in relation to an offence. On that basis, Clause 56 should stand part of the Bill.

Clause 56 agreed.

Amendment 3

Moved by ***Lord Marlesford***

3: After Clause 56, insert the following new Clause—

"Databases: scrutiny of entries

(1) No suspicious activity report (SAR) on a person (P) may be retained on a database operated by a law enforcement agency without having been subject to independent scrutiny under subsection (2).

(2) The Secretary of State shall by regulations establish a system for the independent scrutiny of SARs with a view to ensuring—

(a) the accuracy and reliability of information contained in SARs, and

(b) the protection of P's rights under the European Convention of Human Rights and other relevant international Conventions."

Lord Marlesford: This amendment derives from the report into money laundering and the financing of terrorism that was made by Sub-Committee F and published last year. I was privileged to spend three years as a member of that committee. I must explain, very briefly, of course, what it is all about because we discovered it only when we made the study. The Minister and I have corresponded and talked about it frequently, and I have had answers to a number of Written Questions that have elucidated the case for it.

In order to monitor and prevent money laundering, if the regulated sector, which basically means banks, lawyers, building societies, accountants, finance companies and so on—there is a whole list of them—believes that somebody has been engaged in money laundering, it is required to make a suspicious activity report, commonly known as an SAR. This report is made to the Serious Organised Crime Agency, commonly known as SOCA, which was previously headed by Sir Stephen Lander, the former director-general of the Security Service MI5. It is there to deal with serious and organised crime.

In our inquiries, we discovered that this process of suspicious activity reports has no de minimis condition. A very large number of reports are made. In March last year, there were already 1.5 million reports, and there are now getting on to 2 million. Those who are the subject of such a report are put on to a database known as ELMER. We inquired into it, and found that that is not an acronym. We never discovered what it is, and if the Minister were able to tell us that would advance our knowledge. You get put on this database of suspects. You are not told you are on it, and you will be on it for up to 12 years. It is particularly disturbing that it is not only the regulated sector as it is at present that can put somebody on it, but an anonymous denunciation can result in somebody being put on it. That is quite astonishing and has pretty nasty Stasi overtones.

In our report, we made two recommendations:

"The FATF Recommendations do not require information on the ELMER database to be made available other than in connection with serious crimes. Access for other purposes should be on request to SOCA".

In fact, there is widespread, direct access to this database. The noble Lord, Lord West, has been kind enough to answer questions giving examples of the sort of people

who have access. It even goes down to the Neath Port Talbot County Borough Council, which apparently uses the database to check on consumer behaviour. In my view, this is something of an outrage. The database should be secret. People should be assessed before they are put on to it. My amendment would ensure that that happened. It says:

"(1) No suspicious activity report … on a person … may be retained on a database operated by a law enforcement agency without having been subject to independent scrutiny under subsection (2).

(2) The Secretary of State shall by regulations establish a system for the independent scrutiny of SARs with a view to ensuring—

(a) the accuracy and reliability of information contained in SARs, and

(b) the protection of",

somebody's,

"rights under the European Convention of Human Rights and other relevant international Conventions".

The second recommendation of the Select Committee report from July last year to which I wish to refer was:

"The Information Commissioner should review and report on the operation and use of the ELMER database, and should consider in particular whether the rules for the retention of data are compatible with the jurisprudence of the European Court of Human Rights".

As far as I am aware, the Whitehall process is grinding on and nothing has emerged. In my view and, I think, the view of some of my colleagues on the committee, this is a serious situation, which needs much more action than appears to have taken place. Therefore, I should like to see in this Bill, in which it fits perfectly well, an appropriate protection to make sure that we do not have a secret database of suspects about which people know all too little. I beg to move.

9.15 pm

Lord Hodgson of Astley Abbotts: My Lords, I was a member of Sub-Committee F with the noble Lord, Lord Marlesford, whose amendment I support. I first came across the issue of money laundering and SARs when I was a non-executive director of a small blue-collar building society in the West Midlands—we were about 23rd or 24th on the list in size. I was head of the audit and compliance committee. We used to make 400 or 500 SARs a year. To my knowledge, not one was ever for more than £500; they were mostly for sums of about £150. It seemed to me that an awful lot of time and effort was being used up in making these reports and there was never any response from NCIS, the predecessor of SOCA, about what was happening. When I had the temerity to write and ask what was happening to the reports, I was told very firmly to mind my own business. I then wrote to ask what had happened to the reports. I was again told to mind my own business. I think that things have improved now, but that was the attitude and approach then.

I want to underline what my noble friend has said. The scale is truly staggering. There are 210,000 reports a year. Nearly every month there are 15,000 and, in a big month, there are 30,000. The issue is not just the number of reports; the list of people to whom the information is made available is quite extraordinary. Why should the Post Office and Royal Mail be able to get hold of it? Why should the National Ports Analysis Centre need this information? It beats me, I am afraid.

This information is contained in the SOCA annual report, which does not attempt to conceal any of this. However, a vast amount of information is being circulated about citizens, most of whom will not know that they are on the database and will have no chance of having the database corrected. They may just have been going about their business when they were the victim of an anonymous, vindictive tip-off, as my noble friend said.

Just to make it absolutely clear, the report said:

"On receipt of a SAR no steps are taken to confirm whether or not the suspicion on which it was based is well founded, and SOCA believes it would not be practicable or useful to do so".

Well, that surprises me. Secondly, it states:

"An individual who wishes to see whether the ELMER databases includes entries relating to him, or to transactions or activities in which he has been involved, is unlikely to succeed. SOCA is not subject to the Freedom of Information Act ... Information may be sought under section 7 of the Data Protection Act 1998, but it is likely that the exemptions relating to national security and crime will apply".

I think that we have a black hole into which information goes, is stored and is used for reasons we know not and by agencies we know not. My noble friend is doing a valuable service by proposing this amendment.

Baroness Neville-Jones: I agree with the comments made by my noble friend. The points he raised are valuable and important. Suspicious activity reports are based on the suspicions of those operating in the regulated sector. The question that has been asked is what happens once those reports are received. As has just been mentioned, the Government, in various replies, have said that SOCA does not take steps to establish whether an unknown or anonymous reporter's suspicions are unfounded before the information is recorded on this famous ELMER database. However, they also said that 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. One has to ask whether that is a foolproof way of discovering whether such information has any reality in it. Each SAR, whether or not confirmed as having any real base, is assigned a deletion date of 10 years after receipt and is automatically deleted unless it has been amended or updated. The deletion date thereafter is set to a further six years.

The views of the EU Select Committee have been mentioned. The Information Commissioner has also interested himself in this matter. He has said that if there are SARs meeting a particular threshold level rather than based on hard evidence of criminal activity, the prolonged retention of those records would in his view be inappropriate and disproportionate. The EU committee said:

"Although SARs are not kept indefinitely, the fact that they are routinely retained for ten years on a database to which there is wide access is a matter of concern to us, especially in those cases where it can be shown that the initial suspicion was unfounded"

Both speakers have referred to the widespread access that can be had to this information. It is extraordinarily important that, if people are to have access, some effort should be undertaken to establish whether the suspicion is founded or not, which is quite apart from the issue of how widespread that access should be.

I understand that there is,

"a procedure for earlier deletion of individual SARs where all necessary activity relating to that SAR has been undertaken".

[Baroness Neville-Jones]
In responding, it would be helpful if the Minister could expand on this and say whether it includes removing SARs if subsequent investigation shows that they were unfounded. That is a key point.

I also understand that the Information Commissioner will review the handling of SARs, which is extremely welcome. Will the Minister say when this review will start and when it will be completed? If this information is known to him, it would be helpful for the House to have this information. This independent scrutiny certainly is welcome. This serious issue deserves much more consideration than we will be able to give it tonight, given the constraints of time. It probably makes sense to wait until the outcome of the Information Commissioner's review is known, although it is important to know the timescale. If a Conservative Government are returned to office, these are issues to which they will return.

Baroness Hamwee: My Lords, I say simply from these Benches that we have considerable sympathy with the concerns that underlie the amendment and I look forward to having an opportunity to look at this matter in more detail and at greater length than we will be able to do tonight. I recall the report that has given rise to this amendment, but addressing those concerns is perhaps more complex than an eight-line amendment might suggest.

Lord West of Spithead: My Lords, the noble Lord, Lord Marlesford, referred to acronyms such as ELMER. I seem to have been haunted by acronyms all my life. Some 44 years ago in my first ship, I recall reading a menu that had on it RBG, which I discovered was "rich brown gravy", and TYC, which was "thick yellow custard". I was thrown by HITS, which was "herrings in tomato sauce". I am afraid that I do not know what ELMER stands for, but I will do my best to find out.

The noble Lord has raised an important issue. We recognise the need for appropriate scrutiny of the SARs database. It is already independently scrutinised by the SARs regime committee, which includes private sector and government representatives, and in a sense by Parliament in the form of regular Parliamentary Questions. The noble Lord and I have been in almost continuous dialogue on this issue. We do not think that it would be practical to scrutinise individually every single suspicious activity report before it can be placed on the database, because that would create a huge layer of bureaucracy and a vast administrative burden. As the noble Lord, Lord Hodgson, said, over 200,000 SARs a year are processed.

The noble Baroness, Lady Neville-Jones, touched on the recommendation of the European Union Committee of this House that the Information Commissioner should review the operation and use of the SARs database. I am not sure when the review will start, but it has to be completed by December of this year. It would be precipitous to amend legislation before the Information Commissioner's report is published, as I am sure that he will look at all the aspects, including removal and how long material should be kept on the database.

On the basis that independent scrutiny of each and every SAR would be impractical and in anticipation of the Information Commissioner's report, I ask the noble Lord to withdraw his amendment.

Lord Marlesford: I thank the Minister for that reply. I think that I have at least stimulated a little interest in the matter. Recently there has been a further development. HMRC has decided that all bookkeepers of a small business or even a sports club, however small a scale they operate on, should become part of the regulated sector and register with HMRC with a view to it being able to make SARs. The danger is that this is a form of sweeping in any sort of information simply for the purpose of having it. Let me just give an idea of the scale of this: it could involve some 1.7 million small businesses employing fewer than five people and the 2 million businesses that employ fewer than 10. It has been made clear in Parliamentary Answers that there is no de minimis exemption, but in practice, although the requirement to register has been in place for two years, small business bookkeepers have not done so. Only 12,000 of those who might have had to do so have actually put themselves on the database, presumably because one deterrent is that any wretched bookkeeper, however small scale, has to pay £95 a year for the pleasure of having registered.

I raised this issue with the noble Lord, Lord Mandelson, the Secretary of State for Business and everything else. He assured me that he thought that this sounded like a good candidate for the Better Regulation Task Force. I hope that he has referred the issue to that unit so that at least this nonsense will not be taken any further. In the meanwhile, I am grateful to noble Lords for listening at this late hour and I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Clauses 57 to 60 agreed.

Schedules 1 and 2 agreed.

House resumed.

Bill reported without amendments. Report and Third Reading agreed without debate.

Lord West of Spithead: My Lords, I want to put on record my thanks to all the Members of the House who have taken part in the debates today. I am aware of the pressures of wash-up, but I have no doubt that the Bill will help to protect the public and provide justice for the victims of crime.

Bill passed and returned to the Commons.

Business

Announcement

9.31 pm

Lord Bassam of Brighton: My Lords, this may be a convenient point for me to respond to the debate earlier today in the House on the Business of the House Motion, particularly on the Constitutional Reform and Governance Bill.

My noble friend the Leader of the House gave an assurance earlier that she would consult the Lord Chancellor. I am pleased to be able to report that my

noble friend Lord Bach and my right honourable friend the Lord Chancellor have held constructive discussions with a number of Members of the House. I believe that the Government are now able to proceed with the Bill in a form that will find favour with your Lordships' House and will accord with the general tenor of the debate earlier today.

A note from my noble friend Lord Bach is now available in the Printed Paper Office and the Government Whips Office. It sets out those parts of the Bill that the Government now intend to withdraw.

Finance Bill

First Reading

9.32 pm

The Bill was brought from the Commons and read a first time.

Energy Bill

Order of Commitment Discharged (and remaining stages)

9.33 pm

Moved By ***Lord Hunt of Kings Heath***

That the order of 23 March be discharged, and that the Bill be committed to a Committee of the Whole House.

Motion agreed.

House in Committee.

Clauses 1 to 9 agreed.

Clause 10 : Schemes for reducing fuel poverty: supplementary

Amendment 1

Moved by ***Lord Hunt of Kings Heath***

1: Clause 10, page 9, line 36, leave out "the Secretary of State may determine," and insert "may be specified in the scheme, the Secretary of State may determine that"

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): I shall speak also to the other eight amendments in this group. I acknowledge the consensual way in which agreement has been reached between the various parties concerned on the way forward for the Bill. I thank the noble Lord, Lord Jenkin, for withdrawing his amendments; it is much appreciated.

In its eighth report in this parliamentary Session, the Delegated Powers and Regulatory Reform Committee recommended several changes be made to the Energy Bill. It highlighted two areas in Part 2 where the level of parliamentary scrutiny could be increased: Clause 10(6) in relation to the power to disapply or apply with modification any requirement of a scheme to reduce fuel poverty; and Clause 15(2) in relation to changes to the fuel poverty definition. Amendments 1 to 8 address these areas.

The committee expressed concern about the breadth of the powers in Clause 10(6), which allow the Secretary of State to disapply or modify any requirement of a scheme. In response to this, Amendments 1 and 2 will constrain the circumstances under which this power may be used. This is done by requiring the circumstances in which the Secretary of State can use the power in Clause 10(6) to be detailed in the scheme regulations made under Clause 9. Regulations made under Clause 9 are subject to the affirmative procedure. Through Amendment 3, the Secretary of State would also be required to inform Parliament of any changes made under the power in Clause 10(6). This will be done by laying a memorandum before Parliament detailing any such modifications.

The committee also recommended that any regulations that seek to redefine or determine the scope of fuel poverty or its extent for the purposes of the Bill should be subject to the affirmative procedure. In order to meet this recommendation, we propose several amendments. First, where the existing Bill points back to the definition of fuel poverty in the Warm Homes and Energy Conservation Act 2000, Amendments 5 and 6 propose replicating the definition in that Act in this Energy Bill. Amendments 7 and 8 then make any regulations that seek to change the definition of fuel poverty or its extent in this part of the Bill subject to the affirmative procedure, as recommended by the committee. Amendment 4 ensures that any change to the definition of fuel poverty or its extent are subject to consultation in the same way that the schemes for reducing fuel poverty are subject to consultation.

The committee also recommended a change to Part 4 of the Bill, which covers general provisions. Amendment 9 is tabled to remove the discretion contained within Clause 31(4) that the Secretary of State has in certain cases to choose the parliamentary procedure to which a statutory instrument is subject. We now consider that we no longer require this discretion and therefore we are happy to accept the committee's recommendation in full.

We have accepted and taken action on all the recommendations made by the committee. The amendments are a valuable addition to the Bill. They increase the level of parliamentary scrutiny and I hope that the House will support them. I beg to move.

Lord Jenkin of Roding: My Lords, the Minister has explained the amendments extremely clearly and I have no quarrel with them. I thank him for the letter that he wrote to me on 1 April following the discussion that we had at Second Reading about why there is a difference between the data-sharing arrangements and powers that will apply to the rebate schemes under this Bill and those that otherwise applied to the carbon emissions targets scheme under other legislation.

The Minister has made a convincing case. My only anxiety is that, although the Information Commissioner's Office appears to have been satisfied by the arrangements that the Government now have, we are not to be allowed to see the correspondence that passed between the department and the Information Commissioner's Office. The noble Lord has said that it is privileged communication; someone may like at some stage to make a freedom of information appeal to see whether

[Lord Jenkin of Roding]
or not that claim would hold. In the mean time, I express my thanks for a full and detailed explanation of a point that I raised at Second Reading.

Baroness Wilcox: My Lords, as I said at Second Reading, we welcome the Bill as far as it goes. Most of what is in it is long overdue and would not have caused us too much trouble even if we were to have had sufficient time to discuss it in detail in Committee. The Minister has been most careful to make sure that we have had as much help as we needed to bring us to where we are today, while the noble Lord, Lord Jenkin, has kindly removed the amendments that he had put down. We would have preferred there to be more in the Bill. I have not experienced wash-up before; I do not think that many of us are finding it very pleasant. We shall support the amendments. The Delegated Powers Committee made its recommendations and the Minister's amendments, which he has grouped together, support them. I thank him for his courtesy.

Lord Addington: My Lords, we remain supportive of the Bill and of the amendments, particularly Amendment 3. Not having to prise out the affirmative procedure from the Government is certainly a pleasant change.

Lord Hunt of Kings Heath: My Lords, I thank all noble Lords who have spoken. A copy of my letter to the noble Lord, Lord Jenkin, has been placed in the Library. I understand his point about confidentiality of information between the department and the ICO. One can think of some circumstances where the information in that correspondence would be the subject of an argument as to whether it should be released. That may be one of the reasons why, in certain circumstances, it should remain confidential. Whether that is so, the commissioner will at some point rule. I would be interested if the noble Lord were to pursue this matter through a freedom of information request; we shall have to see how he gets on. I am grateful.

Lord Jenkin of Roding: All I can say is, not next week.

Amendment 1 agreed.

Amendments 2 and 3

Moved by ***Lord Hunt of Kings Heath***

2: Clause 10, page 9, line 40, after "and" insert "the support scheme"

3: Clause 10, page 9, line 41, at end insert—

"(7) If the Secretary of State makes, amends, or revokes, a determination in accordance with provision included in a support scheme by virtue of subsection (6), the Secretary of State must lay before Parliament a memorandum of the determination, amendment, or revocation."

Amendments 2 and 3 agreed.

Clause 10, as amended, agreed.

Clauses 11 to 13 agreed.

Clause 14 : Regulations under Part 2: procedure etc

Amendment 4

Moved by ***Lord Hunt of Kings Heath***

4: Clause 14, page 11, line 15, leave out "or 11" and insert ", 11 or 15"

Amendment 4 agreed.

Clause 14, as amended, agreed.

Clause 15 : Schemes for reducing fuel poverty: interpretation

Amendments 5 and 6

Moved by ***Lord Hunt of Kings Heath***

5: Clause 15, page 12, line 9, leave out from second "person" to ", and" in line 12 and insert "is a member of a household living on a lower income in a home which cannot be kept warm at reasonable cost"

6: Clause 15, page 12, line 16, leave out subsections (3) and (4) and insert—

"(3) The Secretary of State may by regulations make provision about—

(a) what is to be regarded as living in fuel poverty for the purposes of this Part;

(b) what is to be regarded as a reduction in the extent to which a person is living in fuel poverty for the purposes of this Part.

(4) Provision made under subsection (3) may, in particular—

(a) specify what is to be regarded for the purposes of subsection (2)(a) as a lower income, or a reasonable cost, or the circumstances in which a home is to be regarded for those purposes as being warm;

(b) amend this section."

Amendments 5 and 6 agreed.

Clause 15, as amended, agreed.

Clauses 16 to 30 agreed.

Clause 31 : Orders and regulations

Amendments 7 to 9

Moved by ***Lord Hunt of Kings Heath***

7: Clause 31, page 25, line 20, after "9" insert "or 15(3)"

8: Clause 31, page 25, line 32, leave out "or 15(4)"

9: Clause 31, page 25, line 34, leave out from "is" to "subject" in line 35

Amendments 7 to 9 agreed.

Clause 31, as amended, agreed.

Clauses 32 to 39 agreed.

Schedule agreed.

House resumed.

Bill reported with amendments. Report and Third Reading agreed without debate. Bill passed and returned to the Commons with amendments.

Children, Schools and Families Bill

Committee (and remaining stages)

9.45 pm

Clause 1 : Pupil and parent guarantees

Debate on whether Clause 1 should stand part of the Bill.

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): My Lords, at Second Reading, many noble Lords will remember that we celebrated the successes of this Government and what we have achieved since 1997.

Noble Lords: Ha!

Baroness Morgan of Drefelin: We did! It was a great celebration. On this basis, we were able to provide guarantees for pupils and parents into the future. These would have been extremely important guarantees, such as that for one-to-one tuition for children falling behind in English and maths; they would have been funded through our commitment to protect front-line spending. We believe that such tailored support should no longer be the preserve of the wealthy and privileged but be a core component of the curriculum. Alongside them, we intended to strengthen home-school agreements so that head teachers and teachers generally had the powers that they needed to ensure good discipline in schools, and that parents took responsibility for their children. As behaviour expert Sir Alan Steer reported recently, it is important that schools have the confidence of knowing that they operate within a legal system that supports their endeavours and that both parents and schools know that the use of a parenting order is a possibility. However, these important reforms are now being withdrawn. Where we would offer guarantees, others would not; where we would give heads in our schools the powers that they want, the party opposite would not.

There are many other important clauses coming predominantly from our schools White Paper, published in June last year, which sought seek to drive further sustained improvement in schools and youth offending teams. They would have provided parents with the information that they need to ensure that communities are safe and secure. I see no reason why these clauses have been opposed, but they have, and as is the custom we are working together in the agreement.

We want schools to do the best for our children, and we all know that that means good teaching. On this basis, we introduced our proposals to introduce a licensing scheme for teachers. Our intention was to accompany that with a contractual entitlement to continuing professional development. We would be following what other professions do, such as doctors and lawyers, but it seems that there is no commitment to do that on all sides of the House. It is deeply regrettable, but it is something that I believe that we need to do at this point. With great regret, we oppose this stand part.

Baroness Verma: My Lords, we are delighted that the Government have tabled amendments to remove Clauses 1, 2 and 3 from this Bill. We on these Benches have made it clear that we think these clauses are a legalistic and bureaucratic way of trying to address the problems of poor standards in education. We do not believe that these clauses help to address the really important questions of how to ensure that pupils go to school where there is good behaviour, strong discipline, order and safety.

We are also thankful that the Government have removed Clauses 4 and 5. As noble Lords will be aware, we have consistently called for home-school contracts to be strengthened, but the Government's proposals for individual agreements here would have meant further, increased bureaucracy. We believe that agreements should be standardised for all pupils. We understand the value of taking into account parental opinions regarding school provision. Clause 6, however, was overly bureaucratic, with excessive planning, consultation and referral and very little in the way of real action. We are also grateful for the fact that they have removed Clause 19, which is a prescriptive approach to the management of a school. Surely, all heads should be free to seek advice which they find helpful. Why should it be required if others do not find it an efficient use of resources?

I thank the Government for removing Clause 20, which contains the powers for the Secretary of State to collect and publish all information required for their proposed school report card. We on these Benches argue instead that it is more helpful to publish as much objective and factual information as possible, rather than hiding it in an unclear overall report card. We are very grateful indeed that the Government have removed the bureaucratic, tick-box provision which would have brought in licences to practise as teachers. Those clauses showed a marked distrust of the professionalism of teachers. We are grateful for these concessions.

Baroness Walmsley: My Lords, this Bill is a complete car crash. Hardly anything remains of the old banger in one piece. There are bits remaining for which you might get a fiver in a scrapyard, things being sent to the crusher that should remain on the car, and parts that the Government do not propose to scrap but which should go to the crusher. It is a complete mess and completely unroadworthy—and all because of two sad facts. First, the Government have rushed through ill thought-out measures in a vain attempt to appear to have done something about schools and children before they finally expire and become a dead-parrot Government. Secondly, there is the fact that they carved this whole thing up with the Conservatives, behind closed doors, and did not bother their pretty little heads about the opinions of the party that represents about a quarter of the electorate; so much for their respect for democracy.

We are now faced with an appalling carve-up without either moral legitimacy or logic. The Conservatives are seeking the support of the electorate on the basis that they will bring change. This old two-party alliance has been going on for as long as I can remember, even in the face of the fact that half the electorate voted for

[Baroness Walmsley]
other parties in 2005. Neither of them wants to face that fact, so they get together in dark corners and try to get away with deciding between them what is going to happen. After all, they were born to rule, weren't they? If it is not one then it is Buggins's turn. It really is time that they accepted that that is not the way of things any more.

Having got that off my chest, I turn to the matters in this grouping. These clauses sought to introduce pupil and parent guarantees, home-school agreements, parental satisfaction surveys, regulations on school improvement partners, powers for local authorities on schools causing concern, licences for teachers to practise, and regulations on the supervision of youth offending teams. In the short time that we have had available, we on these Benches have opposed all that as being unrealistic, undeliverable and too bureaucratic—apart from the youth offending regulations, which we think are okay but which have not been properly debated. Despite the sneaky way in which the Government have acted behind closed doors, then, we are happy to support dropping all these clauses.

Lord Lucas: My Lords, what the Liberal Democrats are experiencing is a moment—a very rare moment—when we act as if we had PR in this country, and matters are decided between parties rather than in open debate.

Lord Alton of Liverpool: My Lords, it would be tedious at this late hour to keep the House for very long—

Lord Lawson of Blaby: Carry on!

Lord Alton of Liverpool: At Second Reading, I made a long speech which the noble Lord, Lord Lawson, can perhaps take the trouble to consult in *Hansard* if he is really interested. However, I do not think that other Members of your Lordships' House would be very pleased if I were to repeat those arguments this evening.

I have, with my noble friends Lady O'Loan, Lord Northbourne and Lord Hylton, tabled a series of amendments which are on the Marshalled List today. I am extremely grateful to the Government and the noble Baroness, Lady Morgan, for having listened to those concerns and for withdrawing from the Bill the clauses that touch on those issues. I also pay particular tribute to the noble Baroness, Lady Verma, and her friend Michael Gove for the way in which he has responded to the genuine concerns which were raised at Second Reading. I made the point then—and I will conclude with it—that the finest piece of education legislation in the 20th century was the Education Act 1944, which was based on agreement between political parties and stood the test of time. I hope that after the general election there will be a consensual approach to the making of education policy. Many of the ideas that Mr Gove has put forward in recent weeks should commend themselves to all sides of your Lordships' House. These should not be matters of party-political contention. I hope it will be possible for a new Bill to come forward in the new Parliament—one which we will all be able to support.

Lord Northbourne: My Lords, I will not detain the Committee. I simply want to say that I am grateful to the Government for the action they have taken. Many of the intentions in the original drafting of the Bill were good. They were objectives which we should try to follow at a later date and reintroduce in a more practical form in which they would work. My reason for opposing some of the clauses was that I simply did not believe that they would work.

Clause 1 disagreed.

Clauses 2 to 9 disagreed.

Clause 10 : Areas of learning

Amendments 1 to 3 not moved.

Clause 10 disagreed.

Clause 11 : PSHE in maintained schools

Amendments 4 to 15 not moved.

Amendment 16

Moved by ***Baroness Walmsley***

16: Clause 11, page 14, line 7, leave out subsections (8) and (9)

Baroness Walmsley: My Lords, I feel like the boy who stood on the burning deck when all around had fled. I and so many others have campaigned for so long to give children their right to life-saving and life-enhancing education by making PSHE a statutory subject in schools. Now our young people have been betrayed by the old alliance of old parties—the "Labservatives". The Government and the official Opposition have conspired behind closed doors to drop all the provisions that would have given children the high quality PSHE for which they have long asked, which they deserve and to which they have a right under the UN Convention on the Rights of the Child. It is the most truly shocking betrayal of my political life.

The Conservative Party asks the electorate to vote for change and yet there is not a tissue paper now between it and the Labour Party. There is no change there. The Government have shown no backbone. There is no determination to do the right thing for children, even with their dying breath. They do not deserve to be re-elected. All this is so unnecessary. If they had consulted with the Liberal Democrats, instead of just caving in to the wrong-headed prejudices of the Conservatives, we would have supported them in retaining these clauses. They did not do so; that was their mistake. It is one I hope they will not repeat in the weeks to come.

10 pm

Before I look at what these two old dinosaurs of political parties are joining together to throw away, I would like to speak to my Amendment 16 in this group. Subsections (8) and (9) to Clause 11 were inserted into the Bill at the last minute in another place, along with a whole lot of other changes, at the behest of some of the churches which do not want

their schools to comply with the Bill. They were not properly debated so tonight I seek to remove them. According to the Minister in her reply at Second Reading:

"I reassure my noble friend Lady Blackstone and the noble Baroness, Lady Walmsley, that the effect of the government amendment which was accepted in the other place is slight in practice".

In parentheses—I wonder why they bothered to put it in then. The noble Baroness continued:

"It simply puts beyond doubt something that we believe was already clear. All schools will still be under a duty to comply with the principles regarding accuracy, balance and diversity, as I have just described. Faith schools will still—as now—be able to teach pupils about the stance of their church".—[*Official Report*, 8/3/10; cols. 125-6.]

The Minister is wrong. If she really believes that, she has been well and truly conned. It is now clear that faith schools believe that their rights under subsections (8) and (9) override their obligations under the rest of the Bill. They are putting it about that this is a victory and they will not have to change their ways at all. They will be able to ignore the very sound and reasonable principles for teaching SRE in the Bill. This could affect teaching on homosexuality, sexual relationships outside marriage, abortion, contraception, divorce and remarriage. The Government claim that all schools will have to teach the full curriculum and abide by the principles. This is not the case. Subsections (8) and (9) were seen as a great victory by the churches because the wording clearly means that these principles will not have to be followed. I do not believe this is really the Government's intention so I hope that they will follow me into the lobby when I put this matter to the vote a little later.

Let us now look at the wider issues of this set of amendments. The Government and the Conservatives are now seeking to delete Clauses 11, 12, 13 and 14—in other words, all the clauses about having compulsory PSHE in schools. PSHE is not just sex and relationship education—although much of the focus has been on that—it includes careers, business and economics, individual safety, personal finance, nutrition and physical activity, sex and relationships, emotional health and well-being, alcohol and other drug education. Effective PSHE education is well planned, well taught and is appropriate to the age, ability and needs of the learners. These subjects are so important to the life chances of children that they deserve their place in the national curriculum. I congratulated the Government on bringing them forward.

Sir Alasdair Macdonald, who advised the Government, established that PSHE should be seen as a distinct subject with its own body of knowledge, understanding and skills. I shall be objecting to the deletion of each of these clauses. PSHE in secondary schools, and the subject called understanding physical development, health and well-being in primary schools, are desirable for six reasons. First, children, their parents and teachers want it. Research shows that they want opportunities to discuss issues that are relevant to their lives and their well-being, including emotions, relationships, health issues such as mental health, sexual health, diet and exercise. In a recent document circulated by Brook—better known as the Brook Advisory Centres—young people said why that is. "I didn't have a clue before sexual health outreach workers came into my school. They gave me the knowledge I hold today", said a young man. "I only know what I know about sex through the internet. I can't talk to my parents. I can't be honest with my boyfriend and my sex education taught me nothing", said a 17 year-old girl. "My sex education was basically one science teacher, one lesson and a lot of giggling", said another young woman. I could go on, but I will not.

The UK Parliament has collected nearly 22,000 signatures from young people demanding a right to good sex-and-relationship education. Making PSHE statutory will also provide a stronger framework for parents to be consulted, involved and engaged with what is taught. According to a Populus survey last October, 81 per cent of parents agreed that every child should attend sex-and-relationship education as part of the national curriculum.

Lord Lawson of Blaby: I suspect that she was not taught all this when she was at school. How did she manage?

Baroness Walmsley: My Lords, people manage despite all kinds of disadvantages, and somehow people managed to procreate. But sometimes they regret the ways in which they went about it. I am not referring to myself in that case.

As I was saying, 81 per cent of parents want it, and a survey by Parentline Plus shows that 97 per cent of parents believe that drugs-and-alcohol education should be delivered in schools.

Secondly, making the subject statutory will improve quality and enhance parents' confidence that it is being taught appropriately by improving teacher training and inspection. The Macdonald review concluded that effective learning in PSHE is dependent on the quality of teaching. The preceding reviews into sex-and-relationship education and drug-and-alcohol education both provided evidence that the quality of PSHE education being delivered was too variable and was failing to meet children and young people's needs. In all cases, the conclusion of these reviews was that PSHE education should become statutory to compel schools to tackle this.

Children and young people themselves regularly report that the quality and quantity of their PSHE education is failing them. While the PSHE continuing professional development programme has gone some way to improving this situation, there is currently a limited number of specialist PSHE teachers, a situation which, along with the low prioritisation of the subject in schools—because it is not statutory—means that the quality of PSHE provision has remained unacceptably patchy for too long. Ofsted has confirmed this. Statutory foundation subject status will mean that the subject is not only prioritised in curriculum planning but will lead to an upsurge in teachers specialising in PSHE through initial teacher training and other routes. Statutory status would impact on not only the consistency of provision but the quality of teaching and, subsequently, learning. Making PSHE education statutory should make consultation with parents and their engagement with the subject stronger, not weaker.

PSHE is unique, in that through sex-and-relationship education in particular it places a premium on building relationships with parents in order that they can understand and exercise their rights and responsibilities

[Baroness Walmsley]

in this area. Additionally, school governing bodies will consider the delivery of SRE in PSHE education—increasing the potential for parent scrutiny, accountability and engagement. Making this type of education statutory provides a lever through which parents can exercise their need to understand and question the quality of provision with a degree of certainty that is not available while PSHE delivery remains so variable from one school to another. I should like schools to publish an annual statement on their approach and provision on this subject as part of encouraging parents to engage.

The third reason is that PSHE supports academic achievement in other subjects and helps children and young people to develop key life skills, including skills for work. Educationalists recognise that children do not learn well when they are in emotional turmoil. That is why the Government introduced the SEAL programme which has been so successful. Many barriers to learning lie outside the classroom, and supporting children's personal development and well-being, in part through learning PSHE, impacts positively on raising standards of achievement in all subjects. It is self-evident that the knowledge, skills and understanding that children and young people can learn or develop through effective PSHE in school have the potential to be vital in life and work. While it is hard to quantify the impact of PSHE on academic achievement because of the indirect nature of the skills taught, such social skills are widely accepted to be important in schools and the workplace. These life skills include perseverance, conflict resolution, emotional intelligence, self-management, self-respect, teamwork, time management, financial capability, risk competence and managing stress. The Tomlinson report on the 14 to 19 curriculum, the Steer report on behaviour and the Ofsted report on PSHE have all emphasised the importance of children and young people developing life skills to help them to learn, to achieve and to gain employment.

Fourthly, PSHE promotes health, well-being and, crucially, safety. It helps to achieve the Every Child Matters agenda so close to the Government's heart, and connects directly to the five outcomes by helping children to understand what it means to be healthy, to stay safe, to enjoy and achieve, to make a positive contribution and to achieve economic well-being. Evidence from organisations concerned with the safety of children shows us that PSHE is crucial to safeguarding children. Good PSHE education helps them to learn about personal safety and to improve their understanding of respectful relationships—including parenting and family relationships—as well as recognising abusive, harmful or inappropriate behaviour.

Every week, hundreds of children are involved in, or witness, domestic violence, and experience physical or sexual abuse. It is a major and expensive problem in our country. We will never address the problems unless we start at the beginning with the children. Good PSHE teaches about what is acceptable behaviour, about personal space, about appropriate and inappropriate touching, and about being self-confident and assertive in maintaining personal integrity. It also helps children to develop the skills to ask for help. This can contribute to a reduction in childhood abuse and neglect. Similarly, evidence shows that PSHE education is an important intervention for the prevention of bullying. Yet these are the things that the Conservatives do not want to ensure that every child is taught. I am disgusted by that, and so are the many organisations and millions of children who have campaigned for it.

Fifthly, PSHE teaches about values, including respect, morality and an understanding of cultural diversity. It plays a key role in promoting inclusion and reducing inequalities. It provides myriad opportunities to explore difference and diversity, and learn skills for living in a multicultural and diverse society. The Qualifications and Curriculum Development Agency has long recognised the important role that PSHE plays in promoting respect for diversity and difference.

Sixthly, making the subject statutory will improve access for all to PSHE. Although the most recent report from Ofsted suggests that on balance provision has improved, there are serious inconsistencies in delivery and children confirm this. The current non-statutory status of much PSHE education means that some schools are not prioritising the subject and not allocating sufficient curriculum time to it. Some schools are not delivering it at all. This runs counter to the belief that access to high-quality learning that can have a positive effect on well-being should be an entitlement for every child and young person in English schools.

Finally, in primary schools the Understanding Physical Health and Well-being primary curriculum area of learning would provide the right framework for PSHE topics to be taught in an age-appropriate way. Perhaps those noble Lords who do not wish to listen to this speech could leave the Chamber in a courteous manner. The current laws regarding PSHE are confusing. Secondary schools are obliged only to teach the biological aspects of sex, contraception and sexually transmitted diseases. These are usually covered in science lessons, giving children no opportunity to discuss the issues that face them in real life. Human beings are not diagrams on the page of a biology textbook. They are much more than that, and we should recognise this in 21st century education.

There are many myths about PSHE. Some say it would mean sex lessons for five year-olds. It would not. Learning about growing up should start in primary school and focus on empathy, respect for self and others, diversity, understanding relationships with family and friends, looking after yourself and being healthy.

Some say that SRE does not work and that it encourages early sexual experimentation. This is not true either. There is good international evidence that SRE, particularly when linked with contraceptive services, can have an impact on young people's knowledge and attitudes, delay sexual activity and reduce pregnancy rates. In countries where it is taught well, the rate of teenage pregnancy is much lower than it is here. The Minister herself, in her letter to the noble Baroness, Lady Verma, of 24 March, referred to this research. She said that two-thirds of the curriculum-based sex education programmes that were considered had positive effects on teenage sexual behaviour by either delaying the initiation of sex, increasing contraceptive use or both. Nearly all the programmes that were studied had a beneficial impact on young people's confidence to say no to unwanted sex. They were also shown to improve knowledge and communication with parents.

10.15 pm

Some say that SRE will make children lose their innocence. No, it will not. Children need it not only to answer their questions but also to provide balance to the range of often misleading and inappropriate messages about sex in the media. Good-quality SRE provides children with factually correct information and helps them to challenge and be critical of the media.

Children have a right to all this information under the UN Convention on the Rights of the Child. The Minister herself emphasised this in two references in her letter of 24 March. Responding to the Second Reading debate on the rights of parents to withdraw their children, she said:

"Parental rights exist for the protection of the child, not to serve the interests of the parent. The most fundamental and important aspect of the convention protocol, to which the noble Lord, Lord Alton, referred, is that a child has a right not to be denied education. The European Court has consistently held that respect for parental philosophical and religious convictions is a secondary consideration and not a trump card".

Later in the same letter she said:

"With the greatest respect to them, parental rights do not and should not take precedence over those of children themselves"—

a point that was made very eloquently by the noble Baroness, Lady Deech. I agree with the Minister's words.

This brings me to address the attempt by the noble Lord, Lord Morrow, to raise the age up to which parents may withdraw the child to 16 years. Evidence shows that there is widespread support for abolishing the right of parental withdrawal or lowering, rather than raising, the age at which parents can withdraw their child from SRE. A recent nationally representative poll found that the majority of parents believe that the right of withdrawal should either be removed or cease when the child is 11 years old. In the England submission to the UN Committee on the Rights of the Child in 2008, more than 100 non-governmental organisations endorsed a report recommending that the Government should remove the right of parents to withdraw their child from SRE in school.

The right of parental withdrawal is a relatively modern provision, introduced through the Education Act 1993 and later consolidated in Section 405 of the Education Act 1996. It currently affects any child or young person up to the age of 19 but the Conservatives would like to make it 16. This is nonsense. It would mean that a young person had no right to any SRE until they reached the legal age of consent. This ignores the reality of children's lives. Each year in England and Wales about 300 children under the age of 13 become pregnant. They become pregnant—in case I need to spell it out—because they have sex without any protection.

Lord Faulkner of Worcester: I hope that the noble Baroness will forgive me but the *Companion* is quite clear that length of speeches for opening debates such as this one should be limited to 20 minutes, and we are now into the 21st minute. I hope that she can conclude shortly.

Baroness Walmsley: I point out to the noble Lord that this is our only opportunity to debate this subject in any depth. We on these Benches object very strongly to the way in which this has been dealt with by the other two Front Benches. We have a right to put our case. If we are not able to do so in private discussions with the other parties then we have to do it here. The Government have forced us to do this.

Since 2002, there have been more than 63,000 pregnancies among under-16s so it is clear that many young people do not have information, access to help and advice or the self-confidence to take precautions or to say no. International human rights obligations towards children and young people are clear: the parental right of withdrawal is unnecessary and should be repealed altogether.

With respect to the Minister, I shall cut out one page of my speech.

I am dismayed at the betrayal of children that is apparent in the way in which the Government have caved in to the Conservatives on this matter. As I said earlier, that was unnecessary. We on these Benches would have supported the retention of Clauses 11 to 14 in the Bill, despite their imperfections. They are throwing away children's chances to be informed, healthy and safe. The next time a 10 year-old becomes pregnant, the next time a child is sexually abused by an adult because she had not been given the chance to develop the self-confidence to resist and to seek help; the next time a mother and her child are violently abused by a man who never had any education about the right way in which to treat and respect others; the next time any one of those things is in the news, I hope that noble Lords on the government and Conservative Benches will reflect that they had a chance to do something about it and they did nothing. I will not do nothing in the face of these threats to our children. I shall seek the opinion of the House when the time comes.

Baroness Massey of Darwen: My Lords, I shall be very brief. I agree with much of what the noble Baroness, Lady Walmsley, has said. I am saddened and dismayed that we seem to be about to lose personal, social and health education as a statutory component of the curriculum. Many noble Lords on this side of the House are also regretful. I am saddened and dismayed because some colleagues on all sides of the House and on all sides of another place have fought for many years to include PSHE in the curriculum. It would be of benefit to young people and a support for parents, 81 per cent of whom support the measure. I am saddened and dismayed that teachers, the voluntary sector and other campaigners have been let down by our parliamentary procedures and lack of will. They are very angry.

I remember this measure on personal, social and health education being announced at a teachers' conference last year. There was a spontaneous standing ovation at that conference which went on for several minutes, all seemingly to no avail. E-mails that I have received today describe the dropping of PSHE from this Bill as "a great betrayal of future generations", as—*[Interruption.]* thank you—a "disaster", as a "catastrophe", or in the words of one young woman, "disgraceful … we have been totally let down". I wonder how we as politicians can go against the views of young people, parents and teachers. PSHE enables young people to examine and make decisions about their health and their relationships; it helps them to

[Baroness Massey of Darwen]
understand the risks of sexually transmitted infections and teenage pregnancy; and it helps them to deal with bullying, abuse and the essential emotional issues surrounding adolescence. I cannot believe that any politician would wish to deny young people the right to that understanding. By reversing the inclusion of PSHE in the curriculum, we are insulting young people, teachers, parents and campaigners. We will not be thanked. I urge colleagues on all sides of the House to protest against the suggestion that PSHE as a curriculum subject be removed from the Bill.

Lord Northbourne: My Lords, I do not believe that this time of night is the moment at which to have a profound debate on this subject. However, I want to take the opportunity to congratulate the noble Baroness, Lady Walmsley, on a brilliant exposition of what PSHE should mean.

Good PSHE is absolutely desirable and should probably be compulsory. The trouble is that we do not have any guarantee that the PSHE to be taught under the Bill would be of appropriate quality. There is certainly circumstantial evidence to suggest that in some schools today, PSHE is not being taught by suitably qualified, trained and experienced teachers. The extension of PSHE on a compulsory basis to all schools would leave an enormous gap in the availability of teachers and teacher training.

When a new Government are elected, we should try to resurrect the issue and press whatever Government are in power to give proper training to PSHE teachers and to make public the curriculum, what PSHE is about, and to explain it and sell it to the public so that they are not so suspicious of it and do not feel so threatened by it. That is why I introduced some modest amendments to try to improve the Bill. I am delighted that the Government have withdrawn the clauses, because I believe that that gives us the opportunity to look at the matter in a more holistic way after the election.

Baroness Gould of Potternewton: My Lords, I rise with great regret to say that I will do something that I have never done in the 13 years of the Labour Government: I shall be going into the Lobby with the noble Baroness, Lady Walmsley. I have never felt such distress, anger and frustration as I felt this morning when I discovered what was going to happen in respect of the Bill. People have fought for 20-odd years to get this on to the statute book. To suddenly discover at the last moment that it will be removed because it is the wish of the Conservative Opposition I find absolutely distressing. I do not blame my Government—I say that most sincerely—because that is the nature of the wash-up. My Government produced and fought for the legislation. It may be a little late, but we proposed it for the statute book. To find it removed in this way I find unbelievable.

As I said, I shall do that with the greatest regret. I cannot express how I feel about it. Deleting the clauses will mean that young people will grow up without the proper support that they desperately need to deal with relationships, bullying, abuse and to equip themselves with the skills to manage their lives. That is now being denied them. I take the point that we need more and better trained teachers, but it worries me that withdrawing the clauses will deter people from training. If it is not statutory, people will say, "Why should we go through the training process?". I fundamentally disagree that we need to get the teachers before the statute; we need it on the statute book and then make sure that we have the teachers. The noble Lord is absolutely right: we need properly trained teachers. That is true.

In the words of the PSHE Association:

> This appears to be a tragic betrayal of children. Politicians had made a commitment to education that promotes the safety, health and well-being of our nation's young people and I cannot believe that they intend to reverse it".

We are denying young people. It is they who have campaigned for access to high-quality PSHE education. After considerable discussion, we had arrived at a consensus of support from parents, teachers and schools, but principally it is young people who have demanded and insisted on the changes. Many children and young people say that the information that they receive at school about sex and relationships is too little, too late and too biological.

As was referred to by the noble Baroness, Lady Walmsley, a survey of more than 20,000 young people carried out by the Youth Parliament found that 40 per cent of young people aged 11 to 18 thought that SRE in schools was either poor or very poor. That is not good enough. Sixty-one per cent of boys and 70 per cent of girls aged over 17 reported not receiving any information at school about personal relationships. That is what we are talking about: people being nice to people. That is what we want to ensure that our young people are trained to do. Removing these clauses makes sure that schools are not able to do that.

10.30 pm

More than 43 per cent of young people surveyed said that they had not been taught about those important personal relationships. Those children are being let down again after the Government had accepted the need to make PSHE and SRE statutory. Children have the right to learn how to stay safe and to be healthy in these challenging times. They have the right to learn how to manage their lives and their money. They have the right to learn about how to avoid drug and alcohol misuse, about safe sex and about public health. Not to provide them with that opportunity will continue to cost not only them as individuals but also their families and the nation as a whole a great deal. A great responsibility is on us all to make sure that that does not happen.

Parents play a crucial role in promoting positive sexual health, development, behaviour and attitudes among children and young people. I hope noble Lords are listening because 81 per cent of parents said that this should be taught in schools and were pleased that this provision was to be on the statute book. There has been a broad consensus among those young children, parents and professionals that the Government had got it right. It may have taken a little time to get there, but we did get there. The value to young people is reiterated in the recent government consultation on the reduction of teenage pregnancy rates, making it clear that the inclusion of these clauses in the Bill was essential in bringing about a further reduction in

teenage pregnancy. Somehow or other, that seemed to have been forgotten when the discussions were being held with the Opposition.

I regret that the legislation was not forthcoming earlier. I nevertheless appreciate that the Government were persuaded and it is a tragedy that, at this late stage, at the behest of the Conservative Opposition, it is being withdrawn. It is not only a tragedy for those young people who will lose out, but it is a cause of great distress to all those who have campaigned vigorously for so many years. I can only say to noble Lords opposite that there were people on the telephone to me this morning in tears because they had campaigned so long and so vigorously for something that they fundamentally believed in and it was being taken away from them at this last moment in this strange way. I shall vote against the withdrawal of these clauses, but I do not see it as a vote against my Government, but as a vote for my Government's original policies, which I absolutely and fundamentally support.

Baroness Perry of Southwark: I realise that feelings are running very high among noble Lords who have spoken so far, but there is a real danger that in speaking with such strong feelings the case is being completely misrepresented. It is being suggested that by taking these clauses out we are denying young people access to personal, social and health education. It would be almost impossible to find a secondary school, and very rare to find a primary school, that does not teach personal, social and health education. The Bill would have put that on a statutory basis and would have put in a lot of detail about what PSHE should include, but because of the shortage of teachers trained in this subject, I do not think that it would have made any difference to what was given of quality. Many schools teach PSHE in a high-quality way. Many young people have excellent access to all the elements that are in the Bill. Other schools that are unable or unwilling to do it would not have been helped by the Bill because there was always a provision for schools of a religious or other nature to opt out. However strongly noble Lords feel, and I respect their feelings because I believe that PSHE has a useful place in any school's organisation, it is important that we debate on the facts about what is being suggested and not on some imagination.

Lord Howarth of Newport: I have one brief thought to add to the powerful, and surely incontrovertible, arguments of the noble Baroness, Lady Walmsley—she was absolutely right to make the case as fully as she did—and to the impassioned speeches made by my noble friends Lady Massey and Lady Gould.

With the global AIDS pandemic, in a world in which criminal drug trafficking is ubiquitous, and in a society such as ours that has a horrifying and mounting problem of alcoholism, this is not just a matter of safety—the noble Baroness, Lady Walmsley, understated the issue, if anything; it can be matter of life and death. Young people should have the opportunity of really well considered and really well delivered PSHE. I should say to the noble Baroness, Lady Perry, that while it is true that some schools teach excellently in this field, we know that this education is all too patchy and inadequately delivered and that it needs to be greatly improved. The curriculum needs to be properly designed, training needs to be of an evenly high standard, and the opportunities that young people should have to experience first-rate PSHE ought to be universalised.

This matter should not be determined simply in families. The noble Baroness, Lady Walmsley, was absolutely right to make the case that parents should not have the right to opt their children out of this, because young people have responsibilities to other young people, and young people should be entitled to be protected from the hazards in contemporary society. For all these reasons, it is utterly lamentable that these provisions should be lost from the Bill. What the Conservative Party has done in forcing us to this point is a major scandal.

Baroness Sharp of Guildford: My Lords, I was also going to point out to the noble Baroness, Lady Perry, that while there are many excellent examples of PSHE teaching in schools, there are many schools in which it is not good. In answer to the point that the noble Lord, Lord Northbourne, made, the advantage of making it statutory is that teachers are trained better and we get a better standard teaching of this subject in schools.

I must say how much I agree with the sentiments that have been expressed by the noble Baronesses, Lady Massey and Lady Gould, and the noble Lord, Lord Howarth. We are at the culmination of many, many years of campaigning to get PSHE on to the curriculum and taught properly in schools. We thought that we had got that with this Bill, but now we have lost it and it looks as though we may have lost it for another 20 years. This is really appalling. Those who rail against poor parenting should recognise that one is trying to get greater understanding of personal and family relationships and of what contributes positively to those relationships. We are very sad indeed that the Government have capitulated on an issue on which they themselves put such store when they introduced this Bill.

Baroness O'Loan: My Lords, statutory does not necessarily equal excellent when it comes to teaching. Many areas of the curriculum are statutory, and we have many failing schools. It is important to say that, because we will not necessarily make PSHE better by making it statutory. The reality is that the contexts in which PSHE is delivered and its effectiveness will depend on a range of factors that are totally outside children, such as the funding that is given to the school, the staffing and the catchment of the school, and the context in which education is delivered. All those factors will affect the teaching of all subjects in any school, and making something statutory does not necessarily help.

By making something statutory, you also impose a further level of bureaucracy on schools that are already struggling under a mighty weight of bureaucracy. The noble Baroness, Lady Perry, is right to say that we have heard hugely emotive language here tonight. No noble Lord among us would want children not to know about such things as child abuse, domestic violence, teenage pregnancy and so on. Those are all very significant and serious issues, which are provided for in most of the schools in this country. It is right that, if we are to legislate and to place this on a statutory footing, we should get it right.

Baroness Massey of Darwen: Is the noble Baroness aware that there are many surveys in which young people state quite firmly that they are not getting this kind of education either at home or at school?

Baroness O'Loan: Thank you. I am aware that there are surveys of that nature. I am also aware that there are other surveys and other statistics, such as the 69 per cent of parents who do not agree with the proposal that was in this legislation.

In conclusion, there is no correlation, nor has there been, between the teaching of personal, social, health and economic education and any reductions in teenage pregnancy or abortion. We cannot point to that. The legislation has not provided a context within which such would be achieved. There was a project in Glasgow, of which I am sure noble Lords are aware. What was described as an ideal programme of PSHE was delivered. There was a follow-up across 25 schools, covering some, I think, 8,000 students, to see whether there was a reduced incidence of teenage pregnancy and abortion. The result was that there was not.

We need to know a lot more about what would make this proposal effective. If we are to do it, it needs to be done with families, children and teachers. Then we can move forward in a way in which I am sure that all noble Lords would agree. This is not the time.

Baroness Gould of Potternewton: Perhaps I may disagree with the noble Baroness. In making such provision statutory, you provide a framework for implementing all the things for which she is asking. If you do not have that, schools will be able to go off, as they do now, and either provide it or not at whim. We will not have the things that we ought to be looking for—good education and well trained teachers who can provide that. Without it being in a statutory framework, we will not get it. That is why people have campaigned for 20 years. They have done the research and the work in order to create a situation which would provide that.

Lord Lucas: Yes, but if you do it in that way you fossilise a concept of PSHE in legislation which is 20 years out of date. New Section 85B(1), to be inserted in the Education Act 2002 under Clause 11(4), provides a list of things that should be the result of good education and not elements of it. It will merely become a collection of targets and imperatives which will be delivered without any underlying concept. Much good and really advanced work is going on in schools, which I celebrate whenever I see it. But it is not tick-box stuff as set out here. There are other ways of providing incentives to schools. It can be done through inspection. There are all sorts of ways in which schools can be motivated to take this matter seriously and do it well.

The noble Baroness was extremely unfair to say that this is something that was taken away. It was never given. There was no way in which this part of the Bill was going to get through without proper discussion and the Government never provided time for that. This part of the Bill was never on serious offer. It was there as a phantom and no more.

As to the right of withdrawal, a tiny proportion, a fraction of a per cent, of children are withdrawn from sex and relationship education. There are no data to suggest that those children have a worse outcome in terms of childhood pregnancies and other things than children who are not withdrawn from such education. If the Government wish to discourage this, they first should do some research to demonstrate that it does harm.

Baroness Butler-Sloss: My Lords, after 44 minutes on this subject, it is absolutely obvious that this is not a matter for wash-up. It is too important. I was undecided when I came to the Chamber to listen and I remain undecided. It is a matter that requires careful consideration because there are arguments both ways. I am not at all sure which way I want to go. I know that we should not be doing this at 10.40 pm on wash-up on the last but one day of this Parliament. For that reason, I think that I shall vote with the Government, who I believe are probably right. Since they have not given us the time to argue it properly in Committee, it should be argued at another time. Whichever party forms the next Government, I hope that this will be top of the list in a Children Bill.

10.45 pm

Baroness Morgan of Drefelin: My Lords, I appreciate that the hour is late and that a number of passionate, well informed and eloquent contributions have been made to this debate. My job now is to explain and put on the record the Government's position. Before doing so, I should say that my understanding is that these clauses received a great deal of scrutiny in another place and that a lot of work was put into crafting them. However, the Government will be opposing the question that Clauses 11 to 14 should stand part.

Let me be clear that the Government believe that PSHE should be statutory in all state-funded schools. As we have heard, statutory PSHE is regarded by many as essential in preparing young people for adult life. By reducing the age of opt-out to 15, we had intended that all children should receive at least one year of sex and relationship education before leaving compulsory education. We see that as extremely important. A large body of evidence shows that good sex and relationship education correlates well with young people waiting longer to have their first sexual experience and thus reduces teenage pregnancy rates. However, I suggest that now is not the time to go through all that.

Baroness Walmsley: Will the Minister admit that, if she had not caved in to the Conservatives, there would have been a majority in this House for these four clauses?

Baroness Morgan of Drefelin: My Lords, I am going to continue to make a number of points that I am sure the noble Baroness will be interested to hear. I would argue that we must be concerned to do all that we can to tackle teenage pregnancy and all the other issues that noble Lords have raised. We know that children born to young parents are much less likely to secure the outcomes to which we are all committed. It is because of that that the provisions received such significant support in Parliament and more broadly across the sector, as well as among faith groups, as my noble friends Lady Gould and Lady Massey pointed out.

I need to make it clear that the insistence that parents should have the right to withdraw their children until they reach the age of 16—the age at which they

are considered to be mature and are adults in many respects—made it impossible for us to proceed. Both English and European case law does not support a continuing opt-out up to the age of 16. This would have meant that some children would have received no sex and relationship education at all, even when the subject was statutory.

Just to make it absolutely clear, noble Lords will know that, on introducing a Bill to the House, I would have to sign a Section 19 statement confirming that in my view the Bill is compatible with the European Convention on Human Rights. I am advised that, if the Bill had been drafted on the basis of the proposed right of withdrawal until the age of 16, I would not have been able to sign such a statement.

Baroness Walmsley: I am sorry to interrupt the Minister again, but will she accept that, with the support of the Liberal Democrats, she could have resisted an attempt to get the withdrawal age up to 16?

Baroness Morgan of Drefelin: My Lords, I am being absolutely clear that it was not possible for the Government to accept that children should be withdrawn from sex and relationship education until the age of 16. Again, it was not possible for us to do that. On that basis, I have made it clear that this Government believe in statutory PSHE and that we were committed to an age of withdrawal up to the age of 15. It is therefore with deep regret that the Government are in a position where we must oppose that these clauses should stand part.

Baroness Walmsley: My Lords, I am not going to say anything further about Amendment 16 because I should like to move to the question of whether the clauses should stand part. I withdraw the amendment.

Amendment 16 withdrawn.

Amendment 17 not moved.

10.50 pm

Division on Clause 11

Contents 58; Not-Contents 121.

Clause 11 disagreed.

Division No. 4

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11.01 pm

Clause 12 : PSHE in Academies etc

Amendments 18 and 19 not moved.

Clause 12 disagreed.

Clause 13 : Sex and relationships education: manner of provision

Amendments 20 to 24 not moved.

Clause 13 disagreed.

Clause 14 : Exemption from sex and relationships education

Amendments 25 to 28 not moved.

Clause 14 disagreed.

Amendments 29 to 39 not moved.

Clauses 15 to 18 agreed.

Clauses 19 to 26 disagreed.

Schedule 1 disagreed.

Clause 27 : Power of National Assembly for Wales to make provision by Measure

Debate on whether Clause 27 should stand part of the Bill.

Baroness Walmsley: My Lords, we on these Benches regret that the Government wish not to proceed with Clause 27, which grants the framework power which would have allowed the National Assembly for Wales to regulate home education in its own way. While we are quite in favour of withdrawing Clause 26, which was unworkable and did not have general support, we believe that home education is a matter which should be devolved to the National Assembly. We on these Benches would rather have left the clause in the Bill, but we shall not oppose its removal tonight.

Baroness Morgan of Drefelin: I do not wish to detain the House any further. The House is aware of the discussions that have taken place as part of wash-up, in which we agreed that we would oppose stand part.

Clause 27 disagreed.

Clauses 28 to 30 agreed.

Amendment 40

Moved by ***Baroness Walmsley***

40: After Clause 30, insert the following new Clause—

"Reasonable punishment

(1) The Children Act 2004 is amended as follows.

(2) In section 58 (reasonable punishment), after subsection (4) insert—

"(4A) Only a person with parental responsibility for a child within the meaning of section 3 of the Children Act 1989 can justify battery of that child on the ground that it constituted reasonable punishment.""

Baroness Walmsley: My Lords, I beg to move Amendment 40 in my name and that of the noble Lord, Lord Judd, and the noble Baroness, Lady Stern, who apologises for not being able to be present. This proposed new clause would restrict the availability of the defence of reasonable punishment, which can be used to justify common assault on a child, to those who have legal parental responsibility for the child. The amendment uses the term,

"a person with parental responsibility",

rather than "parents" because it is important to include step-parents, grandparents and other legal guardians who have gained full parenting responsibilities, and equally important to exclude fathers who have not sought or been granted parental responsibility—for example, because the child was the result of a rape.

I first make it clear that my party would like to see the defence of reasonable punishment removed completely. Full prohibition of all forms of physical punishment is the only safe and just solution. That has been affirmed by relevant international human rights bodies. The Committee on the Rights of the Child has now recommended three times that the UK reforms its legislation to ban physical punishment, and two other UN treaty bodies have also made this recommendation. But the Government have resisted these calls. Noble Lords will recall that they have even refused their party members a free vote on this issue.

This proposed new clause has been framed to fit in with the Government's current policy on physical punishment. According to official government statements, that policy is to avoid criminalising parents while actively discouraging them from using physical punishment and promoting positive forms of discipline. In 2004, the Conservative Party took a similar line. That is also true of the media, but it is my strong suspicion that the general public are already under the misapprehension that only parents can smack children. I have been puzzled by the Government's reluctance to accept this amendment when it was proposed by my honourable friends in another place, as it makes it clear that only those people with parental responsibility have a right to the defence. The Secretary of State, Ed Balls, chose rather to pass the matter over to Sir Roger Singleton, the independent chief adviser on the safety of children. I note that the Secretary of State said in a debate in the other place that he did not rule out the possibility of accepting the amendment but wanted to wait for Sir Roger's advice before reaching a view. We now have Sir Roger's report, in which he makes three recommendations, all of which the Government have

said they accept. This has been confirmed in the letter from the noble Baroness, Lady Morgan, which says that the Government are committed to ensuring that they are taken forward as swiftly as possible.

The earliest opportunity is today, but the Government have not tabled an amendment so I have done it myself. Sir Roger's principal recommendation is that the current ban on physical punishment should be extended to cover everyone except parents and members of the child's own family or household. Sir Roger declines to define what is meant by family or household, on the ground that such an attempt would be cumbersome, bureaucratic, largely impractical and very difficult to communicate. This, frankly, is a cop-out. I can well understand why Sir Roger is not attempting to define family and household, but, unfortunately, not everyone is going to be able to shrug out of answering this crucial question. For example, are private foster parents included as a child's household? In recent weeks, we have seen the conviction for murder of the carers of Ryan Lovell-Hancox, who had been looking after him for just under 28 days—technically the point at which one becomes a private foster parent. We know that physical punishment played a central role in Ryan's death, as his injuries included a bruise in the shape of a hand on his back. Perhaps in time a court case may decide that care of under 28 days does not amount to a household—but what, then, of Victoria Climbié? Her only care in this country was by private foster carers, one of whom, a great-aunt, was also a family member. Could any court reasonably suggest that those murderous people did not constitute these children's household? I doubt it—so I must tentatively assume that private foster carers are included in those who will have a right to use physical punishment under Sir Roger's proposals.

What about step-parents, or the unmarried partners of parents? They are usually the people who kill children. Here, Sir Roger is clearer; they are to be included in the group that he proposes should be allowed the defence for common assaults on children. I am aware that Conservative spokespeople and others are deeply concerned about an apparent cover-up of the disproportionate degree to which sexual partners—specifically, those that they term guest fathers—are responsible for child abuse. Baby P and Khyra Ishaq are currently the most notorious cases of that.

Sir Roger mentions the fact that his attention has been drawn to these many cases where children have been seriously injured or killed by the partners of their parents, but what does he say about it? He says that these were all cases of unlawful violence and that it is speculative whether the reasonable punishment defence, had it been available at the time, would have had any impact on the assailants' behaviour. Of course, it is speculative that these cases of serious abuse might not have occurred if, for example, a social worker could have informed the mother's boyfriend that he would be breaking the law if he laid a finger on the child. However, it is reasonable to suppose that some children might have been saved—and if even one child had been, does that not justify removing the defence for something that both Sir Roger and the Government say that they do not approve of in the first place? He questions whether the defence should be given to those acting in loco parentis, in circumstances where the adult with formal parental responsibility is content for a mild smack to be administered.

Finally, I return to Sir Roger's proposals that it should be for the courts to decide when a person is a legitimate member of the child's family or household. It is here that we see one of the greatest weaknesses in having such an unclear law. Sir Roger's report notes that the CPS is only aware of 14 cases where the defence might have been raised since Section 58 came into force in 2005, but no cases at all where the use of the defence has resulted in a conviction. In other words, no courts have been asked to test the concept of reasonable punishment, and you can be reasonably sure that no courts will test the definition of family or household either. One reason is that the victims are children. How are children, who are utterly dependent on those inflicting the physical punishment, likely ever to be in a position to challenge that person through a court action?

Calls to Childline make it clear that thousands of children are suffering daily from distressing forms of physical punishment. Far more children than ever come to the attention of social services. Sir Roger's proposals on family and household are guaranteed to cause even greater confusion over the law than at present. I have not mentioned nannies; are they included in households? Accepting this proposed new clause in my Amendment 40 would provide a swift and clear solution to a safeguarding issue of considerable importance to children, and something to which the Government themselves have said that they were committed. I beg to move.

Lord Judd: My Lords, briefly, I warmly support what the noble Baroness has said. As usual, she has put the case clearly and comprehensively, and she should be congratulated on that. I would make a few points. First, I am glad that she emphasised that the Government have tried to move in the right direction on this and that this amendment is to help, as it were, underline and strengthen the direction that the Government have taken. It is in no way hostile to government policy but to strengthen it, and in that sense it should be taken very seriously.

Personally, I find it absolutely extraordinary that, in the 21st century, we can still have institutionalised in law the concept that children can be attacked. It is no accident that the language of the law uses the term "battery", which gives us a good deal of grounds for concern. It is also sad that we are not in the vanguard of the drive throughout Europe to make sure that civilised values are paramount at all times in our treatment of the most vulnerable in our society, who are of course children.

11.15 pm

I also make the point that at a time when we are preoccupied as a nation—and rightly so—by the issue of child abuse in other forms, it is certainly dangerous to have a law which is so unclear about what is permitted and what is not. I have always believed that it is absolutely essential in this area to have clear-cut language which sends a direct message to all concerned.

[LORD JUDD]

However, the wash-up is not the time for a debate on the merits or demerits of chastisement of children by anybody. It is a time to clarify the intention of the Government at the moment. I believe that this amendment seeks to do that, and in that sense I commend it to the Committee.

Baroness Morgan of Drefelin: My Lords, I hope I can do as my noble friend suggests. I start by saying that the Government take very seriously the views and thoughts of your Lordships' House on this issue. There have been several debates in this House over the years and we have done our best to listen carefully throughout. It was this House that contributed significantly to the current law as it stands. To be clear: at present, physical punishment has been prohibited in maintained schools, full-time independent schools, childminding settings, early years settings, children's homes and local authority fostering.

There are some educational or quasi-educational learning settings where express prohibitions do not apply—for example, madrassahs and Sunday schools, and in relation to individuals such as music teachers or sports coaches and so on. By analogy with teachers in schools, they might arguably be acting in loco parentis when supervising children. If so, they may be able to plead the defence of reasonable punishment to a charge of common assault, as noble Lords have said. Also, people within or close to families, such as step-parents, grandparents and babysitters, may also be acting in loco parentis and could plead the reasonable punishment defence.

I welcome the opportunity to respond to the concerns expressed. The Government take the issue of smacking, including the use of physical punishment by persons other than parents, very seriously. Therefore, in the light of recent concerns that there is a potential legal loophole, the Secretary of State—as the noble Baroness, Lady Walmsley, pointed out—sought advice from the chief adviser on the safety of children, Sir Roger Singleton. His independent advice to the Secretary of State was published on 30 March 2010, along with the Government's response.

Sir Roger made three clear recommendations, which the Government have accepted. His first recommendation is:

"The current ban on physical punishment in schools and other children's settings should be extended to include any form of advice, guidance, teaching, training, instruction, worship, treatment or therapy and to any form of care or supervision which is carried out other than by a parent or member of the child's own family or household".

The second recommendation is:

"The Government should continue to promote positive parenting strategies and effective behaviour management techniques directed towards eliminating the use of smacking. Parents who disapprove of smacking should make this clear to others who care for their children".

Recommendation 3 is:

"The development of appropriate safeguarding policies in informal education and learning organisations should continue to be promoted. Legal changes which flow from adoption of these recommendations will need to be communicated".

The noble Baroness, Lady Walmsley, said that the Government have accepted these recommendations—as we have—and that we would bring forward legislation at the earliest opportunity. These issues are complex and need to be thought through very carefully. There needs to be consultation.

Lord Judd: Will my noble friend give way? I am listening very carefully to what she says but does she not accept that in the real situation many of those who may be caring for children on behalf of parents have not had the benefit of a great liberal education that most of us in this House have been able to take for granted? They operate very often on a high level of emotional reaction to situations. In that context, the law as it stands sends a divided message. On the one hand, it says that we do not believe in this punishment—indeed, my noble friend is saying that parents should tell people who take care of their children if they do not approve of it—but, on the other hand, the law says that it is possible.

Baroness Morgan of Drefelin: My Lords, in many ways I agree with my noble friend. I want to be clear that the Government do not condone smacking. I think that most parents who have smacked a child in anger find that a very unsatisfactory situation for parent and child. We want to embrace Sir Roger's second recommendation that we continue to promote positive parenting, as we have done. We know that over the years parents have become less likely to engage in smacking or the physical punishment of children, so there is a trend in this country. However, it is absolutely right that any change to the law should be very carefully thought through.

There is a fundamental problem with the amendment, which is that the concept of parental responsibility is limited only to a very few members of a child's family. I know that the noble Baroness is aware of this. It is limited to a few members of a child's family who may be playing a significant role in its upbringing, but people such as grandparents and step-parents, who have not specifically entered into parental responsibility agreements—aunts, et cetera—will usually not have parental responsibility for a child and therefore would not be able to rely on the defence of reasonable punishment. This means that within families there will be an inconsistency with regard to which carers have responsibility for potential legal protection of the defence.

Lord Wallace of Tankerness: The Minister has indicated that there was a recommendation that legislation be brought forward at the earliest opportunity. Is not this the earliest opportunity, and is the fact that she is not accessing this earliest opportunity due to the stitch-up that she has done with the Official Opposition?

Baroness Morgan of Drefelin: I do not accept that. It would be a big mistake. This House is always very concerned about rushed legislation. [*Laughter.*] We have heard that this evening on many occasions. I press on. I believe that Sir Roger's recommendations will improve the protection of children.

Lord Wallace of Tankerness: I apologise to the noble Baroness for laughing.

Baroness Morgan of Drefelin: I thought that we took it in turns to speak and that we speak only when

one of us is standing, and I was not giving way. I believe that Sir Roger's recommendations improve the protection of children, but without potentially criminalising grandmothers, other kinship carers and other close relatives who administer a mild smack. The Government are therefore committed to implementing the recommendations as soon as possible. I reiterate this assurance. I hope that with that the noble Baroness and my noble friend will consider withdrawing the amendment.

Baroness Walmsley: I thank the Minister for her assurance that should her Government by any chance be re-elected on 6 May, she will bring this matter forward again. If she has the opportunity to do so, we will press her to go further than the recommendations of Sir Roger Singleton. She relies on a potential inconsistency in what I am trying to achieve between the legal position of a parent who hits a child and that of a grandmother who hits a child. I ask her to consider the inconsistency for children as regards their protection vis-à-vis the laws of assault compared with adults. It is illegal to assault an adult; it is not fully illegal to assault a child. However, the hour is late. I beg leave to withdraw the amendment.

Amendment 40 withdrawn.

Clause 31 disagreed.

Clause 32 : Restriction on publication of information relating to family proceedings

Debate on whether Clause 32 should stand part of the Bill.

Baroness Walmsley: My Lords, in this group I seek to oppose the questions that Clauses 32 to 42 should stand part of the Bill. In other words, I seek to delete the whole of Part 2. The Minister suggests that it is not a good idea to put things through that are very controversial at this stage. I agree with her regarding Part 2. This part of the Bill was not debated at all in another place. I oppose Part 2 also on the basis that, as the Minister herself admitted in a letter dated 24 March to the noble Baroness, Lady Verma, after the Second Reading:

> "This was followed in November 2009 with pilots to provide easily accessible and anonymised judgements in some family court cases. These judgements will be evaluated as we move forward".

"Will be evaluated" are the crucial words. I shall explain why.

The Government have set up a pilot to try out a different way of opening up the family courts to public scrutiny—an objective of which we approve. Only four months after the pilot began they are seeking to legislate for a different method anyway. The pilot is not complete and its outcomes have not been measured or evaluated as to whether they achieve their objectives without endangering children, families, expert witnesses or any other innocent people. Yet the Government, in their rush to do something before they eventually sigh their last breath, have decided to put into this Bill measures which have raised the utmost concern among many organisations and, in particular, the people who matter most to me—the children.

The former Children's Commissioner, Sir Al Aynsley-Green, was fiercely against these measures because he had asked the children and he knew what they thought. His organisation, 11 Million, carried out a survey of children and asked for their views on these matters. He found that almost all children were opposed to the media being allowed into family courts to hear children's cases. The children also said that they would be less willing to talk about ill treatment by a parent and disputes between their parents. All this was despite them being made aware that there would be a formal ban on publishing information that might allow them to be identified. Most remained unconvinced on the power of the law to protect their privacy.

Children also did not trust newspapers to protect their privacy. If children are unwilling or unable to talk about what has happened to them, family judges may be faced with making difficult decisions about their future, in the absence of the child's evidence about his wishes and feelings. All the young people said that they did not want their parents to speak to the press while cases were ongoing, and some children felt that without their permission parents should not do that after the case was over. Even with information that the press could not name them, children were fearful that sensitive issues about them would appear in the local press, causing them further humiliation. Young people said that judges or magistrates should seek the views of children before deciding whether to admit the press to a hearing about their future care or safety.

A paper by Dr Julia Brophy of Oxford University also made it clear that children do not trust judges and magistrates to make the right decisions regarding media access and reporting. She analysed recent studies and concluded that in the face of media access, children may withdraw from the process before judges have an opportunity to demonstrate whether any alleged trust is appropriate. Dr Brophy was scathing about the extent to which the Government had consulted children before bringing forward the measures in Part 2.

We have received briefings from many children's organisations indicating their major concerns about these clauses. We have heard also from the Law Society which states that it supports openness in family cases; however, the need to protect children should be a paramount concern in family proceedings. The Law Society states that it is very important to remember that decisions in family cases will affect children and their parents for the rest of their lives. The court has a strong responsibility to make judgments based on the best evidence available. Much of that evidence may be very sensitive and of a sort that most of us would not wish to be publicly available. There is a balance to be drawn between ensuring that there is public confidence in the process, and the needs of the parties to feel able to be open with the court and to trust the proceedings.

11.30 pm

The Law Society is particularly concerned by Clause 40, which provides the power to alter the treatment of sensitive personal information. This clause enables the

[Baroness Walmsley]
Lord Chancellor to make an order to bring into force amending provisions relating to the treatment of this information. There are safeguards. An independent person must undertake a review, not before 18 months, of the operation of the proposed change and must lay their conclusions before Parliament. The statutory order must also be laid before, and approved by resolution of, each House of Parliament. However, the Law Society believes that a strong case should be made before sensitive personal information about identifiable individuals can be reported. The society does not believe that openness and transparency will be achieved by publishing sensitive personal information. The lawyers do not understand what benefit would be gained from the media using this information as a means of communicating to the public the operation of the family justice system. They therefore urge your Lordships to delete Clause 40 from the Bill.

The NSPCC, too, is deeply concerned that any relaxation of the rules on publishing sensitive personal information will increase the likelihood of identification of vulnerable children and families in local press reporting. It says that the amendments brought forward by the Government in another place do not adequately address the dangers. It does not believe that Part 2 of the Bill will serve the public interest or ensure that family courts are accountable. It, too, urges the Government fully to explore other methods of achieving the desirable level of scrutiny without endangering children.

The Children's Rights Alliance for England, along with the Interdisciplinary Alliance for Children, have also expressed concerns. While supporting reform of the family courts in principle, they feel that these measures have been adopted without adequate consultation or an assessment of the potential impact on children. They have even written to the Leader of the Opposition, urging him to get his party to oppose this section, and have quoted the opposition spokesman in another place, who supported that position. We have also heard from the BMA and the Medical Protection Society, which have concerns about the effect of identifying professional witnesses. Both organisations are concerned that these measures are being adopted without the matter having been fully thought through.

It is clear that there are major concerns in the country, both on the part of children and families and the organisations that represent them, and on the part of professionals on whose advice court often depends. We in your Lordships' House have also not had a proper opportunity to scrutinise these measures, including the amendments introduced at a later date in another place. They were not properly scrutinised there, either. I contend that under these circumstances, it would be unsafe to go ahead with Part 2 of the Bill. I therefore invites noble Lords, and especially the Conservative Benches, in the light of the words of their Commons spokesperson, to agree with me that this clause should not stand part of the Bill.

The Earl of Listowel: My Lords, my name is attached to that of the noble Baroness, Lady Walmsley, in opposing the clause. She has eloquently expressed our concerns on this matter. I have met the chair of the family courts committee of the Magistrates' Association. She expressed her strong concerns. Many other interested parties, including those such as the NSPCC who work directly with children in these areas, have had long-standing concerns about this proposal. The noble Baroness, Lady Howarth of Breckland, the chair of the Children and Family Court Advisory Support Service, expressed strong concerns at Second Reading on the matter, as did several other noble Lords.

The noble Lord, Lord Rooker, began this afternoon's proceedings by reminding us of the adverse effects on the public when legislation is ill considered by this House. I emphasise that when Parliament does not give proper consideration to legislation affecting children, the consequences can be very serious. Therefore, I support the noble Baroness's request that this section should be removed from the Bill.

I am very grateful to the Minister for allowing good access to the civil servants involved and I am grateful for the advice they have given in the run-up to this stage of the Bill.

Finally, if this part of the Bill goes through, will the Minister say how the voices of children will be fully involved in any review process? Does she agree that the Children Act 1989, brought forward by the Conservative Party, was an exemplar of how good legislation is made? Does she agree that, if there is a review, something along those lines should be initiated so that there is a very carefully adapted process to ensure that all concerned parties are listened to?

Baroness Butler-Sloss: My Lords, I declare an interest as a former president of the Family Division, so I have some experience of dealing with the press from time to time. I am not in favour of secret courts. Throughout my time as president, I pushed for court judgments to be provided to the public and the press. However, I share the views of the noble Baroness, Lady Walmsley, and the noble Earl, Lord Listowel, and express my own concerns about Part 2 of this legislation being presented to this Committee when it has not been debated in either of the two Houses of Parliament. We are dealing with information concerning children, as the noble Baroness, Lady Walmsley, said.

In my view, the whole of Part 2 should be excluded but there are two things about which I am concerned. One is the identification of witnesses—particularly medical and other expert witnesses. It is very difficult to get medical and health professionals to give evidence, but if they are to be identified in the courts they will continue to keep their heads below the parapet and will not give evidence. There are others in this Chamber who know exactly what I am talking about. This is a very serious matter. When I was president, I had real concerns about getting sufficient doctors to come forward. I discussed this with the medical colleges and the BMA in an attempt to get doctors to give evidence in child abuse cases. At least they knew that their names would not be made known but under this proposed legislation it is almost certain that their names will be given. It will be very difficult for judges to stop that happening.

The other and even more worrying aspect relates to the groups of cases that are included. Clause 33 includes adoption proceedings. If ever there is a group of cases

where no information of any sort should be given to the press or the public, it is that. I appreciate how late it is but it will take me one minute to tell the Committee of a case that I tried where, unfortunately, after the adopters received the child, the natural parents somehow found out and pursued them for more than a year. The adopters had to move five times to get away, and the child's opportunity to settle with them was ruined by the unfortunate disclosure of the evidence indicating who they were. Perhaps judges will not ever give that information in adoption cases, but the possibility of them doing so should not even be in legislation. No part of family proceedings is more important to protect than the law in relation to adoption.

I am shocked that this should come before us in the wash-up without any debate or any scrutiny in either of the two Houses of Parliament. I beg noble Lords to oppose Part 2.

Baroness Finlay of Llandaff: My Lords, I want to support the eloquent speech of the noble Baroness, Lady Walmsley, who has fought for the rights of children. We run a very grave risk of making things worse for the most vulnerable in our population unless we ditch this part of the Bill.

Lord Mackay of Clashfern: My Lords, as the person who had the honour and the responsibility of bringing the Children Bill 1989 to this House, I, too, share the views of the noble and learned Baroness, Lady Butler-Sloss, on finding this kind of provision in this Bill, without full consultation on the matter. I believe it is extremely dangerous to allow this to go forward in its present form without discussion. The only thing I notice about it is that Part 2 is to be brought into force only by order of the Lord Chancellor. Therefore, I hope that whatever decision we come to this evening, the Lord Chancellor, whoever he or she may be in the days to come, will hesitate long before introducing this in its present form.

The Earl of Onslow: My Lords, some 20 years ago, Lord Whitelaw was sitting where the noble Baroness, Lady Royall, is sitting now and Lord Belstead was answering a question, but I cannot remember what it was about. However, I remember that everyone around the House was saying the same sort of things as we are now saying about this Bill. Lord Belstead's brief said, "Resist, resist", and I heard Lord Whitelaw say, "Give way, I will square the Cabinet". I hope that the noble Baroness, Lady Royall, can change her name to Lord Whitelaw.

Baroness Morgan of Drefelin: My Lords, I shall first respond to the specific question asked by the noble and learned Baroness, Lady Butler-Sloss, about the naming of experts. I am aware that she and others see that as a key issue. Only experts who are paid a fee specifically to give evidence will be named by courts. Courts will still be able to withhold the identity, if necessary, of medical practitioners, social workers and teachers who are called in the course of their normal work.

Baroness Butler-Sloss: Forgive me for interrupting. The problem is that the experts will not raise their heads above the parapet, so that will not do any good at all.

Baroness Morgan of Drefelin: My Lords, it will be possible for the review to look at those provisions and to review, as the noble and learned Lord suggested, any problems that arise because of that. This part of the Bill was debated in the other place and was amended quite significantly in response to concerns raised by, for example, the President of the Family Division and others concerned with the interests of children. I hope that I can offer the reassurances that noble Lords seek.

As I have said, on Report in the other place, we made a considerable number of amendments to these clauses. We made them because we recognised that there were concerns about how the changes could affect the operation of the courts, the discretion of the judiciary and the people who come into contact with the family courts, especially children. I know that noble Lords are concerned about the interests of children. If we did not believe that these changes were in the interests of children, we would not have made them.

The clauses will make the family courts more open by increasing the information that may be reported. The media can already attend most family proceedings, so the question is not about keeping the media out of family courts but about making sure that they can report more sensibly what they see and hear during the proceedings. We will be looking to the media to make sensitive and intelligent use of those new freedoms—[*Laughter*.] That is the truth of it. There will be a serious penalty for contempt if they do not. That is something that the media live with now in other arenas.

11.45 pm

The Government have spent a number of years considering how to make family courts more open and transparent. We believe that the provisions are a balanced reflection of that process. We have been patient and cautious in bringing forward the proposals.

The clauses set up three steps to making family courts more transparent. The first step relaxes only slightly what can currently be reported. It will allow reporting of what might be said in court or witnessed in the court room. Those relaxations bring with them stronger safeguards for children and their families. For me, that is absolutely key. They will give children indefinite anonymity, changing the current position where automatic anonymity ends when the proceedings end. That is an important, significant step. This phase also introduces a list of information that cannot be reported, including reviews of children, medical reports and other sensitive information. Courts will continue to have a critical role to play, retaining discretion to prohibit or allow publication of information and, importantly, the power to exclude the media completely where they decide that publication is not in the child's best interest. That is the first step.

The second step is a thorough review of the impact of the changes brought about by phase 1. We have gone a long way towards meeting concerns expressed across the House and elsewhere. Importantly, we have ensured that any review of phase 1 is independent and we have given a commitment that the terms of the review will be agreed with the Justice Committee. We want to ensure that any review considers the impact on those children involved in the family courts, so it is

[Baroness Morgan of Drefelin]
important, as the noble Earl, Lord Listowel, said, that the voices of those children are considered and that their views and thoughts are given the weight that they deserve in the review.

The clauses represent a cautious approach, with robust safeguards to ensure that there will be no move to a more open phase 2 unless Ministers and Parliament agree that there should be. An affirmative resolution of both Houses would be needed to move to the final step, so your Lordships can see that the changes are neither reckless nor speedy; they are cautious and patient.

The third step is a move to a more open reporting regime where personal, sensitive information could be published, but only with significant safeguards. Courts will be able to use their discretion to prohibit publication where, for example, it is an unacceptable intrusion into someone's privacy or, importantly, where publication would prejudice the welfare of the child. The anonymity provisions for children and families would continue to apply indefinitely. The Bill's provisions would strengthen the protection of children's identity, not diminish it. The right to indefinite anonymity for children is an important provision of the Bill. Without it, children are already at risk of identification. I do not believe that anyone here agrees that that is in their best interest.

We want to make the family courts more transparent. We know that the recent history of tragic deaths of children, some of whom were involved in the family courts, leaves the public rightly wanting to understand how the systems work and how decisions are reached. A family justice system that works well is in the best interests of all children. Making the family justice system more transparent is in the interests of all children. The provisions help to do that. They provide the platform for change. They also offer strengthened protection for children and their families. They are cautious and patient. I therefore urge that the clauses remain part of the Bill.

Baroness Walmsley: My Lords, the Minister has stuck valiantly to her brief, but when the House hears such serious warnings from eminent lawyers such as the noble and learned Baroness, Lady Butler-Sloss, a former President of the Family Division, and the noble Lord, Lord Mackay of Clashfern, a former Lord Chancellor, it would be well advised to heed those warnings. A little earlier this evening, noble Lords saw fit to delete Clauses 11 to 14 because they felt that the matter was too controversial for the wash-up. I beg your Lordships to be consistent in that and to vote to remove these clauses from the Bill. They are not safe.

11.51 pm

Division on Clause 32

Contents 96; Not-Contents 70.

Clause 32 agreed.

Division No. 5

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Midnight

Clauses 33 to 40 agreed.

Schedule 2 agreed.

Clauses 41 and 42 agreed.

Schedule 3 agreed.

Clauses 43 and 44 agreed.

Clause 45 : Interpretation of Act

Amendment 41

Moved by ***Baroness Morgan of Drefelin***

41: Clause 45, page 37, leave out line 6

Baroness Morgan of Drefelin: My Lords, these merely technical and tidying amendments are to ensure that other changes agreed by this House are reflected appropriately in the final clauses of the Bill. Noble Lords have laid further amendments in this group seeking to ensure that all commencement orders in Part 1 are subject to the affirmative procedure. While I recognise that this House may have wanted further opportunity to debate aspects of the implementation of this Bill, I do not believe, given the changes that we have agreed tonight, that there is any longer a need for this. I therefore hope very much that the noble Lord will consider not moving his final amendments.

Amendment 41 agreed.

Amendments 42 and 43

Moved by ***Baroness Morgan of Drefelin***

42: Clause 45, page 37, line 14, leave out "sections 1 and" and insert "section"

43: Clause 45, page 37, line 14, leave out "those sections" and insert "that section"

Amendments 42 and 43 agreed.

Clause 45, as amended, agreed.

Clause 46 agreed.

Schedule 4 : Minor and consequential amendments

Amendments 44 to 46

Moved by ***Baroness Morgan of Drefelin***

44: Schedule 4, page 49, line 33, leave out paragraphs 2 to 4

45: Schedule 4, page 50, line 7, leave out sub-paragraphs (2) and (3)

46: Schedule 4, page 50, line 13, leave out paragraphs 6 to 18

Amendments 44 to 46 agreed.

Schedule 4, as amended, agreed.

Schedule 5 : Repeals

Amendment 47

Moved by ***Baroness Morgan of Drefelin***

47: Schedule 5, page 54, line 24, leave out from beginning to end of line 34 on page 55

Amendment 47 agreed.

Schedule 5, as amended, agreed.

Clauses 47 to 49 agreed.

Clause 50 : Commencement

Amendment 48

Moved by ***Baroness Morgan of Drefelin***

48: Clause 50, page 38, line 3, leave out "Sections 27 and 44 come" and insert "Section 44 comes"

Amendment 48 agreed.

Amendments 49 and 50 not moved.

Clause 50, as amended, agreed.

Clause 51 agreed.

In the Title

Amendments 51 to 54

Moved by ***Baroness Morgan of Drefelin***

51: Clause 55, page 32, line 1, leave out subsection (3)

52: Clause 55, page 32, line 8, leave out subsection (4)

53: Clause 55, page 32, line 15, leave out subsection (5)

54: Clause 55, page 32, line 15, leave out "An expulsion resolution or a suspension resolution" and insert "A resolution for the purposes of subsection (1)"

Amendments 51 to 54 agreed.

Title, as amended, agreed.

House resumed.

Bill reported with amendments. Report and Third Reading agreed without debate. Bill passed and returned to the Commons with amendments.

Constitutional Reform and Governance Bill

Committee (and remaining stages)

12.06 am

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, with the leave of the Committee, perhaps I may say a few words on the position in which we find ourselves now. Following the debate earlier this afternoon on the Business of the House Motion and the assurances given by my noble friend the Leader of the House, my right honourable friend the Secretary of State for Justice and I have held a series of extremely constructive discussions with a number of Members of the House. As a result of those discussions, the Government now propose to proceed with the Constitutional Reform and Governance Bill this evening but to leave out a number of clauses, which I will detail in a moment.

For the most part, this has been done with the agreement of all who participated, but I owe an apology to the Liberal Democrats and their leader, the noble Lord, Lord McNally, and particularly the noble Lord, Lord Tyler, who saw us this afternoon and who did not agree to one item, although the document made available in the Printed Paper Office suggested that they had. Once again, I apologise to them for that.

As a result of these discussions, I hope that we will meet the clearly expressed will of the House earlier today to proceed with all the remaining clauses. For the convenience of the House, the Government intend that the following clauses should be left out of the Bill. They are: Part 1, "The Civil Service Etc", Clauses 20 to 23 and Schedule 3; Part 3, "Referendum on Voting Systems", Clauses 29 to 37—all of this part; Part 5, "The House of Lords", Clauses 53 to 58 and Schedule 8—all of this part; Part 7, "Public Order", Clause 61 and Schedule 9—all of this part; Part 8, "Human Rights Claims Against Devolved Administrations", Clauses 62 to 64—all of this part; Part 9, "Courts and Tribunals", Clauses 65 to 67 and Schedule 10—all of this part; Part 10, "National Audit", Clauses 68 to 82 and Schedules 11 to 14—all of this part; and Part 13, "Miscellaneous and Final Provisions", Clauses 88 and 89 on referendums and Clause 91 on Electoral Commission accounts.

Once again, on behalf of the Government I thank all noble Lords who participated in the helpful discussions today. All sides of the House were impressed by the suggestion made by my noble friend Lord Rooker today that there should be post-legislative scrutiny of this Bill. Speaking for the Government side, I can say that, if we are in government at the relevant time, it would be our intention to do that.

Lord McNally: My Lords, I thank the Minister for his courtesy in clarifying the situation. For the benefit of the House, I shall also clarify that we are in agreement with everything that he read out except in relation to Part 5, for the special reason that we believe that it is the equivalent to what they are doing down the other end of the Corridor in giving teeth to the new discipline for this House. We think that it is a great tragedy that it should be dropped. However, we will argue that case when we get to Part 5.

I take this opportunity to thank the Minister and the Lord Chancellor, who I thought at one stage was going to get arrested for either loitering or soliciting, so much was he around the Corridors of this place. As to what was raised earlier, we now have the good red meat of this constitutional reform Bill and we thank the Minister for the hard work that he did in getting us to this point.

Lord Strathclyde: My Lords, I, too, thank the Minister and the Lord Chancellor for the constructive way in which they approached discussions. I also thank the noble Baroness the Leader of the House for what she said earlier today when we had the debate about the whole wash-up process. We have signed up to this agreement, as we have to the whole of the wash-up. I know that there is concern about one of the clauses in Part 5, on the expulsion and suspension of Members of Parliament who have behaved badly. It is not vital that it should be passed today. If we are the next Government, we will certainly wish to find an early opportunity to put this right.

Lord Trefgarne: My Lords, as one of those who was involved in the discussions on this matter, I express my appreciation for what has been agreed. As I have said before, I regret that a Bill of this magnitude should be subject to this difficult procedure right at the end of the Session, but that is a discussion for another day and I have nothing more to say on the matter.

Clauses 1 and 2 agreed.

Schedule 1 agreed.

Clause 3 : Management of the civil service

Amendment 1

Moved by ***Lord Norton of Louth***

1: Clause 3, page 3, line 26, at end insert—

"( ) In exercising his power to manage the civil service, the Minister for the Civil Service shall have regard to the need to ensure that civil servants who advise Ministers are aware of the constitutional significance of Parliament and of the conventions governing the relationship between Parliament and Her Majesty's Government."

Lord Norton of Louth: My Lords, I shall speak also to Amendments 2, 3, 4 and 5 in my name. I shall try to speak briefly to each one.

With regard to Amendment 1, I served on the Joint Committee on the Draft Constitutional Renewal Bill. We recommended in paragraph 281 of our report that there should be a wider duty on civil servants to Parliament, alongside the duty to serve the Government of the day. Although some civil servants were sceptical about the practicality of enshrining such a duty in legislation, Jonathan Baume of the First Division Association acknowledged that the Civil Service had,

"an accountability and a responsibility, if you want, to Parliament over and above its day to day obligations to the government of the day, because the Civil Service is there not only to serve the government of the day but also to be in a fit state to serve future governments … Enshrining that in legislation is difficult but it is something that is I think very important".

12.15 am

There was a not discouraging response from the Lord Chancellor, Jack Straw. He said that he was,

"concerned to ensure that officials and many other people have a sense of rather broader responsibility, a recognition really of the centrality of Parliament in our constitutional arrangements … I would be ready to look at the wording but we have to make sure it does not collide with, say, the day-to-day duty that officials owe directly to the government of the day".

However, when the Government's response to the report was published a year later, it argued that the Civil Service Code makes it clear that civil servants have to act in a way that retains the confidence of all those with whom they have dealings, including Parliament.

This, though, does not quite meet the point; it is not sufficiently specific in relation to Parliament. My concern is that senior and other civil servants are not sufficiently well versed in the role and duties of Parliament, not least in calling government to account. There are occasions when civil servants have clearly overlooked Parliament in taking a particular action and not fully appreciated the need for the department to keep Parliament informed.

Given the problems in putting a duty to Parliament in legislative form, I have opted instead to place a duty on the Minister for the Civil Service to have regard to the need to ensure that civil servants who advise Ministers are aware of the constitutional significance of Parliament and the conventions governing the relationship between Parliament and Her Majesty's Government. This avoids the drafting problem while imposing a specific requirement on the Minister. It is not an onerous burden, but it is an important one.

I do not believe that the wide responsibility to Parliament should be subsumed under some wider provision in the Civil Service Code. There should be a duty on the Minister to ensure that senior civil servants are aware of the role of Parliament. That would be wholly beneficial in terms of the relationship between government departments and Parliament. It may be helpful to Ministers if their officials are well versed in the relationship.

I turn to Amendment 2. Under the existing provisions of Part 1, the Civil Service Commissioners may conduct investigations only when a complaint is made to them. The Public Administration Committee in the other place, the Civil Service Commissioners and the Joint Committee on the Draft Constitutional Renewal Bill have all recommended at some point that there should be provision for the commissioners to carry out investigations into the operation of or compliance with the Civil Service Codes without a specific complaint being made and without the consent of the Minister for the Civil Service being required. As the Joint Committee on the Draft Constitutional Renewal Bill made clear, in order to avoid undue pressure on resources or any risk of politicising the role of the commissioners, the provision should make it clear that the use of this power should be limited to instances where the commissioners consider there is sufficient evidence to warrant an investigation. My amendment incorporates this point.

In their response to the report of the Joint Committee, the Government argued that such a provision was unnecessary—commissioners could approach the Cabinet Secretary with complaints passed to them from other sources—and that it would risk the commissioners being diverted by politically motivated or vexatious correspondence. They also raised the resource implications of such investigations. One could argue against that that the commissioners are not there to act as a post box and, given their independence, should be in a position to undertake investigations only where there is merit in doing so.

The commissioners responded to the Government's concern in a letter to the Public Administration Committee of the other place last October stating:

"Despite some concerns about the potential for politicisation and resource implications, the Commissioners recognise that there may be occasions where it would be right for the Commission to carry out such an investigation: if there were clear evidence of a significant breach of the Code. We would therefore support an approach which gave the Commission, in addition to the duty to consider a complaint from a civil servant, the discretion to investigate matters at its own initiation. We would envisage that the Commission would want to exercise the discretion only in cases where the burden of suspicion was substantial".

Given the attention given to this issue by the Public Administration Committee, the Joint Committee on the draft Constitutional Renewal Bill and the commissioners, there is a case for following the recommendation of those bodies. The case for the new clause is therefore persuasive.

I turn to Amendment 3. Clause 10 provides that appointments to the Civil Service must be on merit, on the basis of fair and open competition. However, certain exceptions are provided in subsection (3). Subsection (3)(a) excepts persons selected for appointment to the Diplomatic Service either as head of mission or in connection with their appointment as governor of an overseas territory.

The Joint Committee on the draft Constitutional Renewal Bill recommended that the exceptions should be precisely that—exceptional—and should require the direct approval of the Prime Minister. The Public Administration Committee in the other place has gone further and proposed that the number to be appointed under this provision be limited to three. As the committee argues, the exemption as it stands is far too widely drafted.

Although the Government have undertaken to use the exemptions only rarely, it is important that there is a limit and that it is put on a clear statutory basis. As the Public Administration Committee argues, the Diplomatic Service deserves statutory protection as much as the rest of the Civil Service. My amendment is not original, but rather that which members of the Public Administration Committee tabled in the other place but which there was no time to debate. The case for that amendment also is clear and compelling.

Amendment 4 deals with promotion on merit. As the Bill is drafted, only appointments to the Civil Service are covered by its provisions. Clause 10(2) provides that the person's selection must be on merit on the basis of fair and open competition. There is no requirement in the Bill for promotion within the Civil Service to be on merit. The amendment seeks to rectify this by including such a requirement. The new clause requires promotion within the Civil Service to be on merit, with the Civil Service Commission's involvement in promotions to the 200 most senior

[LORD NORTON OF LOUTH]
posts. The commission has to give approval for promotion to a post within this category and may participate in the process for promotion.

The need for such an amendment has been recognised by the Public Administration Committee in the other place. It has been recognised also by the Civil Service Commissioner, who wrote to the Public Administration Committee, stating:

"It is a generally accepted principle that civil servants are not only appointed on merit, but are also promoted on merit. As you know the Commission believe that Civil Service legislation offers the opportunity to enshrine this principle in statute, and to provide for regulatory oversight of its application".

My amendment gives effect to that.

I turn finally and briefly to Amendment 5, addressing the issue of special advisers and how many may be appointed. I begin by acknowledging the value of special advisers—indeed, a number of my graduates have served as special advisers. They have a particular and valuable role to play. The problem in recent years has been that some have become too much part of the public face rather than the unseen face of government.

The provisions of the Bill in respect of special advisers are welcome, but they fail to place a limit on the number that may be appointed. I recognise that there are arguments on both sides. If one stipulates a maximum number that may be appointed by a Minister, that number becomes the norm. Against that, there is clear concern about the growth in the number of special advisers, especially political special advisers as distinct from expert advisers. There is a case for placing some limit on the numbers, both for political and financial reasons.

My new clause provides that the number of special advisers to be appointed by any one Minister be limited to two. That is a reasonable number in terms of ministerial needs and the burden on the public purse. However, I appreciate that there may be exceptional circumstances, in the case of a Minister with particular disabilities, for example, or of a Minister with a particularly wide range of responsibilities. The clause allows that, in such exceptional circumstances, the Prime Minister may authorise additional special advisers. He may also do so where a Minister wishes to appoint a policy expert rather than a political adviser. The new clause thus strikes the right balance. It is designed to impose a useful discipline, but not to act as a straitjacket.

I join others in paying tribute to the Minister on the progress that we have made on the Bill. I offer the amendments as a way of improving this section of the Bill, which I think we all recognise is extremely important. I beg to move.

The Earl of Onslow: My Lords, I shall be extremely brief, since we are debating 163 amendments at half past twelve in the morning. I put my name to these amendments because the noble Lord, Lord Norton of Louth, is a wise man and because they sum up to me my idea of what the Civil Service should be. Amendment 1 personifies what Northcote Parkinson says—sorry, I mean the Northcote-Trevelyan rules, although Parkinson's law has entered into this quite a lot. It helps to maintain the culture of what is behind the amendments.

On Amendment 2, it is surely reasonable that you should not have to wait for a complaint to investigate something if you know that it is reasonable. That, I think, is a reasonable point to make. On Amendment 3, the noble Lord is right: the number of Lord Halifaxes in America or Paul Boatengs in South Africa should be limited to two. I must admit that I thought that promotion on merit was automatic and axiomatic. It was Macaulay, I think, who introduced a whole system copying the exams for the Indian Civil Service from the Chinese mandarinate. There is value in the points made about special advisers, but I know that there are slight difficulties in the words "any one Minister" and various things like that, so perhaps the amendment will not be accepted in full. I have put my name to these amendments and I have tried to be as brief as possible. I shall now sit down.

Lord Armstrong of Ilminster: My Lords, perhaps it would be convenient if I also spoke to the five amendments. I do not want to comment on Amendment 1. I should have been prepared to go along with the proposals dealt with in Amendment 2 and the investigations into the code of conduct by the commission if the consent of the Minister had been required for the exercise of such an investigation. Without that, I do not think that I favour it; I could not support that amendment.

Amendment 3 would limit to three the number of people who can be appointed otherwise than on merit in senior diplomatic service appointments. I support that amendment and would be happy to see it passed. On Amendment 4, it is of course already the principle that promotion in the Civil Service is on merit, but I do not think that it should be made statutory. Promotion differs from appointment in that it is very much a management matter and, although it should be on merit, there will be cases when that has to be qualified. There are such things as horses for courses, and it may well be that a candidate for promotion to a particular appointment is not suited to that appointment—it would not suit him or he would not suit the appointment. Management must be free to take that into account. If these proposals on promotion on merit are put into statute, there will be a raft or flood of appeals on promotions, which would hold up the process of promotion and make management a great deal more difficult. I could speak at greater length about it, but I cannot support Amendment 4 and I hope that the House will not accept it.

Amendment 5 deals with the number of special advisers. As the noble Lord, Lord Norton of Louth, has suggested, the danger of fixing the maximum of two per Minister is that everybody will go up to the maximum. I am conscious of that danger, but it makes sense to have a limit on the number of special advisers. I should myself have settled for one, with the safeguard that the noble Lord, Lord Norton of Louth, has proposed for the Prime Minister to have discretion to go above that in particular cases, but I would not object to Amendment 5 if the House were minded to accept it.

12.30 am

Lord Tyler: As one who served with the noble Lords, Lord Armstrong and Lord Norton, on the Joint Committee on the draft Bill—which, it is perhaps appropriate to remind your Lordships, reported in

July 2008; there has been a long period during which its conclusions could have been acted upon by the Government—I want particularly to say a word about Amendment 5, with which I have a great deal of sympathy. The Minister may recall that the Joint Committee exercised considerable concern on the issue of special advisers, and I think that that concern remains in many parts of your Lordships' House.

I am not sure whether the amendment proposed by the noble Lord, Lord Norton, meets all of the Joint Committee's anxieties, but I ask the Minister to take very seriously the concerns that have been expressed this evening on the issue. It may not be that this amendment precisely meets all of those concerns, but somehow or other the way in which special advisers are appointed and their number—which has grown so dramatically in recent years, not least of course in No. 10—is a matter of considerable public as well as parliamentary concern. I hope that the Minister will address that point.

Lord Bach: My Lords, I thank the noble Lord, Lord Norton of Louth, for moving the amendment. I also thank him for the part that he played in this afternoon's discussions. I shall deal with the amendments as briefly as I can. On Amendment 1, we agree that it is very important that,

"civil servants who advise Ministers are aware of the constitutional significance of Parliament and of the conventions",

that govern,

"the relationship between Parliament and Her Majesty's Government".

In short, we accept the amendment. I am grateful to the noble Lord for moving it.

I am afraid that I cannot be quite as helpful about the other amendments. Where Amendment 2 is concerned, we have considered this carefully in the light of evidence in pre-legislative hearings on the draft Bill, and the recommendations of both the Public Administration Select Committee and the Joint Committee on the draft Bill. We also noted the Joint Committee's view that the proposal should not place any additional undue pressure on the resources of the commission or risk politicising its role. We are concerned, as the Government, that such a provision would risk the commissioners being diverted by politically motivated or vexatious correspondence, which would, in turn, have resource implications about which the commissioners themselves had voiced concerns, as well as the potential for politicisation.

Civil servants can already take complaints or concerns directly to the Civil Service Commissioners, who can then investigate and make recommendations. I emphasise that this will continue under the provisions. The commissioners can also approach the Cabinet Secretary with complaints or concerns raised from other sources. The Cabinet Secretary has always taken seriously any approach from the commissioners if there is a concern which needs investigating. I am advised that the commissioners feel no restraint under the legislation about raising concerns with the Cabinet Secretary. Under the Bill, the Minister for the Civil Service and the commission would be able to agree that the commission should carry out additional functions in relation to the Civil Service.

It is also the case that the commission has undertaken an audit of departments in handling complaints under the *Civil Service Code*. I can tell the Committee that a further audit is planned for April 2011. In the light of that work, the Government, in consultation with the commissioners, will consider whether further amendments will be required to legislation.

Amendment 3 relates to the exceptional circumstances as far as the Diplomatic Service is concerned for heads of mission. It would require the Secretary of State to inform the Civil Service Commission of an intention to use the exception to fair and open competition to appoint an individual to the Diplomatic Service as head of mission or governor of an overseas territory. It would also limit to three the number of individual appointments to such posts at any one time. The Joint Committee on the draft Bill recommended that this exception should be limited to exceptional circumstances and should require the direct approval of the Prime Minister. The committee said:

"If the Prime Minister wishes to make political appointments to senior diplomatic posts in exceptional cases, he should be able to do so, but he must be politically accountable for any such decisions".

As the Committee knows, this exception has only ever been used very sparingly. It will continue to be used only on an exceptional basis and to require the direct approval of the Prime Minister. The Government also commit to making any such appointments public. I hope the fact that I have said those words in Committee today will be some comfort to the noble Lord when I tell him that I am afraid we cannot accept his amendment. We do not think it is necessary in these circumstances.

Amendment 4 in the noble Lord's name deals with promotion in the Civil Service. These amendments would put promotion within the Civil Service on the same footing as recruitment into the Civil Service, with promotions regulated by the Civil Service Commission. As the noble Lord, Lord Armstrong, reminded us a moment ago, the principle of promotion on merit is a mandatory requirement, set out in the *Civil Service Management Code*, which forms part of the terms and conditions of employment of all civil servants. The current role of the Civil Service Commission is to regulate recruitment into the Civil Service. At the request of the Cabinet Secretary, the commissioners are involved in moves within the top 200 appointments, including promotions. This role would continue under the legislation.

Below the most senior Civil Service posts it is important, as the noble Lord, Lord Armstrong, said, that departments are able to manage staff in the most efficient and effective way, in accordance with their business needs and the requirements set out in the *Civil Service Management Code*. The current framework puts a clear obligation on departments and enables the Minister for the Civil Service to develop and change the requirements as necessary. I have to tell the Committee that there is no evidence that the current arrangements are failing or that stronger regulation of the arrangements for internal promotion is necessary. Furthermore, current arrangements allow for internal management flexibilities—for example, for temporary promotion or urgent deployment, which may occasionally be

[LORD BACH]
required for the effective conduct of public business. So, we do not think that the case has been made for that amendment.

I turn finally to Amendment 5. I thank the noble Lord, Lord Norton of Louth, for his praise of special advisers. They are, certainly in my experience and, I know, that of other Ministers, much appreciated in the various departments in which they serve. The noble Lord's amendment would introduce a new clause, the effect of which would be to allow all Ministers, even those as lowly as me, to appoint up to two—or more with the approval of the Prime Minister—special advisers. I was immediately attracted by the amendment, but I must resist it. The *Ministerial Code* already makes clear that, with the exception of the Prime Minister, Cabinet Ministers and those Ministers who regularly attend Cabinet may each appoint up to two special advisers, and that all appointments require the Prime Minister's approval. The *Ministerial Code* does not permit all Ministers to appoint special advisers. Provisions in the *Ministerial Code* provide the appropriate mechanism to regulate the number of special adviser appointments. We also publish an annual report on special adviser costs and numbers and were the first Government to do so. Transparency about numbers and costs provides for accountability. The provisions in the Bill will maintain this. I ask the noble Lord not to press the amendment.

Lord Norton of Louth: My Lords, I am very grateful for the Minister's response to the amendments, particularly for his response to Amendment 1. That is the most important amendment in the group because of the duty it imposes on the Minister for the Civil Service and the impact it may have on the Civil Service in relation to Parliament. From the point of view of Parliament itself, it is an extremely important amendment. I am therefore extremely grateful to the Minister for accepting it.

I take some of the points that have been made and I am grateful to noble Lords who have contributed to the debate, not least the noble Lord, Lord Armstrong of Ilminster, my former university chancellor. I am also grateful to some of his successors who have been in touch with me prior to the debate. I am grateful for the Minister's responses. I make two points in terms of my gratitude: one is what is placed on the record in response to some of the amendments. The other point touches on what the noble Lord, Lord Rooker, said earlier, that there will be an opportunity to come back to some of the points embodied in the amendments. Although there are drafting issues, some of the central points of what the amendments are getting at are important and worth coming back to. Indeed, from what the noble Lord, Lord Armstrong, was saying, I suspect that one of the amendments may prove acceptable to him with the removal of one word—"not"—in relation to that amendment. There will be an opportunity to review some of these issues in the way that the Minister has touched on. I am grateful for that response and content with what he has said. In the light of his acceptance of Amendment 1, I beg to move.

Earl Ferrers: My Lords, before my noble friend withdraws his amendment—

The Lord Speaker (Baroness Hayman): If the noble Earl will forgive me, it may assist the Committee if I say that the noble Lord, Lord Norton, has moved his amendment. As I understood it, the Government signified that they were going to accept it. However, I do not want to interrupt the noble Earl.

Amendment 1 agreed.

Clause 3, as amended, agreed.

Clauses 4 to 9 agreed.

Amendment 2 not moved.

Clause 10 : Selections for appointments to the civil service

Amendment 3 not moved.

Clause 10 agreed.

Clauses 11 to 14 agreed.

Amendment 4 not moved.

Clause 15 agreed.

Amendment 5 not moved.

Clause 16 agreed.

Clause 17 : Agreements for the Commission to carry out additional functions

Amendment 6 not moved.

Clause 17 agreed.

Clauses 18 and 19 agreed.

Schedule 2 agreed.

Debate on whether Clause 20 should stand part of the Bill.

Lord Bach: I argue that Clauses 20, 21, 22 and 23 should not stand part of the Bill. We think that for appropriate reasons this part of the Bill should not be pursued this evening.

Clauses 20 disagreed.

Clauses 21 to 23 disagreed.

Schedule 3 disagreed.

Clause 24 : Treaties to be laid before Parliament before ratification

Amendment 7 not moved.

Clause 24 agreed.

12.45 am

Clause 25 : Extension of 21 sitting day period

Amendment 8

Moved by ***Lord Norton of Louth***

8: Clause 25, page 14, line 24, at end insert—

"( ) The Minister shall normally exercise the power under subsection (1) except in the case of treaties that he deems to be minor, technical or incremental adjustments to existing treaties to which the United Kingdom is a signatory."

Lord Norton of Louth: My Lords, I shall speak also to Amendments 9 and 10, also in my name, relating to the parts of the Bill dealing with treaties.

On the amendment, I recognise the importance of transferring the power to ratify treaties to Parliament. It is not restoring power to Parliament. It is giving a power to Parliament that it has not had before. I welcome the transfer. However, one of the issues is to give effect to the transfer in meaningful terms. There is no point giving a power to ratify treaties if Parliament lacks the time and resources to examine a treaty in some detail. This is a point that I made to the Lord Chancellor, Jack Straw, when he appeared before the Joint Committee on the Draft Constitutional Renewal Bill.

We need to create the resources, not least through the establishment of a Joint Committee on treaties. If the Commons is not interested in creating such a committee, then we need to set up a Lords committee. That is a matter for us. However, for that committee to do its job requires time. For a substantial treaty, that will normally mean more than 21 days from when the Minister lays the treaty before Parliament. In such cases, the power to extend the period should be employed.

My amendment is designed to ensure that treaties get the extra time, unless the Minister deems the treaty to be minor, technical or incremental adjustments to existing treaties to which the United Kingdom is a signatory. Many treaties will fall into those categories. I believe that some 30 or so treaties are ratified each year. I suspect that most fall into these categories. I do not think that many will cause problems in terms of being classified in the way that I have suggested. This will be clear to the Minister's advisers as well as to the members of a committee on treaties.

This amendment is therefore designed to ensure that treaties receive sufficient time, depending on their significance. I believe that it helps firm up the intention behind this part of the Bill. It is one half of the solution. The other half is in the gift of Parliament in creating a Joint Committee.

Amendment 9 is fairly self-explanatory. Clause 26 provides that Clause 24 does not apply if a Minister of the Crown is of the opinion that, exceptionally, the treaty should be ratified without the requirements of that clause having been met. It stipulates what steps the Minister has to take as soon as is practical after the treaty has been ratified. My amendment is to ensure that before exercising his power, the Minister has to make every reasonable effort to consult the chairman of the Foreign Affairs Committee of the House of Commons and the chairmen of such other committees of either House or Joint Committees that he considers appropriate.

Amendment 9 is drafted in such a way that if a Minister cannot track down the chairman of the Foreign Affairs Committee or chairmen of other committees that does not prevent him going ahead with ratification. The amendment creates no bar. What it imposes is an obligation on the Minister to make every effort to consult within the limited time available. That is a sensible way to proceed. The amendment enables the Minister to alert the chairman of the Foreign Affairs Committee and other chairmen of the importance of the treaty and the need for ratification under subsection (1), and to get a response. It is up to the Minister as to what account he takes of the response he receives.

I regard this as a common-sense provision which imposes a duty on a Minister without tying his hands when the need to seek ratification is urgent.

On Amendment 10, it is normal practice for an Explanatory Memorandum to accompany a treaty. I would argue that that is best practice. Given that the power to approve ratification is being given to Parliament, it is essential that such a memorandum should accompany each Bill.

I appreciate that Clause 24 provides—as does Clause 26—that a treaty may be ratified if a Minister makes a Statement to Parliament indicating that they are of the opinion that the treaty should nevertheless be ratified, and explaining why. However, the Bill should stipulate that there should be something more than a Statement, which may be little more than a formal explanation. When the Commons rejects one of our amendments, it has to give reasons. Those reasons are not necessarily enlightening. My amendment provides that an Explanatory Memorandum must accompany a treaty, explaining the provisions of the treaty, the reasons for the Government seeking ratification and such other matters as the Minister considers appropriate. It is not an onerous requirement, but if Parliament is to do its job effectively, it is a necessary one. It imposes an important discipline and takes us beyond the wording of Clauses 24 and 26. I beg to move.

Lord Tunnicliffe: My Lords, I will speak also to Amendments 9 and 10. We have listened to the persuasive arguments of the noble Lord, Lord Norton. I hope my words on Amendments 8 and 9 will be of comfort and that he will not press them. The Government are content to accept Amendment 10.

The Government have consulted widely for nearly three years on the proposals to enhance parliamentary scrutiny of treaties. Following a public consultation on the subject, clauses included in the draft Constitutional Renewal Bill were considered in detail by the Joint Committee established for pre-legislative scrutiny, of which the noble Lord, Lord Norton of Louth, was a member. While the Government added Clause 25 to the Bill in response to the Joint Committee's recommendation that there should be a mechanism for considering requests to increase the period available for scrutiny beyond 21 days, the committee's report agreed with the Government that,

"a 21-day sitting period will be sufficient time for Parliamentary scrutiny of treaties in the vast majority of cases".

[LORD TUNNICLIFFE]
The noble Lord's amendment seeks to amend Clause 25, which describes the mechanism for extending the period of scrutiny and provides that the Minister shall normally use that mechanism except in cases where he deems the treaty to be a minor or technical amendment to existing agreements. The amendment would create a presumption that the scrutiny period for treaties will be longer than 21 days, rather than that the extended period will be the exception.

It is current practice under the Ponsonby rule to extend the sitting-day period whenever possible where a request is made through the established channels or by a Select Committee for more time to scrutinise a treaty. In fact, requests for extension are not the norm. This point was recognised by the Joint Committee when it concluded that 21 days would be sufficient in the vast majority of cases. As is evident from the addition of Clause 25 to the Bill in response to the pre-legislative scrutiny undertaken, the Government stand by their previous commitments. I see no sound case for amending the Bill to make extending the scrutiny period the norm. In addition, I note that the amendment is unclear on what should count as minor, technical or incremental adjustments to existing arrangements. Putting such obscure criteria into the Bill would leave the Government open to criticism, and would offer no discernible benefit beyond the Government's current proposals. For these reasons, I hope that the noble Lord will withdraw his amendment.

Clause 26 provides that, in exceptional circumstances only, the provision setting out the normal process of formal parliamentary scrutiny may be disapplied. Clause 26 also states that if exceptional procedures are invoked, the responsible Minister must lay a Statement before Parliament explaining his reasons for departing from the normal procedures. The noble Lord's amendment would require the Minister to consult the chair of the Foreign Affairs Committee and any other committee he considers appropriate before invoking exceptional circumstances. In 2000, the Procedure Committee of another place, in recommending against the setting up of a Commons sifting committee specifically to deal with treaties, stated that the appropriate role for the other place in relation to scrutiny of treaties was to draw upon the established expertise of the departmental Select Committee. It recommended that the Foreign and Commonwealth Office send every treaty subject to ratification to the relevant Select Committee along with its explanatory memorandum. The Government accepted this recommendation and it is now routine practice. In addition, in their response to the committee's report, the Government gave an undertaking to provide an opportunity for debate on any treaty involving major political, military or diplomatic issues if the relevant Select Committee and the Liaison Committee so requested.

It is clear that the Government are committed to working with whichever committee Parliament decides to establish. Nevertheless, I believe that the noble Lord's amendment ties the hands of the Executive unnecessarily. It is not simply tautologous to say that the cases in which it is envisaged that Clause 26 will be used are by their very nature exceptional; the Government need the flexibility to respond to factors outside their control or to urgent situations as they develop. This amendment would require the Government to consult the Chairman of Committees before acting in all cases, even if such a delay would adversely affect the Government's ability to secure the nation's interests. It is not for nothing that flexibility is inherent in the Ponsonby rule—albeit a flexibility which both Conservative and Labour Governments have resorted to on only a handful of occasions over the past 60 years.

The Government will naturally strive to ensure that the chairman of the Foreign Affairs Committee and relevant Select Committees are apprised of matters that concern them in a timely fashion. The Government already do so as a matter of course. Not only is this amendment unnecessary but it would apply a rigid procedure when the uncertain nature of events makes a flexible approach the only sensible one. Under the clause as it stands, there is already a safeguard in that the Minister is under a duty to explain to Parliament his reasons for departing from the norm. This is the appropriate means of dealing with these exceptional cases, and I urge the noble Lord not to press this amendment.

Finally, Amendment 10 would place in statute a requirement for every treaty laid before Parliament to be accompanied by an explanatory memorandum explaining what the treaty is about and why the Government believe it should be ratified. Under the Ponsonby rules, since 1997 the Government have consistently laid an explanatory memorandum at the same time as laying a copy of every treaty. We fully intend to continue this practice and are therefore content to place this requirement on the statute book and accept the noble Lord's amendment.

Lord Norton of Louth: We worked up to the good news. Perhaps I may run through the three amendments. Amendment 8 was designed to change the onus, so in effect it would not make much difference. I think it is important that the onus is placed there but I hear what the noble Lord says.

On Amendment 9, I do not particularly agree with what the noble Lord has argued because the amendment would not place a rigid requirement to consult; it would require the Minister to make every effort to get in touch with and consult the chairman of the Foreign Affairs Committee and other relevant committees. Therefore, it would not necessarily impose a limit on the Minister by preventing him going ahead, as the noble Lord suggested it would. I think he said that in normal circumstances the Minister would make such an effort. I think it is quite valuable to have that duty imposed on the Minister, but it is a duty to make the effort to get in touch and to make every reasonable effort; it is not a rigid imposition. Therefore, a failure to make contact would not bar the Minister from proceeding in the way indicated in the clause. That may be something that we want to look at again in the future.

On Amendment 10, I am extremely grateful for the Minister's response. Given the changes that have been made, I think it is useful to have such a provision in the Bill because it sets out a clear duty. If the House is going to have to consider treaties in order to ratify them, it will be helpful to have the sort of information that is extremely useful for that purpose.

In the light of that, and having heard what the Minister has said, we may want to come back to some of the issues but I am grateful for his acceptance of Amendment 10 and beg leave to withdraw Amendment 8.

Amendment 8 withdrawn.

Clause 25 agreed.

Clause 26 : Section 24 not to apply in exceptional cases

Amendment 9 not moved.

Clause 26 agreed.

Clause 27 agreed.

Amendment 10

Moved by ***Lord Norton of Louth***

10: After Clause 27, insert the following new Clause—

"Explanatory memoranda

In laying a treaty before Parliament under this Part, a Minister shall accompany the treaty with an explanatory memorandum explaining the provisions of the treaty, the reasons for Her Majesty's Government seeking ratification of the treaty, and such other matters as the Minister considers appropriate."

Amendment 10 agreed.

Clause 28 agreed.

The Deputy Chairman of Committees (Lord Geddes): My Lords, I am advised by the government Front Bench that its intention is to oppose the Question that Clauses 29 to 37 en bloc do not stand part of the Bill; namely, the whole of Part 3 will be removed. Therefore, it may be for the convenience of the Committee if noble Lords do not wish to move their amendments. Of course, it is always open to any noble Lord to move an amendment standing in his or her name.

Clause 29 : Referendum on voting systems

Amendment 11 not moved.

Amendment 12

Tabled by ***Lord Tyler***

12: Clause 29, page 15, line 40, leave out "31 October" and insert "30 May"

Lord Tyler: My Lords, I do not intend to move Amendments 12, 13, 14, 16, 18, 19 and 20, but I and my noble friend Lord McNally wish to speak briefly to Clause 29 stand part, which is part of this group.

We were enormously impressed by the sagacity, eloquence and persuasive skills of the Lord Chancellor and Secretary of State for Justice in not only changing his mind on the whole issue of electoral reform, but in persuading so many of his colleagues in the other place, that it achieved the highest majority for a matter of any substance in this Parliament.

I would be remiss if I did not reiterate the point made by the noble Lord, Lord Campbell-Savours, which has been made on a number of occasions in this House. That is a matter for the other place and we agree that it may well be sensible not to press for this section, at this stage, at this time of night, to be the subject of lengthy discussion in this House. However, we will look with great interest to see how persuasive the "un-noble" Lord Chancellor and Secretary of State for Justice will be able, with his usual eloquence and persuasive skills, to persuade the other place to do an amazing u-turn. Having so eloquently persuaded them in one direction, no doubt he will be equally persuasive in presenting the case for doing a major u-turn. We would have been quite happy to push this through, even at this stage, but we recognise that at this time of night that is not likely to be the case.

However, this again emphasises to this House how we have been treated on this Bill in this wash-up. Here is a very important proposal which was thought through very carefully, as we understand it, in the other place, and now the Government are retreating so fast and furiously simply because this does not meet the party political interests of the Conservatives. It is so extraordinary. This provision does not introduce any change to our constitution; it was simply to ask the public whether they thought it was appropriate to consider a change to our electoral arrangements. That principle was so persuasively argued by the Lord Chancellor in the other place. We are disappointed that it has proved impossible in this House, at this stage, to maintain that position.

Lord Bach: My Lords, I hear clearly what the noble Lord, Lord Tyler, says. We understand and share his disappointment. We are committed to a referendum on AV—watch this space—but we are also committed to trying to get an important Bill through Parliament and, being realistic, this is the way to do it.

Lord Wallace of Tankerness: Did the Lord Chancellor ever seriously believe that this would end up other than being knocked out in the wash-up?

Lord Bach: I do not know the answer to that, but I think that there was every possibility that the party opposite would on this matter see sense.

Earl Ferrers: The noble Lord has said that this will be removed from the Bill. I congratulate him on doing that. After all, this is a constitutional Bill, and the altering of the constitution is a great and impressive thing to do. It requires more time than just wash-up. It is derisory to think that a major change to the constitution could come about as a result of an agreement in a wash-up. The fact that the Liberal Democrats always want an alternative voting system is like a mania. They always want it, irrespective of the arguments. The fact is that most people, other than the Liberal Democrats, do not understand how it works and do not realise that there are 12 alternative systems and each of the 12 provides a different answer. You cannot just say, "Let's have an alternative voting system", because it depends on which one you choose, and on which one you choose depends on the result of the vote. I am thrilled that the Government have at least seen sense over this.

Lord Elton: On a procedural matter, one cannot speak in this House unless one speaks to a Motion. The Motion is that the amendment be agreed to, so it requires to be withdrawn when we get to the end of our discussion.

Lord Bach: My Lords, perhaps I may say how thrilled I am that I have thrilled the noble Earl. I have to agree with him that this is a matter that needed considerable discussion—I will go that far with him—but I do not want anyone to be under any misunderstanding: the Government party is committed to a referendum on alternative voting.

Lord Lucas: My Lords, is that like the last commitment that we had to a referendum from the Government, or it is a different kind of commitment?

Amendment 12 not moved.

Amendments 12 to 20 not moved.

Clause 29 disagreed.

Clauses 30 and 31 disagreed.

Clause 32: Role of Electoral Commission

Amendment 21 not moved.

Clause 32 disagreed.

Clauses 33 to 37 disagreed.

Clause 38 agreed.

Schedule 4 agreed.

Clauses 39 to 46 agreed.

Schedule 5: Parliamentary Standards Act 2009: new Schedule 4

Amendment 22

Moved by ***Lord Bach***

22: Schedule 5, page 79, line 19, leave out "each House of Parliament" and insert "the House of Commons"

Lord Bach: My Lords, with the leave of the Committee, I shall speak also to Amendments 23 to 26. I can be very brief with this group of amendments. They give effect to the conclusions and recommendations made in respect of Part 4 by the Delegated Powers and Regulatory Reform Committee. The committee's report speaks for itself. Unless any noble Lord wants further details, if the Committee will allow me, I will leave it at that. I beg to move.

Amendment 22 agreed.

Schedule 5, as amended, agreed.

Clauses 47 to 50 agreed.

Schedule 6 : Parliamentary standards: consequential amendments

Amendments 23 and 24

Moved by ***Lord Bach***

23: Schedule 6, page 81, leave out paragraph (b)

24: Schedule 6, page 81, line 21, leave out from "8(2)"" to end of line 23

Amendments 23 and 24 agreed.

Schedule 6, as amended, agreed.

Clauses 51 and 52 agreed.

Schedule 7 : Parliamentary and other pensions

Amendments 25 and 26

Moved by ***Lord Bach***

25: Schedule 7, page 91, line 37, leave out "the House of Commons" and insert "each House of Parliament"

26: Schedule 7, page 93, line 18, at end insert "(subject to sub-paragraph (5)).

(5) A statutory instrument containing an order made under this paragraph in consequence only of a scheme under paragraph 12 is subject to annulment in pursuance of a resolution of the House of Commons."

Amendments 25 and 26 agreed.

Schedule 7, as amended, agreed.

Amendment 27 not moved.

Clause 53 : Ending of by-elections for hereditary peers

Amendments 28 and 29 not moved.

Debate on whether Clause 53 should stand part of the Bill.

Lord Tyler: My Lords, as the noble Lord, Lord Bach, generously said at the beginning of our proceedings on the Bill this evening, my noble friends and I did not agree to the complete exclusion of Part 5, which relates to matters of considerable concern to this House and to issues on which this House has taken a view on innumerable occasions in recent years, not least when we were discussing the Bill brought forward by my noble friend Lord Steel of Aikwood, which was supported by many Members on other Benches in your Lordships' House.

Clause 53 deals with the ending of by-elections for hereditary Peers, but also within this group we have Clauses 54 and 55, which deal with the extremely important issues of the exclusion and suspension of Members, which, as many Members of your Lordships' House will recall, caused us considerable concern in recent months when we found that the powers that we had on those matters were not substantial and were not sufficiently up to date in many people's view. We also have Clauses 57 and 58, which are tidying-up matters, and Schedule 8.

At this hour, I do not propose to repeat the arguments that we have advanced previously, not least earlier yesterday—I suppose about nine hours ago—on the issue of the extended discussions that have taken place over a long period about the hereditary principle and what the noble Lord, Lord Bach, as recently as in the Second Reading debate, described as the farce of the hereditary by-elections. We believe that it does this House no good to perpetuate farce of that nature. We believe that the Government were absolutely right to tackle this issue in this Bill and to pick up the proposals put forward so persuasively over many months by my noble friend Lord Steel of Aikwood. Therefore, we are disappointed that, under pressure from the Conservatives, who seem to think that preserving the hereditary principle is the big issue of the wash-up, the Government have given way on this issue of principle. We imagine that Members of the other place will be equally disappointed when this Bill goes back to them if the Government's proposals go through. On that issue, we are resolute.

However, we also believe that Clauses 54, 55, 57 and 58 have the real merit of simplifying and clarifying what powers we have in this House to deal with the problems that have been so apparent over recent months. This is, if you like, the IPSA problem so far as this House is concerned. The IPSA provisions in this Bill will go through and no doubt will give some confidence—at least, one would hope so—and increased trust in the way in which the other place deals with its disciplinary procedures. However, unless we have Clauses 54 and 55 in particular in this Bill, this will be unfinished business and we will go into the election and into the new Parliament with the House of Lords not having cleaned up its act. There is a real issue of principle, as well as of trust and of confidence in the parliamentary process and in your Lordships' House in particular.

That is enough at this time of night. We will definitely wish to test the opinion of the House on Clause 53 when the appropriate moment arrives.

1.15 am

Lord Steel of Aikwood: Before we do that, I register again my acute disappointment that, after three years of debate on what I call running repairs in this House on the four issues, the Government picked up three of those issues in this Bill but, at the last minute, we are not going to get even those. I can say straightaway that the noble Lord, Lord Norton of Louth, and I did not intend to move the amendment on a statutory Appointments Commission, despite the fact that it received universal support at Second Reading, for the simple reason that, although we would have done so had this Bill gone through the normal Committee procedure, we believe that it is not right at this late stage to try to introduce a new measure into the wash-up.

It really is quite extraordinary that we are going to make no progress on the other three issues tonight. I think that I understood the noble Lord, Lord Strathclyde, to say that, if a Conservative Government were elected, they would proceed with the disciplinary measures. If I understood him correctly, it is a pity that he does not go further and embrace all three measures. The retirement provision is surely important for the working of this House. We know that, after the election is over, there will be an influx of new Peers in all parts of the House. We will reach something like 800 if we are not careful. Yet it is seriously suggested that we do not even start to allow a provision for Members to retire from the House when they feel that it is right to do so. That is quite extraordinary.

As for the provision on hereditary by-elections, I remind the House of what the then Lord Chancellor, the noble and learned Lord, Lord Falconer of Thoroton, said in the House in 2003:

> "It was never our intention that the remaining hereditary Peers should remain Members of the House for ever. When this interim arrangement was reached, as well as the immediate benefit of the agreement, we accepted the argument that the presence of the remaining hereditary Peers would act as an incentive to further reform. That has not happened … So the context for reform has clearly and significantly changed. The circumstances which gave rise to the original arrangement over the remaining hereditary Peers no longer apply".—[*Official Report*, 18/9/03; col. 1058.]

If that was the position of those on the government Front Bench in 2003, how can it still apply in 2010? It simply does not make sense. If the Government are saying, "Oh well, we have to agree because the Conservative Opposition do not like this provision", I remind them that it was perfectly clear in all our debates that those on the Conservative Front Bench did not carry all those on their Back Benches with them. Not only are they giving in to a minority, but they are giving in to a minority within a minority in seeking to remove this provision from the Bill. It is deeply sad that this is happening. I will say simply that, if these provisions are not brought back before the House when the election is over, I intend to reintroduce my Bill for the third time.

Lord Howarth of Newport: My Lords, it is deeply regrettable that the opportunity has not been taken to pursue these modest measures that the noble Lord, Lord Steel, has so helpfully tabled on a number of occasions for your Lordships' consideration. Today, my right honourable friend the Prime Minister said to the country that it would be the intention of a future Labour Government to reform the House of Lords root and branch and that there should be an elected second Chamber. He has also made it clear that, following the removal of the hereditary principle, the introduction of an elected Chamber should take place by stages and that at least a further two general elections following the one about to take place would need to have occurred before that transition was complete. On the other hand, Mr Cameron has said that reform of the House of Lords would be a matter for a third term of a Conservative Government.

On any basis, we will continue with an appointed House for a considerable number of years to come. It is therefore important to realise that what the noble Lord, Lord Steel, has termed as running repairs, but which are significant reforms, are necessary to make an appointed House respectable and effective in the way that surely all of us desire that it should be. That must be in the interests of Parliament and the Government of this country. It really matters that these changes should be introduced.

[Lord Howarth of Newport]

It is pretty cynical to decline to implement reforms that have been extensively debated and clearly make sense in the context of an appointed House in order to present the appointed House as somehow disreputable. I do not think that that is a proper way to treat this House of Parliament. It is a great shame and greatly to be deplored that the Government have decided not to act on what they had previously intended to do, for which, I believe, they would have had extensive support across the House, with a real possibility of achieving these changes.

Earl Ferrers: My Lords, it is a particular pleasure to support the Government yet again, because they have been sensible over this. We have really got to get this thing right. A lot of absurd arguments have been put forward on one side. The noble Lord, Lord Steel, has said, "After all, I put this thing forward once, twice, three times and why should it not be made law?". That is his bad luck. The law of the country is not just changed; you do not change the constitution because one person happens to be fairly persuasive and obdurate about it.

It would have been a great mistake if the Government had undertaken a huge change—let us make no mistake, it is a huge change—in the wash-up. These things take a tremendous amount of care and thought before great decisions are arrived at. It is all very fine for the noble Lord, Lord Howarth of Newport, to say that he thinks that the whole thing is a farce. What makes a hereditary Peer any worse than he is? He was only appointed by someone. He scratched someone's back and someone said, "All right, I will appoint you". Hereditary Peers have not been appointed by anyone other than the Almighty. The noble Lord cannot just go around saying, "I have been appointed, so I am going to wash everyone else out of the system". The presence of the hereditary Peers—I say this with a great deal of modesty and I exclude myself—does a great deal of good. That is because their presence retains the House of Lords as it is. Once you get rid of the hereditary Peers, it will be a free-for-all. Someone may say, "There are no hereditary Peers. Let us have them all elected".

Noble Lords: Oh!

Earl Ferrers: There you go. I cannot think why the Liberal Democrats cannot keep their mouths shut for half a minute. They want it all to be elected. They do not realise that the House of Commons will hate it or that there will be terrible antagonism between the Lords and the Commons, with the Lords saying, "We have now been elected. O House of Commons, we have got just as much right as you have". We have heard that the House of Commons will not give up one jot or tittle of its power, which is quite understandable. Who will want to be elected here to have no purpose or raison d'être?

The Liberal Democrats have got this mad feeling that you have to change everything. With the greatest of respect, I would ask them to leave something alone for a minute. One of the things that they can leave alone is your Lordships' House. At least the Government have had the sense to think that this is not the right kind of thing to do in a wash-up and I congratulate them on that. I suggest to them that they go on thinking in that way.

Lord Bach: Let me be brief in my response. On Clause 53 and the appointment of hereditary Peers, I should make it absolutely clear that we want to end the farce of hereditary by-elections as soon as possible, but the question is at what price. If we had insisted on that clause in this wash-up period, the price would have been no Bill, which it is hoped there will be by the end of tonight, and there may well have been no other Bills that the Government wanted to get through in the last few days of this Parliament. So one has to make a choice.

There is also an argument in relation to what can and cannot be debated at length in the wash-up. The noble Earl has a point there. But let there be no doubt about the fact that we are against the hereditary principle, and when we are re-elected, we will make sure that the hereditary principle goes.

Lord Phillips of Sudbury: My Lords, what conceivable opposition could there be to giving Peers rights of resignation and disclaimer?

Lord Bach: Moving on to the other elements in Part 5, which are all a bit different from the one I have just talked about, again we had to make a judgment given the very limited time we have to get through some of the important parts of this Bill: Part 1 on the Civil Service; Part 2 on treaties and other parts, including one that is of particular concern to Members of this House in relation to their status; and we also need to get through the IPSA clauses. We had to make a judgment, and the judgment we have made is that it is best, for the moment at least, not to continue with Part 5. If we were to continue with it, the legitimate discussions that would have taken place, even though they would have found a pretty broad consensus around the House, would inevitably have taken longer than we have got in order to get the Bill to another place.

I do not say that this is an ideal state of affairs for Her Majesty's Government, but we are being realistic in the circumstances.

Lord McNally: I agree fully that the Minister is being realistic in the circumstances, but this House, including some Members on his own Back Benches, deserves an explanation from the Leader of the Opposition about why it has held a gun to the head of the Government on Clauses 54 and 55. We understand that the Opposition want to go into this election defending the hereditary principle, and good luck to them on that, but why on earth do they want to keep out of this Bill measures that are essential to the good reputation of this House? I just do not understand. Rather than be the fall guy for the noble Lord, Lord Strathclyde, I think that he owes this House an explanation of why he does not want Clauses 54 and 55 in the Bill.

Earl Ferrers: Perhaps I may help.

Lord McNally: I really do not want the noble Earl, Lord Ferrers, who clearly has not read the Conservative slogan for change. It is going to come as a great shock

to him; indeed, it could almost be fatal when he sees the first posters. The noble Earl is no longer speaking for the Official Opposition, which is stopping these two clauses being included in the Bill.

I will say this about the noble Earl, Lord Ferrers. Just when I am getting really sleepy and thinking, "It's about time we pack it in", he intervenes and the old adrenaline comes in, so I think we could well go on until dawn.

Earl Ferrers: I was only going to try to help my noble friend Lord Strathclyde because I thought that he and the noble Lord, Lord McNally, might like to know why we do not want the clauses. The answer is that there is not enough time. You cannot alter the constitution in a wash-up rather like doing the washing up in the sink. You are changing the constitution. With the greatest of respect to him, the noble Lord, Lord McNally, does not seem to understand that if you alter this, you will alter the whole philosophy of the House of Lords. People in the House of Lords will become elected and people in the House of Commons will hate a second elected Chamber. We have to decide that slowly and carefully, not in the three minutes of a wash-up. I hope that the noble Lord, Lord McNally, who, after all, is an enormously intelligent person, will be able to see that.

Lord Steel of Aikwood: My Lords—

Lord Stoddart of Swindon: Just a minute.

Noble Lords: Stoddart!

Lord Stoddart of Swindon: I had not intended to speak in this debate, but I really must congratulate the Government on their wisdom in accepting that these clauses should not go through today. I am surprised, in fact, that the Liberal Benches, having argued previously that there has not been time to discuss other matters such as the referendum on AV, should even be contemplating passing these clauses, which are fundamental to the House of Lords and require a few days' discussion, in the wash-up.

I say frankly to the noble Lord, Lord McNally, that it was nothing to do with the Leader of the Opposition that these clauses were dropped. The Government saw the amendments on the Order Paper and realised that there was a huge danger that they would not get any of their Bill. Make no mistake: all those amendments were going to be discussed and voted upon. It is no good blaming the noble Lord for that; instead, the Liberal Benches should be congratulating the Government on their wisdom in getting most of the Bill through.

Lord McNally: My Lords, last year we had to dig back for a 300 year-old precedent to try to deal with four Members of this House accused of a very serious offence. These amendments are trying to clean up the procedures of this House. They have been well discussed, and they are parallel to the Commons measures that we have just nodded through. When this Bill goes through, which I hope it will, the message to the country will be that the House of Commons has put its house in order but the House of Lords has not.

Lord Steel of Aikwood: More than that, my Lords, it is not fair to suggest that we are pushing this through in the wash-up. We have had debates on ending the hereditary by-elections three or four times in this House, and that was carried by a huge majority in the other place after a long debate. The issue has been fully debated.

I say to the noble Lord, Lord Strathclyde, who is not rising from his place in response to my noble friend, that I now feel sorry for David Cameron. Here he is, about to enter an election campaign saying that he has modernised the Conservative Party, and it is seriously going to maintain that in the 21st century people should still join the legislature of this country by heredity, chosen by a few other hereditaries. That is a ludicrous position, yet it is one that the party is determined to maintain and the Government have basically had to give in to blackmail.

Viscount Waverley: My Lords, I believe that the majority of hereditary Peers know exactly what our contribution is to Parliament and to its future. When the appropriate time comes, we will work in that regard.

Lord Strathclyde: My Lords, I take this opportunity to set the record straight. Clauses 54 and 55 are important clauses on expulsion, and we wholly support them. We urged the Government to bring them forward but, quite rightly, they took the view that it was not possible for them to be passed today without a great deal of discussion and that that would imperil the whole of the Bill.

I spoke about the rest of the Bill earlier today and I am not going to repeat the points that I made. However, the charges made by the noble Lord, Lord McNally, are completely empty and actually faintly shocking. After the noble Lord pleaded to be part of the discussions and the Government invited him in, in good faith, I find the sort of language that we have heard tonight disappointing from the leader of a political party in this House. I support the Government.

1.35 am

Division on Clause 53

Contents 42; Not-Contents 98.

Clause 53 disagreed.

Division No. 6

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1.45 am

Amendment 30 not moved.

Clause 54 : Removal of members of the House of Lords etc

Amendment 31 not moved.

Amendment 32

Moved by ***Lord Selsdon***

32: Clause 54, page 31, line 3, leave out from "excepted" to end and insert "elected hereditary peer or an appointed"

Lord Selsdon: The caterwauling of the Liberal alley cats has caused me a little bit of concern, and I should like a bit of clarification from the Government on what it means to be elected or accepted and elected or appointed. By my reckoning, about 420 Members of this House have been appointed by Mr Blair or Mr Brown under what you would call parliamentary patronage. I would be grateful if we could have a definition from the Government. An appointed Peer is someone appointed under the Life Peerages Act 1958. An elected hereditary Peer is someone accepted under the House of Lords Act 1999 and then elected. Is that true or is it not true? I beg to move.

Lord Bach: My Lords, I feel that the Committee is waiting for me to answer the noble Lord's question. To be truthful, I do not know the exact answer, but he is normally right.

Lord Selsdon: My Lords, I am most grateful for that. Having made the point, unless anyone wishes to add anything, I beg leave to withdraw the amendment.

Amendment 32 withdrawn.

Amendments 33 to 42 not moved.

1.48 am

Division on whether Clause 54 should stand part of the Bill.

Contents 45; Not-Contents 94.

Clause 54 disagreed.

Division No. 7

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Lee of Trafford, L.
Low of Dalston, L.
Maclennan of Rogart, L.
McNally, L.
Maddock, B.
Mar and Kellie, E.
Miller of Chilthorne Domer, B.
Northover, B.
Oakeshott of Seagrove Bay, L.
O'Loan, B.
Phillips of Sudbury, L.
Razzall, L.
Rennard, L.
Roberts of Llandudno, L.
Sharp of Guildford, B.
Shutt of Greetland, L. [Teller]
Steel of Aikwood, L.
Thomas of Gresford, L.
Thomas of Walliswood, B.
Tope, L.
Tyler, L.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Williamson of Horton, L.

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Andrews, B.
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Armstrong of Ilminster, L.
Astor of Hever, L.
Attlee, E.
Bach, L.
Bassam of Brighton, L. [Teller]
Bates, L.
Boyd of Duncansby, L.
Bradley, L.
Brett, L.
Bridgeman, V.
Brookman, L.
Butler-Sloss, B.
Cathcart, E.
Crawley, B.
Davies of Coity, L.
Davies of Oldham, L. [Teller]
De Mauley, L.
Dubs, L.
Elton, L.
Farrington of Ribbleton, B.
Faulkner of Worcester, L.
Ferrers, E.
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Geddes, L.
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Golding, B.
Gordon of Strathblane, L.
Gould of Potternewton, B.
Graham of Edmonton, L.
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Henley, L.
Howard of Rising, L.
Howe, E.
Howe of Idlicote, B.
Howell of Guildford, L.
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Morrow, L.
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Symons of Vernham Dean, B.
Taylor of Holbeach, L.
Thornton, B.
Tomlinson, L.
Trefgarne, L.
Tunnicliffe, L.
Ullswater, V.
Verma, B.
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Wilcox, B.
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1.58 am

Schedule 8 : Conditions for removal of members of the House of Lords etc

Amendments 43 to 47 not moved.

Schedule 8 disagreed.

Clause 55 : Expulsion and suspension of members of the House of Lords

Amendments 48 to 58 not moved.

Clause 55 disagreed.

Amendments 59 to 72 not moved.

Clause 56 : Resignation from House of Lords

Amendments 73 to 77 not moved.

Clause 56 disagreed.

Clause 57 : Disclaimer of peerage

Amendments 78 to 87 not moved.

Clause 57 disagreed.

Amendment 88 not moved.

Clause 58 : Supplementary provision

Amendments 89 to 92 not moved.

Clause 58 disagreed.

Amendments 93 to 102 not moved.

Clause 59 : Tax status of MPs and members of the House of Lords

Amendments 103 and 104 not moved.

Amendment 105

Moved by ***Lord Selsdon***

105: Clause 59, page 33, line 37, leave out "and domiciled"

Lord Selsdon: My Lords, this is a probing amendment asking once more for a definition. I am getting extremely concerned about the shortage of good words. The Liberal Democrats are for ever going on about non-doms. The Conservative Party goes on about non-doms. I should like to have a definition once and for all of the term "domicile". I declare an interest as a Scot. As a Scot with a lair, which is a grave, and a mausoleum, I am for ever and a day domiciled in Scotland. My family, however, have a habit of dying at sea. When you die at sea, there is a difficulty as to where you were domiciled at the time of your death.

I want to get the Government to describe the term "domicile". At birth in the United Kingdom in general you take the domicile of your father, which is called domicile of birth. At the age of 16, you may change that domicile to domicile of choice. However, if you change your domicile to domicile of choice, you must sever all relationships with your domicile of origin. This makes no problem at all for people who are born in the United Kingdom and take their father's domicile, but for those who may have foreign parents, domicile is an interesting and difficult situation.

The way the Government have worded this part of the Bill is not altogether clear. "Resident" and "ordinary resident" are extremely clear, but when you use the word "domicile" and talk about estate duty for part of the year, you have a considerable problem if you are looking at the application of death taxes or inheritance taxes in many countries around the world, particularly those which do not have a double taxation agreement. I should like the Minister to give an official definition of "domicile". I beg to move.

Lord Tunnicliffe: My Lords, I shall not be the first person in this House to disappoint the noble Lord, Lord Selsdon, and probably not the last. I cannot answer his question in those terms, but I can answer it in terms of the Bill. By omitting "and domiciled" from Clause 59(2), MPs and Peers would be deemed to be only resident and ordinarily resident, not domiciled. If MPs and Peers are not deemed to be domiciled, they would be able to access the remittance scheme and, as such, not pay full UK tax on their worldwide income. It is the consensus of all parties that that should not take place. I ask the noble Lord to withdraw his amendment.

Lord Selsdon: My Lords, if everyone is happy with that very clear definition, I would advise your Lordships that in the international courts from time to time there may be certain disputes. But perhaps that is the official declaration of domicility today. The word "deem" is also difficult, because against "deem" sometimes goes "the great redeemer". However, in view of the enthusiasm that the Government have shown for giving up using "dom" and sticking to "domiciled", I beg leave to withdraw the amendment.

Amendment 105 withdrawn.

Amendments 106 to 114 not moved.

Amendment 114A

Moved by ***Lord Tunnicliffe***

114A: Clause 59, page 34, line 36, leave out paragraph (c)

Lord Tunnicliffe: My Lords, I am assured that this is a consequential and technical amendment. I beg to move.

Amendment 114A agreed.

Amendment 115 not moved.

Clause 59, as amended, agreed.

Clause 60 : Tax status of members of the House of Lords: transitional provision

Amendments 116 to 120 not moved.

Amendment 121

Moved by ***Lord Tunnicliffe***

121: Clause 60, page 35, line 10, at end insert—

"(4A) But section 3(1)(b) of the 1999 Act does not apply in relation to M before the end of the period of three years beginning with the date on which the notice is given."

Amendment 121 agreed.

Amendment 122 not moved.

Amendment 123

Moved by ***Lord Tunnicliffe***

123: Clause 60, page 35, line 14 , at end insert—

"(5A) But subsection (5)(b) does not apply before the end of the period of three years beginning with the date on which the notice is given."

Amendment 123 agreed.

Amendments 124 and 125 not moved.

Amendments 126 and 127

Moved by ***Lord Tunnicliffe***

126: Clause 60, page 35, line 21, leave out from "peerage" to "subsection" in line 22 and insert "is conferred on M or M succeeds to a peerage,"

127: Clause 60, page 35, line 23, at end insert—

"If subsection (4)(a) has applied to M, it does not stop M becoming excepted from section 1 of the House of Lords Act 1999 again by filling a vacancy under section 2 of that Act after the notice is given."

Amendments 126 and 127 agreed.

Amendments 128 and 129 not moved.

Clause 60, as amended, agreed.

Amendment 130

Tabled by ***Lord Selsdon***

130: After Clause 60, insert the following new Clause—

"Tax status and citizenship of members of the House of Lords

(1) Any Member introduced into the House of Lords after the passing of this Act shall be a British citizen for taxation purposes.

(2) For the purposes of this Act "British citizen" means—

(a) a citizen of England, Wales, Scotland or Northern Ireland;

(b) a citizen of Her Majesty's Crown Dependencies and Her Majesty's Crown Dependencies are—

(i) the Isle of Man,

(ii) the Bailiwick of Jersey,

(iii) the Bailiwick of Guernsey; or

(c) a citizen of Her Majesty's Overseas Territories who holds British citizenship under the British Overseas Territories Act 2002 and Her Majesty's Overseas Territories are—

(i) Anguilla,

(ii) Bermuda,

(iii) British Antarctic Territory,

(iv) British Indian Ocean Territory,

(v) British Virgin Islands,

(vi) Cayman Islands,

(vii) Falkland Islands,

(viii) Gibraltar,

(ix) Montserrat,

(x) Pitcairn, Henderson, Ducie and Oeno Islands,

(xi) St Helena and her dependencies of Ascension Island and Tristan da Cuhna,

(xii) South Georgia and South Sandwich Islands.

(3) For the purposes of this Act a member of the House of Lords who is a citizen of one of Her Majesty's Realms, may be granted British citizenship without surrendering the current citizenship of a country of Her Majesty's Realms which are—

(a) Antigua and Barbuda,

(b) Australia,

(c) The Bahamas,

(d) Barbados,

(e) Belize,

(f) Canada,

(g) Grenada,

(h) Jamaica,

(i) New Zealand,

(j) Papua New Guinea,

(k) St Kitts and Nevis,

(l) St Lucia,

(m) St Vincent and Grenadines,

(n) Solomon Islands,

(o) Tuvalu.

(4) For the purposes of this Act, a member of the House of Lords who was born in any country of the Commonwealth prior to independence of that country may be granted British citizenship without surrending the current citizenship of the country of birth."

Lord Selsdon: I shall take only 30 seconds. The amendment concerns 30 territories around the world to which British citizenship relates. I want to make sure that we do not forget that British citizens are not necessarily residents of the United Kingdom, but they may be residents of many of Her Majesty's territories around the world. All that I should like to be sure of is that these territories are on the record and that everyone understands that, when we are discussing taxation or membership of the House of Lords of British citizens, they are British citizens.

Amendment 130 not moved.

Clause 61 : Demonstrations etc in the vicinity of Parliament

Amendments 131 and 132 not moved.

Clause 61 agreed.

Schedule 9 : Amendment to Part 2 of the Public Order Act 1986 etc

Amendments 133 to 137 not moved.

Schedule 9 disagreed.

Clause 62 : Time limit for human rights actions against Scottish Ministers etc

Debate on whether Clause 62 should stand part of the Bill.

Lord Wallace of Tankerness: My Lords, the noble Lord, Lord Bach, said some considerable time ago when the debate started that it was the Government's intention to delete these clauses from the Bill. Perhaps the Minister could confirm that the effect of these clauses, were they to be enacted, would be to repeal the Convention Rights Proceedings (Amendment) (Scotland) Act 2009 and statutory instrument 2009/1380, which I recall debating in this House last year. Is the Minister content that, if these clauses are not enacted, the legislation passed by the Scottish Parliament will still be effective?

Lord Bach: Yes, I am content that the Scottish legislation will be effective. This has been looked into.

Clause 62 disagreed.

Clauses 63 to 65 disagreed.

Schedule 10 : Judicial appointments etc

Amendment 138 not moved.

Schedule 10 disagreed.

Clauses 66 and 67 disagreed.

Clause 68 : The office of the Comptroller and Auditor General

Amendment 139 not moved.

Clause 68 disagreed.

Clause 69 : Status of the Comptroller and Auditor General etc

Amendment 140 not moved.

Clause 69 disagreed.

Clause 70 disagreed.

Clause 71 : Remuneration package of the Comptroller and Auditor General

Amendment 141 not moved.

Clause 71 disagreed.

Clause 72 : Resignation or removal of the Comptroller and Auditor General

Amendments 142 and 143 not moved.

Clause 72 disagreed.

Clauses 73 and 74 disagreed.

Schedule 11 : The National Audit Office

Amendments 144 to 147 not moved.

Schedule 11 disagreed.

Clause 75 disagreed.

Schedule 12 disagreed.

Clauses 76 to 80 disagreed.

Schedules 13 and 14 disagreed.

Clauses 81 and 82 disagreed.

Clauses 83 to 85 agreed.

2.15 am

Clause 86 : Freedom of information

Amendment 148

Moved by ***Lord Bach***

148: Clause 86, page 50, line 13, at end insert—

"(2) The Secretary of State may by order make transitional, transitory or saving provision in connection with the coming into force of paragraph 4 of Schedule 15 (which reduces from 30 years to 20 years the period at the end of which a record becomes a historical record for the purposes of Part 6 of the Freedom of Information Act 2000).

(3) An order under subsection (2) may in particular—

(a) make provision about the time when any records are to become historical records for the purposes of Part 6 of the Freedom of Information Act 2000, and

(b) make different provision in relation to records of different descriptions.

(4) An order under subsection (2) is to be made by statutory instrument.

(5) A statutory instrument containing an order under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament."

Lord Bach: My Lords, we move to Part 12 of the Bill and the Dacre report. In moving from a 30-year to a 20-year rule for the transfer of records to the National Archives and other archives and, in parallel, reducing the period during which certain exemptions in the Freedom of Information Act apply, the Government will be providing earlier access to a significant volume of material.

Of course, it is right that such a move involves careful preparation and is managed with an eye on the cost to the public purse. It is estimated that central government alone holds approximately 2 million paper files between 20 and 30 years old that would need to be reviewed as part of this process. A power is already included in the amendments to the Public Records Act in Clause 85 to allow us properly to prepare for and manage this change. The power is flexible but it is anticipated that two years-worth of records will be transferred to the National Archives or other place of deposit each year during a 10-year transitional period. These amendments to Clause 86 and Schedule 15 create a power to make corresponding transitional arrangements for entry into force of the amendments to the Freedom of Information Act. This is a logical extension.

The transitional provisions, which can be applied for different periods for different types of record, are needed because large volumes of requests for some information over 20 years old are anticipated. A gradual reduction would help us properly to manage the resource burden resulting from the changes to the Freedom of Information Act. I beg to move.

Amendment 148 agreed.

Clause 86, as amended, agreed.

Schedule 15 : Amendments of Freedom of Information Act 2000

Amendments 149 and 150 not moved.

Amendments 151 and 152

Moved by ***Lord Bach***

151: Schedule 15, page 132, line 15, leave out "In section 62(1)" and insert—

"(1) Section 62 (interpretation of Part 6) is amended as follows.

(2) In subsection (1)"

152: Schedule 15, page 132, line 16, at end insert—

"(3) After subsection (2) insert—

"(2A) Until the end of the period of 10 years beginning with the commencement of paragraph 4 of Schedule 15 to the Constitutional Reform and Governance Act 2010, subsection (1) has effect subject to any order made under section 86(2) of that Act.""

Amendments 151 and 152 agreed.

Schedule 15, as amended, agreed.

Clause 87 agreed.

Amendment 153 not moved.

Clauses 88 and 89 disagreed.

Clause 90 : Parliamentary elections: counting of votes

Amendment 154 not moved.

Clause 90 agreed.

Clause 91 disagreed.

Amendment 155

Moved by ***Lord Ramsbotham***

155: After Clause 91, insert the following new Clause—

"Prisoner voting rights

Section 3 of the Representation of the People Act 1983 is omitted."

Lord Ramsbotham: I fully accept that the Bill that we are now discussing is but a shadow of the one that came before us yesterday afternoon. I am conscious of the hour and do not wish to detain your Lordships on a subject which many may deem peripheral. However, I submit that it is actually far from peripheral in the context in which we are conducting this wash-up—namely, the forthcoming general election—because it has to do with the way in which the Government have chosen to handle an issue that could endanger the whole process. Indeed, it could have been dealt with years ago. If this were a normal Committee stage, I would now set out my reasons in full, cataloguing what has happened in the nine years since the High Court rejected the case made by three serving prisoners, that all prisoners should be enfranchised in accordance with Protocol 1, Article 3 of the European Convention on Human Rights, which this Government caused to become part of the United Kingdom law in October 2001.

One of the three, John Hirst, appealed to the European Court of Human Rights, which in March 2004, unanimously ruled against the UK Government's blanket ban on sentenced prisoners voting, which had been set out in Section 3 of the Representation of the People

Act 1983, but dated back to the Forfeiture Act 1870. The government appeal to the Grand Chamber of the European Court was dismissed in October 2005.

In logic, you would expect that a Government who pride themselves on acting within the law and who have introduced more legislation than any other in our recent history, would abide by the decision of the highest court to which it could appeal and take the necessary steps to implement what was laid down. But no, frightened of offending reactionary public opinion by appearing not to be tough on criminals—which is not the same as Mr Blair's unfulfilled pledge to be tough on crime and the causes of crime—the Government determined to prevaricate for as long as possible, going to absurd lengths, such as suggesting that prisoners had lost the moral authority to vote.

Civil and political rights determine who may vote, not moral authority and goodness knows who else the Government would have deemed to have lost the moral authority to do so, with the notable exception of Members of this House, if they decided to go down that route. The European Court was damning in its criticism of the Government's line, saying that it found no evidence to support the claim that disfranchisement deterred crime and that there was no evidence that the Government had ever sought to assess the proportionality of the ban as it affected convicted prisoners. The Grand Chamber went even further by stating that there was no place under the European convention where tolerance and broadmindedness are the acknowledged hallmarks of a democratic society for automatic disfranchisement based purely on what might offend public opinion.

The prevarications included the charade of two so-called consultations. The first, initiated in December 2006 and promising a legislative solution early in 2008, was farcical on two counts: first, it was based on the wrong question. The court having ruled that all convicted prisoners have the right to vote, the issue should have been who should not, rather than who should be allowed to do so. Secondly, there was no response until April 2009, over two years later, and a year after the promised solution. The second consultation, announced at the same time as the results of the first, was also farcical on two counts: first, it lasted for 20 weeks, ignoring the Government's published code of practice laying down a maximum of 12 weeks; and, secondly, because despite frequent questioning it was clear from the start that the Minister of Justice had no intention of doing anything before the election.

Comparisons are odious, but what makes that delay even more reprehensible is that, during that period, the Ministry of Justice was abusing the process in a completely different way, again for its own ends. On 15 March this year, the chairman of the Bar Council drew the attention of a Grand Committee of this House to the fact that the Minister of Justice, prevaricating over prisoner voting consultations, had rushed through a consultation on draft conditional fee agreements, stipulating that consultation should be limited to a mere four weeks, rejecting all pleas for extensions and publishing his response a mere two weeks later. He justified that deviation from the code of practice as being "in order to be in a position to implement the proposal as soon as possible". The Bar Council chairman commented that that wording made it sound as though there were not so much a predisposition to implement the proposal, as a predetermination. The same observation applies to the issue of prisoners voting with the addition of the word "not" before "to implement".

The Committee of Ministers at the Council of Europe has publicly expressed its condemnation of that prevarication three times in the past six months, most recently on 8 March, when it said that it was seriously concerned that a failure to implement the European Court's judgment has given rise to a significant risk that the next United Kingdom general election would be performed in a way that failed to comply with the European convention and requiring the Government to rapidly adopt measures of an interim nature to ensure the execution of the court's judgment before the forthcoming election. In other words, we are being accused of behaving like a recalcitrant third-world country, rather than the country which, until now, has had a proud record of setting examples for others to follow. Clearly, the possible threat to the general election is not regarded as requiring the same urgency as conditional fee agreements.

Much has been said today about the contempt in which the parliamentary process is being treated during this wash-up. I have sided not just with the noble Lord, Lord Rooker, but with all those who have called for time to be allowed for proper scrutiny of legislation and for Bills to deal with discrete issues, rather than the vast catch-alls that have marked criminal justice Bills in particular. I cannot imagine why the Government have not included this issue in all that legislation. Time and again, it has had to be raised whenever an opportunity arises, such as tonight. I hope that the issue will be put to bed very quickly by the next Government, because it is a disgrace that this has gone on for six years, which, as I have pointed out previously, is longer than the whole of World War II.

There is another reason why I want to put the issue on the record. The Government's prevarication amounts to nothing less than deliberate and inexcusable defiance of the rule of law as laid down by the courts. At the same time, they have gone to extreme length to punish those who do the same thing, as demonstrated by the record numbers in our prisons, the fact that we have more life-sentence prisoners than the rest of Europe added together, and that more than 3,000 new laws carrying prison sentences have been introduced.

At a time when the reputation of Parliament is at an all-time low, what respect can anyone have for a Government who so flagrantly fail to practise what they preach? What message does that attitude to the law send, not just to criminals but to young people who may be tempted to turn to crime?

Ghana was faced by exactly the same situation in November last year, when two lawyers took the Government to court for refusing to allow prisoners to vote. In sharp contrast to this country, the High Court found against the Government on 23 March—a mere four months later—contending that it found it extremely difficult to understand what constitutionally legitimate interest was served by the non-recognition of prisons as places of residence for the purpose of voter registration. The court commended the lawyers for advancing the

[LORD RAMSBOTHAM]
frontiers of human rights in Ghana's justice system. I find it ironic to be proposing the amendment because of the refusal of the Secretary of State for Justice to advance the frontiers of human rights in the United Kingdom's justice system when he was the Minister responsible for the introduction of human rights into our law in the first place.

As the Minister knows, I have never called for all prisoners to be allowed to vote. Clearly, some have committed crimes that justify that right being removed, but that should be decided by the courts as part of the sentence. Had we been having a normal Committee, I would have been able to set that out in more detail but, in the mean time, I ask for the removal of a wholly unnecessary blot on our national escutcheon, which we share with very few countries in Europe, such as Albania and Bulgaria, by the omission of Section 3 of the Representation of the People Act 1983, thus allowing prisoners to execute their civil and political right to vote. I beg to move.

Lord Grenfell: I strongly support what the noble Lord, Lord Ramsbotham, has just said. The fact that he felt it necessary at this hour to take eight minutes to make a very important point demonstrates how we have lost so much in this House by not having had the time to have a proper debate on the Bill. I feel strongly that he made a very good point. It is awful that this House has to get through the Bill, arriving at 2.30 in the morning, when we should have had at least the chance to have a proper debate on it. As I said earlier, the whole Bill should have been held over until the next Parliament. It would have been so much better if we had had the chance to have a proper debate during the next Parliament. I have a feeling that whoever was in charge of the wash-up has put fast-forward on to spin-dry because we have not had a chance. This is typical of what we said earlier, but there are good points in the Bill. There are 42 pages of amendments, yet we have got through them in a very short time because we have not had a chance to debate them. They have been withdrawn one after the other. Many of them were making very good points. I re-emphasise that I hope that this will not happen again. It is a sad day for this House that we arrive at the end of our discussion of a constitutional reform Bill at this hour and have had to take so little time to debate the important issues that have just been raised by the noble Lord, Lord Ramsbotham.

Earl Ferrers: I agree with both the noble Lords who have just spoken that it is a terrible thing that all these important matters dealing with the constitution are being done in the course of a wash-up. It is not only the two noble Lords who have so complained but also the Select Committee on the Constitution. I remind noble Lords of what it said at paragraph 45:

"The House may take the view that the consequence of the Government tabling so many late amendments to the Bill is that the parliamentary consideration given in both Houses to the important aspects of constitutional reform which this Bill is likely to effect has been substantially curtailed".

It goes on:

"In any event, we consider it to be extraordinary that it could be contemplated that matters of such fundamental constitutional importance as, for example, placing the civil service on a statutory footing should be agreed in the 'wash-up' and be denied the full parliamentary deliberation which they deserve".

In paragraph 47, the report states:

"This is no way to undertake the task of constitutional reform".

Both noble Lords who have just spoken made that point, and many other noble Lords feel the same. Although we have done the best with the Bill that is in front of us, it is wrong to try to alter the constitution in such a hurried and undebated way.

Baroness Butler-Sloss: Returning to the issue of the votes of prisoners, I hope that whichever party comes into power after 6 May will make this matter a priority. It will be very sad if we continue for years to come to have my noble friend Lord Ramsbotham asking whichever Government are in power to get on with something that has become a disgrace.

Lord Elton: The reputation of the wash-up process is now in shreds and it is not necessary to go on about it. The point raised by the noble Lord, Lord Ramsbotham, is a serious issue. Your Lordships may not find it attractive at first glance because it deals with prisoners, but were we able to have a full-scale debate, I feel confident that we could convince your Lordships that this is something that needs to be done urgently for reasons quite separate from the need to abide by the law as established by the European courts. We do not have that opportunity. I add my support, without such a debate, to the amendment moved by the noble Lord, Lord Ramsbotham. If the Government say that they cannot accept it because it is now too late to carry out the duty that this would impose on them, that reflects a shameful light upon them.

Lord Norton of Louth: I will briefly piggyback on the amendment in the light of what the noble Lord, Lord Grenfell, and my noble friend Lord Ferrers have said. This will save some time because I will not need to move Amendment 161. I take my noble friend Lord Elton's point about the wash-up; I intend only to make a constructive suggestion. I have made the point that in the new Parliament the Constitution Committee of your Lordships' House should carry out an inquiry into wash-up, which would enable us to stand back, look at the whole issue and recommend how this ought to be addressed in the future. I think that that is the way forward.

Lord Lucas: My Lords, I totally support the amendment in the name of the noble Lord, Lord Ramsbotham. I merely note that, were it to be passed, we would be left in the company of murderers and rapists only. That may be disfranchisement and not really the place in which we want to find ourselves.

Lord Tyler: I record on behalf of my noble friends that we, too, support the noble Lord, Lord Ramsbotham, as we have consistently on a number of occasions. It is most unfortunate that this has come at this juncture, but that is scarcely his fault. It is entirely the fault of the Government, who have left it to this very late stage. It is extraordinary that the Government see fit to respond to the concerns of the *Daily Mail* rather than to obey the Court.

Lord Bach: My Lords, I thank noble Lords who have spoken in this debate, which has been about two things: the addition to the Bill which the amendment proposes—it is not in the Bill, but is an amendment to it; and the Constitution Committee and the wash-up generally.

I heard the extensive criticisms of the Bill that were made at Second Reading and repeated again this morning, and obviously we have taken note of them. A number of items of constitutional importance have been dropped by the Government as a consequence of what has been said. Indeed, it is worth making the point that, ironically, we have been criticised for dropping some of the things that we have dropped, but lessons have no doubt been learnt. Once again, I repeat how grateful we are to noble Lords who had strong feelings about this Bill and who have taken part in discussions today so that, at the end of the day, we have a Bill to send back to the other place. I repeat again that we very much take on board what my noble friend Lord Rooker said about post-legislative scrutiny of this Bill in time to come.

Let me turn to the issue of the amendment. Everyone in the Committee is well aware of the expertise and high reputation of the noble Lord, Lord Ramsbotham, when he talks about these matters. He is attempting through the amendment to repeal Section 3 of the Representation of the People Act 1983, thereby removing the statutory prohibition on voting by convicted prisoners. It remains the Government's view that the right to vote goes to the essence of the offender's relationship with democratic society, and the removal of the right to vote in the case of some convicted prisoners can be a proportionate and proper response following conviction and imprisonment. Indeed, the noble Lord himself said just as he ended his address that he had never believed that all prisoners, whatever they had done, should be given the right to vote.

Our approach to implementing voting rights for prisoners aims to arrive at a solution that respects the judgment of the Court in Hirst while taking into account our own traditions. Indeed, the Committee knows that the European Court affords a wide margin of appreciation not just to the United Kingdom but to other countries when they pass their judgments. We have been consistently clear that we oppose enfranchising all prisoners irrespective of the seriousness of their crimes or the length of their sentence, which would be the actual effect of the amendment. We consider that the more serious the offence, the less an individual should have the right to retain the right to vote when sentenced to imprisonment. Tying the entitlement to vote to sentence length has the benefit of establishing a clear relationship between the seriousness of the offence or offences and the suspension of the right to vote.

Our proposed approach to the enfranchisement of prisoners is therefore based on the length of custodial sentence to which a prisoner has been sentenced. We have consulted on a range of options that would allow those receiving sentences of up to one year, two years or four years imprisonment to retain the right to vote. We are considering the responses to the consultation and will set out our next steps towards implementation once the responses have been analysed. However, even for those, this amendment would not deliver a satisfactory outcome—which is unlike the view of the noble Lord who tells us that he does not support the enfranchisement of all prisoners. While it would remove the current statutory bar by repealing Section 3 of the Representation of the People Act 1983, it puts nothing in its place regarding the necessary arrangements which would enable prisoners to exercise their right to register and to vote in practice.

Some people believe that once the statutory bar is removed, there would be few practical considerations of substance to be dealt with. We say that that would not be true. In contrast, I have to tell the Committee that extending the franchise to convicted prisoners to any degree would require obviously a considerable number of issues to be resolved and settled in electoral law, if nothing else, if it is to be done consistently and effectively. Let me mention just a few of those issues. Where should prisoners be entitled to be registered to vote—for example, in what constituency? How should prisoners be recorded on the register? How would prisoners cast their votes—by post, by proxy or a combination of the two? How would the security of the ballot be enforced? This amendment would provide for none of those things. It would risk creating inconsistencies in approach. Electoral administrations would not have clarity on how to implement the legislation, which could lead to anomalies in arrangements. A rushed implementation of prisoners' voting rights may also mean that it is not possible to ensure that the right systems are in place to prevent electoral fraud.

It is vital that Parliament has proper time to scrutinise, debate and amend proposals for enfranchising prisoners. [*Laughter.*] If noble Lords say, as they do, with some justification, that they should have had longer to review this Bill, they can hardly support this amendment. Supporting amendments to complex electoral legislation, given the lack of parliamentary time available, and seeking to implement Hirst 2 as an amendment to this Bill is not appropriate. I hope that the noble Lord will withdraw his amendment.

Lord Ramsbotham: My Lords, I thank the Minister for that reply. I have to admit that the wording of this amendment was suggested by the excellent Public Bill Office, which has been overworked on this Bill as much as on anything else. As I have made clear on the other occasions when I have tabled this amendment, I am not in favour of all prisoners voting. However, to go into all the details of that at this stage of this Bill would be utterly inappropriate.

As regards timing, the Government have now had six years since the ruling of the court, so to come at this at a rush now seems utterly inappropriate. The last part of what the Minister had to say was highly inappropriate in relation to the Bill that we are discussing and the stage at which we are discussing it. It seems paradoxical, given that we have been fussed about the rush with which things have been put to us, to be ending up talking about a delay during which something could have been brought forward.

However, not just in view of the hour but in view of the stage of this Bill, it is obviously highly inappropriate to take this forward. I hope that the points that noble

[LORD RAMSBOTHAM]
Lords were good enough to make will be taken on board in relation to the wash-up process and the need to get on with this issue and avoid the shame of being criticised by Europe for the fact that we have failed to take action. I beg leave to withdraw the amendment.

Amendment 155 withdrawn.

Clause 92 agreed.

Clause 93 agreed.

Clause 94 : Power to make consequential provision

Amendments 156 to 158 not moved.

Clause 94 agreed.

Amendments 158A and 158B

Moved by ***Lord Bach***

158A: Clause 95, page 53, line 41, leave out subsection (1)

158B: Page 54, line 1, leave out "any other Part of"

Amendments 158A and 158B agreed.

Clause 95 : Extent, commencement, transitional provision and short title

The Deputy Chairman of Committees (Lord Geddes): I must advise the Committee of two misprints at this point in the Marshalled List. I am sure that everyone will have spotted the fact that Amendment 161 should be taken after Amendment 160, and the italics regarding Clause 95 standing part should come after Amendment 162.

Amendment 159

Moved by ***Lord Bach***

159: Clause 95, page 54, line 10, leave out paragraph (a)

Amendment 159 agreed.

Amendments 159A and 159B

Moved by ***Lord Bach***

159A: Page 54, line 12, leave out from "60" to the end

159B: Page 54, line 13, leave out "other than section 91"

Amendments 159A and 159B agreed.

Lord Elton: Could we possibly have an indication of what the amendments are about?

Lord Tunnicliffe: I am assured by officials that all the manuscript amendments are purely consequential.

The Deputy Chairman of Committees: Would it assist the Committee if I read out the amendments? However, I do not think they would enlighten noble Lords too much if I did.

Amendments 160 to 162 not moved.

Clause 95, as amended, agreed.

In the Title :

Amendments 162A and 162B

Moved by ***Lord Bach***

162A: Line 2, leave out from "Settlement" to first "to" in line 4

162B: Line 5, leave out from "treaties;" to "to" in line 6

Amendments 162A and 162B agreed.

Amendment 163 not moved.

Amendments 163A and 163B

Moved by ***Lord Bach***

163A: Line 7, leave out from "elections;" to second "to" in line 8

163B: Line 11, leave out from "holders;" to "to" in line 13

Amendments 163A and 163B agreed.

Amendments 164 and 165 not moved.

Amendments 166 and 167

Moved by ***Lord Bach***

166: Line 16, leave out from "purposes;" to first "to" in line 18

167: Line 18, leave out from "1986;" to first "to" in line 19

Amendments 166 and 167 agreed.

Lord Elton: May I make the point that it would be quite easy to have these photocopied and circulated, as manuscript amendments have been in the past.

The Deputy Chairman of Committees: The noble Lord will find that the amendments were available in the Printed Paper Office.

Lord Elton: I unreservedly withdraw that comment.

Amendments 168 and 169

Moved by ***Lord Bach***

168: Line 19, leave out from "administrations;" to first "to" in line 20

169: Line 20, leave out from "holders;" to second "to" in line 23

Amendments 168 and 169 agreed.

The Title, as amended, agreed.

House resumed. Bill reported with amendments. Report and Third Reading agreed without debate. Bill passed and returned to the Commons with amendments.

Bournemouth Borough Council Bill [HL]

Returned from the Commons

The Bill was returned from the Commons with the amendments agreed to.

Manchester City Council Bill [HL]

Returned from the Commons

The Bill was returned from the Commons with the amendments agreed to.

Equality Bill

Returned from the Commons

The Bill was returned from the Commons with the amendments agreed to.

Northern Ireland Assembly Members Bill [HL]

Returned from the Commons

The Bill was returned from the Commons agreed to.

Bribery Bill [HL]

Returned from the Commons

The Bill was returned from the Commons agreed to with amendments. It was ordered that the Commons amendments be printed.

Digital Economy Bill [HL]

Returned from the Commons

The Bill was returned from the Commons agreed to with amendments and with a privilege amendment. It was ordered that the Commons amendments be printed.

House adjourned at 2.50 am.

Written Statements

Wednesday 7 April 2010

Armed Forces: Equipment
Statement

The Minister for International Defence and Security (Baroness Taylor of Bolton): My right honourable friend the Secretary of State for Defence (Bob Ainsworth) has made the following Written Ministerial Statement.

Further to my announcements on 22, 25 and 29 March, I can advise the House that the Ministry of Defence has signed a £690 million engine support contract with Rolls-Royce for 15 years to see Royal Air Force Tornado aircraft through to their out-of-service date in 2025.

In my Statement of 15 December, I set out our intention to review the fast jet fleet mix in the course of the forthcoming Strategic Defence Review. I can assure the House that this support contract provides sufficient flexibility for changes in future aircraft numbers, and will deliver excellent value for money for defence. It is expected that this new contract will deliver savings in the order of £180 million over the next 15 years.

The RB199 operational contract for Engine Transformation 2 covers repair, maintenance, provision of spares and technical support, and builds on the current Rolls-Royce support contract.

Elections: General Election
Statement

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My right honourable friend the Prime Minister has made the following Statement.

I have written to ministerial colleagues providing guidance on the conduct of government business during the election period. The Cabinet Secretary has also issued guidance to civil servants on their conduct during this period. The guidance comes into force with immediate effect.

Copies of the documents have been placed in the Libraries of both Houses and on the Cabinet Office website at www.cabinet-office.gov.uk.

EU: Agriculture and Fisheries Council
Statement

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): My right honourable friend the Secretary of State (Hilary Benn) has made the following Written Ministerial Statement.

My honourable friends the Minister for Food, Farming and Environment (Jim Fitzpatrick) and the Minister for Marine and Natural Environment (Huw Irranca-Davies) represented the United Kingdom at the Agriculture and Fisheries Council in Brussels on 29 March.

The presidency tabled presidency conclusions on the food supply chain in Europe, acknowledging that the distance between member states on issues related to the CAP and competition rules, and the treatment of producer organisations, was unbridgeable. The four dissenting member states—UK, Sweden, Denmark and Czech Republic—all confirmed their opposition to council conclusions, but noted that there was much common ground on wider aspects of the text.

France recorded a number of observations underpinning the presidency text, whilst other member states took the floor to support the presidency and to press issues. Commissioner Ciolos, endorsing the presidency text, noted the need for proposals to deal with medium and long-term issues related to the food supply chain, including competition policy. The presidency recorded that while much of the text had been agreed unanimously, unamended presidency conclusions would be adopted with the support of a majority of member states.

Following discussion on the reform of market management measures for the post-2013 CAP at the February council, the presidency adopted presidency conclusions, branded informally "trio conclusions" on behalf of the present and incoming Belgian and Hungarian presidencies. The conclusions recorded the prevailing view among Ministers that the current CAP market orientation was sufficient, and that the existing market management regime should be retained as a safety net.

Commissioner Ciolos observed that the conclusions were merely the beginning of a debate on the future of market management, which would inform the wider debate on CAP reform post-2013. The presidency stated that its conclusions were supported by the majority, and that there would be an opportunity for further discussion of CAP reform at the informal council on 1 June.

Commissioner Ciolos then presented the latest iteration of its quarterly dairy market report, and noted the recovery in the sector since 2008.

Next, the presidency facilitated a discussion on the relationship between Europe 2020 and the CAP, providing Ministers with a questionnaire which solicited their views on the CAP's contribution to Europe 2020 objectives. They also noted that the European Council had adopted a specific conclusion in respect of the relationship between Europe 2020 and the CAP, observing that the CAP "will need" to support Europe 2020.

The Commission noted that Europe 2020 was not intended to undermine existing EU policies. The CAP would continue, subject to reform, and in conformity with the provisions of the Lisbon treaty. The CAP should also meet the three objectives set out in Europe 2020: smart, inclusive, and green economic growth. It also suggested that the Agriculture Council should feed the European Council ideas on how CAP reform could feed into Europe 2020 with a view to consideration at the June European Council.

A full table round developed with a predictable split between those member states which believed that Europe 2020 was inexcusably silent on the contribution of the

CAP to the growth of the European economy; and those that believed that the CAP would need to prove its worth through reform in support of Europe 2020 objectives. Each camp interpreted the European Council conclusion on the CAP and Europe 2020 as support for its own particular doctrine. The presidency concluded that it would be important to consider the Agriculture Council's contribution to the June European Council, where Europe 2020 would be adopted. It would outline its plans in due course.

Under any other business, Italy raised concerns about implementing the 2006 regulation on Mediterranean fisheries management, which was causing serious difficulties for operators and there should be some reconsideration of how this should be done. Commissioner Damanaki was robust in saying that many Mediterranean stocks were not being sustainably fished and that member states had had more than three years to implement this regulation.

Malta, with some support, raised concerns about some member states voting differently to the agreed EU position on blue-fin tuna at CITES and the difficult position this had left them in with their fishing industry. Commissioner Potocnik drew some general conclusions, including the need for the EU to up its game on external representation and reserved the right to take all necessary measures in relation to this specific case. The UK registered disappointment that CITES was unable to agree to protect blue-fin tuna.

France brought to Ministers' attention the forthcoming agriculture ministerial meeting of the Union for the Mediterranean in Cairo, 15 and 16 June, and encouraged Ministers to attend.

Austria presented its paper recording the outcome of the recent OECD agricultural ministerial, highlighting Ministers' acknowledgment of the climate security challenges facing agriculture.

Commissioner Ciolos noted that there were no significantly new elements to discuss regarding the WTO/DDA. However, as a new Commissioner, and as agricultural negotiator, Ciolos wanted to reaffirm his own commitment to a balanced conclusion to the round.

EU: Environment Council

Statement

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): My right honourable friend the Secretary of State (Hilary Benn) has made the following Written Ministerial Statement.

I represented the United Kingdom at the Environment Council on 15 March in Brussels, together with the Minister of State at the Department of Energy and Climate Change (Joan Ruddock).

The presidency presented a progress report on the soil framework directive, noting that negotiations remain stalled because a group of member states that includes the UK remains strongly opposed to it. In the discussion that followed, I reiterated the reasons for the United Kingdom's position and highlighted that the fundamental differences of view between member states mean there is a need for a fresh approach to the dossier. Other member states spoke in line with their well-established positions.

The council adopted conclusions setting out an EU vision for biodiversity through to 2050, and setting a 2020 target to halt the loss of biodiversity and the degradation of ecosystems services and to restore these as far as possible. I spoke in support of the conclusions and welcomed the work of the intergovernmental platform on biodiversity and ecosystems services (IPBES) and the study on the economics of ecosystems and biodiversity (TEEB). I also highlighted the importance of forestry and access and benefit sharing in ensuring an ambitious outcome at the conference of the Parties to the Convention on Biodiversity in Nagoya later this year.

Environment Ministers also exchanged views on the Commission's recently published communication on the Europe 2020 strategy for jobs and growth, in advance of debate in the European Council later this month. I welcomed the communication's focus on resource efficiency and emphasised that the transition to a low-carbon, resource-efficient and climate-resilient economy, which preserves our natural resources for future generations, represents an important opportunity to promote jobs and growth.

Lunchtime discussion focused on the follow-up to the Copenhagen Climate Change Conference. Following lunch, Ministers agreed council conclusions on this subject in which EU positions were broadly maintained. Joan Ruddock emphasised the importance of working towards a legally binding outcome and in particular making concrete progress towards this in Cancun. She highlighted the importance of the positive outcomes from Copenhagen and encouraged swift progress on implementing the Copenhagen accord, particularly around REDD+ (the framework for reducing emissions from deforestation and forest degradation) and fast start finance. Ministers continued to show commitment to a global legal framework for reducing emissions, with openness on proposals for achieving it. Mexican Environment Minister Juan Elvira Quesada attended to update Ministers on Mexican preparations for Cancun, and Joan Ruddock intervened in recognition of the Mexican team's dedication and efforts to renew the negotiation process.

The Environment Council concluded with a policy debate on the proposed regulation on reducing CO_2 emissions from light vehicles (ie vans), during which Joan Ruddock emphasised that this proposal is key to reducing carbon emissions from transport. She stated that the regulation must include an achievable long-term target for 2020 and also proposed a short-term target date for 2016, supported by effective penalties and incentives for investment in ultra-low-carbon vehicles. She also highlighted the importance of maintaining competitiveness in the automotive sector through the flexibilities proposed in the regulation.

Questions for Oral Answer: Correction

Statement

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): I regret that the Answer given to Lord Clarke on 30 March 2010 (*Official Report*, col. 1288) was not correct in respect of the timing of Department for International Development (DfID) funding of humanitarian assistance to those displaced by recent violence near Jos in Nigeria.

DfID has previously provided £200,000 for the International Committee of the Red Cross ICRC) for use in Nigeria.

DfID is currently considering further additional funding for humanitarian assistance to victims of recent violence in Jos, decisions upon which will be made on the basis of a needs-assessment currently being carried out by the ICRC.

Taxation: Information Exchange Agreements

Statement

The Financial Services Secretary to the Treasury (Lord Myners): My right honourable friend the Financial Secretary has made the following Written Ministerial Statement.

Tax information exchange agreements (TIEAs) were signed with the Commonwealth of Dominica and with Grenada in London on 31 March 2010.

The text of each TIEA has been deposited in the Libraries of both Houses and made available on HM Revenue and Customs' website. Each text will be scheduled to a draft Order in Council and laid before the House of Commons in due course.

Written Answers

Wednesday 7 April 2010

Armed Forces: Helicopters

Question

Asked by ***Lord Astor of Hever***

To ask Her Majesty's Government what has been the retention rate for Apache helicopter pilots serving in HM Armed Forces in each year since 2001. [HL2943]

The Minister for International Defence and Security (Baroness Taylor of Bolton): There is no single, formal measure providing a retention rate for aircrew.

Apache aircrew deployable strength has increased from 46 to 108 since 2007 due to increased operational demand. There has been a fourfold increase in flying hours for Apache helicopter aircrew since 2006.

The Attack helicopter force has been steadily growing since the Apache was introduced into service. The original requirement was to provide 40 crews by 2009 and a long-term plan of growing to 60 crews in 2012.

Armed Forces: Imprisonment

Question

Asked by ***Baroness Miller of Chilthorne Domer***

To ask Her Majesty's Government how many soldiers who have served in Iraq and Afghanistan and refused to return there have been imprisoned due to their refusal to serve another tour in each of the past four years; and what is the average length of sentence for such soldiers. [HL3096]

The Minister for International Defence and Security (Baroness Taylor of Bolton): The information is not held in the format requested.

Our Armed Forces are prepared to put their lives on the line in service of the country. They willingly accept restrictions to their lifestyle and the unique conditions of service that are required to do the job. Wherever possible we will accommodate individual needs, providing that this does not impact on operational effectiveness.

Service personnel are not allowed to choose which assignments they will undertake or which orders they will follow. As a result, refusing to serve on operations may result in a charge for desertion. In each of the past four years, three personnel from all three services have been charged and found guilty of desertion, with an average length of sentence of about eight months. It is not possible to confirm whether a refusal to serve in Iraq or Afghanistan, on either a first or second tour, was a factor in all of these cases.

Armed Forces: Snatch Land Rovers

Question

Asked by ***Lord Astor of Hever***

To ask Her Majesty's Government further to the Written Answer by Baroness Taylor of Bolton on 18 March (*WA 214*), how many Snatch Land Rovers are deployed in Afghanistan. [HL3067]

The Minister for International Defence and Security (Baroness Taylor of Bolton): It has been a long-standing policy of this department not to release data on the number of vehicles deployed to Afghanistan as their disclosure would, or would be likely to prejudice the capability, effectiveness or security of the Armed Forces.

Armed Forces: Travel

Question

Asked by ***Lord Astor of Hever***

To ask Her Majesty's Government under what circumstances senior officers in Her Majesty's Armed Forces are granted first class train travel. [HL3206]

The Minister for International Defence and Security (Baroness Taylor of Bolton): I refer the noble Lord to the Answer given in the other place on 25 March 2010, (*Official Report*, col. 414W) to the right honourable Member for Rotherham (Mr MacShane).

Civil Service: Redeployment

Question

Asked by ***Lord Astor of Hever***

To ask Her Majesty's Government how many civil servants there are in the Headquarters Land Forces redeployment pool as a result of Project Hyperion; how long they have been there; and what is the cost of keeping them there. [HL3101]

The Minister for International Defence and Security (Baroness Taylor of Bolton): Project Hyperion is the co-location of all Headquarters Land Forces staff to Andover by summer 2010. As part of this process 183 posts were deemed surplus to requirements at Andover. The individuals affected are being offered other employment as suitable opportunities become available. So far, 138 staff have found new jobs, taken early release or retired.

The cost of maintaining staff in the redeployment pool only begins to accrue after their posts have been disestablished. Even then, the department aims to find temporary alternative employment for those concerned while they search for a permanent role. As at 29 March 2010 none of the 45 staff left in the redeployment pool has had their post disestablished.

Cluster Bombs

Question

Asked by ***Baroness Northover***

To ask Her Majesty's Government what action they will take to advance a worldwide ban on the use of cluster bombs. [HL3113]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): It is the Government's desire to achieve a global cluster munitions ban as soon as possible.

We have already started working to achieve this. Notably, in November the Government launched a political initiative encouraging Commonwealth states to support the convention. Further targeted lobbying work has been undertaken at the African Union summit in January 2010 and during a range of recent bilateral meetings.

Following Royal Assent to the Cluster Munitions (Prohibitions) Act on 25 March, the UK will ratify the Convention on Cluster Munitions imminently. Our UK posts overseas have been instructed to lobby their hosts to support the convention.

We will continue to raise universalisation of the convention with non-signatory states in relevant international meetings and fora, and during bilateral contacts. We will continue to co-operate and work in partnership with non-governmental organisations and like-minded states in these efforts.

Democratic Renewal Council

Questions

Asked by ***Lord Tyler***

To ask Her Majesty's Government who are the members of the Democratic Renewal Council; and which members attended which meetings of the Council. [HL3023]

Baroness Crawley: The full membership of the Democratic Renewal Council is:

Prime Minister (Chair);

Leader of the House of Commons (and Lord Privy Seal); Minister for Women and Equality;

First Secretary of State, Secretary of State for Business, Innovation and Skills, and Lord President of the Council;

Chancellor of the Exchequer;

Secretary of State for Foreign and Commonwealth Affairs;

Secretary of State for Justice and Lord Chancellor;

Secretary of State for the Home Department;

Secretary of State for Environment, Food and Rural Affairs;

Secretary of State for International Development;

Secretary of State for Communities and Local Government;

Secretary of State for Northern Ireland;

Leader of the House of Lords and Chancellor of the Duchy of Lancaster;

Secretary of State for Scotland;

Secretary of State for Wales;

Chief Whip (Parliamentary Secretary to the Treasury);

Attorney-General; and

Minister of State, Ministry of Justice.

Other Ministers are invited to attend meetings where necessary.

Information relating to the proceedings of Cabinet Committees, including which members attended which meeting, is generally not disclosed. To do so could harm the frankness and candour of internal discussion.

Asked by ***Lord Bates***

To ask Her Majesty's Government on what dates the Democratic Renewal Council has met. [HL3024]

Baroness Crawley: Information relating to the proceedings of Cabinet Committees, including when and how often they meet, is generally not disclosed. To do so could harm the frankness and candour of internal discussion.

Democratic Republic of Congo

Questions

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what assessment they have made of how many people have been (a) killed, (b) raped, and (c) internally or externally displaced, in the east of the Democratic Republic of Congo since operation Amani Leo was launched. [HL3105]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): I visited the east of the country where operation Amani Leo is being carried out when I was in DRC in February. I met people who are living their daily lives amidst the conflict and heard first hand about the dangers they face. When I spoke to MONUC and FARDC commanders who are planning operation Amani Leo I reiterated that human rights abuses will not be tolerated and that conditionality must be applied by MONUC in cases where they are committed. This means that MONUC support will be removed from FARDC battalions that are involved in human rights abuses. I was assured that this message is being delivered to the troops in the field. We remain extremely concerned at the effect this conflict is taking on innocent people. We are monitoring developments and will continue pushing for human rights abuses to be investigated as well as conditionality to be applied.

The FDLR continue to kidnap, kill and rape—particularly in South Kivu which is why the military operations to remove them as a source of instability are necessary. With closer MONUC involvement and a more organised FARDC, Amani Leo is better planned than its predecessor, Kimia II. However, people are still being displaced as a result of military operations. Congolese army troops (FARDC) continue to commit human rights violations. I told President Kabila that the issue of impunity must be addressed and perpetrators of human rights abuses held to account when I met him in February. FARDC has made efforts to implement President Kabila's "zero tolerance" policy, by bringing some offenders to justice. MONUC is demanding that human rights violators are removed from military

units that they are supporting. FARDC is being more transparent and is now reporting to MONUC cases of human rights abuse as they occur. We understand FARDC has provided figures to MONUC detailing the number of personnel tried in military courts between February 09 and February 10 for human rights crimes including rape, murder and armed robbery. Reporting from our post in DRC and MONUC sources suggests that the situation has improved over the last year.

MONUC also carries out disarmament, demobilization, repatriation, resettlement and reintegration (DDRRR) work with foreign armed groups, principally the FDLR and Lord's Resistance Army. In 2009 the combination of enhanced DDRRR work and military operations resulted in a threefold increase over 2008 in successful repatriations of FDLR fighters back to Rwanda. The UK continues to fund DDRRR work and I visited one of the UK-funded radio transmitters used for DDRRR communications when I was in DRC seeing how UK money is being put to good use.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what assessment they have made of the comments of the European Commissioner for Development and Humanitarian Aid, Karel De Gucht, that "Congolese leaders are inappropriate partners and the aid given by the international community to the Democratic Republic of Congo is a total waste". [HL3106]

Lord Brett: The UK is one of the largest donors to the Democratic Republic of Congo (DRC), spending £105 million in 2009-10. The UK works closely with the Government of the DRC, though we recognise the Government's weak capacity and the high risks of our engagement. Implementation of UK programmes is managed by international organisations, including the World Bank and United Nations agencies. This helps us to ensure that UK taxpayers' money is managed properly and put to good use.

UK aid is yielding results in the DRC. Our health programme is reaching 2 million people with basic services and has provided 3 million mosquito nets to prevent malaria, a major cause of death in DRC. We also work with the United Nations Children's Fund (UNICEF), the Belgian Technical Co-operation and the DRC Ministry of Energy and Water to provide safer water and sanitation facilities for some 4 million people.

We have made no specific assessment of Mr de Gucht's remarks.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what assessment they have made of the security situation in (a) the Kivus provinces, (b) Katanga, (c) Bas-Congo, and (d) Dungu, in the Orientale province in the north-east of the Democratic Republic of Congo. [HL3156]

Baroness Kinnock of Holyhead: The security situation across the Democratic Republic of Congo (DRC) remains a serious concern for the UK and we continue to monitor the situation closely.

(a) I visited the Kivu's where Operation Amani Leo is currently under way when I was in DRC at the end of February. In Bunyakari I spoke to UN peacekeeping mission to DRC (MONUC) troops and the Congolese army (FARDC) 8th brigade who told me that while operations had opened up the main road and improved trade and communications insecurity was still high with FDLR attacks including rape, looting, house burning a daily occurrence. My meetings with local people confirmed the dangers and difficulties they face. I reiterated to MONUC and FARDC commanders that there must not be a repeat of the human rights abuses of Kimia II and that conditionality, whereby support offered by MONUC to FARDC battalions will be withdrawn where human rights abuses are committed, must be applied and acted upon where warranted. They assured me that this message is being delivered to troops and battalions in the field.

In the North of North Kivu the main threats come from kidnappings by the Allied Democratic Forces/ National Liberation Army for the Liberation of Uganda (ADF/NALU) and banditry committed by the PNC (Congolese Police Force), elements of FARDC, and the Army for the Liberation of Rwanda (FDLR) being pushed north by the military operations.

(b) The FDLR has a presence in the north of Katanga, with some moving south as they are pushed out of their bases in the Kivus. Exploitation of minerals remains a source of insecurity as various armed actors and criminal elements seek to profit from mines.

(c) There are border issues with Angola in Bas Congo, and the Angolans are also in dispute with DRC over access to oil in the ocean.

The Government clampdown of the Bundia Dia Kongo group in 2008 has left a lingering tension in Bas Congo. The activities of Bundia Dia Kongo and the DRC Government remain concerning. Underlying tensions do not seem to have been resolved, though there have been no recent signs of violence.

(d) The Lord's Resistance Army (LRA) is present and terrorising the local population in Dungu. Human Rights Watch released a report recently which says that 321 civilians were killed by the LRA during a four day rampage in the Makombo district in December 2009. Fear of LRA attacks is preventing the local population from leaving the relative security of the towns and villages meaning fields are left uncultivated. Roads in the region are in a poor state and there are no mobile phone networks outside of Dungu; early warnings and a rapid response to attacks are nearly impossible. As I stated on 30 March "The LRA continues to pose a serious threat to civilians. They also put at risk both the conduct of humanitarian operations and the stability of the region".

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government whether they will ask the World Trade Organisation to establish a study group on the protection of workers, with particular reference to allegations of slavery, forced labour and the exploitation of children in the Congo. [HL3157]

Baroness Kinnock of Holyhead: The exploitation of civilians, use of forced labour and exploitation of children in the Democratic Republic of Congo (DRC) are of serious concern to the UK.

The United Nations High Commissioner for Human Rights (UNHCR) January 2010 report highlighted the natural resource sector as a particular area where armed groups use forced labour. I spoke to Prime Minister Muzito when I was in DRC about the importance for the country of mineral sector reform. We are working with the International Community to help the Government of DRC reform their natural resource sector.

I also spoke to President Kabila about ending impunity for all human rights abuses including the use of child soldiers. We support the work of UN peacekeeping mission to DRC (MONUC) in reintegrating militia groups which has led to children being released into the care of child protection organisations. Through the EU advisory and assistance mission for security reform in the Democratic Republic of Congo (EUSEC) we are funding a biometric census project which provides accurate personnel figures for FARDC regiments and allows child soldiers to be successfully identified and removed.

Alongside abduction one of the major factors that persuades children to join militia groups is the lack of access to education. As part of our work to address this, the Department for International Development provides £500,000 funding to projects improving access to primary education.

We do not have any plans to ask the World Trade Organisation to establish a study group on the protection of workers.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what representations they have made to the Governments of Rwanda and Uganda, and at the United Nations, on Rwanda and Uganda's alleged role in the conflict and humanitarian situation in the Congo; and with what results. [HL3158]

Baroness Kinnock of Holyhead: The Democratic Republic of Congo (DRC) has made recent rapprochements with both Rwanda and Uganda, the UK Government welcome these and strongly support the greater regional co-operation they signify. DRC and Rwanda have now exchanged ambassadors. The DRC-Uganda rapprochement has led President Kabila and President Museveni to publicly pledge co-operation across the board.

Our embassies and High Commissions in the Great Lakes region of Africa remain in constant contact with host governments over the best means to end political violence and promote stability and development in the DRC and more widely in the region.

We have raised the issue of regional co-operation amongst Great Lakes countries at all levels in the UN. Most recently when I was in New York in March I spoke to the UN Secretary-General Ban Kin Moon about the region. During my recent visits to DRC and Uganda, and in a meeting last month with the Rwandan Foreign Minister I have urged the importance of regional co-operation.

Drugs: Mephedrone

Question

Asked by ***Lord Willoughby de Broke***

To ask Her Majesty's Government whether they were required to consult the European Union before banning mephedrone. [HL3228]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): The UK Government do not consider that they are required to consult the European Commission before controlling mephedrone under the Misuse of Drugs Act 1971.

The technical standards directive is not designed to cover action by member states to control dangerous drugs and consequently no consultation with the Commission is necessary prior to laying a draft order before Parliament to control mephedrone under the Misuse of Drugs Act 1971.

Economic Partnership Agreements: ACP Countries

Question

Asked by ***The Earl of Sandwich***

To ask Her Majesty's Government how many of the least developed African, Caribbean and Pacific countries have signed regional economic partnership agreements; which of those countries have not signed such agreements; and what assistance they are providing to countries in both those categories during their negotiations with the European Union. [HL3184]

Lord Brett: So far, the Caribbean is the only region to have signed a regional economic partnership agreement (EPA). This region includes one least developed country (LDC), Haiti. Three other LDCs (Lesotho, Mozambique and Madagascar) have signed interim EPAs, and six more LDCs (Comoros, Zambia, Uganda, Tanzania, Burundi and Rwanda) have indicated their intention to sign interim EPAs. The following LDCs across the African, Caribbean and Pacific (ACP) region have not signed an EPA: Angola, Chad, Central African Republic, Democratic Republic of Congo, Sao Tome e Principe and Equatorial Guinea; Kiribati, Samoa, Solomon Islands, Timor Leste, Tuvalu and Vanuatu; Djibouti, Eritrea, Ethiopia; Malawi, Somalia and Sudan; Benin, Burkina Faso, Cape Verde, Gambia, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Senegal, Sierra Leone and Togo.

The Department for International Development's (DfID) assistance is not linked to signing of EPAs. However, DfID provides significant support through Aid for Trade to help ACP countries, as well as other developing countries, to improve trade and to help them integrate further into regional and global markets.

Egypt

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what representations they have made to the Government of Egypt about the assault on the Anglican clergyman,

Pastor Mahrous Karam, and Mrs Karam, of the Anglican Church in Luxor on 18 March, the subsequent destruction of church buildings, and the general treatment of Egyptian Coptic Christians. [HL3104]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): We are aware of the case of Pastor Mahrous Karam. We have not made specific recommendations to the Government of Egypt on this case, but will continue to monitor the situation closely.

The Government actively raise concerns on freedom of religion and belief with the Egyptian Government. In January, we raised the fatal shooting at Naga Hammadi. In February, during the UN's Human Rights Council's Universal Periodic Review of Egypt, we noted the recent rise in inter-religious tensions and encouraged further efforts to reduce and prevent discrimination. In March, during the third meeting of the EU-Egypt Sub-Committee on Human Rights and Democracy, the EU enquired into the Egyptian Government's intentions to address ongoing concerns and reports of discrimination of persons belonging to religious minorities.

Embryology

Questions

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government further to the Written Answer by Lord Drayson on 23 March (*WA 277–8*), what is the objective of improving the efficiency of human somatic cell nuclear transfer; and whether funds provided by the Medical Research Council to obtain additional women's eggs for human cloning may be used towards the derivation of clinical grade human embryonic stem cell lines for use in cell therapies or improving the outcome of infertility treatments. [HL3196]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): The MRC-funded research project to which the noble Lord refers is not being conducted under clinical grade conditions. However, knowledge derived from the project, which aims to improve the efficiency of the technique of human somatic cell nuclear transfer, may inform the development of stem cell lines for therapy and the improvement of fertility treatment in future.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government further to the Written Answer by Lord Darzi of Denham on 23 March 2009 (*WA 92*), how the use in laboratory research of patient-specific embryonic stem cells derived by human cloning differs from the use of patient-specific pluripotent cell lines described in the journals Cell (volume 134, issue 5, pp 877–86 and volume 136, issue 5, pp 964–77), Nature (volume 457, issue 7227, pp 277–80 and volume 461, issue 7262, pp 402–06) and Science (volume 321, issue 5893, pp 1218-21). [HL3197]

Lord Young of Norwood Green: There are a number of different approaches to deriving stem cell lines that can be used in the study of disease in laboratory-based research, these include somatic cell nuclear transfer and the derivation of induced pluripotent stem cell (iPS) lines from patients. It is known that cells derived using different approaches have different features, for instance iPS cells divide more slowly than embryonic stem cells. There are many groups working to identify these differences and to develop iPS cells that are more like embryonic stem cells. However, both of the approaches cited by the noble Lord continue to be valuable in research studies of disease phenotype.

The Medical Research Council (MRC) has not made any detailed assessment of the work described in the published papers cited, however these papers indicate the continued rapid development of the iPS field and its continued promise following the development of disease-specific and patient-specific cells.

However, it is not evident at present which area of stem cell research may deliver the most effective treatments for particular conditions and more research is needed on all types of stem cells to determine which routes should be pursued in the development of cell-based therapies. The MRC therefore supports research into all approaches to harness the potential of stem cells to understand human disease and develop effective treatments.

EU: Scrutiny Override

Question

Asked by ***Lord Roper***

To ask Her Majesty's Government further to the Written Answer by Baroness Kinnock of Holyhead on 8 December 2009 (*WA 110*), why the scrutiny reserve resolution was overridden on the proposed Council Decision approving the appointment of Vygaudas Usackas as the European Union Special Representative to Afghanistan; and what steps they are taking to avoid a repeat of those circumstances. [HL3185]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): The role of the European Union Special Representative (EUSR) for Afghanistan is important in focusing the EU effort, ensuring that it dovetails with the work of other bilateral and multilateral partners. The Government continue to believe in the importance of our work in Afghanistan and in the benefits of continued international co-ordination.

I deeply regret that, on this occasion, my honourable friend, Chris Bryant, had to agree to the Council decision approving the appointment of Vygaudas Usackas as the EUSR to Afghanistan before it had cleared the Scrutiny Committee. The failure to allow the committee to fully scrutinise this decision came about due to an administrative oversight. Chris Bryant has spoken to those responsible to ensure this will not happen again.

Expenditure: Office Equipment

Question

Asked by ***Lord Bates***

To ask Her Majesty's Government what was the average purchase price, excluding value added tax, of a 500-sheet ream of white A4 80 gsm photocopier paper paid by each regional development agency in the latest period for which figures are available; and how much they spent in total on all photocopier paper in the last year for which figures are available. [HL2395]

The Minister for Trade and Investment (Lord Davies of Abersoch): The regional development agencies are committed to achieving value for money in procurement and use of office supplies. Each RDA uses recycled paper in their printers and photocopiers in accordance with the network's commitment to sustainability.

Prices of paper are influenced by specification in terms of paper quality, the distance of the supplier to the RDA's office (which impacts on carbon footprint, logistics and storage costs), the policy on the use of local suppliers, the environmental specification and the use of collaborative contracts with other public sector customers.

RDA	*Total spent on all photocopier/printer paper in the 2008-09* £	*Average purchase price exc. VAT), of a 500-sheet ream of white A4 80 gsm photocopier/ printer paper in 2008-09* £
Advantage West Midlands	10,444.80	2.49
East of England Development Agency	4,415.88	1.55
East Midlands Development Agency	8,131.00	1.98
London Development Agency	19,442.65	2.55
North West Development Agency	13,485.84	2.42
ONE North East	14,164.68	2.18
South East of England Development Agency	11,442.08	2.03
South West of England Development Agency	6,932.72	1.48
Yorkshire Forward	14,884	3.20

Food: Aspartame

Questions

Asked by ***Baroness Masham of Ilton***

To ask Her Majesty's Government how many aspartame-sensitive participants have been recruited to the current Food Standards Agency study of anecdotal complaints relating to aspartame; and when the study will be completed. [HL3027]

To ask Her Majesty's Government what was the scientific basis for the Food Standards Agency's funding for the ongoing study of anecdotal complaints relating to aspartame. [HL3028]

To ask Her Majesty's Government when the Food Standards Agency expects to report its interim findings from the study being conducted of anecdotal complaints relating to aspartame; and what progress is being made. [HL3029]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The study is not investigating anecdotal complaints relating to aspartame, but is aiming to collect validated information from individuals who believe aspartame adversely affects them. This information has not previously been systematically collected under trial conditions.

The basis for funding this study was the need to gather information on the adverse effects individuals relate to the consumption of aspartame in a safe and controlled environment. This will enable a robust analysis of this evidence, which is not possible to do with the unverified case report data available at present.

To date, 48 individuals who believe that they are sensitive to aspartame have volunteered to participate in the Food Standards Agency-funded study. An age and sex matched control is recruited for each aspartame-sensitive volunteer who takes part in the study.

The aspartame study is due to report early in 2011. This is reliant upon the volunteers attending the clinic and participating in the study. If those who have already volunteered do so it should be feasible to recruit the remaining participants and compete within this timeframe.

There will be no interim report of findings from this study. Due the nature of the study, a double blind placebo controlled study, it is not possible to review the study outcomes until the target number of volunteers have participated in the trial, as this would result in the research team being aware of which product the participants are consuming (placebo or control) and may influence how they treat them.

As an evidence-based organisation we hope to increase our knowledge in this area and be in a better position to advise consumers.

Gaza

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government how the Middle East quartet plan to put into practice the proposals in the statement issued following their Moscow meeting on 19 March. [HL3071]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): The UK is represented in the Middle East quartet through its membership of the European Union. We welcome the

quartet's statement as an important way of reinforcing the key messages from the international community to both sides of the conflict. We will continue to work with our international partners to encourage both sides towards credible negotiations and to work for an urgent and durable solution to the situation in Gaza.

Government: Borrowing

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government why there was a downwards revision of £4.3 billion in public sector net borrowing for January as published in the Office for National Statistics' February revision of central government current expenditure; which departments reduced their expenditure or increased their income (or both); and by how much each department reduced its expenditure or increased its income (or both). [HL3162]

Baroness Crawley: The information requested falls within the responsibility of the UK Statistics Authority. I have asked the authority to reply.

Letter from Stephen Penneck, Director General for ONS, to Lord Laird, dated March 2010.

As Director General of the Office for National Statistics, I have been asked to reply to your Parliamentary Question asking why there was a downwards revision of £4.3 billion in public sector net borrowing for January as published in the Office for National Statistics' February revision of central government current expenditure; which departments reduced their expenditure or increased their income (or both); and by how much each department reduced its expenditure or increased its income (or both). [HL3162]

Revisions to previous months' data for the public sector finances are not unusual, particularly for the most recent periods, reflecting their provisional status. The monthly data are also volatile and it can be misleading to read too much into them.

The single biggest contributor to the revision of the January 2010 data, accounting for £3.2 billion of the total, was central government current expenditure. There were a number of factors contributing to this, including the availability of better estimates from government departments. Earlier months in the current financial year were also revised, leaving the year to date total broadly unchanged.

There was also an upward revision of £1.4 billion to government tax revenues with firmer data replacing figures that were partially estimated.

A breakdown of revisions by government department is not available. A significant part of the revision is due to technical changes, which are not subdivided by department, to some of the components that make up central government current expenditure.

Health: C. Difficile

Question

Asked by ***Lord Taylor of Warwick***

To ask Her Majesty's Government how they plan to achieve their target of reducing the number of hospital acquired Clostridium difficile infections by 55 per cent over the next three years. [HL3202]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): While there has been significant and rapid progress in reducing C. diffcile infections, some National Health Service organisations have not contributed as significantly as they could have done to these reductions. The key aim of the new C. difficile objective, starting in April 2011, will be to address this variation by driving the performance of all organisations towards the level of the best by setting a performance level for each NHS organisation (acute trusts and primary care organisations) based on its historical performance. The largest challenge will be for those organisations that have not contributed as significantly as they could have done to the progress made so far. The 55 per cent national reduction referred to is a consequence of successfully delivering the key aim of the objective.

Israel

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether Israel has responded to the United Nations Resolution (ref: A/HRC/RES/10/19) of 26 March 2009; if so, in what terms; and, if not, whether they will make representations to the Government of Israel for a full response in the near future. [HL3163]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): The Israeli Ministry of Foreign Affairs issued the following statement:

"The resolution adopted today in Geneva by the United Nations Human Rights Council has no connection to the safeguarding of human rights. As a democratic country, Israel will continue its internal inquiry procedures, out of its commitment to the rule of law and moral values. Israel has an outstanding legal system, widely esteemed around the world. Israel will continue to realize its right to protect its citizens, while at the same time maintaining the strictest moral standards".

The UK will continue to press both the Israelis and Palestinians to conduct full, credible and independent inquiries into the serious issues raised by the UN Human Rights Council fact-finding mission on Gaza.

Israel and Palestine

Question

Asked by ***Lord Ahmed***

To ask Her Majesty's Government what action they are taking in response to the Government of Israel's construction of Israeli settlements in Palestinian occupied territory. [HL3118]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): We along with our EU and US partners have condemned Israel's plans to build 1,600 housing units in East Jerusalem.

The UK will continue to urge both sides to show the courage, commitment and compromise needed to make real progress. The quartet has also expressed its determination to move swiftly to proximity talks addressing issues of substance.

Justice: Arrest Warrants

Question

Asked by ***Lord Pearson of Rannoch***

To ask Her Majesty's Government further to the Written Answers by Lord West of Spithead on 19 November 2008 (*WA 199*) and 25 March 2010 (*WA 324–5*), how many British citizens have faced proceedings under the European arrest warrant; how many have been surrendered; and what accounts for any difference between the number arrested and the number deported. [HL3189]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): The Serious Organised Crime Agency (SOCA) and Crown Office and Procurator Fiscal Service (for Scotland) are the designated authorities in the UK responsible for processing European arrest warrants (EAWs). It is not possible from current systems to break down the number of EAWs received by the UK into nationality. To do so would require a manual examination of all files and incur disproportionate cost.

On 19 November 2008, the Home Office replied to the noble Lord stating that, from 1 January 2004 up to 30 September 2008, 203 British citizens had been arrested pursuant to EAWs. 101 British nationals had subsequently been surrendered to other European member states pursuant to EAWs. Due to changes in late 2008 in the way the information was recorded it is not possible to provide figures for the remainder of 2008-09 without disproportionate effort. However, a new system introduced on 1 April 2009 will allow SOCA to provide more detailed figures once these have been validated.

The difference between the number of arrests compared with the number of surrenders over any period is due to the judicial processes in the UK. Once the subject has been arrested on the European arrest warrant, it can take from a matter of days to many months before the subject is surrendered to the requesting territory

Nigeria

Questions

Asked by ***Lord Sheikh***

To ask Her Majesty's Government what recent reports they have received from the Government of Nigeria regarding the situation in Jos. [HL3214]

To ask Her Majesty's Government whether they intend to make representations to the Government of Nigeria about the violence in Jos. [HL3215]

To ask Her Majesty's Government what is their assessment of the political situation in Nigeria. [HL3216]

To ask Her Majesty's Government what steps they will take to promote religious freedom and tolerance in Nigeria. [HL3217]

To ask Her Majesty's Government what assistance they have given to victims of the conflict in Jos, Nigeria. [HL3218]

To ask Her Majesty's Government what steps they will take to ensure that Nigeria upholds the values of the Commonwealth. [HL3219]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): As I said in the House on 30 March in response to the noble Baroness Cox of Queensbury, we condemn the recent violence near Jos (House of Lords, *Official Report*, 30 March 2010, col. 1287), which resulted in such terrible loss of life. I raised UK concerns with the then Foreign Minister Maduekwe on 20 January, and my honourable friend the Minister of State Ivan Lewis spoke to the Foreign Minister on 15 March. Our High Commission in Abuja remains in regular contact with the Nigerian Government at state and federal level on this issue. The situation on the ground has now stabilised, although a curfew remains in place in Jos between 2100 and 0600 hours.

The Department for International Development (DfID)'s representatives in Nigeria began discussions with the International Committee of the Red Cross (ICRC) on assistance to victims of conflict in Jos in mid-March 2010. Previously, DfID had provided £200,000 to ICRC for its overall work in Nigeria, which has helped to meet immediate needs. Decisions on any additional funding will be made on the basis of a needs assessment currently being carried out by the ICRC.

More broadly, our High Commission in Abuja and DfID will continue its programme of outreach and interfaith activity to promote dialogue between different communities to foster reconciliation and tolerance. We will also continue to press the Government of Nigeria on the importance of ensuring security for its citizens and protecting freedom of religion as enshrined in the Nigerian constitution, and the Universal Declaration of Human Rights. We encourage all Commonwealth states to uphold the values of the Commonwealth, as reiterated at the last Commonwealth Heads of Government Meeting (CHOGM) in 2009, with the issuing of the Trinidad and Tobago Affirmation on Commonwealth Values and Principles. We also maintain a close dialogue with Nigeria through the Commonwealth forum. For example during last year's CHOGM I had productive discussions with Foreign Minister Maduekwe .

Prisoners: Home Leave

Question

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government why Daniel Hargan, who was sentenced to seven years' custody in September 2008 by Belfast Crown Court for manslaughter, was given home leave after serving 18 months of his sentence. [HL3166]

Baroness Royall of Blaisdon: It is not the case that Mr Hargan was given home leave after serving 18 months of his sentence. Prior to the introduction of the Criminal Justice Order 2008 the legislation pertaining to Northern Ireland stated that 50 per cent remission applied to all determinate sentences. He became entitled to apply for home leave in his last six months of sentence. The timing of his eligibility for that was a consequence of the remission applied and the relevant period served in custody on remand. His application was approved by the Home Leave Board.

Public Bodies: Prompt Payment

Question

Asked by ***Lord Hunt of Wirral***

To ask Her Majesty's Government whether they plan to extend the prompt payment code to apply automatically to non-departmental public bodies. [HL3058]

The Minister for Trade and Investment (Lord Davies of Abersoch): The prompt payment code is a voluntary code developed and managed by the Institute of Credit Management (ICM).

We encourage all public sector bodies and private sector businesses to become signatories to the code.

The list of signatories is provided in the Institute of Credit Management website at http://www.promptpaymentcode.org.uk.

Republic of Macedonia

Question

Asked by ***Lord Bowness***

To ask Her Majesty's Government what representations they have made, or propose to make, to the Government of Greece about entering into negotiations with the Government of the Republic of Macedonia to resolve their dispute over the use of the name "Republic of Macedonia" in the context of the Republic of Macedonia's candidacy for the European Union. [HL3200]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): The UK has ongoing contact with the Government of Greece regarding the name issue at official and ministerial level. Negotiations between Greece and Macedonia continue under the auspices of UN Special Representative, Matthew Nimetz. The UK remains fully supportive of these talks and continues to encourage both Macedonia and Greece to engage flexibly in the negotiations in the hope that they will be able to find an early solution.

Schools: Church Schools

Questions

Asked by ***Lord Glenarthur***

To ask Her Majesty's Government what factors they consider, in conjunction with local education authorities and diocesan representatives, in promoting and encouraging church schools. [HL3138]

To ask Her Majesty's Government what links they maintain with diocesan boards of education with regard to Church of England schools. [HL3141]

To ask Her Majesty's Government whether there are any proposed closures, or consultations on potential closures, of Church of England schools, taking place in central Liverpool; and, if so, what is their position on the possibility of any closures. [HL3142]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): The Government are not directly involved in individual decisions on making changes to local school provision, including promoting the establishment of new maintained schools and the closure of existing schools.

We acknowledge the long-standing tradition of church schools in this country and the significant contribution that they continue to make to our education system. We remain committed to supporting church schools where local consultation has shown that this is what parents and the local community want. We have regular contact with faith group national bodies, including the Education Division of the Archbishops' Council of the Church of England which is invited to termly stakeholder meetings at the Department for Children, Schools and Families. They then feed back any required information to their dioceses.

The role of diocesan boards of education is secured in law by the Diocesan Boards of Education Measure 1991. This requires every diocese to have a Diocesan Board of Education and that its functions are to include, among other things, promoting education that is consistent with the faith and practice of the Church of England, promoting religious education and worship in schools in the diocese and promoting church schools in the diocese.

Where changes to local school provision are proposed a statutory process must be followed, that includes consultation with all those likely to be affected by the proposals. The process is decided at a local level under established decision-making arrangements, normally by the local authority. There are rights of appeal to the independent schools adjudicator in certain cases. In recognition of the importance of their schools to the education system, both the Church of England and Roman Catholic diocese have a right of appeal in the majority of cases, even where church schools are not directly involved.

Our records show that St Margaret of Antioch Church of England Primary School has been approved under local decision-making arrangements for closure from 30 August 2010, and the displaced pupils will be accommodated at a local community primary school. We are not aware of any current consultations on potential school closures in the Liverpool area. However, under the statutory process any consultation would be a matter for either the local authority or the school concerned.

Sport: Football Clubs

Question

Asked by ***Lord Morris of Manchester***

To ask Her Majesty's Government further to the Answer by Lord Brett on 10 March (*Official Report*, col. 243), whether they have offered any advice or assistance in relation to the financial position of Manchester United; and whether they will take any action as a result. [HL2803]

Lord Davies of Oldham: The financial position of Manchester United is a matter for the club and the football authorities.

The Government will continue to push the football authorities for tougher regulation from within the game.

Sudan: Darfur

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what assessment they have made of the situation in the Jebel Mara region of Darfur and the estimate of Médecins du Monde that 100,000 civilians have been displaced and 400 are dead; and what steps they are taking to ensure that (a) the African Union/United Nations Hybrid operation in Darfur (UNAMID) assesses the humanitarian needs of the civilian population, and (b) aid workers have access to civilians. [HL3195]

Lord Brett: The UK Government are extremely concerned about the situation in the Jebel Mara region of Darfur. However we cannot confirm whether the estimates made by Medecins du Monde (MDM) are accurate. The Government of Sudan, the Sudanese Liberation Army rebel movement and the insecurity in the region have prevented humanitarian agencies from undertaking assessments in the areas where most civilians are thought to have fled.

The UK Government have called upon all parties to cease hostilities immediately and allow humanitarian agencies access to all areas in order to assess the needs of the affected civilian population and provide humanitarian assistance. We are encouraging and supporting the African Union/United Nations Hybrid peacekeeping operation in Darfur (UNAMID) to focus on its primary roles of improving civilian protection and security. The UN's Humanitarian Co-ordinator, Georg Charpentier, is currently in Darfur. We are awaiting his report and will continue to use all opportunities and channels available to us to press all sides to allow humanitarian access.

Taxation

Questions

Asked by ***Lord Oakeshott of Seagrove Bay***

To ask Her Majesty's Government what increase in revenue there has been as a result of the domicile changes introduced in the 2008 Budget, broken down into revenue (a) directly from the £30,000 annual charge, (b) from the removal of the personal allowance, (c) from changes to residence criteria, and (d) as a result of closing loopholes and anomalies. [HL2977]

To ask Her Majesty's Government what estimate they have made of the number of people who have given up the remittance basis of taxation as a result of the £30,000 annual charge introduced in the 2008 Budget for those not domiciled in the United Kingdom. [HL2978]

To ask Her Majesty's Government when figures will be published detailing the number of (a) resident non-domiciled taxpayers, and (b) non-resident non-domiciled taxpayers in (1) 2007–08, (2) 2008–09, and (3) 2009–10. [HL2979]

The Financial Services Secretary to the Treasury (Lord Myners): Estimates are not yet available for the revenue yield from the package of reforms made to the remittance basis in Finance Act 2008.

However, an initial analysis of the self-assessment returns received to date by HMRC for the 2008-09 tax year shows payments of the £30,000 remittance basis charge currently total around £130 million. It is not currently possible to estimate the number of individuals who have ceased to be taxed on the remittance basis as a result of the introduction of the £30,000 remittance basis charge.

The Government have no plans to publish details of the taxpayer population broken down by their residence and domicile status.

Visas

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government further to the Written Answer by Lord West of Spithead on 25 March (*WA 330*), whether they will maintain and collate statistics on the numbers of foreign students granted visas to study at particular private colleges in order to assist the UK Border Agency in making assessments of the compliance and reliability of such colleges; and why they decided that making the number of visas issued per college known to competitors could put the college at an unfair disadvantage. [HL3226]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): Educational institutions must issue a confirmation of acceptance for studies (CAS) to each student they wish to sponsor under tier four. The UK Border Agency regulates the number of CAS each institution can issue and knows, from its sponsor management system when a CAS is issued. In this way the agency can tell how many students are studying at a particular institution at any one time.

Publishing the number of visas issued to students studying at individual institutions could be used by would-be migrants to assess the popularity of particular institutions and could put those with few students from outside of the EU at a disadvantage.

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ALPHABETICAL INDEX TO WRITTEN ANSWERS

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