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House of Lords

Wednesday, 20 July 2011.

10 am

Prayers—read by the Lord Bishop of Derby.

Arts: Regional Theatres

Question

10.06 am

Asked By ***The Earl of Clancarty***

To ask Her Majesty's Government what steps they are taking to encourage and support theatre within the regions.

Baroness Rawlings: My Lords, Her Majesty's Government invest money via Arts Council England. In the financial year 2012-13, the Arts Council will provide over £50 million of grant-in-aid support to regional theatres. Money has also been designated for greater touring opportunities and the refurbishment of some major theatrical buildings.

The Earl of Clancarty: I thank the Minister for that reply, but is she aware of the current extent to which not only companies but venues whose job it is to serve local communities, such as the Northcott Theatre in Exeter and the Derby Theatre, are at risk of closure? Is she also aware that Tom Morris, co-director of "War Horse", has said that the great international critical and commercial success of "War Horse" and "Jerusalem"—the product to a large extent of seeds sown in the regions—would not have been possible without public subsidies, and that those productions have been regarded with envy by Americans whose own far more conservative funding model Jeremy Hunt wishes to emulate?

Baroness Rawlings: My Lords, the noble Earl, Lord Clancarty, has been consistent and is extremely knowledgeable on this issue. I am aware of the theatres and that "War Horse" has been a fantastic success; we are thrilled about that. However, I suggest that bald statements on funding do not tell the whole story. Thirty-seven per cent of London's regularly funded organisations were identified as touring in 2010, and "War Horse" has been touring everywhere with great success. Their influence spreads well beyond the M25. We must acknowledge, too, that the Arts Council is investing in capital projects across the regions through National Lottery funds.

Baroness McIntosh of Hudnall: My Lords, first I declare an interest as a member of the board of the Royal Shakespeare Company and a former executive director of the Royal National Theatre. I echo the point that the noble Earl, Lord Clancarty, made about the interdependence of the major companies, the National and the RSC, both of which are currently enjoying huge success in America. They are hugely dependent on the health of the regional theatre sector, as has already been pointed out. The Minister will be aware that the Arts Council has already implemented cuts of nearly 30 per cent in its awards across the country this year and for the next three years. She will be aware also that it is faced with the necessity to cut 50 per cent of its own costs in the next few years. Does she think that it is likely that the Arts Council, faced with those difficulties, will be able properly to fulfil its remit as a strong, arm's-length body supporting the arts?

Baroness Rawlings: My Lords, the noble Baroness made some very valid points. More than 100 organisations that identified touring as a core part of their work are recipients of regular Arts Council funding. In the near future, there will be an additional £80 million a year of lottery income invested in national portfolio organisations for touring.

Baroness Bonham-Carter of Yarnbury: My Lords, I declare an interest as a trustee of the Lowry. Is the Minister aware of the excellent programme, Schools Without Walls, run by the egg theatre in Bath? Children from primary schools in Bath are taught their lessons at the theatre for a few weeks during the summer term, and creativity and drama are introduced across the curriculum. The programme has no public funding. What do the DCMS and the DfE intend to do to help theatres to engage in such good outreach programmes?

Baroness Rawlings: My Lords, I thank my noble friend Lady Bonham-Carter for that question regarding children in primary schools and the theatre. It is a very important issue, and the Government and DCMS have brought forward a project with match funding. Arts Council England recently launched its £40 million Catalyst Arts scheme, which will provide £30 million of match funding to arts organisations exactly as the noble Baroness mentions, and will help smaller bodies to build their fundraising capacity.

Lord Harrison: Does the noble Baroness understand that the success of the West End is built on the bedrock of the professionalism of regional theatres and the professionals whom they offer to the West End? Secondly, does she realise that regional theatres build up the new generation of theatregoers that we must encourage to make sure that the theatre has it right and proper place in our cultural life?

Baroness Rawlings: My Lords, I agree totally with the noble Lord, Lord Harrison. Towards that goal, in his Budget of 23 March, the Chancellor of the Exchequer announced a significant package of new measures to support a drive towards greater charitable giving exactly in this area. It was worth around £600 million.

Lord Brooke of Sutton Mandeville: My Lords, I declare a modest interest as a friend of Salisbury Playhouse. Perhaps through my noble friend the Minister I may congratulate the Arts Council on the manner in which it dispensed what I acknowledge were reduced funds and say that, because of the quality of the Salisbury Playhouse, it was not cut in any way.

Baroness Rawlings: My Lords, my noble friend brings up a valid point. I congratulate the Arts Council and the Salisbury Playhouse.

Lord Stevenson of Balmacara: Does the Minister agree that, with notable exceptions such as those in Chichester, Sheffield and Leicester, the combination of local authority cuts of up to 60 per cent and the declining income from audiences in areas of high unemployment is posing real threats to this sector? Is there nothing that the Government can do to assist the Arts Council, which has been forced to impose a 10.9 per cent cut in real terms on regional theatres in the period to 2015?

Baroness Rawlings: My Lords, the Government have negotiated a substantial settlement for the arts in these times of economic constraint. We have limited the cut to the Arts Council's overall budget, grant in aid and lottery, to just 11 per cent. While grant in aid—just one part of the Arts Council's overall income—is being reduced, we are reforming the lottery so that more money will go to the arts. An additional £80 million will go into the arts from the National Lottery each year from 2013.

Lord Ramsbotham: My Lords, I declare an interest as president of the Arts Alliance, which consists of all the organisations delivering arts to offenders. Does the Minister include in the funding of regional arts, the arts being delivered in prisons and to other offenders in the regions?

Baroness Rawlings: My Lords, I do not have the details of that here, but I very much hope so. I will write to the noble Lord with the answer.

Lord Kinnock: Does the noble Baroness accept that while we can all share in the pride that the noble Lord, Lord Brooke, feels in the theatre of which he is patron, quality has not been the major determinant of the cuts inflicted on the Arts Council and by the Arts Council? There are many companies up and down the country, in London and in the regions, that are recognised to have world-quality status but have had their funding savagely reduced.

Baroness Rawlings: My Lords, the noble Lord, Lord Kinnock, is not quite right. The overall budget for the Arts Council will be reduced by just 11 per cent over four years. This is hardly going from feast to famine.

House of Lords: Reform

Question

10.14 am

Asked By ***Lord Grocott***

To ask Her Majesty's Government how many representations have been received from the public in response to the House of Lords reform draft Bill and accompanying White Paper.

The Chancellor of the Duchy of Lancaster (Lord Strathclyde): My Lords, the Government have received, and continue to receive, many representations on all aspects of House of Lords reform.

Lord Grocott: My Lords, I did not really expect an answer to the Question so I am not disappointed. Have the Government still not learnt the lesson of the AV referendum? Unlike the Deputy Prime Minister, the British public do not think that our constitution is broken and they think that Government should spend their time on other, more important matters. Can I suggest that before the Government embark on any future constitutional experiments they apply two tests? First, do the public want it? Secondly, is there a political consensus to deliver it?

Lord Strathclyde: My Lords, it is true that the Government have not been overwhelmed with responses from the public after the publication of the White Paper. However, at least one interpretation of that is that the public are reasonably satisfied with the proposals that the Government have put forward. Of course, the public are understandably concerned with a whole range of important things, such as jobs, education and health, but because the reform of the House of Lords does not have an immediate resonance, that does not mean that it is important.

Noble Lords: Oh!

Lord Strathclyde: I have reminded the House of this before: at the last election all three main parties had in their manifestos a pledge to reform the House and people were very happy to vote for that. As for political consensus, we will see to the work of the Joint Committee when it reports next year.

Lord Tyler: My Lords—

Lord Cormack: My Lords—

The Minister of State, Ministry of Justice (Lord McNally): My Lords, I think that seniority gives it to my noble friend Lord Tyler.

Lord Tyler: My Lords, among the representations he has been examining, has my noble friend seen the report published on Monday entitled *The End of the Peer Show?*, in which Mr Hilary Benn has committed the Labour Party to a continuing campaign based on its manifesto commitment for a wholly elected House of Lords? Is my noble friend aware of any successful parliamentary candidate who arrived in the other place committed to voting against his party's manifesto?

Lord Strathclyde: My Lords, no, I am not. I have not read Mr Benn's no doubt splendid article, but given that the Recess starts later on today, perhaps it should be required reading for all noble Lords.

Lord Hughes of Woodside: My Lords, why is the Leader of the House so reticent about telling us how many representations he has actually had? He said many—is that 10, 20, 100, 500, 1,000? Will he take this opportunity to correct his Freudian slip when he said that House of Lords reform was not important?

Lord Strathclyde: My Lords, that was well spotted by the noble Lord. Of course the issue is extremely important and something that this Government are very committed to dealing with. Since the general election, we have received over 180 letters from members

of the public. Since the publication of the White Paper, we have received over 30 pieces of correspondence. The key point is that the vast majority of these letters call for a change in the way that this House is run.

Lord Cormack: My Lords, has my noble friend, having had such an overwhelming response, had the chance to memorise all these letters? Can he tell the House how many people have written to him or made representations on the National Health Service, on the Education Bill or on the Localism Bill? Does this not indicate that the general public are fairly well satisfied with what they have and very much more worried about many other things? Perhaps we could take the Recess to readjust the priorities of Her Majesty's Government.

Lord Strathclyde: My Lords, we have just set up a first-class Joint Committee of both Houses which is going to look at the draft Bill. Most of the letters we have received come up with their own new and improved schemes for the future of the House of Lords, or are interested in the Bishops remaining in the House of Lords and the representation of other faiths.

Lord Kakkar: My Lords, public engagement with the Bill might be enhanced by describing its consequences in terms of the interaction of our citizens with this Parliament. How would the noble Lord the Leader advise a constituent in 2016 with two elected representatives to this Parliament, an MP from the opposition party and a senator for the governing party, who wished to raise an urgent issue with the Home Office? Should the constituent speak to MP or senator?

Lord Strathclyde: My Lords, I hope that that is exactly one of the questions that the noble Lord, Lord Richard, will tackle in his Joint Committee. We do not anticipate senators, if that is what they are to be called, taking over the role of Members of Parliament. Of course, it will be entirely free for members of the public to write both to their Members of Parliament and to their senators.

Lord Richard: My Lords, I was fascinated by the figures that the noble Lord the Leader of the House produced. The House may like to know that a call for evidence has gone out from the Joint Committee. I sincerely hope that we will do much better than the Government on this.

Lord Strathclyde: My Lords, I fully expect that the noble Lord will do so.

Media: News International

Question

10.21 am

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

To ask Her Majesty's Government what progress has been made in taking forward the inquiries into the practices and ethics of News International and other media organisations.

Baroness Rawlings: My Lords, the Prime Minister has appointed Lord Justice Leveson to lead a wide-ranging inquiry. For part one of that inquiry Lord Leveson will be assisted by a panel of experts. The Prime Minister will make a Statement later this morning and we hope that he will be able to announce then the final terms of reference and the names of those on the panel.

Lord Roberts of Llandudno: I thank the Minister for that response. What steps will Her Majesty's Government take to make certain that in future not only the Murdoch empire but other media groups behave in a responsible and sensitive manner? Does the Minister agree that the present Press Complaints Commission is not fit for purpose and that, in order to regain public confidence, a new body should be established immediately, not composed entirely of newspaper personnel, but with authority to deal with traditional and new, online media in a very fresh way?

Baroness Rawlings: My Lords, my noble friend Lord Roberts goes right to the heart of the matter and he is right to look into the future. His most important point is on the need to regain the confidence of the public. Clearly, the current regime of the Press Complaints Commission has not been effective. That is why the draft terms of reference for Lord Justice Leveson's inquiry require recommendation for a new, more effective policy and regulatory regime which supports the integrity and freedom of the press, the plurality of the media and their independence from government, while encouraging the highest ethical and professional standards. The PCC is a self-regulatory, self-appointed, independent body and it is not for the Government to say what will or will not happen to it. That will be a matter for the press and media.

Baroness O'Neill of Bengarve: My Lords, does the Minister agree that the purpose of having a free press is for the sake of citizens, not for self-expression by the media? If it is to be for the sake of citizens, the press has to communicate. If it is to communicate, there must be standards and these have to be genuinely independently overseen, not independent in the sense in which the Press Complaints Commission is independent.

Baroness Rawlings: My Lords, the noble Baroness makes a very valid point, to which the Prime Minister will be speaking this morning.

Baroness Jones of Whitchurch: My Lords, can the Minister confirm that the Cabinet Secretary carried out all the necessary checks on Andy Coulson before he was appointed to a very senior post at the heart of government? Can she clarify how and when the Cabinet Secretary's advice to the Prime Minister on this appointment will be published?

Baroness Rawlings: My Lords, the Cabinet Secretary had given him a vetting for his grade.

Baroness Doocey: My Lords, I declare an interest as a member of the Metropolitan Police Authority. Last February, I expressed concern that senior Metropolitan Police officers were dining with executives from the

[Baroness Doocey]
News of the World at a time when the Metropolitan Police was investigating the newspaper. My concerns were brushed aside by the Met, which said: "It does not naturally follow that you cannot talk to a hierarchy if someone within the organisation has committed an offence". Do the Government agree with this? How will they ensure that the Met's new system of recording meetings and hospitality with the press will be open and completely transparent?

Baroness Rawlings: My Lords, the Metropolitan Police has promised a robust investigation, and the DPP said on 24 January that his principal legal adviser, Alison Levitt QC, would rigorously examine any evidence resulting from the recent or new substantive allegations made to the MPS. As for what the noble Baroness asked about, that will be referred to in part two of the inquiry and it is not a matter for Her Majesty's Government until the results of Lord Justice Leveson's report. It is absolutely right that she asks the questions, and that is exactly why we are having this inquiry.

Lord Low of Dalston: My Lords, in the run-up to the Welfare Reform Bill there has been much misinformation in the press about benefit claimants. Does the Minister agree that the inquiry must find more effective ways to get the press to live up to its duty of accuracy?

Baroness Rawlings: The Prime Minister announced that there will be an inquiry in two parts, which is very important, and we hope that it will look into all those details and report back, I think, within a year.

Baroness Scotland of Asthal: My Lords, the noble Baroness has indicated that cross-media ownership is going to be looked at by the inquiry, but does she agree that it is of vital importance, now that we have identified material flaws in the Enterprise Act and the Communications Act, that we should now move swiftly to cure those flaws by taking advantage of the negative resolution procedure under Section 58 and amending the grounds upon which a notice can now be issued?

Baroness Rawlings: My Lords, this will be covered exactly by part one of the inquiry in due course.

Lord Ryder of Wensum: My Lords, I declare an interest as the former chairman of a commercial radio company. Can my noble friend please explain how and why the daily regulation of a 24-hour commercial music station varies from the oversight given to a newspaper by the Press Complaints Commission?

Baroness Rawlings: My Lords, my noble friend Lord Ryder asks a very interesting question regarding daily regulation. Commercial radio is covered by Ofcom, but newspapers have been protected by the Bill of Rights since 1689. That does not mean that we cannot revisit it in today's climate. While we strongly believe in a free press as a cornerstone of our democracy, we probably need to look again at how it is all regulated in the circumstances. The inquiry, as I said before, will do just that and make the necessary recommendations.

Lord Foulkes of Cumnock: My Lords, will the Minister answer the question from my noble friend Baroness Jones, which I think she misunderstood? The question was: when was Andy Coulson interviewed by the Cabinet Secretary and did the Cabinet Secretary pass that information on to the Prime Minister?

Baroness Rawlings: My Lords, Andy Coulson was given the appropriate vetting required for his grade.

Malawi

Question

10.29 am

Asked By ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government how they intend to distribute United Kingdom aid in Malawi following their suspension of general budget support for Malawi on 14 July.

Baroness Verma: My Lords, the UK has indefinitely suspended general budget support to Malawi. We are determined to continue funding other programmes in Malawi that protect the poor. We will continue to work through specific government ministries like health and education and with trusted NGOs.

Lord McConnell of Glenscorrodale: My Lords, I declare an interest: I am engaged in a number of charities supporting development in Malawi. I thank the Minister for her Answer.

Over the past six years UK budget support to Malawi has contributed to a number of the most successful development programmes anywhere in Africa. The Malawi growth and development strategy has delivered growth rates among the highest in the world. The farm input subsidy programme has supported 1.6 million households and turned famine into food surplus in Malawi. Malawi has one of the best records in Africa for reversing the increase in HIV/AIDS.

I ask the Minister, first, for an assurance that overall aid to Malawi will not be reduced as a result of this decision on budget support; secondly, for an assurance that there will be speedy discussions with those government departments in Malawi to ensure the continuation of those programmes so that money is not underspent by the end of this financial year and these programmes can continue; and, thirdly, whether she would be prepared to meet the Scotland Malawi Partnership to discuss its interest in this very important subject.

Baroness Verma: My Lords, UK aid to Malawi has not been reduced; it has just been redirected through sector support now. We will look at ways of ensuring that the budget support that we are giving and our aid programmes do not fail the poor, which I think is what the noble Lord wishes to hear. I assure him that we will continue to work with those sectors and with NGOs to ensure that, whatever difficulties we are having with the Malawian Government, we work collectively to ensure that aid goes out to the poor. On his point about meeting the Scottish Malawi Partnership, I spoke to my officials yesterday and they would be happy to arrange a meeting.

Lord Chidgey: What element of general budget support was allocated to supporting good governance in Malawi? In DfID's good governance fund for Malawi, what element will now be allocated to democracy and parliamentary strengthening, particularly scrutiny, monitoring and oversight of aid effectiveness by the Malawian Parliament?

Baroness Verma: My noble friend raises a number of key issues here. The support that we were giving was in order to have oversight of good governance and to ensure that economically the country was following the right paths for the delivery of budget aid. However, I bring the noble Lord back to the original Question, the answer to which is that we are continuing to work with the Malawian Government but we will need to direct general budget aid through programmes that we can have oversight of.

Lord St John of Bletso: My Lords, does the Minister agree that while it is vital that our Government continue to support Malawi through the aid programme, it is just as important in the medium and long term for our Government to assist the African Union as well as SADC to promote trading blocs to promote more trade and inter-African trade for sustainable economic growth?

Baroness Verma: The noble Lord is right. I know that he shares a great interest in that region with the Government. We wish to see greater economic development there, which is why we are encouraging private sector investment but also working with Governments to ensure that they are able to move much more strongly in revisiting their systems and ensuring that good governance overreaches all areas of their government as well as where the budget aid is going.

Baroness Kinnock of Holyhead: My Lords, is the Minister aware that in the DfID press release announcing the suspension of general budget support to Malawi there was an unexpected announcement? It says:

"This comes as the Government reduces general budget support across the world by 43 per cent".

Will the Minister give us more detail on this announcement in the press release and say which countries are affected, by how much and over what timescale?

Baroness Verma: The noble Baroness will know that I am not able to answer on each individual country at this moment in time, but I will get someone to write to her. The reductions are a result of our bilateral and multilateral reviews, where we saw that we needed to ensure that whatever moneys we were giving through aid via DfID were being well spent. The noble Baroness shakes her head, but she will know that during her time she faced the same sort of difficulties in ensuring that such programmes were both fully funded and fully scrutinised by the programmes we had in place. Governments needed to build up on good governance, which some were failing to do.

Lord Patel: I am sure that the Minister is well aware that Malawi has one of the highest maternal mortality ratios and one of the highest incidences of obstetric fistula. What impact assessment have the Government made of how programmes to deal with these will be affected by the redirection of aid?

Baroness Verma: I come back to my original Answer. I reassure the noble Lord that we have not cut back on aid but are redirecting the aid that was going through budget support to the health and education sectors, so we will be providing even more support by directing the aid to those sectors and having better oversight of where that money is being spent.

Lord Steel of Aikwood: My Lords, I appreciate the real difficulty that the Government have with the increasingly autocratic President of Malawi, but can the Minister give us any indication of whether relations are on the mend following the expulsion of our high commissioner?

Baroness Verma: My noble friend knows that while we have difficulties, we are continuously working on improving relationships. It is key that our relationship with Malawi is maintained and strengthened. The negotiations will continue but we will not stop our programmes from being delivered, because at the heart of everything that we are doing is the delivery of aid to poor people.

Standing Orders (Public Business)

Motion to Agree

10.36 am

Moved By ***Lord Strathclyde***

That the standing orders relating to public business be amended as follows:

Standing Order 40 (Arrangement of the Order Paper)

In paragraph (8), after "Affirmative Instruments", insert ", Negative Instruments".

The Chancellor of the Duchy of Lancaster (Lord Strathclyde): My Lords, I beg to move the Motion standing in my name on the Order Paper.

Lord Trefgarne: My Lords, before the House agrees this Motion, perhaps I may ask why we are not now hearing the outcome of the hereditary Peers' by-elections? That would have been normal at this time and indeed was widely expected. While I acknowledge that we are sitting an hour earlier than was originally intended, was it really not possible to complete the count by now?

Lord Strathclyde: My Lords, my noble friend has the answer to the question in one. There is no solution because the counters are counting at the moment and have not completed their business. However, I am able to announce to the House that the announcement will be made at the end of the Third Reading of the Police Reform and Social Responsibility Bill.

Motion agreed.

Draft Financial Services Bill

Membership Motion

10.37 am

Moved By The Chairman of Committees

That the Commons message of 19 July be considered and that a Committee of six Lords be appointed to join with the Committee appointed by the Commons to consider and report on the draft Financial Services Bill presented to both Houses on 16 June (Cm 8083) and that the Committee should report on the draft Bill by 1 December 2011;

That, as proposed by the Committee of Selection, the following members be appointed to the Committee:

B Drake, L McFall of Alcluith, L Maples, L Newby, L Skidelsky, B Wheatcroft;

That the Committee have power to agree with the Committee appointed by the Commons in the appointment of a Chairman;

That the Committee have power to send for persons, papers and records;

That the Committee have power to appoint specialist advisers;

That the Committee have leave to report from time to time;

That the Committee have power to adjourn from place to place within the United Kingdom;

That the reports of the Committee from time to time shall be printed, regardless of any adjournment of the House; and

That the evidence taken by the Committee shall, if the Committee so wishes, be published.

Motion agreed, and a message was sent to the Commons.

Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2011

Corporate Manslaughter and Corporate Homicide Act 2007 (Commencement No. 3) Order 2011

Corporate Manslaughter and Corporate Homicide Act 2007 (Amendment) Order 2011

Land Registration (Network Access) (Amendment) Rules 2011

Motions to Approve

10.37 am

Moved By ***Lord McNally***

That the draft Orders and Rules laid before the House on 16 May and 7 June be approved.

Relevant Documents: 23rd Report from the Joint Committee on Statutory Instruments, considered in Grand Committee on 5 July.

The Minister of State, Ministry of Justice (Lord McNally): My Lords, with the leave of the House, I beg to move the four Motions standing in my name on the Order Paper en bloc.

Lord Thomas of Gresford: My Lords, in relation to the Rehabilitation of Offenders Act order, the Minister will recall that when we discussed the matter in Grand Committee we raised very considerable difficulties about owners and managers not having clearance with regard to convictions. Can my noble friend assist with the worries raised at that time?

Lord McNally: My Lords, my noble friend is referring to the new alternative business structures for legal firms. It is true that both he and my noble friend Lord Hunt raised these points in Committee, and I agreed to take the matter back to ministerial colleagues if they would allow this order to proceed. I have done so, and Ministers have agreed that consideration and a decision in respect of the business case for the inclusion in the exceptions order of owners and managers of alternative business structures should be made as soon as possible. In the event that the Ministers agree that any addition should be made to the exceptions orders, I assure Members that this work will be expedited and an amendment will be prepared as a matter of urgency. On that basis, I hope that the House will allow the order to go through.

Motions agreed.

Police Reform and Social Responsibility Bill

Third Reading

10.40 am

Clause 7 : Mayor's Office for Policing and Crime to issue police and crime plans

Amendment 1

Moved by ***Baroness Browning***

1: Clause 7, page 7, line 2, at end insert—

"(e) give the panel a response to any such report or recommendations, and

(f) publish any such response."

The Minister of State, Home Office (Baroness Browning): I would like to speak to the government amendments in this group. The intention of Amendment 1 is to bring the provisions of the London Assembly police and crime panel's scrutiny of the police and crime plan into line with the provision for panels outside the capital. For forces in England and Wales outside London, the PCC must respond to any reports or recommendations made by the panel on the draft plan and publish the response. This amendment will put those provisions on the face of the Bill for London.

Amendment 2 was tabled by the Government at Report and was debated on 4 July. Unfortunately, due to an error this amendment was not moved formally. The Government have sought to resolve this by tabling the amendment again. I hope noble Lords will agree

that the substantive issues behind it were fully debated on the previous occasion, and that there is no need to delay the proceedings of the House by going through them again. Noble Lords will recall that the corresponding provision for London was moved and agreed by the House.

Amendments 16 and 17 are minor and technical amendments to ensure that PCCs and the Mayor's Office for Policing and Crime have the same powers as police authorities. Amendment 16 will give PCCs and the Mayor's Office the ability, subject to ministerial approval, to compulsorily purchase land, a power police authorities currently have. It was simply an error that this power was not included in the Bill at the outset.

Amendment 17 will exempt the Mayor's Office for Policing and Crime from some of the provisions of the Landlord and Tenant Act 1987 which require landlords to offer residential premises to their tenants before disposing of them. Police authorities outside London have this exemption at present, and the Bill replaces the reference to police authorities in the 1987 Act with a reference to PCCs. However, when the Metropolitan Police Authority was created by the Greater London Authority Act 1999, it was not given this power. It seems that this was an oversight in the legislation. This amendment will correct that anomaly and apply the exemption to both PCCs and the Mayor's Office. I beg to move.

Lord Hunt of Kings Heath: My Lords, first, I welcome the amendments that the noble Baroness has tabled. I have an amendment in this group, Amendment 3, to which I would like to speak in particular. I am sure that in the weeks, months, and indeed years ahead the events of the last few days will be analysed and researched, and many conclusions will be drawn from them. These events have shown the risk of the potential politicisation of our police arrangements through the close involvement of politicians in policing matters. That is why I worry about some of the impact of this Bill, and why I think that my amendment is important in seeking to strengthen the amendment of the noble Baroness. Let me say at once that I very much welcome that amendment; I just want to make it a little bit more effective.

I want to go back to something I said in response to the statement the noble Baroness made two days ago—it seems like years. We have seen some of the potential implications of importing American-style elected police and crime commissioners to the UK. The nearest we have to that is the London mayor, and it does not seem to have prevented a lot of the problems that one can see arising. It is well to remember that the mayor, Boris Johnson, when originally asked about phone hacking allegations, described them as codswallop. It is worth reflecting on what support the Met would have received from the mayor if they had actually decided to undertake a vigorous operation when questions were asked about reopening these issues a couple of years ago.

My concern is that having an elected mayor or an elected police and crime commissioner inevitably draws those people into making comments about operational policing matters and seeking to influence the chief constable. I do not see how it can be avoided. When a person is elected as police and crime commissioner for the West Midlands, for example, they will be asked questions about running issues which will inevitably go into not only the operational efficiency of the force, but also specific operations. My concern is that those elected police and crime commissioners will be drawn into commenting.

In London, the mayor is now going to be on his third commissioner. My concern is that this will be replicated throughout the country. Let us take an elected police and crime commissioner, representing a party that is perhaps not very popular in the public opinion polls and which faces elections in a year's time. What better way to boost one's prospects than by picking a fight with the chief constable and essentially requiring them to retire or resign? It is one thing for chief constables to be properly accountable—that is absolutely right—but my concern is that they are going to be very insecure people, and will therefore be more deferential to the elected police and crime commissioner than is healthy for the system.

Noble Lords know that I have a health service background. There was a time when the average length of stay of a chief executive in the NHS was about 2.8 years. The instability that that causes does great harm to public services. I believe we are building in huge instability and real threats of politicisation. I accept that this is the way the Government want to go, but I think it is important that we build in safeguards.

I welcome the amendment of the noble Baroness. I think the name of the noble Lord, Lord Dear, may have been on the amendment that was not moved on Report. But I would like to go further. It is important that police and crime panels are given support in exercising their functions of scrutiny on behalf of the public. Specifying in the amendment that the functions of the police and crime panel for a police area should be exercised with a view to,

"upholding the integrity, impartiality and effectiveness of the police force for that police",

would be an important safeguard and provide reassurance. Being in primary legislation, these words would give a very clear message to police and crime commissioners, chief constables and panels that we want a police force that is impartial, has integrity and does right by the public.

Lord Cormack: My Lords, the noble Lord, Lord Hunt, has made some valid and important points. I remind the House that the Bill to which we recently gave a formal Third Reading is in fact very different from the one that came from the other place. It is the expectation of most of us that the other place will indicate its dissatisfaction with the major amendment made in Committee by this House. Obviously we must wait and see, but I say this to my noble friend the Minister. The Government will have to look at this Bill again because of that amendment, but because of what has happened over the past three weeks, to which the noble Lord alluded in his speech, surely it is necessary to enact a Bill that truly deals with all the problems, ones that were not foreseen—I blame no one for that—when the Bill was first placed before Parliament. This is a golden opportunity for the Government to come back to us with amendments that recognise that there are areas of policing which are not adequately dealt with in the current Bill.

[LORD CORMACK]
Certain problems have been highlighted in recent days which it is incumbent on Parliament to recognise and adequately to legislate for.

My plea to my noble friend the Minister, who has shown herself to be painstaking, thorough and responsive to the feelings of the House, is that she should talk to the Home Secretary and her other ministerial colleagues with a view to ensuring that when the other place comes back to this House, one would assume either in September or October, we will have before us amendments which deal fully with many of the issues that initially provoked the noble Baroness, Lady Harris of Richmond, to move her amendment, and that subsequently have built upon that feeling of unease. I do not seek lengthy Divisions this morning, but an assurance that the final shape of the Bill proves to be up to the circumstances that we are now aware of.

Lord Harris of Haringey: My Lords, I hesitate to interrupt someone with such long parliamentary experience, but I would be grateful if he could give the House his guidance. I share with him the objective that, even at this very late stage, the Government should look again at how the proposals they would like to see enacted will work and how they could be improved in the light of the events of the past week or so. But is not the real dilemma for the Government that what will go back to the Commons for consideration are simply those narrow areas of the Bill which have been changed by the decisions of your Lordships' House? The safeguards that I am sure we all want to see—perhaps with one or two exceptions—will be very difficult for the Government to introduce during the course of ping-pong.

Lord Cormack: Like the famous Irishman, I would not have started from here. The truth of the matter is that on the very first day in Committee, a major amendment was passed in this House. It is therefore likely that the Government, unless they are going to see their Bill completely torpedoed, will wish to reject that amendment and come back to the House. As we saw earlier this week and last week, when ping-pong is played, there is an opportunity for the Government to insert further amendments. It is not a desirable situation, but the Government are going to want to put back all the provisions for police and crime commissioners that were taken out by the amendment in the name of the noble Baroness, Lady Harris. When they do that they will have an opportunity, as I see it, to further refine the Bill in a way that reflects not only the general concerns expressed in this House, but also the need to deal with the sort of situations which have disturbed us all so much in recent days.

Lord Harris of Haringey: My Lords, I am delighted to hear that advice. My understanding of the problem is that essentially all that will be sent back to the Commons, apart from the government amendments which will be nodded through, are the three lines from the beginning of the Bill which the amendment in the name of the noble Baroness, Lady Harris, deleted, and the sole fairly short clause which was then added. Someone incredibly ingenious needs to insert into those first three lines all the safeguards that Members of your Lordships' House are seeking. I am delighted that the noble Lord, with all his parliamentary experience, thinks it is possible, but I have to say that I have deep reservations over whether a way can be found of doing it.

Lord Cormack: In turn, I am delighted to hear that. I am merely making a few remarks in the hope that my noble friend the Minister will discuss this matter to try to make it possible because it is clear that we have an unsatisfactory situation. I believe that it is possible, when the Government decide to disagree with us in that fundamental amendment, for them to make some additional comments, as it were. I hope that that is what will happen.

This is not a situation that I or the noble Lord would have wished to see. The dilemma is that the problems have been compounded by the events of recent days and weeks. The Government have time during the Recess in which to look at this, and I hope that they will be able to do so. Then, when a police and social responsibility Bill goes on to the statute book, it is legislation that is truly adequate for policing in the next quarter of the 21st century. That is because we do not want to be, as the Americans say, continually revisiting this situation over the coming years.

Baroness Harris of Richmond: My Lords, as the instigator of that infamous amendment right at the beginning of the Committee stage, I welcome what my noble friend Lord Cormack has said. I want only to make the briefest of interventions on Amendment 3, to which I have added my name. My noble friend is absolutely right to say that more work needs to be done on this Bill in the light of what has happened recently. I urge my noble friend the Minister, having given us some comfort in her amendments today, to take a further step.

I will have a little more to say about recent events and their relevance to this Bill when speaking to a later amendment, but I want to support this amendment for the reasons set out by the noble Lord, Lord Hunt of Kings Heath. What we seek is to draw out the strength of the panels so that they are able to send a strong message to the public. That is what we want.

Baroness Hamwee: My Lords, does my noble friend agree that her amendment, which I certainly would not describe as infamous, was the result of concern in the House that the model being proposed did not contain the strict checks and balances that most of us wish to see? Therefore, picking up the concern of the noble Lord, Lord Harris of Haringey, it would be entirely proper for the Government to come back on ping-pong with proposals reflecting, beyond Clause 1, the strict checks and balances which led to the original amendment.

Baroness Harris of Richmond: I support my noble friend in her comments. The whole point of tabling the amendment was to try to persuade the Government to bring on the strength of the checks and balances. That has not been done, and I cannot imagine what they could come up with at the ping-pong stage. But I hope they do come up with something because it is the

strength of those checks and balances that this House, which voted so strongly in favour of my amendment, supported. I therefore urge my noble friend the Minister to see what she can do.

Lord Soley: I rise to speak in support of Amendment 3, and I am grateful to the noble Lord, Lord Cormack, because I can now abbreviate what was already going to be a small number of comments. I agree with what he said, and believe that the only danger the noble Lord faces is that he is likely to win the award for parliamentary understatement of the year when he says that he thinks the Government will be minded to reverse the amendment in the other place. I think we all know that they will.

The position is exactly as he has said: recent events have emphasised the importance of the checks and balances. The particular word that I picked out of my noble friend's Amendment 3 is "impartiality". The problem, as we have seen recently, is how a senior police officer can be impartial not only when dealing with the Government, but also when dealing with large organisations. In the recent case, of course, the organisation is News International. That is a profoundly important point.

11 am

Is the Minister absolutely confident that there will not be a politicisation of the police that results in senior police officers being removed by an elected mayor? I am not entirely opposed to what Boris Johnson has done in some cases—I was opposed in the case of Ian Blair, who went because of pressure from Boris Johnson—but we have now lost another commissioner and deputy commissioner, both of whom the mayor said ought to go. The mayor might be right—I am not in a position to know—but this is a politicisation, which many of us on both sides of the House are worried about. Is the Minister confident that there are enough checks and balances to make sure that such things do not happen inappropriately? There will be times when what has happened may be appropriate, but we need to ensure that it does not happen inappropriately. For example, what happens if a chief officer attempts to be very impartial and gets into difficulties or—this is the one that has always worried me—if crime is rising for reasons that are not under the control of the police?

As I have said before when I have talked about crime prevention, the assumption that the police can stop crime rising is wrong. There are many other factors involved, although the police clearly play a very important part. If we have a situation where crime is rising—maybe because of economic factors, unemployment or the lack of crime prevention policies and so on—it could be very easy for an elected mayor to point the finger at the chief police officer and say, "The chief police officer is failing and has to go". That is the profound danger that we are all worried about.

My noble friend made a comment—which I do not quite recall—asking what support the chief constable would receive in some of the situations that have come to light in recent days. That is key, and that is why his Amendment 3 is so important. Underlying all of this is my concern that at a time of rising crime—crime will rise, under all Governments, from time to time for reasons that are not always under the control of the police—it would be very easy for a mayor to point the finger at a senior police officer and say, "It's their fault, and they have got to go", when that may not in fact be the case.

Baroness Hilton of Eggardon: I, too, speak in support of Amendment 3. In earlier stages of the Bill I spoke about the dangers of police and politicians becoming too close. These dangers are exemplified by the current crisis in the relationships among the police, press and politicians. At one time in my police service, when David McNee was commissioner, we were quite explicitly forbidden from speaking to the media. This changed when Ken Newman became commissioner, and we were encouraged to be more open and democratic and to explain police actions to the public. Unfortunately, when a channel of communication is opened, it becomes a two-way street. The wrong information may flow from the police and inappropriate influence may be exercised by the media on the police service. Relationships develop and become too close or antagonistic, as they have in this current nexus of police, press and politicians.

This is a model of what will happen once these elected police commissioners are in post. In the past, politicians were treated by the police service with respect but not deference. Now, politicians, who necessarily represent factions in society and whose concern is a short term desire to be re-elected, will have excessive influence and we will be back to the bad old days of the excessively politicised watch committees that we used to have in some of our major cities. By emphasising the importance of impartiality, this amendment would offset these political pressures to some extent and go some small way towards establishing an explicit code of conduct for the police and crime commissioner. I therefore hope that the Minister accepts it.

Lord Ramsbotham: My Lords, I put my name to this amendment out of consistency with what I have been saying at various stages throughout the Bill's passage: namely, that, despite the fact that it is called a police reform Bill, there is precious little in the Bill about police reform and it is all about the reform of police governance. Therefore, anything that would support and help the police must be welcomed. I notice that today we are to have a Statement on public confidence in the police. It is the police on which we should concentrate. I hope that noble Lords have read the excellent, thought-provoking and very timely article in today's *Times* by my noble friend Lord Dear about leadership in the police.

Therefore, it seems to me that this amendment, which talks about the need for the police and the crime panel to support the police and help them in what they do, is entirely in line with what we should be trying to achieve in the Bill. The governance that we have spent so long talking about is actually miles away. Mindful of what Lord Acton, I think, said about hindsight being the privilege of the historian, I suspect that, in view of what we have had disclosed in the past two weeks, if the Government were introducing this Bill today, it might be a very different Bill, which I hope would concentrate more on the police than on governance.

Lord Clinton-Davis: I thank my noble friend for introducing this amendment. There never has been a time when it is more apposite to talk about the integrity, impartiality and effectiveness of the police force. I very much regret what has happened in the past few days. I pay tremendous tribute to my noble friend Lady Hilton of Eggardon who has just spoken. However, I recall times in the early 1960s when some of the police were not always politically impartial. I refer to the Challoner case. Throughout West End Central, there was a philosophy that the police could do anything that they liked. This was absolutely wrong. I believe that my involvement in the Challoner case was an expression of the public's disquiet of what was happening, and I think I had every reason to feel that.

I hope that the events of the last few weeks will herald a change in the way that the police are looked at by the public because I think that it is imperative that the public should have confidence in the police.

As far as elections are concerned, I believe that we are taking a step backwards. It is inevitable that the police will be drawn into political controversy, which is not desirable. Senior police officers should represent the qualities that my noble friend's amendment emphasises. It is very important, from the point of view of the public, that these issues should be aired. I have no hesitation in supporting what my noble friend has said. We have plenty of time for the noble Baroness to be able to prevail upon some of her colleagues in Government to change their minds, too.

Lord Dear: My Lords, I think that one should reflect on the fact that policing can be a very lonely business. It is undoubtedly lonely for a police constable who is alone outside a club as it is turning out at 2 o'clock in the morning and everything seems to be going out of control—some of us have been there. It is equally lonely to be in the office at midday as a chief officer of police when the world is clamouring for a press conference and you are not too sure how to handle it. In the past I have found useful Polonius's advice to his fast-departing son in *Hamlet*—a long list of things that one should or should not do—which concludes:

"to thine own self be true,
And it must follow, as the night the day,
Thou canst not then be false to any man.

Of course, that begs the question, which Shakespeare did not address, of what yardsticks you are going to use when you are being true to yourself.

To address the loneliness of policing on some occasions one should turn to the oath of office that one takes as a constable, and which binds you all the way through to the most senior of ranks. You swear or affirm that you will exercise your duties as a constable at all levels without favour, affection, malice or ill will. That is a binding principle and is a useful one to remember. I am sure that the majority of police officers remember it whenever the going is tough. The answer to the question of how you should react is that you react without favour, affection, malice or ill will. That really means impartiality.

I do not quarrel at all with the wording of the amendment. Upholding the integrity and impartiality of the office is, of course, critical. It is critical today because it is in the public focus; it is always critical at 2 am and 12 pm, as I have just said. I support the amendment in the name of the noble Baroness, Lady Browning, which refers to,

"the effective exercise of the functions of the police".

From my point of view, the effective exercise of functions embodies, among other things, the fact that you will act impartially and according to the oath of office which binds you when you are in the police.

I suppose what I am saying, in an effort to be helpful, is that I do not quarrel at all with the wording of Amendment 3, but I have spoken on several occasions in your Lordships' House in Committee and on Report about the risk of being overprescriptive. I do not think this is overprescriptive; it spells out in greater detail what the words, "effective exercise of functions" means. For my money, I am happy to stick with the amendment tabled by the noble Baroness, Lady Browning, because, as I have said—I will not repeat myself at length—it encompasses not only the words of Polonius to his son, but, much more importantly, the wording of the oath of office. As I say, I do not quarrel with the amendment of the noble Lord, Lord Hunt, the wording of which is admirable, but I think that it is encompassed by the wording of the amendment tabled by the noble Baroness, Lady Browning.

Lord Beecham: My Lords, the problem with the proposition advanced by the noble Lord, Lord Dear, is that the government amendment is strictly related to the person and role of a single individual—the police commissioner. It seems to imply that it is necessary to direct the panel to support the police commissioner in the exercise of his functions as if that was an overriding consideration whereas, of course, the overriding consideration is the functioning of the police service. That is what is encompassed in the amendment of my noble friend Lord Hunt. I am surprised that the Government felt it necessary to produce the amendment in the terms that they have. It seems to see the role of the police and crime panel as the police and crime commissioner's little helpers who are there to support him in the exercise of his functions.

Given that this is a political role, the implications around supporting the commissioner in the exercise of those functions—for example, in the run-up to an election for a police commissioner—are rather disturbing. Are we to see the police and crime panel accompanying a future Mayor of London on another occasion when the police make an early-morning arrest? Are we to have a latter-day repetition of the siege of Sidney Street, not just with an individual—the Home Secretary was involved in the Sidney Street affair—but with a police commissioner, accompanied by the police and crime panel effectively supporting him in the exercise of his functions? It is rather concerning.

My noble friend referred to the position of the chief constable in these circumstances. Surely he is also entitled, and the police force is entitled, to the support of the police and crime panel in the exercise of its functions, not simply those of the commissioner. Given that it is possible to envisage circumstances in which, in an election for a police and crime commissioner, one of the platforms of a candidate might be a wholesale criticism of the existing chief constable and an implicit

threat that he might be replaced, what is the position then of the police and crime panel as regards that person being elected? The Government need to reconsider this provision very carefully. My noble friend's amendment pitches the support where it is needed—for the police force as a whole, not for an individual, be it either the chief constable or the police and crime commissioner. That seems much the preferable course. There is an implicit danger in the Government's amendment. I hope that on reflection they will accept that my noble friend's amendment achieves what is probably the Government's intention, but which might be frustrated in practice given the politicisation of the role which is being created.

11.15 am

Lord Newton of Braintree: My Lords, my noble friends on the Front Bench will be relieved to hear that I do not rise to support Amendment 3, particularly in the light of the wise words of the noble Lord, Lord Dear. Even as the person in this House who probably has more experience of business management than any other noble Lord, I do not have an answer to the question asked by the noble Lord, Lord Harris of Haringey. However, I know that if there is sufficient consensus about the need to do something different, a way to do it can usually be found. I hope that that will be borne in mind.

My main purpose in rising is to support my three noble friends from this side who have made three basic points. Can this Bill possibly have taken into account what has happened in the past two weeks? The answer is clearly no. Do these amendments, or anything in the Bill, take account of those developments? The answer, presumably, is no. Do I think that we should make a lot of trouble today as a result? My noble friends will be relieved to hear that my answer is no. However, the Government now have at least seven weeks to think further in the light of what the Commons thinks about our amendments. They should use that time to consider whether what is now in the Bill is entirely appropriate given the recent experience which has not yet been fully digested or taken into account. I hope that my noble friend will at least be able to give me an assurance that that is not ruled out.

Baroness O'Loan: My Lords, I support the amendment of the noble Lord, Lord Hunt. We have to revert to what is happening to policing at present. We cannot make decisions without focusing on those issues. As I have said previously, the reality is that the police are fighting many battles on many fronts, particularly in the context of terrorism and organised crime. We have very serious problems internationally, but more than that the police are operating in a context of serious economic instability across the world. We all know that the almost inevitable effect of economic instability is a rise in the levels of crime. Opportunities are presented by this situation, which exists not just in the United Kingdom but in other countries. The questions around the model of a police and crime commissioner on which the Government are clearly set, which is based on the United States model but does not have the protections afforded by that model, are not answered by the amendments which the Government have tabled. Such a model will inevitably cause problems such as have been experienced in the United States where chiefs are sacked by mayors at regular intervals. This is accepted as a political reality. They then move from major city to major city to run other forces, which leads to huge instability.

The reality for the people, too, will be that if a Tory, Labour or Lib Dem police and crime commissioner is elected, there will inevitably be a perception among the public that the policing will be delivered in accordance with that party's policy. No matter what you try to tell them, that will be the perception. That perception will inevitably lead to distrust in some areas of the country. There is a very clear need to focus on the issues raised in the amendment of the noble Lord, Lord Hunt, and in particular to place a statutory obligation on police and crime panels to focus on integrity and impartiality.

Lord Shipley: My Lords, I will speak in a moment on Amendments 2 and 3, but I would like to speak briefly to Amendment 13, which stands in the names of my noble friend Lady Hamwee and myself. This relates to the checks and balances which are, in theory, to be strict; it also relates to the substitution of or deputising for any member who is unable to attend a meeting of the panel, and to the quorum and the need to define the quorum required for a meeting of the panel actually to be held. There are important reasons why this matters.

At Report, my noble friend the Minister said that substitutes would be permitted at meetings of the panel. I seek further clarification as to exactly how this is going to be done, because it matters. In terms of the two-thirds of the membership of the panel having the power to veto appointment of a chief constable or of the precept, then who attends the meeting and what the quorum is matter: these points become material. One has to maximise the number of people who can attend, and if a member of the panel cannot attend then the Bill should state who would be permitted to attend that meeting of the panel on behalf of that same local authority. Also, as there will be decisions to be made which do not require a two-thirds majority but nevertheless will be decided after debate on a simple majority basis, how many people are required to attend the meeting to make it valid seems to be highly material. I am looking for further clarification about this matter from my noble friend the Minister because we see it as being very much part of the checks and balances on the police and crime commissioner, without which it is not clear that those checks and balances would function correctly.

I turn to Amendments 2 and 3 briefly, because there has been a very good and helpful debate on this matter. As someone who has listened to that debate, it seems to me that the two amendments are not incompatible, but there are differences between them. It would be very helpful if my noble friend the Minister could take those two amendments away and see if they could be redrafted in a way which would meet the requirements and wishes of all sides of your Lordships' House. It seems now that there is an opportunity for this to be done.

Baroness Henig: My Lords, I will speak extremely briefly—I realise that we have had a good debate on this. I wish to respond to the noble Lord, Lord Dear.

[Baroness Henig]
It seems that the difference between these two amendments goes to the heart of the issue of corporate governance.

The first amendment, tabled by the Government, is very much in line with the Government's model that the panel scrutinises the commissioner and the commissioner scrutinises the police. That is the Government's model, and I have understood that right the way through. What my noble friend's amendment tries to do is to develop a more corporate approach to try and give the panel more input, and therefore to have a more corporate approach as between the panel and the commissioner in scrutinising the police. That is the intent of the amendment, and that is a big, fundamental difference. While I accept all the points about the need in the future particularly for chief officers to have more support—and this will come out in later amendments—good governance structures need to be in place: that is fundamental. If we are going to make changes in policing, good governance structures have to underpin those changes. At the moment, those structures are not there. That is one of the problems that we have.

I support all noble Lords who have said let the Government take the summer to look at this. That is absolutely right, but my point is that it is going to take a fundamental re-look at things. As long as the Government's model gives one politician on a party political ticket such huge influence over policing—one person, without good governance structures in place—grave concerns are going to remain. That is the fundamental issue. While I therefore support all attempts to try and get the Government to look at this again, unless the model is changed fundamentally those central concerns will remain. That needs to be put on the record, because it is the big difference between these two amendments.

Baroness Browning: My Lords, the Government are clearly reflecting on the events of the past few days—that is what the Statement which will follow Third Reading will seek to address, as of course did the Home Secretary's Statement which was read in this House on Monday. We have had a detailed analysis of the Bill, but I am not at this stage going to pre-empt what the other place will make of the changes that this House has made.

The noble Baroness, Lady Henig, has just outlined a very potted version of the Government's plan. It might be helpful at this stage if I reiterate what was said at the beginning of Committee stage; although it was refuted around the House when I said it, I believe that there is greater clarity in this matter now. While we have police forces up and down the country who we all would want to pay tribute to in the work that they do, there has for some time, as our research which I shared with the House in Committee has shown, been a belief among the general public that local police forces should be held to account. We believe that in order for them to be held account, the public—who have not been mentioned very much so far—should be given the right to elect the person on their behalf who will hold the local police chief constable to account. I give way.

Baroness Henig: I am sorry to interrupt the Minister so early on, but will she not acknowledge that when the public were polled on whether they wanted that accountability to be exercised through a party politically elected individual, they overwhelmingly said they did not? Over 70 per cent said they did not want a party political person having that sort of power. They wanted somebody who was accountable, but not somebody elected on a party political ticket. More than one poll came out with that finding. Will the Minister acknowledge that?

Baroness Browning: The noble Baroness and I have, in the course of our debates and deliberations, exchanged stats on various polls. Certainly, the Bill has sought at all stages to strengthen that accountability of the PCC, and I am very grateful to Members on all sides of the House in this. In particular, we have brought forward amendments at Report stage which strengthen the panel, so that the PCC can be held to account, but in turn the public hold the PCC to account.

I believe that the events of recent weeks go to show how ineffective the present governance system is in robustly holding the police to account. If anything, I believe that it goes to show how important these reforms are—something that I realise from various body language opposite me is not agreed—but none the less I believe that is the case. Of course, the serious events that have been before both Houses in the last week or two were not known at the time that the Bill was drafted, but the Bill itself will seek to restore that public confidence in the police, a confidence that has been rocked to its foundations. Only a police service that is reactive to public concerns and held to account democratically will address the deficit.

I come to some points that have been raised here, and particularly in respect of the Metropolitan Police. Noble Lords will know that I am a Home Office Minister. I cannot, and it would not be appropriate for me to feel I had to, answer for the Mayor of London; I am quite sure that he is robust enough to answer any criticisms for himself. However, it would reflect very badly on the police and crime commissioner—

Baroness O'Loan: I apologise for interrupting the Minister, but will she explain, if she can, the inadequacies of the present system? My understanding is that under the present system in London there is an elected mayor.

11.30 am

Baroness Browning: The noble Baroness, Lady O'Loan, is quite right, there is an elected mayor; but we are making some changes. PCCs will be elected around the country, and the mayor is elected, but the MPA is still in place, as it always has been, in its current form. The Bill makes some changes to that structure.

Lord Harris of Haringey: My Lords—

Baroness Browning: I knew that I was going to provoke the noble Lord.

Lord Harris of Haringey: I am grateful to the noble Baroness for giving way. However, the changes that she is introducing will provide less oversight by the

mayor and the MOPC than currently exists through the structure with the mayor and the Metropolitan Police Authority.

Baroness Browning: My Lords, I am sure that I do not need to remind the noble Lord and the House that he is a Home Secretary-appointment to the MPA and, as I understand it, at the moment he is in charge. I am not being personal—I am saying this in general terms—but clearly the current system is not working. We have seen that in the seriousness of what happened in the Met and what is continuing to be investigated there.

Having served 20 years as a Member of Parliament, I raised concerns which I knew were shared by many people. I did so not as a reflection on the individual police force that covered the constituency that I represented; the force worked very hard and there were some very good people in it. Over the years, however, there has been what I can only describe as a public perception of creep, whereby law-abiding people who bring up their children to respect the police and the law have increasingly had an underlying feeling that, at times, the police are not on their side. There are lots of reasons for that and we could have a lot of debate about it. I see the noble Lord nodding. It is something that I have raised with chief officers as a Member of Parliament.

It is a very dangerous thing if what I might call middle England, for want of a better expression, start to believe that the police are not on their side, or that when something happens to them, often for the first time in their lives, as far as law and order is concerned, they do not feel that it is even worth picking up the phone to report it because they have a preconceived idea of what the response will be. That sort of creep—and I can only describe it as creep—is something that concerned me for many years as a Member of Parliament. I know from discussions with others that that is not an isolated case. It is very dangerous if, having had policing by consent for generations, we suddenly have an emerging generation—although it goes across the age spectrum—who do not have that confidence in the police. It is not about individual officers or chief officers but is about the way in which structures have been introduced and developed and about governance. That governance needs to change, and this is the Bill that will change it . I give way again to the noble Baroness.

Baroness Henig: I have listened with great care to what the Minister has been saying. However, given that more than 60 per cent of the public still have confidence in the police, as against 18 per cent who have confidence in politicians, is the right answer to have directly elected party politicians bearing down on chief constables?

Baroness Browning: My Lords, there is absolutely no guarantee that PCCs will necessarily be party politicians—although they can be, of course. I think that it would be welcome on all sides of the House to get the best person for the job regardless of party. That is what people have usually looked for in jobs such as this across the public sector. Many people in this House will have had very responsible jobs in public office and I hope that no one in this House would suggest that the only reason why they held those jobs was their party political allegiances. I have to say that this also applies to Members of Parliament—yes, there is a lot of party political cut and thrust, but I hope that all colleagues in this House who have formerly been Members of Parliament would agree with me that once you are elected you represent everyone in your constituency. As a Member of Parliament—apart from when you are actually at the other end of the corridor, and I see a few noble Lords nodding—once the election is over, you put party politics to one side in order to take on your responsibilities for a whole constituency. That applies across the public sector when people are elected or appointed to a post. I would hope that, regardless of party politics, people will step up to the plate to take on a public office of this level of importance.

I turn now to the opposition amendments. Amendment 3, tabled by the noble Lord, Lord Hunt, seeks to alter the government amendment providing for the panel to exercise its functions in support of the commissioner. Instead, it would give the panel a more direct role in the performance of the force. The Government listened to the concerns of noble Lords across the House in Committee and in meetings which I held outside the Chamber about the panel not doing battle with the commissioner and about the panel having a supportive role in addition to the role set out in the Bill. At Report we tabled an amendment to that effect. I am very grateful to the noble Lord, Lord Dear, for speaking to this group of amendments and reminding the House of the oath that constables take, which is at the forefront of their minds. That was so well explained—far better than I could have done—and I am grateful to him.

The Government's amendment sends out a clear message that we expect the relationship between the PCP and the commissioner to be one in which both parties work towards the mutual aim of providing the best service to the public. The amendment tabled by the noble Lord, Lord Hunt of Kings Heath, and the noble Lord, Lord Ramsbotham—who also spoke to it—would substitute the Government's provision with one where the panel is responsible directly for the performance of the police force. As already discussed during our debates, the Government's model provides for direct accountability from the chief constable to the police and crime commissioner for the performance of the force. The commissioner is then, in turn, directly accountable to the public. To give the panel the role that noble Lords suggest would confuse these clear lines of accountability.

Baroness Hamwee: My Lords, perhaps I may ask the Minister a question on that before she moves on. It may be another way of putting the point that the noble Lord, Lord Dear, has made. I absolutely take the point about the deletion of the words,

"supporting the … exercise of the functions of the police and crime commissioner".

That is something that I was concerned about myself. Can the Minister tell the House how we can read into the Bill the points about integrity, impartiality and so on which are clearly exercising the House? If they are not expressed in the Bill they may well be implied, either through the implied reference to the oath or

[Baroness Hamwee]
through some other mechanism. Perhaps at the end of her speech she will be able to assist us on how we can understand that.

Baroness Browning: I am grateful to my noble friend because I was about to turn to the amendment that she and my noble friend Lord Shipley tabled.

The intention of Amendment 13 is for panels to include specific provision in their arrangements for substitutes or deputies where a panel member cannot attend proceedings, and provision for the quorum for a meeting of the panel. This was an issue discussed during Report stage. Your Lordships will recall that during that debate I stated that provision for substitutes or deputies for the panel's vote on the precept and the appointment of the chief constable could be included in the regulations dealing with those specific procedures. We will consider using these powers with partners should we feel that they are necessary, but we start from the position—and I hope that noble Lords will agree—that the authorities around the PCP table are responsible bodies that will take their statutory duties seriously and ensure that their rules and procedures more broadly cover this ground.

As to the veto, we have the power to intervene and regulate on this should we feel it necessary. There is also general provision in the Bill for panels to make their own rules of procedure, including rules on the method of making decisions. That is the mechanism for panels to make their own rules on matters such as a quorum. We start from that point but, none the less, I am happy to say to noble Lords that we will look at this in regulations if it is felt that changes are needed.

Lord Shipley: Is it the intention that regulations may be made to enable substitutes to attend meetings that are discussing matters other than the veto on the appointment of a chief constable and on the precept?

Baroness Browning: I understand that point and it is certainly something that we will look at in terms of regulations. At the moment, I cannot say how that will be described.

Perhaps I may come back to my noble friend Lady Hamwee's point and concerns. I have to say to my noble friend that we feel that the Bill as drafted and amended provides the checks and balances that she is asking for.

Lord Hunt of Kings Heath: I am extremely puzzled. In my reading of the Bill as amended on Report, these words already appear. If I turn to page 20—

Baroness Browning: Did the noble Lord say 20 or 22?

Lord Hunt of Kings Heath: I think that it has been cleared up. As printed, the Bill contains an error, because the wording of her amendment appears in the Bill. The people who dealt with it anticipated that the noble Baroness would move the amendment on Report. I gather that there is a correcting sheet, which none of us seems to have, pointing that out. I have cleared it up to my own satisfaction, if no one else's.

Baroness Browning: My Lords, between us the noble Lord and I make a great team. I was concluding my remarks to my noble friend Lady Hamwee. I know that she will find this a disappointing answer, but we believe that her concerns are addressed in the Bill.

Amendment 1 agreed.

Clause 29 : Police and crime panels outside London

Amendment 2

Moved by ***Baroness Browning***

2: Clause 29, page 22, line 16, at end insert—

"( ) The functions of the police and crime panel for a police area must be exercised with a view to supporting the effective exercise of the functions of the police and crime commissioner for that area."

Baroness Browning: I beg to move.

Amendment 3 (to Amendment 2)

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

3: Clause 29, line 3, leave out "supporting the effective exercise of the functions of the police and crime commissioner for that" and insert "upholding the integrity, impartiality and effectiveness of the police force for that police"

Lord Hunt of Kings Heath: My Lords, I am grateful to all noble Lords who have spoken in this debate. I will briefly respond to the noble Baroness. She said that the system is not currently working in London, but what I take from the current debacle is the dangerous cocktail of politics and policing being mixed together. She has not answered the specific concern of the current mayor, who is shortly to work with the third commissioner so far in his single term of office. My concern is that in order to deal with an issue of accountability, the architecture of the Bill brings with it many perverse incentives.

Baroness Browning: I am grateful to the noble Lord for giving way; I did not pick up on this point. I would point out that, despite perceptions, the current mayor has not fired anyone and does not currently have the power to do so. It is the Metropolitan Police Authority that has the power to dismiss the Commissioner of the Metropolitan Police. It was suggested that the mayor was responsible for the resignation of Sir Paul Stephenson, but that is definitely not the case, as was said both in his evidence yesterday to the Home Affairs Committee and in other statements.

Lord Soley: My Lords, I did not say that he was responsible. I indicated that he apparently supported the suggestion that Sir Paul Stephenson should resign. From what I understand, the mayor said that he did not oppose the offer to resign by those two people. In the case of Ian Blair it was different.

Lord Hunt of Kings Heath: The House would not want us to go into the details of the resignations of commissioners. What is clear is that the mayor has had an influence. It shows quite clearly the risks of having party politicians so directly involved. The noble Baroness says that there may not be party politicians elected to

these posts, and of course that may be true. I suspect, however, that in the 42 police areas that we are concerned about in my amendment, the great majority will have political labels. We would expect them to carry out their duties without fear or favour but many of those people will be seeking re-election. The point is that their activities will be coloured by wishing to seek re-election.

I agree with the noble Lord, Lord Dear, that to be a chief officer of police is a lonely business at any time. While I certainly believe chief constables need to be held to account, they also need support. My concern is that elected police commissioners will not be in a position to give the kind of support that is necessary to officers who have to bear those heady responsibilities.

The noble Lords, Lord Cormack and Lord Newton, made very important points and asked the Government to reflect. It may be that in the Statement to come we will hear a little more about how the Government will reflect. I hope that they do. Ping-pong can be flexible but there are limits. The best way to ensure that the other place and the Government properly consider the issues surrounding the responsibilities of police and crime panels is to send my amendment back to the Commons; it will then put the issue in play.

I do not agree with the noble Baroness that my amendment takes the PCP beyond its current responsibilities into direct intervention. No, it gives strong signals to the police and crime panel about the impartiality and integrity of the police force. They are there to scrutinise through the police and crime commissioner. That would be a very important signal for this House to give. I beg to move.

11.46 am

Division on Amendment 3

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Amendment 3 disagreed.

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11.58 am

Amendment 2 agreed.

Amendment 4

Moved by ***Lord Harris of Haringey***

4: After Clause 48, insert the following new Clause—

"Role of Mayor's Office for Policing and Crime in appointments

The Commissioner of Police of the Metropolis shall ensure that the Mayor's Office for Policing and Crime shall have the opportunity to interview all candidates being considered for appointment under sections 46, 47 and 48 and to make recommendations to him about such candidates before he consults the Mayor's Office for Policing and Crime in accordance with sections 46(2), 47(2) and 48(2)."

Lord Harris of Haringey: My Lords, a few minutes ago, the noble Baroness talked about the current system in London not working. By implication, she was suggesting that if the Bill were to pass, the arrangements for the accountability and governance of the police would be stronger in London than they are at the moment. However, in practice, the Government are weakening the arrangements in London. They are providing the Mayor and the MOPC with fewer powers in terms of control and governance over the police service in London, which I assume is not the Government's intention. The purpose of my modest amendment is to require that the MOPC is given the opportunity to interview candidates for appointment as a commander, deputy assistant commissioner or assistant commissioner of the Metropolitan Police. It does not take the final decision away from the Commissioner of Police of the Metropolis; it leaves it there.

On Report, I made my view clear that in an ideal world there should be a joint recommendation on the appointment of the Commissioner and Deputy Commissioner of Police of the Metropolis from the mayor and from the Home Secretary. It would continue to be a royal appointment, a fact that the Government and those former Commissioners of the Metropolitan Police to whom I have spoken feel is important. However, this amendment does not change. What it does do is to give a significant, though not a decisive, role on appointments slightly below that level, down to the level of commander of the Metropolitan Police, to the

MOPC. It would give an opportunity to advise on the basis of having seen the candidates concerned and for that advice then to be considered by the Commissioner of Police of the Metropolis before a final appointment is made and before the final consultation processes take place.

I am aware that the mayor's office in London has made very strong representations to the Government. Indeed, as recently as earlier this week—I believe on Monday—the chair of the MPA and London's deputy mayor for policing wrote to Theresa May, the Home Secretary, with a copy to the Prime Minister in which he reiterated the concerns of the mayor's office in London:

"The Mayor and I have deep concerns regarding the proposed future lack of MOPC involvement in MPS officer appointments, and conduct matters in addition, according to the Police Reform and Social Responsibility Act. The Bill will remove the role of the governing body in appointment of all ACPO officers".

That is as clear a statement as you can find that the new arrangements being proposed by the Government will reduce the mechanisms by which the mayor's office in London holds the police service accountable. The statement continues:

"As I have communicated to you previously, the Mayor and I feel strongly".

The Government are saying that in London there will be fewer levers, fewer controls and fewer powers for the system that governs the Metropolitan Police. This is at a time when the Government tell us that they want to strengthen those accountability mechanisms. This is at a time when the Government tell us that the current arrangements are not working in London and by implication they ought to be strengthened. This is a time, incidentally, when there is a Conservative Mayor of London. You would have thought that the Government would have the utmost confidence in that person's ability to take on those functions in an appropriate way; but no. What the Government are doing is taking away even those very limited powers that currently exist and giving them to the Commissioner of Police of the Metropolis.

I find the approach that is being taken here quite extraordinary. In quieter times, before the events of the last few weeks, the arrangements in London, where there is a directly elected mayor for the whole city, were being held up to us as being the beacon that was guiding this entire piece of legislation; yet now we are being told that those arrangements are inadequate. However, instead of the arrangements and the responsibilities of the mayor's office being strengthened, they are being weakened by this Bill.

On Report, I challenged the Minister to give me one instance in this Bill where the new structures will have more responsibility than the current structures have over the Metropolitan Police; I received no answer. The reason I received no answer is because there are no such instances. This Bill weakens the governance arrangements in London.

I think we understand, given the national responsibilities currently held by the Metropolitan Police, why the Home Office has to be involved in the appointment of the Commissioner of Police of the Metropolis. I think we understand the historic reasons why it is important that that appointment be a royal one, but in circumstances where every other elected police and crime commissioner will have at least the power of appointment of the chief officer of police—assuming that the Government restore that measure to the Bill, as the noble Lord, Lord Cormack, hinted that they might consider doing. However, in London, even though an assistant commissioner has the equivalent rank to a chief constable outside London, the mayor's office will have no involvement other than the right to be consulted. I suggest that this is a diminution of the powers which is extremely unfortunate.

I know that one reason the Government have taken this stance is the desire of the outgoing Commissioner of Police of the Metropolis that he should have control over all appointments of his senior team. No one is suggesting that the Commissioner of Police of the Metropolis should not be able to decide how he wants deploy his senior team, but I question whether it is sensible that those appointments are made simply by that one individual in these circumstances.

During my time on the Metropolitan Police Authority, for four years I chaired every appointments panel for officers above the rank of chief superintendent. In the subsequent seven years, I sat on virtually all the appointments panels for deputy assistant commissioners and above. There have been one or two instances of disagreements between the Commissioner of Police of the Metropolis and the appointments panel of the Metropolitan Police Authority. Usually the Metropolitan Police Authority panel has deferred to the preferences expressed, if they have been expressed clearly, by the Commissioner of Police of the Metropolis or his representatives. In a number of instances—it is probably inappropriate for me to give any details—that decision has been against the better judgment of the panel of the Metropolitan Police Authority. In those instances, that better judgment has proved to be right and the strongly held view expressed by the Commissioner of Police of the Metropolis was in fact wrong. Therefore, I do not think it is sensible to have an arrangement whereby you are preventing or not requiring the MOPC to have a direct involvement and to have at least the opportunity to interview the candidates so that there can be a dialogue or a consultation with the Commissioner of Police of the Metropolis on the basis of detailed information about the strengths and weaknesses of various candidates. I do not think it is sensible even in the terms of what the Government are doing in trying to have a transparent system where the elected representative of the people is seen to be having a decisive role in the governance of policing. I think the way in which the Bill is drafted is a mistake. Unless it is rectified at this stage, I suspect that we will rue the consequences in the future. I beg to move.

Baroness Hamwee: My Lords, the noble Lord, Lord Harris of Haringey, described his amendment as modest. I have often heard him describe his amendments as modest, although I have not necessarily agreed with him. However, this amendment is about no more than making recommendations. If the Minister is minded to resist, can she explain to the House how that squares with the amendment that we have just made to the Bill about supporting the effective exercise of the functions?

Lord Rosser: My Lords, as my noble friend Lord Harris of Haringey stated, his amendment provides that no person shall be appointed as an assistant commissioner, deputy assistant commissioner or commander by the commissioner of police without the Mayor's Office for Policing and Crime having the opportunity to interview all candidates being considered for appointment and without the mayor's office having the opportunity to make recommendations to the commissioner before the commissioner consults the Mayor's Office for Policing and Crime.

The amendment addresses the responsibilities of the police and crime commissioner in London—namely, the Mayor's Office for Policing and Crime—and whether it is realistic that a Commissioner of Police of the Metropolis should only have to consult the Mayor's Office for Policing and Crime before making appointments to senior posts without the mayor's office having a proper opportunity to assess all candidates for such positions and make recommendations to the commissioner of police.

The Government see police and crime commissioners as being key players in the future in increasing public accountability for policing, including strategy, and making it clear where responsibility lies. The Mayor of London already has overall responsibility for policing in the metropolis—albeit he does not have time to carry out this role, so he has in effect handed it on to someone not directly elected to carry that responsibility. However, if the intention is that the Mayor's Office for Policing and Crime is to be responsible and accountable to the public for policing, then surely it cannot be right that the mayor's office can find that the commissioner of police has made a series of senior appointments without the Mayor's Office for Policing and Crime even seeing the candidates and being in a position to express a view to the commissioner of police.

We have expressed our views on corporation sole in relation to a chief constable, including the Commissioner of Police of the Metropolis, and the consequent extensive power that it gives the occupants of these posts. The amendment seeks to address one issue of concern—namely, the process for making senior appointments—which arises from the lack of proper checks and balances within the Bill. The amendment is intended to provide a check on the use of the power of Commissioners of Police of the Metropolis in this area of appointments, and it gives a better balance in the appointments process between the commissioner and the Mayor's Office for Policing and Crime, while, as my noble friend Lord Harris of Haringey emphasised, still leaving the decision with the Commissioner of Police of the Metropolis. We await the Minister's response with interest.

Lord Condon: My Lords, first, I apologise for not being present at the start of the discussion. I was delayed on a train.

I support the amendment. Throughout our discussions on the Bill I have expressed concerns about chief officers being able to appoint their senior team. I realise that the Government have a theoretical model in which a chief officer appoints his team and the chief officer is then responsible to the elected commissioner. There is a purity and simplicity in that approach, but recent events and past history suggest that there is great strength in bringing others into the consideration of and recommendations for chief officer posts. That adds legitimacy and the possibility of national concerns about leadership being incorporated into local decisions. I realise that it challenges some of the purity of the Government's modelling on this issue but I urge them to think through the notion that no one other than the chief constable or the commissioner should be responsible for these senior appointments other than in an informing role. I think that in the public interest something more than informing is desirable.

Baroness Browning: My Lords, a key principle underlying the reforms outlined in the Bill is to hand over responsibility for all decisions relating to the running of a police force to the chief constable or, in this case, the commissioner. This includes the selection and appointment of officers for senior posts. The Government believe that these appointments are key to the effective running of the police force and that sole responsibility for decision-making should rest with the commissioner. The commissioner is best placed to identify the mix of skills required by his chief officer team and the areas where he or she feels that the force would benefit from a fresh injection of skills.

In considering the amendment, we also need to bear in mind accountability. The commissioner will be accountable to the Mayor's Office for Policing and Crime for the decisions that he takes in running the force. Giving the MOPC the power to make recommendations about which candidates should be appointed as assistant commissioners, deputy assistant commissioners and commanders would, we believe, blur that line of accountability.

12.15 pm

I appreciate that the amendment tabled by the noble Lord, Lord Harris, does not compromise the ultimate decision sitting with the commissioner but we need to appreciate that the closer the MOPC is to these appointments, the harder it becomes for the MOPC to hold the commissioner to account for his or her senior team, otherwise we run the risk of the MOPC not being able to hold the commissioner to account because he is too closely involved in the appointment of individuals to these ranks and because the commissioner regards the MOPC as being jointly responsible for their appointment. We want accountability to be clear and therefore robust. Although I appreciate the intention behind the amendment, I fear that it may tie the hands of the MOPC unintentionally in the future rather than increase its powers of accountability.

The Bill makes provision for the commissioner to consult the MOPC prior to appointment. Clauses 46, 47 and 48 make that clear. The commissioner must consult the MOPC prior to the appointment of an assistant commissioner, a deputy assistant commissioner and a commander. I therefore ask the noble Lord to withdraw his amendment.

Lord Harris of Haringey: My Lords, the noble Baroness, Lady Hamwee, suggested that I sometimes describe amendments as modest when they are rather less than that. The reason I described this amendment

as modest is that it falls a long way short of what I think is necessary. However, perhaps unlike the Government, I am prepared to compromise on some issues in the Bill, which is why I put forward this amendment. It simply enables the MOPC to interview the candidates and then to make a recommendation to the Commissioner of Police of the Metropolis before the final decision is taken and the final consultations take place.

The Minister's response suggested that being jointly involved in appointments would tie the hands of the MOPC in the future and minimise accountability. However, I suggest that she looks again at the terms of the amendment. It does not create a system of joint appointment; it leaves that appointment in the hands of the Commissioner of Police of the Metropolis. It simply enables the MOPC to have an informed dialogue with the Commissioner of Police of the Metropolis about the candidates who are being considered. This is about enabling the MOPC to do the office's job properly and effectively.

I am grateful to the noble Lord, Lord Condon, for his support. We never worked together in terms of the Metropolitan Police Authority because he had retired as commissioner before I became involved at that level. However, his points about why this is an important safeguard for the integrity and position of chief officers of police are extremely important, and, again, I would have hoped the Government would have listened to them.

I can only conclude that what we are being told now is that a Conservative-led Government do not trust a Conservative Mayor of London with these powers. I am aware that the popular press—in so far as one can refer to them in that way in these strange days—suggest that there is an air of rivalry between the Prime Minister and the Mayor of London, or perhaps rivalry between the Chancellor of the Exchequer and the Mayor of London, over the succession to the Prime Minister. I hope that that is not the motivating factor here. I suspect that the reality is that the Government have not thought this through. They claim that the model in London is the model that they want to create elsewhere in the country, but they will weaken the powers of governance of the mayor and the MOPC even below the level that currently exists with the Metropolitan Police Authority and the mayor, a model which the Minister said only a few minutes ago was not working.

As I think that the Government have got this so wrong, I wish to test the opinion of the House.

12.19 pm

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12.31 pm

Clause 59 : Power to make provision about elections etc

Amendment 5

Moved by ***Baroness Browning***

5: Clause 59, page 39, line 13, leave out "of political parties in connection with" and insert "or other recognition of political parties and other persons incurring expenditure in relation to"

Baroness Browning: My Lords, Amendments 5, 6 and 7 change the powers of the Secretary of State to make secondary legislation in relation to elections. The Bill, as currently drafted, allows provision to be made about the registration of political parties, candidates' spending limits and spending limits for political parties. Amendments 5 and 6 amend those powers to ensure that the Secretary of State can make provision about all these matters, but can also make provision, as in the case of other elections, in relation to other or third parties who may incur expenditure campaigning for or against a specific candidate or more widely.

Your Lordships will recall that my noble friend Lady Hamwee brought forward amendments in this area on Report, which I committed to consider. I am grateful to my noble friend for raising these important points. Secondary legislation to be made under Clause 59

would have already restricted what candidates and political parties could spend in those elections. Noble Lords will appreciate that the spending of organisations that campaign during elections, but that are not themselves fielding candidates, can greatly affect the result of a poll, even if they are not explicitly supporting a specific candidate. It is important that we are clear that the Bill will allow for that. It is usual in elections for such spend to be regulated and PCP elections should not be an exception. The amendments are necessary to ensure that the powers of the Secretary of State are sufficient to achieve that regulation. I hope that my noble friend Lady Hamwee will agree that they achieve the same end as her amendments on Report. I beg to move.

Baroness Hamwee: I am grateful to my noble friend, and I think we should all be grateful to the Electoral Commission, for taking such an eagle-eyed interest in and concern for the Bill. I am perfectly happy to accept that parliamentary counsel's drafting achieves ends that I could only describe in a narrative kind of way.

Amendment 5 agreed.

Amendments 6 and 7

Moved by ***Baroness Browning***

6: Clause 59, page 39, line 15, leave out paragraphs (d) and (e) and insert—

"(d) about funding and expenditure, in relation to elections of police and crime commissioners, of candidates, political parties and other persons incurring such expenditure;"

7: Clause 59, page 39, line 29, at end insert—

"( ) Provision within paragraph (d) of subsection (2) includes, in particular—

(a) provision prohibiting, or imposing limitations on, funding or expenditure of any kind mentioned in that paragraph, and

(b) provision for treating funding or expenditure of any such kind which does not relate exclusively to an election of police and crime commissioners as being (or not being), wholly or partly, funding or expenditure in relation to which—

(i) any provision within paragraph (a) applies, or

(ii) any relevant provision applies."

Amendments 6 and 7 agreed.

Clause 63 : Appointment of acting commissioner

Amendment 8

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

8: Clause 63, page 41, line 29, leave out subsection (2) and insert—

"( ) The panel may only appoint a person under subsection (1) if that person is—

(a) a member of that police and crime panel; and

(b) a member of the relevant local authority.

( ) In appointing an acting police and crime commissioner under subsection (1), the relevant police and crime panel must stipulate the maximum length of time that the person may hold that position."

Lord Hunt of Kings Heath: My Lords, we come to a matter which has been discussed both in Committee and on Report. This relates to the proposal in the Bill that, if for whatever reason the police and crime commissioner has to give up office or is indisposed, the police and crime panel can appoint an acting police and crime commissioner who shall be a member of the staff of the police and crime commissioner. Noble Lords will know that I have been very concerned about the possibility of a staff member of the police and crime commissioner assuming such great responsibility. The noble Baroness said that she was still considering this matter, and that we could bring it back at Third Reading. I am hopeful that she will be able to accept my amendment, which ensures that the acting police and crime commissioner has to be a member of the panel and an elected politician. This follows on from the amendment that the noble Baroness moved at Report, which allows for independents to be appointed to police and crime panels. I do not think it appropriate for those people to become acting police and crime commissioners, which is why I have drafted the amendment in this way.

If I may say so, this is meant as a helpful amendment, to find a way through. I have detected some considerable support around the House for my view that it is not right for a staff member to assume such great responsibilities, including issues around the hire and fire of chief constables, in my understanding, and the precept. Surely it is better that an elected politician member of a police and crime panel fulfils that role. I beg to move.

Baroness Harris of Richmond: My Lords, I want to say a few words in support of this amendment. I find it completely incomprehensible that anyone would think that it was acceptable to put a politically restricted person in charge of making political decisions, which is the effect of the current proposals relating to deputy and acting PCCs in this Bill. Quite apart from the fact that this would give such a person an impossible technical conundrum to resolve—because a politically restricted person must be politically neutral, and therefore cannot by definition make political decisions—it completely undermines the Government's own arguments about greater public accountability. It is particularly important that an acting PCC must be able to make decisions as if he or she were the PCC. This includes the key decision about what precept to set if the PCC is absent at that particular time of the year. The PCC's office cannot not make a decision about this, whether or not the PCC is present, because the police service would be missing up to half its funding the following year if this was so. Not for the first time, I have thought that we were creating an Alice in Wonderland world in this Bill—it is all somehow upside-down.

It is clear to me that an acting PCC cannot be politically restricted. That means that an acting PCC cannot be drawn from the members of the PCC's staff—which bizarrely now include the deputy PCC, although that is another issue. The obvious place to look is therefore among the members of the police and crime panel, and particularly among the elected members of the panel, if we are serious about a commitment to

[BARONESS HARRIS OF RICHMOND]
democracy and accountability. This is exactly what the amendment of the noble Lord, Lord Hunt, stipulates, and I am very happy to support it.

Baroness Hamwee: My Lords, at the last stage, both the noble Lord, Lord Boswell of Aynho, and I made rather impromptu suggestions about other possibilities which the Government might look at. Mine was that the commissioner should make the choice, because it seemed to me that there would be a logic in that. I hope that the noble Baroness, who sounded very open to the different possibilities, might be able to respond to the menu that was suggested last time. However, I retain my concern about it being proper that the person who acts up is a person who has been elected. I do not think that the fact that the appointment is made by the panel meets the concerns; it is the object of the appointment that I am concerned about. Indeed, there is almost an irony in suggesting that the appointment is made by the panel—the elected people—as the logic of the Government's model is that the commissioner is an elected person. I hope that the Minister can help find a way through this.

Baroness Browning: My Lords, this amendment, as with similar amendments at Report stage, seeks to secure the appointment of an acting PCC from the police and crime panel rather than the PCC staff. I want to make it clear that the Government accept that this is a important area and one that we must get right. I am aware that the Opposition disagree with the Government's proposals, but I continue to believe that the alternative put forward is not the answer. Our objective is simple—we agree that the acting PCC must be underpinned by a mandate from the people to act. The point is that, true to democratic principles, this mandate must be what the people have voted for in that force area. The opposition amendment would replace one elected mandate—the legitimate one that brought the PCC into power—with another that may be completely different and at odds with that of the PCC.

I accept that a member of the PCC staff does not have a direct mandate. They are there to help deliver the PCC's police and crime plan. We have ensured that they cannot amend this while doing their caretaker role—this will ensure that the mandate of the PCC and the public's will is maintained. Maintaining the PCC mandate intact is important—delivering on an elected mandate is what democracy is all about, and there are also practical implications. As I have pointed out at previous stages in the Bill, we do not want another local politician, with possibly a different agenda, to take the reins and take the police force in a different direction. We believe that this is not a good proposal. There is a fundamental difference in our approach to this—we see the acting PCC role as a caretaker role and nothing else; it seems that the Opposition see the acting PCC as more than this. Given the direct mandate of the PCC and the fact that the acting PCC should be a temporary measure, I cannot agree. We cannot hand the office of PCC to somebody who will likely seek to take the force in a different direction without a mandate.

This was debated during Report, when the noble Lord, Lord Harris of Haringey, in particular made the point that there are no other examples of an unelected person setting a precept. It is important to note here that the acting PCC is hardly acting completely unchecked. First, the PCP has a veto in this area; and, ultimately, should the precept remain excessive, it will be subject to a referendum.

I will finish on how this is all likely to work in practice—after all, this is what matters. As noble Lords know, the Government introduced an amendment to allow PCCs to establish deputies. In reality, we envisage that the PCP will appoint the deputy as the acting PCC. Given the debate thus far on the need to ensure the PCC has sufficient powers, noble Lords will see that we have left it to the PCP to decide which members of the PCC staff should be appointed in the circumstances and at that time. I believe that this satisfies the democratic need in this area and I ask that the amendment is withdrawn.

Baroness Henig: Before the Minister sits down, I ask her to clarify whether the post of deputy will be a politically restricted post. There was some discussion on this and I did ask a question about it at the last stage, but I do not think it has been clarified.

Baroness Browning: The answer is no. I have also been informed that the relevant provision is paragraph 199 of Schedule 16, if the noble Baroness wishes to look at it.

Lord Hunt of Kings Heath: My Lords, I do not claim my amendment is ideal but I am trying to put some safeguards into a Bill that I know to be considerably flawed. The noble Baroness says that it would be wrong to replace one mandate by another, on the basis that if the House accepted my amendment and an acting police and crime commissioner had to be appointed, it would be a local authority member on the police and crime panel, and that person therefore would have a different mandate. However, I have always sought to explore how the circumstance would arise in which an acting police and crime commissioner had to be appointed. I do this because you can then see the absurdity of the Government's position—and it is an absurd position.

Assume that a police and crime commissioner had to step down because that person was unduly and inappropriately interfering in the operational activities of the police and the chief constable. Are we seriously saying that, in those circumstances, that mandate continues—that a member of that person's staff should be the acting commissioner, able to set a precept? The credibility of such a person would be shot to pieces. The naivety coming from the Government on this just amazes me. Do they not understand that they are creating a situation where it is almost inevitable that some of these elected police and crime commissioners will act wholly inappropriately in interfering in police activities? If only the Government would just pause to reflect on this. In those circumstances, a member of the police and crime commissioner's staff would, up to a point, undermine confidence in the police. I am very sorry that the noble Baroness is not going to accept my amendment and I wish to test the opinion of the House.

12.46 pm

Division on Amendment 8

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12.57 pm

Amendment 9

Moved by ***Baroness Browning***

9: After Clause 79, insert the following new Clause—

"Policing protocol

(1) The Secretary of State must issue a policing protocol.

(2) Each relevant person must have regard to the policing protocol in exercising the person's functions.

(3) The Secretary of State may at any time—

(a) vary the policing protocol, or

(b) replace the policing protocol.

(4) Before varying or replacing the policing protocol, the Secretary of State must consult—

(a) such persons as appear to the Secretary of State to represent the views of elected local policing bodies,

(b) such persons as appear to the Secretary of State to represent the views of chief officers of police of police forces maintained by elected local policing bodies,

(c) such persons as appear to the Secretary of State to represent the views of police and crime panels, and

(d) such other persons as the Secretary of State thinks fit.

(5) The functions of the Secretary of State under subsections (1) and (3) are exercisable by order.

(6) In this section—

"police and crime panel" means—

(a) each police and crime panel established in accordance with Schedule 6 (police areas outside London);

(b) the London Assembly's police and crime panel (see section 33);

"policing protocol" means a document which sets out, or otherwise makes provision about, ways in which relevant persons should (in the Secretary of State's view) exercise, or refrain from exercising, functions so as to—

(a) encourage, maintain or improve working relationships (including co-operative working) between relevant persons, or

(b) limit or prevent the overlapping or conflicting exercise of functions;

"relevant persons" means—

(a) the Secretary of State in the exercise of policing functions;

(b) each elected local policing body;

(c) the chief officer of each police force maintained by an elected local policing body;

(d) police and crime panels."

Baroness Browning: My Lords, the Bill ensures that direction and control of the police force remains with the chief constable and that the functions of PCCs in securing the maintenance of an efficient and effective force and holding the chief constable to account are the same as the functions of the police authorities at present. There is nothing in the Bill that would allow a PCC to compromise the operational independence of the chief constable. However, it is clear to all in the House and in another place, and indeed in the wider policing community, that there remains concern as to how the proposed model of reform will work in practice. These concerns have been heard and noble Lords will be aware that we have been working with our policing partners on a draft protocol that sets out the nature of the relationship between chief constables and PCCs and the delineation of their responsibilities.

We have indicated in the past that we are keeping an open mind as to whether the protocol should be put on a statutory footing. We have considered the current draft of the protocol, the comments made by representatives of the existing policing tripartite during the drafting process and the points raised in the useful debates on this subject in your Lordships' House. I am also very grateful to noble Lords who have attending meetings with me outside the Chamber specifically to discuss the protocol. We have tabled an amendment requiring the Home Secretary to issue a protocol by statutory instrument that will be subject to parliamentary scrutiny under the negative resolution procedure.

The Home Secretary will be able to vary or replace the protocol once issued but only after consultation with interested parties and any variation or replacement would be scrutinised by Parliament under the same procedure.

Lord Soley: Will the noble Baroness reconsider it being under the negative procedure rather than the affirmative procedure?

1 pm

Baroness Browning: We considered that because, as I have outlined, there is a structured consultation in respect of the protocol and any amendments to the

protocol that may come forward later, but the purpose of this is to put it in the statute for the Secretary of State. We believe that we have got the balance right in terms of parliamentary consideration of it. I beg to move.

Amendment 10 (to Amendment 9)
Moved by ***Baroness Henig***

10: After Clause 79, line 37, at end insert—

"( ) The policing protocol must, in particular, provide that if a chief constable, Commissioner of the Metropolis, or Deputy Commissioner of the Metropolis resigns or is required to resign before the expiry of his term of appointment, HMIC must conduct a review of the reasons for that resignation and publish a report on that review.

( ) In conducting that review, HMIC may call upon the assistance of IPCC, if the reason for the resignation is or appears to be one which is related to the ethical conduct of any party to whom the protocol applies.

( ) A statutory instrument containing an order under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Baroness Henig: My Lords, Amendment 10 is a very modest amendment, like some of the amendments we have had this morning, but I believe it is a very important amendment in the light of current events. Its purpose is to afford some protection under the proposed protocol to senior officers if they resign prematurely by ensuring that HMIC must conduct a review in these circumstances. The amendment would also ensure that the regulations setting out the protocol would need to follow positive resolution procedures. Given the significant impact regulations could have on the practice and the governance of policing nationally, I believe that this is essential.

I would like to say a few words on why I think this improvement to the Government's amendment is necessary. I, along with many noble friends and colleagues in the House, have consistently raised concerns about the Bill in a number of key areas. We have already heard about these concerns earlier this morning; concerns about whether these reforms will politicise policing and place too much power in the hands of one person; that we need a more corporate approach with more emphasis on good governance and internal regulation; a desperate need to strengthen checks and balances across the whole Bill; inadequate provisions for conduct and complaints, particularly in relation to commissioners, but also in relation to senior officers. Once chief officers become responsible for appointing and disciplining their own senior team, in my view and in the light of the events of recent days, this is a very serious concern. Things have actually been changed by what has been going on.

I acknowledge that the Government have improved some of the checks and balances while the Bill has been in this House—for instance, around lowering the veto majority required by the panel—and we welcome the progress that has been made. In particular, I welcome the government amendment in relation to the protocol which seeks to provide some rigour around protecting the operational responsibility of chief police officers, although my amendment suggests an improvement to these proposals, prompted by recent events. In any event, the devil will be in the detail of the regulations at the end of the day, but my amendment will ensure that they must at least address situations where the chief officer resigns prematurely. Because the devil will be in the detail, I suggest that the regulations need to be subject to positive resolution procedures in both Houses because this is fundamental to ensuring that operational responsibility is adequately protected.

I echo the comments of many noble Lords and Members of the other place about the long and dedicated service of both Sir Paul Stephenson and John Yates. I mentioned at earlier stages of the Bill that I did not always agree with Sir Paul, but I have always respected and admired his great abilities and his tremendous commitment to policing. He will be a great loss to London and to the service.

The events of the past week have fuelled my great concern about the future of policing and the impact this could have on reducing public confidence in policing as well as creating instability and uncertainty in the police themselves, particularly among senior ranks. Recent events have dramatically illustrated the vulnerability of senior police officers when subject to the control of a single individual elected on a party political ticket, an individual who is used to operating in a very political environment. The fact is that all senior officers at some time or another need support in difficult situations. The noble Lord, Lord Dear, referred to this earlier this morning and it is absolutely the case. Every now and again they need the opportunity to talk things through on a confidential basis. I know for a fact that that has often happened up and down the country with police authority chairs and deputies and, indeed, with independent members of police authorities. The governance structure has given senior police officers the opportunity to talk to and confide in members and that has helped them in doing their job.

It is quite clear from recent events that individuals elected directly to oversee policing will operate completely differently from police authorities under the present governance arrangements. I am not arguing that that may not have many advantages. The Government have argued that they want a new governance structure and I understand what their reasons are. But I want to point out the huge downsides of this new governance structure, because the individuals so elected, the commissioners, will put their own political career prospects and their own survival ahead of any other factor when problems arise. They will ramp up the pressure on senior police officers rather than work with them supportively behind the scenes. It does not matter what protocol you put in place or whether you say, "This is operational but this is not, and you must not cross this line", ramping up pressure is of a different order entirely. That is what I am so concerned about. It is for that reason that two Metropolitan Police commissioners have gone in the past two and a half years.

My concern is that once this system is extended to the rest of the country without any safeguards, we can predict fairly certainly that the same problems will arise up and down the country. Chief constables will be driven to resign and police and crime commissioners will boast about how tough they are being and play to the media for effect. That will happen; anyone who is a politician knows that.

[Baroness Henig]

Another of my worries is that the effect on the public's trust and confidence in the police will be enormous. I think that their trust and confidence in the police will go down but their trust and confidence in politicians will not go up. That will mean a poisonous outcome of these new governance arrangements that a statutory protocol will not alleviate. Hence my amendment to have resignations thoroughly investigated by the inspectorate and, if necessary, the IPCC so that at least the public can get a clear and dispassionate picture of what the issues and problems are, free from the distortions of the media or of the commissioner's account. That is what is motivating me in the amendment.

I remind noble Lords, although I am sure that they need no reminding, that the government Benches have consistently claimed that the London pilot model is a pilot of the proposals for the rest of the country. I do not happen to agree with the Government that it is a very good pilot, but the Government have consistently claimed that the proposals are close enough to act as a test bed and that no other pilots are needed because the London model is such a success. After the previous few days, that rings very hollow and worries me enormously. If London is the model for the rest of the country, then what we are seeing now is what we will see writ large over the next few years.

We are seeing the direct consequence of politicising the police. The senior ranks of the Metropolitan Service have felt the need to employ PR and media advisers, for example, in order to do their job in a political environment and to try to cope with political pressures. Do we really want that sort of scenario to be repeated up to 43 times across the rest of the country as the reforms are rolled out? I am sure the Government will tell me that my fears are misplaced, but I am sorry, that is what I am concerned about.

We live in a complex world. The media play an essential role in enhancing the accountability of the police. The police need to have a balanced relationship with the press, to answer their questions and disseminate information. Obviously, they cannot cut ties with the press and still be seen to be accessible and accountable, but we need to spend time getting the relationship right.

I warmly welcome the recent announcement by the Minister, when she repeated the Home Secretary's Statement to the other place, that a review of this relationship is to be conducted, but surely we must await the outcome of that review before pressing ahead with the reforms in the Bill. Surely it is madness to do otherwise.

I fear that we are heading for a perfect storm of colliding events in the police world. The first of these, as I have just mentioned, will be a combination of the erosion of public confidence in policing as a result of the phone-hacking scandal together with instability and increased uncertainty among senior ranks of the police. This will be combined with unprecedented demand and pressures on the police with the upcoming Olympics; the Jubilee; the implementation of budget cuts that will affect the police directly but also increase demands on them; the changes predicated by the Winsor and Neyroud reviews on leadership; and more changes thorough the demise of the NPIA and the creation of the national crime agency. Is this really the time to be going ahead with all this along with the new governance structure, which, as we all acknowledge, has serious concerns attached to it?

My noble friend Lord Hunt has warned time and again as the Bill has progressed through the House that the Bill is badly thought through and will require the Government to bring in changes within a year or two to correct its errors if it goes ahead. I agree with him. Recent events have shown the cracks and dangers in the Government's proposed model. Even if some noble Lords do not accept my view that these dangers are pressing, surely we have to take on board the lessons of the reviews and inquiries into the recent scandals—otherwise why have them? Surely we are going to wait to see what they say. Surely we must ensure that these problems that the reviews will bring up are fixed before any new model of policing is considered, because if we do not, the consequences will be severe and disastrous when combined with all the other demands which are coalescing on police resources. Senior police officers deserve a sense of stability and some certainty that they are not going to be asked to fall on their swords to protect their political masters.

I accept that there are some safeguards in the Bill, although in my view they are inadequate if the chief officer is formally required to resign. As the noble Lord, Lord Blair, has pointed out to us many times, there are ways of persuading a chief officer that he should resign voluntarily if a directly elected individual deems that his or her face no longer fits. Chief police officers deserve some certainty about this scenario too. In fact, it is fundamental to a healthy relationship between the commissioner and the chief officer.

My amendment cannot undo all the dangers and inadequacies of the Bill, particularly those around corporate governance and the woefully inadequate standards regime, but it tries to provide some safeguards for chief officers against losing their job on spurious grounds by ensuring that the HMIC must review all premature resignations. A question arises about whether checks and balances are strong enough and whether we need more of them. I urge the Government to consider this again, particularly regarding the powers of the panel and the ability—or lack of it—of the inspectorate to inspect commissioners.

Although I do not for a minute suggest that either Sir Paul Stephenson or John Yates would come into this category, the uncertainty about tenure prompts questions about whether we need again to consider banning disgruntled former police officers from standing as commissioners straightaway, because of course the Bill does not rule that out. In fact, recent events have prompted so many queries about the inadequacies of the Bill that I feel we must make sure that a strong message goes to the other place about this: a very strong warning about all the problems inherent in the Bill that may result in complete disaster.

With all due respect to the Minister, who is innocent of formulating these proposals in the first place, she has done a sterling job in trying to defend them. I know she has tried to bring about changes. She keeps

telling the House that she will go away and seek changes and then she comes back and says that she is terribly sorry but the changes are not possible. We can only speculate about what goes on behind the scenes, but I know that the she has battled hard. Surely there is now only one course of action: to pause and think again. We need time to reflect on the impact of recent events and to consider how the reviews being undertaken by the inspectorate and the IPCC need to be reflected in any reform proposals. At the very least, people will surely accept that this is the wrong time for reform. While I hope that over the summer the Government will pause to reflect again, in the mean time I seek to put forward this minimum safeguard to mitigate some of the more extreme possible outcomes. My amendment is really directed to safeguard chief officers' operational responsibility and to protect their positions from the capricious, media-seeking, and politicised antics of some—not necessary all—directly elected commissioners. I beg to move.

Lord Wasserman: Does the noble Baroness really mean that if a chief officer resigns for domestic, private or health reasons, there has to be a published report from the HMIC?

Baroness Henig: I say to the noble Lord that what may appear as a private matter may have been caused by months of stress because of wrangles between the commissioner and the chief constable. There are all sorts of things that may not meet the eye. I really believe that we have to think of the public in all this. What is the public going to make of this system, of the new governance structures and of the police? It is important that they see chief constables and their forces as operating above party politics. In a lot of amendments that I have put forward I am trying to help the public to maintain respect for the police and not to feel that party politics will undermine the integrity of the police force. That has been in the back of my mind in all my amendments.

1.15 pm

Baroness Harris of Richmond: My Lords, I think that my noble friend the Minister would be disappointed if I did not rise to support the amendment moved by the noble Baroness, Lady Henig. Like her, I acknowledge and welcome many of the government amendments, minor though I believe them to be, including this one on the protocol. However, I am still concerned that the checks and balances on PCCs remain inadequate. While they remain inadequate, chief officers are very vulnerable. I am concerned about the impact this could have on the confidence of senior officers, so I commend this amendment because it would afford at least a minimum level of protection. While this is a start, as the noble Baroness, Lady Henig, pointed out, we need to consider seriously whether in the light of recent developments, this is the right time to be implementing major reforms.

I have consistently expressed my concern that the powers of the panel are not strong enough to act as a proper check on PCCs, but I am also concerned that the wider checks and balances are not strong enough either. This includes checks and balances between PCCs and chief officers, and regulating their relationship effectively. So the amendments dealing with this aspect are welcome because they are helpful up to a point.

All this brings us back to the fundamental problem of the Bill: it puts too much power in the hands of one person and places too little emphasis on good governance. My noble friend the Minister has said on several occasions that she will ensure that the principles of good governance are strengthened in the Bill, so the amendment concerning the protocol is helpful in that it defines roles and functions clearly. However, I would ask her to explain exactly which other principles have been addressed and strengthened. I am particularly concerned that a fundamental weakness of the Bill remains the reliance on individuals rather than embracing a more corporate approach.

Corporate bodies have well-established rules of governance and self-regulation which are well understood and thoroughly tested. We have discussed at length both in Committee and on Report why this is not true of corporations sole. Indeed, other amendments at Third Reading are related to this point. It also means that if there is no internal system for regulating a corporation sole properly, because it is comprised of an individual rather than a collective, that regulation must come independently from outside if it is to be credible. The Bill is seriously flawed in this respect, and particularly in relation to senior officer appointments and dismissals, audit and who will check how public money is spent, complaints and the conduct of both PCCs and senior officers. The Bill sets out only very limited external regulation for all these functions.

The Bill's proposals are particularly worrying in respect of complaints about conduct. So far as PCCs are concerned, it is lamentable to suggest that they should be regulated only by reference to a criminal standard of behaviour; everything else will be down to informal resolution between the PCC and the panel. It is not clear what that will mean in practice because it will be subject to regulations which have not been developed. This is not an adequate way of handling matters which so clearly impact on public confidence. The Bill is also inadequate in relation to conduct issues among senior officers. I have argued consistently that giving chief officers powers to deal with disciplinary matters in relation to their immediate senior team is a recipe for corruption. Recent events have demonstrated that public confidence is critical, so this must be changed.

Even under the current, much more robust regime, public confidence is badly dented—and that is without these new provisions which say in effect that the police should investigate themselves. We should ask what the public perception of the recent scandals would have been if the decision to suspend and discipline senior officers other than the Commissioner of the Metropolitan Police had been left entirely up to the Commissioner of the Metropolitan Police. I am in no way impugning the integrity of Sir Paul Stephenson. Like other noble Lords—I follow the noble Baroness, Lady Henig—I believe that he has been an outstanding officer. He will be a very sad loss to policing in this country. However, it is a matter of public perception and what they will make of this arrangement if there are accusations about police corruption.

[Baroness Harris of Richmond]

At present, the Bill manages to combine too much lassitude for individuals with too little regulation. This is a direct consequence of the inadequate corporate and governance structures. I am also inclined to agree with the noble Baroness, Lady Henig, that the events that we have seen in recent days are also a direct consequence of politicising policing and a stark warning about the dangers of the press influencing policing in a political environment. This will make all senior officers—particularly chief officers—vulnerable to the winds of political fortune in the new world of directly elected police governors. For this reason it is essential to improve protection for chief officers to enable them to exercise their operational responsibility without fear or favour as the noble Lord, Lord Dear, told us earlier.

If we must take this Bill forward, it is surely now evident that these flaws must be resolved. I join with the noble Baroness, Lady Henig, in urging the Government to think again. We need to strengthen internal as well as external checks and balances, which means implementing a more corporate approach to guard against the dangers of putting too much power in the hands of one individual. We need a model that is more transparent and effective at self-regulation; this includes a stronger role for the panel. We need to ensure that the principles of good governance are applied to embed this more rigorous approach. We need a proper misconduct regime as a key plank of monitoring effective behaviour and governance.

Arguments to pause and reflect on this Bill are now overwhelming. We need to ensure that chief officers are properly protected from political inference but we also need to learn and apply lessons that will be learnt from the review that HMIC and the IPCC have been asked to undertake before the Bill is finalised. I am also conscious that there will shortly be another police Bill this time dealing with the national landscape.

Lord Wallace of Saltaire: My Lords, we are at Third Reading. We are dealing with a specific amendment. I ask the noble Baroness to be as brief as possible, since we have a Statement to follow on some of the other issues with which she is dealing.

Baroness Harris of Richmond: And finally, I cannot resist asking the Government why they have resisted making the protocol statutory until now? It certainly does not deal with what would have happened in similar circumstances under the proposed new regime where the chief police officer would have been in charge of dealing with allegations against his senior team.

This has been my last main speech in this debate. I have found it profoundly the most debilitating, distressing and appalling police Bill that has ever been my misfortune to have dealt with in the 12 years that I have been in your Lordships' House. I regret deeply that there has been no real concern placed on looking at what my noble friend earlier called, "the very important checks and balances". They are not here.

Lord Ramsbotham: I speak particularly to subsection (6) of the proposed new clause, which presents a very neat way out of the issues of the British Transport Police and the British Transport Policy Authority that I raised on Report. In doing so, I thank the noble Baroness, not just for the way that she has conducted this Bill through the House, but also with the speed with which she, the Secretary of State for Transport and the noble Earl, Lord Attlee, responded to the points that I made and had a meeting to discuss them. In subsection (6), it describes the police protocol as,

"a document which sets out, or otherwise makes provision about, ways in which relevant persons should … exercise, or refrain from exercising, functions so as to … encourage, maintain or improve working relationships (including co-operative working) between relevant persons, or … limit or prevent the overlapping or conflicting exercise of functions".

That seems to be precisely at the heart of the very long delay—10 years' delay—in bringing the jurisdiction and powers of British Transport Police constables and the definition of their chief officer's role together with those of the Home Office police.

At Second Reading, I mentioned that there was a certain urgency in this because the transport police have a key role to play not just in anti-terrorism but in the run-up to and progress of the 2012 Olympics. Therefore, as I say, something needs to be done quickly. There is a way out if you accept that the British Transport Police and the British Transport Police authority should be included in the protocol to the extent that the annual police plans, which have to be drawn up by the police and crime commissioners, should include the operations of the British Transport Police. You thus get over all the problems associated with them because they have to be resolved with the measure. For example, the licensing issue, which particularly affects transport hubs and is a matter of concern, and the proper licensing of firearms rather than requiring every constable to get an individual one, would have to be done not as separate issues but as part of a plan in every area. I was disappointed to hear that when the British Transport Police raised this at the meeting with the Secretary of State, officials said that it was inappropriate because the protocol applied only to the Home Office police. That is precisely why it presents the ideal vehicle. I hope very much that the Minister will assure the House that that approach will be followed.

Lord Hunt of Kings Heath: My Lords, I have an amendment in this group. I thank the noble Baroness for bringing forward her amendment. We have debated establishing a protocol and giving parliamentary endorsement to it, so that is very welcome. I also echo the remarks of the noble Baronesses, Lady Henig and Lady Harris, who expertly identified the flaws in the Bill. I very much support my noble friend's amendment. I also support what the noble Lord, Lord Ramsbotham, said. He made a very good point. I hope that the noble Baroness will respond to him.

I have a very modest amendment in this group—Amendment 12. The noble Baroness's amendment contains an order-making power. Essentially, the order-making power applies to the issuing, varying or replacing of a policing protocol. My reading is that that will be a negative SI. I think that it ought to be an affirmative SI. I refer the noble Baroness to the guidance given by the Delegated Powers and Regulatory Reform Committee. It states:

"A supplementary memorandum must be submitted when any Government amendment is tabled which introduces a significant new delegated power".

I checked last night and I know that her department issued a supplementary memorandum in relation to amendments to Clause 59(2)(c), and that a two-page memorandum has been produced. However, I have not discovered a memorandum issued in relation to this amendment. I hope that the noble Baroness will clarify whether such a supplementary memorandum has been issued.

However, the real point is the following. From all the comments that have been made, right from Second Reading through to today, the importance of this protocol is not in doubt. Given that it is an order-making power, I fail to see why the noble Baroness's amendment does not refer to an affirmative order. It ought to be an affirmative order to stress the importance of this matter. I hope that the noble Baroness will be able to give me some comfort on that.

1.30 pm

Lord Soley: My Lords, before the noble Baroness speaks I wish to comment on and support both Amendment 9 in the Government's name, and my noble friend Lady Henig on Amendment 10. I just have a couple of points and I do not need to spend too much time on them. First, though, the Minister who just intervened on his own supporter and asked her not to speak so much should remember that the problem we have in this House is that government legislation on a number of issues has been brought to this House in a mess, and it needs to be put right by Parliament. It is not for Ministers to tell parliamentarians not to give it the attention it deserves to try to get it into some sort of order. It is not just this Bill, and it is not just me on this side of the House who is saying this. A number of Members on the Government's side are saying that legislation is reaching this House in an inadequate form, regardless of whether you like the policy or not.

I have a couple of points on Amendment 10. My noble friend Lady Henig, supported by the noble Baroness, Lady Harris, is right. I was interested in the second unnumbered paragraph within the amendment: the issue of the dismissal of police officers. I do not want to go over the issue again; I simply want to make this point. The concern is that you make it a political issue, and there have been examples of that. I made it very clear in my last intervention on this that I am not saying whether the last two senior officers to resign were right or wrong: I stand back on that until there has been judgment. However, we do not want the discussion of these sorts of things on television and radio to become a regular thing. There have been three such cases with the present Mayor of London, and I am not sure that this will not happen in other situations when we have elected officials in this role. It will be so easy to produce a leaflet—and any of the political parties will do this—which says, "We need tougher policing in this area because crime is rising, and that means we do not want any more of this soft policing". We know what that means: we will end up with the senior officer being persuaded to resign. My noble friend, supported by the noble Baroness, Lady Harris, has been trying to draw the attention of the House to that and to try and get that into the Bill, and they are right.

My noble friend Lady Henig was very generous to the Minister, and that was very fair: he has been trying to improve the Bill. I sometimes get worried that he goes back to the Home Office and they have an item on the agenda for the waterboarding of the noble Baroness, Lady Browning, in order to get her to back off. I simply say to her to beware of extraordinary rendition, and next time you go, take your toothbrush and overnight clothes—you might need them. There is a very clear attempt by the Government to say, "We are not going to give way on these central issues". The noble Baroness, Lady Browning, has dealt with the House with enormous courtesy, and great wisdom as well, but she comes back with an empty purse.

I wish to say one other thing about the noble Baroness's previous contribution on this. She was right to say that there was a loss of confidence in the police before, but I do not think she is right to say it now, and she presented the argument as though it was now. The reality is that there was a loss of confidence in the police in the 1990s. It was not about corruption but about their inadequacies in dealing with public concern: not coming back with telephone calls to victims of crime; not dealing with disorder affairs and so on. As an elected Member at that time, as she was, I am sure we both got the same sort of complaints. In my experience, by the time I left the House of Commons in 2005 those complaints had stopped, and there were very few of them coming forward because the police had got very much better at their public interface and were dealing with it rather well. The police deserve credit for this. When the noble Baroness says the public need to be given confidence in the police, she is fighting a battle that was fought some years ago, and is over. It is not the same now. There is, as my noble friend Lady Henig says, a lot of confidence in the police.

My last point is in relation to the Government's Amendment 9, and proposed new subsections 3 (a) and (b) which deal with varying or replacing the protocol. I simply say, as an individual and not specifically as a member of the Delegated Powers and Regulatory Reform Committee, that off the top of my head I find it very hard to see what the argument would be for this not to be under the affirmative resolution procedure. I would be asking myself on that Committee—as I suspect would other Members, though I cannot speak for them, obviously—whether Parliament will be happy with the Government putting forward a protocol on policing which varies or replaces it without them having an affirmative view of it, an affirmative statutory instrument approach.

It is possible that other Members of the Committee will take a different view. When I have been presented with the arguments it is even possible that I might change my view. However, I simply say that varying or replacing a protocol on policing is an important issue that I would see, certainly initially, as being politically important—not just in parliamentary terms but as party members on both sides thinking, "Is this sensible?". The noble Baroness might wish to take this away and run it past her colleagues in the Home Office, if it does not put her at risk again. I am simply saying that one needs to think this through carefully. My immediate judgment is that the SI would require the affirmative procedure.

Baroness Browning: My Lords, I am grateful to noble Lords for their concern about what happens to me when I go back to the Home Office of an evening. I can assure noble Lords that I have been around long enough to take care of myself. In a week when women have discharged their duties in this respect, I can tell noble Lords that I was once trained in Tae Kwon-Do, which may come as a surprise to noble Lords. I know it does not look like it when you look at me now, but I am sure that I can remember a bit of it if I ever need to use it.

I begin with the point made by the noble Lord, Lord Ramsbotham, about the British Transport Police. The protocol focuses on Home Office forces and does not apply to the BTP. However, as he has acknowledged, we have opened up consultations that I hope will be more fruitful than those of 10 years ago. We will make sure that the points he has raised are subject to further consultation. As I indicated on Report, although I fully understand the pressing need to address the concerns of the BTP, I am not able to put them into the Bill. However, I hope that the noble Lord is reassured that we are taking his concern very seriously. There would obviously need to be more formal consultation at this stage before amending the Bill in any way to accommodate the needs of the BTP.

Lord Ramsbotham: I am very grateful to the noble Baroness.

Baroness Browning: I am grateful, too. I turn to Amendment 10. I hope that the response of the Government to the very public developments over the past few days with regard to the Metropolitan Police Service indicates that the necessary powers are already in existence to achieve what I believe the amendment of the noble Baroness, Lady Henig, seeks to place in the Bill.

The Home Secretary has a power, as we have seen this week, to direct HMIC to undertake work such as a review, and for that review to be published. The IPCC is an independent body. Matters for investigation are referred to it, and it is for the IPCC to determine how best to undertake its investigation. HMIC may look to the findings of IPCC investigations to assist in its inspection conclusions, but we must be clear that the IPCC cannot and must not be used as a tool to undertake certain areas of inspection or be placed under the direction and control of another accountable body.

If there is a matter related to the ethical conduct of any party to which the protocol applies, the Metropolitan Police authority has demonstrated how this can and should be dealt in the future with by the Mayor's Office for Policing and Crime. It is the accountable authority that shall make a referral to the IPCC, and the IPCC shall be free to determine how that matter is investigated without fear or favour. I therefore suggest that there is no need for this amendment and that we should take a degree of assurance from the existing structures and mechanism that have been put into action this week. On that basis, I ask that the noble Baroness to consider withdrawing her amendment.

Amendment 12 in the name of the noble Lord, Lord Hunt of Kings Heath, would make the protocol subject to the affirmative resolution procedure, as opposed to the negative resolution procedure. This amendment was spoken to by the noble Lord, Lord Soley, and others. It is not necessary because the government amendment put before this House for the protocol to be given a statutory footing would also require the Secretary of State to consult with all interested parties before varying or replacing the protocol. It is also the case that whether the SI is affirmative or not, the detail of the protocol cannot be amended by Parliament.

A consultation that will inevitably focus on the interpretation of the statute provisions for those parties is attached to this requirement, and a draft revision will emerge. Where there is a clear discrepancy, then either House will be able to challenge the proposed protocol. In our view the negative resolution procedure affords the right level of parliamentary scrutiny.

Other Members of your Lordships' House have spoken on wider issues beyond the amendments before us. I ask noble Lords with amendments in the group not to press them and ask the noble Baroness to withdraw her amendment.

Baroness Henig: I listened closely to what the Minister said and I have expressed my strong concerns. I was trying to draw attention to the fact that if this Bill goes ahead then, regretfully, we will see far more of what we are currently experiencing. I wanted to concentrate minds on establishing some machinery so that every time something along these lines happens we did not go into a great spin about what should be done. This is going to become a more frequent occurrence and we need to think about how we will deal with it. However, in view of what the noble Baroness has said and the late hour of this debate, I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Amendment 9 agreed.

Amendment 11

Moved by ***Lord Harris of Haringey***

11: After Clause 101, insert the following new Clause—

"Report on necessity of creating offices as corporations sole and separating finance functions

The provisions of this Part—

(a) creating offices as corporations sole, and

(b) applying the Local Government Finance Act 1988 to the chief finance officer of a chief constable or the Commissioner of Police of the Metropolis, shall not come into force until the Secretary of State has laid before Parliament a report stating why it is necessary to create those offices as corporations sole and apply the Local Government Finance Act 1988 to the chief finance officer of a chief constable or the Commissioner of Police of the Metropolis and that report has been considered by both Houses of Parliament."

Lord Harris of Haringey: I will be brief because I know we want to return to Amendment 12 in the previous group. I can assure your Lordships that I do not intend to make a valedictory speech about all the issues we have talked about during the course of this Bill.

However, this Bill is extraordinarily constructed. Where there is a direct route to one of the Government's objectives, they have gone the long way round to do it. It is almost as if someone walking from your Lordships' House to the Supreme Court decided to go up Whitehall, via Trafalgar Square, along the Mall and down Birdcage Walk to get there rather than simply crossing Parliament Square. There are two instances of that: first, the strange decision to use the concept of corporation sole as the mechanism for chief officers of police and for police and crime commissioners; and, secondly, the decision to insist on duplicate financial and audit systems, neither of which are necessary to achieve the Government's objectives. They are simply going the long way round.

As we have discussed repeatedly during the course of this Bill, corporation sole is a medieval construct designed to prevent priests ripping money off the mother church. It has occasionally been used as a construct in terms of public policy in this country, most recently by the Children's Commissioner. However, in the recent review, the Children's Commissioner has made clear that the mechanism is unsatisfactory; it does not allow proper governance and is not particularly robust or transparent. Yet this is the mechanism the Government are using in terms of chief officers of police and police and crime commissioners. Frankly, that is a bizarre way of doing it. That also gets to the heart of the problem of this Bill, which is whether there will be adequate governance around the position of police and crime commissioners and whether there will be the adequate checks and balances that I know Liberal Democrat and many Members of your Lordships' House are so concerned about. It gets to the heart of that principle because it does not facilitate good governance; it is a single individual making decisions alone. That is why it is called a corporation sole.

The second issue concerns having two chief financial officers, both of which will be subject to audit regulations. I have a letter from the Audit Commission which confirms that the Bill requires that both the chief officer of police's chief financial officer and the chief financial officer of the police and crime commissioner will have to have separate auditors. There will have to be a separate audit opinion on separate financial statements, so the single police fund will be audited twice: once as it passes through the hands of the police and crime commissioner, and again as it passes through the chief finance officer of the chief constable. In fact, in London, it will be audited three times, because it has to pass through the hands of the Mayor of London and the Greater London Authority; it then passes to the MOPC, who will have to have a chief financial officer and who will have to be separately audited with a separate audit function; and then it passes to the Commissioner of Police for the Metropolis.

What a bizarre waste of public money. That is simply because it has not entered the Government's mind to go the shortest distance from one place to another. That is why we have this bizarre construct of corporations sole and chief financial officers. The amendment would require the Government to come back to Parliament with a proper explanation, which can be debated, as to why those bizarre routes have been taken to deliver what they want. That would give Parliament an opportunity to make the Government think again and put more sensible, transparent and accountable systems in place. I beg to move.

Baroness Henig: I very much support my noble friend's amendment. In the past few weeks, I have struggled hard to master the concept and practice of corporations sole and to understand the Government's thinking in this area. I know that we were going to have a meeting about it with the Minister. I would have welcomed that so as to be able to tease out the problems and issues. Unfortunately, that could not take place, and I quite understand that.

My problem is that in this area, the Home Office often has a different view from police authority chief executives, the Audit Commission and other bodies. There is a range of views here: there is the Home Office view of how we should things, and there are other people who have different views. The reason I have a problem with that is that I have many years of experience at national level of sitting on bodies dealing with the Home Office's suggested way forward. In my experience, the Home Office sometimes gets things wrong—not always, but on occasion. On occasion, the Home Office can be very stubborn in denying that it gets things wrong. Again, I have experience of that. I know that sometimes it can take years for the Home Office to accept that it has made a mistake and put it right. I am not saying that that happens all the time, but it happens.

In that light and in that spirit, I think that we need to pause. This is a very complex area, and I am not clear that the Government have got it right at the moment. My noble friend has put forward a serious argument and I hope that the Government are willing to consider it.

Lord Rosser: We believe that the Government should support the amendment and justify their decision in a report to Parliament as to why it is necessary to concentrate such largely untrammelled power in the hands of police and crime commissioners and chief constables without proper checks and balances. We say that particularly in the light of recent events concerning policing and police actions which, as the Minister will know, are now the subject of inquiries and investigations that may well comment on the issues of governance, checks and balances.

Baroness Browning: Amendment 11 would require the Secretary of State to justify the need for police and crime commissioners, the Mayor's Office for Policing and Crime and chief officers of police to be corporations sole, and for the chief finance officers employed by chief officers to be subject to the local government legislation that currently applies to police authority treasurers. The Secretary of State would have to address those matters in a report to be considered by both Houses before the relevant provisions could commence.

I hope that it is clear why the Government believe that it is necessary for PCCs and the MOPC to have corporate status. Police authorities, including the Metropolitan Police Authority, are corporate entities at present. In order to allow them to carry out their functions, the PCCs and the MOPC will have the same

[Baroness Browning]
functions as police authorities do at present. Turning to chief officers of police, the Government set out the reasons very clearly in Committee and on Report why there is a need for them to have corporate status too. It is simply so that they can employ staff and hold funds in their official rather than their personal capacity. PCCs, the holder of the Mayor's Office for Policing and Crime and chief officers of police will be individuals. That is the essence of the Government's model for policing governance. It follows that, if they are to have corporate status, they will be corporations sole. This simply follows as a matter of inescapable logic.

I turn to the appointment by the chief officer of police of a suitably qualified chief finance officer with responsibility for making reports. Again, I hesitate to repeat what I have said more than once before, but the Bill creates a model for policing finance that is different from the current system. The Government are clear that chief officers should employ their own staff—a vital process in the context of providing greater autonomy over day-to-day management of the force. As an employer, therefore, for the first time the chief police officer will need to hold substantial amounts of money, and it is vital that there are appropriate safeguards around this. Each chief police officer will need his or her own chief finance officer, suitably qualified to manage the chief officer's affairs. In fact, police forces already have finance directors to do this job. The Government believe that the chief finance officer should be under a statutory duty to make reports where he or she fears the chief officer has made or will make an unlawful decision. Such a report would also go to the PCC and to the chief officer's auditor.

I remind the House that, as I said in previous stages of the Bill, there will not be, and in fact cannot be, any duplication between the role of a PCC's chief finance officer and that of the chief police officer's chief finance officer. The former will have responsibility for money within the police fund, and the latter will have responsibility for the money that has been paid over to the chief officer out of that fund. As such, without a properly qualified chief finance officer—with all the necessary powers and requirements—there will be a significant gap in proper financial propriety.

The Government have been very clear both in this House and another place as to why these provisions are necessary. Amendments to remove them were withdrawn with the House's consent on that basis. We believe that these are necessary measures, and I hope that the House will see that there is a very real need to have quite distinct separation in terms of the financial accounting of the PCC and the chief officer. I invite the noble Lord, Lord Harris of Haringey, to withdraw his amendment. I would say to him and to other Members of the House that I regret very much that we did not have our meeting, particularly on corporations sole, which was in the diary. Unfortunately it clashed with the day on which we had to take emergency legislation through the House. I apologise to noble Lords for having had to cancel that meeting.

As this may be my last contribution on Third Reading of this Bill, I hope that the House will allow me to say some words of thanks to those who have contributed to its smooth passage. I thank particularly the Lord Speaker and Deputy Speakers who have presided, and the clerks and doorkeepers, for whose assistance I am very grateful. I thank my colleagues on the Front Bench; I do not know what I would have done without them. I am also very grateful to the Bill team, who have worked very long hours, not just when they have been in attendance in this House but behind the scenes—and I can assure the House that they certainly were not attempting to waterboard me. I thank all Members of the House who have contributed to this Bill, both in the Chamber and outside. We have not been able to agree on everything; none the less, I have brought forward a package of amendments on Report and Third Reading based very much on what has been said by noble Lords on all sides of the House and outside. I would ask the noble Lord, Lord Harris of Haringey, to withdraw his amendment.

Lord Hunt of Kings Heath: My Lords, before my noble friend decides what he wants to do, as the noble Baroness has rather jumped the gun, perhaps I may respond by saying that I am most grateful for her remarks and for the way in which she has conducted the Bill since taking it over at pretty short notice on the first day of Committee. She has earned the admiration of the whole House for the way in which she has conducted herself. She said that she can take care of herself. Indeed, she can, which is why we had a vote on the first debate.

I also thank the noble Lords, Lord Wallace of Saltaire and Lord De Mauley, as well as the Bill team, for the support they have given the noble Baroness. I am also grateful to my noble friends Lord Rosser and Lord Stevenson and to all noble colleagues who have spoken on the Bill.

Before we come to my noble friend, I just say that the Government have an opportunity to pause now. I know that the Prime Minister suggested in his Statement that he is determined to plough on with elected police commissioners, but there is time to reflect. I hope that the Government will take advantage of that time to consider the real concerns about the Bill that have been expressed around the House.

Lord Harris of Haringey: My Lords, it is slightly strange to respond on the amendment after going through the normal courtesies of Bill do now pass. I think that all Members of the House are grateful to the Minister for the way in which she has conducted herself throughout these proceedings, having been given a very difficult, and at times impossible, brief in terms of selling arguments to us. We are conscious that she was thrust into this at a very late stage. If I have expressed myself on occasions with vehemence or even asperity, that has certainly not had anything to do with the noble Baroness but more to do with the difficulty of the brief with which she has been presented.

However—this is the asperity—the response that she gave on my amendment did not really address the key questions. In fact, it addressed two separate points which I did not make. It said that we needed to have corporate status for the PCCs and the chief officers and so on. No one is arguing about whether they should have corporate status; the question is why it should be a corporation sole. This is a particularly

strange concept and no one who has had to deal with it seems to think it is terribly satisfactory. It does not lead to transparency or good governance. That is why it seems such a strange way of proceeding.

Similarly, no one is arguing that there should not be a suitably qualified senior financial officer for each chief constable or for the Commissioner of Police of the Metropolis. The question is why that chief financial officer has to be recognised under the Local Government Finance Act and the Audit Commission Act, thereby creating a panoply of two separate audited accounts. That is what is wrong with the Bill; that is why we are asking for Parliament to be given another opportunity to look at the matter; and it is why, I am afraid, even at this late stage I wish to test the opinion of the House.

1.58 pm

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Ashcroft, L.
Ashdown of Norton-sub-Hamdon, L.
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Amendment 12

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

12: Clause 154, page 105, line 28, at end insert—

"( ) an order under section (Policing protocol);"

Lord Hunt of Kings Heath: My Lords, the protocol is a vital matter. I fail to see why it should not be subject to an affirmative order. Even at this late stage, will the noble Baroness be prepared to accept this? I can see she will not. I beg to move.

2.10 pm

Division on Amendment 12

Contents 133; Not-Contents 178.

Amendment 12 disagreed.

Division No. 5

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Mar, C.
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Schedule 6 : Police and crime panels

Amendment 13 not moved.

Schedule 10 : Elections of police and crime commissioners: consequential amendments

Amendments 14 and 15

Moved by ***Baroness Browning***

14: Schedule 10, page 149, line 6, leave out "limitation of expenses" and insert "funding and expenditure of candidates, political parties and other persons"

15: Schedule 10, page 149, line 14, leave out paragraph 14

Amendments 14 and 15 agreed.

Schedule 16 : Police reform: minor and consequential amendments

Amendments 16 and 17

Moved by ***Baroness Browning***

16: Schedule 16, page 199, line 35, at end insert—

"106A In section 120 (acquisition of land compulsorily by principal councils), after subsection (3) insert—

"(3A) Police and crime commissioners and the Mayor's Office for Policing and Crime are to be treated as principal councils for the purposes of—

(a) this section (apart from subsection (1)(b)), and

(b) section 121."."

17: Schedule 16, page 208, line 31, after "commissioner" insert ", the Mayor's Office for Policing and Crime"

Amendments 16 and 17 agreed.

Bill passed and returned to the Commons with amendments.

Hereditary Peers By-election

Announcement

2.20 pm

The Clerk of the Parliaments announced the result of the by-elections to elect two hereditary Peers, which were held in accordance with Standing Order 10.

In the whole-House election to elect a hereditary Peer in place of Lord Ampthill, 313 Lords completed valid ballot papers. The successful candidate was Viscount Colville of Culross.

In the election of a Conservative hereditary Peer in place of the Earl of Onslow, 45 Lords completed valid ballot papers. The successful candidate was Lord Ashton of Hyde.

Public Confidence in the Media and the Police

Statement

2.21 pm

The Chancellor of the Duchy of Lancaster (Lord Strathclyde): My Lords, this might be a convenient moment to repeat a Statement that was made earlier by the Prime Minister in another place on the subject of phone hacking.

"Over the past two weeks, a torrent of revelations and allegations has engulfed some of this country's most important institutions. It has shaken people's trust in the media and the legality of what they do; in the police and their ability to investigate media malpractice; and, yes, in politics and in politicians' ability to get to grips with these issues.

People desperately want us to put a stop to the illegal practices, to ensure the independence and effectiveness of the police and establish a more healthy relationship between politicians and media owners. Above all, they want us to act on behalf of the victims: people who have suffered dreadfully, including through murder and terrorism, and who have had to relive that agony all over again because of phone hacking.

The public want us to work together to sort this problem out, because until we do so it will not be possible to get back to the issues they care about even more—getting our economy moving, creating jobs, helping with the cost of living, protecting them from terrorism and restoring fairness to our immigration and welfare systems.

Let me set out the action we have taken. We now have a well-led police investigation which will examine criminal behaviour by the media and corruption in the police. We have set up a wide-ranging and independent judicial inquiry under Lord Justice Leveson to establish what went wrong, why and what we need to do to ensure it never happens again.

I am the first Prime Minister to publish meetings with media editors, proprietors and senior executives, to bring complete transparency to the relationship between government Ministers and the media stretching right back to the general election. The House of Commons, by speaking so clearly about its revulsion at the phone hacking allegations, helped to cause the end of the News Corp bid for the rest of BSkyB.

Today I would like to update the House on the action that we are taking, first, on the make-up and remit of the public inquiry and, secondly, on issues concerning the police service. Thirdly, I will answer—I am afraid at some length—all of the key questions that have been raised about my role and that of my staff.

First, I will discuss the judicial inquiry and the panel of experts who will assist it. Those experts will be: the civil liberties campaigner and director of Liberty, Shami Chakrabarti; the former chief constable of the West Midlands, Sir Paul Scott-Lee; the former chairman of Ofcom, Lord Currie; the long-serving former political editor of "Channel 4 News", Elinor Goodman; the former political editor of the *Daily Telegraph*, George Jones; and the former chairman of the *Financial Times*, Sir David Bell. These people have been chosen not only for their expertise in the media, broadcasting, regulation and policing, but for their complete independence from the interested parties.

I also said last week that the inquiry will proceed in two parts, and I set out a draft terms of reference. We have consulted with Lord Justice Leveson himself, with the Opposition, the chairs of relevant Select Committees and the devolved Administrations. I also talked to the family of Milly Dowler and the Hacked Off campaign. We have made some significant amendments to the remit of the inquiry.

With allegations that the problem of the relationship between the press and the police goes wider than just the Met, we have agreed that other relevant forces will now be within the scope of the inquiry. We have agreed that the inquiry should consider not just the relationship between the press, police and politicians, but their individual conduct too. We have also made clear that the inquiry should look at not just the press, but other media organisations, including broadcasters and social media, if there is any evidence that they have been involved in criminal activities. I am today placing in the Library of the House the final terms of reference. Lord Justice Leveson and the panel will get to work immediately. He will aim to make a report on the first part of the inquiry within 12 months. There should be no doubt: this public inquiry is as robust as possible; it is fully independent; and Lord Justice Leveson will be able to summon witnesses under oath.

Let me now turn to the extraordinary events we have seen over the past few days at Britain's largest police force, the Met. On Sunday, Sir Paul Stephenson resigned as Commissioner of the Metropolitan Police. I want to thank him for the work he has carried out in policing over many, many years in London and elsewhere. On Monday, Assistant Commissioner John Yates also resigned and, again, I want to express my gratitude for the work he has done, especially in improving our response to terrorism.

Given the sudden departure of two such senior officers, the first concern must be to ensure that effective policing of our capital, and confidence in that policing, is maintained. I have asked the Home Secretary and the Mayor of London to ensure that the responsibilities of the Met will continue seamlessly. The current deputy commissioner, Tim Godwin, stood in for Paul Stephenson when he was ill and did a good job. He will shortly do so again. The vital counterterrorism job carried out by John Yates will be taken on by the highly experienced Cressida Dick. The responsibilities of the deputy commissioner—which, the House will remember, include general oversight of the vital investigations both into hacking and into the police, Operations Weeting and Elveden—will not be done by someone from inside the Met, but instead by Bernard Hogan-Howe who will join temporarily from Her Majesty's Inspectorate of Constabulary. We are also looking to speed up the process for selecting and appointing the next commissioner, but we cannot hope that a change in personnel at the top of the Met is enough.

The simple fact is that this whole affair raises huge issues about the ethics and practices of our police. Let me state plainly that the vast majority of our police officers are beyond reproach and serve the public with distinction, but police corruption must be rooted out. Operation Elveden and Lord Justice Leveson's inquiry are charged with doing just that, but I believe that we can and must do more.

Put simply, there are two problems: first, a perception that when problems arise, it is still "the police investigating the police"; and secondly, a lack of transparency in terms of police contacts with the media. We are acting on both. These were precisely the two points that my right honourable friend the Home Secretary addressed in her Statement to this House on Monday. We believe that this crisis calls for us to stand back and take another, broader look at the whole culture of policing in this country, including the way it is led.

At the moment, the police system is too closed. There is only one point of entry into the force. There are too few—and arguably too similar—candidates for the top jobs. As everyone knows, Tom Winsor is looking into police careers, and I want to see radical proposals for how we can open up our police force and bring in fresh leadership. The Government are introducing elected police and crime commissioners, ensuring that there is an individual holding the local force to account on behalf of local people. We need to see if we can extend that openness to the operational side too. Why should all police officers have to start at the same level? Why should someone with a different skill set not be able to join the police force in a senior role? Why should someone who has been a proven success overseas not be able to help turn around a force at home? I think that these are questions we must ask to get the greater transparency and stronger corporate governance that we need in Britain's policing.

Finally, I turn to the specific questions that I have been asked in recent days. First, it has been suggested that my chief of staff was behaving wrongly when he did not take up then Assistant Commissioner Yates's offer to be briefed on police investigations around phone hacking. I have said repeatedly about the police investigation that they should pursue the evidence wherever it leads and arrest exactly who they wish. That is exactly what they have done.

No. 10 has now published the full e-mail exchange between my chief of staff and John Yates, and it shows that my staff behaved entirely properly. Ed Llewellyn's reply to the police made clear that it would be not be appropriate to give me or my staff any privileged briefing. The reply that he sent was cleared in advance by my permanent secretary, Jeremy Heywood. Just imagine if they had done the opposite and asked for or acquiesced in receiving privileged information, even if there was no intention to use it. There would have been quite justified outrage. To risk any perception that No. 10 was seeking to influence a sensitive police investigation in any way would have been completely wrong. Mr Yates and Sir Paul both backed this judgment in their evidence yesterday. Indeed, as John Yates said:

"The offer was properly and understandably rejected".

The Cabinet Secretary and the chair of the Home Affairs Select Committee have both now backed that judgment too.

Next, there is the question as to whether the *Ministerial Code* was broken in relation to the BSkyB merger and meetings with News International executives. The Cabinet Secretary has ruled very clearly that the code was not broken, not least because I had asked to be entirely excluded from the decision.

Next, I would like to set the record straight on another question that arose yesterday—whether the Conservative Party had also employed Neil Wallis. The Conservative Party chairman has assured me that all the accounts have been gone through and has confirmed to me that neither Neil Wallis nor his company has ever been employed or contracted by the Conservative Party, nor has the Conservative Party made payments to either of them.

It has been drawn to our attention that Neil Wallis may have provided Andy Coulson with some informal advice on a voluntary basis before the election. To the best of my knowledge I did not know anything about this before Sunday night; but, as with revealing this information, we will be entirely transparent about this issue.

Finally, Mr Speaker, there is the question whether everyone—the media, the police, politicians—is taking responsibility in the appropriate manner. I want to address my own responsibilities very directly, and that brings me to my decision to employ Andy Coulson. I have said very clearly that if it turns out that Andy Coulson knew about the hacking at the *News of the World* he will not only have lied to me but lied to the police, to a Select Committee and to the Press Complaints Commission as well, of course, as perjuring himself in a court of law. More to the point, if that comes to pass, he could also expect to face severe criminal charges.

I have an old-fashioned view about "innocent until proven guilty", but if it turns out that I have been lied to, that would be the moment for a profound apology. In that event, I can tell you I will not fall short. My responsibilities are for hiring him and for the work that he did in Downing Street. On the work that he did, I will repeat, perhaps not for the last time, that his work at Downing Street has not been the subject of any serious complaint. And, of course, he left months ago.

On the decision to hire him, I believe that I have answered every question about this. It was my decision. I take responsibility. People will, of course, make judgments about it. Of course I regret and am extremely sorry about the furore it has caused. With 20:20 hindsight, and all that has followed, I would not have offered him the job, and I expect that he would not have taken it. But you do not make decisions in hindsight; you make them in the present. You live as you learn and, believe you me, I have learnt.

I look forward to answering any and all questions about these issues and, following the Statement, I will open the debate. But the greatest responsibility I have is to clear up this mess, so let me finish by saying this. There are accusations of criminal behaviour by parts of the press and potentially by the police, where the most rapid and decisive action is required. There are the issues of excessive closeness to media groups and media owners where both Labour and Conservatives

[LORD STRATHCLYDE]
have to make a fresh start. There is the history of missed warnings—Select Committee reports and Information Commissioner reports missed by the last Government, but, yes, missed by the official Opposition too.

What the public expect is not petty point-scoring. What they want and deserve is a concerted action to rise to the level of events and pledge to work together to sort this issue once and for all. It is in this spirit that I commend this Statement to the House".

2.35 pm

Baroness Royall of Blaisdon: My Lords, I thank the Leader of the House for repeating the Statement made in the other place by the Prime Minister. The decision to recall the other place today to debate the issues in the phone hacking scandal was the right one. Rebuilding trust in the press, the police and our politics is essential. The most powerful in the institutions of our land must show the responsibility that we expect from everybody else. That is why the country wants answers from those involved in this crisis, so that those responsible can be held to account and so that we as a country can move forward. That is why we on these Benches welcome Lord Justice Leveson's inquiry and the announcement of the terms of reference and panel members. It is why we welcome the Prime Minister's agreement with this party that the Press Complaints Commission should be abolished and replaced. It is why we welcome the apology from Rupert Murdoch and the withdrawal of News Corporation's bid for BSkyB.

It is also why we respect the decision of Sir Paul Stephenson to stand down so that the leadership of the Met can move forward and focus fully on its vital work. The police in our country provide a vital service. Not only do the vast, overwhelming majority of police officers work hard for the community, but that vast, overwhelming majority will be as appalled as the rest of us—in fact, probably more so—about the flaws in policing among a tiny number of police officers which have been exposed in the last few weeks.

We are beginning to see answers given and responsibility taken in the press and in the police. In politics, the Government must now do the same if the country is to move forward. Regarding BSkyB, last Friday the Prime Minister revealed that since taking office he has met representatives of News International or News Corp, including Rebekah Brooks and James Murdoch, on 26 separate occasions. The Government must recognise that they need to be transparent, not just about the number of meetings but also about what was discussed. Can the noble Lord the Leader of the House assure the House that the BSkyB bid was not raised in any of those meetings or in phone calls with those organisations?

In his response to the Statement given in the other place earlier today by the Prime Minister, my right honourable friend the leader of the Opposition put to him a series of detailed points and questions centring on the Prime Minister's former director of communications, Mr Andy Coulson. I fully agree with and support the forensic focus of the leader of my party on these issues. My right honourable friend the leader of the Opposition in the other place has led the way on these matters—led for my party, led for Parliament, and led for the country. He is right to concentrate on the issues—serious issues—around the judgment of the Prime Minister. My right honourable friend the leader of the Opposition, in what he said to the Prime Minister in the other place earlier today, was putting those issues—about the Prime Minister's own conduct, and about his own staff—directly to the Prime Minister in person. We strongly support the clear focus of by my right honourable friend in the other place.

The events of the past two weeks have brought forward a wide range of issues. For instance, in relation to takeover bids—stemming from News Corporation's now-abandoned bid for BSkyB—careful consideration of the issues with which we have had to deal over the past period demonstrates clearly that there are significant flaws in the process which was adopted under the Enterprise Act 2002 and the Communications Act 2003 in relation to News Corp's bid for BSkyB.

There is little that we could or should do in relation to the criminal investigations. They must take their course, and we strongly support the investigations going wherever the evidence leads them. But on other issues there are things which we can do to address the ills which have been identified. The Enterprise Act provides for changes to be made, if necessary, to the conditions that apply in merger situations. We on these Benches have a number of proposals on these matters, as my right honourable friend the leader of the Opposition indicated at the weekend. Will the Leader of your Lordships' House join with us in this party in agreeing a process to deal with those flaws? We have available to us a provision in Section 58 of the Enterprise Act which allows this House and the other place to make amendments by way of negative resolution. My noble and learned friend the shadow Attorney-General, Lady Scotland of Asthal, has proposals which I would invite the Leader of the House to consider with us.

At the end of today's business, this House is due to move into Recess. The other place has been recalled from its Recess today to hear the Statement from the Prime Minister and to take a further debate on the phone hacking scandal. But although Parliament will not be sitting after today, unless there is a need to recall it over the Recess, that does not mean that the events surrounding these issues will be equally in recess. First, there has been an extraordinarily fast-moving sequence of events over the past few weeks. In the light of that, few if any would care to predict what will or could now happen. Secondly, the mechanisms which have been set up to examine this affair fully and properly will begin their work. Again, we welcome the appointment of Lord Justice Leveson to head the media inquiry, and we welcome too the appointment of the panel of experts announced in the Statement. The inquiry has a tough job to do and we look forward to it getting on with the job.

While we welcome the details set out by the Prime Minister in his Statement, we believe that, as my right honourable friend the leader of the Opposition made clear in his remarks, there are many more questions for the Prime Minister to answer. These are serious matters which have appalled and revolted the public,

matters which have made things even worse for those who were already victims; among others, victims of crime, terrorism and armed conflict. We look to the Leveson inquiry as the right way to address all these issues. We will maintain our own scrutiny of the Government and others on these matters, and we look forward, as and when appropriate, to Parliament continuing to keep these issues properly in focus, including in your Lordships' House.

2.41 pm

Lord Strathclyde: My Lords, I begin my response to the noble Baroness by referring to what she said at the end of her remarks. It is true that we are on the verge of starting the Recess, and that the House of Commons, which had already risen, was recalled today to hear the Statement and to hold a short debate on the subject. She is quite right to say that events will continue to unfold. This is a fast-moving story and anyone would have been amazed at how it has developed over the past couple of weeks. I particularly agree with what she said in welcoming all the inquiries that are taking place. We must allow them to get on with the job and to report back as soon as possible. It is also important that Parliament should be kept fully informed and play its continuing role not just in debating these issues, but also in holding the Government to account.

I agree with what the noble Baroness said about the police. Our decent, hardworking police men and women provide an important and vital service, and I agree that the vast majority deserve considerably more. Equally, I think it is right that we have announced the review on leadership. As it unfolds, I shall of course report back to the House.

The Prime Minister has announced the occasions on which he met executives, editors and proprietors from News International, and it is entirely right that he should have done so. The noble Baroness asked whether I could confirm that at no stage was the BSkyB takeover bid discussed. I can confirm that, and indeed not only can I do so, but also the Cabinet Secretary, no less, has said that there has been no breach of the *Ministerial Code*. Rebekah Wade said in her evidence yesterday that not one single inappropriate conversation had taken place about the bid, and the Prime Minister has set out every meeting since the last general election. I think he also wished that perhaps the Opposition might do the same about any of their meetings with News International since the election—or, indeed, with the previous Government. We all know that the relationships between News International and the last two Prime Ministers were extremely close.

I wholly accept that the leader of the Opposition in the House of Commons, Mr Miliband, had to raise questions about Andy Coulson and his relationship with the Prime Minister. In the Statement, the Prime Minister said that there will be no question about Andy Coulson's conduct in No. 10. I now very much hope that the leader of the Opposition, Mr Miliband, can accept the assurances and very clear answers that the Prime Minister has given in his role, the reason why he was employed, what happens now and the proposition that Mr Coulson should be innocent until proven guilty.

The noble Baroness also asked a very clear question about the workings of the Enterprise Act. I am grateful both to her and to the shadow Attorney-General for her thoughts. The Enterprise Act allows the Secretary of State to issue only one European intervention notice. It is correct that the Enterprise Act does not allow for a European intervention notice to be substantively revised once it has been issued, or for a subsequent notice to be issued. There is increasingly a widely held concern, which I am sure should be looked at, whether in the communications review or in the ongoing competition policy review, about the point being relevant across different uses of the public interest test. We would be very happy to work with the noble Baroness or the shadow Attorney-General in looking further at the issue.

Likewise, the Section 58 orders contain the power to allow Ministers to intervene in mergers on the basis of public interest and to make decisions. There are currently three specified areas in which they can use their discretion: national security, the media—including plurality, broadcasting standards, the accurate presentation of news in newspapers—and the stability of the UK financial system. That there might be a gap within these public interest tests has recently been thrown up. We might also want a review when these are triggered. We slightly feel that we should await the outcome of part one of the Leveson inquiry. However, I can confirm that any changes can be made through secondary legislation and again that the Government would be very happy to work between the parties to see which is the best way forward.

2.47 pm

Lord Fowler: I underline the complete honesty and good reputation of the Prime Minister's chief of staff, Ed Llewellyn, who seems to have acted entirely properly. I ask the Leader of the House two questions. First, although there are many extraneous issues now swirling around, do not the essential issues remain the extent of the illegal phone hacking—which is a direct threat to the public in this country—why the police and the Press Complaints Commission were unable to stop it and just how some clear water can be put between politicians and media in this country? Those are the issues. We now need action. Secondly, although I entirely welcome the judicial inquiry, on reflection would it not have been better to have set up this inquiry several months ago rather than repeatedly declining to do so?

Lord Strathclyde: My noble friend Lord Fowler forgot to mention that he is one of those who has been calling for an inquiry for several months. He has, therefore, been proved entirely right—better late than never. We have possibly got a more far-reaching judge-led inquiry than we would have done hitherto. It is perhaps the awfulness of the story that has developed in recent weeks that has allowed the Government and Parliament to agree so wholeheartedly between the parties and across the Houses that it should be done at such a high level.

As far as the other questions that my noble friend raised, I agree that we need to know as soon as possible the extent of the illegal phone hacking and

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why the police and the PCC were unable to deal with it. This is precisely what I hope the inquiry will provide for us as soon as possible. As part of that, my noble friend asked that there should be more clear water between politics and the press. I think that that position is already set fair, and not just because of the increased transparency. Ministers will now declare all their contacts with the press at a senior level. That will be to the benefit of the press and politicians alike. I very much welcome that.

Lord Dholakia: My Lords, I thank my noble friend for repeating the Statement. I wish to ask him two questions. First, the Prime Minister has said that the public want us to work together to sort out this problem. In that respect, will he look at the review of the Press Complaints Commission and ensure that before the powers and functions of the new commission are determined there is adequate public consultation so that the public's point of view is taken into account?

The second point about which I am concerned is that, whereas the first part of Lord Justice Leveson's inquiry has to report within 12 months, there is no timescale attached to the investigation to be carried out by the Independent Police Complaints Commission. As someone who has supervised a similar investigation with the former police complaints commission, I know that the timescale involved is considerable. You are talking about at least 12 months to supervise an investigation of this nature, following which criminal charges are likely to be laid. If that is the case, we are talking of a process which may go on for about two or three years. The impact of that is very serious because none of the other inquiries that have been set up can carry out their work adequately unless this investigation has been finalised. Will my noble friend look at this aspect to see whether a particular timescale is appropriate in this investigation?

Baroness Farrington of Ribbleton: My Lords, will the noble Lord the Leader of the House please remind Members to make very brief questions or comments?

Lord Strathclyde: The whole House will have heard what the noble Baroness has just said.

My noble friend Lord Dholakia is right: the Prime Minister thinks that we should all work together. I think that reflects the public's mood as well. Today we published the terms of reference for the review of the press and press ethics. I am not sure that there was much public consultation but there certainly was consultation with the devolved authorities, Select Committees in another place and, of course, with Lord Justice Leveson.

As regards my noble friend's second point, time limits are not a straightforward issue. We have asked the Leveson inquiry to report back on the first part within 12 months—we hope that it will do that—but as regards the second part, we have to leave it to the members of the inquiry to determine to what extent they can operate without affecting the police inquiry and subsequent court process, if that occurs. However, I can confirm to my noble friend that HMIC should report before the end of the autumn.

Lord Dear: My Lords, I welcome the thrust of the Statement that the Leader has read to the House. It will come as no surprise when I say that I particularly welcome the thrust of the report on police leadership and the whole question of ethics that surrounds that. I have tried to highlight that subject repeatedly over the years. We must get this right and this is the opportunity to do so.

I wish to ask the Leader of the House two questions. First, given that the door of this issue has flown open, as it were, and given the kinetic energy that has grown up behind the events of the past couple of weeks, does he agree with me that there is a danger that we shall go too far too fast and in effect have a knee-jerk reaction and get this wrong? Coupled with that, will he also agree that to prevent that, we now need a review body established with respected and experienced individuals to look at the subjects of police leadership, ethics, morality, attitudes and so on, in depth but as a matter of some urgency? Could such a body be set up this autumn in advance of the Winsor report? The report is of course critical, but that body could quite well start taking its own evidence, coming to some conclusion, and then sweep the Winsor report up before it reaches a final conclusion.

Lord Strathclyde: My Lords, those are two valuable ideas. I agree that there is a tremendous opportunity but that equally there is a danger of having a knee-jerk reaction. We are all too well aware of this in both Houses of Parliament. We have an opportunity to get it right and we should go forward on that basis, particularly dealing with the issue of leadership.

Secondly, on the whole question of leadership, the Government are taking this immensely seriously and we want to move forward on it with the police. The noble Lord's knowledge and understanding of this issue is extremely important, and I know that the Home Office will very much welcome his input.

Lord Prescott: My Lords, as one of the victims referred to, I welcome the Statement by the Leader of the House who has made clear the commitment to get to the bottom of the hacking, the inadequate police inquiry, and indeed the IPCC.

However, is the noble Lord aware that in July 2009 I sent a letter to the Prime Minister—he was the leader of the Opposition then—warning him of the appointment of Andy Coulson as press adviser? It was clear that Mr Coulson was in the middle of the *News of the World* phone hacking allegations, and I advised the Prime Minister that he was not fit to enter Government as No. 10's director of communications. Can the Leader confirm that within 12 months of that the Prime Minister was to refuse advice from the police, newspaper editors, the *Guardian*, the Deputy Prime Minister, and indeed his own chief of staff? All these warnings were ignored, and it is simply not good enough to hide behind the excuse of 20-20 hindsight.

Can the Leader of the House also confirm that in the dozens of social and political meetings that he held with News International, the Prime Minister now appears to have adopted the Murdoch corporate policy, best displayed by the three monkeys: hear no evil, see

no evil, and speak no evil? Will the Leader agree that this is a definition of the lack of judgment which the Prime Minister is now rightly accused of?

Lord Strathclyde: My Lords, many in the House have a great deal of sympathy for the noble Lord, Lord Prescott, as one of the victims of the hacking scandal. However, he belittles himself by making these rather fetid political points. If he was writing to anybody in the summer of 2009, it should of course have been the then Prime Minister, asking him why he had failed to do anything or to respond to any of the reports from the Select Committees, the Information Commissioner and all those other people who raised these issues.

Lord Inglewood: My Lords, I support the Prime Minister's Statement which my noble friend the Leader of the House repeated, but in it he pointed out that the Prime Minister had said:

"We have consulted with Lord Justice Leveson himself, the Opposition, the Chairs of the relevant Select Committees and the devolved administrations",

about the terms of reference of the inquiry. I am privileged to speak as the Chairman of the Communications Committee in this House. We were not consulted—does my noble friend know why?

Lord Strathclyde: My Lords, I have absolutely no idea—in fact I had no idea they were consulting with the Select Committees in another place either. It is a good point though, and I will raise it with No. 10: when consulting chairmen of Select Committees in another place they should similarly consider Peers in your Lordships' House.

Lord Condon: My Lords—

Lord Gilbert: My Lords, I have given way three times and I am not going to do it again. I welcome the Statement of the Prime Minister—not only the text but the way in which it was delivered. I watched it and he delivered it to the other place with a good tone. One lacuna worries me. There is no discussion or mention that I have seen in what the Prime Minister is saying about the decision on who is a fit and proper person to take control of parts of the media. I am sure that I carry the House with me when I say it is essential that the people who determine who has or has not a role as a fit and proper person should themselves be beyond reproach. I hope that we can have an assurance from the Leader of the House that that consideration will be in the Prime Minister's mind, and in front of Lord Justice Leveson.

Lord Strathclyde: My Lords, I very much welcome the noble Lord's support for the Prime Minister this afternoon, I, too, thought he did splendidly. The noble Lord says that there is a lacuna on the "fit and proper person" test and he particularly wants to ensure that those who are making the test should themselves be beyond reproach. That must be an ambition for us all and it is the kind of issue that may well come out of the inquiry. I know that the noble Lord will be the first to draw it to our attention as we debate these matters.

Lord Condon: My Lords—

Baroness Doocey: My Lords, I declare an interest as a member of the MPA. The allegation that police officers accepted money from News International has been hugely damaging to the Metropolitan Police. It is absolutely essential that any investigation is seen to be thorough and independent. The Government have said that the IPCC will carry out a "supervised" investigation, but this means that the initial investigation will be under the control and direction of the Met. Do the Government not agree that it would be more appropriate for the IPPC to carry out a high-level independent investigation that would be completely independent of the Met?

Lord Strathclyde: My Lords, my noble friend is entirely right that these accusations are highly damaging to the Met and need to be dealt with extremely quickly and transparently. I do not agree with her that an IPCC-led investigation will affect its independence or ability to come up with the right result. There are so many reviews, inquiries and ongoing internal discussions that as the months go by I think we will get increasingly confused as to who is reporting on whom. This is important because, as my noble friend says, public confidence in the Met will be severely damaged unless we can clear this up as soon as possible.

Lord Condon: My Lords, as someone who had the honour and privilege to serve as commissioner for seven years, I particularly welcome the Prime Minister's affirmation that the vast majority of police officers are doing a very good job and that should not be lost sight of. However, does the Leader of the House agree that to avoid a meltdown in police morale over the next few months the Government must find a co-ordinating mechanism to draw together the strands of Lord Justice Leveson's inquiry, the other inquiries that have been mentioned, the police reform Bill, the Winsor review on pay and conditions and all these other matters that are interacting? In previous times a royal commission would have been the vehicle to draw together all these strands in these most difficult circumstances. However, I realise that royal commissions are not in fashion. I hope that the Leader of the House will agree that the Government are now under an obligation to bring together a careful co-ordinating mechanism to sequence the findings, recommendations and interdependence of all the inquiries that are looking at the police service.

Lord Strathclyde: My Lords, the noble Lord, with all his experience as seven years as Met commissioner, will know all about police morale. Clearly, everything that has happened in recent months—particularly in the past few days—will cast a long shadow. I think that the noble Lord is right to say that we need to find a way of bringing these threads together. Whether that is through a royal commission, I am less certain. We need the inquiries to get going, particularly that of Lord Justice Leveson and the police inquiries, to begin to see some of the fruits of their labour, and then take longer-term decisions. Perhaps I may echo what the

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noble Lord, Lord Dear, said; we should not make knee-jerk reactions, but consider with care the results of these inquiries.

Lord Lloyd of Berwick: My Lords—

Baroness Scotland of Asthal: My Lords—

Noble Lords: Scotland!

Baroness Scotland of Asthal: My Lords, I commend what the noble Lord the Leader of the House has said in relation to the willingness to look at the revision to the law that may be necessary in the short term. Does he agree that it is very important for this House and the other place to do what we can immediately to cure the flaws that this bid has now given voice to? If the negative resolution procedure is available to us and we could, over the summer, plug the gap and fill it by September, should we not seize that opportunity? Making provision to prevent anyone taking adventitious advantage of a misrepresentation, bad faith or a mistake is essential; having the public interest at the forefront is also critical and we should move swiftly together to fill that gap without any further delay.

Lord Strathclyde: My Lords, we are very happy to work closely with the noble and learned Baroness and others in her party to plug that gap if we can identify it.

Lord King of Bridgwater: I strongly agree with the noble Lord, Lord Gilbert, that the tone of the Prime Minister's Statement in the House of Commons was entirely appropriate. I strongly endorse what the noble Lord, Lord Dear, has said about leadership; it is extremely important. There is another implication flowing from these rapidly moving events and it relates to the comment made by the noble Lord, Lord Gilbert, about fit and proper persons. This might touch the headlines shortly were Mr Murdoch to decide, for various reasons, that he did not want to continue with his news media in this country. The issue of fit and proper persons wishing to inherit may become a major issue.

Lord Strathclyde: My Lords, this is an extremely good point and one which is well taken by the Government.

Lord Lloyd of Berwick: My Lords, my point is a very short one and it is simply to add to something said by the noble Lord, Lord Dholakia. Surely it would be better simply to leave it to Lord Justice Leveson and his panel to decide in what order they will take the various matters into which they are inquiring and not divide them up into part one or part two. It seems to me a pointless exercise. Why not leave it to Lord Justice Leveson?

Lord Strathclyde: My Lords, I understand, there are so many people inside and outside Parliament who wish to know more as quickly as possible and to take a view on how we should progress, but I very much agree with the noble and learned Lord, Lord Lloyd of Berwick. Everyone says that Lord Justice Leveson is a man of exceptional integrity and intelligence; having asked him to do the job we should allow him to get on with it and produce the result.

Localism Bill

Committee (10th Day)

Relevant documents: 15th and 16th Reports from the Delegated Powers Committee.

3.09 pm

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): My Lords, I beg to move that the House do now resolve itself into a Committee on the Bill.

Lord Bassam of Brighton: My Lords, it is now 3.09 pm, the House is arranged to close at 7 pm today, it being a Thursday—

Noble Lords: Wednesday.

Lord Bassam of Brighton: Sorry, I apologise, but it is the last day before the recess. It is Wednesday, although it feels like Thursday. We have 36 groups of amendments on the agenda this afternoon and I think it unlikely that we will get through them. I did a calculation earlier and I thought that worked out at less than 10 minutes per group; it is now even less. I wonder how the Government intend to proceed. We have been very co-operative on this Bill. Both our Front Bench and Back-Benchers have been extraordinarily disciplined in their speaking, as have colleagues around the House. The Bill has attracted a great deal of interest.

We acceded to the House starting at 10 o'clock today, which is unusual. The House sat until well past 11 o'clock last night. We agreed also to have two days in succession on the Bill. I think it unreasonable to expect the House to sit endlessly on the Bill. I suggest to your Lordships that it would be right and proper that we have the rest of the day on this Bill in Committee and that a further day be tabled for it in the autumn. I made a perfectly reasonable offer to the Government to shrink the minimum intervals so that the Committee can go reasonably seamlessly into Report later, because I appreciate that the Government want to make progress with their legislation—as they should, that is a principle that we on this side entirely support.

I hope that the noble Lord the Leader, in the absence of the Government Chief Whip, can furnish me with some answers. I am more than happy to have discussions off the Floor of the House. I gave the Chief Whip notice that I would raise this matter before your Lordships, but the House need some answers. Staff, Members on our Front and Back Bench, Back and Front-Benchers opposite, and those who have been intimately involved need to be given some guidance as to how the House will proceed. It is my very firm view that the House should stop at 7 o'clock. We usually managed our business so that we stopped mid-afternoon on the last day before a recess. It is not our fault that the Government have got themselves

into something of a car crash with their legislative programme at this early stage—after all, we are some months away from this Session coming to an end. The House requires some answers.

Lord Grocott: In fully supporting what my noble friend said, my point may seem trivial, but I hope that the House will not think that. There is a pretty good tradition in this House that when there is a major Statement, a really significant Statement, 40 minutes, not 20 minutes, will be allowed for Back Bench contributions. I understand that a request was made on that basis but refused today.

It would be very difficult to think of a more significant Statement than the one we have had today. I cannot think of one. The Leader of the House has been around a lot longer than I have, and perhaps he can draw on one. It was a Statement by the Prime Minister for which he had specifically come back from his tour of Africa and, in the other place, it is being followed by a debate. They will have about six hours to discuss these major issues. We have had about 40 or 45 minutes.

It is no use saying that we had a debate last Friday. We did. I was not here, but I have read it, and it was an outstanding debate. There is no reason not to think that this House could make a substantial contribution to these hugely important issues. I should like an explanation from the Leader of the House why the tradition of major Statements having 40 minutes for Back Bench contributions has been ignored on this occasion.

The Chancellor of the Duchy of Lancaster (Lord Strathclyde): My Lords, the noble Lord, Lord Grocott, is right to say that there have been such occasions. I do not know whether it is a tradition, but if it is, it is overwhelmingly on issues where this House has a particular expertise, which is why the past few occasions that I can remember have been on the future of this House. This is an important Statement, but it was no more important than many Statements that we take every week. The purpose of a Statement is to bring to the House at the earliest possible opportunity a change of policy or a statement by the Government, and that is what we have done. I can absolutely promise the noble Lord that this is not the last time that we shall be discussing this issue. Over the next few months—indeed, years—we will have plenty of opportunity to debate it, as we have done recently, not only last Friday but on another Statement only a week ago. It was on that basis that I did not see the need to detain your Lordships any longer.

It might interest the noble Lord, Lord Grocott, to know that we offered the opportunity to the Opposition that we could sit tomorrow—Thursday—to have a debate, but that was rejected. It is a pity, because not only could we have had a debate on the press, but we could have risen earlier this afternoon and finished off the Localism Bill tomorrow.

I have heard these little complaints from noble Lords on the Front Bench opposite that we are working them too hard on the Localism Bill. But this is day 10 in Committee and it is a quarter past three, so we have plenty of time to continue work on the Bill. It has long been known that the Government's aim is to finish the Committee stage of the legislation today. That may prove to be impossible but, with a fair wind and the co-operation of the opposition Chief Whip, there is no reason why we should not finish. My sense is that those who have been sitting in Committee for the last nine and a half days would rather like to get on with it and to be heard. We are about to be off for six weeks. I share with the opposition Chief Whip the concerns that he has rightly for the staff of this House, who work incredibly hard for us. The good news is that from tomorrow they, too, like noble Lords, will be able to have a long lie-in and a rest. They do not need to come back and be bothered about this until September.

3.15 pm

Lord Bassam of Brighton: My Lords, I am grateful to the noble Lord for sharing my concern. It is not just the staff of this House who will be affected, it is also our own staff. When the Order of Business has been well advertised and well known for some time, it is unreasonable to expect people to be here well past our normal finishing time. This is not wasting time; it is making a perfectly proper point. The House needs to be treated with the respect it deserves, and this Bill needs to be treated with the respect it deserves. It deserves good scrutiny. Driving us on to late hours at night on the last day I think is quite wrong.

I am sure the Minister has the votes in his pocket. That is why the Government are here and that is how they operate in this House, but it is quite wrong to do this. I urge him to at least encourage some reasonable discussions this afternoon about how we can draw this to a close. We are a co-operative Opposition, but it is our job also to act properly in opposition and do a proper job of scrutiny on Bills in the correct hours. I believe in that very strongly and I am sure the whole House does.

Lord Strathclyde: My Lords, I am very happy to have further discussions off the Floor of the House, and I am very keen that the House should behave and continue in a proper way. However, to me, the noble Lord's protestations sound a little hollow given that we are about to take six weeks off.

Lord Bassam of Brighton: That is just not true. The noble Lord has not answered the point. How does he expect us realistically to deal with 36 groups of amendments, some of them very long, in less than four hours? That just does not seem to me to be the right way to set about business.

Noble Lords: Hear, hear.

Motion agreed.

Clause 124 : Applications for planning permission: local finance considerations

Amendment 166WA

Moved by ***Baroness Hamwee***

166WA: Clause 124, page 117, line 3, at end insert—

"(2A) For the avoidance of doubt, subsection (2) should not be read to imply that any greater weight should be placed on local finance considerations than on other material considerations."

Baroness Hamwee: My Lords, my noble friend Lord Greaves, who tabled this amendment, is unable to be here this afternoon—sadly for us, maybe not for him. Clause 124 deals with local finance considerations in connection with applications for planning permission. It provides that local finance considerations may be considered in dealing with those applications so far as material to the applications. My noble friend's amendment provides:

"For the avoidance of doubt",

the relevant subsection,

"should not be read to imply that any greater weight should be placed on local finance considerations than on other material considerations".

My noble friend Lord Greaves knows, because we discussed it yesterday, that this is not my preferred option, but I am very happy to move it in order for it to contribute to the debate.

We have heard that, in this reference to local finance considerations and their materiality, there is no change to the law and that this is merely a matter of clarification. Indeed, that is what the amendment says. Perhaps it is necessary to make it clear that the materiality of financial matters should be no weightier than other material considerations. However, it is important—indeed, essential—to be clear that planning permissions cannot be bought and sold and that they should not be thought of as being able to be bought and sold.

The issue is topical because of the new homes bonus announced by the Government. In their response to consultation on the bonus in February this year, they said:

"Local planning authorities will be well aware that when deciding whether or not to grant planning permission they cannot take into account immaterial considerations. The New Homes Bonus cannot change this, and nor is it intended to. Local planning authorities will continue to be bound by their obligations here".

This bonus is not the first matter on which finance and planning have come together on a list of matters which a local planning authority has to consider. Noble Lords will be familiar with Section 106. The not bought or sold issue was stated unequivocally in Circular 05/05, which deals with Section 106:

"The use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold. It is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms".

That is fine so far and, I should have thought, fine as regards any new source of finance. However, Clause 124 raises a number of issues, of which I shall refer to just two. One is material considerations. That term has been defined in case law, not statute, since the birth of our town and country planning system in 1947. The second raises the issue of how government incentives are to influence planning decisions. The Royal Town Planning Institute commented on this. It stated:

"The RTPI recognises that the use of incentives to stimulate development is at the heart of the Government's approach to growth. However, we firmly believe that the point at which incentives should affect policies and cultures is when local authorities and communities are preparing plans for their areas—not at the point of deciding on the individual applications that deliver that plan".

As I said, that is the view of the RTPI and it is my view as well.

If there is no change in how material considerations are to be dealt with, not only, in my view, is it not necessary to provide for this in legislation but it is positively harmful. Clause 124 must mean something and I think that it can mean only the elevation of financial considerations above others. Can this not be dealt with by circular or guidance in the way that these matters are currently dealt with?

I have a question for the Minister, of which I have given him notice. Can he explain the case law or anything else that has led the Government to take the view that the position needs to be stated in primary legislation rather than simply confirmed in guidance? If it has to be referred to in primary legislation, why is there not just an obligation on the Secretary of State to issue guidance to the local planning authority so that it has regard to local financial considerations so far as they are material to the application, as well as regard to the provisions of the development plan so far as they are material and any other material considerations?

I hope that I have been clear about the danger that I believe exists in trying to address a problem that is not there. By doing so, you suggest that there is an issue which you are denying—have the Government stopped beating their wife yet? My strongly preferred solution is to remove the clause entirely, but I am very happy to move my noble friend's amendment because it raises issues on which I hope the Government can reassure the Committee today. I beg to move.

Lord Jenkin of Roding: My Lords, my noble friend Lady Hamwee has put a very convincing case. Like others, when I received a flood of representations from a number of environmental and other bodies that the clause opened the door to buying planning permission, I thought to myself that that cannot be right. I looked into it and, of course, I found that the provision is really intended to be a restatement and clarification of existing provisions. I shall not repeat what my noble friend has said about the Town and Country Planning Act 1990 and her reference to any other material considerations.

In his absence, I say to my noble friend Lord Greaves, who has taken a great deal of time during the passage of the Bill to put his views to the House, that I think this is a brilliant amendment. It exactly meets what we want to say. We need a restatement of the law and it would not surprise me at all if my noble friend indicated that that was the legal advice which the Government have had. However, it is right to say that finance is no more material than any other consideration that a planning authority has to take into account. I would be perfectly happy with the clause if amended in this way.

My noble friend Lady Parminter's opposition to Clause 124 stand part forms part of the first grouping on the list and I thought, "Gosh, this must be important". I think this matter has been blown out of proportion.

Nothing in this suggests that planning permission can be bought and sold. Other provisions, which we discussed earlier, such as the community infrastructure levy, the whole question of Section 108 and various other measures, are all important planning considerations. As I understand it, this clause with the amendment is exactly what the House should want. I very much support it.

Baroness Parminter: My Lords, I oppose that Clause 124 stand part of the Bill. My noble friend Lord Jenkin was kind enough to reflect on the fact that I gave notice of this matter only because I think it is important, and it remains an important issue. This clause outlines the fact that financial considerations can be material to a planning application and it was added on Report in the Commons. The Minister then said that,

"it is an incidental measure for clarification".—[*Official Report*, Commons, 17/5/11; col. 271.]

Frankly, why is such clarification needed in statute?

As my noble friend Lady Hamwee has stated, the test for establishing what considerations are material in planning have developed from case law, not statute, since 1947. The classic statement is found in the 1970 case of Stringer v Minister for Housing and Local Government, which makes it clear that any consideration which relates to the development of land is capable of being a planning consideration. Accordingly, there is no legal or policy restriction in place that forbids financial considerations from being taken into account in relation to judicial decisions on planning applications. Indeed, over time, the courts have asserted that a range of particular financial considerations can be taken into account.

However, as this clause stands, it threatens the probity of planning. It sends a message out to developers that under this new planning system, which relies heavily on incentives—not top-down targets—to secure development, such planning permissions can be bought and sold. This concern has a long history. In 1997, the Nolan committee's report on the standards of conduct in local government made it clear that the Government should consider whether the present legislation on planning obligations is sufficiently tightly worded to prevent planning permissions from being bought and sold. A key principle of planning has been that applications are decided on their planning merits, which can already include financial considerations, as my noble friend Lady Hamwee has said. Many of us who are or have been councillors will be only too familiar with Section 106 and other planning obligations where funding is used to make an otherwise unacceptable planning application acceptable in planning terms.

However, this clause elevates financial considerations above all other legitimate planning considerations, which are not mentioned here or anywhere else in statute, and it can be read as meaning that financial inducements that are irrelevant to the merits of a particular development proposal can be material in determining planning applications. As such, it is a fundamental and deeply damaging change to the planning system.

If further clarification is needed on the relationship between financial considerations and considering planning applications, then the way to achieve this is by drawing up guidance for local authorities, not through primary legislation. The probity of the planning system is crucial, and is indeed vital if we are to achieve community buy-in to sustainable development, and meet the housing needs that we know are out there in our communities.

This clause threatens to bring the planning system into disrepute, and should be withdrawn.

3.30 pm

Lord Reay: My Lords, I put my name down to oppose that Clause 124 stand part of the Bill. A report was issued in 2007 by BERR—as noble Lords will remember, it was a department which existed before BIS and DECC came into being—which was entitled *Delivering Community Benefits from Wind Energy Development: A Toolkit*. It included this statement:

"There is a strict principle in the planning systems in all parts of the UK that a decision about a particular planning proposal should be based on planning issues; it should not be influenced by additional payments or contributions offered by a developer which are not linked to making the proposal acceptable in planning terms … To put it simply, planning permission cannot be 'bought'".

Do the Government still stand by that statement?

I am grateful to the Minister for circulating the most recent, six-page, briefing from her department on Clause 124. That document states that whereas Section 106 payments, or planning obligation payments as they are called, must relate to the planning merits of the specific development to which they relate, CIL income can be used more widely. However, local planning authorities, it goes on to say, should not have regard to considerations that are not material, and if they do their decisions will be unlawful. Deciding on the scope of what, as a matter of law, could be material to a planning decision remains principally a matter for the courts.

So what has changed? The Government say nothing has changed, except that the current legal position has been clarified by putting it into statute, presumably by removing it from case law. The Government have not stated clearly what happened to make them take the step of suddenly producing this clause at Report stage in another place. I should be grateful to the Minister if he takes the opportunity today of stating why that is so. In doing so, perhaps he could explain why the Government wanted to remove decisions about what count as material considerations in planning matters from case law, and what he thinks the effects of doing that will be.

I should also like my noble friend to state that the Government stand by the BERR statement from 2007 that I quoted—that it is not the Government's intention that planning decisions can be bought. I would also welcome it if the Government were able to support Amendment 166WA, which was moved by the noble Baroness, Lady Hamwee. Incidentally, I should also like the Minister to say when we can expect the national planning policy framework, as this is the last day before the Recess on which we can receive that information directly.

Lord Best: Perhaps I could speak before the noble Lord, Lord McKenzie, who will bring everything together thereafter. I know that opposition to Clause 124 relates to the effects on planning decisions of taking into

[LORD BEST]
account, in particular, the financial benefits from the community infrastructure levy and, very importantly, the newly formulated new homes bonus. In relation to the community infrastructure levy, I think the Government were absolutely right in reworking and reintroducing the CIL concept. I hope that planning decisions will take full account of the benefits that these levies can bring.

I shall now consider the potential impact of the new homes bonus. I am a supporter of the bonus, and I pay tribute to the Housing Minister, the right honourable Grant Shapps, for bringing forward this way of rewarding those local authorities that take their leadership role seriously, often in the face of considerable and vocal opposition, and seek to increase the number of new homes built in their areas. We know how important it is that acute shortages of decent housing, particularly in the southern half of England, should be urgently addressed. Planning can be the fundamental barrier to new homes getting built; but it can also be a positive force that facilitates badly needed new homes, even though the beneficiaries—the proposed new residents—have no voice in the local decision-making because they have not yet moved in.

The new homes bonus provides a mechanism for local authorities to give something back to the existing communities affected by new development: money to enhance local facilities, improve the local environment and reward those who are bound to be inconvenienced by building works close by and probably by increased traffic. Councillors can stand before the sceptics and protestors and declare that not only will the new housing serve the needs of young families seeking a home, but it will bring benefits directly or indirectly to the local community too. Some district councils in the Home Counties—exactly the places where opponents of new homes are often most vociferous—could gain significantly from the bonus payments by taking a pro-growth line. In these difficult times, these payments could mean that local authority services, which would otherwise have to go, may be retained. Conversely, those councils that succumb to every pressure and oppose new homes being built in their areas will lose out. I wish the new homes bonus every success and would hate to see planners ignoring the benefits it could bring.

My starting point, therefore, has been to look favourably at Clause 124's intention that planners should recognise the positive financial considerations for their localities that a planning decision can achieve. However, the arguments from the noble Baronesses, Lady Hamwee and Lady Parminter, and the noble Lords, Lord Jenkin and Lord Reay, cause me to think again. If there is a danger that this measure could lead to accusations of planners selling planning permissions, to objectors being able to argue that financial incentives have improperly influenced decisions, and to legal challenges and long delays, then I can see that it would be much better not to tackle this through legislation. If reliance on existing legislation—with some extra guidance—is the safer option then, as a firm advocate for the new homes bonus who would not want to put it at risk, I would support the amendment and that the clause stand part.

Lord McKenzie of Luton: My Lords, we have added our name to the clause stand part debate that was spoken to by the noble Baroness, Lady Parminter, in particular. Along with the noble Lords, Lord Jenkin and Lord Reay, and, I think, the noble Baroness, Lady Hamwee, we stand by the long-standing and fundamental principle that planning permission may not be bought or sold—a principle that was reinforced by, I think, the Nolan committee in 1997.

I can see that the amendment was an attempt to be helpful and potentially addresses one area of the concern that primacy has been given to financial considerations. However, it still raises the issue of why it is specifically mentioned and highlighted, even with the qualification, when other material considerations are not. Why does it not stand or fall like any other material consideration, subject to whatever case law produces and to guidance? I would support that proposition as well. I was very struck by the force of the arguments that came to us when this clause was introduced, as it was introduced very late in the day in the other place and there was no opportunity to debate it extensively. My understanding is that the test for planning obligations includes that it must be,

"relevant to planning … necessary to make the proposed development acceptable in planning terms … directly related to the proposed development … fairly and reasonably related in scale and kind to the proposed development … reasonable in all other respects".

I take the opportunity to refer to some correspondence from the Permanent Secretary at CLG—in this case with Nick Raynsford MP, although I think other MPs had a similar exchange. In relation to what was then new Clause 15, the Permanent Secretary stated:

"The Department's policy position is that local finance considerations should be taken into account in the determination of planning applications, but only where they are material to the decision in hand. That is, where they relate to the use and development of land, and to the planning merits of the application in question. The Minister does not agree that the clause would cut across the fundamental role of planning in protecting the public interest, and it is not our intention to indicate that local finance considerations will always be material, that any specific weight should be given to them, or that they are any more important than other material considerations".

This begs the question: why do we need this clause? What is it doing in relation to the new homes bonus that is so important to the Government, particularly given all the anger and concern that it has raised?

I am not sure that I would share in its entirety the encouragement of the noble Lord, Lord Best, for the new homes bonus. One can see that it is an important part of government policy, but after year 1 it will be funded by scraping off the top of the grants that local authorities get. The redistribution of those moneys is not particularly helpful. It also acts against regeneration because it is done on a net basis. Therefore, if you knock down existing properties to build new ones, nothing will flow from it.

Perhaps the Minister could give us an example of when receipt of a new homes bonus would not be a material consideration. The new homes bonus is always computed by reference to the development; that is how it is generated. Because it is calculated in this way, will the Minister give us some instances, to support the Government's proposition, of when it would not be a material consideration? That would help us. It would

be good to hear from the Minister why the Government feel that it is so important that this must be included in a new clause. What is it about the new homes bonus that would otherwise be a problem if the clause were removed?

Earl Attlee: My Lords, I am grateful to all noble Lords who have taken part in the debate. My first and pleasant duty is to welcome the noble Lord, Lord Kennedy of Southwark, to the opposition Front Bench. We did business the other day on his interesting question about Thameslink. Because it was topical, it required me to work pretty fast.

The Government are committed to increasing housing supply to meet housing needs and to supporting growth to boost recovery. Along with planning system reforms, we need better incentives for communities to support and accept new development. The noble Lord, Lord Best, touched on that in his valuable contribution. However, it is vital that we provide clarity on how such incentives relate to the statutory planning system. This is not a new phenomenon, as my noble friend Lady Hamwee pointed out. Voluntary agreements between landowners and local planning authorities to provide things needed as a result of development have been in use since 1932. Nowadays, Section 106 of the Town and Country Planning Act 1990 makes provisions for planning obligations. The use of planning obligations is regulated by statutory and policy tests. A developer cannot be made to sign up to a planning obligation, but planning permission can be refused if, without one, a particular development would be unacceptable in planning terms.

Community infrastructure levy powers introduced in 2010 allow local planning authorities to collect and pool mandatory developer contributions, based on charges per square metre of new buildings. While planning obligations must relate to the planning merits of the specific development that they relate to, community infrastructure levy funds can be used to support development across a wider area. The new homes bonus is even more flexible, as local authorities can spend it as they see fit. The Government's hope is that the community infrastructure levy and the new homes bonus will encourage and support more ambitious development planning, by increasing the resources available for local authorities to spend in their areas over and above what they can reasonably seek as planning obligations.

However, they are both new on the scene and questions have been raised over how such measures relate to the statutory planning application system; in particular, can they ever legitimately be taken into account in decisions on planning applications? The Government are therefore keen to clarify the legal position on this. Clause 124 provides this clarity by amending Section 70 of the Town and Country Planning Act to clarify that such considerations should be taken into account in relation to planning applications but only where they are material to the particular application being considered.

3.45 pm

In answer to my noble friend Lady Parminter, Clause 124 does not challenge the probity of the planning system. It does not change what can be material or how much weight to give to each material consideration. It does not give any particular level of weight to local finance considerations, nor does it require greater consideration to be given to local finance considerations than to any other material consideration. The discretion to determine the weight to be attached to each material consideration remains with the decision maker, and we are fully confident on these points. I will come back to the example sought by the noble Lord, Lord McKenzie, in a moment.

My noble friend Lady Hamwee asked why we are resorting to primary legislation. Clarification of the current legal position could be provided in guidance, as she suggested, or policy. However, the benefits of using the Localism Bill were that the Bill was already proceeding so provided a more immediate opportunity to give the desired clarification, and the high profile of the Bill meant that clarification was likely to come quickly to the attention of concerned parties, and it certainly has.

My noble friend Lady Parminter suggested that the clause will undermine the integrity of public confidence in decisions. I do not agree. Indeed, allowing the current uncertainty to linger is much more likely to undermine the system's integrity and affect public confidence. My noble friend also asked about the pre-eminence of local finance considerations. This clause simply draws out local finance considerations as a potential subset of other material considerations. The development plan has special status as a lead factor in planning decisions not because it is mentioned in Section 70 but because of Section 38(6) of the Planning and Compulsory Purchase Act 2004, which says:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

We have no intention of, and we are not, amending Section 38(6).

My noble friend Lord Reay asked me when the NPPF will be published. The Government hope to publish the draft NPPF imminently.

Lord McKenzie of Luton: My Lords, I think we have now had "imminently", "soon", and "very soon". Can the Minister perhaps rank those concepts for us and be a trifle more specific?

Earl Attlee: My Lords, when I originally drafted my response to my noble friend, I put down the word "shortly", but the note came from the Box that it should be "imminently". Once I was told that something would happen "shortly" and we got the statutory instrument 10 years later. However, I can assure noble Lords that the NPPF will come much more rapidly.

The noble Lord, Lord McKenzie, asked me for some illustrations and I have a few matters to draw to your Lordships' attention. The first is the test for whether a consideration is material. Case law has established that to be material to the determination of a planning application, any consideration must relate to the development and use of the land, and to the planning merits of that application.

[Earl Attlee]

These are long-established principles. For example, back in 1970, in Stringer v Minister of Housing and Local Government, the classic statement was made that,

"any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend upon the circumstances".

The noble Lord, Lord McKenzie, asked for examples of where NHB or CIL is or is not material. Take a scenario where NHB and CIL funds pooled by an authority will help fund a new parkway station on the local commuter route. In determining an application for a major housing development on a site within the catchment of the proposed station, it would be perfectly reasonable for the local planning authority to have regard to—as a material consideration—the fact that the development would generate revenues which would contribute to the new parkway station that would serve that development.

Of course, matters relating to NHB and CIL will not be material in relation to every development. Using the same example, what if the new development was particularly aimed at the retirement market? The development would, as with executive homes, result in NHB and CIL funds which would contribute to providing the station. This would still be a reasonable use of the funds. However, the provision of the station would not be material to the determination of this application, because it would not relate to the planning merits of the development proposed. Equally, the provision of this station would not be material to the determination of an application for a similar sized executive housing development which would be in the same local planning authority's area, but on a site far removed from the station, and whose occupants would not use that new facility—so it would not be relevant to the application. What I hope I am illustrating here is that local planning authorities will only be able to take matters relating to NHB and CIL into account where they fairly and reasonably relate to the planning issues that are relevant to the particular application they are considering.

These are, of course, only very simple examples. For most planning applications there will be a wide range of matters that might be material: local planning authorities will need to judge, with the law as their guide, which matters are material to the case in hand. They will then need to decide how to apportion weight between all of those matters that are material. Just because something is or is not material does not mean that it will always have a decisive bearing on the decision to be made.

Turning to the amendment in the name of my noble friend Lord Greaves, ably moved by my noble friend Lady Hamwee, I thank the noble Lords most genuinely for this helpful suggestion. Despite its humble purpose, Clause 124 has clearly caused some to worry that it might in some way oblige decision makers to give more weight to local finance considerations—but only where material—than to other material considerations, such as amenity or the environment. My noble friend's suggestion is without doubt intended to provide reassurance on this point and it fully reflects the Government's intention to leave the apportioning of weight to the discretion of the decision-maker. The Government are confident that the current clause achieves this on its own. However, there is merit in looking again at the wording to ensure that it does not inadvertently place local finance matters in any particular place in the pecking order of material considerations. My noble friend's suggestion will be of great assistance as we continue to reflect on whether this Clause best reflects our intentions. In the light of this, I hope that my noble friend will feel able to withdraw the amendment.

Lord McKenzie of Luton: My Lords, before the noble Baroness does so, may I just draw out the Minister a bit on one example? A local development plan has provision for 5,000 houses but is strapped for cash. It sees the opportunity for a cash incentive—which is what the new homes bonus is—because it needs to use some resources elsewhere in its provision of services. It therefore grants planning permission for 8,000 units, motivated by that cash incentive. Would that, all other things being equal, be a non-material consideration? Would it put in jeopardy the approval, because of the difference between that and the development plan?

Earl Attlee: My Lords, the noble Lord poses a good question that will help to illustrate the situation. He describes a situation where the planning application is for more houses than are provided for in the local development plan. The extra money arising from the NHB and the CIL from those houses can be taken into consideration if it is used in relation to those extra houses. If the money is going to enhance a railway station that would support those extra houses, it can be taken into consideration, but if it is to support perhaps a swimming pool on the other side of town, it cannot be taken into consideration because it is not relevant to the application.

Baroness Hamwee: My Lords, my noble friend Lady Parminter's opposition to the clause standing part reflects not just the concern of her organisation but the concern felt outside the House about the provision. Of course I will withdraw the amendment and I am grateful to the Minister for his agreement that the matter will be looked at again.

I shall comment on one or two of the points that he has made. On his example of the parkway station, the reaction around me was, "But that would enable development, and moreover it seems to be suggesting that economic growth is more important than the provision of extra housing". It may be an interesting example but it has not quite yet convinced us.

The Government put the clause in the Bill in order not to allow uncertainty to linger. However, guidance can be produced quite quickly. It can be issued on the day that the Act comes into force or it can precede it. Although I understand that the Government wanted to reassure people, there are other mechanisms for doing so.

The Minister said that it was important to provide clarity. I hope that I have helped at any rate to suggest that the clause does quite the opposite—instead of clarity it provides more confusion and concern. We will ensure that my noble friend Lord Greaves is aware of the praise for his amendment. I beg leave to withdraw it.

Amendment 166WA withdrawn.

Amendments 166X and 166Y not moved.

Clause 124 agreed.

Amendment 167 not moved.

Lord Berkeley: My Lords, with the leave of the House, I would like to speak to Amendments 168 and 169.

Lord Jenkin of Roding: My Lords, the noble Lord is perfectly entitled to speak to an amendment that has not been moved because, as the Clerks will tell one, an amendment belongs to the House. I have to say, though, that it is totally contrary to the spirit and conventions of this House that someone should seek to speak to an amendment that has not been moved. We cannot stop the noble Lord, but I hope that he will do so extremely briefly. I have a number of other amendments in exactly the same situation, and I do not intend to say anything about them at all.

The Deputy Chairman of Committees (Lord Colwyn): If the noble Lord speaks to the amendment, he must move it.

Baroness Gardner of Parkes: I also would like to comment on this. The groupings list says that these amendments have already been debated. They were not debated; they were not moved. This is because we considered that these issues were so important that they required major discussion. I had an undertaking from the Government that we would get full debating time to discuss these issues. I know how important the amendment of the noble Lord, Lord Berkeley, is; all the amendments are important. It is essential that we have adequate time to discuss them, which we do not have today. If we are going to have a proper debate about them, that is important, but the record should be set straight that the amendments have not already been debated. They were simply not discussed because they were not moved for the reasons that I have given.

The Deputy Chairman of Committees: Does the Committee wish to discuss Amendment 168?

4 pm

Earl Attlee: If the noble Lord, Lord Berkeley, wants to weary the patience of the Committee, he is perfectly entitled to move Amendment 168.

Amendment 168

Moved by ***Lord Berkeley***

168: After Clause 124, insert the following new Clause—

"Planning permission for subterranean development

After section 75 of the Town and Country Planning Act 1990, insert—

"75A Planning permission for subterranean development

(1) Any proposed development which extends below the ground level of an existing property shall be deemed to be "a subterranean development" and any person seeking to undertake a subterranean development must—

(a) commission a "Subterranean Impact Study" by consultants approved by the Department for Environment, Food and Rural Affairs on the impact of the proposed subterranean development upon—

(i) subterranean ground conditions with particular reference to flowing and standing water; and

(ii) foundations, footings and structure of any adjacent buildings and other buildings within a radius of 100 metres of the proposed development;

(b) provide owners of any adjacent properties and of properties within a radius of 100 metres with a copy of the Subterranean Impact Study and enter into consultation with the respective owners during a period of not less than 90 days;

(c) submit a copy of the Subterranean Impact Study to the relevant planning authority, together with the results of the consultation with relevant adjacent and nearby property owners, before submitting any application for full planning approval for the proposed subterranean development from the relevant planning authority;

(d) seek the approval of the Secretary of State for the proposed subterranean development;

(e) provide an appropriate warranty or bond and security for expenses to a value to be determined by a specialist advisor.""

Lord Berkeley: I wish to move Amendment 168 very briefly and to speak to Amendment 169. As the noble Baroness, Lady Gardner, said, the amendments have not already been debated, in spite of what it says on the groupings list. Amendments 170CA, 170CB and 170 CE are not on the groupings list and they have not been debated either, so I hope that they will be debated at some stage.

All I was going to say in moving the amendment—in fact, I was hoping to speak to it after another noble Lord had moved it—was that I supported it. I was also going to ask the Minister whether and how it would apply to underground workings such as cracking. Cracking is the extraction of gas from underneath the ground: one drills many thousands of feet underground and pumps in high pressure water and gas is then extracted. This is a common occurrence in the United States at the moment. A lot of gas is extracted but a lot houses are subsiding and being damaged as a result. I believe that the same process is being planned or has started in the Blackpool area. I am looking for information from the Minister on that as well. Whether I get it now or whether he writes to me, I do not really mind. I beg to move.

Lord Selsdon: My Lords, as it is my amendment and the noble Lord, Lord Berkeley is, I believe, a former member or director of the piggy-back club, I assume that he is piggy-backing. My amendment is too big to be discussed here. I consulted my party and it has very kindly given me leave to introduce a Private Member's Bill which will cover all these areas. I would much appreciate it if the noble Lord, Lord Berkeley, would co-operate with me. I should declare that I have lots of underground interests too.

Lord Berkeley: I am grateful for that remark and I look forward to further discussions with the noble Lord.

Lord McKenzie of Luton: I think it is a bit unfair to suggest that the noble Lord, Lord Berkeley, was going to weary the Committee. I say to noble Lords that if

[LORD MCKENZIE OF LUTON]
the issue is a big one and they have other routes for having a debate, why put down an amendment? When amendments go down, we all spend time trying to get our minds around what the issues are so that we can respond. It wastes our time as well.

Baroness Gardner of Parkes: We had every intention of debating it and, as noble Lords will know, I complained about having to wait day after day in the hope of getting to this amendment. Yesterday it was quite clear that we were running out of time. This Bill is terribly important and it is important that we get to Report stage. It was because of the degree of importance that we decided to take action and seek an assurance from the Minister that we would be guaranteed sufficient time to debate it on Report. It will be debated then.

Baroness Hanham: My Lords, just about everything that could be said has been said on this matter. The noble Lord, Lord Berkeley, asked about gas extraction. I will have a letter written to him before the next stage so that he knows the situation.

Lord Berkeley: I am grateful to the Minister. I beg leave to withdraw the amendment.

Amendment 168 withdrawn.

Amendments 169 and 170 not moved.

Amendment 170A

Moved by ***Lord Reay***

170A: After Clause 124, insert the following new Clause—

"Windfarms: appeal costs

Where an appeal is made against the decision of a local planning authority to reject a planning application for an onshore windfarm, and the matter is taken to a public inquiry, the costs incurred by the authority in contesting the appeal, as well as any reasonable costs incurred by any registered rule 6(6) party under the Town and Country Planning Appeals Rules 2000, shall be paid for by the appellant."

Lord Reay: My Lords, in moving my Amendment 170A, I should like to start by quoting what the Minister, Mr Greg Clark, said in another place at the Report stage of the Bill:

"There is also a case for looking at the fact that the costs of losing appeals can sometimes hang over local authorities. Sometimes the threat of losing an appeal dissuades a local authority from turning down an application that it might want to turn down. We should look at that".—[*Official Report*, Commons, 17/5/11; col. 274.]

My only quarrel with that statement is that it is not so much the threat of losing an appeal as the costs of fighting one, whatever the result, that can dissuade a local authority from turning down a planning application that it should turn down and/or might otherwise want to turn down. This is more true today than ever now that local authorities are having to make severe budget cuts.

Following my having taken up that point at Second Reading, my noble friend the Minister kindly wrote to me on the 20th of last month and ended her letter by saying that she hoped to be able to update me shortly with news on,

"how we propose to do that";

that is, deal with the concerns about appeal costs. I am hoping that she may be able to tell us today what that is.

I have singled out onshore wind farm applications because it is particularly scandalous that it is the subsidies that wind farm developers are promised that place them in a position to outbid local authorities and local action groups. Without those subsidies, the planning applications would never be made in the first place. Just to remind noble Lords, the subsidy takes the form of a promise to take on to the grid for 20 years all the electricity that the wind farm can produce at a price which is currently over twice the market rate. If for some reason the grid cannot accept the electricity, as we have seen happen recently and I am sure we will again, it will still pay for it at the subsidised rate. It is of course the consumer, including the consumer who is being pushed into fuel poverty, who is then charged on his electricity bills with these costs, and who thus pays for the subsidy.

This of course creates the very antithesis of a level playing field. The result is that this is an area where final planning decisions are emphatically not taken by local authorities or local communities. Localism does not rule. It is routine for developers to waste no time in appealing once the local authority has rejected, if it has had the courage to reject, their planning application. In the first place, the developers hope to intimidate the local authority with the threat of a protracted and expensive public inquiry into granting their planning applications. If, nevertheless, the local authority stands up to them, they hope to defeat the local authority at the public inquiry. As developers are invariably able to afford better legal and administrative representation than the local authority, and certainly than the local action groups, they are favourites to win.

The Government are complicit in this unjust process because they maintain the subsidies. The Government also apply immense pressure on the Planning Inspectorate through statements in every conceivable piece of legislation and guidance to help deliver, through its decisions at public inquiries, the Government's renewable energy targets. In many cases the inspector does give priority to local concerns or to landscape considerations, but it still seems to be the case that in a majority of cases he will give priority to government policy. So by means of the subsidies to renewable energy electricity generators and the pressure on the Planning Inspectorate to deliver the Government's renewable energy targets, the Government are doing everything in their power to thwart local opponents of onshore wind farm schemes. Yet they still claim to want to devolve decision-making powers in planning matters to local communities. How do they justify that blatant contradiction? I am afraid that it invites the charge of hypocrisy.

Yet it is still the case that the Government have signalled their recognition that the ability of developers to intimidate local planning authorities into granting planning permission because of the costs of going to appeal represents a problem, which is why I hope that

my noble friend will say today what the Government propose to do about it. My amendment might result in developers thinking twice about taking local planning authority refusals to appeal. In doing so, it might give some encouragement to local authorities to stick to their guns with the result that more final decisions might be in accordance with the wishes of local communities. Perhaps naively I thought that that was meant to be the main purpose of the Bill. I beg to move.

Lord Whitty: My Lords, I trust that the Government will give no credence to this intervention by the noble Lord, Lord Reay. Government policy for encouraging the development of alternative energy—which is essential to our future—includes onshore wind farms. If he wishes to pursue his opposition to that policy, he should pursue it under energy Bills and the various regulations that are brought before this House under the energy Bills. He may well have done so. However, this is not the appropriate point to do it.

His amendment would do the opposite of what he is suggesting. It would discriminate against developers of wind farms as compared with any other developer, as well as cutting across what has been a cross-party consensual position in terms of encouraging alternative energy, including wind farms. In reality, the number of wind farms that have been rejected on planning grounds is at least equivalent to those that have gone forward and the number on which a decision has been challenged.

I do not want to use the same intemperate language as the noble Lord, Lord Reay, but, in practice, on wind farm applications, the nimby's have generally won. In this, at least, let us recognise that there is an overriding national consideration that this Government, the last Government and all parties in this House have accepted. This is not the point at which to further discriminate against wind farm developers.

Lord Marlesford: In case the House were to think that my noble friend was in a minority of one, I rise to support his amendment strongly. Frankly, the essence of the planning system is that planning decisions should be made on planning grounds. To attempt to distort those decisions is thoroughly undesirable and totally contrary to the whole basis of what was set up by the party of the noble Lord, Lord Whitty, when it was in power in 1948. It was one of the great achievements of the Labour Government—the other being the health service. England would not be the country it is if it had not had that planning system.

My noble friend is talking particularly about wind farms, which is quite relevant because of the element of subsidy. However, very undesirable pressures have been put on planning authorities, for example, by supermarkets, which have proposed to build in quite inappropriate places and have threatened expensive public inquiries and local authorities with damages if they presume not to grant the application. My noble friend Lord Reay is absolutely on to the right idea. I strongly advise the Government to think very carefully before they distort the planning system in this sort of way.

Lord Judd: My Lords, I must intervene. I had not intended to do so because much the same ground will come up under some subsequent amendments to which I have put my name. However, I point out to my noble friend Lord Whitty, for whom I have great respect and who I regard as a particularly good personal friend, that there is an issue which comes up under a number of amendments.

What the noble Lord, Lord Marlesford, has said is very telling. I am very proud of what the post-war Labour Government contributed to civilised values in this country through their planning arrangements and commitment to the countryside. I regard that as one of the most precious assets in the history of our party and do not want to see it lightly cast aside. What worries me about the implications of this part of the Bill, to which the noble Lord, Lord Reay, has moved his amendment, and, indeed of subsequent parts, is that all the implicit accumulated evidence, which is becoming increasingly explicit, shows that instead of a prejudice in planning in favour of our rich inheritance of countryside, scenery and the rest, the balance is changing to making economic considerations the priority. We need to get that balance right but I do not want to see the mistakes of the first Industrial Revolution repeated. Our countryside was raped in the first Industrial Revolution, but it could all have been done in a much more civilised way. Do we never learn? The noble Lord, Lord Reay, is absolutely right to be vigilant on this issue.

4.15 pm

Lord McKenzie of Luton: My Lords, with respect, I find myself more in agreement with my noble friend Lord Whitty than with my noble friend Lord Judd. I am bound to say that that is unusual. My advice is that the normal arrangement is that parties bear their own costs in an appeal. I have heard nothing which suggests that we should disrupt that arrangement whether in respect of wind farms or anything else. If we go down that path, we shall have a two-tier system whereby in some circumstances people will bear their own costs whereas in others, because they happen to be wealthier, they will have different arrangements. That seems a rather odd proposition. However, I particularly wanted to—

Lord Marlesford: The noble Lord misunderstood me; of course, I am aware of that. The point is that the costs likely to fall on the local authority in a prolonged planning appeal have to be a consideration. In plenty of cases there has been a threat that if it is felt, or can be shown, that the local authority was wrong to deny the planning consent in the first instance, damages for the delay can be claimed by the applicant. That is the point I was making.

Lord McKenzie of Luton: I understand that point but it seems to be being proposed that the outcome of an appeal is somehow prejudged, and that some will have satisfactory outcomes with which we are happy but others will not. I pick up the proposition that the planning inspectorate colludes to try to achieve government policy in respect of renewables. As I have said before, I was a Minister in CLG for a very short period. All Ministers get the opportunity—if that is the right word—to deal with inspectors' reports. Certainly, my experience of probably no more than half a dozen

[Lord McKenzie of Luton]
such reports is that they were very thorough and very balanced. Some recommended that an appeal should be accepted, others did not. My experience is that a professional approach was taken to the matter. I certainly did not detect any perceived pressure on the inspectorate to achieve one outcome rather than another, so it is rather unfortunate to suggest that the opposite is the case. I am very well aware that supermarkets push their luck through the planning system but they get knocked back. That seems to me to validate the process that we have.

Lord Shutt of Greetland: My Lords, I thank the noble Lord, Lord Reay, and other noble Lords who have taken part in the discussion on this amendment. It is accepted practice that all parties to an appeal should normally meet their own costs, but cost awards may be made by the planning inspectorate if a party behaves unreasonably. There are no special circumstances that apply to onshore wind farm appeals compared with appeals against other forms of development, nor is it clear why there should be. This proposal to require appellants to pay all parties' costs for onshore wind farm appeals will treat wind farms differently from any other types of development. It would create pressure to extend the provision to other types of development. What will it achieve? Is it meant to encourage more proposals for wind farms to be refused, irrespective of their merits? Local planning authorities will already consider whether a proposed wind farm is acceptable in terms of their development plan and other considerations. These can include national planning policy and relevant planning issues raised by local communities.

I appreciate that wind farms can be controversial, but that in itself is not a reason to refuse them. Wind farm developers, like local communities, should expect a level playing field. Local planning authorities should be confident in refusing development that is clearly contrary to an up-to-date development plan, and defending their decision at appeal. It is our intention that local plans will become more prominent in decision making, and there should be a presumption in favour of sustainable development at the heart of the planning system.

I have just been handed a note that the Minister is to revise the costs awards circular—circular 03/09—to make sure that it is clear that where a local planning authority refuses a development proposal on the grounds that it is contrary to an up-to-date development plan and there is no issue of conflict with national planning policy, there should be no grounds for an award of costs against the local planning authority.

I trust that with these remarks the noble Lord will feel able to withdraw his amendment.

Lord Reay: My Lords, I am grateful to my noble friend the Minister for his concluding remarks, although I am rather surprised that he should have received this as a last-minute piece of information from his officials considering that this amendment has been down for quite a considerable amount of time.

I am grateful for what he said; I would like to study the implications of it. I can understand that he does not wish to make any distinction between wind farm developments and any other form of planning application. That really relates to the issue of renewable development which the noble Lord, Lord Whitty, said was no matter for this Bill. He might say that to some of his noble friends when they try and introduce an obligation to pay more attention to climate change and what should be done about it, because that is an example of exactly the same thing.

I am extremely grateful to my noble friend Lord Marlesford for his support, and to the noble Lord, Lord Judd. I entirely agree with him: planning is a matter of getting the balance right. The party opposite are rightly proud of what the planning system has achieved in this country. It has preserved the countryside from, among other things, ribbon development and inappropriate high-rises. All of us are now proud of that consequence, and it is extremely important that we succeed in the future in maintaining the balance that is implied by that, and that we do not give overriding consideration to some overarching concern like renewable energy. On that basis, I am happy to withdraw my amendment.

Amendment 170A withdrawn.

Amendment 170B

Moved by ***Lord Avebury***

170B: After Clause 124, insert the following new Clause—

"Planning permission for sites for Gypsies and Travellers

In the Town and Country Planning Act 1990, after section 77 insert—

"77A Planning permission for sites for gypsies and travellers

(1) The Secretary of State may direct a local planning authority to grant planning permission for an application involving development which provides a site for the accommodation of a specified number of gypsies and travellers.

(2) In the East of England and South West regions, the specified number of gypsies and travellers under subsection (1) may not exceed any number specified for that local authority in the regional strategy.

(3) In the North West and South East regions, and in any other region where there is a report by the independent panel appointed by the Secretary of State under section 8 of the Planning and Compulsory Purchase Act 2004, the specified number of gypsies and travellers under subsection (1) may not exceed the number for that local planning authority in the independent panel report.

(4) In any other region, the specified number of gypsies and travellers under subsection (1) may not exceed the number in the gypsy and traveller accommodation needs assessment conducted under section 225 of the Housing Act 2004.

(5) In this section "gypsies and travellers" has the meaning given by regulations made under section 225 of the Housing Act 2004.

(6) The reference to a regional strategy applies to the regional strategy in place at the abolition of regional strategies under section 94 of the Localism Act 2011.""

Lord Avebury: My Lords, the noble Lord, Lord Reay, has just said that planning is a matter of getting the balance right. My amendment attempts to do that in the case of Gypsies and Travellers, the purpose being to ensure that caravan-dwelling Gypsies and Travellers have somewhere to live.

There are 18,300 who retain a strong cultural aversion to housing which is left over from the days when the whole Gypsy population was nomadic. Of these, some

3,000 now live in unauthorised developments or encampments, so that almost one in five of the population is statutorily homeless. That proportion had begun to decline over the past three years as a result of circular 01/06 and the establishment of target figures for planning permissions for Gypsy sites in every district of England through a three-stage process. First, there were the Gypsy and Traveller accommodation needs assessments, conducted by experts on behalf of local authorities; secondly, public inquiries on the results of those assessments; and, thirdly, a review at the regional level providing that a minimum of 15 pitches were to be provided in every district, regardless of assessed need and reducing the number in some authorities which had more than a proportionate existing population of Gypsies, such as Basildon in Essex.

As your Lordships may have seen, 90 families are being evicted from the Dale Farm site in that borough, while other local authorities in the county have been avoiding planning for any Gypsy sites up till now. This is an emergency situation which could only be solved by allowing the families who are to be evicted to relocate on to publicly owned land in the neighbourhood where temporary planning permission could be sought pending a permanent solution. Otherwise, these 90 families will be thrown onto the roadside, with all the trauma and disruption that that would involve for them, especially the children.

I repeat the suggestion I made to my noble friend Lady Wilcox that some of the land that is to be transferred by the regional development agencies to the Homes and Communities Agency could be earmarked for Gypsy sites because, if by some miracle the amendment were to be accepted, having the right numbers in plans would be no guarantee that local authorities would be able or willing to identify the tiny amounts of land to satisfy the need. This would be a possible immediate solution to the Basildon problem. Amending the purposes for which RDA land is to be used would be a simple matter, if there was political will.

The previous system was intended to satisfy local residents that, much as they objected to having Gypsies and Travellers in their neighbourhood, the small number they were being asked to accept was reasonable and had been worked out carefully and methodically, with a view to eliminating the unauthorised encampments that are a legitimate cause of complaint—not only against the homeless Gypsies but against Governments motivated by cowardice and barely concealed hostility towards Gypsies and Travellers.

Just as the Bill makes an exception for major infrastructure projects, we believe that a different approach is necessary—albeit for different reasons in the case of planning for Gypsy and Traveller sites. Left to their own devices, local authorities will never make adequate provision for the number of Gypsies and Travellers who still live in caravans, in spite of all the obstacles that they have to face—as proved by the experience of the past half century. I had understood that the coalition would concentrate on the matters that had been agreed between the two parties. Leaving aside the points on which there were differences, tearing up the whole strategy for dealing with Gypsies and Travellers was a denial of that promise.

However, the numbers remain. Therefore, in the amendment we reinforce the numbers by requiring every local authority to grant planning permission for a specified number of pitches. In the case of the two regions where the numbers were in a completed regional strategy, those are the numbers. In the two regions where the penultimate stage had been reached, of a report by the independent panel, the numbers are those in the panel report; and in the remaining regions, we take the numbers that were in the GTAAs. We should have specified the minimum of 15 pitches for every local authority, but this can be added at Report stage if the Government agree to this amendment in principle.

Amendment 170C provides that the same numbers should be a "material consideration" in determining planning appeals in respect of Gypsy sites in the relevant authorities. That is not my preferred choice, but if we make no reference to the numbers at all, we already know what is going to happen. A report by the Irish Travellers Movement in Britain, a copy of which I sent to the Minister last week, details the responses of 100 local authorities in three different regions to inquiries about their pitch targets. In the east of England, the targets were 36 per cent below those in the regional strategy; in the south-west, the reduction was 32 per cent compared with the emerging regional strategy; and in the south-east, it was 82 per cent. Overall, there was a reduction of just over half in the plans, and there was widespread delay and uncertainty about how to proceed. This research confirms with a vengeance the fear, expressed by the CLG Select Committee in another place in its report of 28 February, that,

"abolition of RSSs will reduce the provision of sites for Gypsies and Travellers and make it harder for local authorities to share out sites over an area larger than the local authority".

The committee quoted with approval the written evidence they had from six different sets of witnesses, all asserting that the planning vacuum would have an adverse effect on the provision of sites, and effectively saying that over the longer term the new framework, or rather the lack of any framework, would mean an increase in the number of unauthorised sites. It gives me a feeling of déjà vu, from the similarly predictable disaster of 1994, when the 1968 Act was repealed. I said then—several times—that repeal would have a disastrous effect on the provision of sites, and so it did.

I now say, without fear of reasoned contradiction, that without this amendment many local authorities will not grant permission for any sites whatever, as the Mayor of London, for example, has indicated. In his draft London Plan under the previous system, 524 extra pitches were to be provided. That was then reduced in March 2010, close to the election, to 236 and then in October he scrapped the numbers altogether, leaving the boroughs to decide their own strategies, if any. The replies from individual authorities to the ITMB survey showed that many had taken advantage of the new freedom to reduce targets but many more had just not bothered to adopt targets at all because of alleged shortcomings in the evidence based in the GTAAs, abandonment of the 15 minimum, what was locally acceptable or that they were waiting for the replacement of circular 01/06, which I believe is about to appear.

4.30 pm

During this hiatus, since the Secretary of State's unlawful letter scrapping the previous Government's planning strategy, almost all the new Gypsy sites have been provided only as a result of successful appeals against the refusal of applications by the Gypsies themselves. As we have heard, that process is now to be stopped. The question now before us is not just whether this amendment should be passed, but whether this Committee will tell the Government that they have taken a wrong turn in their whole policy for Gypsies and Travellers, condemning yet another generation to exclusion and deprivation.

It pains me intensely to say this about the coalition, which I have otherwise supported through difficult times since the last election, but this is an issue I have fought over the past five decades and I am convinced that leaving the right to adequate housing for these communities in the hands of local authorities—at the mercy of the implacably hostile electorate—is a recipe for certain failure.

We are under investigation by the UN rapporteur on the Right to Adequate Housing for the treatment of the evictees on the Dale Farm site, but as I have already emphasised to her the question goes much further than that.

Over the decades we have been unwilling to take the action needed to ensure that Gypsies and Travellers have a lawful place to live, in breach of our obligations under Articles 11.1 and 2.2 of the International Covenant on Economic Social and Cultural Rights. The Government may not care about the few critics who argue this cause in Parliament, but if they want to avoid the humiliation of being pilloried before the UN Human Rights Council, this is their opportunity. I beg to move.

Lord McKenzie of Luton: My Lords, I have a deal of sympathy with the position of the noble Lord, but I am constrained by our Front Bench position. A proposition which gives more power to the Secretary of State to dictate is something we would draw back from. The noble Lord made some crucial points, however. We are already concerned about what the withdrawal of regional spatial strategies has done to strategic planning and affordable housing. Until the noble Lord spoke I had probably not focused sufficiently on its impact on Gypsy and Traveller families. It will be interesting to see if the duty for authorities to co-operate produces anything like a solution. I suspect that it will not.

The Government are focused on financial incentives as part of their approach to housing. I do not think the new homes bonus would bite directly but perhaps it is interesting to pursue whether financial incentives for local authorities would encourage them to do what they should be doing, which is to take and make available their share of provision for this disadvantaged section of our community.

Lord Shutt of Greetland: My Lords, it would be impossible to respond to my noble friend's amendment without paying tribute to his lifetime's support to Gypsies, Travellers and those in housing need.

The previous Government's model of top-down pitch targets has not delivered. Between 2000 and 2010, the number of caravans on unauthorised developments increased from 728 to 2,395. That is the caravan count published by DCLG. Local authorities are best placed to assess the needs of their communities, including Travellers. Our proposed planning policy asks local authorities to set targets for Traveller sites that are underpinned by a strong evidence base. The policy set out clear consequences for those authorities which do not make available land to meet the need that they have identified. The duty to co-operate will ensure that local authorities continue to work together on strategic issues. It will require local planning authorities, county councils and other public bodies to engage constructively, actively, and on an ongoing basis in the planning process. Local authorities will be required to demonstrate compliance with the duty as part of the public examination of local plans. If an authority cannot demonstrate that it has complied with the duty, its plan will not pass the independent examination.

A policy-led approach is a more appropriate one through which to address provision of sites through the planning system. The national, regional and local need for accommodation for Travellers would be a relevant material consideration for the decision-maker in any event. The planning, compulsory purchase and town and country planning Acts require that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise. Any consideration which relates to the use or development of land is capable of being a material consideration.

On Amendment 182, which is linked with Amendments 170B and 170C in the Marshalled List, the majority of new Traveller sites are small, private ones provided by Travellers themselves, not local authorities. That meets community aspirations on tenure, and their small size can aid integration with the settled community. A duty for local authorities to provide sites would therefore not be appropriate.

That was the finding of a recent Equality and Human Rights Commission report, entitled *Assessing Local Authorities' Progress in Meeting the Accommodation Needs of Gypsy and Traveller Communities in England and Wales: 2010 Update*. The DCLG-chaired, cross-government ministerial working group on Gypsy and Traveller inequality includes a work stream to encourage new development of small, private sites and better publicity of the success of existing small private sites. That work was included following consultation with members and representatives of the Travelling community, among whom there is a consensus that such site accommodation is preferable to public sites provision.

The planning system is therefore the key place to deliver the provision. The Government published our proposed new planning policy for Traveller sites on 13 April. It tells local authorities to use a robust evidence base of local need, to set targets for sites and identify land to meet those targets. The draft policy is out to consultation. When I got the notes, they said until 6 July, but it has been pushed on to 3 August, so if noble Lords want to give their views, they are welcome to do so and have until 3 August. Local authorities are subject to a statutory duty under

Section 225 of the Housing Act 2004 to carry out an assessment of the accommodation needs of Gypsies and Travellers residing in or resorting to their district when they are undertaking a review of housing need in their district under Section 8 of the Housing Act 1985. All local authorities prepare Gypsy and Traveller accommodation assessments under that duty, and some, such as Somerset County Council, have begun undertaking new assessments of need for Travellers residing in or resorting to their areas.

Given my response, I hope that the noble Lord will feel able to withdraw his amendment.

Lord Avebury: My Lords, I am grateful to the noble Lord, Lord McKenzie, for drawing attention to the duty to co-operate. However, I do not attach any great confidence to that when you consider what has happened in the Essex region. Basildon has a large number of Gypsies and Travellers, more than it would have been asked to provide for under the previous Government's system, and other local authorities within the county have done nothing whatever. Although this duty has been passed, there is no method for compelling the other local authorities to comply with it, so I do not consider it very effective.

I am most grateful to my noble friend for his reply and for the kind remarks that he made about the work that I have done over the past 47 years on behalf of Gypsies and Travellers. If I do not get anywhere with this Bill, it will be a major disappointment. We have been here before, in 1994, when the 1968 Act was torn up. For many years after that, hardly anything happened at all. We were beginning to make some progress under the previous legislation. My noble friend said that the figures between 2000 and 2010 show that there was an increase in the number of unauthorised encampments and developments. However, looking at the last three years, the number was beginning to decline as a result of circular 01/06 and the obligations that had been placed on local authorities to carry out a detailed assessment of the numbers of Gypsies and Travellers who should be accommodated because they were residing in or resorting to the area. That was followed by extensive public inquiries and the redistribution of the obligation between the local authorities in an area.

Now the Government have decided—the Minister reiterated this—that local authorities are to be required to set targets for Traveller sites. I am asking why they would bother to do that when they have already done it. They have consulted experts and arrived at figures that have been validated by these public inquiries. Therefore, I am afraid that I do not attach very much confidence to what my noble friend said. Although I will comply with his request to cut my remarks short on this occasion, I intend to return to this issue on Report. Meanwhile, I beg leave to withdraw the amendment.

Amendment 170B withdrawn.

Amendments 170C to 170CB not moved.

Amendment 170CC

Moved by ***Baroness Parminter***

170CC: After Clause 124, insert the following new Clause—

"Community right of appeal

(1) The Town and Country Planning Act 1990 is amended as follows.

(2) In section 70 (determination of applications: general considerations)—

(a) in subsection (1)(a), after the first "subject to" insert "subsection (2A) and",

(b) after subsection (2) insert—

"(2A) Where the planning authority decides under this section to grant a permission for an application which falls within one of the categories, and meets any of the conditions specified in section 78(2A)—

(a) in case where no appeal is lodged against the decision, it shall make the grant as soon as may be specified in a development order after the expiration of the period for the lodging of an appeal;

(b) in case where an appeal or appeals is or are lodged against the decision, it shall not make the grant unless, as regards the appeal or, as may be appropriate, each of the appeals—

(i) are withdrawn, or

(ii) are dismissed by the Secretary of State."

(3) In section 78 (appeals to the Secretary of State against planning decisions and failure to take such decisions) after subsection (2) insert—

"(2A) Where a planning authority grants an application for planning permission, and—

(a) the authority has publicised the application as not according with the development plan in force in the area in which the land to which the application relates is situated; or

(b) the application is one in which the authority has an interest as defined in section 316;

certain persons as specified in subsection (2B) below may by notice appeal to the Secretary of State, provided any one of the conditions in subsection (2C) below are met.

(2B) Persons who may by notice appeal to the Secretary of State against the approval of planning permission in the circumstances specified in subsection (2A) above are—

(a) a ward councillor for the area;

(b) any parish council covering or adjoining the area of land to which the application relates; or

(c) any overview and scrutiny committee for the area.

(2C) The conditions are—

(a) section 61W(1) of the Town and Country Planning Act 1990 applies to the application;

(b) the application is accompanied by an environmental impact assessment;

(c) the planning officer has recommended refusal of planning permission."

(4) In section 78, after subsection (4D) insert—

"(4E) For appeals lodged under subsection (2A), a notice must be served no later than 28 days from the date of notification of the decision."

(5) Section 79 is amended as follows—

(a) in subsection (2), omit "either" and the words after "planning authority" and insert "or the applicant (where different from the appellant)";

(b) in subsection (6), after "the determination", insert "except for appeals as defined in section 78(2A) and where the appellant is as defined in section 79(2B))."""

Baroness Parminter: My Lords, Amendment 170CC introduces a community right of appeal, which delivers two things that this Government are committed to. The first is devolving powers to local communities. In this Bill, the Government are right to create greater opportunities for local neighbourhood planning. However,

[Baroness Parminter]
if the Government accept the importance of local people having a direct say in the planning of their communities in their environment, how can it be right for local people to have no redress when a planning application is approved that drives a coach and horses through everything that has been agreed?

The second objective is enhancing the primacy of the local plan. The Minister in another place has made statements about the importance of enshrining the primacy of the local plan. On Report, he confirmed that the reforms were all geared towards making the plan prominent and indeed sovereign. Granting a limited community right of appeal, which was triggered where a decision to grant planning permission was not in line with the adopted local plan, would be a powerful support to that approach. To be clear, it is a limited right of appeal for the community that I am proposing. It is limited as to the conditions under which it can appeal, principally if it is not in line with the agreed local plan, although also if an authority grants an application in which it has a financial or other interest. It is also limited as to who can apply—that is, members of the local community through their elected representatives—and limited in time, with 28 days to lodge an appeal to minimise delay and uncertainty.

Critics have argued that granting a right of appeal to communities will slow down the planning process, but limiting the right of appeal minimises any delay. Recent government figures make it clear that the number of so-called departure applications are extremely small—8,000 out of more than 6 million planning applications in the past decade, or 0.15 per cent. It could also help to ensure that local councils put sufficient weight on policies in the democratically agreed plan and strengthen mandatory pre-application discussions for major developments introduced by the Bill. Indeed, in New Zealand, where such an appeal right exists, it acts as a powerful incentive on all parties to focus on pre-application discussions.

A limited third-party right of appeal was a manifesto commitment of both coalition parties. Introducing one would help to make a reality of the goals of this Government to build public faith in decision-making and encourage participation in the planning process. It would also help to make the local plan sovereign. I beg to move.

4.45 pm

Amendment 170CCA (to Amendment 170CC)
Moved by ***Lord Reay***

170CCA: After Clause 124, leave out lines 45 and 46

Lord Reay: My Lords, the present appeal system is unbalanced. Developers have an untrammelled right of appeal against the refusal of any planning application by a local planning authority. The appeal goes to a planning inspector—usually at a public inquiry—who hears the case as if for the first time. He can reverse the local planning authority's decision on whatever grounds he chooses. Local communities, on the other hand, have no right of appeal. Once a planning permission is given by the local planning authority, that is the end of the story.

Prior to the general election, that was a situation that both the parties now in government recognised was unfair and promised to redress. *Open Source Planning*, which set out Conservative planning policy, promised to make the system symmetrical both by allowing appeals against local planning decisions from local residents—the broad purpose of the amendment of the noble Baroness, Lady Parminter—and by limiting the grounds on which developers could appeal to, first, where the correct procedure had not been followed, whereby cases were to be dealt with by the Local Government Ombudsman, and, secondly, where the decision contravened the local plan. I believe that Liberal Democrat policies were similar.

Both those policies would have advanced the principle of localism; both have now been abandoned by the Government. The arguments they use are incoherent. In opposing the third-party right of appeal, the Minister said that he wanted fewer appeals to the Planning Inspectorate and more decided locally. In that case, why not limit the developer's right of appeal?

Planning policy has been captured by the Treasury, which seems to believe that any balance in planning policy threatens economic growth, and the Treasury is no doubt being cheered on by the Department of Energy and Climate Change, desperate to carpet the country with its useless wind farms.

I wholeheartedly support the amendment of my noble friend Lady Parminter, which seeks to reintroduce a community right of appeal. Such a right of appeal must clearly be circumscribed in some way and, as she explained, the amendment limits those entitled to appeal to local ward councillors and local parish councils.

However, there is one condition that my noble friend has introduced which I question, and I have tabled Amendment 170CCA to remove it—namely, that an appeal can go forward only if the planning officer recommends refusal. In other words, only in cases where the local authority had granted a planning application against the recommendation of the planning officer would the community right of appeal come into play. For the community, everything would hinge on what the planning officer recommended. If the planning officer recommended acceptance, and the local authority endorsed that recommendation, then the community would have no right of appeal.

That seems to me to give too much power to the planning officer. I do not see why it is the unelected planning officer who will in effect be able to decide whether there is any right of appeal against the decision of the local planning authority. If my amendment, and that of my noble friend to which mine is an amendment, were adopted, the effect would be that, whatever the recommendation of the planning officer, the community would have a right of appeal against decisions of the local planning authority. That seems to me to be more democratic.

Amendment 170CF, the other amendment in my name, seeks to deal with the developers' right of appeal. That was suggested to me by the CPRE. I do not feel committed to it in its present form; indeed, I can see that there are reasons why it might be preferable to have a simpler amendment that would require any

appeal to be confined to where the original decision by the local planning authority had contravened the local plan. If the refusal of the local planning authority were in conformity with the local plan, the developer would have no right of appeal. That would put Conservative and perhaps also Liberal Democrat policy back to where it was before the election. It would also chime with what Ministers keep saying about their wish to make the local plan sovereign, as my noble friend has pointed out. Would the Minister be tempted by such an amendment?

On the other hand, if the Government were to persist in their refusal to allow a community right of appeal, and at the same time do nothing whatever to limit the current right of appeal of the developer, so allowing the present unlevel playing field to be maintained, they would have revealed their words about wishing to ensure that fewer decisions go to public inquiry to be much empty waffle. The intentions that they express to give primacy to local concerns would be exposed as insincere, sacrificed to the Treasury's false belief that this is the way to get economic growth going and to the lunacy of the Government's climate change fanatics.

Lord Judd: My Lords, the noble Lord, Lord Reay, is nothing if not challenging intellectually. I find myself very much in support of some of the issues which he raises in his amendment, but I do not support one of them. On one point, I strongly disagree with him. The profession of the planning officer is a very honourable and demanding one, and with all the subjective pressures which operate in society—sometimes very crudely with very considerable amounts of money and innuendo about possibilities and non-possibilities—it is very important to have the objectivity of a professional in the middle who can look at the law and at the overall social challenges and get matters right. It seems to me that, if a person has put his profession on the line and made a particular recommendation, that is very important in deciding whether an appeal is appropriate. I am afraid that on that issue I strongly disagree with the noble Lord, Lord Reay.

I certainly do not see my role in this House as helping to put the Conservative or Liberal Democrat policy back on course, but we have a responsibility to try to be objective and to see valid points that are made and, when they are made, to support them. In the middle of this, there are some very important and valid points. I referred to some of them in an intervention on a previous amendment. I am deeply concerned about the trend towards putting commercial economic interests above social, environmental and scenic issues. I strongly support anything that can be done to increase the well-being and dynamism of our economy—of course I want that—but my thinking does not totally coincide with that of the noble Lord, Lord Reay, as I also believe very strongly that wind power has a contribution to make. I put it to the noble Lord that if you have alternative energy, it will always be an aggregate of less dramatic quantities of energy than we have had from some of the methods with which we are familiar.

Therefore, I do not think it is an issue of being on the side of wind power or against it. I am very worried by those who turn anti-wind power positions into a kind of ideological cornerstone. The issue is where you put the wind farms; and the issue is how you take into account the social challenges and social needs, so that you do not end up with the least articulate members of society becoming the waste bin for all projects because everyone else has been able to fight them off. There is a huge social planning job to be done, but planning will succeed only if it carries the sympathy and understanding of the population as a whole. There is of course a great deal to take seriously in the Government's position, about making democracy as meaningful and relevant as it possibly can be, and as near to the people as possible. Therefore, the position of the communities is crucially significant.

I believe that, if one looks at the Bill as a whole—not just on this issue, but on a lot of the issues that have been so painstakingly debated by colleagues in the course of the Bill—there is a very strange underlying paradox. The name of the Bill, and the cause of the Bill, is localism and enhancing local democracy; the effect of the Bill is an unprecedented concentration of central power. That has to be countered. It seems to me that from that standpoint the noble Lord is right. It is of course a great temptation to have increased authority for the Secretary of State at the centre, and all his civil servants working with him. If I was a civil servant with responsibilities in this area, I would get terribly vexed and frustrated at all this local democracy that was getting in the way of absolute logic; but if we are to have such increased authority at the centre, then it is very important that we make sure that there are firm rules about how that frustration is brought into play.

I think that the amendment of the noble Lord, Lord Reay, does something helpful: it in a sense takes the whole theoretical purpose of the Bill, and says, "Right, if we really mean what we say here, we must have codes by which the Minister is operating in his decisions which override local wishes, and we must make sure that those are limited, and that they are clear, explicit, and understood". As for the amendment of the noble Baroness, Lady Parminter, she is absolutely right: it is a charade, a nonsense and a provocation to talk about a Localism Bill and then deny the community the right to appeal. Of course the community should have that right.

I conclude by making one point again—and I know that the Minister, who has not himself been participating in this debate, has been very good on this issue, and very sympathetic and understanding, as have some of his colleagues. If we talk about the importance of generating a vigorous economy, and giving priority to the measures that are necessary to make our economy strong, why do we want this? It is because we want a decent, civilised place in which to live. We want to have a society worth living in, and such a society needs a strong economy underpinning it. That is the whole point about the issue of balance: how do we ensure that we have strong policies, but at the same time that they are not so unduly, at the price of the quality of the wider dimensions of our society? That is why I repeatedly come back to the point of how previous generations ruined the countryside unnecessarily: we can now see with hindsight that it could all have been done much better. I think that the noble Lord is right, again, to be vigilant on these issues, although I profoundly

[LORD JUDD]
disagree with him on some of his observations. I hope that the Government will take seriously what he and the noble Baroness have been arguing in their amendments.

Lord McKenzie of Luton: My Lords, we are fundamentally in listening mode on this issue. I would particularly like to listen to the Minister's explanation as to why his party seems to have reversed its view on third party rights of appeal. If that is not the case, then we would be interested to know. I would also be interested to hear his views on the comments of my noble friend Lord Judd and of the noble Lord, Lord Reay. Each of them in a different way raises concerns about the planning system being bent to issues of growth and commercial development and that balance going astray. The Minister will be aware, if he can think back that far, that right at the start of our deliberations we had debates about getting the issues of the purpose of planning in the Bill, definitions of sustainable development, and the embedding of sustainable development at NPPF level, at local development framework level and at neighbourhood level, as one way of trying to make sure that the concerns that are increasingly being raised could be dealt with effectively.

At the end of the day, that issue comes back to the NPPF—for as long we do not have that and cannot debate it, we are always going to be left with this uncertainty. I think it is an opportune moment to hear directly from the Government as to whether they accept that charge or whether they maintain that the more traditional approach to sustainable development and a balanced approach, as my noble friend Lord Judd enunciated, is still their position.

5 pm

Lord Shutt of Greetland: My Lords, as ever, we come back to this whole business of things being decided locally. I thank noble Lords who have taken part in the debate. This is my third appearance today and I am having, once again, to suggest that these amendments are not ones that the Government wish to support at this stage. Planning has got a key role to play in creating the conditions for economic recovery. We should not lightly agree to any measures that add uncertainty, cost and delay to recovery and growth. Development that is permitted after consultation with communities and consideration by the local planning authority should not have unnecessary hurdles placed in its way. A similar amendment seeking a community right of appeal was considered in the other House. In the relatively small number of cases where a decision is made that grants planning permission that is not in accordance with the development plan, it is only right that the locally elected planning authority should make that decision and not the Planning Inspectorate. The local planning authority is ultimately responsible for exercising its judgment in reaching a decision. Safeguards are already built in to the system of decision-making. Applicants will have invested considerable time, money and effort in preparing their proposals. They should expect the local planning authority's decision to be a corporate one and not subject to challenge by other members of the council.

I agree with the noble Lord, Lord Reay, that the plan should be the starting point for the determination of a planning application. Legislation already provides for this. Local planning authorities should feel confident in defending planning decisions made in accordance with an up-to-date plan, if challenged at appeal. Where appeals are made, the Secretary of State must operate within the law. As a decision-maker, he is entitled to take other material considerations into account when reaching his decision. This is essential if we are to ensure that the planning system creates the conditions for economic recovery and sustainable development. Material considerations may change over time and should not be tightly defined, as this amendment seeks to do. The amendment on determination of appeals goes too far. It is unnecessary and will have a negative impact on growth and sustainable development. I hope the noble Lord appreciates why we do not therefore accept it.

The noble Lord put it to me that I might be tempted. Words have been spoken about why there may be changes in position—I am not aware whether there are any such changes, but I understand what has been said and accept it. All I would say is that at 5 pm on 20 July, I do not think I am in a position to say that we will accept this. However, the rest of July and August beckons and I do recommend that noble Lords use it well. If they believe that they have got concerns that can be drawn to the notice of the Government about ways that this Bill may be still further changed, I recommend that they use their endeavours. This is, as I have said before, Committee stage, but I trust that in the circumstances at the moment, the noble Baroness will feel able to withdraw her amendment.

Lord Reay: I will say one thing in reply to what the noble Lord, Lord Judd, said about planning officers. I have no intention of denigrating planning officers. They do an invaluable job and can be highly impressive. However, their job on the whole is to advise the democratically elected planning authorities. The amendment would put them in quite a different position, unlike the position that they normally occupy. However, in view of what the Minister has said, I am happy, for the moment at least, to withdraw my amendment.

Amendment 170CCA (to Amendment 170CC) withdrawn.

Baroness Parminter: I thank my noble friends for making powerful contributions in support of the case for a community right of appeal. I take some comfort from the words of the Front Bench and I will over the summer use all the endeavours that I have at my disposal, and those of my colleagues, to press the case for delivering what the Government want to achieve in terms of helping people to have a powerful say in local planning and decisions that affect their lives. In view of the time, I beg leave to withdraw the amendment.

Amendment 170CC withdrawn.

Amendment 170CD

Moved by ***Lord Best***

170CD: After Clause 124, insert the following new Clause—
"Consideration of planning applications: design review panels

In section 70 of the Town and Country Planning Act 1990 (determination of applications for planning permissions: general considerations), after subsection (2) insert—

"(2A) Where an application has been made under subsection (1), the authority may submit it to a design review panel for consideration.

(2B) Where an application has been submitted to a design review panel, the panel may make recommendations to the authority regarding the quality of design in the application.

(2C) Where recommendations have been given, the authority shall, in dealing with the application, have regard to such recommendations so far as material to the application.

(2D) In subsection (2A) "design review panel" means an independent cross-professional panel appointed to examine and evaluate the design of the proposed development.""

Lord Best: My Lords, this amendment concerns design review panels and is supported by the noble Lord, Lord Tyler, and the noble Baroness, Lady Whitaker. It goes some way to answering concerns expressed by noble Lords yesterday about giving prominence to design, which can seem a subjective concept—the argument that beauty is in the eye of the beholder. The amendment gives local authorities permissive powers to submit applications for planning permission to a local design review panel and then to have regard to the views of this independent, cross-professional panel. It accords with my self-imposed ordinance to avoid amendments that extend central government's powers over local authorities. It introduces not a duty but a permissive power.

An amendment proposed in the other place would have put an onus on developers to take their plans to such a panel. It was rejected by the Minister, Greg Clark, because it would have added to the regulatory burden on builders. My lighter-touch amendment avoids this hazard by putting the onus on local authorities, but without any compulsion on them—"may", not "must". Independent design review panels are working well in several areas and have proved their worth. Support is now available through a network of panels managed and facilitated by Design Council CABE, which advocates adoption of key principles, spreads good practice and works with the RIBA and the RTPI.

The amendment suggests that, with local authorities short-staffed and often struggling with their planning capacity, the time has come to extend the use of design review panels that so helpfully pull in expertise from outside the council to see that design is taken on board in local authority decisions. I beg to move.

Baroness Whitaker: My Lords, before speaking to Amendment 170CD, perhaps I may express my extreme disappointment with the usual channels at their arrangements, which effectively prevented me from carrying out the job of scrutinising legislation here and speaking to Amendments 170B, 170C and 182, to which I added my name, because I was moving an amendment tabled in my name alone in the Education Bill Committee in the Moses Room. I hope that there will be no repetition of such a ridiculous arrangement in September so that noble Lords can carry out the work for which they were appointed.

I turn to Amendment 170CD. The noble Lord, Lord Best, explained clearly what it is about. I will add that the Housing Minister Greg Clark's awareness of the importance of good design is well known and appreciated. This new proposal is almost a tautologous requirement. One might say that there would not be much point in sending off an application to an independent panel and then paying no attention to its recommendations. This is the lightest of light touches. It is a gentle nudge in the direction of trying to make sure that, in the words of Greg Clark,

"the built environment is better than it otherwise would be, and that it is beautiful and functional for people to live in".—[*Official Report*, Commons, Localism Bill Committee, 1/3/11; col.718.]

I hope the Minister will understand that. I am sure she will and that she will agree to accept the amendment.

Lord McKenzie of Luton: We had a canter round this yesterday—at least it seems like it was yesterday. We are very supportive of these amendments.

Baroness Hanham: My Lords, we did indeed discuss this yesterday and we had a bit of discussion on the subjective nature of design decisions. I think we all agree that design is an enormously important part of planning, as indeed it is an important part of developing and ensuring how a community looks and what an area is like.

I have great admiration for the noble Lord, Lord Best, but I think this amendment is unnecessary. As he has already pointed out, planning authorities get independent expert advice from the Design Council, and local planning authorities are already able and indeed encouraged to submit applications to design review panels and to heed their impartial, expert advice. I am not sure that putting any more legislation forward on this will do anything. However, we will undertake to give encouragement to local authorities to make sure that they understand that design review panels are a good thing. So there really is no reason for this. We need to keep it out of legislation. I understand the purpose behind it but there are already proper ways of dealing with this. I hope that the noble Lord will feel able to withdraw his amendment.

Lord Best: My Lords, I take some comfort from the Minister's undertaking to ensure that strong encouragement is given to local planning authorities to take on board the value of design review panels. For the moment, I beg leave to withdraw the amendment.

Amendment 170CD withdrawn.

Amendment 170CE

Tabled by ***Baroness Gardner of Parkes***

170CE: After Clause 124, insert the following new Clause—

"Application of Party Wall etc. Act 1996 to subterranean development

After section 20 of the Party Wall etc. Act 1996 insert—

"20A Application to subterranean development

The requirements of this Act apply to any subterranean development or proposed development.""

Baroness Gardner of Parkes: My Lords, on the groupings list it says "already debated" after Amendment 170CE and I would like to make it clear

[Baroness Gardner of Parkes]
that it was not debated. It was one of the amendments in a group which was not moved. We consider the subterranean issue so important that it will be debated on Report. Could that record be corrected, so that it is not listed as already debated?

Amendment 170CE not moved.

Amendment 170CF not moved.

Amendment 170CG

Moved by ***Lord Berkeley***

170CG: After Clause 124, insert the following new Clause—

"Matters to which local authorities must have regard

(1) When considering planning applications for, in particular, warehouses, distribution sites, ports, airports and airfields, local authorities must have regard to the impact on—

(a) businesses,

(b) leisure facilities,

(c) the provision of emergency services,

(d) the environment, and

(e) the local economy.

(2) When considering planning applications which are expected to result in a significant increase in the use of local transport infrastructure, local authorities must have regard to—

(a) achieving the minimum disruption to local transport infrastructure,

(b) achieving efficient freight access to businesses,

(c) encouraging the use of sustainable transport,

(d) ensuring pedestrians, disabled people and cyclists are appropriately provided for, and

(e) possible alterations to the infrastructure to make use of future low-carbon transport.

(3) Local authorities must adopt planning policies to protect transport routes which may reasonably be believed to have a role in providing low-carbon transport in the future."

Lord Berkeley: My Lords, in general planning terms, this amendment seeks to establish how larger developments, which we discussed yesterday, fit into the local planning framework. Quite often, with big developments—ports, airfields, airports, warehouses, distribution centres or whatever, or even energy projects, that we have discussed at length—there are problems with the local facilities getting overloaded. It is very important that there is a link between the way that these big projects get permissions and what happens around them locally, which may or may not be subject to Section 106 agreements or other agreements.

Looking particularly at subsection (2) of this amendment, one can envisage a significant increase in the use of local transport and heavy goods vehicle transport. Therefore, it seems important to encourage sustainable transport here and also not to forget the needs of pedestrians, cyclists and disabled people and generally to encourage the use of low-carbon transport. It may be seen as an amendment to introduce something we have talked about before—general sustainable development. I hope that it is more than motherhood and apple pie and that the Minister, in responding, may say that it will all be in the national planning policy framework, which is now imminent, I believe. I will look on the website when I leave here and see if it is. It would be good to hear from the Minister whether these kinds of issues will be in the NPPF, or, if not, whether the Government look with favour on amendments such as this. I beg to move.

5.15 pm

Baroness Hanham: My Lords, the noble Lord has introduced an interesting amendment which rustles between two responsibilities. If this were a very big application, such as those in the first part of the amendment—sites, ports, airfields—that would not be the responsibility of local authorities, that would be for the new planning inspectorates or commission. On the other applications, I think that that would happen already—it is all part and parcel of our planning considerations—and while we understand the concern about balancing the transport system in favour of sustainable transport, which the noble Lord mentioned, he should understand that is only part of what is included.

Many of these areas are already taken into account—I am trying to go back to my own limited experience from years ago—and most are things that the planning committee would be interested in, while the bigger applications will be dealt with by other means, although local authorities will, of course, be able to comment on them as they go along. I hope the noble Lord will withdraw his amendment.

Lord Berkeley: I am very grateful to the Minister for that response. She is absolutely right that on big projects, these things should be taken into account in the whole, but I still have a concern about something falling between two stools, if that is the right analogy. Perhaps I can have a discussion with her between now and Report, or read *Hansard*. In the mean time, I beg leave to withdraw the amendment.

Amendment 170CG withdrawn.

Amendments 170CH to 170CK not moved.

Clause 125 agreed.

Amendment 170CL

Moved by ***Lord Whitty***

170CL: Before Clause 126, insert the following new Clause—

"Local housing strategy

(1) All Local Housing Authorities in England must draw up an analysis of housing supply and demand in their areas and this analysis should include all forms of tenure in their area and cover at least the following—

(a) trends in housing supply and demand in the owner occupied, private rented and social housing sectors,

(b) trends in housing prices and rents,

(c) new developments, new build and conversions,

(d) empty properties, and

(e) second homes, and

this analysis should be related to broad demographic and employment trends in their areas.

(2) On the basis of this analysis each Local Housing Authority in England should draw up a rolling ten year housing strategy for their area.

(3) All measures required of local housing authorities in relation to social housing and homelessness as a result of Chapters 1 to 4 of this Part of the Act shall be required to be undertaken in consistency with the housing strategy required by subsection (2)."

Lord Whitty: My Lords, we now move on to the part of the Bill dealing with housing, social housing particularly, that probably has the most direct and immediate effect on millions of people around this country. Many of the issues we have been discussing so far are, of course, very important, but for most people they will seem somewhat esoteric. For the millions who are in social housing, wish they were in social housing or ought to be in social housing, the issues dealt with by the subsequent clauses in relation to changes in the provisions on tenure, the responsibilities on local authorities, changes in the obligations on local authorities in relation to homelessness and changes in housing revenue will all hit, in one way or another, positively or negatively, many of our fellow citizens. In addition to that, in the welfare Bill which we were supposed to discuss yesterday, there is a major change in the housing benefit provisions which will affect many of the same people.

This part of the Bill is very important for a lot of our fellow citizens. While I do not want to give the usual channels too hard a time, the fact that we are moving at this stage into this section of the Bill—and I suspect we are unlikely to allow all the amendments which are tabled in this section to be debated by 7 o'clock—is a matter of some regret to me. I hope there is still time for the usual channels to discuss that.

However, my attempt in this amendment is to set a background for the discussion on the social housing provisions. We did touch on this issue in part in discussions on planning under an amendment moved by the noble Baroness, Lady Greengross—who is not currently in her place--but I think it is more appropriate to discuss it here. If one just reads straight through this Bill, social housing is dealt with in isolation and in a very bureaucratic, contractual, legal and financial way. The reality is that social housing has to be seen against the background of the housing market as a whole, local authority by local authority.

I declare an interest. I have recently become chair, with a non-pecuniary interest, of a new organisation called Housing Voice, which deals with social housing. The provision of social housing is only one part of the issue. We need to look at the total supply and demand of housing, nationally and area by area, and to relate it to the demands and requirements of the population; the economic demands for employment within the area and travel to work from housing, and the effects of inward and outward migration, because our populations are changing dramatically. Every local authority, in its planning and social housing provisions, must recognise its responsibility to ensure that there is adequate housing for all those who need it, and that as far as possible, supply and demand are reasonably in balance. They must therefore provide housing, in whatever form of tenure, at a price or a rent which is affordable for most people. None of the housing market currently meets those propositions nationally, and in most parts of the country it does not do so locally either.

In the owner-occupied sector, successive Governments have had policies to increase the proportion of people in this type of housing, and some of that has been significantly successful. I do not wish to reverse that, but that fact is that nowadays, it is virtually impossible for young families to get into the owner-occupied market, both in our inner cities and in our rural areas. The latest information is that the average age for getting a first mortgage is 37, and in a few years' time it is likely to be well over 40. Those of us who were fortunate enough to get on to the homeowning ladder in our twenties do not recognise that picture. Unless one has some support from parents or elsewhere, one cannot get a mortgage if one is much younger than 40 these days. Even for those who do have this support, the deposit required rules it out for many people, and of course advances from building societies and banks in this area have largely reduced as a result of the housing crisis.

Housing for all our population, and particularly for young families, young couples and people who have to move away from their home area for work, is not now available. There are far too many people. The private rented sector is not much of an alternative: in our inner cities, particularly in London, the cost of private renting puts it out of reach for many people. Despite attempts by the previous Government to bring more housing into the private rented sector, particularly for key workers and so forth, the amount of private rented accommodation available, never mind its price, is also far too limited.

In the social housing area itself, we have a situation where there have been cutbacks in the amount provided and 4 million people in England alone are seeking to be included on housing lists. The provisions on social housing, which we shall come to later, need to take this into account. All this relates to the shortage of new housing coming on to the market, whether by new build, conversion or properties coming on to the market in other ways. Yet our society is moving in exactly the opposite direction. We have a degree of atomisation in the form of smaller households, as well as households forming and breaking up. People are living longer and moving around more to seek work or education. All this increases the demand for accommodation. The terrible truth is, though, that at the moment the rate of household formation is running at twice the rate of the provision of new housing. That is a completely unsustainable position nationally, and locally, as we know, conditions are even worse. There is massive overcrowding in many inner city areas, as well as homelessness since people cannot find accommodation. Moreover, in many rural and suburban areas the housing situation is extremely difficult for young people.

This is an issue not just of social housing, but of the housing market as a whole. The previous Government attempted to do something about it by setting regional targets. By and large that did not work completely, although there were some successes. The present Government have abandoned those targets. In the context of this Bill at least, although I might argue the point elsewhere, I have no objection to that because the amendment is designed to recognise the localism of the issue and to place the responsibility clearly on local authorities to work out their own ambitions and decide the appropriate housing provision for their own populations. This clause therefore attempts to make it

[LORD WHITTY]
clear that it is their responsibility. They need to look at the local population and what is happening in their areas both economically and demographically, and assess the quantity and quality of the available housing for the various different groups. That is localism.

Some may object to the clause because it allegedly imposes an additional duty on local authorities, but in fact this duty is absolutely central to the local authority's ability to provide for the well-being of their communities. In one sense it states the obvious, but it also puts into context the clauses that follow it. If it is to work, local authorities will need to go through the processes outlined in the amendment. They will need to assess need, economic trends and likely future provision. No doubt there are better ways of drafting this provision, and I am certainly open to that, but somewhere in this Bill it is necessary to have a provision which sets out what local authorities must undertake. It is not prescriptive in terms of the methodology they use or the numbers they put into their assessments for future plans and strategies, nor is it presumptive in terms of the balance between different forms of housing and of tenure. But it does require local authorities to recognise these wider obligations.

If we do not have a provision such as this, which gives the wider context, it could be interpreted that all we are concerned about in this Bill is, in effect, increasing flexibility in the social housing market and reducing the constraints on it by raising rents and eroding security of tenure, excluding from our richer areas people who are paying their rent with housing benefit and, effectively, trying to squeeze out of the existing stock a greater use of social housing. However, even if all that was to work—by and large I am against most of it—it would not solve the problem of the housing shortage across the board. We need to look at our housing supply and new build so as to offer quality and choice to our population. In the absence of a policy from the top down—although I do not dispute that—we need one that is built up local authority by local authority. That should be seen in this Bill and more widely as a central responsibility of the local authority in conjunction with its community. This clause would set the context in which that operates, so I hope that the Government will give at least some consideration, if not to accepting the precise wording of the amendment, to accepting the intention behind it. I beg to move.

5.30 pm

Lord Shipley: My Lords, I rise in support of the amendment of the noble Lord, Lord Whitty. Given the range of the amendments that are about to be debated, having the context to them is very important in understanding the strategic problem around housing and homelessness. We have a rising number of households. The noble Lord, Lord Whitty, is absolutely right; we should be building somewhere between 200,000 and 250,000 new homes a year to keep abreast of new household formation. We got half the figure—around 139,000—last year.

Meanwhile, the housing market is volatile. There is a rising number of mortgage repossessions. There is 1 million more people renting their homes now than were renting six years ago, largely because of the economic situation and the difficulty of getting a mortgage. There are now more people wanting to rent than there are vacancies. In some parts of the country, rents are rising much faster than inflation, reducing individual capacity to save. Disposable incomes are declining, which adds to the problem. While short tenancies might be acceptable for many single people, they are not at all good for families where continuity and security matter, or for neighbourhoods where continuity builds social cohesion.

There will be very great pressure on the rented sector over the next few years. It is crucial that we ensure the protection and rights of tenants rather than seeing everything from the perspective of supply. We are not building enough homes, which is a failure of successive Governments over many years. This situation must be addressed urgently. It is the context of my view that we need to have local housing strategies because each part of the country will be different. Unless we understand the problem that we are trying to solve, we will not have the evidence base, making housebuilding programmes, the modernisation of homes and so on more difficult to achieve in the right numbers.

Lord Kennedy of Southwark: My Lords, first, I thank the noble Earl, Lord Attlee, for his kind words from the Government Front Bench. They are much appreciated. The Opposition fully support the amendment in the name of my noble friend Lord Whitty. The proposal is strategic and practical. It sets up a context for the debate and other sections of the Bill. It provides both the Government and the local authority with valuable information for assisting the planning for housing need in the future. I hope that the noble Baroness will be able to accept my noble friend's amendment. If not, I hope that she will feel able to take it away and look at it over summer, maybe in the terms referred to by the noble Lord, Lord Shutt of Greetland, in the previous amendment.

Baroness Hanham: My Lords, welcome to the noble Lord, Lord Kennedy. He was sharp, swift and brief—brilliant. We will have more of the noble Lord, if we might. On the amendment of the noble Lord, Lord Whitty, supported by the noble Lord, Lord Shipley, I am once again going to say that we do not need it. While I admire the verve with which the noble Lord, Lord Whitty, has presented his case, there are already statutory provisions.

Local authorities are already under statutory provisions to provide plans for the housing needs of their population and to discharge their housing functions in accordance with their strategic priories as detailed in their housing strategies. Section 13 of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to keep under review matters that are likely to affect the development of their area, including size, composition and distribution of the housing for their population. In addition, planning policy statement 3 and the associated guidance on strategic housing assessment make clear that local authority plans should be informed by a robust evidence base of housing need and demand in its area for market and affordable housing.

Section 87 of the Local Government Act 2003 provides a power for the Secretary of State to require all local housing authorities to have a housing strategy, so the provision is there already. It is well understood that local authorities should be more than clear about the requirements in their area in this regard. The current guidance on local housing strategies in England stresses that the local housing strategy is the local housing authority's vision for housing in its area. It should set out objectives, targets and policies on how the authority intends to manage and deliver its strategic housing role, and provides an overarching framework against which the authority considers and formulates other policies on more specific housing issues. That is the strength of my argument in saying that we do not need the amendment. However, I understand the concern that lies behind it and behind the comments of the noble Lord, Lord Shipley. We are dramatically underhoused.

The noble Lord, Lord Shipley, has drawn attention to the limited housebuilding that has occurred over a number of years. Last year we had one of the lowest housebuilding programmes since 1923. We are trying to boost housebuilding. We have introduced the new homes bonus and are trying to encourage building through various means such as shared ownership and buy now pay later schemes. There are all sorts of plans to increase housing but you cannot do it overnight; it takes time to develop. However, there is no misunderstanding on the part of this Government that housing and a housing strategy are needed. With the assurance that this amendment is not necessary for the reasons I have given, I hope that the noble Lord will withdraw it.

Lord Whitty: My Lords, I thank the noble Lord, Lord Shipley, and my noble friend Lord Kennedy for their support for the amendment. I also thank the Minister for at least appreciating what lies behind the amendment. I understand that bits and pieces of the requirement for a strategy are in various bits of existing legislation. However, the most coherent expression is to be found in the planning guidance. Indeed, I have sought to gather some of the themes of the planning guidance in one place and to give it statutory backing. The noble Baroness says that the amendment is not necessary. I may return to it but for the moment I accept that. As she rightly says, this is a long-term problem. It has arisen over a long time and will take a long time to resolve. Those of us who are veterans of the housing debate know that I was not particularly supportive of various aspects of the previous Government's policy in this regard. I have yet to be convinced that the new Government's policy is likely to deliver more housing, particularly affordable housing for the kind of people I have talked about.

There is a need for a strategic framework here. The Localism Bill, in so far as it redefines the decisions that are to be taken locally, is probably the right place for it. I will consider carefully what the noble Baroness has said. However, at some point in this whole housing policy debate and in the Localism Bill we will have to re-emphasise the fact that the national drivers—in so far as they worked—have largely gone, and that the real driving force in solving what is admittedly a long-term housing problem now rests with our local authorities. If I have at least got that message across and the Government follow it through, I will have achieved something. I have taken 20 minutes over this amendment, for which I apologise. I may return to it at Report, but at this stage I beg leave to withdraw the amendment.

Amendment 170CL withdrawn.

Clause 126 agreed.

Clause 127 : Allocation only to eligible and qualifying persons: England

Amendment 170CM

Moved by ***Lord Kennedy of Southwark***

170CM: Clause 127, page 119, line 16, after "(4)" insert "and (7A)"

Lord Kennedy of Southwark: My Lords, on behalf my noble friend Lord Patel of Bradford, I beg leave to move Amendment 170CM and speak to other amendments in the group.

The Opposition have considerable concerns with this section of the Bill as presently drafted, and we hope the Government will be disposed to accept a number of the amendments that have been tabled by noble Lords. Local authorities will no longer be required to maintain open lists for persons seeking housing assistance. Instead, they will be able to impose qualifying requirements for applicants. They will also be able to discharge their housing duty by securing an offer in the private rented sector. Existing tenants seeking a transfer will no longer be required to go through the local authority allocation scheme.

As currently drafted, the legislation could lead to existing tenants with reasonable preference in England being disqualified from seeking a transfer under Part 6 of the Housing Act 1996, the only route to which such tenants may transfer according to Clause 126 of the Bill. For example, if Mr A had been a tenant for two years, having moved to the area shortly prior to his tenancy starting, and a local housing authority then introduced a new local connection rule stating that applicants must prove local links to the area going back at least five years to qualify for housing, then Mr A could find himself trapped in unsuitable accommodation and unable to transfer or apply for other areas with similar long-term local connection requirements. This would be the case even if he were willing to downsize to a similar home and free up much-needed family accommodation for another household.

This amendment, adding a new subsection to new Section 160ZA, would ensure that whatever qualifying criteria local housing authorities apply to new applicants, existing tenants with reasonable preference would be deemed to be qualifying by default. Existing tenants without reasonable preference are being taken out of the allocation scheme under Clause 126 of the Bill so will be able to transfer without competing against households with more urgent needs, and would therefore already be protected from this potential trap. It should be noted that the amendment would lead to existing tenants qualifying for housing even if they were guilty of serious unacceptable behaviour. However, it would be straightforward for local housing authorities to

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design their transfer policies in a way that would prevent tenants with good behaviour losing out as a result of this important protection.

I move to other amendments in the group. Clauses 129 and 130 will enable local authorities to discharge their homelessness duty by placing people in the private rented sector without due regard for the wishes of homeless applicants. At Commons Third Reading the Minister, Andrew Stunell MP, said:

"I recognise that there are some concerns and I am prepared to consider further the need for additional protections for homeless households placed in the private rented sector".—[*Official Report*, Commons, 18/5/11; col. 408.]

Homeless households should continue to have a choice of whether a private rented sector tenancy is appropriate for them. If this choice were removed, vulnerable homeless households, who may most need the stability of a social home, are unlikely to be in a good position to advocate for themselves. This may result in local authorities discharging their duty into the private rented sector, whether or not this is the best option for the household concerned, particularly in areas of high housing demand. Amendments supported by Crisis were tabled in the Commons in Committee to introduce a two-stage discharge of the homelessness duty to the private rented sector, strengthening the duty to help homeless people not in priority need, to require local authorities to discharge the duty only to accredited landlords, and to ensure that any property a homeless household is placed in is affordable.

Despite the fact that large numbers of vulnerable households are being placed in private rented accommodation, often at a considerable cost to the taxpayer, there remains very little assurance of standards in the sector. A number of local authorities have raised concerns about the standard and suitability of some private rented sector accommodation. They feel that some form of protection should be put in place to ensure that the properties are of good enough quality to meet the needs of their clients. As homeless households are likely to be offered accommodation in the cheapest third of the private rented sector, there is a risk that they will be placed with private landlords who are wholly unsuitable to be letting homes to vulnerable people. In the past, this included landlords who have consistently breached housing legislation and undertaken other forms of unlawful practices.

Research by Shelter—the summary of its survey of environmental health officers—found that 47 per cent of respondents had encountered examples of landlords engaging in the harassment of illegal eviction, or both, of tenants, and 99 per cent of respondents had come across landlords who persistently refused to maintain their property in a safe condition. Moreover, 36 per cent of respondents said they frequently came across such cases. Private rented accommodation is often of poor quality; according to the *English Housing Survey*, 40 per cent of private tenants live in non-decent homes, compared with 23 per cent of social tenants and 29 per cent of owner occupiers.

As I said at the start of my remarks, the Opposition have considerable concerns about this part of the Bill as presently drafted. We hope that the Government will listen carefully to your Lordships' House and accept a number of the amendments, or indicate that they have heard the concerns, take them away, reflect on them over the summer and bring amendments back on Report.

5.45 pm

Lord Shipley: My Lords, I shall speak to a number of amendments standing in my name and those of my noble friends on these Benches, and I shall speak first to Amendments 170D and 171A. They would extend from two to five years the period in which the homeless duty on a local authority would recur, and provide for a household accepted as homeless to receive reasonable preference on the local authority's allocation scheme during the five years, arising from the household's need for stable housing. Without these amendments some very vulnerable people could face increased vulnerability.

The Government's housing White Paper last November confirmed their commitment to tackling homelessness and protecting the most vulnerable in society, and confirmed their belief that social housing should continue to be prioritised for the most vulnerable, given that this could be the only way that they would gain access to a secure home. These are people who may have been in care, had a mental illness or disability, been a member of the Armed Forces, or served a custodial sentence. Groups such as these need security and support to set up and manage a home successfully. It is difficult to see why an acceptance that such people are priority homeless should now be so constrained.

The impact of changes to local housing allowance means that households dependent on full or partial housing benefit will be pushed into the cheaper part of the private rented sector without any reasonable preference for a permanent and affordable home. I believe and would suggest that the Government should stick to their commitment in their housing White Paper that the existing reasonable preferences categories should remain unchanged to ensure that social housing is clearly focused on those who need it most. Local authority duties cannot simply be discharged by offering a single short-term contract with a private landlord.

Amendment 171ZA provides a framework for the exercise of the right of review that is presently enjoyed by applicants for social housing. The present statutory scheme for allocation of social housing and the re-cast scheme proposed in Clause 128 contain provisions enabling applicants to seek reviews of adverse decisions on their applications. The problem is that the current Act and the new clause are silent as to the procedure to be followed if an applicant exercises those rights. Our amendment suggests that a fair mechanism for resolving reviews would be as laid out, and essentially replicates the procedural rights enjoyed by homeless applicants who seek reviews of homelessness decisions under the Housing Act 1996. The amendment also reflects basic good practice that some local authorities have already incorporated into their local schemes. The need for structure to be applied to review procedures was recognised by the Government many years ago, and I understand that an ODPM letter to local authorities sent on 11 November 2002 promised further guidance. That guidance is still to arrive and the amendment in my name makes good that omission.

Amendments 171D and 172A restore the requirement that a final offer of accommodation under the homelessness duty must be reasonable for the applicant to accept. In fact, these amendments to Clause 129 simply restore the law to its current position. At present, Section 193(7)(f) of the Housing Act 1996 provides that a housing authority shall not make a final offer of accommodation, including approving an offer of private sector accommodation, to a homeless applicant,

"unless they are satisfied that the accommodation is suitable for the applicant and that it is reasonable for him to accept the offer".

The requirement that it is reasonable to accept the offer has been removed by Clause 129(9) for no obvious reason and this amendment would restore that condition. A recent case in the Court of Appeal considered that while a flat may have qualified as suitable in terms of size and location, the council concerned should have gone on to consider the wider question of whether it was reasonable for the family to accept it, ruling that "suitability" and "reasonable to accept" are overlapping but different concepts.

This piece of legislation is very important where there are aspects of accommodation or more likely the surrounding environment that would not prevent the accommodation itself being objectively considered as suitable but would have a detrimental affect on the applicant. Examples could include the risks of racial harassment or violence by individuals unknown to the applicant, or a risk to the welfare of the applicant where the accommodation offered is in a neighbourhood associated with drug use or dealing and where the applicant is a recovering drug addict. It could include the perceived risk of harassment or violence by individuals known to the applicant, such as a violent ex-partner whose relatives, friends or associates live in the neighbourhood. I hope my amendment is seen as a sensible way forward; to restore the law simply to its current position. It is about making it clear in the Bill what process should be followed.

Amendment 173ZB would create a statutory duty on local authorities to record all approaches they receive from people in housing need, including those who apply for social housing, those who express an interest in applying, those who are considered to be homeless by the local authority and those who consider themselves to be homeless. Requiring local authorities to collect data on all housing or homelessness approaches that they receive would provide a clearer picture of the genuine level of housing need that exists in a local authority area. Such data are essential to inform the localised planning system and the local tenancy strategies introduced by the Localism Bill, particularly as restrictions on social housing waiting lists could reduce the extent to which these lists can provide an indication of housing need.

Amendment 173AA seeks to define the suitability of accommodation secured under homelessness duties; it should be affordable and take into account such matters as distance of the accommodation from employment opportunities, any disruption to the education of children and young persons, the risk to the applicant of isolation, the level of support available to the applicant in the district, such as closeness of families and friends, the availability of medical treatment where appropriate and any caring responsibilities of the applicant in relation to another person.

If local housing authorities are able to discharge their main duty with potentially one offer of private rented accommodation, it becomes much more important that this offer is suitable for the needs of the household. At Third Reading, the Minister Andrew Stunell said that he recognised there are some concerns and that he was prepared to consider further the need for additional protections for homeless households placed in the private sector. It is very welcome and I would be pleased to see the Government come forward with concrete proposals to deliver that objective.

It is a question of getting this on to the face of the Bill. At Second Reading, my noble friend the Minister stated that the accommodation crucially must be suitable, which covers a wide gamut of issues including affordability, size, condition, accessibility and location. We need that on the face of the Bill.

Amendment 173ZC is about a household being deemed to be in priority need but intentionally homeless. In this case, the authority must provide not only advice and assistance but suitable accommodation for a period that will give the householders a reasonable chance of finding accommodation for themselves. Amendments 173ZE and 173ZF are self explanatory, I hope. They relate to extending the period to five years to enable reapplication after a private sector offer and enable people to maintain the right to an offer for a longer period.

Amendment 1738B relates to the *Homelessness Code of Guidance 2006*, which states at paragraph 8.32:

"where a person applies for accommodation or assistance in obtaining accommodation, and:

(a) the person is an assured shorthold tenant who has received proper notice inaccordance with s21 of the Housing Act 1988;

(b) the housing authority is satisfied that the landlord intends to seek possession; and

(c) there would be no defence to an application for a possession order; then it is unlikely to be reasonable for the applicant to continue to occupy the accommodation beyond the date given in the s21 notice".

There is a major issue here, because the Secretary of State plainly considers that, ordinarily, a tenant in such circumstances—that is, one who has been properly served by a Section 21 notice—should be accepted as homeless by the local housing authority. The problem is that local housing authorities rarely do so, but will accept an application only at the point of eviction, thus causing anxiety to the tenant and his or her family, which could be avoided, and needless incurring of costs.

I realise that I have tabled a number of amendments. I would be very happy for the Minister to consider us talking further about some of these issues over the summer, but they are all exceedingly important in protecting the rights of tenants.

Lord Rix: My Lords, I speak to Amendments 171 to 173, which are scattered among other amendments in the group. Amendment 171 is concerned with the allocation of housing. Mencap, of which I am president,

[LORD RIX]
hears stories on a daily basis from parents of learning-disabled offspring about how difficult it is to find a suitable home for their son or daughter. That is why many people with a learning disability continue to live with their parents, often into late adult life. Mencap's report some years ago, *The Housing Timebomb*, highlighted that about 29,000 adults with a learning disability still live with parents who are over 70.

Although the "reasonable preference" groups—which guide local authorities and their decisions as to who should be housed as a priority—highlight the people who need to move on medical and welfare grounds, including disability, people with a learning disability still struggle to be regarded as in urgent need of housing. At that point, living with parents puts them in the position of being in "settled accommodation" and therefore less of a priority in terms of both homelessness and medical reasons.

To resolve that problem, my amendment is aimed to change the "reasonable preference" categories so that anyone who has an assessed housing need in the context of a community care assessment should be included in the "reasonable preference" groups. That would make it clearer to local housing departments that housing need, in the context of someone with a learning disability, has to be seen in a broader sense than is currently the case, and help to improve this unhappy situation.

Amendments 172 and 173 concern the ways in which local authorities discharge the homelessness duty. The Bill proposes that people can be placed in the private rented sector without due regard to the wishes of the homeless applicants themselves. Currently, a homeless applicant can reject an offer by the local authority to move into private rented sector accommodation. My amendment would introduce appropriate safeguards so that if an individual was placed in private rented accommodation, there needs would be properly addressed.

There are many reasons why people may not consider accommodation offers in the private rented sector to be suitable, including insecurity of tenure and, of course, cost. If the provision is enacted, strict safeguards should be in place to ensure that the accommodation which disabled and older people are offered, and have to accept, is appropriate, affordable and provides some security of tenure. That is why Amendment 173 proposes to increase the minimum period of such a tenancy from just 12 months to 60. This will provide the security of tenure that is so important to many people with a learning disability and their parents.

I am also encouraged by the Government's comments during Report in the House of Commons, in which it was outlined that they would,

"consider further the need for additional protections for homeless households placed in the private rented sector".

Ministers also said that they would be,

"prepared to consider using those powers for the provision of additional protections on standards of accommodation or other matters". —[*Official Report*, Commons, 18/5/11; col. 408.]

I look forward to hearing from the Minister whether the Government have had any further thoughts on this, including the possibility of introducing a national accreditation scheme.

Baroness Doocey: My Lords, I shall speak to Amendments 171B, 171C and 173ZA. Amendments 171B and 171C propose a two-stage tenancy process. The Localism Bill effectively removes the right of qualifying homeless people to turn down an offer from the local authority of private rented accommodation; and I agree with the comments just made by the noble Lord, Lord Rix. A local authority will now be able to discharge its duty to the homeless by offering private rented accommodation on a "take it or leave it" basis with a minimum tenancy of 12 months.

The problem is that a private rented accommodation offer may not be suitable for a variety of reasons, yet if a homeless applicant refuses the offer, they can be deemed intentionally homeless and the local authority will no longer have a duty to house them. Given its obvious attraction to landlords, the 12-month tenancy is likely to become the norm, or at least commonplace. It may prevent homeless people from finding secure and stable accommodation and will almost certainly lead to recurring homelessness. Even if tenants do not become homeless again, the 12-month minimum prevents them putting down roots and stabilising their employment or their children's education.

The aim of these amendments is to improve the sustainability of private tenancies for homeless households by requiring households to be placed in a successful interim tenancy prior to the 12-month minimum tenancy that discharges the authority's duty. The amendments would not scrap the Bill's proposal to end the right of homeless people to refuse an offer of private rented accommodation, nor would they change the 12-month minimum. Amendment 171C would create a mandatory two-stage process. In the first stage, the homeless person would be placed in private rented accommodation for a short tenancy of between six and 12 months. At the end of that period, the landlord and tenant can agree a minimum 12-month tenancy, turning the Bill's original proposal into a second stage. In effect, this would extend the period of accommodation from a minimum of 12 months to at least 18 months. A local authority could only discharge its duties in this way if the applicant had previously been placed in an assured shorthold tenancy of between six and 12 months, the local authority is satisfied that the applicant can afford the rent, and the household's various support needs can be met.

This is a moderate amendment that does not undermine any of the major proposals contained in the Bill; rather it seeks to make the Bill work better. It would encourage the tenant, landlord and authority to work together to ensure the success of the tenancy and encourage early intervention when any problems arise. In this way, the amendment builds on the work of private rented sector access schemes, which are supported by the Government. It would provide further support and assessment to the tenant from the local authority. Although local authorities will have to assess the support needs of all tenants, this should not create an undue burden since many tenants will have low-level support needs, and some will have none at all. Where tenants do need support to sustain a tenancy, it is already best practice to provide this, and such support can help avoid the cost of repeat homelessness. Although at the end of the second tenancy the tenant will have

been settled for at least 18 months, it does not entail tenancies of over 12 months and should therefore appeal to landlords. This is because both landlords and tenants will have the option of not renewing after the interim tenancy. In other words, if a landlord accepts stage one, he or she is not obliged to move to stage two. By preventing repeat homelessness, this system can work better for tenants, landlords and local authorities.

I turn to Amendment 173ZA. The purpose of this amendment is to establish a statutory framework for housing option schemes and other measures for the prevention of homelessness. The amendment would do two things. It would oblige local authorities to provide the applicant with comprehensive advice and assistance in the course of their inquiry and to keep the applicant fully informed of his or her options. It would also restore the right of applicants to reject an offer of private rented accommodation without affecting the duties of the local authority. The amendment assumes a 12-month minimum tenancy for private rented accommodation, as set out in the Bill. I very much hope that the Government will carefully consider these suggestions.

Baroness Hollins: My Lords, I support Amendments 171, 172 and 173, as presented by my noble friend Lord Rix. I want to speak about the prioritisation of housing need for people with learning disabilities.

For many years, it has been government policy to support people with learning disabilities in living in their own homes. However, as my noble friend Lord Rix said, the majority still live with their parents well into their parents' later years. For the past 30 years, I have worked as a psychiatrist with people with learning disabilities and their families. Many of the parents have been caring for 30, 40 or even 50 years. Indeed, I myself am the parent of a man whose carer I have been for approaching 40 years. That is a long time.

The majority stay at home with their families until there is a crisis such as parental illness or death, effectively leaving the person with the learning disability homeless, or certainly vulnerable to homelessness, and leading to expensive unplanned residential care. This is instead of a carefully planned transition to a secure future which takes account of an individual's assessed needs. I think that parents who have provided care for those years should reasonably expect their sons and daughters to be given priority for accommodation of their own at an earlier stage, rather than be left with long-term anxiety—in many cases, daily anxiety—about what is going to happen when they are no longer there to care. For those reasons, I support these amendments.

Lord Palmer of Childs Hill: My Lords, I shall speak to Amendments 173ZZD, 173ZDA and 173ZD. Broadly speaking, these amendments are intended to improve notification of advice and assistance for persons who become homeless intentionally and are not in priority need. We heard my noble friend Lord Shipley talk eloquently about those deemed to be in priority need but intentionally homeless, and they have a priority need in their favour. However, many people are entitled to receive advice from the local authority about their options when they are homeless but, because they are not in this priority bracket, often they are not given the advice that they need. They are frequently the single homeless who go along to the local authority office, as I have seen during my 25 years in a local council. The local authority office does not really want to deal with them because they do not have a priority need, they are intentionally homeless and they are single. They are often pushed from pillar to post, sleeping rough and begging for places to sleep, and often they have a mental problem or a drug problem. In the minuscule amount of advice that the local authority gives, it seems to say that these people should go to the private rented sector and rent a room. The trouble is that those in the private rented sector do not envisage such people as their top choice for tenants. Such people fall between many stools in this situation.

All the amendments are trying to do is to encourage and insist that local authorities give real advice and assistance to what these people can do to get into a secure place, albeit for a short time, so that they can recover and then come into the normal tenant situation in the urban or rural areas where they live. I hope that the Government will consider this.

Lord Best: My Lords, a whole series of significant points have been made which I hope do not get lost. We have had a kind of teach-in on all the issues around homelessness, which I hope can be carried forward in different ways. I shall speak to Amendment 173A, which differs from Amendment 173AA only in containing a typing mistake which Amendment 137AA has rightly expunged. Therefore, I hope I can count the noble Lords who follow me as supporting the same amendment as mine.

The amendment also relates to the proposed ending of the obligation for local authorities to find a place for a homeless household, eventually, if not immediately, in the social sector; for example, in council or housing association accommodation. In future, local authorities would be able to discharge their duty by getting the household into a private landlord's property. Up to now, it has been assumed that the characteristics of social housing, security, which we shall discuss later, and relatively low rents alongside some social support from the landlord have been essential for those who have become homeless. However, some homeless people may not need anything more from their landlord than a roof over their heads for a year or so and some may be able to cope with higher rents in due course.

More realistically, in many areas there is simply no alternative to the private rented sector for some of the people who have nowhere else to go. Even if the nation embarked on a major programme of new social housebuilding, which, despite the good effects on the wider economy, is highly improbable while deficit reduction is the greatest priority, it would be many years before that sector could satisfactorily meet the pent-up demand for affordable decent homes. Even so, using the private rented sector in place of social housing as the long-term solution to the needs of homeless people—households sufficiently vulnerable that councils must accept responsibility

[LORD BEST]
for them—is not the same as using the PRS for temporary, emergency accommodation, let alone for short-term lettings to students or to more affluent single people who plan to buy later.

If the council's duty towards a homeless family is for that family to be satisfied, on a permanent basis, in a privately rented property, that offer needs to satisfy rather higher standards of suitability than for short-term lets. After all, if the household were nominated to a housing association, its housing arrangements would come under the extensive regulatory powers of a statutory regulator, the Office for Tenants and Social Landlords, now known as the Tenant Services Authority, which is to be part of the Homes and Communities Agency. That regulator sets standards on matters like property condition, rent levels and the rights of tenants to be consulted and involved.

In considerable contrast, private landlords have no regulator, no FSA, Ofcom, Oftel or Ofgem. Many argue, as emerged from the 2009 report from Julie Rugg at York University, that some regulation of the PRS is badly needed. The Association of Residential Letting Agents is keen for amendments to go forward to regulate letting and managing agents. That would bring some 60 per cent of private lettings into a regulated system, but it is clear that the Government are not likely, at present, to be convinced of the case for regulation of this sector. This means protection for the most vulnerable of tenants—the homeless family or the homeless individual—will have to be addressed in a different way.

6.15 pm

Tenants in the social housing sector can take their complaints to the Housing Ombudsman—whose role we will be discussing later—if their expectations of high standards of management and maintenance are not fulfilled. There is no ombudsman for complaints against private landlords. I should declare an interest, as chairman of the Property Ombudsman service, which hears complaints against estate agents, who must by law be part of a redress ombudsman scheme, and against managing and letting agents, who can voluntarily join an ombudsman scheme, but not complaints against private landlords. In the PRS, tenants must take their complaints all the way to the courts, with all the associated expense and hassle. If a long-term solution to a household's needs is to be found in the unregulated private rented sector, and not in the regulated social housing sector, some basic requirements—much more basic than for housing associations, perhaps—would seem essential. Several enlightened local authorities have been working on accreditation schemes, to raise standards and distinguish between quality landlords and rogue landlords. Amendment 173A should help that approach. It provides a framework to assess the suitability of the PRS accommodation. It does not add to the duties on local authorities, but rather defines them more clearly.

I am encouraged by the new statement from the Department for Communities and Local Government, entitled "Proposed circumstances in which private rented sector accommodation used to end the main homelessness duty is to be regarded as 'suitable'". This statement helpfully pre-empts some of the aspects of suitability which my amendment, backed by Shelter and Crisis, seeks to address. Perhaps I could briefly spell out what the amendment aims to achieve, and how the DCLG statement assists.

First, the amendment requires that the accommodation should be affordable to the homeless household, since otherwise it will get into arrears and lose the home fairly quickly; a sensible definition of affordability follows. The DCLG statement also suggests that the accommodation must be affordable, but without spelling out what this means. Secondly, the amendment requires that the location should be properly considered in relation to the tenant's employment opportunities, their children's schooling, services the household needs, ongoing support, care, hospital treatment and so on, and proximity to people for whom the tenant has caring duties, always bearing in mind the age of those affected and similar factors. The DCLG is silent on this, but I guess that any reasonable person would regard it as very unfair if the offer of PRS accommodation took no account of the location of the property for that particular household. Thirdly, the amendment requires that the landlord, and the managing agent if there is one, should be a "fit and proper person", using the same test as that for ownership and management of houses in multiple occupation. I am pleased to see that the DCLG statement takes this point fully on board. Finally, the amendment requires that the standard of the property satisfies the very low-level test of health and safety—again, that used for houses in multiple occupation. This, too, is covered by the DCLG statement, which would outlaw properties if they are found to fail the test of a category 1 hazard to health or safety, although without the obligation on the local authority to carry out the housing health and safety rating assessment before placing a tenant in the property.

It is clear that the Government are thinking along the same lines as myself and the authors of this amendment. However, the response to date only takes us part-way down this road. I hope the Minister will be able to indicate that there is room for amendment to the DCLG statement.

Amendment 173A would not secure the advantages of the social housing sector for those tenants who have faced the traumas of homelessness and are placed within the private rented sector; but it could prevent any switch from the social to the private rented sector bringing with it a host of problems for these households, and for the local authorities, which would have the unenviable task of repeatedly picking up the pieces if the new arrangements were constantly to fail. I look forward to hearing the Minister's views.

Baroness Wilkins: My Lords, may I just add my support to this group of amendments, particularly those in the name of the noble Lord, Lord Rix? Disabled people are feeling increasingly vulnerable, and targeted by the Government's legislative proposals. Social housing is yet another area in which their security is being undermined. Recent achievements in enabling independent living for disabled people are at risk, particularly for people with learning disability. I hope the Government will reflect over the summer and try to meet some of these concerns.

Lord Newton of Braintree: If nobody else wants to say anything, I do. However, I only want to say it once otherwise I suspect I will have the Chief Whip charging in here to tell me to shut up. I am prompted by the speech of the noble Lord, Lord Best, but more particularly—although I am ashamed to say I did not hear the debate but noticed it on the screen while I was otherwise preoccupied—by the amendments of the noble Lord, Lord Rix, and by what has just been said by the noble Baroness. I did on one occasion incur some possible unpopularity on my Benches by making the point that we have at least three—if not more—Bills on the go at the moment: the Welfare Reform Bill, the Legal Aid, Sentencing and Punishment of Offenders Bill, and this one, all of which impact on various disadvantaged groups, including disabled people. It is far from clear that there has been a joined-up approach to these bits of legislation. I am signalling in these bits that relate to homelessness—but it also applies more generally to those parts we are about to come to on housing policy—that I would not want my noble friends to think that, because I am not talking in detail or going to talk endlessly, I do not have some concerns about all this, which might get ventilated further at Report stage, depending on what is said now. I hope that is brief and to the point enough and at least puts my stake in the ground on these issues.

Lord Cormack: I will be even briefer. Not for the first time today, I find myself entirely on the side of my noble friend Lord Newton. He has made some extremely valid points. I too listened to the noble Lord, Lord Rix, with interest, sympathy and very considerable concern. I believe that it is essential the Government take these points on board because I would like my noble friend the Minister—who is going to respond in a minute or two—to know that there are many of us on these Benches who may not be physically present at the moment but who share the concerns articulated by my noble friend Lord Newton.

Baroness Gardner of Parkes: I too have heard these speeches although I have not been present in the Chamber. I wanted to comment on Amendment 173A, tabled by the noble Lord, Lord Best, relating to the suitability of accommodation. It would be terrific if we could do it. However, going back 40 years, when I had housing responsibility, we found that the only thing we could offer homeless people then was bed and breakfast. We ran out of central London bed-and-breakfast accommodation and people had to travel quite a lot further out. So although "suitable accommodation" is the ideal, I do not know how it can ever be realistically achieved. That is the worry about what the future might be for this.

Baroness Hanham: My Lords, this is clearly a debate that needs a lot more time than we have got tonight. I have listened to some very moving and knowledgeable speeches on the amendments and I understand fully the points that people have been making. The trouble is the time constraints—the way these have been grouped in this large bunch makes it almost impossible for me to deal with all the many points that have been raised in the manner in which I would have wished to do so. As a result, I will probably be quite general in my comments, but if there are issues which I think need further application, and I have not dealt with them properly, I will look at those in *Hansard* and will try to make sure there is a response. I think my response will be dry—it is not meant to be and I do understand all the points that have been made. I know that my colleagues in the House of Commons have made some quite sympathetic statements and I am not going to undermine any of those. However, in the interests of time, at this stage, I am going to respond to the amendments briefly. I ask people to forgive me for not going into great detail on what they have said, since it is inevitable that I shall not be able to do so.

I shall start quickly with Amendments 171D, 172A, 173ZE, 173ZF, 171B, 171C and 173. We all understand that the people who face homelessness need suitable accommodation, but they do not always require social housing. Therefore, local authorities should have the flexibility to take case-by-case decisions. The changes in these amendments would undermine the intention of the proposed measures. This would be unfair to households on social housing waiting lists, who would have to wait longer to have their housing needs met. This is a balance that housing authorities have to make all the time. It would be unfair to the taxpayer who would have to fund expensive temporary accommodation that is often completely unsatisfactory, as noble Lords know. By housing people in social housing who might manage in the private rented sector, we would stop somebody who needs social housing, probably on a lifetime tenancy, from getting it.

Our reforms strike a sensible balance between the additional safeguards for homeless households offered in the private rented sector accommodation, ending the main duty, and fairness to other households in need. It is not practical to expect private landlords to be prepared to offer tenancies for an initial fixed term of more than 12 months to tenants they do not know, although it will be possible and very probable that local authorities will want and need to negotiate longer tenancies where they can, if 12 months does not prove to be sufficient time.

I turn to Amendments 172, 173A, 173AA, 171D and 172A, and apologise for not attributing them to the relevant noble Lords. Existing safeguards will apply before the duty can be brought to an end with a private rented sector offer. The authority must be satisfied that the accommodation is suitable for the applicant and his or her household. In considering suitability, authorities must by law consider whether a specific property is suitable for the applicant and their household's individual needs. This includes considering whether the accommodation is affordable for the applicant, as well as its size, condition, accessibility and location. A lot has to be taken into account before the offer is made. On affordability, the local authority must by law consider the applicant's financial resources and the total cost of accommodation in determining whether the accommodation is suitable.

Statutory guidance, to which local authorities must have regard by law, sets out the factors on location and standards that should be taken into account. It also states that housing authorities should consider that a property would not be affordable if a claimant's residual income after rent and associated costs would be less

[Baroness Hanham]
than the level of means-tested benefit. Tying down criteria in legislation would restrict the ability of the local authority to make decisions on what is reasonable affordability, balanced against the availability of properties.

I understand the concerns about the issue of physical standards. I have laid a Statement in the House Library confirming that we are prepared to use existing order-making powers and setting out the factors that could be included in such an order. In doing so, we will work closely with organisations such as Shelter and Crisis to make sure that that is all workable.

Amendments 173ZZD, 173ZBA, 173ZA, 173ZB, 173ZD 173ZC and 173AB would place specific requirements on local authorities to provide advice and assistance and to collect data. This is too bureaucratic and I will resist the amendments for that reason.

6.30 pm

Local authorities already have a discretionary power to provide emergency accommodation for households that are not in priority need and not intentionally homeless. We believe this strikes a reasonable balance between the need for some particularly vulnerable homeless households to be provided with emergency accommodation and the cost that this entails. We must be careful to avoid distorting legislation that balances protections for genuinely homeless people against rewarding those who have become homeless through their own behaviour.

The noble Lord, Lord Rix, drew attention to the issue of "reasonable preference" in a very moving speech. I understand about people with disability; I also understand the terrible difficulties carers have in trying to ensure that their offspring or their relatives are cared for. With regard to the reasonable preference category for medical and welfare, this includes people with a disability. This includes learning disability as well as physical disability. We are going to be issuing revised statutory guidance to make sure that that is absolutely clear. If the noble Lord wishes to discuss that or any other aspect further, I am only too happy to do so—when we have all had a holiday and if we can ever get away from this House tonight.

I have touched on Amendments 171D and 172A, tabled by the noble Lord, Lord Shipley, on the question of "reasonable to accept". I will briefly expand on that. The two concepts of "reasonable to accept the offer" and "suitability" were always meant to be treated separately. After all, they relate to two different things. "Reasonable to accept the offer" was only ever meant to refer to whether an applicant could reasonably be expected to accept an offer if they were under contractual or other obligations in respect of their existing accommodation, with regard to rent or a tenancy agreement, and they could bring those to an end before they were required to take up the offer. Over time the courts have interpreted the two terms in a way that overlap and they now consider questions of suitability under the heading of "reasonable to accept". The Bill provides an opportunity to clarify what is meant by "reasonable to accept the offer" but I assure the noble Lord that there will be no lessening of protection as a result.

Turning to the amendments tabled by the noble Lords, Lord Shipley and Lord Palmer, local housing authorities already collect a wealth of statistical information on homelessness on a voluntary basis and the information is returned as a P1E. The noble Lord, Lord Shipley, also raised physical management standards. Local authorities have a duty to take appropriate action if a property is found to contain a category 1 hazard under the housing health and safety rating system. This means that any property should be free from hazards that pose a significant risk to the occupant, such as electrical hazards, pests, damp and mould. So that is a requirement.

Following on from my honourable friend Andrew Stunell's comments in the Commons, I have laid a Statement in the House Library confirming that we are prepared to use existing order-making powers in setting out the factors that could be included in such an order. This includes consideration of protections against category 1 hazards and whether landlords are fit and proper people, which was a question raised by the noble Lord, Lord Best. If anybody has not had an opportunity to see those two Statements they are both there.

The noble Lord, Lord Shipley, also tabled Amendment 173AB. The homelessness legislation strikes a careful balance between offering protection for those who are homeless and restricting the burdens on local authorities to provide assistance to the majority of householders, most of whom, upon receipt of a Section 21 notice, will be able to secure their own accommodation without recourse to local authority resources.

Finally, on the right of complaint for private rented tenants, as now, applicants accepted as owed the new homelessness duty, if included in the private rented sector, have the right to ask for a review of suitability by the local authority and, if not satisfied, have the right of appeal to the county court.

I am conscious that I have not mentioned everybody and that I have probably not covered all the aspects I should, but over the next few weeks I will look at this, because I appreciate that it is an extremely important issue in the Bill. I hope that we will be able to do justice to it, if not now, then at the next stage. I hope that the noble Lord will be prepared to withdraw his amendment.

Lord Kennedy of Southwark: My Lords, I thank all noble Lords who contributed to this debate and the noble Baroness, Lady Hanham for her response. As I said at the start, the Opposition have considerable concerns about this section of the Bill as presently drafted. That has been reflected in the contributions we have had in the debate this afternoon from across the Chamber. I agree very much with the comments of the noble Lord, Lord Shipley, about vulnerable people in need of housing and also his comments about the environment and the suitability of accommodation. The comments of the noble Lord, Lord Rix, in moving his amendment to change the "reasonable preference" category, were absolutely right and very welcome. I pay tribute to the work he has done on behalf of Mencap over many years. The noble Baroness, Lady Doocey, was absolutely right to highlight the problems of the 12-month tenancy. The noble Baroness, Lady

Hollins, supporting the amendment in the name of the noble Lord, Lord Rix, brought her professional expertise and her experience as a carer to the debate. The noble Lord, Lord Palmer, was able to share his experience of 25 years as a local councillor and the problems of people falling between the cracks. The noble Lord, Lord Best, was right when he said that we have enjoyed important contributions today from your Lordships. I agreed with his comments about the private rented sector and the need for regulation.

My noble friend Lady Wilkins was right in her comments and the noble Lords, Lord Newton of Braintree and Lord Cormack, and the noble Baroness, Lady Gardner of Parkes, reflected the concerns felt right across the House today. I hope that the Government will take due note of that. The Opposition and, I am sure, many other noble Lords, will look carefully at what comes back from the Government and, if necessary, bring these issues back on Report. With that, I beg leave to withdraw the amendment.

Amendment 170CM withdrawn.

Amendment 170CN not moved.

Clause 127 agreed.

Clause 128 : Allocation schemes

Amendments 170D to 171ZA not moved.

Clause 128 agreed.

Clause 129 : Duties to homeless persons

Amendments 171A to 173 not moved.

Clause 129 agreed.

Clause 130 : Duties to homeless persons: further amendments

Amendments 173ZA to 173ZF not moved.

Clause 130 agreed.

Amendments 173A to 173AB not moved.

Amendment 173B

Moved by ***Lord Best***

173B: Before Clause 131, insert the following new Clause—

"Exemptions from flexible tenancy regime

(1) The Secretary of State shall by regulations provide that a secure tenancy shall not be capable of being a flexible tenancy if it falls within one of such classes as shall be prescribed.

(2) The prescribed classes of secure tenancy referred to in subsection (1) shall include—

(a) tenancies granted to a tenant (alone or jointly with others) aged 60 years or more;

(b) tenancies granted to a tenant (alone or jointly with others) in circumstances where the tenant or a member of his or her household suffers from a long-term illness or disability, or has a need for secure accommodation on medical or welfare grounds;

(c) tenancies granted to such other persons as regulations shall provide who have a need for secure accommodation.

(3) In determining whether a tenant falls within one of the prescribed classes of person, the landlord authority shall have regard to guidance issued by the Secretary of State under this section.

(4) Where a tenancy is a secure tenancy by reason of regulations made under this section, it shall be a ground for possession within section 84 of the Housing Act 1985 (grounds and orders for possession) where the accommodation afforded by the dwelling-house is more extensive than is reasonably required by the tenant.

(5) The court shall not make an order for possession under subsection (4) unless—

(a) it is satisfied that suitable alternative accommodation will be available for the tenant when the order takes effect; and

(b) it considers it reasonable to make the order.

(6) Part IV of Schedule 2 to the Housing Act 1985 (suitability of accommodation) shall have effect for determining, for the purpose of subsection (5)(a), whether suitable alternative accommodation will be available for the tenant.

(7) Where the landlord considers that the ground for possession in subsection (4) applies to a tenancy, the court shall not entertain proceedings for possession of the tenancy unless the landlord has complied with the notice requirements in section 83 and subsections (3) and (4) of section 84 of the Housing Act 1985.

(8) Where proceedings are brought for possession of a dwelling-house under the ground in subsection (4), the court shall have the powers set out in section 85 of the Housing Act 1985."

Lord Best: My Lords, Amendments 173B and 173D concern the new regime for flexible tenancies which will change the nature of security of tenure in social housing and will mean that in future councils will be able to grant tenancies for just two years rather than for life. Correspondingly, housing associations will be allowed by their regulator to use assured and short-hold tenancies in place of the previous presumption in favour of lifetime security of tenure.

There are positive reasons for such a change. For example, some housing associations, particularly in central London, can see benefits from letting some properties to younger, mobile, more affluent, single people and childless couples. These tenants can add a mix of incomes and of lifestyles to so-called monocultural estates that might otherwise become labelled as being only for the most disadvantaged households. In combination with reforms being introduced by the Government to enable social landlords to charge much higher rents, shorter tenancies to rather better-off tenants could produce surplus income to plough back into meeting more traditional housing needs. A two-year tenancy could suit this kind of tenant.

As a supporter of flexibilities and freedoms for social landlords, and as an advocate for more mixed and less stigmatised social housing, I see the merit in a tenure regime that allows some short-term lettings for certain categories of tenant. The key point is that councils and housing associations will continue to be entitled to grant permanent tenancies if they so decide: I would hope Ministers will give them every encouragement to continue to do so. Security is a distinguishing feature of social housing since these landlords are not investing with an eye on future capital gains and do not need, in contrast to the private rented sector, to be able to gain possession for investment reasons. In my early days in the Housing Association world, organisations like the Notting Hill Housing Trust and Paddington Churches Housing Association bought tenanted properties from the notorious

[LORD BEST]
landlords of the day simply to provide security for the occupiers. Even though sufficient funds for renovating the buildings were not available, security could be offered, and that could change lives.

I think—and certainly I hope—that the new tenancies are not the thin end of a wedge. Ministers have made clear that they would expect two-year flexible tenancies to be very exceptional. The Government's consultation paper on housing reform states that

"the vast majority of tenancies will be provided on longer terms--particularly for vulnerable households or those with children".

I find this reassuring. However, it is not clear whether there is an expectation that flexible tenancies will generally be used for a longer but still relatively short period—say, five years—with no certainty that they will be renewed thereafter.

Some commentators, recognising the intense pressures for social housing, have advocated a review of each tenant's income after a fixed period and no renewal of the tenancy if that tenant has achieved average earnings or above, or if they no longer qualify for housing benefit. I fear this approach would send out all the wrong signals and could be hugely counterproductive. Tenants will be well aware that the chances of finding a comparable family home in the private rented sector, at a reasonable rent, are remote, and of course no private landlord would be likely to offer security of tenure for more than six months or a year. So the prospect of being forced to leave their home would hang over social housing tenants like the sword of Damocles. This way of using flexible tenancies would penalise those who make a success of their lives; it would encourage people to fail at work in order to keep their families secure; it would encourage deceit to save the family home and would require an army of snoopers to police it; and it would mean announcing that social housing was confined to losers, condemning those brought up there as society's failures and greatly impeding their life chances.

Quite different is the concept of a periodic review, a free consultation, by the landlord for the tenant to see whether, if incomes have risen, a shared ownership or equity purchase arrangement would not now be sensible. Although the tenant would thereafter pay more, they would secure an ownership stake, with all the financial and psychological advantages that that could bring.

Amendment 173B, again backed by Shelter and Crisis, would make sure that the flexible tenure regime excluded certain specific categories of tenant. The first group is older people, including those owner occupiers we are hoping will move from unsuitable homes and who, if we could persuade them to move into retirement flats, would free up a family home. But older people will never be persuaded to move if the tenancy is for only a few years, after which they could, even if only in theory, be evicted. The second category is the tenant with a disability or long-term illness who clearly needs a secure home. The third category is widely drawn to embrace any others whom the Secretary of State could commend for proper security of tenure. My view is that this should normally cover families with children for whom a sense of security by remaining at the same school, by becoming established in the area and by settling down for the long term is hugely important. The Minister may argue that no exemptions are necessary because housing associations and councils can continue to give lifelong tenancies if they wish, but this amendment would provide reassurance for those likely to be most anxious about the loss of security.

Amendment 173D picks up on the provision in the Bill for a review of the tenant's position because they have lost their tenancy at the end of a fixed period and spells out that normally the tenant could expect to have the tenancy renewed for at least a similar term. This is not as helpful to those for whom security is all-important as knowing that the home is theirs, like that of any other owner occupier, for as long as they need it. But this amendment at least gives a measure of comfort that only in exceptional circumstances will they be required to move out after five years, or whatever initial term they obtained. Just because they have now secured a proper job, there should be no expectation of having to up sticks and find another home.

Together, these amendments try to ensure that the positive elements of a move to flexible tenancies are preserved, while fears and anxieties about the arrangements are put to rest. I beg to move.

6.45 pm

Lord Shipley: My Lords, I shall speak to Amendments 173CE and 173E. I should say that a gremlin has got into the system, and Amendment 173CF is incorrect. I beg permission not to speak to it because it is a mistake.

The purpose of Amendment 173CE is to enable a person to whom the offer of a flexible tenancy is made to request a review of the landlord's decision as to the length of the term of the tenancy, thus eliminating the restriction that no review can be requested if the offer is within the landlord's policy as to the length of the term of such tenancies. I shall give an example to explain the problem. A tenant or prospective tenant may want to request a longer period which is permitted by the policy but which has not been offered on the basis of the initial assessment by the local authority before the offer. The longer period being sought could be because of long-term specialised medical treatment needed for a member of the household or to avoid disruption of the education of a child with particular needs. There could be a difference between the authority's initial assessment of the time required for the tenancy and the tenant's assessment of the time leading to the need for a review. I do not understand why a local housing authority should not consider representations in relation to the length of a flexible tenancy in a particular case. It would be to the advantage of a tenant or prospective tenant that it should be able to undertake a review.

Amendment 173E is about creating a presumption that flexible tenancies should be renewed on expiry unless good reasons are shown to the contrary. As the legislation stands, the process tenants will have to undergo when their flexible tenancies come to the end of the fixed term is weighted almost entirely in favour of the landlord. The amendment would hope to ensure that, when this process is being undertaken, there is

greater protection for tenants, many of whom will be particularly vulnerable toward the end of their tenancy. This could be achieved by requiring a landlord to justify refusing to extend the tenancy rather than expecting the tenant to undergo a potentially complicated reapplication process. This would be preferable, as many tenants might be unaware of what factors are relevant to the authority's decision and might find it difficult to successfully advocate for renewal of a tenancy or struggle to provide proof of need.

We also need to guard against bureaucratic failure. Bureaucratic failings already cause a great deal of hardship for people on low incomes, such as when mistakes occur in determining housing benefit claims or when registered providers fail to issue an assured tenancy following a successful probation period. No one should face the loss of their home as a result of bureaucratic failing. This amendment would help to prevent this happening. There is also the question of landlord accountability. This amendment would help to improve accountability, as landlords would have to demonstrate greater objectivity and transparency before taking possession of a tenant's home. The removal of security of tenure will result in a great deal more uncertainty for tenants, as they will become aware of the looming threat of losing their homes toward the end of their fixed-term tenancy. While a presumption in favour of renewal would not remove this huge worry, it would at least ensure that tenants are on a more secure footing and hope to ensure that landlords undertake a thorough process when reviewing tenancies.

In committee in the other place, the Minister Andrew Stunell, said that we expect landlords to discuss housing options with tenants well before the fixed term of their tenancy comes to an end. That we would expect the tenancy to be renewed in many cases needs to be underlined. For those reasons, it is important that this expectation in terms of presumption of renewal of tenancy is written into the Bill. Social housing is for many people the best means of ensuring security and a long term stable home. For some, it is the first step in enabling them to improve their circumstances. Having people living in a neighbourhood for long periods can build community cohesion and social capital. The amendment will simply help to maintain people in their homes.

Baroness Doocey: Speaking to Amendments 173CA and 173CB, I turn to Amendment 173CA. The purpose of this amendment is to increase the minimum length of flexible tenancies in social housing. With a diminishing stock of social housing under increasing pressure, the Government see greater flexibility of tenancies as a better way of managing social housing stock. The amendment would increase the minimum length of a flexible tenancy from two to seven years. It does not oppose the principle of flexibility. Rather, it is an attempt to reconcile the advantages of flexibility with the need of tenants for a reasonable degree of security and stability.

In theory, the Bill would give local authorities and housing associations the flexibility to be able to offer tenancies of varying length in order to best manage their stock. They could still offer inflexible tenancies if they chose; the length of a flexible tenancy could be as short as two years, although we know that the Government believe that a two-year tenancy would be the exception. However, in practice, there is a risk that local authorities and housing associations could make two years the norm. If two years become widespread or commonplace, it would undermine household housing stability.

Until now, social housing has been stable; it is often the first stable accommodation that many vulnerable people have ever experienced. If this stability were lost, it would remove a key benefit of social housing for such people. It would significantly weaken the sustainability of communities. Two years is too short because it would lead to a higher turnover of residents on estates, with the associated problems of poor community cohesion. If we want to achieve mixed communities and well-functioning neighbourhoods, it is important that people—including those in work and with good prospects—are able to put down roots in an area and feel a sense of ownership. Extending the minimum to seven years is not a panacea but it would go some way towards mitigating the problems caused by flexible tenancies.

A two-year limit could act as a serious disincentive to work since tenants would fear that if they find employment and increase their earnings, they might no longer be able to renew their tenancy. A seven-year limit would lessen this fear since finding employment would not have an immediate impact on their tenancy.

The purpose of Amendment 173CB is to ensure that people moving on from one secure tenancy are offered another. At present, tenants in the social rented sector enjoy secure tenancies of unlimited duration. The change to a flexible scheme would apply to new tenants but not existing ones. Leaving aside any objections to flexibility per se, the Bill as drafted includes an ambiguity. It is clear that an existing secure tenant will not have his or her tenancy agreement torn up or amended. It is also clear that a new tenant may be subject to a limited-term tenancy. However, the Bill is unclear on what happens if an existing secure tenant moves to a different property. Therefore, it does not guarantee their security.

The Government are putting measures in place to make it easier for social tenants to transfer to a new property that will better meet their needs, such as the introduction of the national affordable home swap scheme. At the same time, the Government intend to cut housing benefit for social tenants who are underoccupying; that is, those living in a house with more bedrooms than they are deemed to need. Many of the people affected by this cut will move to smaller accommodation, but only if that accommodation is available. The Government are right to encourage an increase in social housing transfers because everyone wins. It will be good for existing tenants who can move to more suitable housing, the homeless because it will free up larger houses and social landlords because they can better allocate their housing stock. However, if the Bill leads to existing secure tenants being granted only flexible tenancies simply because they have made the choice to move to a new property, the effect will be that many, if not most, such tenants will decide to stay put.

Lord Rix: My Lords, my Amendment 174 also concerns the Government's proposal to introduce flexible tenancies of just two years for social housing tenants. The promotion of flexible tenure is based on the notion of non-disabled younger adults having access to other housing options, depending on income levels and employment. I am concerned that this approach is not appropriate for people on low or fixed incomes, especially those with disabilities who may have limited or no other housing options available. Many disabled people may also need adaptations to their homes or rely on informal support networks, which can take many years to establish. Many disabled people consider security of tenure to be essential to both their quality of life and their well-being. Over the years, many tenants build up local support networks and use nearby services which enable them to remain independent. I am therefore extremely concerned by the proposal to introduce two-year tenancies and the reluctance to make an exemption on the face of the Bill for certain groups, in particular those who are disabled.

At the Report stage of the Bill in the House of Commons, the Under-Secretary of State at the Department for Communities and Local Government, Andrew Stunell MP, outlined that the Government,

"propose that five years should be the minimum term in normal circumstances. We would expect it to be appropriate to offer less than five years only in very exceptional cases".

He also confirmed that,

"the tenure standards will provide specific protection for the vulnerable".—[*Official Report*, Commons, 18/5/11; cols. 403-6.]

I welcome these comments as they show some recognition that disabled people require further protective measures. However, I do not think that standards alone are adequate enough to protect disabled people from flexible tenancies. Hence, Amendment 174 aims to place an explicit exemption on the face of the Bill for disabled and older people.

7 pm

Lord Kennedy of Southwark: My Lords, I rise to speak briefly in support of Amendment 173B moved by the noble Lord, Lord Best, and on other welcome amendments in this group.

Amendment 173B adds an important protection to exempt vulnerable and older people from flexible tenancies. Amendment 173CA in the names of the noble Baroness, Lady Doocey, and the noble Lord, Lord Shipley, adds an additional protection to extend those terms from two to seven years. Amendment 173CB in the name of the noble Baroness, Lady Doocey, seeks to have protection regarding previous tenancy arrangements. In his Amendment 173D the noble Lord, Lord Best, also seeks to add a protection for the review decision so that it proceeds,

"on the basis of a presumption that a new flexible tenancy for a term at least equivalent to the current or previous",

terms of the tenancy. The noble Lord, Lord Rix, highlighted in his amendment the exemptions for vulnerable or older people from flexible tenancies.

As I said in my previous remarks, the Opposition are very concerned about this Bill, and particularly this housing section. We very much hope that the Government are listening to what has been said in the House today. I hope that the Minister can either accept these amendments or give the House an assurance that she is going to take them away, reflect on them, and bring these matters back at Report.

Baroness Hanham: My Lords, before I respond to the debate, I move the government amendments that are in my name—

The Lord Speaker (Baroness Hayman): If the noble Baroness forgives me, you can only move amendments at the point at which they come in the Marshalled List. You can speak to them with the greatest of pleasure.

Baroness Hanham: My Lords, I shall learn after another few years if I have not learnt before. My apologies to the House.

I will speak to the amendments in my name. Government Amendments 174N and 174P are small amendments which remove requirements on landlords to register a tenancy with the Land Registry and execute the tenancy by deed. They reflect concerns from the National Housing Federation that requirements to register tenancies with a term of more than seven years and execute by deed those with a term of more than three years would discourage landlords from granting longer-term tenancies. There are, in these circumstances, no practical advantages to a social tenant from either the tenancy being registered or executed by deed since they cannot deal in their tenancy—that is, tenancies in social housing may not be bought and sold. These amendments simply put fixed-term social tenants on the same footing as secure or assured social tenants in this regard.

I turn to government Amendments 173CAA, 173CC, 173CD, 174B, 174C, 174D, 174E, 174F, 174G, 174H, 174J, 174K, 174L and 174M. These amendments make small corrections to the existing text of the Bill and provide additional clarification where parliamentary counsel considers this helpful. They make no change to our policy intention. Those are the government amendments; I now turn to the debate on this part of the Bill which, as I expected, was again half understanding but also slightly quarrelsome. I will again seek to answer the amendments as well as I can.

The amendment spoken to by the noble Baroness, Lady Doocey, would be an unhelpful restriction on local authority landlords' flexibility to use their social housing stock in a way which best meets the needs of individual households and their local area. This question was about the two-year minimum-term offers. I need to explain that we believe that there is some advantage in seriously exceptional circumstances—and I stress these will be very exceptional circumstances—for landlords to be able to provide for a short period of housing when it is felt it is needed and proper protection.

We have consulted landlords on this and they have made it clear that the great majority would only issue two-year tenancies under exceptional circumstances. As we expect and mean that to be exceptional, as I will say later on, we will look to see what we need to do to underline that. We continue to affirm that we expect longer tenancies of five or 10 years, and of course lifetime tenancies, to be the norm. Those are particularly for vulnerable households or those with children.

Of course the vulnerable will be protected. We intend to require landlords in their tenancy policies to take specific account of the needs of those who are vulnerable through the provision of tenancies that provide a reasonable degree of stability. Two-year tenancies might be appropriate in particular and probably quite exceptional circumstances—for example, helping young people to enter employment; for a family who need a larger home for the short term; or perhaps for someone who has had a serious accident, cannot manage in their own home for a short period and needs access to accessible housing for a short term before they return home. As regards larger housing requirements, people's children often leave home and therefore the tenancy may not be needed any more. We know that some local authorities are considering how fixed-term tenancies could help them to develop support packages for recovering drug addicts, for example.

I want to underline firmly that we are looking for these provisions to be applied in exceptional circumstances and, in the light of today's debate, I will reflect on how we can ensure that social landlords grant only tenancies with a term of less than five years in exceptional circumstances. We probably will not be able to put that in the Bill because it may not make sense; but there will be strong guidance about what we mean by exceptional two-year tenancies. I will discuss this matter with officials and consider the best way of dealing with it because I want to make it absolutely clear so that people are not concerned any more. I know that they have been.

Amendments 173B, 174A and 174, propose new clauses that would create categories of individuals and families who could not be offered a flexible tenancy. They would always have to receive a lifetime tenancy. We recognise that the needs of older people and the needs of those with a disability, for example, are likely to remain broadly constant over the long term. Lifetime or long-term tenancies are, of course, likely to be appropriate for these households in the vast majority of cases. More importantly, landlords recognise that too. In only the most exceptional cases will two-year tenancies be granted, but they will usually be for significantly longer or a lifetime for those with ongoing needs. As a safeguard, our draft direction to the social housing regulator sets out our intention to require landlords in their tenancy policies to take specific account of the needs of the vulnerable. Indeed, we have strengthened our proposed terms for the tenure standard, having listened carefully to the views expressed. That is a better way forward than seeking to prescribe centrally categories of people who should always be granted a lifetime tenancy.

The new clauses proposed by Amendments 173B and 174A include a new ground for possession to be available for secure tenancies and provided to some new tenants if a property is more extensive than is reasonably required by the tenant and if the landlord can supply a suitable alternative. I support the intention behind these amendments. We need to do more to make best use of social homes, but we do not believe that these amendments are the right way forward. Flexible tenancies will be a far better means of tackling overcrowding and underoccupancy. They offer a straightforward deal between landlords and tenants, particularly on underoccupancy. A landlord could, for example, offer a family a large family home on a 15-year tenancy on the clear understanding that they would be required to move to a smaller social property at the end of that term when their children had left home and, therefore, they had more space than was necessary.

Amendment 173CB seeks to put into legislation for some existing tenants the guarantee of continued security on moving home. We by contrast are putting in place through regulation a guarantee of continued security for all existing tenants who move to a social rented home. I hope that that answers the concerns of the noble Baroness, Lady Doocey. We are upholding our promise that existing tenants' rights would be protected and respected, and that includes guaranteeing the same level of security to existing tenants who move to another social rented property. We will do that through a direction to the housing regulator on the new tenancy standard, which we have now published for consultation. All social landlords will be required to meet the tenancy standard, which will guarantee continued security to existing secure and assured tenancy, unlike this amendment.

We do not believe Amendments 173D and 173E are necessary. A review of the original decision must be carried out by a more senior officer not previously involved to ensure that the decision was fair and in line with the landlord's published tenancy policy. Should the reviewing officer conclude that the decision is not in line with the landlord's policy then the landlord will have to reconsider. If he does not then a tenant can approach a local councillor, MP or tenancy panel for assistance and have their case referred to the Housing Ombudsman. The Bill makes clear that where a landlord seeks possession of a tenant's property, despite a review concluding that they were not acting in line with their own policy, then of course the court will refuse that application. The inclusion of a reference to comply with human rights is therefore not necessary. Landlords will need to ensure their decisions on tenancies are proportionate in human rights terms. Recent judgments make clear that a tenant of a local authority will be able to raise a proportionality defence in possession proceedings.

Amendment 173CE would widen the scope of the review available to a tenant or prospective tenant on the length of a tenancy being offered by a local authority. As the Bill stands, the review gives the individual an opportunity to request a review if they consider that the length of the tenancy they are being offered is not in line with the landlord's published tenancy policy. That policy must set out the kinds and length of tenancies the landlord will grant in different circumstances. If a decision by the landlord appears to be out of line with the policy then it is absolutely right that a prospective tenant should be able to challenge it. If a prospective tenant has concerns that the tenancy policy is not fair, they are free to pursue the issue through the landlord complaints procedure.

Amendment 173CF changes the wording of the Bill to request a review on the length of tenancy. We are covered with that; as it stands, a person seeking a review could argue that their tenancy should be for life.

[Baroness Hanham]

I will respond to Amendment 174AA although I am not sure whether it was spoken to. While I agree it makes sense that when a tenancy will be for life, a tenant should be compensated when the tenancy is for a fixed term, a right to compensation makes less sense. Perhaps we did not discuss compensation but I will finish nevertheless. This is about flexibility for the landlord, making sure they can make best use of their stock. Forcing a landlord to pay for improvements made by a tenant who may shortly be moving on is just not practical.

I have spoken in some detail—perhaps more than anybody would have wished— but I hope that having done so it will set the base for future debate. I ask that, with those responses, noble Lords will not press their amendments.

Lord Best: My Lords, I am very grateful indeed to the Minister for that very long and valuable exposition of the many ways in which things may turn out for the best at the end of this process. I welcome her reassurance that lifelong tenancies will still be very much the bread and butter of what social housing is all about; not just for those with extremely important ongoing needs, such as older people and those with disabilities, but for families with children, for whom a tenancy for life—a proper family home—is so important. Where social landlords do use flexible tenancies, she makes it clear that these will seldom be for less than the full five years. In any case, they will be relatively exceptional.

The noble Baroness mentioned the guarantee that those who move or transfer their home will take with them the same security of tenure. That is very important. She made a lot of reassurances that we will be able to read at our leisure during the summer, which I hope that we will find satisfactory. The Minister explained that a lot of those ministerial intents will be put into practice through the regulator having the power to issue firm requirements on social landlords in relation to tenure. That is an extension of the way in which the regulator works at present. None of the three noble Lords whose names were above mine who were to oppose the Question that Clause 133 should stand part of the Bill rose to do so—I do not suggest that they do now. The noble Baroness explains the value of the regulator having that role. She gives me a dilemma because, as a matter of principle, many people are opposed to the Secretary of State giving more and more instructions to the regulator and are aware of the dangers that that has of taking away the independence of the social housing landlords. Perhaps we could debate those matters when some of us oppose Clause 134 standing part of the Bill. In the mean time, with all those reassurances from the noble Baroness, I beg leave to withdraw the amendment.

Amendment 173B withdrawn.

Clause 131 : Tenancy strategies

Amendment 173C

Moved by ***Lord Best***

173C: Clause 131, leave out Clause 131 and insert the following new Clause—

"Tenancy strategies

(1) A local housing authority in England working with registered providers of social housing in its area, residents, and other stakeholders shall consider appropriate responses to relevant tenancy issues locally.

(2) A local housing authority must publish information detailing the approach taken locally to tenancy issues in any manner it considers appropriate.

(3) This information may include how the local housing authority, registered providers and partners will work together in relation to—

(a) the kinds of tenancies they grant,

(b) the circumstances in which they will grant a tenancy of a particular kind,

(c) where they grant tenancies for a certain term, the lengths of the terms,

(d) the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy, and

(e) any other issues as determined appropriate by the local housing authority.

(4) The powers in this section may be exercised by a single local housing authority or by two or more local housing authorities acting jointly."

Lord Best: My Lords, I apologise for speaking again, but I shall do so only briefly. Amendment 173C is supported by the Local Government Association and the National Housing Federation. Clause 131 places a duty on every local authority to draw up a tenancy strategy for its area. The social landlords, the registered providers of social housing, must then have regard to that tenancy strategy in formulating their tenancy policies. Neither local authorities nor housing associations are in favour of that idea. Pursuing a theme affecting the whole Bill, I oppose the centralist tendency at work here in dictating the process and instructing local authorities on how to act—in this case, making them produce a new strategy.

Local authorities do not want to be told what to do in their procedures. Equally, housing associations are not keen on that prescriptive approach when they know that better results can be achieved by forging locally tailored partnerships. Bodies such as the Chartered Institute of Housing have strongly encouraged local authorities to reduce tenant strategies for some time, and those voluntary arrangements are working well. Therefore, the replacement clause in my amendment is intended to get local authorities and social housing providers to work together, with councils taking the strategic role in identifying housing requirements and the tenancy policies that flow from understanding that data. Such an approach goes with the grain of localism and recognises the very different housing strategies already been brought together by a number of local authorities, from the Derbyshire Dales to the London Borough of Hackney, to create mutually agreed approaches with their partners. This is how it should be. I beg to move.

Baroness Hanham: My Lords, I have a swift answer for the noble Lord. A tenancy strategy will not be onerous. There is no requirement for it to be in a specific format or of a particular length or particular content. Many local authorities have indicated that they want to build on the existing policies and strategies, and Clause 131 rightly requires the authority to consult housing associations before adopting strategy. I therefore ask the noble Lord to withdraw his amendment.

Lord Best: I thank the Minister for that response and I beg leave to withdraw the amendment.

Amendment 173C withdrawn.

Clause 131 agreed.

Clauses 132 to 134 agreed.

Clause 135 : Flexible tenancies

Amendment 173CA not moved.

Amendment 173CAA

Moved by ***Baroness Hanham***

173CAA: Clause 135, page 127, line 30, leave out "secure" and insert "flexible"

Amendment 173CAA agreed.

Amendment 173CB not moved.

Amendments 173CC and 173CD

Moved by ***Baroness Hanham***

173CC: Clause 135, page 127, line 39, leave out "("the original flexible tenancy")"

173CD: Clause 135, page 127, leave out line 41 and insert "that is a flexible tenancy for a term certain of the length specified in the notice, and sets out the other express terms of the tenancy, and

(e) the length of the term specified in the notice is at least two years.

(3A) The length of the term of a flexible tenancy that becomes such a tenancy by virtue of subsection (3) is that specified in the notice under paragraph 4ZA(2) of Schedule 1.

(3B) The other express terms of the flexible tenancy are those set out in the notice, so far as those terms are compatible with the statutory provisions relating to flexible tenancies; and in this subsection "statutory provision" means any provision made by or under an Act."

Amendments 173CC and 173CD agreed.

Amendments 173CE to 174 not moved.

Clause 135, as amended, agreed.

Amendment 174A not moved.

Clause 136 : Flexible tenancies: other amendments

Amendment 174AA not moved.

Amendments 174B to 174M

Moved by ***Baroness Hanham***

174B: Clause 136, page 131, line 23, leave out subsection (6)

174C: Clause 136, page 131, line 31, leave out "the purposes of the Housing Act 1985" and insert "a term certain"

174D: Clause 136, page 131, line 38, leave out from second "tenancy" to end of line 39 and insert "that would be a flexible tenancy for a term certain of the length specified in the notice,"

174E: Clause 136, page 132, line 1, after "specifying" insert "a period of at least two years as"

174F: Clause 136, page 132, line 1, at end insert ", and

(c) setting out the other express terms of the tenancy.

(3) The length of the term of a flexible tenancy that becomes such a tenancy by virtue of this section is that specified in the notice under subsection (2).

(4) The other express terms of the flexible tenancy are those set out in the notice, so far as those terms are compatible with the statutory provisions relating to flexible tenancies; and in this subsection "statutory provision" means any provision made by or under an Act.""

174G: Clause 136, page 132, line 2, leave out subsection (8)

174H: Clause 136, page 132, line 8, leave out "This section" and insert "Subsection (2)"

174J: Clause 136, page 132, line 10, after "tenancy" insert "within the meaning of section 107A of the Housing Act 1985"

174K: Clause 136, page 132, line 13, at beginning insert "If the landlord has served a notice within subsection (3) on the tenant before the end of the demoted tenancy then,"

174L: Clause 136, page 132, line 14, at end insert—

"(3) The notice must—

(a) state that, on ceasing to be a demoted tenancy, the tenancy will become a secure tenancy that is a flexible tenancy for a term certain of the length specified in the notice,

(b) specify a period of at least two years as the length of the term of the tenancy, and

(c) set out the other express terms of the tenancy.

(4) The length of the term of a flexible tenancy that becomes such a tenancy by virtue of this section is that specified in the notice under subsection (3).

(5) The other express terms of the flexible tenancy are those set out in the notice, so far as those terms are compatible with the statutory provisions relating to flexible tenancies; and in this subsection "statutory provision" means any provision made by or under an Act.""

174M: Clause 136, page 132, line 15, leave out subsection (10)

Amendments 174B to 174M agreed.

Clause 136, as amended, agreed.

Amendments 174N and 174P

Moved by ***Baroness Hanham***

174N: Before Clause 137, insert the following new Clause—

"Creation of tenancies of social housing

(1) In section 52 of the Law of Property Act 1925 (requirement that conveyances of land and interests in land be made by deed) in subsection (2) (exceptions) after paragraph (d) insert—

"(da) flexible tenancies;

(db) assured tenancies of dwelling-houses in England that are granted by private registered providers of social housing and are not long tenancies or shared ownership leases;".

(2) After that subsection insert—

"(3) In this section—

"assured tenancy" has the same meaning as in Part 1 of the Housing Act 1988;

"dwelling-house" has the same meaning as in Part 1 of the Housing Act 1988;

"flexible tenancy" has the meaning given by section 107A of the Housing Act 1985;

"long tenancy" means a tenancy granted for a term certain of more than 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture;

"shared ownership lease" means a lease of a dwelling-house—

(a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or

(b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.""

174P: Before Clause 137, insert the following new Clause—

"Registration of tenancies of social housing

(1) The Land Registration Act 2002 is amended as follows.

(2) In section 3 (voluntary registration of title) after subsection (4) insert—

"(4A) A person may not make an application under subsection (2) in respect of a leasehold estate in land under a relevant social housing tenancy."

(3) In section 4 (compulsory registration of title) after subsection (5) insert—

"(5A) Subsection (1) does not apply to the transfer or grant of a leasehold estate in land under a relevant social housing tenancy."

(4) In section 27 (dispositions required to be registered) after subsection (5) insert—

"(5A) This section does not apply to—

(a) the grant of a term of years absolute under a relevant social housing tenancy, or

(b) the express grant of an interest falling within section 1(2) of the Law of Property Act 1925, where the interest is created for the benefit of a leasehold estate in land under a relevant social housing tenancy."

(5) In section 33 (interests in respect of which notice may not be entered on the register) after paragraph (b) insert—

"(ba) an interest under a relevant social housing tenancy,".

(6) In section 132(1) (interpretation) at the appropriate places insert—

""assured tenancy" has the same meaning as in Part 1 of the Housing Act 1988;";

""dwelling-house" has the same meaning as in Part 1 of the Housing Act 1988;";

""flexible tenancy" has the meaning given by section 107A of the Housing Act 1985;";

""long tenancy" means a tenancy granted for a term certain of more than 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture;";

""relevant social housing tenancy" means—

(a) a flexible tenancy, or

(b) an assured tenancy of a dwelling-house in England granted by a private registered provider of social housing, other than a long tenancy or a shared ownership lease;";

""shared ownership lease" means a lease of a dwelling-house—

(a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or

(b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house;".

(7) In Schedule 1 (unregistered interests which override first registration) after paragraph 1 insert—

"Relevant social housing tenancies

1A A leasehold estate in land under a relevant social housing tenancy."

(8) In Schedule 3 (unregistered interests which override registered dispositions) after paragraph 1 insert—

"Relevant social housing tenancies

1A A leasehold estate in land under a relevant social housing tenancy.""

Amendments 174N and 174P agreed.

Clauses 137 and 138 agreed.

Schedule 14 agreed.

Clause 139 : Succession to secure tenancies

Amendment 175

Moved by ***Lord Rix***

175: Clause 139, page 134, line 15, after "partner" insert "(priority successor)"

Lord Rix: Amendments 175, 176, 177 and 178 regard the Government's intention to remove succession rights for carers and relatives, which are currently provided by a secure tenancy. In contrast to the Government, I believe that this right should be preserved and extended to all new tenancies in the social housing sector. The original provisions in the Housing Act 1985 gave recognition to the role of carers who had given up their own homes to look after a parent or a relative. We already know that unpaid carers make a significant contribution to the welfare of disabled and older tenants and dramatically reduce the demands on social services, the NHS and, of course, the Treasury.

The provision in the Housing Act 1985 also ensures that a disabled son or daughter living with parents, often into old age, would be protected after their parents have died. In 2006 the Law Commission recommended a single social tenancy that would allow a "reserve successor" on the death of a "priority successor". A priority successor would be a spouse or partner, and a reserve successor would be a relative or carer living with the resident before their death. At the end of the Report stage in the House of Commons, the Government made some amendments to the clause on succession rights that will allow for succession rights for tenants other than spouses or civil partners, where,

"an express term of the tenancy makes provision for a person other than such a spouse or a civil partner of the tenant to succeed the tenancy".

I welcome the Government's acknowledgement that restricting succession rights to spouses and civil partners alone is not appropriate. However, I am still concerned that the changes proposed do not go far enough, and I do not believe that the government amendments which follow mine affect my concerns. I beg to move.

Lord Kennedy of Southwark: My Lords, I am sorry; I was too slow in getting to my feet. I support Amendment 175 in the name of the noble Lord, Lord Rix, and other amendments in the group. Clause 139 removes the statutory right of succession of those other than spouses and partners to succeed to secure tenancies granted after the Bill comes into force, except where an express term of tenancy makes provision for this. I understand that this clause has been inserted to assist local authorities in dealing with under-occupancy of social housing following succession against the background of a chronic shortage of social housing and correspondingly long waiting lists.

There is concern on these Benches that these proposed changes are likely to have a disproportionate effect on vulnerable people. Presently, close family members are able to succeed to secure tenancies. In addition, local authority tenancies sometimes contain an express provision to provide succession rights to close family members. The proposals under Clause 139 would mean

that any family member other than a spouse or a civil partner would not be able to succeed to any form of secure tenancy unless there was an express tenancy term making provision for this. Even then, that person's succession would have to be in accordance with that term. This provides considerable discretion to social landlords to operate a term in their agreement that may make it virtually impossible for a member of a family, other than a spouse or a partner, to succeed to a tenancy.

Local authorities are under pressure to ensure that their housing stock is fully utilised. The removal of the right of succession beyond spouses and civil partners is potentially damaging. Many of those currently eligible to succeed a close family member may have remained living at home with good reason—perhaps because of a disability or some other vulnerability. No doubt local authorities also see remaining in the parental home a number of single adults who have no vulnerability or disability but simply have no inclination to move out. However, we are concerned to ensure that protections for the vulnerable are not removed unwittingly. Restricting the right of succession under the Bill to a spouse or civil partner goes too far, as other potentially vulnerable family members may be living at the property and have little choice about their living arrangements. If the change under the Bill goes ahead, there will be no prospect of anyone close to the deceased who may have lived in the tenancy all their lives securing such a succession unless it is specifically stipulated in the tenancy terms.

There will be little incentive for local authorities or landlords to include an express provision in their tenancy agreements. Local authorities, which currently make such express provisions for succession by non-spouses—with unsecured tenancies, for example—may well cease to do so once the statutory succession rules are changed, with an increasing number of new tenancies being granted without express provisions on succession. The Government should carry out a more detailed impact assessment of the removal of such a provision and of the extent to which the removal would affect the construction or granting of secure tenancies.

Amendments 175, 176, 177 and 178 would create a condition allowing close family members to become qualified reserve successors to a secure tenancy, as per the current system. Reserve successors would be qualified to succeed only if, at the time of the tenant's death, the dwelling house was occupied by a spouse or civil partner of the deceased tenant as his or her only or principal home. There are alternative measures for addressing under-occupancy following succession, by making existing grounds for possession under-occupancy function more effectively.

In conclusion, I look forward with interest to the noble Baroness's response. I hope that she is able to give the Committee some reassurance on these important matters.

7.30 pm

Baroness Hanham: My Lords, before responding, I wonder whether I may speak to the amendments in this group that stand in my name—Amendments 178ZA, 178ZB, 178ZC and 178ZD. Amendments 178ZA and 178ZB are minor and technical, and tidy up Clause 139.

Amendment 178ZC ensures that there will be no statutory succession in the case of shared ownership properties, as this could conflict with the rights of a beneficiary in a deceased shared owner's will. Amendment 178ZD ensures that where there is no eligible successor but someone inherits the balance of a fixed-term tenancy as part of the deceased tenant's estate, the landlord can recover the property. Amendment 178ZD helpfully deals with an issue raised by the Opposition in the other place. When someone who is not a spouse or partner succeeds to a local authority property which is larger than they reasonably need, the landlord can move them to a more suitably sized property between six and 12 months after the death of the original tenant.

The amendment deals with cases where the successor tenant withholds news of the death of the tenant from the landlord until after the recovery window has closed, thereby preventing the landlord reclaiming the property. It does this by allowing a court to decide whether the window is deemed to have opened six months after the original tenant died or six months after the landlord became aware of the death. I hope that is reasonably clear.

I can reply to the amendments quite quickly. Our proposals guarantee one succession to a spouse or partner and importantly also allow landlords a freedom to grant more successions, as they see fit; for example, allowing a succession to someone as the noble Lord, Lord Rix, has said, who has given up their own home to move in and care for the tenant. We believe that the proposals are clear, simple and fair: one guaranteed succession to a spouse or partner and anyone else if the tenancy agreement says so. That will allow landlords to ensure properties go to those in actual need and Amendments 175 to 178, tabled by the noble Lord, Lord Rix, would reintroduce a prescriptive approach which would prevent landlords considering individual circumstances in reaching sensible decisions. Once again, social landlords are social landlords and are meant to be considering the best interests of those who live in their properties. With that explanation, I hope that the noble Lord, Lord Rix, will be willing to withdraw his amendment.

Lord Rix: My Lords, I have no desire to delay your Lordships' holidays any longer, so I beg leave to withdraw my amendment.

Amendment 175 withdrawn.

Amendments 176 to 178 not moved.

Amendments 178ZA and 178ZB

Moved by ***Baroness Hanham***

178ZA: Clause 139, page 134, line 44, leave out from beginning to end of line 5 on page 135

178ZB: Clause 139, page 135, line 17, at end insert—

"(6) The amendments made by this section do not apply in relation to a secure tenancy that—

(a) was granted before the day on which this section comes into force, or

(b) came into being by virtue of section 86 of the Housing Act 1985 (periodic tenancy arising on termination of fixed term) on the coming to an end of a secure tenancy within paragraph (a)."

Amendments 178ZA and 178ZB agreed.

Clause 139, as amended, agreed.

Clause 140 : Succession to assured tenancies

Amendment 178ZC

Moved by ***Baroness Hanham***

178ZC: Clause 140, page 136, line 48, at end insert—

"(7) This section does not apply to a fixed term assured tenancy that is a lease of a dwelling-house—

(a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or

(b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.""

Amendment 178ZC agreed.

Clause 140, as amended, agreed.

Amendment 178ZD

Moved by ***Baroness Hanham***

178ZD: After Clause 140, insert the following new Clause—

"Secure and assured tenancies: recovery of possession after tenant's death

(1) In section 90 of the Housing Act 1985 (devolution of fixed term secure tenancy) after subsection (4) insert—

"(5) The following provisions apply where a tenancy that was a secure tenancy of a dwelling-house in England—

(a) has been vested or otherwise disposed of in the course of the administration of the secure tenant's estate, and

(b) has ceased to be a secure tenancy by virtue of this section.

(6) Subject as follows, the landlord may apply to the court for an order for possession of the dwelling-house let under the tenancy.

(7) The court may not entertain proceedings for an order for possession under this section unless—

(a) the landlord has served notice in writing on the tenant—

(i) stating that the landlord requires possession of the dwelling-house, and

(ii) specifying a date after which proceedings for an order for possession may be begun, and

(b) that date has passed without the tenant giving up possession of the dwelling-house.

(8) The date mentioned in subsection (7)(a)(ii) must fall after the end of the period of four weeks beginning with the date on which the notice is served on the tenant.

(9) On an application to the court for an order for possession under this section, the court must make such an order if it is satisfied that subsection (5) applies to the tenancy.

(10) The tenancy ends when the order is executed."

(2) In Part 3 of Schedule 2 to that Act (grounds on which court may order possession of dwelling-house let on secure tenancy if reasonable and if alternative accommodation is available) after Ground 15 insert—

"Ground 15A

The dwelling-house is in England, the accommodation afforded by it is more extensive than is reasonably required by the tenant and—

(a) the tenancy vested in the tenant by virtue of section 89 (succession to periodic tenancy) or 90 (devolution of term certain) in a case where the tenant was not the previous tenant's spouse or civil partner, and

(b) notice of the proceedings for possession was served under section 83 (or, where no such notice was served, the proceedings for possession were begun) more than six months but less than twelve months after the relevant date.

For this purpose "the relevant date" is—

(a) the date of the previous tenant's death, or

(b) if the court so directs, the date on which, in the opinion of the court, the landlord (or, in the case of joint landlords, any one of them) became aware of the previous tenant's death.

The matters to be taken into account by the court in determining whether it is reasonable to make an order on this ground include—

(a) the age of the tenant,

(b) the period (if any) during which the tenant has occupied the dwelling-house as the tenant's only or principal home, and

(c) any financial or other support given by the tenant to the previous tenant."

(3) In section 7 of the Housing Act 1988 (orders for possession of assured tenancies) after subsection (6) insert—

"(6A) In the case of a dwelling-house in England, subsection (6)(a) has effect as if it also referred to Ground 7 in Part 1 of Schedule 2 to this Act."

(4) In Part 1 of Schedule 2 to that Act (grounds for possession of dwelling-houses let on assured tenancies: grounds on which court must order possession) in Ground 7 (devolution of tenancy under will or intestacy)—

(a) in the first unnumbered paragraph, after "tenancy)" insert ", or a fixed term tenancy of a dwelling-house in England,",

(b) in the second unnumbered paragraph—

(i) omit "periodic", and

(ii) after "period" insert "or length of term", and

(c) after that paragraph insert—

"This ground does not apply to a fixed term tenancy that is a lease of a dwelling-house—

(a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or

(b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.""

Amendment 178ZD agreed.

Clauses 141 to 144 agreed.

Amendments 178A and 178AA not moved.

Baroness Anelay of St Johns: I am most grateful to the Lord Speaker. This is the last day that she will be performing this particular function, and it is coming to a rather different conclusion than expected, with amicable agreement. It would not be normal for me to stand up at this time, but of course I was not allowed to come in while the Lord Speaker was on her feet calling amendments. I am most grateful to her for stopping at this moment.

There have been discussions in the usual channels. I am grateful, too, for the assistance of the Convenor of the Cross Benches. Agreements have been reached whereby business will be able to be concluded—we estimate within about half an hour. I am most grateful to Members of all Benches, who have agreed that, on this occasion, they will not be moving their amendments.

Clearly, there has to be one exception to this, and that is with regard to those government amendments which have been tabled; these will need to be dealt with. Agreements have been reached within the usual channels about the appropriate way in which that might be handled. I am, unusually, going to advise my noble friend the Minister, from a standing position, that she will be able merely to move her amendments without speaking to them. I anticipate that the opposition Front Bench, and the coalition Benches, will be able to support the Motion that those amendments be added to the Bill. My anticipation is that, as a result of these discussions, all other Peers will be saying "not moved" as their amendments are called.

I am sorry to presume upon the patience of the Lord Speaker, because I realise that she will indeed have rather a large speaking role in guiding us, as she always does, so deftly through business.

Noble Lords: Hear, hear.

Lord McKenzie of Luton: Can the noble Baroness please explain to me this: if we are going to forbear and not move our amendments today on the basis that they could all come back at Report, why does not the same run for the government amendments?

Baroness Anelay of St Johns: My Lords, there have been discussions about this. There are circumstances in which that happens, and it was a possibility. As the noble Lord, Lord McKenzie, will know, it is a procedure that is happily adopted in Grand Committee, whereby if there is agreement, a government amendment may go in; later on, if the Opposition find that they have not had time for proper thought, and find the amendment totally objectionable, it is possible for an amendment to be brought at Report, by agreement within the usual channels. If a government amendment is accepted and thereby inserted it into the Bill, but this subsequently appears to have been done in a way that the Opposition did not quite expect—if they have found out information later on and, had they known it then, the amendment would have been objectionable to them—then the assurance that I can give both to the noble Lord, Lord McKenzie, who was a distinguished Minister himself so I know he has been through this, and to the House is that they can bring an amendment at Report. There have been thorough-going discussions about how we may properly address issues at Report. I hope that satisfies the noble Lord.

Lord McKenzie of Luton: One further point: is the noble Baroness going to guarantee that we will have sufficient time at Report to bring back the amendments which we are forbearing to move? We have a lot to get through at Report in any event, quite apart from this. I would not want to feel that we were precluded, and end up in the same position as we have ended up in tonight, which has, frankly, mostly been a waste of time in terms of our chance to focus on the detail of these amendments.

Baroness Anelay of St Johns: The usual channels have taken those issues into consideration, and have come to an agreement which I hope will accommodate proper scrutiny at Report.

Lord Bassam of Brighton: Can I just press the noble Baroness the Chief Whip a little further? When we were in discussions a figure was mentioned. I think it might be helpful, and for the benefit of the House, if that figure was put on the record.

Baroness Anelay of St Johns: I am most happy to do so. In the ordinary manner of things, we had planned for four days on Report, which is the usual length. The noble Lord, Lord McKenzie, is shaking his head—we accepted that that would not be appropriate, and there will be five and a half days provided on Report.

The Lord Speaker: The noble Baroness said that, as usual, I would speak a great deal tonight. In fact, I think it is the first time in five years. The Committee will have to have some patience, I fear.

Amendment 178B had been withdrawn from the Marshalled List.

Clause 145 agreed.

Schedule 15 agreed.

Clause 146 agreed.

Amendment 178C not moved.

Clauses 147 and 148 agreed.

Clause 149 : Limits on indebtedness

Amendment 178D not moved.

Clause 149 agreed.

Amendment 178DA not moved.

Clauses 150 to 156 agreed.

Amendment 178DB had been withdrawn from the Marshalled List.

Schedule 16 : Transfer of functions from the Office for Tenants and Social Landlords to the Homes and Communities Agency

Amendments 178DC to 178E not moved.

Schedule 16 agreed.

Clause 157 agreed.

Amendments 178EA to 17EB not moved.

Schedule 17 : Regulation of social housing

Amendments 178F to 178G not moved.

Schedule 17 agreed.

Clause 158 : Housing complaints

Amendments 179 to 181ZA not moved.

Clause 158 agreed.

Clause 159 agreed.

Clause 160 : Transfer of functions to housing ombudsman: supplementary

Amendment 181A not moved.

Clauses 160 agreed.

Clause 161 agreed.

Amendments 181B and 181C

Moved by ***Baroness Hanham***

181B: After Clause 161, insert the following new Clause—

"Tenants' deposits

Tenancy deposit schemes

(1) The Housing Act 2004 is amended as follows.

(2) In section 213 (requirements relating to tenancy deposits)—

(a) in subsection (3) (landlord's requirement to comply with initial requirements within 14 days of receipt of deposit) for "14" substitute "30", and

(b) in subsection (6)(b) (landlord's requirement to give tenant information within 14 days of receipt of deposit) for "14" substitute "30".

(3) Section 214 (proceedings relating to tenancy deposits) is amended as follows.

(4) In subsection (1) (grounds for an application to a county court) for paragraph (a) substitute—

"(a) that section 213(3) or (6) has not been complied with in relation to the deposit, or".

(5) After subsection (1) insert—

"(1A) Subsection (1) also applies in a case where the tenancy has ended, and in such a case the reference in subsection (1) to the tenant is to a person who was a tenant under the tenancy."

(6) In subsection (2) (conditions for a remedy)—

(a) in the opening words—

(i) for "Subsections (3) and (4)" substitute "Subsection (3) (subject to subsection (3A)) and subsection (4)",

(ii) omit "such", and

(iii) after "application" insert "under subsection (1)", and

(b) for paragraph (a) substitute—

"(a) is satisfied that section 213(3) or (6) has not been complied with in relation to the deposit, or".

(7) After subsection (3) insert—

"(3A) Subsection (3) does not apply in a case where the tenancy has ended at the time of the application under subsection (1), and in such a case the court may order the person who appears to the court to be holding the deposit to repay all or part of it to the applicant within the period of 14 days beginning with the date of the making of the order."

(8) In subsection (4) (amount of penalty payment)—

(a) omit "also", and

(b) for "equal to" substitute "not less than the amount of the deposit and not more than".

(9) Section 215 (sanctions for non-compliance) is amended as follows.

(10) In subsection (1) (prevention of service of notice under section 21 of the Housing Act 1988)—

(a) at the beginning insert "Subject to subsection (2A),", and

(b) for paragraph (b) substitute—

"(b) section 213(3) has not been complied with in relation to the deposit."

(11) In subsection (2) (prevention of service of notice under section 21 of the Housing Act 1988) at the beginning insert "Subject to subsection (2A),".

(12) After subsection (2) insert—

"(2A) Subsections (1) and (2) do not apply in a case where—

(a) the deposit has been returned to the tenant in full or with such deductions as are agreed between the landlord and tenant, or

(b) an application to a county court has been made under section 214(1) and has been determined by the court, withdrawn or settled by agreement between the parties."

(13) In Schedule 10 (provisions relating to tenancy deposit schemes) in paragraph 5A(9)(b) (modification of section 213(3)) for "14" substitute "30"."

181C: After Clause 161, insert the following new Clause—

"Houses in multiple occupation

Exemption from HMO licensing for buildings run by co-operatives

(1) In Schedule 14 to the Housing Act 2004 (buildings which are not HMOs for the purposes of that Act (excluding Part 1)) after paragraph 2A insert—

"Buildings controlled or managed by a co-operative society

2B (1) A building where—

(a) the person managing or having control of it is a co-operative society whose rules are such as to secure that each of the conditions set out in sub-paragraph (2) is met, and

(b) no person who occupies premises in the building does so by virtue of an assured tenancy, a secure tenancy or a protected tenancy.

(2) The conditions are—

(a) that membership of the society is restricted to persons who are occupiers or prospective occupiers of buildings managed or controlled by the society,

(b) that all management decisions of the society are made by the members (or a specified quorum of members) at a general meeting which all members are entitled to, and invited to, attend,

(c) that each member has equal voting rights at such a meeting, and

(d) that, if a person occupies premises in the building and is not a member, that person is an occupier of the premises only as a result of sharing occupation of them with a member at the member's invitation.

(3) For the purposes of sub-paragraph (1) "co-operative society" means a body that—

(a) is registered—

(i) as a co-operative society under section 1 of the 1965 Act, or

(ii) is a pre-2010 Act society (as defined by section 4A(1) of the 1965 Act) which meets the condition in section 1(2) of the 1965 Act, and

(b) is neither—

(i) a non-profit registered provider of social housing, nor

(ii) registered as a social landlord under Part 1 of the Housing Act 1996.

(4) In this paragraph—

"the 1965 Act" means the Co-operative and Community Benefit Societies and Credit Unions Act 1965;

"assured tenancy" has the same meaning as in Part 1 of the Housing Act 1988;

"protected tenancy" has the same meaning as in the Rent Act 1977;

"secure tenancy" has the same meaning as in Part 4 of the Housing Act 1985."

(2) Until the coming into force of section 1 of the 2010 Act, the paragraph 2B inserted by subsection (1) of this section has effect as if for sub-paragraph (3)(a) of that paragraph there were substituted—

"(a) is a society registered, or treated as registered, under section 1 of the 1965 Act in the case of which the condition in section 1(2)(a) of that Act is fulfilled (bona fide co-operative society),".

(3) Until the coming into force of section 2 of the 2010 Act, the paragraph 2B inserted by subsection (1) of this section has effect as if in sub-paragraph (4) of that paragraph "Industrial and Provident Societies Act 1965" were substituted for "Co-operative and Community Benefit Societies and Credit Unions Act 1965".

(4) In subsections (2) and (3) "the 2010 Act" means the Co-operative and Community Benefit Societies and Credit Unions Act 2010."

Amendments 181B and 181C agreed.

Amendments 182 to 182K not moved.

Amendments 182KA to 182KB had been retabled as Amendments 181B to 181C.

Amendments 182KC to 182KG not moved.

Amendment 182KH had been withdrawn from the Marshalled List.

Amendments 182KJ and 182KL not moved.

Schedule 18 agreed.

Clauses 162 and 163 agreed.

Amendment 182L not moved.

Clauses 164 to 168 agreed.

Clause 169 : Transfer schemes: general provisions

Amendment 182LA

Moved by ***Baroness Hanham***

182LA: Clause 169, page 160, line 45, leave out ", as from time to time amended,"

Amendment 182LA agreed.

Clause 169, as amended, agreed.

Clauses 170 and 171 agreed.

Amendment 182LAA not moved.

Schedule 19 : Housing and regeneration: consequential amendments

Amendments 182LB and 182LC

Moved by ***Baroness Hanham***

182LB: Schedule 19, page 379, line 12, at end insert—

"Greater London Authority Act 1999 (c.29)

35A The Greater London Authority Act 1999 is amended as follows.

35B (1) Section 38 (delegation) is amended as follows.

(2) In subsection (2) (persons to whom functions exercisable by the Mayor may be delegated) before paragraph (e) insert—

"(db) the Homes and Communities Agency;".

(3) In subsection (3) (cases where delegation to body requires its consent) after "In the case of" insert "the Homes and Communities Agency,".

(4) In subsection (7) (power to exercise delegated functions where no existing power to do so) before paragraph (c) insert—

"(bb) the Homes and Communities Agency,".

(5) Before subsection (9) insert—

"(8B) An authorisation given by the Mayor under subsection (1) above to the Homes and Communities Agency in relation to a function does not prevent the Mayor from exercising the function."

35C (1) In section 73(6), in the substituted subsection (2) of section 5 of the Local Government and Housing Act 1989 (reports by monitoring officer), the definition of "GLA body or person" is amended as follows.

(2) Before paragraph (d) insert—

"(ca) the Homes and Communities Agency, when exercising any function of the Greater London Authority in consequence of an authorisation under section 38 of the Greater London Authority Act 1999;".

(3) Before paragraph (h) insert—

"(gb) any committee or sub-committee of the Homes and Communities Agency when exercising any function of the Greater London Authority in consequence of an authorisation under section 38 of the Greater London Authority Act 1999;".

(4) Before the closing words insert—

"(mb) any member, or member of staff, of the Homes and Communities Agency when exercising, or acting in the exercise of, any function of the Greater London Authority in consequence of an authorisation under section 38 of the Greater London Authority Act 1999;"."

182LC: Schedule 19, page 380, line 23, at end insert—

"43A In section 4(6) (application of rules about the exercise of the Homes and Communities Agency's specific powers) before the "and" at the end of paragraph (a) insert—

"(aa) subsection (2) does not apply to the exercise of a function by the HCA in consequence of an authorisation under section 38 of the Greater London Authority Act 1999 (delegation by Mayor),"."

Amendments 182LB and 182LC agreed.

Schedule 19, as amended, agreed.

Schedule 20 : Abolition of London Development Agency: consequential amendments

Amendment 182LD

Moved by ***Baroness Hanham***

182LD: Schedule 20, page 383, line 16, at end insert—

"4A In section 38(8) (application of section 101 of the Local Government Act 1972) after paragraph (a) insert "or"."

Amendment 182LD agreed.

Schedule 20, as amended, agreed.

Clause 172 agreed.

Clause 173 : Designation of Mayoral development areas

Amendment 182M not moved.

Clause 173 agreed.

Clause 174 agreed.

Schedule 21 : Mayoral development corporations

Amendments 182N to 182Q not moved.

Schedule 21 agreed.

Clauses 175 and 176 agreed.

Clause 177 : Object and powers

Amendment 182QA

Moved by ***Baroness Hanham***

182QA: Clause 177, page 165, line 39, at end insert—

"(aa) subsection (4) does not apply to the exercise of a function by an MDC in consequence of an authorisation under section 38 of the Greater London Authority Act 1999 (delegation by Mayor),"

Amendment 182QA agreed.

Clause 177, as amended, agreed.

Clause 178 : Functions in relation to Town and Country Planning

Amendment 182R not moved.

Clause 178 agreed.

Clauses 179 to 193 agreed.

Clause 194 : Transfer schemes: general provisions

Amendment 182S

Moved by ***Baroness Hanham***

182S: Clause 194, page 174, line 36, leave out ", as from time to time amended,"

Amendment 182S agreed.

Clause 194, as amended, agreed.

Clauses 195 to 198 agreed.

Schedule 22 : Mayoral development corporations: consequential and other amendments

Amendments 182T to 182V

Moved by ***Baroness Hanham***

182T: Schedule 22, page 387, line 35, at end insert—

"Local Government Act 1974 (c. 7)

2A In section 25(1) of the Local Government Act 1974 (authorities subject to investigation by a Local Commissioner) after paragraph (bd) insert—

"(bda) a Mayoral development corporation,"."

182U: Schedule 22, page 394, line 12, at end insert—

"(4) After subsection (8) (further delegation, and Mayor's power to continue to continue to exercise delegated functions) insert—

"(8A) An authorisation given by the Mayor under subsection (1) above to a Mayoral development corporation in relation to a function does not prevent the Mayor from exercising the function.""

182V: Schedule 22, page 394, line 18, at end insert—

"45A (1) Amend section 68 (disqualification and political restriction) as follows.

(2) In subsection (2) (application of disqualification and political restriction to certain bodies) after paragraph (b) insert—

"(ba) a Mayoral development corporation."

(3) In subsection (3) (person appointed by Mayor as a member of his staff under section 67(1) not disqualified from becoming an unpaid member of Transport for London) after "Transport for London" insert "or a Mayoral development corporation".

(4) In subsection (6) ("statutory chief officer" to include chief finance officer)—

(a) after "London," in paragraph (a) insert "and

(aa) of a Mayoral development corporation,", and

(b) after "member of Transport for London" insert "or, as the case may be, a Mayoral development corporation".

(5) After subsection (6) insert—

"(6A) In the application of section 2 of that Act in relation to a Mayoral development corporation by virtue of subsections (1) and (2) above, any reference to the person designated under section 4 of that Act as its head of paid service is to be taken as a reference to the chief executive of the Mayoral development corporation."

45B (1) In section 73(6), in the substituted subsection (2) of section 5 of the Local Government and Housing Act 1989 (reports by monitoring officer), amend the definition of "GLA body or person" as follows.

(2) After paragraph (b) insert—

"(ba) a Mayoral development corporation, when exercising any function of the Greater London Authority in consequence of an authorisation under section 38 of the Greater London Authority Act 1999;".

(3) After paragraph (g) insert—

"(ga) any committee or sub-committee of a Mayoral development corporation when exercising any function of the Greater London Authority in consequence of an authorisation under section 38 of the Greater London Authority Act 1999;".

(4) After paragraph (m) insert—

"(ma) any member, or member of staff, of a Mayoral development corporation when exercising, or acting in the exercise of, any function of the Greater London Authority in consequence of an authorisation under section 38 of the Greater London Authority Act 1999;"."

Amendments 182T to 182V agreed.

Schedule 22, as amended, agreed.

Clause 199 : Delegation of functions by Ministers to the Mayor

Amendments 183 to 184ZA not moved.

Clause 199 agreed.

Clauses 200 and 201 agreed.

Schedule 23 agreed.

Clauses 202 to 206 agreed.

Amendment 184A

Moved by ***Baroness Hanham***

184A: After Clause 206, insert the following new Clause—

"Part 7A

Compensation for compulsory acquisition

Taking account of planning permission when assessing compensation

(1) The Land Compensation Act 1961 is amended as follows.

(2) In section 14 (assumptions as to planning permission)—

(a) before subsection (1) insert—

"(A1) This section applies only if the relevant land is in Wales.", and

(b) in the side-note for "permission" substitute "permission: land in Wales".

(3) After that section insert—

"14A Taking account of actual or expected planning permission: England

(1) This section is about assessing the value of land in accordance with rule (2) in section 5 for the purpose of assessing compensation in respect of a compulsory acquisition of an interest in land in England.

(2) In consequence of that rule, account may be taken—

(a) of planning permission, whether for development on the relevant land or other land, if it is in force at the relevant valuation date, and

(b) of the prospect, on the assumptions set out in subsection (5) but otherwise in the circumstances known to the market at the relevant valuation date, of planning permission being granted on or after that date for development, on the relevant land or other land, other than—

(i) development for which planning permission is in force at the relevant valuation date, and

(ii) appropriate alternative development.

(3) In addition, it may be assumed that planning permission is in force at the relevant valuation date for any development that is appropriate alternative development.

(4) For the purposes of this section, development is "appropriate alternative development" if—

(a) it is development, on the relevant land alone or on the relevant land together with other land, other than development for which planning permission is in force at the relevant valuation date, and

(b) on the assumptions set out in subsection (5) but otherwise in the circumstances known to the market at the relevant valuation date, planning permission for the development could at that date reasonably have been expected to be granted on an application decided—

(i) on that date, or

(ii) at a time after that date.

(5) The assumptions referred to in subsections (2)(b) and (4)(b) are—

(a) that the scheme of development underlying the acquisition had been cancelled on the launch date,

(b) that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme,

(c) that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers, and

(d) if the scheme was for use of the relevant land for or in connection with the construction of a highway ("the scheme highway"), that no highway will be constructed to meet the same or substantially the same need as the scheme highway would have been constructed to meet.

(6) In subsection (5)(a) "the launch date" means whichever of the following dates applies—

(a) if the acquisition is authorised by a compulsory purchase order, the date of first publication of the notice required under section 11 of the Acquisition of Land Act 1981 or (as the case may be) paragraph 2 of Schedule 1 to that Act,

(b) if the acquisition is authorised by any other order—

(i) the date of first publication, or

(ii) the date of service,

of the first notice that, in connection with the acquisition, is published or served in accordance with any provision of or made under any Act, or

(c) if the acquisition is authorised by a special enactment other than an order, the date of first publication of the first notice that, in connection with the acquisition, is published in accordance with any Standing Order of either House of Parliament relating to private bills;

and in paragraph (a) "compulsory purchase order" has the same meaning as in the Acquisition of Land Act 1981.

(7) In subsection (5)(d) references to the construction of a highway include its alteration or improvement.

(8) If there is a dispute as to what is to be taken to be the scheme mentioned in subsection (5) ("the underlying scheme") then, for the purposes of this section, the underlying scheme is to be identified by the Upper Tribunal as a question of fact, subject as follows—

(a) the underlying scheme is to be taken to be the scheme provided for by the Act, or other instrument, which authorises the compulsory acquisition unless it is shown (by either party) that the underlying scheme is a scheme larger than, but incorporating, the scheme provided for by that instrument, and

(b) except by agreement or in special circumstances, the Upper Tribunal may permit the acquiring authority to advance evidence of such a larger scheme only if that larger scheme is one identified in the following read together—

(i) the instrument which authorises the compulsory acquisition, and

(ii) any documents published with it.

(9) For the purposes of the references to planning permission in subsections (2)(a) and (b)(i) and (4)(a) and section 14B(1)(c), it is immaterial whether any planning permission was granted—

(a) unconditionally or subject to conditions, or

(b) on an ordinary application, on an outline application or by virtue of a development order,

or is planning permission that, in accordance with any direction or provision given or made by or under any enactment, is deemed to have been granted.

14B Planning permission to be assumed for acquiring authority's proposals

(1) In a case where—

(a) the relevant land is in England,

(b) the relevant interest is to be acquired for purposes which involve the carrying out of proposals of the acquiring authority for development of the relevant land or part of it, and

(c) planning permission for that development is not in force at the relevant valuation date,

it is to be assumed for the purposes of section 14A(2)(a) and (b)(i) and (4)(a) that planning permission is in force at the relevant valuation date for the development of the relevant land or that part of it, as the case may be, in accordance with the proposals of the acquiring authority.

(2) For the purposes of subsection (1)(b), no account is to be taken of any planning permission so granted as not to enure (while the permission remains in force) for the benefit of the land and of all persons for the time being interested in the land."

(4) In section 15 (assumptions not directly derived from development plan) before subsection (1) insert—

"(A1) This section applies only if the relevant land is in Wales."

(5) In section 16 (special assumptions in respect of certain land comprised in development plans)—

(a) before subsection (1) insert—

"(A1) This section applies only if the relevant land is in Wales.", and

(b) in the side-note after "land" insert "in Wales".

(6) In section 17 (certification of appropriate alternative development)—

(a) in subsection (1) after "an interest in land" insert "in Wales",

(b) omit subsections (10) and (11) (which relate to the Norfolk and Suffolk Broads), and

(c) in the side-note for "development" substitute "development: Wales".

(7) After section 17 insert—

"17A Certificate of appropriate alternative development: England

(1) Where an interest in land in England is proposed to be acquired by an authority possessing compulsory purchase powers, either of the parties directly concerned may (subject to subsection (2)) apply to the local planning authority for a certificate containing whichever of the following statements is the applicable statement—

(a) that in the local planning authority's opinion there is development that, for the purposes of section 14A, is appropriate alternative development in relation to the acquisition;

(b) that in the local planning authority's opinion there is no development that, for the purposes of section 14A, is appropriate alternative development in relation to the acquisition.

(2) If—

(a) the authority proposing to acquire the interest have served a notice to treat in respect of the interest or an agreement has been made for the sale of the interest to that authority, and

(b) a reference has been made to the Upper Tribunal to determine the amount of the compensation payable in respect of the interest,

no application for a certificate under this section may be made after the making of that reference by either of the parties directly concerned except with the consent in writing of the other party directly concerned or the permission of the Upper Tribunal.

(3) An application for a certificate under this section—

(a) must contain whichever of the following statements is the applicable statement—

(i) that in the applicant's opinion there is development that, for the purposes of section 14A, is appropriate alternative development in relation to the acquisition concerned;

(ii) that in the applicant's opinion there is no development that, for the purposes of section 14A, is appropriate alternative development in relation to the acquisition concerned;

(b) must, if it contains a statement under paragraph (a)(i), specify—

(i) each description of development that in the applicant's opinion is, for the purposes of section 14A, appropriate alternative development in relation to the acquisition, and

(ii) the applicant's reasons for holding that opinion; and

(c) must be accompanied by a statement specifying the date on which a copy of the application has been or will be served on the other party directly concerned.

(4) Where an application is made to the local planning authority for a certificate under this section in respect of an interest in land, the local planning authority must not, without the agreement of the other party directly concerned, issue a certificate to the applicant before the end of 22 days beginning with the date specified in the statement under subsection (3)(c).

(5) If a certificate under this section contains a statement under subsection (1)(a) it must also—

(a) identify every description of development (whether specified in the application or not) that in the local planning authority's opinion is, for the purposes of section 14A, appropriate alternative development in relation to the acquisition concerned, and

(b) give a general indication—

(i) of any conditions to which planning permission for the development could reasonably have been expected to be subject,

(ii) of when the permission could reasonably have been expected to be granted if it is one that could reasonably have been expected to be granted only at a time after the relevant valuation date, and

(iii) of any pre-condition for granting the permission (for example, entry into an obligation) that could reasonably have been expected to have to be met.

(6) If a certificate under this section contains a statement under subsection (1)(a)—

(a) then, for the purposes of section 14A, development is appropriate alternative development in relation to the acquisition concerned if, and only if, it is of a description identified in accordance with subsection (5)(a) in the certificate, and

(b) the matters indicated in accordance with subsection (5)(b) in the certificate are to be taken to apply in relation to the planning permission that under section 14A(3) may be assumed to be in force for that development.

(7) If a certificate under this section contains a statement under subsection (1)(b) then, for the purposes of section 14A, there is no development that is appropriate alternative development in relation to the acquisition concerned.

(8) References in subsections (5) to (7) to a certificate under this section include references to the certificate as varied and to any certificate issued in place of the certificate.

(9) On issuing to one of the parties directly concerned a certificate under this section in respect of an interest in land, the local planning authority must serve a copy of the certificate on the other of those parties.

(10) In assessing any compensation payable to any person in respect of any compulsory acquisition, there must be taken into account any expenses reasonably incurred by the person in connection with the issue of a certificate under this section (including expenses incurred in connection with an appeal under section 18A where any of the issues are determined in the person's favour).

(11) For the purposes of this section and sections 18A to 20, the Broads Authority is the sole district planning authority for the Broads; and here "the Broads" has the same meaning as in the Norfolk and Suffolk Broads Act 1988."

(8) After section 18 (appeal to Welsh Ministers against certificate under section 17) insert—

"18A Appeal to Upper Tribunal against certificate under section 17A

(1) Where the local planning authority have issued a certificate under section 17A in respect of an interest in land—

(a) the person for the time being entitled to that interest, or

(b) any authority possessing compulsory purchase powers by whom that interest is proposed to be acquired,

may appeal to the Upper Tribunal against that certificate.

(2) On any appeal under this section against a certificate, the Upper Tribunal—

(a) must consider the matters to which the certificate relates as if the application for a certificate under section 17A had been made to the Upper Tribunal in the first place, and

(b) must—

(i) confirm the certificate, or

(ii) vary it, or

(iii) cancel it and issue a different certificate in its place,

as the Upper Tribunal may consider appropriate.

(3) Where an application is made for a certificate under section 17A, and at the expiry of the time prescribed by a development order for the issue of the certificate (or, if an extended period is at any time agreed upon in writing by the parties and the local planning authority, at the end of that period) no certificate has been issued by the local planning authority in

accordance with that section, the preceding provisions of this section apply as if the local planning authority has issued such a certificate containing a statement under section 17A(1)(b)."

(9) In section 19 (extension of sections 17 and 18 to special cases)—

(a) in subsection (1) (surveyor may apply for certificate) for the words after "certificate" substitute "under section 17 or 17A; and the provisions of sections 17 and 18 if the land is in Wales, or the provisions of sections 17A and 18A if the land is in England, apply in relation to an application made by virtue of this subsection as they apply in relation to an application made by virtue of section 17(1) or, as the case may be, section 17A(1).",

(b) in subsection (3) for "the said section seventeen" substitute "whichever of sections 17 and 17A is applicable", and

(c) in the side-note after "17" insert ", 17A".

(10) In section 20 (power to prescribe matters relevant to Part 3)—

(a) in the opening words after "seventeen" insert ", 17A",

(b) in paragraph (a) after "seventeen" insert "or 17A", and

(c) in paragraph (c) after "seventeen", in both places, insert "or 17A".

(11) In section 22(2) (interpretation of sections 17 and 18) after "eighteen" insert "and 17A and 18A"."

Amendment 184A agreed.

Amendments 185 to 186AA not moved.

Amendment 186AB had been withdrawn from the Marshalled List.

Amendments 186AC to 186AG not moved.

Clause 207 agreed.

Schedule 24 agreed.

Clause 208 agreed.

Clause 209 : Orders and regulations

Amendments 186B and 186C not moved.

Amendment 186CA

Moved by ***Baroness Hanham***

186CA: Clause 209, page 183, line 13, at end insert "or (Taking account of planning permission when assessing compensation);

(h) an order or regulations under section 210 which, in consequence of provision made by section (Taking account of planning permission when assessing compensation), amend or repeal a provision of an Act other than a local or private Act."

Amendment 186CA agreed.

Amendment 186D not moved.

Clause 209, as amended, agreed.

Clauses 210 and 211 agreed.

Schedule 25 : Repeals and revocations

Amendments 187 to 187AB

Moved by ***Baroness Hanham***

187: Schedule 25, page 405, leave out lines 8 and 9

187A: Schedule 25, page 421, line 18, at end insert—

"Section 55(3)(b) and (d)."

187AA: Schedule 25, page 427, leave out line 40 and insert—

"In section 38—
(a) subsections (2)(d) and (7)(b), and
(b) in subsection (8), paragraph (c) and the "or" preceding it."

187AB: Schedule 25, page 430, line 6, at end insert—

"Part 33

Compensation for compulsory acquisition

Reference	*Extent of repeal*
Land Compensation Act 1961 (c. 33)	Section 17(10) and (11).
Norfolk and Suffolk Broads Act 1988 (c. 4)	In Schedule 3, paragraph 3."

Amendments 187 to 187AB agreed.

Schedule 25, as amended, agreed.

Clause 212 agreed.

Amendment 187B not moved.

Clause 213 agreed.

Clause 214 : Commencement

Amendment 188 not moved.

Clause 214 agreed.

Clause 215 agreed.

House resumed.

Bill reported with amendments.

House adjourned at 7.54 pm.

Grand Committee

Wednesday, 20 July 2011.

Arrangement of Business

Announcement

11.45 am

The Deputy Chairman of Committees (Lord Geddes): My Lords, it is now 11.45. However, having discussed with both the opposition and the government Front Benches, it might be more convenient, in the likelihood of a Division, if we postpone the start of Grand Committee until 10 minutes after the Division has been called or in the event of it being called off. I suggest that we do not start for the time being, otherwise the noble Baroness, Lady Hughes, will be interrupted after about two minutes.

The Division has now been called. The Grand Committee will commence at 11.57.

11.47 am

Sitting suspended for a Division in the House.

11.57 am

The Deputy Chairman of Committees: My Lords, it is now 11.57 am. If there is a further Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and will resume after 10 minutes.

Education Bill

Committee (8th Day)

Relevant documents: 15th Report from the Delegated Powers Committee, 13th Report from the Joint Committee on Human Rights.

Amendment 107A

Moved by ***Baroness Hughes of Stretford***

107A: After Clause 35, insert the following new Clause—

"Local schools commissioner

(1) A local authority shall appoint a fit person with the approval of the Secretary of State to be the schools commissioner.

(2) The schools commissioner shall promote—

(a) collaboration between schools with the aim of ensuring all publicly financed schools in the local authority area achieve a standard of education set by the Secretary of State,

(b) parental confidence in all schools, and

(c) fair access to all schools.

(3) The Secretary of State shall delegate to the schools commissioner his or her functions in agreement with the local authority which are considered necessary for the schools commissioner to fulfil his or her duty under subsection (2).

(4) The local authority shall delegate to the schools commissioner functions considered necessary for the schools commissioner to fulfil his or her duty under subsection (2).

(5) Notwithstanding any function delegated to the schools commissioner by subsections (3) and (4), the commissioner shall advise admission authorities for schools on—

(a) such matters connected with the determination of admission arrangements, and

(b) such other matters connected with the admission of pupils,

as may be prescribed.

(6) Notwithstanding any function delegated to the schools commissioner by subsections (3) and (4), the schools commissioner shall advise the local authority, head teachers and school governing bodies on—

(a) promoting good behaviour and discipline on the part of pupils,

(b) reducing persistent absence by pupils,

(c) identifying children missing education and those who are not on a school admission register,

(d) the strategy for all children of compulsory school age to receive full-time education appropriate to their age, aptitude and ability and any special educational need,

(e) directing a school to admit a child who is not on a school admissions register,

(f) promoting parents' views on admissions arrangements in their area.

(7) The schools commissioner will be advised by an advisory board constituted according to regulations which must provide for half the membership to be made up of parent governors but also include representatives of head teachers, teachers, governors, proprietors of Academies and the local authority.

(8) Regulations shall make provision for the meetings and proceedings of the advisory board and the manner in which advice is to be given to the schools commissioner.

(9) For the purposes of this section, a school includes all schools maintained by the local authority and all Academies and City Technology Colleges located within the area of the local authority."

Baroness Hughes of Stretford: My Lords, I hope that the Committee will indulge me and perhaps give me a little more time than I have taken so far, because this amendment is very important. It is designed to try to get to the heart of the Government's vision for education. While we have been diligently scrutinising the detailed proposals in the Bill, several noble Lords have reminded us along the way that we also need to lift our eyes from the page, look ahead to the future and ask, "What will the education system look like if all these changes go through?", and, more importantly, "Will it work better for children and families?".

We have to understand from the Government what their vision is. Where are they trying to get to and what is the big picture? While Amendment 107A relates particularly to Clauses 34 and 35, on admissions, it is in fact a broad probing amendment that tries to bring together the collective impact of all the measures in the Bill that, taken together, will dramatically change the landscape of the schools system in England. In effect, this amendment asks whether the Government have a broader vision, whether the measures to free up individual schools will add up to a coherent education system and how that will work.

Let us briefly remind ourselves of the broad themes of the Bill. First, the Government want to repeal many of the current requirements on schools and give individual schools the power to decide many issues for themselves—to choose the children they want to admit and whether to collaborate with other schools on children's services—without having to account to any

[Baroness Hughes of Stretford]
external body except, directly and in theory, to the Secretary of State. Secondly, the Government are dismantling the structures and procedures that currently enable parents, local authorities or other schools to challenge on admissions, exclusions or school improvements while time centralising those powers in the Secretary of State.

Noon

Thirdly, the Government are dissolving the local networks between individual schools, schools and local authorities, other children's services, schools collectively and parents' representatives, weakening the ability of local authorities to act on their behalf to resolve problems and to tackle schools that are behaving badly or failing their pupils.

Finally—and this is the issue—all this is in the context of moving towards a completely different scale of free schools and academies. There will be tens of thousands of them, not hundreds. There will be 2,000 by the end of 2011. They are all to be supported and monitored directly by the Secretary of State in the Department for Education. We have noted the significant extension of centralising power in the Bill, but I question how the Secretary of State can exercise those powers effectively for so many schools from his office in the Department for Education. At the same time, it is not clear in the Bill or in previous legislation what measures will apply to academies, what will not or what can be applied via the funding agreements at the discretion of the Secretary of State, a point I will return to shortly.

In a discussion with the Minister before the Bill came here, which I hope he will not mind me referring to, I asked what the Government's vision of the future is, and he replied with the oft-misquoted Maoist view that it is to let a thousand flowers bloom. So I ask the Minister whether the vision for the future is of free-floating individual schools all doing their own thing, not connected to local networks and with no one locally holding the ring on behalf of parents and children; no one locally driving school improvement or ensuring fair access; no one looking across an area at reducing rates of teenage pregnancy, for example, or of persistent absence; no one identifying children missing from education, identifying where permanently excluded children are and finding them a place; and no one responsible for looking out for the children who may fall through the cracks between all these separate schools making their own decisions?

I wonder whether there is a gaping void at the heart of government policy, a void where there should be a clear understanding of how the education system would address those important issues and for ensuring, as the White Paper promised, whole-system reform in which every child matters and,

"giving every child access to the best possible teaching".

The Minister has to try to explain to us how the system that will emerge from the Government's changes will achieve those objectives, which I am sure we can all support.

This is the challenge that Amendment 107A is designed to address. As we have already heard, the Bill represents large risks to fairness in admissions and exclusions. When we debated Clause 4, we heard how certain groups of children—those with special educational needs and those from minority ethnic groups—are already more at risk of exclusion than others, and we heard how the Bill is relaxing safeguards against unfair exclusions. In our debate on Clause 6 we heard about the risks arising due to the abolition by the Bill of the duty on schools to participate in behaviour and attendance partnerships and the duty to co-operate with other services. In the debate so far on this clause on admissions, we have heard that with a weakened admissions code, increased numbers of now independent-in-law admissions authorities—potentially up to 20,000 such authorities—no need for admissions forums and a weakened schools adjudicator, there is a real risk that fairness in admissions, which we have all long striven for and have achieved some progress in, will be undermined.

Let us also consider the new EBacc, which was introduced retrospectively and picks an arbitrarily narrow curriculum to judge schools' performance. That is already changing schools' behaviour, with heads talking about EBacc streams, as my noble friend Lady Morris pointed out recently in an article. How can the Government ensure that this new narrow performance measure, added to the removal of safeguards, will not introduce selection by the back door? Given that after this Bill is enacted grammar schools will be able to keep their selective admissions if they become academies and will be able to expand by setting up satellite schools in neighbouring areas, is this not another means by which selection can be extended, as noted with approval recently by the *Daily Telegraph*?

While the Bill, maybe commendably, wants to give power to schools, it is simultaneously weakening the essential counterpart of that freedom that is a strong system of co-ordination and accountability. Hitherto it has been the local authority's duty to tackle failing schools and to drive school improvement. I would be the first to agree that not every local authority has done a good job. They have not been tough enough sometimes on schools. However, that does not mean that a good job does not need to be done at this level.

This amendment proposes that there should be a new tier of accountability between schools and the Secretary of State, with the engagement of key local stakeholders: parents, parent-governors, head teachers, teachers and the proprietors of academies, as well as local authority representatives. I stress again that this is a probing amendment designed to draw out the level of the Government's recognition of the need for, and support for, increased local accountability of schools to parents and the community. There are parallels in other countries. In Canada, district superintendents support continuous improvement in schools, influenced by local needs and priorities and parents' concerns.

In the model set out in the amendment, which is only one possible model, a schools commissioner, appointed by the local authority, would promote collaboration between schools, parental confidence in schools and fair access. They would advise schools' admissions authorities on admission arrangements and other matters. They would advise the local authority, head and governing bodies on promoting good behaviour,

on reducing persistent absence and identifying children who are missing completely from education and on parents' views on admissions. They would also be able to direct a school to admit a child who is not on any school roll. That is happening now before we even get to an increase in the number of academies. The role would cover all schools maintained by the local authority and all academies and city technology colleges in the local authority's area. Importantly, the schools commissioner would not act alone. They would represent the views of parents, pupils and the community by being required to be advised by a board made up of parent-governors—50 per cent of the membership—as well as representatives of head teachers, teachers, governors, proprietors and the local authority.

The Government say in other places that they are committed to localism. This amendment would go some way towards a localised element in the system where parents, pupils and communities play an influential role, and it would ensure a local system—not atomised schools—that can work for pupils. When the Minister replies, and in conclusion, I would be grateful if he could address three specific issues. First, as the Government move towards thousands or tens of thousands of academies, are they clear about what legislation—in this and previous Bills—actually applies to academies? We asked him for such a list some time ago. It is not yet forthcoming and yet we are being asked to comment on legislation and schools are being asked to consider becoming academies without any clarity—including within his department, apparently—as to what laws will apply to academies and what will not. Secondly, can the Minister explain exactly how a system of thousands of in effect independent schools will deliver the aspiration of giving every child access to the best possible teaching, as stated in the White Paper? Finally, if the Government are not minded to accept the proposal for something such as a local schools commissioner, which person or body will undertake the responsibilities listed in this amendment for missing children, for finding places for children excluded and so on? I beg to move.

Baroness Perry of Southwark: My Lords, I have two problems with this amendment, although I recognise the concerns expressed by the noble Baroness. When I read through the amendment, I asked myself how I would feel if I were the director of children's services in a local authority. The director of children's services in many authorities was the former director of education—the person responsible for all schools that were not academies or free schools. The director of children's services still has the same responsibilities for all community schools and all schools that remain in the local authority's purview.

If I were the director of children's services, I would find it difficult to have someone coming in as a schools commissioner suddenly having a role with the schools that I would regard as my responsibility. The noble Baroness is concerned about the academies and free schools that are not within the local authority's purview, but she has overlooked the fact that schools can do intelligent and sensible things about collaboration and co-operation without someone from outside telling them what to do.

I recently visited the London Borough of Hackney, which now has more academies than community schools. The principals of the academies have come together informally to deal with special educational needs and with admissions. People who run schools are intelligent and powerful people. They do not need someone from outside coming and telling them to do these clever things. Most arrangements for collaborations between schools that we have applauded and encouraged in our discussions in Committee are not necessarily confined to one authority. Many schools have developed collaborations with schools that are independent and with schools outside their own authority, particularly in the big cities where boundaries are permeable and children go to school across them.

For all these reasons, I would find this very difficult. Once again, we are assuming that we have to be cleverer than the senior people who run our schools and who are making intelligent decisions.

Lord Sutherland of Houndwood: My Lords, on a point of order I wonder whether we could have the timing clocks switched on. I am tempted to add wickedly that I am constructing a league table of length of contributions and I have yet to decide whether it will published anonymously or not.

The Deputy Chairman of Committees: My Lords, there is a technical problem. Unfortunately, the clocks were not switched on at the beginning of this amendment and there is no way of winding them back, even though we all know that we started at 11.57 am. If the noble Lord could do some mental arithmetic, it would satisfy his curiosity.

Baroness Massey of Darwen: My Lords, I shall not trouble the noble Lord, Lord Sutherland, with having to time me because I shall be very brief, and I always listen to the noble Baroness, Lady Perry, with great respect. My noble friend Lady Hughes has a point in talking about the "gaping void" and in going back to the *Every Child Matters* agenda.

I am interested in the later amendment, Amendment 114, in the names of the noble Baroness, Lady Perry, and the noble Lords, Lord Lucas and Lord Lexden. This amendment talks about what she calls a "visitor". I do not want to go into that right now, but this has echoes of what used to be called "school improvement partners", who were in schools when I was a governor. The school improvement partners were incredibly useful people to have around because they helped with the business plan, the school ethos and the curriculum. I think that if I were a director of children's services—and I am glad that I am not—I would welcome a local commissioner who would have a responsibility for schools, because a director of children's services has enough to be getting on with anyway, with the safeguarding role in particular. How would the "visitor" envisaged by the noble Baroness, Lady Perry, have some kind of influence on what is going on at that local level without some co-ordination? Perhaps visitors are not like the school improvement partners, but I suspect they might be. As I understand it, they would have responsibility over a number of

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schools. I think she is saying that they would then report to Ofsted or the skills and children's services board. Is that right? They have to report to someone.

Baroness Perry of Southwark: To Ofsted.

Baroness Massey of Darwen: That seems to be rather a large jump. Would it not be better to have someone at a local level—a local commissioner, or whatever they might be called—to try to co-ordinate the concerns of visitors and do something about it?

12.15 pm

Lord Peston: My Lords, I have not the faintest idea—I never do—as to how long I am going to speak; I just go on speaking until I get bored with the sound of my own voice. I congratulate my noble friend both on her amendment and on her speech introducing it to us. She supplies what I think the Americans call "the vision thing", and we are sorely in need of that.

My noble friend Lady Massey said that we have to bear in mind, as central to our vision in education, that all pupils matter and that all pupils matter equally. I take that to be central to what my noble friend is emphasising to us.

We fail too many of our young people, who are convinced that no one in education cares about them and is on their side. Their experience of education precisely gives that to them. There should be someone around locally who cares about them demonstrably and, more to the point, who is absolutely on their side. Therefore, as my noble friend pointed out, how we implement the amendment is not the point at issue; the issue is the vision contained within it.

I hark back to the Education Act 1944, which was based on selection at 11-plus and categorised most pupils on day one of their secondary education. The overwhelming majority were told to regard themselves as failures. The words "failed the 11-plus" were actually used. What a way to go—to have an Act of Parliament that categorises so many people as failures. I regret to say that this Government have not committed themselves to ending that. As my noble friend reminded us, they are, according to the *Daily Telegraph*, trying to create a set of circumstances in which selection will increase. Certainly, one needs to be told categorically that selection will in no circumstances increase under this Government. No one should be able to increase how many people they select.

I might add, since we are not discussing religion today, that Catholic schools were very much at the forefront of introducing comprehensive education, precisely because they did not want to discriminate between fellow members of their religion. I should have pointed out when we were discussing religious matters the other day that, often, those with religion are at the forefront of doing the right thing. However, we did the right thing and we moved to comprehensive education. I hate to say it, but my interpretation of what this Government are doing is that they are trying to abandon comprehensive education, which is why I strongly support my noble friend in bringing this matter to our attention today. It is the vision of education that matters. We can discuss the details when we report back to their Lordships at another stage.

Baroness Ritchie of Brompton: My Lords, I had not intended to speak to the amendment, but I should like to express sympathy with what the noble Baroness, Lady Perry, said. There appears to be some duplication in the amendment, not only of the role of directors of children's services but possibly of the role and responsibilities of lead members—here, I have to declare an interest as a lead member and my involvement with the Local Government Association. Another layer of bureaucracy could be introduced, so I would not support the amendment.

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): My Lords, we have already discussed in Committee the principles that underline the Government's education reforms: increasing school autonomy, improving the quality—

The Deputy Chairman of Committees: My Lords, with great respect to the noble Lord the Minister, another Division has been called. The Grand Committee stands adjourned until 12.30 pm.

12.20 pm

Sitting suspended for a Division in the House.

12.30 pm

The Deputy Chairman of Committees: My Lords, it is now 12.30 pm—at least, I think it is. It is very difficult to see the time against the red background. It might still be 29 minutes past, but if all Members of the Grand Committee are ready, we can recommence.

Lord Hill of Oareford: My Lords, we have already discussed the principles underlying the Government's education reforms: increasing school autonomy, improving the quality of teaching, and strengthening accountability. Back in 2005, in their schools White Paper, the previous Government set out their vision for all schools becoming autonomous and for the local authority to become more of a commissioner than a provider of education. We are building on that approach.

The Bill makes few changes to the role of local authorities. It is also the case that our approach to the spread of schools converting to academies in last year's Academies Act was permissive, because we wanted the extent of change and reform to be driven by governing bodies and head teachers of individual schools. The speed of conversion to academy status tells us something about the attitude of schools towards the previous arrangements and their appetite for taking greater responsibility. What has also been particularly striking, as the programme has moved on, is not only the desire for schools to have more autonomy but increasingly the desire to combine that autonomy with greater collaboration.

We are seeing groups of schools forming clusters and chains, building on the collaboration that they have already established and which the previous

Government took forward. That is one of the most encouraging developments of the academies programme. We are also seeing early converters themselves becoming sponsors of underperforming schools, with the development of the kind of collaborative work that I think all of us would want to see. While I recognise that the landscape is changing—more rapidly in some parts of the country than in others, it is fair to say—I do not accept the basic premise of the argument that, left to themselves, schools cannot be trusted to act collaboratively and therefore need to be brought under a new set of statutory arrangements.

At the heart of this debate about a local schools commissioner is a difference of view between us and the party opposite about the new schools system. I recognise that the noble Baroness, Lady Hughes of Stretford, moved a probing amendment to get the debate going. However, she seems to want to reconstruct a system that many schools have been choosing to leave. She seems to prefer a more structured approach, applied equally across all areas of the country and prescribed in legislation. The Government, by contrast, believe in a system with autonomous schools led by professionals who want to collaborate and drive improvement locally.

I agree with the noble Baroness about the importance of collaboration. So far, over 160 schools have created 58 new or expanding chain partnerships across the country. We are increasing the numbers of national and local leaders of education to 3,000 by 2014, building on the previous Government's initiative to provide support to other schools. The national college has now designated 100 teaching schools to start in September, so that the very best leaders and teachers can drive improvements in the quality of teaching in their area and for the next generation of teachers.

Academies also have to be part of their community. Funding agreements require an academy to,

"be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community".

A recent study from the London School of Economics found that not only had standards in academies improved faster than in other schools but that other schools in their locality had seen results improve—further evidence of the way in which schools, working together and helping to raise standards, spread those benefits more widely.

The noble Baroness, Lady Hughes, rightly asked about accountability. Our approach to that is to increase the amount of data available about schools and to make sure that in future inspections concentrate on the most important issues: what pupils achieve; the quality of teaching and leadership; and that pupils behave well and are safe. These changes apply to academies as they do to all maintained schools.

The noble Baroness, Lady Hughes, mentioned fair admissions. We have already discussed that at some length. Academies must comply with the admissions code and are part of the co-ordinated admissions process run by the local authority. As we have discussed, this Bill extends the adjudicator's remit to academies, and local authorities can refer any school to the adjudicator if they feel that admission arrangements breach the code.

I accept the noble Baroness's reproach about my failure to have circulated before now the list of measures in the Bill and how they affect academies rather than maintained schools. I signed it off this morning. I am sorry that I did not get it across before this debate, but we will circulate it later on. From it, noble Lords will see the way in which the measures of the Bill are applied equally to academies and maintained schools in many regards.

I recognise that it is a time of considerable change, but that change is being driven locally by parents, professionals, schools and others with an interest in education. The noble Baroness talked about localism. I recognise that there is an important debate to have on where localism resides, but I would argue that there is nothing more local than a group of local parents and teachers wanting to set up a school for local children and making that provision fit what those children require, whether it is for children with special needs, an alternative provision or for more of a mainstream school. We are driving change from the department to address entrenched school underperformance, which disproportionately affects the most disadvantaged pupils, and I believe that is the right thing to do.

The noble Baroness specifically mentioned children missing education. Local authorities, maintained schools and FE and sixth-form colleges have safeguarding duties under the Education Act 2002. Academies are required to make provisions for safeguarding under the independent school standards and their funding agreements. Under education regulations from 2006, all schools are required to inform the local authority when a pupil fails to attend school regularly. Noble Lords may also know that the Government have committed in the other place to review the Education (Pupil Registration) (England) Regulations 2006 and to tighten up and extend the circumstances in which all schools must inform the local authority when a child is missing school or removed from the register. We are also planning to revise the statutory guidance to clarify how local authorities can best carry out their duties to identify children missing education. So there are clear, statutory duties to support that important and vulnerable group of children.

Overall, many local authorities have welcomed the changes that the Government are taking forward. They deliver the stated aim of the previous Government, which I share, for local authorities to be commissioners. There is growing evidence that the best school leaders and professionals welcome the opportunity to collaborate and drive improvement across schools in their area. We hope that these changes will free local authorities, led by directors of children's services, to focus on championing the interests of parents and children who most need support. We are working with representatives from all sectors through a ministerial advisory group on the role of the local authority, of which my noble friend Lady Ritchie is a member, to help shape our thinking in this area.

Our aim overall is a freer system in which the best schools and professionals are in the lead and collaborating to improve the education for all children in their area. I do not think that the specific proposal for local school commissioners made by the noble Baroness,

[Lord Hill of Oareford]
Lady Hughes, is the right approach. It would add, as my noble friends Lady Perry and Lady Ritchie said, another layer into the system, which would blur accountability.

The noble Baroness made specific points about admissions, children missing education and accountability. There are mechanisms in place. I recognise that it is a time of change, and I acknowledge her questions, but as the process of change is taken forward and driven by schools, professionals, parents and teachers, we will get to a system that will raise quality and provide more choice for parents, which we all want. Therefore, I hope that she will feel able to withdraw her amendment.

Baroness Hughes of Stretford: I thank the Minister for his reply and other noble Lords for their contributions. I make one or two points in response. I was trying to get Members to think about what the future will look like. Therefore, I have to say to the noble Baronesses, Lady Ritchie and Lady Perry, that in future if the Government achieve their objectives and when most schools are academies—if that occurs—directors of education will have no powers or responsibilities vis-à-vis most of the schools, because they will be outwith the maintained system. There will therefore be no extra layer of anything—indeed, there will be no layers at all—between the schools and the Secretary of State. That was the picture in the future that I was trying to get Members of the Committee to engage with, and the picture from which my concerns arise about what happens particularly but not exclusively to some of the most vulnerable children in communities, who will fall through the cracks of a system in which schools operate completely freely and make decisions on their own. We have had no satisfactory clear view of how that will work in the future.

The Minister said that this Government are building on what the previous Government were planning. We were certainly planning to move into another phase, having established academies in some of the most disadvantaged areas and some of the most problematic schools. However, there is a clear distinction between our vision and this Government's vision. Ours was a clear role for local representatives and local parents in that system. We can see from this Bill that at the same time as giving schools greater freedoms the Government are dismantling structures and relationships at the local level.

The Minister said that schools are choosing to leave a system with local accountability. Schools may choose that, but that does not mean that it is right. There are key questions to be answered. If schools are choosing to leave that system, is that in the interests of children and parents? Will that achieve the objective of every child accessing the best possible teaching? Will it close the educational gaps between the most disadvantaged children and the rest? It is clear, despite the Minister trying to be helpful, that the Government cannot answer those questions with any clarity. Rather, they are dismantling the current system on the basis of blind faith, not on the basis of evidence through which they can show that the system they are moving to will be likely to achieve those three objectives and be in the interests of children and parents. They are aligning the interests of schools and assuming that that will automatically be to the benefit of children and parents. That assumption is not testable or proven; there is no evidence to support it.

That is not to say that some schools will not choose to leave the system or that all schools will behave badly; many schools will behave with integrity and try to do the best for children. However, not all will. It is likely that the most disadvantaged children will lose out as a result of decisions that schools will take that are not in the interests of children, and parents' only recourse in that situation will be to the Secretary of State for Education. There will be no one locally to hold the ring and say, "Come on, let's do better here". That was the point of the amendment.

The Minister said that he was strengthening accountability, but I cannot for the life of me see how it increases accountability to centralise powers to the Secretary of State and leave nowhere for parents to go at the local level. He also said that he wants local authorities to develop a role as champions of parents and is talking to them about that, but they will be completely toothless champions. They might well champion the interests of parents but they will have no responsibilities or powers when those schools are academies, so I am afraid that after this interesting debate we are still no clearer as to how the system will work locally, particularly when there are problems, when children fall through the gaps, and when schools do not behave well. Okay, most will behave well, but some will not, and families will have nowhere to go when they have problems.

I am happy to withdraw my amendment in Committee, and will return to this matter on Report.

Amendment 107A withdrawn.

The Deputy Chairman of Committees: Before moving on, for the assistance of the noble Lord, Lord Sutherland, I calculate that the debate on Amendment 107A lasted for 38 minutes.

Amendments 107B to 170C not moved.

Clause 36 : Establishment of new schools

Debate on whether Clause 36 should stand part of the Bill.

Baroness Jones of Whitchurch: My Lords, I rise to oppose the Motion that Clause 36 stand part of the Bill and to speak to the Motion on whether Schedule 11 should be agreed. These amendments go to the heart of the difficulties that we have with this Bill. In seeking to restructure education provision in this country, far from decentralising power to parents and local authorities, as we have just debated, the Secretary of State is taking decision-making away from them. Flexibility and parental choice are being restricted rather than embraced and welcomed.

Clause 36 and Schedule 11 illustrate this point perfectly. In future, there will be a presumption that any new school will be an academy. The power of local

authorities to consult widely, to plan for a spread of school choices and to take account of parental demand is massively curtailed. Under this clause, when a new school is needed, local authorities will have a duty to seek proposals to set up an academy and identify a possible site. They must obtain the Secretary of State's consent—

The Deputy Chairman of Committees: My Lords, with great respect to the noble Baroness, yet another Division has been called. If she could curtail her remarks, the Grand Committee will be adjourned until 12.56 pm.

12.46 pm

Sitting suspended for a Division in the House.

12.57 pm

The Deputy Chairman of Committees: My Lords, it is now 12.57 pm. The noble Baroness, Lady Jones of Whitchurch, was interrupted in full flow.

Baroness Jones of Whitchurch: I could bore everyone by starting again, but I am not going to do that. I was talking about how under this legislation the power of local authorities to consult and to plan for a spread of school choices is massively curtailed.

Under this clause, when a new school is needed local authorities will have a duty to seek proposals to set up an academy and to identify a possible site. They must obtain the Secretary of State's consent before publishing proposals for a competition to set up a new school, and the Secretary of State can intervene at any point to stop a competition early. Meanwhile, competitive academy proposals will no longer need to be submitted to local authorities for approval and can instead go directly to the Secretary of State. I do not think local authorities are left in any doubt about what will happen to their proposals if they put forward anything other than an academy to the Secretary of State. They might well wonder what happened to their strong strategic role supposedly defending the interests of parents and children, as envisaged in the schools White Paper.

I am intrigued to know how the Minister can explain how this central directive that new schools can be only one type squares with the concept of parental choice. Moreover, how would the Secretary of State know what represents the best type of school for a particular locality? If, as it appears, the Government think that academies are always the right solution, does that also mean that maintained schools, even the best performing ones, are in some sense second-class schools? It might be thought that as these provisions apply to new schools only, they will have relatively little impact on the overall architecture of school provision, but the proposals cannot be seen in isolation from other clauses in the Bill that allow the Secretary of State to close down schools more readily and to hasten the conversion of maintained schools into academies. From all these measures, it appears that the Government's grand plan is that all schools should be academies. Perhaps the Minister can confirm that.

I am sure that the Minister will remind us at this point that the academies programme was brought in under the previous Government, and indeed it was, but it had a different purpose. Academies were seen as a way of targeting resources and focusing on struggling schools when other interventions had failed. As more and more schools convert to academies, they will lose the kudos, focus and additional resources that helped them succeed.

1 pm

We do not oppose the expansion of the academies programme, although we recognise that the Government's aims are different from the past, but we place the decision firmly back in the hands of local people. What matters is that parents and pupils have access to a choice of good-quality schools. However, the presumption that all new schools are academies takes away that choice.

On this issue the Government are guilty of their rhetoric not matching the reality of what is actually in the Bill. For example, in Committee in the Commons, the Minister said,

"the intention behind the schedule and the general thrust of the Government's education policy is to increase parental choice by diversifying provisions and ensuring that parents have a genuine choice of school to which they send their children".—[*Official Report*, Commons, Education Bill Committee, 29/3/11; col. 790.]

It is hard to reconcile that position with what is in the Bill. The Minister is trying to suggest that there is a level playing field of choice, whereas the reality is that there is none.

Therefore, we do not support the clause and the schedule but we support the rights of parents and local people to choose the range of schools they would like to have for their children in the community. I very much hope that noble Lords will support our amendments.

Baroness Massey of Darwen: My Lords, I shall speak to Amendments 108, 109, 110, 111 and 112 in this group. I also support the remarks of the noble Baroness, Lady Hughes. The noble Baronesses, Lady Hughes and Lady Jones, have pulled out an important thread in this debate about assumptions that individualism in schools will automatically be a good thing. Of course, I am all for excellence in schools, whatever their names, and excellence not just in academic subjects but throughout the school delivery.

However, the Education Bill, as we have heard, amends the Education and Inspections Act 2006 to require local authorities that think that a new school needs to be established to seek proposals for the establishment of an academy. In effect, this introduces a presumption that when local authorities set up new schools they will be academies or free schools. I am not going to go into all that again—I will express a particular concern. This new requirement to prefer academies and free schools is likely to aid the proliferation of state-funded religious academies and free schools, among others. Academies and free schools are particularly attractive, not only to mainstream religious groups but to minority groups. This is because they are largely unregulated and there is nothing to stop groups with extreme agendas from applying to run these state-funded schools. Are we really not concerned about this?

[Baroness Massey of Darwen]

Academies and free schools with a religious character can discriminate against students and parents in their missions and against staff on the grounds of religion or belief. We shall come on to that later. They can also opt out of the national curriculum and choose not to provide even the most basic sex education biology or to teach creationism. I am not trying to dismantle the whole faith-school system—I hope no one is going to accuse me of that. I am simply trying to promote a balance of provision at a local level. I am concerned that this new requirement on local authorities to prefer academies and free schools when creating new schools will lead to a proliferation in largely unregulated and unaccountable state-funded religious schools. These amendments remove the assumption that new schools will be academies and allow greater consideration of local opinion about what types of schools are created. It is all very well to champion parents, but what about championing children and their right to a full education?

Baroness Ritchie of Brompton: My Lords, I shall speak to my amendment in this group, Amendment 108A. As has been said, the passage of the Academies Act last year allowed us considerable debate on the merits of the academy system introduced by the previous Government and accelerated by the current one. Academies have become an established part of the education system and I do not want to revisit that debate. Through this probing amendment I wish to raise local government concerns over the ability of the education system to react to local circumstances. Here, I must yet again declare an interest as the chair of the LGA children and young people's board.

Amendment 108A would alter Schedule 11 to allow it to continue to recognise the Government's ambition of seeing schools transferred to academy status, but would retain the necessary local flexibility in the school system to allow for local needs to be taken into account and avoid the creation of a potentially burdensome process for establishing new schools.

Schedule 11 creates a requirement for a local authority seeking to establish a new school first to look at setting up an academy. Councils do not object to that first part of the schedule. However, its subsequent provisions establish a process by which the local authority must report to the DfE on the process of establishing that new academy. Further provisions place restrictions on the establishment of new schools, requiring a council to seek permission from the DfE before considering alternative models of provision and giving powers to the department to order a council to withdraw a notice issued to invite proposals for establishing a new school.

The DfE has projected that while overall pupil numbers in state-funded schools have been in decline, they will increase from this year onwards. Indeed, by 2014, pupil numbers in maintained primary schools will be more than 8 per cent higher than in 2010. Despite the current contraction in demand for secondary school places, the increase in demand for primary school places over the next three to four years is likely to create a sudden boom in the demand for pupil places such that the education system has not had to react to since demand began to decline in 2004.

The primary concern of a council and its community when managing this demand and seeking to establish a new school should be the needs of local parents, and of course of children. Furthermore, councils must be able to balance place provision to ensure that the needs of the entire local area are met. We need to ensure that the Bill does not reduce the ability of local parents, education providers and councils to respond quickly and effectively to new demand and that local choice and diversity of provision are maintained.

Unfortunately, the later provisions in Schedule 11 could restrict the ability of local communities to decide what type of school is established, not only by the creation of burdensome and bureaucratic reporting requirements but ultimately by placing decision-making in the hands of departmental officials in Whitehall rather than locally elected representatives in town halls. Councils understand their residents and local areas well. If local parents do not want schools to be established as academies, there needs to be an option to reflect local parental demand and to establish other types of schools. Councils should not be required to get permission from Whitehall before responding to and implementing the wishes of local residents.

Lord Sutherland of Houndwood: My Lords, I hope to speak to briefly on this question in view of my earlier remarks. This is a crucial clause, which has to do with the direction of government policy and a struggle that might develop between national policy and local authorities. The Academies Bill has gone through. I supported that, and I support the direction of travel in this Bill, not least because it clarifies very considerably what the Academies Bill amounted to. There are two or three points of difficulty that I want to mention, to which I hope the Minister might respond.

First, if every school becomes an academy, which is a possibility, then, as we have consistently pointed out, there may be cracks in the system. There has to be some oversight should these cracks appear. This is not regulating schools; it is trying to find a coherent policy that serves the needs of the whole community, should every school become independent of local authority control. As I said, the direction of travel is right, not least because we have had many decades of local authority supervision of schools and we do not have a system that any of us is content with. That is the reality, and it is one good reason why we should support the Bill, another being the excellence of the academy policy of the previous Government and the way in which many schools want to sign up to it. We have to give this a fair wind.

I have read the Explanatory Notes very carefully, and paragraph 180 contains a series of bullet points on which it is possible for local authorities to take a view on founding a further school. The most significant of these is a loophole. It is the last bullet point in paragraph 180, and it reads:

"Local authority proposals for a new community or foundation school",

are possible,

"where following publication of a section 7 notice no proposals are approved by the local authority, no Academy arrangements are entered into, or no proposals are received".

There is therefore, as I read this, room for the local authority to take steps to make provision for what otherwise might be absent.

I have two further points. First, the proposals for a series of schools becoming in effect independent over the years lack a proper sense of scrutiny of what might happen over the next five, 10 or 15 years in some of these schools. I shall speak to this point when we come on to exemptions from inspection and I shall not expand on it now. Secondly, 20 years ago a Secretary of State came up with a great new whizz and said to me, "Stewart, I plan to make all schools directly answerable to the Secretary of State. What do you think?". I gulped and pointed out to him that this might mean that in Parliament he would be answering questions about the state of the lavatories at Walford primary school because there would be no other place to go to raise the questions. I hope any sensible Government would want to avoid that kind of situation.

Baroness Whitaker: My Lords, my Amendment 111A is different in content from the other amendments in the group, but like them it concerns the vigilance that we need to exercise over academies. Small-scale, local and innovative new schools and academies are good ideas in education. However, when groups of people get together to innovate in education, we will not want them to act in ignorance of good practice and the immense importance of the built environment. My amendment would give them exactly that access to good practice.

I have been in academies—which, as we all know, were formerly instigated to turn around fading schools—and the influence of the building and its design have been paramount. The latest RIBA report, *Good Design: It All Adds Up*, gives several examples of the educational effectiveness and economy of good school buildings. One of the most anti-educational elements in a school is insecurity—the lack of physical safety, the prevalence of bullying, petty theft, a culture of skiving off, persuading other members of a peer group to do the same, and vandalism.

I have seen buildings that have completely reversed this trend. It sounds like common sense but in fact the proponents of skilled design to improve security had to argue their case, such as everywhere being easy to see, personal lockers and toilets with only the cubicles private. The effects showed in the figures: much higher attendance, truancy dropping well below the London average, much higher attainment and even, at some schools, a reduction of crime in the immediate area. The only correlative was the new school building.

Of course it is not only security that makes a difference, although in failing schools it has been a huge factor. Ease and enjoyment of learning and pride in school are strongly influenced by the layout of classrooms, libraries, larger meeting places such as assembly halls, smaller informal ones, and other physical factors such as ventilation and light, which allow good teachers to give of their best. It all looks obvious when you see it in a school building, but far too few people realise what expertise goes into the right design and how much well-being is created by it.

I am sure that the Minister understands this point, as do his colleagues in the Department of Culture, Media and Sport, and I hope that he will grasp the opportunity for our children in the amendment.

1.15 pm

Baroness Walmsley: My Lords, I support the amendment proposed by the noble Baroness, Lady Ritchie of Brompton. Governments, who are made up of democratically elected MPs, and most Ministers—although not those in your Lordships' House, of course—sometimes forget that local authorities are democratically elected as well. I wonder what the point is of having a consultation on the opening of an academy if the local authority is fettered in any way in responding to that consultation—if local parents say that they would prefer to have a local authority school, thank you very much. Anything that fetters the opportunity of the local authority to respond to its own local people is not a good idea, and I support what the noble Baroness has just said.

Baroness Howarth of Breckland: My Lords, I rise briefly to support the noble Baroness, Lady Ritchie, and the amendment of the noble Baroness, Lady Massey, which provides that a local authority may set up a school. I also read the Explanatory Notes and thought that my concern might be covered. However, I have listened to the debate and I think that, unless there is some forward planning, there may be a discussion about a variety of schools but none of them may meet the needs of a particular group of pupils who are coming up for education at that time. Therefore, it is absolutely crucial that there is some co-ordinated planning and that, if the proposal does not come forward, the local authority already has some plans to meet the requirements. Can the Minister tell me whether that is within the programme?

Lord Howarth of Newport: My Lords, I would like to speak in support of Amendment 111A. I congratulate my noble friend Lady Whitaker on tabling it and congratulate the Committee on reaching it. I understand that it has been a long and winding road, and I hope that the weary travellers will not mind me joining them for this short step along their great trek.

My noble friend's amendment changes the requirements to be met when a new school is proposed, so that the criteria are set out,

"which the design of the school must meet, following best practice as prescribed by the Secretary of State".

I understand the Government's desire to minimise the barriers to the creation of new schools, the introduction of greater variety in the school system and the liberation of new energies—and, of course, to minimise bureaucracy—but it would be a mistake to cut corners on planning and design. They go together, and it has been one of the achievements of your Lordships' House in recent years to amend the town and country planning system to require planners to take account of and have regard to the importance of good design. The Secretary of State's outbursts against the architects associated with Building Schools for the Future programme were unwarranted and inappropriate. I declare

[Lord Howarth of Newport]
my interest as an honorary fellow of the Royal Institute of British Architects and chair of the Associate Parliamentary Group on Architecture and Planning.

I am very happy that it appears that a truce has now broken out between the Secretary of State and the RIBA. I was pleased to read in the 8 July edition of *Building Design*, in the report by the president of the RIBA, Ruth Reed, that she said that the Secretary of State had acknowledged that the James review was simplistic. Noble Lords will recall that the James review said that school design should be standardised to save money. She reported that the Secretary of State is,

"keen to get good value for money for school buildings. He is aware design matters and he did recognise that you have to invest in design … He certainly didn't come across as someone who doesn't like good design".

It is encouraging to have that confirmation.

I entirely believe that Ministers want good design in school buildings. The question is how that good design can be assured or how we can do as much as possible to assure good design, particularly under the provisions of this legislation. If I may also quote from the circular that was sent out to members of the RIBA immediately after the meeting the Secretary of State, we were told that one of the key outcomes of the meeting was an agreement to work with the Department for Education and the Department for Culture, Media and Sport to consider how to achieve the best value from good school design, particularly in mapping out scenarios for the future delivery of schools. Ruth Reed said this was a productive meeting. She said:

"We have agreed to assist in identifying the constraints to achieving well designed schools including those in procurement and planning. Well designed schools"—

she observed—

"will always be value for money because they deliver optimum conditions for learning which last for decades to come."

It would be helpful if the Minister would comment on the meeting between the president of the RIBA and the Secretary of State for Education, as well as with Mr Penrose, the Minister at the Department for Culture, Media and Sport with responsibility for architecture, if he would explain how his department intends to develop this work with the RIBA, whether he sees implications for this legislation and whether he thinks there may be a case for introducing an amendment to strengthen the commitments that the Government make in this legislation to the good design of school buildings.

Hitherto, I have lacked confidence that that would be the case. I understand that the department is consulting about making change of use easier, so that, for example, offices might be converted into new schools under permitted development rights. I seek reassurance from the Minister on that point. At face value it would appear that new schools might be opened in any old building. Perhaps he would tell us what guarantees that basic standards of health and safety, and of accessibility, can be assured by the Government.

More importantly, if "anything goes" in school design, there is a risk that the quality of education will suffer. Good design, as my noble friend said, and as the president of the RIBA also said, helps to create an environment that supports learning; is stimulating in the best sense; helps to restrain and minimise bad behaviour, ill discipline and vandalism; and creates the flexibility needed to accommodate different sorts of teaching groups and changes in the curriculum.

My noble friend's Amendment 116A is to be debated in a later group, but she is right to stress the desirability of Ofsted reporting, among other matters, on the effectiveness of buildings and their design on the education provided in them. Design is only one of the factors that make for good education. Outstanding teachers teaching bright and motivated children will create good education in almost any circumstances. An extreme case that I am aware of was in Albania, after the fall of the Hoxha regime, when the schools were derelict shacks. There was no glass in the windows and there were no pencils for the children to write with. Yet when Albanian children visited my then constituency of Stratford-upon-Avon, I strongly suspect they had a better knowledge of Shakespeare than the children being educated in schools in Stratford-upon-Avon. They definitely had a better knowledge of Byron.

We have seen in the English public schools that good teachers teaching well-motivated pupils are able to provide first-class education in conditions of Hogarthian squalor. Good design is not more important than good teaching. Good design supports good teaching. Policy and the legislative framework should be such that the whole system and the standards set by the Government support the generality of teachers and pupils, in particular those who work in disadvantaged communities. Of course we should share experience. The system should support school leaders to benefit from the experience of design that has often been hard won in other places.

The report in the *Times* today of the Government's announcement yesterday does little to encourage me to have confidence that we are going to see an insistence on good design in the new generation of schools that are to be built. One must, of course, welcome the announcement of funding for the rebuilding of schools and the building of new schools, but we are advised that this programme will be funded through public/private partnerships. We have seen in public/private partnership and PFI-funded school developments some environment and architectural atrocities, so I hope the Minister will be able to reassure us.

It is very difficult working through all the complexities of the contractual process of PFI to build in a requirement for good design. Because of this complexity, I understand that a handful of large contractors will bid for contracts and that contracts will be negotiated with the department or with the new funding agency for schools. I am worried about that because it seems to me that kind of system will not sufficiently provide for local factors to be taken into account. It is the sensitive and expert observation of local needs that is so often the key to good design, so I hope the Minister will be able to explain that the system that the Government are introducing will indeed provide assurances that design factors will have the prominence and the emphasis that they ought to have.

More broadly, I think the Government should think very carefully about the signal that they send about the importance and standing of education and schools if the policy is really that anything goes in school design. If grottily designed schools are to be permitted, the Government seem to be saying that grotty education is okay. That is absurd because that is not what the Government mean at all.

Baroness Garden of Frognal: I apologise for intervening on the noble Lord. He is making a fascinating speech, but it is trespassing on being a Second Reading speech rather than concentrating on the amendments in front of us. I think the Committee would be grateful if the noble Lord would draw his remarks to a conclusion on the amendment.

Lord Howarth of Newport: I understand the noble Baroness is very delicately hinting to me that I am going on too long. I think that my remarks have been very closely focused on the amendment, but I will rather quickly wind them up. I think the noble Baroness will agree that it is closely relevant to the amendment for me to note that the Bill would increase the power of the Secretary of State to make land available for free schools. Will she say whether that means that the Secretary of State can by fiat bypass the role of the local planning authority? Planning expresses the claims of the whole local community, not just of a particular group, however enthusiastic it might be. The system should not be rigged to support the group proposing free schools: the sponsors and the particular parents of children of school age who are keen to see the school. A school is a very important presence in an area. Its presence affects everyone; it affects the movement of traffic and makes demands on infrastructure. Sites for new schools should be appropriate, and that appropriateness should be determined by local communities. There are complex judgments to be made, and they ought to be informed by local knowledge and concern for all the legitimate issues within the community.

I support the thrust of my noble friend's amendment. My only reservation is that it seems to be a charter for prescriptiveness by the Secretary of State, and I would rather that she had couched her amendment in the terms that we have built into existing planning law and that the Bill should simply require that all those concerned with the promotion of the development of a new school should have regard for the importance of good design. Perhaps we can come back to it on Report in something like those terms.

1.30 pm

Lord Hill of Oareford: My Lords, we have discussed more than once in this Committee the strong international evidence that greater school autonomy helps to raise standards. We know that the work of the academies programme, set up by the previous Government, is adding to that evidence almost day by day. Traditional academies, of the sort championed by the party opposite, are securing improvements in standards well above the national average. In academies, the attainment of pupils receiving free school meals is improving faster than in other schools—all the more impressive given that academies have tended to start from a low base and operate in challenging circumstances. That is at the heart of why the Government seek to take forward the idea set out in the 2005 White Paper: to make sure that there are more autonomous schools providing greater opportunities for the children who need them most.

We set up the free schools programme to respond to parental demand for new and different school places. That has seen many more parent-led proposals for new schools than there ever were under the previous model—and, if I may say so, significant numbers of teacher-led proposals, which is a welcome development. By requiring local authorities under Clause 36 to consider academies first, we simply want to ensure that all local areas enjoy the proven benefits associated with greater school autonomy.

My noble friend Lady Ritchie is concerned that these changes will make it harder for local authority commissioners to ensure diversity of school provision and that parents should be able to choose between schools that are different from each other, whether in their ethos, their curriculum, their pedagogy or other such characteristics. However, we have already seen great breadth in the variety of schools emerging from both the academies programme and from free-school proposals. As the noble Lord, Lord Sutherland of Houndwood, rightly pointed out, our provisions acknowledge the fact that there may well not always be an appropriate academy proposal to meet the need for a new school. In those cases a local authority, with the consent of the Secretary of State, can obviously run a competition that can include all kinds of schools. If that competition does not produce an appropriate school, local authorities may publish proposals for a community school. It will also remain possible for groups to bring forward proposals for voluntary-aided schools outside the competitions process.

My noble friend Lady Ritchie was also concerned that the new process would be cumbersome for local authorities, but thanks to some of the changes made in Clause 36, such as reducing the circumstances in which a competition must be held, the time taken under our proposals to decide on the provider of a new school will be less than the 12 months it currently takes. We are keen to work in partnership with local authorities to help identify potential school providers who can respond swiftly and effectively to the need for school places that local authorities have identified.

The noble Baroness, Lady Massey, expressed concerns that the Government's attempts to increase school autonomy may lead to an increase in extremism. I think that was her particular concern, which I understand. All groups submitting a free school application have to be thoroughly checked for their suitability to run a school as part of the approval process. Applications need to demonstrate that they support UK democratic values, including respect for democracy, support for individual liberties and mutual tolerance.

As with all other schools, each free school will be inspected by Ofsted. The department is working with Ofsted to ensure that inspectors have the necessary knowledge and expertise to determine whether extremist and intolerant beliefs are being promoted in a school. New arrangements for inspecting maintained schools,

[LORD HILL OF OAREFORD]
academies and free schools are being developed, and relevant training on aspects of pupils' spiritual, moral, social, and cultural development will be provided to inspectors. All state-funded schools, including academies and free schools, must also comply with the admissions code and will be accountable to their communities for their admissions arrangements.

We had an interesting debate last night on the Statement on Building Schools for the Future, but sadly neither the noble Lord, Lord Howarth, nor the noble Baroness, Lady Whitaker, were able to be in the House for it. They have very properly raised today some of the issues that we touched on last night, which were also raised in proceedings on the Localism Bill. I agree with what the noble Baroness and the noble Lord said about the environment in which learning takes place. It must be conducive to and support education as far as possible. Good-quality buildings, classrooms and equipment are necessary for children to learn and to ensure that their school is a place where they can feel happy and secure. I recognise their points about the importance of design.

The noble Lord, Lord Howarth, in particular, asked a number of detailed questions. Rather than delay the Committee, perhaps I may write to him and to the noble Baroness and answer those questions as best I can. On the building regulations point, we said yesterday that we will consult on this in the autumn. After this Session, I shall try to pick up on the questions that I have been asked and come back on them.

As to the amendments, we are keen to ensure that unnecessarily high building and design requirements are not a barrier to new entrants to the market, including parent promoters of the new free schools. We are not keen to introduce new statutory requirements in this area, but I shall try to give the noble Lord such reassurance as I can.

The noble Baroness, Lady Howarth, asked about the role of local authorities in planning. They retain the responsibility to meet the particular needs of groups of children under Section 315 of the Education Act 1996, and we are retaining the duty on local authorities to keep under review arrangements for special educational provision in particular.

I recognise the points that have been made. At heart, what lies behind Clause 36 is the wish to bring academy solutions to parts of the country where they are not being pursued because of the benefits that they bring to children—particularly children from disadvantaged backgrounds.—and to ensure that they are able to have those advantages. On that basis, I ask the noble Baroness, Lady Jones of Whitchurch, to withdraw her objection and that Clause 36 stand part of the Bill.

Baroness Jones of Whitchurch: I thank the noble Lord for his interesting contribution. Is it the Government's intention that in future all schools should become academies? I think the answer—although the Minister did not put it in these blunt terms—is yes. It was interesting that in his response to the very wide debate that we have had and the comments from around the Room that he did not seem to mention parents and communities.

The Government have decided centrally that in future all schools should be academies and that local democracy does not figure in this brave new world that we are creating. That is sad because it means that all the local choice that the Government have been talking about will not exist in practice in the future. The Government are sending out a signal that high-performing maintained schools, of which there are many around the country, are being classified as second class: that they are not the current or future game in town. That is sad, because if you ask most parents around the country they would really like choice. Of course they all want high-quality, high-performing schools, but they want choice— and I do not see where choice figures in Schedule 11.

Under the current arrangements, without Schedule 11 we already have the opportunity for schools to transfer to academies and for new schools to become academies. The figures have already been quoted about how many existing and new schools are becoming academies—the process is already happening out there—and Schedule 11 add nothing except to give the Secretary of State undue powers to instruct that this will always be the case.

I would have liked to have heard more from the Minister on the point raised by the noble Baroness, Lady Ritchie, about the expansion of the school role and communities being able to respond rapidly to and having some control over what happens in the locality.

I listened carefully to the noble Lord, Lord Sutherland, and I was slightly disappointed with what he said. He seemed to be suggesting that we should not worry because there is a loophole. I would have thought that local communities want more than a loophole; they want the right to determine what should happen in their area.

Lord Sutherland of Houndwood: May I just clarify? That is the way in which the note is written. It seems to me that there is a power there that local authorities can use. There is an extra step—I concede that—but there is a power that they can use to create a school that meets the needs of the community if there is no alternative proposal that would meet them.

Baroness Jones of Whitchurch: If that is what we have to rely on, it is to be regretted. It should be much more of a forceful and enforceable right. I do not think I have anything more to say. In some sense this is an ideological difference between us. However, it is not about academies or no academies but about central and local control. We are very much on the side of parents, local communities and local democratically elected representatives. I do not think that the Government have fully acknowledged that. I am sure we will return to this subject, and I beg leave to withdraw the amendment.

Clause 36 agreed.

Schedule 11 : Establishment of new schools

Amendments 108 to 112 not moved.

Schedule 11 agreed.

Clause 37 : Constitution of governing bodies: maintained schools in England

Amendment 113

Moved by ***Lord Lucas***

113: Clause 37, page 34, line 22, at end insert—

"( ) in the case of a primary school, a person nominated by the parishes (if any) from which the school draws significant numbers of pupils,"

Lord Lucas: My Lords, in the Localism Bill we have been setting out to create neighbourhoods that are involved, vibrant and powerful. If you do that you will create a band of people whose first care is the education and well-being of their children. They deserve to be connected with primary schools, particularly ones that serve their children, and that is what this amendment does. I beg to move.

Baroness Walmsley: My Lords, I shall speak to Amendment 113ZA in my name and that of the noble Baroness, Lady Howe of Idlicote, who mentioned to the Committee on Monday that she is not able to be in her place today. I assume, therefore, that she will not be speaking to Amendments 113A and 113B, but I do not have my name to either of those.

First, I thank the Minister for his amendments in this group and pay tribute to my honourable friend Dan Rogerson MP, the Member for North Cornwall, whose powers of persuasion in another place were so great that he managed to convince the Minister for Schools, Mr Nick Gibb MP, that we need the government amendments that we find in this group. The amendments ensure that school governing bodies are more representative of school communities. However, students play a central role in these communities but at present cannot become school governors. We have put down this amendment to try to ensure that students can serve as full members of school governing bodies.

Article 12 of the UN Convention on the Rights of the Child ensures that children are involved in all decisions that affect them and that their views are given due weight in accordance with their age and maturity. I very much welcomed the statement by the Minister for Children, my honourable friend Sarah Teather, in December 2010, that the convention would be given due consideration when making new law and policy. I now urge the Committee to consider how students' rights to participate in decision-making can be strengthening through their involvement in school governing bodies. In 2009 the Committee on the Rights of the Child said:

"Respect for the right of the child to be heard within education is fundamental to the realization of the right to education … Steady participation of children in decision-making processes should be achieved through, inter alia, class councils, student councils and student representation on school boards and committees, where they can freely express their views on the development and implementation of school policies and codes of behaviour. These rights need to be enshrined in legislation, rather than relying on the goodwill of authorities, schools and head teachers to implement them".

1.45 pm

We are not asking for something new, because young people's participation in governance has worked successfully in education and beyond. Students were able to participate as full members of school governing bodies until a change in the law in 1986. Experience shows that young people can play a valuable role in governance arrangements. For example, young people under the age of 18 have for many years been members of the Children's Rights Alliance for England's council of management and have been actively involved in its human rights advocacy. They have taken difficult and complex decisions about budgets, staffing and strategy, and I believe that with the right information young people provide a uniquely insightful contribution to the deliberations of many organisations. They can be just as capable as adults of making governance-related decisions. I hope that the Committee will see fit to support this amendment.

Lord Touhig: My Lords, I rise at the request of my noble friend Lady Howe to speak to the amendments that she has tabled. As the noble Baroness, Lady Walmsley, explained, she cannot be here today. I am delighted to be able to follow the noble Baroness. It is more than 20 years since we had our first student governors when I was chairman of a school board. They made an important contribution right at the beginning because they started with a list of complaints about what they thought was wrong with the school, particularly the quality of the food. The school governing body decided that the first task of our student governors would be to do market research among the rest of the school and to talk to the dieticians and so on to decide what we should have on offer at the school. They came forward with a very good and healthy eating programme, and what the school sold at lunchtime reflected that. They continued to make an important contribution to the life of the school and the role started to grow.

Even now, I know that a number of schools unofficially invite students along to sit on school boards. I talked to a teacher last year who told me that the hardest part of the process of getting the job in his school was being interviewed by the students because they interviewed the teachers and then presented a report to the appointments committee of the governing body. I believe it is correct that we should put the rights of students in statute and allow students to become school governors. This will improve inclusion and will give students a voice. I remember that when I got expelled from college, having accused the principal of acting like Adolf Hitler, I would certainly have liked to have had some student support, but it did not exist.

Amendments 113A and 113B are probing amendments to examine the way the Education Bill is changing the relationship between the head teacher's responsibilities and those of the governing body and whether, as a result, there should be changes in their statutory relationship. Amendment 113A proposes removing the opportunity for the head teacher to be a full member of the governing body of a school. I must admit that over the years I have thought that they should be and that they should not be, and at the moment I conclude that they should not be. Currently, the vast majority of head teachers are members of their governing body, but with the added responsibilities the Bill proposes for head teachers, they will have a degree of conflict in reporting to the governing body and holding themselves to account as members of the

[LORD TOUHIG]

governing body. The National Governors' Association thinks there is a conflict of interest and believes that it is worth resolving.

The suggestion is that it should be solved simply by the head teacher not being a full member of the governing body but reporting to the governing body on the school's policies and so on. Noble Lords will know that the key role of the governing body is to examine the head teacher's proposals for the school and to agree or disagree with them. Head teachers propose the majority of strategies, policies and initiatives to their governing body and therefore will attend the governing body in any event, even though they would not be governors. However, under this amendment, they would not take part in the decisions that the governing body would reach on their policies. By way of a parallel, it is extremely unusual for the chief executive of, say, a charity to be a trustee and a member of the board, and permission has to be sought from the Charity Commission. The suggestion is therefore that this practice should be adopted by the schools sector and that these lines be removed from the Bill.

In the House of Commons, a number of Members were concerned about the undue influence that head teachers have over governing bodies. I became a school governor at the age of 18. I do not know whether that was legal. It was 1966, and I got co-opted on to a school governing body. I had experience of teaching appointments, which is a very important role of a governing body. I became chairman of the board. We had four schools in our group: two secondary schools, and two grammars schools—a boys' grammar school and a girls' grammar school. The headmaster of the boys' grammar wooed the governors. He persuaded them, he influenced them, he drew them along the lines that he wanted and he inevitably got the person he wanted appointed to the job when there was a vacancy, but the head of the girls' school had no such subtle approach. She simply told the governing body, "I want you to appoint that one", and inevitably it ignored her. I have seen those two extremes whereby heads can have a great deal of influence, perhaps in the wrong way, particularly on teaching appointments.

This small change proposed for the composition of governing bodies will not in itself rectify the probable dysfunctional relationship. Removing the right of head teachers to sit on governing bodies would send a signal about the respective leadership roles of the governing body and the head. Understanding each other's role is important for the effective working of the governing body. As your Lordships will know, the National Governors' Association was pleased to see in last November's White Paper that the Government said:

"School governors are the unsung heroes of our education system … To date, governors have not received the recognition, support or attention that they deserve. We will put that right".

This amendment provides some much needed recognition that the role of the governing body is to monitor, to challenge and to support the head teacher in the best interests of the children in the school. The amendment would bring clarity and the good practice that exists in the charitable sector, and would greatly benefit schools. It is important that we see a very close working relationship between the head and the governing body, but it is distinct, and it is important that we recognise that.

I am sure that many of us who have served on governing bodies have had all sorts of experiences over the years where there have been dangers of conflict. I served on a governing body where we used to meet until 11.15 pm because of conflict between the governors and the headmaster, and the only way we resolved it was by all the governors eventually being removed by the bodies that nominated them and a new team being put in so that we could have better co-operation. The amendment before your Lordships will benefit and greatly enhance the way in which governing bodies and head teachers can work positively in support of their schools.

Baroness Massey of Darwen: My Lords, I support the remarks made by the noble Baroness, Lady Walmsley, and my noble friend Lord Touhig about having students on governing bodies for two reasons. First, it would be good for the school and, secondly, it would be good for the students to have experience of being on a governing body. We have got better at listening to children over the past six or eight years or so. I sit on a couple of boards on which young people are now represented, and they collaborate fully. We have a Youth Parliament that is incredibly powerful, sensitive and sensible. We have talked before about the importance of school councils. Having pupils as governors is an extension of that. School councils are elected. They are not just there to talk about the toilets. They talk about all kinds of important issues, such as school meals, discipline and bullying, and they talk about the ethos and curriculum of the school. This is all to the good. Schools benefit and young people benefit, so I support the amendment.

Baroness Turner of Camden: My Lords, I, too, support my noble friend in her amendment. I have been briefed by a number of organisations, including Save the Children, of which I was a trustee for many years. It is fully in support of the amendment, which would ensure that students were able to become school governors. I gather that they cannot be at the moment; they may play a very full role in the community, but they cannot become school governors unless there is a change in legislation to make it possible. Save the Children has reminded me about the UN Convention on the Rights of the Child and the right for children and students to be involved in decisions that affect them. What can affect them more than the kind of education they have? It seems entirely reasonable that students should be allowed to become governors, which I am sure will add to the general weight and value of governors and ensure that students begin to feel a much greater sense of responsibility than if they are simply governed by other people. Therefore, I strongly support the amendment and I hope that the Government will be prepared to accept it as well.

Baroness Howarth of Breckland: My Lords, your Lordships would not but expect me to support the idea that young people should be fully involved in boards. I serve on a number of boards that are fully

integrated and that work. However, I am anxious about the rights and responsibilities aspect. If this amendment is incorporated into the legislation, what will the difference be between the responsibilities of adult governors and those of minors? That difference is made absolutely clear in voluntary organisations and non-departmental governing bodies on which young people sit with equal rights to speak. There is clarity about their accountability because they do not hold property or estate, which can be called on in a voluntary organisation. I know all the benefits of young people being fully involved—I do not want to repeat the speeches of my colleagues on that—but I want clarity on their protection as minors. We often forget that we as adults have that responsibility for them.

I support the separation of powers between heads and governing bodies. I know that there has been a great deal of debate, certainly in the voluntary sector, as to whether chief executives should be full members of trustee boards. However, that again brings a number of conflicts of interest below the line. If there is a difference of opinion between the majority of the trustees and a group of trustees with the head, and there are issues that take the group into disrepute, there are real dangers in that. One needs a head teacher who is a chief executive and gives advice independently, and the decision-making power within the governors. I agree with the noble Baroness, Lady Howe, that these powers should be separated, although I understand why the Government are trying to give teachers the status of being on the board.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall): There is a Division in the House. The Committee will adjourn.

1.58 pm

Sitting suspended for a Division in the House.

2.20 pm

Lord Knight of Weymouth: My Lords, I wanted to speak to this group of amendments but not because I oppose any of them. In many ways, I can see the benefits in appropriate circumstances of parish councils being represented. Indeed, when I was the mayor of Frome, which was technically a parish council, we had nominations as a minor local authority on to governing bodies locally, so there is some precedent for it. I am certainly a strong advocate of the student voice in schools and see the benefit of students on governing bodies and similarly of staff local authority representation.

I wanted to take a couple of minutes to put it to the Committee, and particularly to the Minister for him to think about it, that we need to have a wider deeper debate about school governance. It is currently confused. I started a review of school governance that never quite concluded. Indeed, it was more difficult to get some agreement about the future of school governance than it was to get all the faith groups to agree about statutory sex and relationship education in our schools, so I do not underestimate the difficulty.

I certainly do not think that anyone in this Committee or elsewhere would want to give the message that the wonderful job that school governors do is being undervalued, when they are the largest group of volunteers working in our society. However, when people are essentially there as representatives rather than for the skills that they bring to challenge the school leadership, as you would when looking at the governance of organisations in other sectors, you have confusion between what an advisory body is, which is made up of representatives and stakeholders such as staff, students, parents and perhaps local authorities, and what a board of governance is, which is there to recruit and to really challenge the leadership of the school. I am afraid I do not believe that with 23,000-odd schools in this country, we have 23,000 excellent governing bodies that are properly challenging head teachers.

Indeed, most head teachers who I talk to tell me that their governing body is frankly a bit of an irritation. It is something that they have to work out how to manage, rather than something that properly supports and challenges them as leaders. That tells me that we clearly have a problem. The discussion, particularly by my noble friends Lord Touhig and Lady Howarth, on whether heads should serve on governing bodies is in turn a demonstration of that confusion, because points were rightly made about a conflict of interest and it probably being inappropriate for a chief executive to be a full member of the board if we were to use the suggested model from the third sector. The Government would be well served by looking at whether we can move to shared, more professionalised governing bodies, particularly as we see the emergence of clusters of schools, and proper councils or advisory bodies for each school.

That would be a significant and brave reform. However, academy sponsors tell me—I spoke to a leading one yesterday—that they strongly believe that the most important thing we did when introducing academies was to strengthen governance. It was not about autonomy as such, or about the freedom to pay teachers what they liked or about freedom in the curriculum being really important; it was about strong governance, and about getting sponsors in who appointed really good people for their skills in challenging heads and school leaders. It was about leaner, or smaller, numbers of governors, who could then gel as a group, much as the trustees of a charity or board of a private company might do. It is something that we urgently need to look at if we are to make the progress that the Minister and his colleagues in the ministerial team want to make in making every school a good school—and, in particularly, in making sure that we attend to the biggest problem that we have with schools in this country. That is not how we fix failing schools and make them successful again—we have worked out how to do that. Our problem is how we stop average schools becoming failing schools. In the end, we do that by strengthening our governance arrangements.

Baroness Jones of Whitchurch: My Lords, I very much welcome the contribution of my noble friend Lord Knight, as he attempted to widen the debate. I was going to widen it but not quite as widely as he did, but I wanted to make the case for diversity on governing bodies. Although I support the amendments tabled in all noble Lords' names, including those tabled by the Government, they go only so far. We very much

[Baroness Jones of Whitchurch]
welcome the fact that the Government have listened to the case made by colleagues of the noble Baroness, Lady Walmsley, as she said, for there to be staff and local authority representatives on governing bodies. We made that case as well, and I am glad that it has been taken on board in part. However, the effect will be that a single local authority representative could be on each maintained school governing body, while at the moment there could be up to five local authority representatives on a typical community secondary school governing body.

In my experience, when I was chair of the governors of a secondary school for many years, the local authorities in my area used the opportunity to have a spread of places in order to bring diversity of community representation and people with different skills to the governing body. Governing bodies work best—and here I half-meet my noble friend—when there are strong, diverse voices from the community. What worries me about the legislation now is that it almost seems to want to curtail the spread of knowledge and skills. That might be something that the Minister can respond to, although I may have got that wrong. Diversity is very important.

The governors whom we have make up one of the largest volunteer forces in the country. We should be upskilling them, valuing them and making sure that they can make a greater contribution. Of course, if my noble friend Lord Griffiths was here he would say that we also need to take account of the fact that the ongoing work of being a governor is increasingly arduous and time-consuming, so we need to make sure that we have the support networks and the training to support it. It is a particular challenge for parent-governors who, with all their other responsibilities, as I know from my own experience, find being a governor particularly time-consuming and challenging.

I am anxious about what is to happen when the current governors, who are providing that spread of expertise, are told that they are going to be stood down. There seems to be a lack of a transitional plan. That might mean that it will be more difficult to recruit governors in future if the signal that is going out is that current local authority governors, or their range of skills, are not seen as the future. I hope the Minister can address the whole issue of diversity on governing bodies and how we are going to maintain that strong community voice so that it is not just the parents, teachers or head teachers who help to make the governing body strong but outside challenges and expertise.

2.30 pm

Baroness Sharp of Guildford: I would like just to say a few words on these amendments. Like others in the Room, I have been a governor in one form or another for the past 20 or 30 years. I have hesitations about some of the proposals, particularly those from the noble Lord, Lord Knight. While I support entirely the notion of student governors, will those who propose the notion—particularly my noble friend Lady Walmsley—say whether this is to apply to primary schools as well as secondary schools? What about infant schools? Is it to apply to small village primary schools, which are in effect just infant schools?

Baroness Walmsley: All secondary schools should have student governors. There is a role for younger children perhaps to be associate governors on the governing bodies of their primary school. These various categories of governors can be viewed in different ways. The staff governor and the student governor need to be there because they have a very particular perspective, whereas the local authority governor, who appears in the Minister's amendment, is modified by the Minister's other amendment, Amendment 113C, which allows schools to choose a local authority governor with the skills that they require. I agree with the noble Lord, Lord Knight, that schools should have a governing body with a set of skills that are appropriate to them, and these government amendments allow that.

To return to my noble friend's question, in the case of children and staff it is not so much the skills as the perspective that they bring which matters. That is why there is a role for children even younger than 11 on the governing body, although perhaps not as a full governor.

Baroness Sharp of Guildford: Thank you. That clarifies the position as far as I am concerned.

Lord Touhig: In my part of the world we found that the primary school council was a very good conduit into the school governing body.

Baroness Sharp of Guildford: Certainly student councils are an important thing to encourage, but some younger students in particular would find it rather intimidating to come on to the full governing body.

I find the question of the separation of powers very interesting. The head has been a full member on all the governing bodies that I have sat on, and I have not sat on one with this separation of power. The proposals by the noble Lord, Lord Knight, worry me a little. I played a seminal role in getting parent-governors agreed back in the 1970s in London, where the ILEA was the first authority to have parent-governors and I led the London campaign for the advancement of state education. There was a need for governors to be seen as links to the local community.

Many London governing boards had managing boards for a whole cluster of schools. We found this appalling. You had the same group of governors attending governing boards for every school and basically rubber-stamping the heads' notions. The notion of a separate governing board for each school became an important part of what we as parents wanted. The notion that the governors were critical friends of the head and helped both to support and criticise the head was very important. Because the local authority was more important than it is now, the separation of powers was perhaps less so than now seems to be the case.

I would be sad to see two things disappear. One is the notion of the board of governors providing in some sense a link between the local community and the school. Second would be the loss of the notion of

the critical friend, so that you become just a scrutineer. I would also be sad to see large managing boards for groups of schools.

Baroness Brinton: My Lords, the noble Lord, Lord Knight, and the noble Baroness, Lady Jones, referred to how the word "representative" has crept into the discussion. As far as I can see—I would be grateful if the Minister could confirm this—there is no intention that anyone elected, appointed or nominated to a governing body should be a representative of a particular group. They are nominated by a group but their main function is as a member of the governing body, and that should remain the priority.

Lord Hill of Oareford: My Lords, like other noble Lords, I shall start by thanking the 300,000 governors who work so hard for schools. Without them, schools could not operate properly. The quality of school governors is vital to the success of our schools, which is why the principle at the heart of the changes we are proposing, which are permissive by nature, is to give governing bodies more freedom to recruit governors based on their skills, as the noble Lord, Lord Knight of Weymouth, said. Having heard that the noble Lord looked into this area a couple of years ago, if he has the time I would be keen to look at his scars to see whether there is anything I can learn, because we have grappled with some of the same issues.

In fact, the issues around governance are a subset of some of the broader debates that we have had on a range of issues in Committee. We all start with the instinct to try not to be too prescriptive and to trust people, and then find ourselves drawn by stages into saying that we want to be completely permissive apart from this area, this area and this area—areas about which we feel strongly individually. The same thing has happened in our approach to governance and, as the noble Lord, Lord Knight, said, we have ended up with a complex system.

A number of noble Lords have raised fundamental questions about the purpose of a governing body such as what we look to it to do and the kind of people who could best provide the challenge we are keen to see provided. These are very good first principle questions that ought to be asked. However, as even the noble Lord, Lord Knight, was defeated in his attempt to grapple with this issue, I shall be more modest and bring the Committee back to the Bill and the amendments.

The current complex regulations can sometimes get in the way of some governing bodies, and the main purpose of Clause 37 is to free up the constitution of maintained school governing bodies. We also want to amend the relevant regulations to minimise prescription around the proportions of governors required from each category. We believe that the governing body is best placed to determine what will work best for them locally and that—this is an important point—the current governing body should decide on any change to its constitution. As I said, the changes that we are proposing are permissive. The noble Baroness, Lady Jones, asked me about that, and that is the answer—no governing body will be required to change if it does not think it is in the best interests of the school.

As I have said, our wish is to minimise prescription, but having listened to the concerns expressed in another place—which I know my noble friend Lady Walmsley shares—we are bringing forward two government amendments. I accept that there are strong views that maintained school governing bodies should be required to include an elected staff governor, other than the head teacher, and one local authority governor whose skills will assist the governing body. We propose that when a local authority governor post becomes vacant, the governing body should liaise with the local authority to identify a suitable candidate for appointment. The governing body should be able to ask a local authority to make a different nomination if its original one does not have the skills required by the governing body.

I agree with my noble friend Lord Lucas that it is important for a primary school to have close links to its local community. It is, of course, already possible for the local authority or the governing body to appoint governors who represent the local community, and it is right that we should leave the decision to do so to be made locally—it may well appoint a representative from the parish—rather than to prescribe a completely new category.

We had a long debate about student governors. As has been pointed out, many schools already have well established and highly effective school councils. Pupils can already be invited to attend and speak at governing body meetings and can serve as associate members of governing bodies. Like the previous Government, we think that these arrangements allow for governing bodies to take proper account of pupils' views.

I would be cautious about prescribing a new category of pupil governor and forcing governing bodies to appoint them, because we are keen to try to move away from that. There are some practical issues relating to student governors of the sort that the noble Baroness, Lady Howarth, referred to which one would need to think through. Another set of issues was then flushed out by my noble friend Lady Sharp. We would need to think very carefully, for instance, about giving pupils responsibility for decisions relating to pupil or staff disciplinary matters, or issues around pay. However, I would be interested to discuss some of these points further with my noble friend.

Baroness Walmsley: It is common practice, whenever there are issues such as the Minister has just mentioned, for staff and student governors to withdraw. It is perfectly practicable to do it that way.

Lord Hill of Oareford: I accept that, my Lords. There are ways of dealing with that, but there are a range of other practical issues that one would need to think through. I would be very happy to explore some of them with my noble friend and others who have an interest and see where we end up.

On head-teacher governors, I again understand the arguments that have been put by both sides. That is probably why the noble Lord, Lord Knight of Weymouth, having had both these opposing views, concentrated on other issues. I understand the argument both for their inclusion on boards, in the same way as a chief executive of a company might serve on a board, and

[Lord Hill of Oareford]
against in the case of the voluntary sector and other charities, where the chief executive is often not on the board.

We know that there are issues, but overall the system is operating. We are working with the National College to develop training for chairs of governing bodies to assist them in the role of holding head teachers to account. Head teachers can choose to remove themselves from governing bodies. If individual governing bodies wish to move to the position suggested, they can do so and the head teacher can resign from the governing body. The thought of removing head teachers from every governing body in the land, from 25,000-odd schools, seems quite courageous, but, as the noble Lord, Lord Knight, said, these are issues on which we need to continue to reflect.

The noble Baroness, Lady Brinton, asked me a specific question about governors. Governors are not there to represent a particular group and should act in the best interests of the school, having formed their own opinion.

I therefore commend my amendments and ask my noble friend to withdraw his amendment, which he moved some time ago before we had many Divisions in the House.

Lord Lucas: My Lords, I thank my noble friend for his comprehensive reply. I beg leave to withdraw the amendment.

Amendment 113 withdrawn.

Amendments 113ZA to 113A not moved.

Amendment 113AA

Moved by ***Lord Hill of Oareford***

113AA: Clause 37, page 34, line 23, at end insert—

"(ba) a person elected as a staff governor,

(bb) a person appointed as a local authority governor,"

Amendment 113AA agreed.

Amendment 113B not moved.

Amendment 113C

Moved by ***Lord Hill of Oareford***

113C: Clause 37, page 34, line 30, at end insert—

"(4ZA) Regulations made by virtue of subsection (3)(c) in relation to a maintained school in England may include provision for eligibility criteria for the school's local authority governor to be such as may be specified by the school's governing body."

Amendment 113C agreed.

Clause 37, as amended, agreed.

Clause 38 agreed.

Clause 39 : School inspections: exempt schools

2.45 pm

Amendment 113D

Moved by ***Baroness Walmsley***

113D: Clause 39, page 35, line 15, at end insert "except that regulations must provide for inspections of safeguarding policies at prescribed intervals"

Baroness Walmsley: My Lords, Amendment 113D would make sure that, where schools are not regularly inspected by Ofsted, regulations would provide for inspection of their safeguarding policies at prescribed intervals by some means or other. Due to the central importance of child protection in schools, somebody should be inspecting all schools to make sure they are fulfilling their legal duty to safeguard and promote the welfare of children under the Education Act 2002.

The NSPCC has had some conversations with Ofsted about those schools which are going to continue to be inspected. It has agreed that the right place for the inspection of safeguarding should be within the leadership and management strand of the new inspection framework. It also recommends in the statutory guidance, *Safeguarding Children and Safer Recruitment in Education*, that the Ofsted report should state whether the school has an effective policy on child protection which is consistently applied; whether the school has a designated lead member of staff for child protection; whether the designated person takes part in local, multi-agency arrangements such as case conferences; and whether school staff attend child protection training which is refreshed at intervals set out in the statutory guidance. All these things would apply to schools that are not exempt from inspection. The question that I am raising in this amendment is what happens to safeguarding when schools are not regularly inspected?

If academic standards slip over a period of time—the head teacher might move to another school and a new one comes in who is not perhaps as able—someone is likely to notice and trigger an inspection, which legislation allows. However, safeguarding can go pear-shaped very quickly and this is often very well hidden. Can the Minister say how the Government intend to ensure that schools are carrying out their safeguarding role diligently, especially in the light of the intention to repeal the duty to co-operate with local authorities? Will excellent safeguarding policy and practice be a limiting factor in whether a school can achieve an outstanding Ofsted report? Guarding the safety of children in school is one of the most vital roles of every school, whether the academic achievement is good or poor. We are proposing not to inspect those that have high academic achievement. It does not necessarily go hand in hand with very high standards in safeguarding policy. What do the Government intend to do to ensure that this matter is addressed? I beg to move.

Baroness Perry of Southwark: My Lords, I speak to Amendment 114. I entirely support Clause 39. It is absolutely right that academies and other schools that are exempt should be given freedom from full Ofsted

inspection. I have severe reservations about whether Ofsted's regime in the past has been proven to do anything to improve standards in schools. In fact, the contrary appears to have been the case. We have to hope, of course, that Ofsted in its revised form will be a more positive experience. Nevertheless, it is right that these schools should be exempt from routine Ofsted inspection. However, as my noble friend has already said, academic standards can slip, but long before academic standards begin to show a decline in a way that can be identified, it is possible for a school to begin—usually because there is a change of head—to decline in terms of standards of discipline and staff morale. Therefore, the overall ethos of the school begins to change and, within two or three years, that will certainly begin to be reflected in the academic results and standards.

The proposal in Amendment 114 may be a little leftfield. It proposes that, instead of having a full inspection regularly, a school should have somebody assigned to it who just keeps an eye on it. The noble Baroness, Lady Massey, suggested that this amendment brought about something like a school improvement partner, but that is not what is envisaged at all. This person would not have a role in helping the school to improve or develop; they would simply be a friendly eye, popping in two or three times over the year—at least once a term—just to ensure that the high standards that had been present before were maintained. If there is any question or doubt, this would be the early warning system; if the "visitor", as the amendment calls this person, had reason to believe that things were beginning to go wrong, he or she would be able to trigger a full inspection by Ofsted.

I am sure that all of us in this Room with our tremendous experience of schools have seen schools change very quickly when there is a change of head. I have certainly seen schools that were very good begin to deteriorate in a couple of terms, when a weak head moved in—and, vice versa, a school that has been weak in the past can suddenly begin to pick up very fast when a good head moves in. Assuming that it is the case in some schools that they go down in standards, I believe that it would be very important to have someone keep an eye on that, rather than wait the two or three years before it begins to appear in the standards of achievement. I do not need to remind the Committee that these are children's lives; they do not have a second chance. If the school's standards begin to decline, down the line their success and achievements will also go down. So I very much hope that my noble friend will at least look sympathetically on this idea.

Lord Lucas: My Lords, I take a more radical view than my noble friend, although if her amendment was accepted a lot of my worries would be dealt with. The Government are making a great mistake in going down this route. It is not that I like Ofsted—I do not like the old-style Ofsted; a lot needs to be improved about it. But going in this direction is going to cause considerable problems down the road.

Schools that are rated outstanding often do not stay outstanding. Quite a high proportion of them drift downwards. This is entirely natural, with changes in the staff and in tempo and other changes that mean that a school loses its grip on the excellence that it once had. Perhaps it was lucky to get a grade 1 in the first place and has just slipped back to its natural place in grade 2. Unless you have some contact with the school, you absolutely do not know that that is happening.

One of the main grouses that I have with Ofsted at the moment is that it is very late to pick up changes. Ofsted will pile into a school and put it in special measures when, if it had caught it a couple of years earlier, it would have meant a minor change of course. I can think of an excellent secondary school in Manchester that was dumped into special measures when it got a head who was being experimental and trying all sorts of things and forgetting to look after the basic management of the school. It was a very easy thing for an experienced head to pick up; if someone had just come in, as my noble friend Lady Perry suggests, and had a look at the school, they would have sensed that immediately.

I do not share the confidence of my colleagues on the Liberal Democrat Benches that these things get picked up by parents, since parents are by and large terribly loyal to their schools. They do not talk to outside people or to Ofsted. There may be a flow of information round the local circuit, but it does not get out of that; no one complains. Often, there will be a flow of propaganda from the school that what it is doing is right and that the course it is taking is the best one. Even if it is experimental and there are some worries about it at the moment, it will all work out. Parents are inclined to accept that and an outside expert eye can make all the difference. At the moment, Ofsted is deficient in that it does not look at schools often enough and this causes much greater problems than there ought to be. If we get to a position where Ofsted does not see schools at all, we will start to have serious problems going unchecked, to the point where the rot is so bad that the fruit falls off the tree and the educational lives of a great many pupils are seriously damaged.

Beyond that, we are considering opening up the curriculum so that a great deal of what a secondary school, in particular, does will be down to that school. So we will start not to know what a school is doing and whether it is doing well unless someone tells us what is going on. How will we know that PSHE in a school is being done properly, or what is being done, or what is being taught? We will rely entirely on what the school chooses to tell us. If it is a good school doing the right thing, fine—that will be all right—but how will we know if that is the case?

The proposals in this clause, as they are now, will fail schools, fail children and fail parents and the information they should have. We should seriously look to do something about this.

Lord Sutherland of Houndwood: My Lords, the clause is very radical in its consequences. Amendments 113D, 114 and 114A are all firefighting amendments and I support them as such, particularly in regard to the importance of safeguarding. However, I agree with my colleague and friend, the noble Lord, Lord Lucas,

[Lord Sutherland of Houndwood]
that, if we move away from requiring inspection of a whole range of schools, danger lies down the road and that we may be in a different position when debating this issue in five or 10 years' time.

I was involved when Ofsted was established—I am sorry to be historical but this is relevant—and one of the earliest things I did was to go to a meeting with private school head teachers. I was wise to go to girls' schools where they were mostly lady head teachers, who were much more reasonable. I challenged them and said, "If the state system can put up with this, what about you"? Much to their credit, they began to create an inspection system of their own and compared notes with Ofsted all the way down the line and found it beneficial.

On another bit of relevant history, five years ago during debates on the Education and Inspections Bill, a major issue about faith schools arose. Indeed, after re-reading *Hansard* and as I look around, it is like being back there—the noble Lord, Lord Lucas, the noble Baronesses, Lady Walmsley, Lady Sharpe, Lady Perry and Lady Howarth, were all there when we debated it at some length. They may recall—I certainly do, as I tabled one or two crucial amendments—that there was an immense degree of what I can only call aggression. Except for the issue of assisted dying, I have not seen the House of Lords quite as split right down the middle as on the question of the future of faith schools.

We have had a sensation of that in this Committee but we have held back, I am happy to say. However, that could be recreated because the exemptions proposed include a number of faith schools that cause severe worries for Members of the House. This may reopen the whole issue of whether there should be any at all, let alone, as the question was, any new ones. I see, for example, Amendment 114 as a step towards this. There could be other ways in which one might take a step towards obviating the possibility of a certain kind of curriculum, the way in which it is taught and a lack of attention to community cohesion—which I believe were the words on which the amendments at that time focused.

The crucial issue was that there would be a backstop, and Ofsted would inspect all schools on the basis of their capacity to create cohesion in the community. That provided a net within which many of the worries of Members of the House were resolved sufficiently for them not to move down the much more radical secular path. I put it to the Minister that a number of us would be minded to introduce further amendment at the next stage if Clause 39 stands in its current form without these issues being dealt with.

3 pm

Baroness Jones of Whitchurch: My Lords, our Amendments 114A and 122ZB would apply the same provisions to FE.

Under Clause 39, once a school was deemed "exempt", it would never again need a Section 5 inspection. Like other noble Lords who have already spoken, we believe that freeing schools from any future inspection is a very dangerous step to take. Our amendments would therefore require regulations to provide for a range of local bodies to be able to trigger inspections where there are concerns. The most obvious of these would be local authorities and parents, but it is possible to imagine, for example, information from the police or appearing in the press being sufficient for Ofsted to decide that an inspection is justified. The noble Lord, Lord Sutherland, called it fire-fighting, which may be what are talking about. We are certainly talking about recognisable incidents or failings which have triggered concern and therefore an inspection.

As the noble Lord, Lord Lucas, said, echoed by the noble Lord, Lord Sutherland, there is no obvious purpose behind the clause. It is not clear what the rationale is, where the demand is coming from or how the resulting inspection void will be filled. We have considerable sympathy, therefore, with the movers of Clause 39 stand part.

Section 5 inspection reports are not just about a crisis of some kind; they are also extremely useful to parents and pupils, whether the pupils are already at the school or prospective pupils. The reports help parents and local authorities understand the strengths of a school and the areas where improvement is needed. They mean that parents can send their children to a particular school with a high level of knowledge about the quality of the learning experience that their children can expect. They also help local authorities hold schools to account and support them. The benefits for parents and the wider community of exempting schools are therefore unclear. Perhaps the noble Lord can explain that to us.

It is also not exactly clear from the legislation what conditions would render a school or college exempt. I understand that it was indicated in the Commons that it would be when a school was judged to be outstanding by Ofsted, but it is not clear that they would be the only circumstances in which a school would be classified as exempt. Perhaps the Minister can clarify that. If they are the only circumstances, can the Minister confirm that it is quite likely that a school, once deemed to be outstanding, may not be subject to an inspection for six years or more? In other words, a whole cohort of children could pass through it without it ever being subject to inspection. Surely, as has been pointed out around the Committee already, there is a risk that once a school has been judged to be outstanding, its standards could subsequently decline.

We, and no doubt others, have received comments from bodies such as Barnardo's, Children England and Save the Children, echoing concerns about making exemptions from inspection. For example, unfairly selective admissions processes, lack of support for pupils with special educational needs or support to improve their behaviour, or dips in attainment of children from disadvantaged backgrounds may not be picked up. In addition, a school's ongoing performance as a newly converted academy, with all the change and upheaval that it might entail, may not be considered and identified.

During the course of the Bill, we have debated the future of a number of education quangos. Thankfully, the Government have recognised the importance of Ofsted and that it needs to continue. They have also recognised that Ofsted inspections are still considered

to be the gold standard which teachers respect and parents rely on. If they are going to apply to only a certain proportion of schools, is there not a danger that that whole brand and that authority will diminish over time? One of the great strengths is that it is something that can be compared across the whole spectrum of schools as things stand at the moment. The clause allows exempt schools to request an inspection themselves, and a number of outstanding schools have already indicated that they may be forced to make such a request because they fear that parents will not be interested in reading a report about them that could be five years out of date. The fact that Ofsted will be able to charge for those inspections raises the spectre that there may be another fundraising subtext to these proposals, and I would be grateful if the Minister could debunk that suggestion.

As the Bill stands, local authorities cannot trigger an inspection, yet local authorities are the champions of education in their areas and they are very well placed to identify concerns within a school, either through direct experience or through receiving concerns and complaints from the local community. Local authorities and parents are losing out in the way that these increasingly fragmented inspection systems are being introduced.

Our amendment would enable parents, the local authority and other interested bodies to trigger an inspection on an otherwise exempt school. I recognise that if this amendment were agreed it would need to be worked upon to identify what the threshold should be for triggering an inspection. For example, would there need to be a number of parents or prospective parents requesting an inspection and how would Ofsted assess the seriousness of the concern raised? We believe that that could be spelled out in regulations. We hope that our amendments go some way towards providing some checks and balances, but we are also extremely sympathetic to the wider issue raised by the noble Lord, Lord Lucas, and other noble Lords in this debate.

Lord Hunt of Kings Heath: My Lords, I have put my name to the Motion that this clause should not stand part of the Bill. I find it quite extraordinary that the Government are proposing that schools should be exempt from Ofsted inspections. I am not an uncritical admirer of Ofsted. Like the noble Lord, Lord Lucas, I have seen some inspections which have not done the required job and have often had a disabling effect on the teachers because of the conduct of the inspectors. None the less, overall, Ofsted inspections provide important safeguards for the public.

We are not told very much about the rationale for this. The Explanatory Notes state that this will allow the Secretary of State to exempt certain schools, and one has to look at the debate in the Commons or at the Minister's comments at Second Reading to find that the intention is that outstanding schools should be exempt. Like my noble friend Lady Jones, I would like the Minister to confirm that. The noble Baroness, Lady Perry, suggested earlier that academies would be exempt. I would like the Minister to confirm that that is not the case and that it is, at the moment, the intention that only outstanding schools will be exempt.

At Second Reading, my noble friend Lady Morgan, the chair of Ofsted, commented on this. She said,

"outstanding schools and colleges will in future be inspected only where there is cause for concern".—[*Official Report*, 14/6/11; col. 737.]

I have considerable concerns about this. The fact is that not all outstanding schools remain outstanding. The figures that Ofsted published in answer to a Written Question I asked a few weeks ago show that of the 1,155 schools judged to be outstanding at their penultimate inspection, 302 were judged to be grade 2 at the most recent inspection, 58 grade 3 and one grade 4, so over 30 per cent of schools experience a reduction in their grading on a subsequent inspection by Ofsted. What possible basis could there be to say that we will exempt outstanding schools for all time?

We are told that the Government believe that the risk can be reduced because Ofsted is developing this risk assessment approach to include a basket of indicators, which will flag up concerns. It will also be influenced by complaints from parents or local intelligence from the LEA—although given that the Government are taking so much power away from those LEAs, it is difficult to know how they will have much local intelligence in future.

We know that Ofsted is planning this matrix system, where data on schools can be checked to trigger an inspection, but we all know about data. In any case, the data will be historic so the risk is that when an outstanding school declines, the trigger mechanism does not come into play until children have been adversely influenced because of that decline. Given that top-grading already allows inspections to be postponed it is clear that nearly a third of outstanding schools take their foot off the gas when regular inspection is not imminent, so how much worse will that become if we have no regular inspections at all?

We have heard a number of examples. The most obvious is when the head and a cadre of senior teachers retire at the same time. I know that noble Lords will have seen examples where the school has declined rapidly in the event of that happening. Perhaps I might give another example, since the previous debate on governance was very interesting. There are outstanding heads who do not welcome strong governance and use their influence to make sure that weaker governors are appointed. My experience is that the person most influential in appointing governors is the head teacher themselves, so you can have a situation where there is a very strong head and a weak governing body. When the head retires, the governing body appoints a new head but then does not know how to deal with the incoming head, who may not be up to the job. The absence of regular Ofsted inspection means that there are fewer safeguards for parents than there would be if Ofsted continued to inspect those institutions.

The suspicion is that this is driven by resources and that a pared-down Ofsted will have to focus on the weaker schools, but surely we owe it to all parents who send their children to the schools affected for Ofsted to have a continuing role in relation to those schools. To give an example from the National Health Service—I declare an interest as a consultant trainer in the NHS and as chair of a foundation trust—NHS trusts have

[Lord Hunt of Kings Heath]
gone through a similar process of regulation, both by the Care Quality Commission and by Monitor. If you achieve foundation trust status, Monitor does not just go away and not darken your door for six or 10 years. We are in a quarterly reporting mechanism and if we fail to meet the top four or five targets, the chair and chief executive can expect to be called in at any time to account for the problems. I do not understand why the Minister's department is taking such a different approach than to other parts of the public sector. I fail to see how you can justify not having regular inspections for all schools.

I also have concerns about the nature of Clause 39. Why do the Government not specify which category of schools is to be exempt in the Bill? The Bill could be used by the Secretary of State to exempt academies, if he wanted to, or faith schools, if he wanted to, or free schools, if he wanted to. There are absolutely no guarantees that he will not do that in future. Finally, why is the order-making power negative? I would have thought that something as important as the exemption of categories of school from Ofsted inspections would, at the least, deserve to be treated as an affirmative order. I hope that the noble Lord will reflect on these points. It is clear that there is concern around the Committee on these issues, as there will be among parents unless the Government are prepared to reconsider this.

3.15 pm

The Lord Bishop of Ripon and Leeds: My Lords, I want to add my voice to the concern about Clause 39 and particularly to support Amendment 114A. I have a rather more positive view of Ofsted than most noble Lords who have spoken in the debate. It seems to me that on the vast majority of occasions the Ofsted inspection is extremely valuable, as the noble Baroness, Lady Jones, said earlier. While there are undoubtedly some exceptions to that, an effective and good inspection system is in operation.

I was particularly moved to intervene by the comments of the noble Lord, Lord Sutherland, that this might be used as a way of, in some way, exempting faith schools from the inspection process. I want to make it quite clear that I at any rate would not want faith schools to be exempted from the inspection process in any way. I hope the Minister will confirm that there is no intention of doing that. The vast majority of faith schools are maintained schools and wish to remain so. Where some of them wish to become academies it is not in any way to avoid being part of an inspection system. Certainly I have never heard in the debates over academies of any school indicating, either overtly or covertly, that one of things it wanted to do was to evade the inspection system.

I believe the inspection system to be extremely important, not simply for local authorities—though certainly for them—but also for diocesan boards of education, both Roman Catholic and Anglican. They too work with schools through the Ofsted process and through that inspection and it is of considerable value in discussing, helping and encouraging the schools. I hope the Minister can assure me that there is no intention of exempting faith schools here and that he will say where academies stand in all of this discussion.

Baroness Sharp of Guildford: My Lords, I would just like briefly to say that I have some sympathy with this set of amendments and in particular to draw attention to the fact that Clause 41 applies these provisions to colleges as Clause 39 applies them to schools. We are all very well aware of how important school leaders are and that a head and a college principal can make all the difference. When they move on to take another job or to retire, a school or a college can go downhill extremely quickly. One needs to have some form of trigger for an inspection in these circumstances; something equivalent to Amendment 114 put forward by my noble friend Lady Perry might be appropriate for colleges as well as for schools. Alternatively, if we move on to Clause 42—I think it is that clause, but it may be further on—local authorities are given the responsibility for taking action when schools are causing concern. They might well have the responsibility for triggering an inspection.

We all probably welcome the slightly more light-handed form of inspection outlined in Clause 40, but at the same time there are dangers with total exemption of the outstanding ones. We are aware that what is outstanding one year can fall very quickly.

Lord Knight of Weymouth: My Lords, I support the position of the noble Lord, Lord Sutherland, in particular. Like him, I would take some persuading to support exempting schools.

I can understand the Government's probable motivation: they believe that schools should be freed up from unnecessary burdens of inspection. The trend over the past few years has certainly been to lessen the burden of Ofsted inspections and the use of self-evaluation has been relatively successful in that regard. I am sure that the Government and the Minister would not for a second want anyone thinking that they do not think that schools should be accountable and that accountability is an important element of parental choice. Certainly, throughout our perennial debates on testing and tables as the drivers of choice—and I pay tribute to the noble Lord, Lord Bew, for his reviews around SATS at primary level—the mantra trotted out was that parents should not only look at the test results and the ranking tables, because those were put together by newspapers and, anyway, the Government do not rank schools, but at Ofsted inspections and other sources of information. An Ofsted inspection is always in the line that you have to take when talking about these issues. Yet if a school becomes exempt, all you can rely on is that data.

As the Government move towards opening up and publishing more and more data about schools, a richer picture can perhaps be formed. However, if the Minister were to persuade me that through better, more rigorous and richer publishing of data, we could get to the point of exempting outstanding schools, he would have to further persuade me that there are satisfactory forms of data. The data should relate not only to the achievement of pupils, the quality of teaching and the quality of leadership—difficult as some of those proxies might be in data terms—but to behaviour and safety.

Are there good proxies for child safety, the subject of the amendment that I support from the noble Baroness, Lady Walmsley; are there good proxies for,

"the spiritual, moral, social and cultural development of pupils at the school"?

All these items should be covered in a chief inspector's report on a school. The only way in which you could possibly justify exempting a school is by coming up with accurate proxies in data form for all of the measures that the Government say should be covered in an Ofsted report under Clause 40.

As I said earlier and as others have said during this debate, schools do go backwards—and sometimes they go backwards fairly quickly. People can be tempted and attracted by exempt schools. In some of the conversations that I have had with head teachers who are four or five years from retirement, they have said, "I have had my last Ofsted inspection so now I can do what I like". That will free people up to innovate and to ignore the Schools Minister in the other place. When Nick Gibb goes on about synthetic phonics and prescribing what kind of text books to use, they can say, "Well, it does not really matter. I do not have to do that because I am not going to be inspected on it. As long as my results are all right and I carry on being outstanding, I can ignore Nick Gibb". That is quite a persuasive argument but, in the end, it is not good enough and we need that accountability through inspection.

I want to meet the noble Baroness, Lady Perry, half way on her interesting amendment. When I talk to head teachers now about Ofsted—which they do not admire without criticism—they tell me that they would like a much greater feeling that the people doing the inspection are head teachers who are currently in the workforce. Their worry is that the people who come round are sometimes a little out-of-date in terms of what is going on. There is a lot to be gained from peer review—from heads inspecting other heads. One of the most successful forms of school improvement that we have at the moment is the national leaders of education, who perform that kind of peer review function in respect of school improvement.

There might be a middle way—I will not call it a third way because that may confuse people—of having lighter touch inspections, still as Ofsted inspections, but, by and large, being carried out by head teachers inspecting each other. They would not inspect schools that they know or have an association with, because that independence would have to be there. That might enable Ofsted to carry out its own burden of inspection in a relatively lean way in terms of cost, yet still give the accountability which parents and those of us who have to care about the spending of public money need. In the end, that is very important.

Baroness Howarth of Breckland: My Lords, I shall not repeat all the arguments about why we should continue with inspection because they have been made fairly clearly and in some depth. I shall make two points. I certainly support all those arguments, and I am not an uncritical observer of Ofsted, having been on the receiving end of its investigations, both positive and negative, in a number of roles and having had both positive and negative levels of inspections.

I am most concerned, and I speak from my experience as well as from my general understanding of safeguarding, that safeguarding will not be regularly inspected. I sit as chair of a safeguarding board and as chair of a number of organisations that have safeguarding boards, and I advise organisations that need to develop their safeguarding boards. In those roles, one thing I find is that whereas many social services establishments are keen to develop their safeguarding and to report on it, there is a culture within schools not to report but to develop their own safeguarding plans, if they possibly can, and not necessarily to co-operate with the wider organisation, if they are part of it. I understand all that, and I understand why. Reporting on something that has happened in your school has consequences, certainly if you have to report it to the local authority and it does not react appropriately, but also if the thing develops and you find that you have gone to the outside world. I understand that, but we cannot possibly have a regime where there is no inspection of safeguarding and safeguarding procedures.

I say to the Minister that if the Government intend that to happen, they are on an extraordinarily dangerous path. When we last discussed Ofsted, I was so vehement about some of the issues that I got sent off by the Minister to see the chief inspector—I got sent to see the headmaster. This was because I was concerned about the level of expertise of the people inspecting these sorts of areas; I will come to that again when we come to talk about boarding school inspections. I hope that the Minister will take the seriousness of this to the others in his Government who are looking at it. I predicted when children's services went into children's trusts that unless those heads of service who came from the education stream rather than the social care stream were thoroughly educated and understood safeguarding, there would be difficulties. I do not have to run through the series of cases for noble Lords to know that that prediction was unhappily proven. I simply encourage the Minister to look at that.

My second point is about visitors. I absolutely understand what the noble Baroness, Lady Perry, is getting at in this—she knows I have huge respect for her—but as a director and an assistant director of social services in the past, I had responsibility for implementing visitor schemes developed by a series of previous Governments, none of which were ever truly successful. If you talk, as I do, to head teachers—I also talk to people in social care—you find that they have real anxieties about any old body being able to come into their school. There would be issues about how the people are selected and whether they are going to be totally lax, and not know what they are looking for, or the kind of busybodies who get into organisations and institutions and drive those who are trying to run the place absolutely mad. There is the whole question of qualification: how they are trained in observation, what they are looking for and whether they have to be CRB checked. There is a whole issue about visitors, which you have to be absolutely clear about before you embark on that sort of path.

3.30 pm

I am absolutely in favour of a lighter touch. Ofsted could do a third of the inspections that it does, but

[Baroness Howarth of Breckland]
those that it does it should do systematically. My own local primary school, which we are all terribly fond of and which was in the top six schools in the county, had an inspection and was put immediately into special measures. I may have some view about that and to how it happened, but it shows how fast the world can change and how important it is that inspection is systematic. I hope that the Minister will look at this area because I am sure that we will come back to it seriously at Report, if there is no movement in between.

Baroness Massey of Darwen: My Lords, there have been many wise words said this afternoon. Some sort of consensus is emerging that systems need inspection, and the Government are going to run into a tangled web if they think that we can end up with a random system, relying on complaints and such.

I, too, have had positive and negative experiences of Ofsted, but they have been mainly positive from its consultation with governors and parents of pupils. It does a very thorough job, although it depends somewhat on the team, as I think the noble Lord, Lord Knight, implied. I appreciate that self-evaluation within schools has contributed to checking standards but this can be fairly subjective, whereas an Ofsted inspection is objective. All systems, whether educational or not, should be inspected in some way to check on the quality, particularly systems dealing with children. If not, we risk infringing children's rights to not only safeguarding, which has rightly been brought up, but academic achievement. I remember Graham Allen saying, in relation to early years, that we need firefighters but we also need smoke alarm systems.

I understand where the noble Baroness, Lady Perry, is coming from with her model. I would like to look at the people involved and the criteria that they are working from to do this kind of visiting, but it is an interesting idea. Some terrible things could be not picked up in a school that was exempt from inspection, such as extremism or the impact of unqualified teachers. We have to be very careful here. Maybe Ofsted needs reviewing or a lighter touch, but it certainly needs to be there to ensure that children are receiving the very best in our schools in this country.

The Earl of Listowel: My Lords, I was sorry to be absent from these proceedings this morning but I was attending a youth court in London, where I heard about very serious offences committed by 16 year-olds. Two of them had been stabbed, one of them three times—in the lungs, the neck and, I think, the belly. It really brought home to me how important a haven schools are for children, and that the order that schools offer to children's lives is so important—and, in particular, the fact that there was not a single father present in any of the four hours when I was listening to this. The mothers were carrying the burden for their young men.

With regard to the role of governors, is there clear guidance to them about how they can sit in, in schools, observing classes and what happens in the playground, so they can assist in this fire-alarm system in the new arrangements? I share the concerns of colleagues expressed in the Committee and look forward to the Minister's response.

Lord Hill of Oareford: My Lords, I shall come back to the issue of the trigger and the risk assessment which lie at the core of many noble Lords' concerns. There was broad agreement over, and a broad welcome for, a "lighter touch approach", if I can call it that, though there remain various concerns about how that would be translated into action and what safeguards there would be in place.

I also recognise the concerns emerging from the Committee about exemption, and I will seek to address them by setting out some of the principles and intentions that underpin Clause 39. I will respond to the points raised by the noble Lord, Lord Hunt of Kings Heath, as well as addressing the context within which the clause has been developed. I will also say something more about the safeguards that are provided both within and beyond its provisions, and try to respond to some of the questions that I have been asked.

What is driving this? We think that we have an opportunity to respond to the concerns of schools, to reduce central prescription, to avoid uniformity, to eliminate unnecessary burdens and to be more proportionate. Inspection reform has a contribution to make as part of the overall move that we are keen to encourage. Clause 39 will introduce a more proportionate and targeted approach to school inspection by enabling our highest performing schools to be released from the burden of routine inspection as long as they continue to perform well. I shall return to that issue in a moment.

The thinking behind that is so that Ofsted can focus its inspections on where most noble Lords agree they are most needed—that is, on those schools that are inadequate or satisfactory or coasting. I hesitate to say much about the evolution of inspection because so many members of this Committee were instrumental in its introduction. Regular inspection was introduced with the establishment of Ofsted in 1992, which means that by now schools have experienced at least three Ofsted inspections. Also—and this is part of an answer to my noble friend Lord Lucas and his concerns about information—there have been in that period huge advances in the availability and quality of performance information. I agree with the noble Lord, Lord Knight, that we need to develop more—it is not always straightforward—but the provision of more information is part of our answer to the question of how we can know what is going on in schools.

Inspection has evolved over that time and become more differentiated, with longer intervals already between inspections for stronger performers. Most outstanding schools are now subject to a full inspection once every five years. It is worth making that point because of some of the perfectly proper questions that are being asked as to what are the safeguards and how do we know when schools can change quite quickly. We currently have a system where the schools about which Members of the Committee are most concerned are subject to full inspection only once every five years. Our thinking is that, subject to safeguards, it is possible to take proportionality to the next logical step and to free those schools from routine fuller inspections.

I accept the fact that schools decline and can do so quite quickly, a point made by a number of noble Lords. Ofsted's evidence shows that the majority of

outstanding schools are able to maintain their effectiveness over time. The noble Lord, Lord Hunt, used figures which are true in the way that they break down—what he said was absolutely accurate—but it is also true that 95 per cent of those schools were outstanding or good at their next inspection. Not all remain effective—I accept that point—and that is why we have been clear that exempt schools would not be free from accountability and that any exemption is conditional.

My noble friend Lady Sharp made the point that the safeguards are the key issue and perhaps I may say a few words about the approach that Ofsted is developing to risk assessment. All exempt schools would be subject to annual risk assessment by Ofsted, starting three years after the school's latest inspection. Risk assessment is currently used to determine the frequency of inspection for individual schools. In future, it is proposed that an enhanced process would be used as a basis for determining whether an exempt school should be re-inspected. Her Majesty's inspectors would consider a range of indicators. These include performance data; information on staff changes—the point was made about a school suddenly losing a head or a group of senior teachers—the outcome of any Ofsted survey inspection visits; complaints from parents; the views of local authorities; and any other available intelligence.

From September, Ofsted intends to take greater account of parents' views in helping to decide whether a school should be inspected. One way in which we are going to do that is by having a questionnaire online, which parents will be able to complete at any time to give their views about their child's school. I can confirm that the powers for Ofsted to consider parental complaints under Section 11A apply to exempt schools and that the arrangements for students to complain will apply to exempt colleges.

Local authorities—a theme to which we have returned a number of times in Committee—have an important role to play in representing the interests of parents and pupils. If they have concerns about any exempt school, including an academy, they will obviously able to request an inspection, and any such request would have to be considered carefully. The implication of Amendments 114A and 112ZB is that Ofsted would lose its discretion over whether it should inspect in these circumstances. We are not sure that that would be right, because HMI should be able to consider the range of evidence in deciding what action to take.

Where Ofsted has concerns about an exempt school or college, it would have a range of options open to it, including arranging a short-targeted visit or a full re-inspection. Professional judgment by HMI needs to be at the heart of the new arrangements. We think that Ofsted should have the appropriate flexibility to act decisively, but in a proportionate manner. The same powers that allow the chief inspector to visit an exempt school to test out a concern also allow for exempt schools to be visited as part of focused inspections of curriculum subjects and particular themes, including outstanding provision and practice. We expect an increased focus on best practice visits in future, as well as more emphasis on sharing best practice by Ofsted through a variety of means. One question raised in the past is how schools will learn from outstanding practice, and this is one way in which we can help address that.

Some points have been raised about information. As I have said, we intend to give parents easier access to information and so, from next January, parents will be able to access data showing the progress of high, average and low-attaining pupils across a range of subjects. From June, they will have access to data down to individual pupil level in an anonymised form. I hope that that will help.

Lord Knight of Weymouth: In respect of information for parents, can the Minister clarify Clause 39(4)? It refers to charging schools for inspection. If parents have triggered an inspection using their current powers, is there any charge for that and, if not, how do we guard against Ofsted having a disincentive to inspect if, in its judgment, it feels it cannot afford it?

3.45 pm

Lord Hill of Oareford: No, that should not be an issue. There would not be a charge in those circumstances. Perhaps I might move on because I want to respond to the underlying concerns about the risk assessment process and to some of the suggestions made by my noble friend Lady Perry and others.

On my noble friend Lady Walmsley's important point about safeguarding, we know that Ofsted's evidence shows that outstanding schools perform well in terms of safeguarding. Schools remain under a duty to have appropriate arrangements in place to safeguard and promote the welfare of their pupils, and we do not think there is reason to think that outstanding schools would not take that matter seriously. There would be a mechanism for concerns to feed in to Ofsted's risk assessment process, and those concerns might come from parents, the local authority, the local safeguarding children board or any other local body or person.

We recognise that safeguarding is a hugely important issue and we intend to commission Ofsted to undertake a survey of safeguarding procedures in a sample of exempt schools and ask the inspectorate to publish its findings. On the basis of that evidence we could consider whether any further measures are necessary.

I was asked a number of specific questions about exemptions and who would be exempt. The noble Lord, Lord Hunt, asked me that. We issued draft regulations in the other place in March making clear that our plan is to exempt only schools that were outstanding at their last inspection. So the definition is their status at the Ofsted inspection. It could include maintained schools, academies and whatever; it is not a special exemption for any particular groups.

Lord Hunt of Kings Heath: The Secretary of State can, of course, produce draft regulations in future using the clause in this Bill to exempt any category of school he wanted. My second argument here, going beyond inspections, is that this is a great, open-ended power. I am interested to know why outstanding schools were not specified in the Bill because that would give a certain reassurance.

Lord Hill of Oareford: I will write on the point of detail. I had this explained to me earlier. The difficulty is because an Ofsted category is not a statutory definition.

[Lord Hill of Oareford]
That is the problem and why it is hard to put it in the Bill. I will make sure that I have got that right and I will write, but I believe that is the explanation.

Lord Knight of Weymouth: When the Minister writes, will he also clarify how, if it is difficult to pin it down in primary legislation, it would be possible in secondary legislation? Secondary legislation is still law, so you would still need a definition in law of what an outstanding school is.

Lord Hill of Oareford: I will get some clever person to write me something that will explain why that is the case.

The noble Lord, Lord Sutherland, raised important points about faith schools. He will know better than me that it is a separate inspection process. Faith schools, including exempt schools, would continue to be subject under Section 48 of the Education Act 2005 to a separate inspection into their religious education. This can also cover spiritual, moral, social and cultural development and reports will be published. That is not a complete answer to the noble Lord's concerns but it is another part of a possible reassurance.

The noble Baroness, Lady Jones of Whitchurch, asked me whether a cohort could pass through an outstanding school without any inspection. The absence of inspection does not mean that Ofsted will fail to pay attention to exempt schools. Currently outstanding schools have five years between inspections. The risk assessment would start at three years and be done annually but, if there were concerns before then, the whole point of the triggering process is that Ofsted would be able to look into them.

Overall, we think that a lot has changed in the past 20 years in terms of transparency and accountability. There is more information and the inspection system over those years has become increasingly proportionate. We have a large number of schools that are capable of evaluating their own performance and identifying and responding to their own improvement priorities. We are keen to focus inspection on those that need it most— underperforming and inadequate schools. I recognise the strength of feeling that has been raised.

There were a number of thoughtful suggestions, particular around the important question of the rigour of the risk assessment. I understand that Ofsted is due to publish its approach to risk assessment and I would like to use that as an opportunity to discuss these concerns further, to reflect on what has been said to me today and to raise them with the noble Baroness, Lady Morgan of Huyton. I hope that through that process—I will be happy to discuss it with noble Lords who have particular concerns and who have contributed to this debate—I can address some of the concerns that have been raised, reflect on them and then report back to noble Lords. I will certainly reflect on the mood of the Committee. I will listen to the advice that I have been given but in the mean time I ask my noble friend Lady Walmsley to withdraw her amendment.

Lord Lucas: My Lords, I am grateful for what my noble friend has said. I do not really think that saying that the system at the moment has its defects is a good reason for adding to them. I very much hope that, in what happens between now and Report stage in terms of an understanding of the Ofsted mechanisms and in discussions between ourselves, we can firm this up. It seems to me to be a serious disaster in the making and a very wrong step the Government are looking at.

I want to pick up on a point made by the noble Lord, Lord Sutherland. Clause 40(2) removes the compromise that we reached at the end of that long and, as he says, acrimonious debate. I very much hope the Minister will take the time to read that debate and to understand why that clause got into the 2006 Act. It was a compromise, carefully worked out by the then Government, to deal with questions about the way in which faith schools fit into the system. By removing that compromise you are reopening the whole argument as to that relationship and inviting a repeat on Report of the experience of 2006. I hope the noble Lord, if only in preparation for that, will read through that debate. I am sure we will revisit this in October. I hope that between now and then we will have made some progress.

Baroness Walmsley: My Lords, this has been a very thorough and rigorous debate and I do not intend to summarise the whole of it. I will respond only on my own amendment as the Minister has been intervened upon a number of times. My understanding of what the Minister said in response to my amendment was that there is no reason to believe that outstanding schools will not take safeguarding seriously. Without intending to be rude to the Minister, I wrote in my notes, "Well, we are hoping for the best then". Frankly, I do not agree that if somebody is good at one thing they are necessarily good at another. Only on Monday I talked about my own grandsons, one of whom is brilliant at maths and the other is brilliant at English. I think the same applies to schools.

The Minister said that Ofsted will now carry out a survey, but I understand that there are currently no plans whatever to inspect safeguarding regularly in schools that are regarded as exempt—and therefore will not be regularly inspected—unless, of course, the Ofsted survey advises the Government that there is no correlation between a school being good academically and being good at safeguarding. Can the Minister just nod if I am correct in that understanding of his reply?

Lord Hill of Oareford: Yes.

Baroness Walmsley: In which case, I have to declare that I am very unhappy about that. I rather suspect that my concerns are reflected in other parts of the Committee. It is a matter to which I may very well return on Report. However, in the mean time I beg leave to withdraw the amendment.

Amendment 113D withdrawn.

Amendments 114 and 114A not moved.

Clause 39 agreed.

Clause 40 : School inspections: matters to be covered in Chief Inspector's report

Amendment 115

Moved by ***Baroness Walmsley***

115: Clause 40, page 36, line 25, after "achievement" insert "and well-being"

Baroness Walmsley: My Lords, I shall speak also to Amendment 120. We are now moving to Clause 40, which sets out the new Ofsted framework. These probing amendments address two different aspects of that framework.

Amendment 115 seeks to add the words "and well-being" in proposed new subsection (5A)(a) so that it reads,

"the achievement and well-being of pupils at the school".

I should have perhaps said, "the well-being and achievement of pupils in the school", because well-being comes before achievement. All Members of the Committee will agree that unless a child's well-being has been addressed, he or she is not going to achieve what he or she otherwise might. Well-being is fundamentally important to a child being ready to learn. I do not think I need to rehearse that argument any further because it is widely accepted.

That is why I ask my noble friend the Minister: where will well-being be covered in the framework, how will Ofsted report upon it and will the school's performance in relation to the well-being of children be a limiting factor in determining whether the school can achieve an outstanding Ofsted report? I will leave my comments on Amendment 115 at that. It is fairly simple.

Amendment 120 was suggested to us by the Equality and Human Rights Commission, which welcomes the explicit mention in the Bill of the needs of disabled pupils and pupils with special educational needs in proposed new subsection (5B)(b)(i) and (ii). However, it is concerned that without specifying other protected groups in the legislation, inspection will not focus adequately on their needs and Ofsted may not be able to report adequately on progress towards closing gaps and improving educational outcomes. Indeed, the lack of these groups in the legislation may also undermine Ofsted's ability to demonstrate due regard under the public sector equality duty.

The amendment is very simple and its purpose is to avoid any doubt in the wording of Clause 40. It is a small matter of crossing the "t"s and dotting "i"s for the avoidance of doubt. We are dealing with groups of children with specific needs who need to be dealt with in specialised ways. Those groups are: pupils in respect of whom the school receives the pupil premium and pupils who have protected characteristics for the purposes of the Equality Act 2010. At Second Reading, there were several references to equality by a number of noble Lords across your Lordships' House. They were concerned about how children and young people from culturally diverse backgrounds, including Gypsy, Roma and Traveller children, for example, will be affected—although unintentionally—because many are among the most deprived educationally in England and their needs must be considered. That is why Amendment 120 adds pupils who have a disability for the purpose of the Equality Act 2010 and those in respect of whom the school receives the pupil premium.

I simply need reassurance that the new framework will take full account of the school's record in respect of meeting the needs of these children as well as of those referred to in the Bill. I beg to move.

4 pm

Baroness Flather: My Lords, I shall speak to Amendment 116. All the amendments concern the role of Ofsted and it is very interesting to me—although not comprehensible—why community cohesion, as a separate fact, has been withdrawn from the responsibilities of an Ofsted inspection.

I have had a look at Ofsted's document about inspectors' responsibilities, especially in relation to community cohesion. It does not say anything except "community cohesion", which is quite worrying, because I am sure that noble Lords around us in this Room have their own ideas about what amounts to community cohesion. It speaks mainly about well-being, which has just been referred to. That is certainly one of the issues that Ofsted has to look at, but there is nothing about community cohesion.

I spoke to an inspector who told me that her notion of community cohesion was, first, understanding one's local community, which makes sense; secondly, understanding the national community, which makes sense; and, finally, understanding the international community, which makes sense as well. Why we should withdraw this duty from Ofsted, I fail to understand.

I have been sent a letter by the Minister which says that inspections will be related to schools' "core responsibilities". Why community cohesion should not be part of the core responsibilities is again not clear to me. Our country now encompasses many different types of people, cultures and development. If ever there was a need for community cohesion, it is now and for the future. To withdraw that seems to be spitting in the wind. We have schools which are different; we have faith schools. We need to know whether faith schools in particular are encouraging community cohesion. One can be faithful to one's faith, but community cohesion is for all of us, of whatever faith we are. I would have thought that that was an integral and important part of any faith school. I am not speaking about Church of England schools' bishops, because they are very good; I do not have much of a problem with them.

The Minister said in his letter that community cohesion is to be,

"considered in a proportionate and integral way".

If it is not considered as a separate issue, I do not know how it becomes proportionate and integral, because it is a particular area which needs to be understood. The Minister went on to say that it would be considered,

"through looking at pupils' spiritual, moral, social and cultural development".

I am sorry. That is not about community cohesion; it is about a pupil's well-being and making sure that they are well rounded. I do not understand where community cohesion comes in.

[Baroness Flather]

This is a very important area for the future of our nation. I remember very clearly, not so long ago, the noble Baroness, Lady Warsi, being made Minister for Community Cohesion in the House of Lords. What happened to that? I had thought that community cohesion was a "big buzz" thing. Whether it is a buzz thing or not, it is important that schools do not lose sight of it.

Baroness Whitaker: My Lords, I very much agree with the noble Baroness, Lady Flather, but in the interests of time I shall speak only to the amendment in my name, Amendment 116A. This gives Ofsted an additional task, to inspect the effectiveness of education as influenced by the buildings and design of the school. I do not expect that this is what the Government really want, but I would urge them to take the opportunity of this amendment to embed the importance of properly designed school buildings in the assessment of the education they provide.

I shall not repeat what I said on the earlier group of amendments, but I think that it is all more important in view of the Minister's response on design standards. I briefly draw attention to the recently published Space for Personalised Learning report commissioned by the previous Government. In changing their approach to school building, I implore the present Government not to thrown the baby out with the bath water and ignore this treasure trove of expertise. Learning is changing, and so is our understanding of it. Even if we return to chronological history and Latin, both of which I rather like, our children need to be at home with and, indeed, masters of, the modern world and its changes. They need to earn a living in that world, and they need to be able to contribute to UK growth and culture and their own self-fulfilment. The essential message of the report is that buildings and the designed space matter very much for effective learning, inclusive learning, safe and secure learning and enthusiastic and creative learning. If our inspectorate does not pay attention to this aspect of education and further it where it can, we shall all lose out.

Lord McAvoy: I rise very briefly, just for a few minutes, to speak on Amendment 116. When the noble Baroness, Lady Flather, was moving the amendment, I felt I reached a new understanding with her, seeing as we have previously disagreed. I was even starting to think that I had a soul mate—I will withdraw the word "soul" in case that offends her. She said so much in the first part of her speech, but I will deal with that secondly. She rather spoilt it in the second part of her speech by homing in on faith schools. Although she made it clear, as usual, that she was not talking about Church of England schools, I had a bit of bother trying to fathom out which particular faith school she was on about. I am sure I will figure it out at some point. It would be totally invidious if separate criteria applied to faith schools, and I am afraid it shows deep paranoia and suspicion about Catholic schools that I just do not get.

Being positive and concentrating on the first half of her speech, it was brilliant in trying to get across how much all schools can contribute to community cohesion. I see schools I am most aware of—outside England's jurisdiction, but nevertheless, I have knowledge of schools in England as well—and all schools getting involved in fair trade and fund raising for Africa and going out to Africa as part of various voluntary organisations. There are parent-teacher organisations that dig deep into the community because they get the parents involved. All of this goes back to the school and feeds back to the community. If there is any discrimination or any lack of importance given by the Government to community cohesion, the noble Baroness has highlighted that that is a weakness. Where it is going well, it is going very well. I also notice a bit of local rivalry which helps because if one school sees that another school has raised £2,000 or £3,000 for aid to Africa, that is its target. That is friendly rivalry, not contentious rivalry. Anything that brings back into consideration by the Government the contribution of all schools to community cohesion, the sooner the better.

Lord Quirk: My Lords, in a spirit of attempting to clarify rather than add to the duties of Ofsted, the proposers of Amendment 117 hope that it will find favour with the Committee and with the Minister. Indeed, we can see no reason why it should not, for this minimalist, one-word addition to the Bill very much runs with the grain of the clause in which we propose to embed it.

For those who may say, not unreasonably, why not add also other terse desiderata, such as mathematical, musical or physical, we say, no, linguistic is in a class of its own. The social and cultural development of pupils depends critically on their command of language and the interpersonal relations that promote such development proceed above all else on successful and confident facility with language. In other words, the social and cultural development already in the clause actually entails linguistic development. So manifestly true is this that it might well be felt that adding "linguistic" is superfluous, but it is not. Rather, its omission from the clause should be viewed as a glaring oversight, so much do the other two—social and cultural—depend on it. Language is what supremely distinguishes the human species, giving us uniquely the facility to talk about the past, speculate about the future and analyse the present.

This is why Ofsted's attention needs to be specifically drawn to the monitoring of linguistic development, not only for the sake of the unfortunate minority of youngsters with pathological problems in speech and language, nor for the sake of the much bigger minorities who come from non-English speaking homes or from homes which are non-speaking, and in which conversation in any language is in short supply. Our amendment has all these in mind but we propose it for the sake of the school community as a whole, for whom rich, rapid and early language development is the key to their whole education and subsequent careers. Moreover, the richer their English, the likelier it is that their interest—social and cultural—will reach out beyond English to the social, cultural and, indeed, vocational opportunities to be found in the realm of foreign language learning.

Lord Ouseley: My Lords, I shall speak to Amendment 118. To an extent, I support what the noble Baroness, Lady Walmsley, has already said when introducing Amendment 120, in which two additional duties for Ofsted's are mentioned. I will try not to go over the arguments in support of that. I am concerned that the Minister indicated that the framework is, among other things, to give a lighter touch to the work of Ofsted. That in itself worries me to the extent that a lighter touch has proved disastrous—perhaps I am wrong, as the Minister is nodding.

Lord Hill of Oareford: I hope I would have said that what we hope to get from boiling it down is a sharper focus, not a lighter touch.

Lord Ouseley: That is helpful, and I thank the Minister. I will refer not to a lighter touch, but if in fact the sharper focus is to lighten the burdens of the chief inspector and narrow the focus, however sharply, then the way we are trying to address this worries me. I used "lighter touch" because I heard those words used by the Minister—it may have been in a different context. However, a lighter touch is associated historically with the FSA which, as we saw, led to the disaster which we are all still suffering from.

One of the additions that we seek to make here to provide protection to all pupils in our schools, as associated with the Equality Act 2010, is because a lighter touch has been so light that it has been almost totally ineffective. I worry when I hear about a lighter touch because that Act was predicated on a White Paper that talked about light-touch regulation, which does not work. Light-touch inspection does not work either, although I agree with it being sharply focused. However, in this case we have heard of the variation in the quality of inspection reports over the years. I have experience of seeing some of those reports and how they have either impacted on the way in which people have responded to the needs of children within those schools or avoided saying things that have to be said.

4.15 pm

The amendment is important because we need to make this as explicit and comprehensive as possible, without adding to the burdens of the chief inspector in reporting, so that we are able to provide what is intended and deal with the needs of all our children. By focusing only on those with special educational needs and those with a disability, we do a disservice to what is intended and to all those other children who have particular needs but will be excluded from that category. A great many other disadvantaged children will not be sharply focused on by any chief inspector's report. The reason for the other two categories being included has been alluded to and cogently argued for by the noble Baroness, Lady Walmsley.

When we discuss meeting the needs of a range of pupils in the school, it is important that we recognise that there are many socioeconomically disadvantaged children whose needs have to be addressed. If the focus is on schools that are not achieving and not doing well, there will be many children within the range that we ought to be looking at who should be the subject of careful consideration and who should be reported on.

Baroness Garden of Frognal: I apologise for interrupting the noble Lord. We are in rather strange circumstances. We have agreed to complete this important group of amendments but we need to finish by 4.30. Perhaps we could make our contributions as succinct as possible in order that the noble Baroness and I have a chance to wind up.

Lord Ouseley: Thank you very much. I acknowledge what the noble Baroness has said, and I am about to conclude. However, I have not made many interventions in Committee and I intend to speak as fully as I can while being as brief as I think is reasonable.

The protected characteristics under the Education Act 2000 provide us with a basis to enable some of the other amendments in this area to address this issue. The amendments will need to remain as explicit as they are here if we are to do justice to what we want to see achieved, through inspection reports, in addressing the range of educational needs across all different groups of children. It is particularly important that we include those characteristics and enable, as part of any follow up, the guidance that the chief inspector should have.

When we consider groups on the basis of race, it is easy enough for a report to be blunt in the way in which it states that it has dealt with the issue of race and ethnicity. However, if you look across the whole range, groups such as Traveller and Gypsy children are very often excluded when inspections are taking place and the report does not relate explicitly and specifically to those groups which are underachieving, and the quality of education that is being inspected in the school tends not to address those particular needs.

Bearing in mind the time factor, I conclude by asking the Minister to explain why, when looking at the range of needs, the sharp focus is restricted to only two categories. Why is not this comprehensive amendment—which enables a broadening of the categories while maintaining a sharp focus—an appropriate way forward?

Lord Lucas: My Lords, I support the noble Baroness, Lady Flather, and I hope that she brings her amendment back on Report.

As we discussed on the previous group of amendments, the research I have been doing for the Localism Bill about how neighbourhood planning works within cities, and mostly within London, has drawn the comment from a number of the people involved that one of the principal problems they face is the actions of faith schools, in this case the very small ones—I am certainly not referring to the favourite cause of the noble Lord, Lord McAvoy—both Christian and other denominations, which seem intent on focusing communities around themselves rather than reaching out more widely. That certainly relates to the point about community cohesion which the noble Baroness, Lady Flather, raised and which was the subject of long debates in 2006.

[LORD LUCAS]

On the amendment tabled by my noble friend Lord Boswell of Aynho, I merely say that it is a well known problem that secondary schools take the prospectuses of FE colleges and others, lock them in the head's cupboard and say that that is their duty to their pupils. This needs to be looked at, at least occasionally.

Baroness Howarth of Breckland: My Lords, I will ask a brief but important question in relation to the amendment tabled by the noble Baroness, Lady Whitaker. I should have stood up and asked her, but I have been told off before for standing up too soon, so I thought that I would wait.

I was unable to be present for the Statement yesterday about buildings, and I am sure that this might have been raised then. The question is whether or not a building should be a limiting factor in an Ofsted inspection's outcome. Many schools now have huge problems with their standards, and I speak as a trustee of a college where the premises are totally inappropriate for the work that we are trying to do. This means that we can never get a good Ofsted inspection, despite the fact that the teaching is good and the pupils like going there. There would be nowhere else for these disabled young people to go if it did not exist. In the present economic climate, is this limiting factor appropriate when we know that it is not going to change? This school would have been redeveloped under the previous programme, which, of course, was abandoned.

Lord Sutherland of Houndwood: My Lords, the amendments tabled by my noble friends Lord Quirk and Lord Ouseley belong closely together because you do not have to visit many primary schools with children of disadvantaged backgrounds to discover that one of their chief difficulties is lack of linguistic capacity when moving from reception into primary school. That is why I support the amendments, as I do the amendment tabled by my noble friend Lady Flather. In view of what I said earlier, I shall not repeat myself, but there is a definition of community cohesion, quoted by the noble Lord, Lord Adonis, from the Home Office, available at column 39 of volume 686 of *Hansard.*

Baroness Hooper: My Lords, my name is attached to Amendments 117 and 121, and I wish to associate myself with the remarks made by the noble Lord, Lord Quirk, with regard to Amendment 117. Both these amendments were intended to remind us of and to draw our attention to the importance of the teaching and learning of modern languages for communication skills, for understanding other people's cultures, as an added value for employment purposes and to enable pupils to have a better understanding of their own language. I wish to make that rapid interjection to support these amendments.

Baroness Perry of Southwark: My Lords, my noble friend Lord Boswell of Aynho has asked me to flag up for Amendment 122ZA the requirement on schools to provide a continuity of careers guidance to young people with special needs, which can take them out of the purview of the school, and who can therefore be missed by Ofsted.

Baroness O'Neill of Bengarve: My noble friend Lady Coussins, who is attending her daughter's graduation today, asked me to say a couple of words on Amendment 121, to which I wish to add my support. The late, lamented Lord Dearing picked up very strongly in his languages review that we are not monitoring the catastrophe that has happened to the learning of modern foreign languages in the wake of what many of us regard as the largest single piece of inadvertent educational vandalism in the past decade—the removal of the GCSE language requirement. Since then in state comprehensive schools the proportion of pupils still studying a language between the ages of 14 and 16 has halved from 80 to 40 per cent. As ever, it is the children in the less ambitious schools who are being deprived in every possible way, including being deprived of certain future employment opportunities. I hope we could at least start monitoring it.

The Lord Bishop of Ripon and Leeds: My Lords, I associate myself, too, with Amendment 116 and the excellent contribution of the noble Baroness, Lady Flather. I come from Leeds, where we now have a city board for safer and stronger communities. It is interesting that the chief inspector has to report on safety but not on stronger communities as the legislation stands. The way in which schools contribute community cohesion over the whole of a city such as Leeds seems to me to be crucial to the way in which the city develops. I, too, hope that the noble Baroness, Lady Flather, will bring back this matter on Report.

The Earl of Listowel: My Lords, I hope that your Lordships agree with me that it is vital to give full recognition to those teachers and head teachers who put a huge effort into taking children forward. Where there is a challenging intake, perhaps with high levels of special educational needs or numbers of children with pupil premium, it is important to recognise in achievement the distance pupils have travelled and not just their performance against all other pupils across the country. I would be grateful perhaps for a note from the Minister on how Ofsted inspections will look at achievement and fully recognise it in terms of the distance travelled by children.

Baroness Jones of Whitchurch: My Lords, our names have been added to Amendments 115 and 118, so I will speak very briefly. First, I agree with the noble Baroness, Lady Walmsley, about the narrow focus on educational achievement which ignores the wider role of education in providing a safe and happy environment where all children can thrive and be healthy and confident. We believe that well-being should include such things as nutrition, exercise, relationships, respect for each other and how to overcome low self-esteem. A good school will include all this in the curriculum, but it does not mean that we should exempt all schools from having that assessed and checked from time to time.

The noble Lord, Lord Ouseley, gave a very coherent case for why Amendment 118 is important. It is important that we check that the Government's rhetoric when they introduced the pupil premium can be backed up

by independent assessment in the longer term, particularly in light of the new autonomous school structures. If we are not careful, disadvantaged children will get left behind. We need independent assessment to double-check that all is going well with the way that the money is being spent. I sense people's frustration at the late hour and I will say no more at this stage.

Baroness Garden of Frognal: My Lords, I shall try to speak very quickly, which in no way reflects the seriousness and importance of the group of amendments we have just been discussing. The existing arrangements for inspection have become cluttered and crowded. Inspectors face the challenge of having to form a discrete judgment on just about everything schools do. The cumulative effect of this is that we have lost the sharp focus—which my noble friend referred to and the noble Lord, Lord Ouseley, picked up—on those things that are the fundamental responsibilities of schools.

Clause 40 seeks to address this by streamlining the reporting arrangements so that they focus on four key areas: pupils' achievement, the quality of teaching, the effectiveness of leadership and pupils' behaviour and safety. In doing so, inspectors must consider pupils' spiritual, moral and cultural development and how the needs of all groups of pupils, including in particular those with SEN or a disability, are being met.

As far as Amendments 115 and 116 are concerned, schools themselves remain under a duty to promote pupil well-being and community cohesion. The provisions in Clause 40, including the specific requirements around behaviour and safety and spiritual, moral, social and cultural development, provide the right structure.

4.30 pm

Ofsted recently commented that well-being will be at the heart of the new framework, because it will require inspectors to consider the full range of experiences for pupils. This demonstrates clearly its commitment to covering pupil well-being appropriately. It also confirmed that community cohesion remains in scope for inspection. In practice, that involves inspectors evaluating pupils' understanding of their own culture and those of others locally and nationally. As part of overall effectiveness, inspectors will consider how pupils develop the skills to enable them to participate in a modern, democratic Britain, and whether pupils understand and appreciate the range of different cultures within school and beyond school as an essential element of their preparation for life. I hope that that will provide noble Lords and, of course, the noble Baroness, Lady Flather, with some assurance on this matter. I am sure that we are all delighted that she and the noble Lord, Lord McAvoy, have become soulmates.

Baroness Flather: Will the noble Baroness take on board that it is not just about culture?

Baroness Garden of Frognal: Indeed we take that on board.

Amendments 118 and 120 seek to ensure that particular groups of pupils are considered as part of school inspections; namely, those benefiting from the pupil premium and those given specific reference in the Equality Act 2010. Clause 40 requires inspectors to consider the needs of the range of pupils at the school. This is a phrase lifted from the current inspection legislation. It is a useful catch-all that avoids the needs for lists in the primary legislation. Inspectors will pay particular attention to the extent to which gaps are narrowing between different groups of pupils in a school and compared to other schools. They will evaluate teaching with an eye to how well teachers engage, motivate and challenge the most able pupils.

In the case of protected groups, additional assurance is provided by the fact that Ofsted is subject to the public sector equality duty, which is provided for in the Equality Act 2010. This commits the inspectorate to playing its part in promoting equality and eliminating discrimination, including through its inspection activity. We do not therefore believe that it is necessary to replicate this within the clause. The best place for these references is not in the primary legislation, but in the framework and supplementary guidance—the detailed documents that determine how inspections are delivered on the ground—and that is where they will be found under the new system.

The last set of amendments in this group all seek to add to the inspection provisions explicit references to various subjects and aspects. Amendments 117 and 121 concern linguistic skills and modern foreign languages. I entirely endorse what was said by the noble Baronesses, Lady O'Neill and Lady Coussins. Here I would highlight the benefit of the new arrangements in giving inspectors more opportunity to focus on teaching and learning, observe lessons, listen to pupils read, and talk to individuals and groups of pupils. In terms of inspection of modern foreign languages, Ofsted conducts a rolling programme of subject surveys, and that will continue to be the way in which it assesses individual curriculum areas in future.

Moving to careers advice, I note that the noble Lord, Lord Lucas, and the noble Baroness, Lady Perry, spoke on this on behalf of our joint noble friend Lord Boswell of Aynho. This will be captured within the new inspection arrangements. Inspectors will consider, for example, the extent to which pupils have a well informed understanding of the options and challenges facing them as they move through school and on to the next stage of their education, training and employment.

I know that the noble Baroness, Lady Whitaker, raised the matter of school buildings and design at the recent meeting hosted by the noble Baroness, Lady Morgan of Huyton. I am aware that we have discussed this before and, if she will forgive me, I will skip over a further to reply on that, but I assure her that what she says is being taken on board.

As the noble Baroness, Lady Morgan of Huyton, pointed out during Second Reading,

"There are always perfectly good reasons to add to an inspector's remit".—[*Official Report*, 14/6/11; col. 737.]

However, we have a real opportunity here to start afresh, to streamline the requirements on inspectors, to provide more coherence to the arrangements, to clarify to schools what is expected of them and to provide parents with more meaningful assessments of

[Baroness Garden of Frognal]
their child's school. It is vital that Ofsted is allowed to stay focused on the key aspects set out in Clause 40. This will not be the last time that we discuss these important issues, but I hope for the moment that the noble Baroness will support this important ambition by withdrawing her amendment.

Baroness Walmsley: My Lords, I thank the noble Baroness for skating so very quickly through her response and yet managing to be so thorough. I shall be very brief. I thank her for her confirmation that well-being and community cohesion are within the scope of inspections as undertaken by Ofsted, that Ofsted will inspect how well schools narrow the gap, that the equality duty covers Ofsted and that all ranges of children within the school have to be considered by it. That will, I hope, include those schools that have the groups of children about whom I had some concerns.

On languages, I welcome her statement that there can be themed surveys. I think there is a danger that including languages will get us on to the slippery slope of including geography, physics, history and all the rest, which we do not want to do. Finally, I welcome the fact that, as my noble friend Lady Brinton and I have just noticed, lines 30 and 31 on page 36,

"the spiritual, moral, social and cultural development of pupils at the school",

are lifted directly from *Every Child Matters*, which proves that this Government believe that every child does matter. With that, I beg leave to withdraw the amendment.

Amendment 115 withdrawn.

Amendments 116 to 122ZA not moved.

Clause 40 agreed.

Lord Hill of Oareford: My Lords, I think this may be a convenient moment for the Committee to adjourn until Monday 12 September at 3.30 pm.

Committee adjourned at 4.37 pm.

Written Statement

Wednesday 20 July 2011

Energy: National Policy Statements

Statement

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Lord Marland): My right honourable friend the Secretary of State for Energy and Climate Change (Chris Huhne) has made the following Written Ministerial Statement.

Yesterday, the House of Commons debated and approved the six energy national policy statements which I laid for parliamentary approval on 23 June 2011. I am therefore pleased to inform Parliament that I am today designating them as national policy statements under the provisions of Section 5(1) of the Planning Act 2008, and laying copies before you as required by Section 5(9)(b) of the same Act.

I believe this designation marks a significant step forward, as it delivers a key part of our plans to move to a low-carbon future while protecting the security of the UK's energy supplies at affordable prices.

Written Answers

Wednesday 20 July 2011

Airports: Heathrow

Question

Asked by ***Lord Soley***

To ask Her Majesty's Government whether representatives of Brazil, Russia, India and China have raised any concerns with civil servants in the Foreign and Commonwealth Office about the lack of runway capacity at Heathrow or other British airports. [HL11134]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): No concerns have been raised with the Foreign and Commonwealth Office. However, the Department for Transport (DfT) has received representations about the difficulty in securing access to Heathrow, including landing slots. DfT published a scoping document in March 2011 seeking views/evidence from stakeholders on strategic aviation issues. DfT notified a number of London embassies/high commissions, including the above, about the aviation policy scoping exercise, encouraging them to respond directly to the DfT.

Alisha Thomas

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government whether they will place in the public domain Coroner Roger Whittaker's report on the death of Alesha Thomas in 2009. [HL11109]

The Minister of State, Ministry of Justice (Lord McNally): The report issued by the then West Yorkshire (West) coroner under Rule 43 of the Coroners Rules 1984 (as amended) following the inquest into the death of Alesha Thomas was sent to the Lord Chancellor in accordance with the rule. Rule 43 reports are not published in full but are summarised in six-monthly bulletins of all Rule 43 reports and responses received which are published on the Ministry of Justice website. The Rule 43 report following the inquest into Alesha Thomas's death was included in the bulletin published on 10 March 2010. A copy of the full report, redacted in accordance with data protection requirements, is available on request from the Ministry of Justice.

Animals: Scientific Procedures

Question

Asked by ***Lord Wills***

To ask Her Majesty's Government what progress has been made in implementing each of the 16 recommendations of the Weatherall Report, published in 2006, on the use of non-human primates in research into the prevention or treatment of disease. [HL11381]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): I will write to my noble friend and a copy of my letter will be placed in the Library of the House.

Apprenticeships

Question

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government what steps they are taking to encourage (a) young people to enter further education, and (b) the availability of apprenticeships. [HL11188]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): Subject to the passage of the Education Bill, schools will be under a duty to secure access to independent, impartial careers guidance for their pupils from September 2012. The guidance must include information on the full range of 16-18 education and training options, including apprenticeships. Schools will be free to determine how best to fulfil this duty, taking into account the needs of their pupils. In addition, we fund 16-19 provision and have pledged to continue fully funding Level 2 (GCSE equivalent) and Level 3 (A-level equivalent) programmes for young adults.

The Government are strongly committed to investment in apprenticeships for young people including setting out clear routes to widen access. This includes establishing a new *Access to Apprenticeships* pathway within the programme to widen access for young people aged 16-24.

Armed Forces: Medals

Question

Asked by ***Lord Ashcroft***

To ask Her Majesty's Government how many Victoria Crosses have been awarded since its inception. [HL10982]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): 1,359 Victoria Crosses (VCs) have been awarded since its inception in 1856, which includes:

three Bars;

two VCs of Australia;

one VC of New Zealand; and

one VC to the US Unknown Warrior.

Armed Forces: Staff

Question

Asked by ***Lord Oakeshott of Seagrove Bay***

To ask Her Majesty's Government what were the numbers of (a) officers, and (b) other ranks, serving in each of the Army, the Royal Navy, and the Royal Air Force, on 1 April in (1) 1980, (2) 1990, (3) 2000, (4) 2005, (5) 2010, and (6) 2011. [HL10941]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): The numbers of officers and other ranks in each of the three services is

presented in the following table. The figures comprise both trained and untrained personnel, and are rounded to the nearest 10.

Strength of UK Regular Armed Forces, at 1 April each year

	1980	*1990*	*2000*	*2005*	*2010*	*2011*
Naval Service	71,940	63,250	42,850	39,940	38,730	37,660
Officers	10,140	10,150	7,660	7,730	7,460	7,410
Other Ranks	61,800	53,110	35,190	32,210	31,270	30,240
Army	159,050	152,810	110,050	109,290	108,870	106,230
Officers	17,040	17,440	13,870	14,660	14,640	14,760
Other Ranks	142,010	135,380	96,180	94,630	94,230	91,470
RAF	89,640	89,680	54,720	51,870	44,050	42,460
Officers	14,790	15,270	10,990	10,620	9,820	9,660
Other Ranks	74,850	74,410	43,730	41,250	34,230	32,810

Arms Export Controls

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government why, in their response to the First Report of the House of Commons Committees on Arms Export Controls, 2010–12, they have declined to support the introduction of legislation covering re-export of arms controls; and whether they will give this further consideration. [HL11108]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): The Committees on Arms Export Controls First Joint Report of Session 2010-11 published on 5 April 2011 did not include a recommendation to introduce such legislation and therefore the Government's response to the report published on 7 July 2011 did not seek to address this issue.

Bahrain

Question

Asked by ***Lord Patten***

To ask Her Majesty's Government what information they have about the current welfare and whereabouts of Dr Al Singace, who has been in detention in Bahrain. [HL10918]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): We are aware of the sentence received by Dr Al Singace and are deeply concerned by the nature of the charges brought against him and the 20 other political figures. We have not been able to establish the whereabouts of Dr Al Singace and have no specific information about his welfare.

The Parliamentary Under-Secretary of State, my honourable friend Alistair Burt, made a statement on 22 June 2011 expressing his concern about the process surrounding the sentencing of the 21 opposition members, and the nature of many of the charges. He said he was deeply worried that civilians had been tried before tribunals chaired by a military judge, by the reports of abuse in detention, and by the lack of access to legal counsel and the coerced confessions.

Banking

Questions

Asked by ***Lord Myners***

To ask Her Majesty's Government, further to the Written Answer by Lord Sassoon on 4 July (*WA 2*) concerning Project Merlin, whether the commitment and obligations are made and accepted by HSBC Bank Plc or HSBC Holdings Plc. [HL10866]

The Commercial Secretary to the Treasury (Lord Sassoon): The Project Merlin Banks' statement represents a collective commitment on the part of the major UK banks (Barclays, HSBC, Lloyds Banking Group and Royal Bank of Scotland, and, in the context of lending, Santander).

Asked by ***Lord Myners***

To ask Her Majesty's Government, further to the Written Answer by Lord Sassoon on 7 July (*WA 89*), what are the tools available to hold the banks to the published lending commitments they made under Project Merlin. [HL11199]

Lord Sassoon: The Chancellor has made clear that the Government will use every tool available to hold the banks to the published lending commitments which they made. For example, the expectations, capacity and willingness relating to lending to small and medium-sized businesses will be given more weight in the performance metrics of the chief executives of each bank for 2011, as well as the leaders responsible for the relevant business areas, than the SME lending share of each bank's profits might otherwise imply.

Asked by ***Lord Myners***

To ask Her Majesty's Government what is their response to the conclusion of the Bank for International Settlements that the current proposals under Solvency II are likely to have a significant adverse effect on the availability of equity finance for small and medium-sized enterprises and infrastructure. [HL11200]

Lord Sassoon: Solvency II will require insurers to assess the risks they are exposed to on both the liability and the asset side of the balance sheet and to hold capital commensurate to the underlying risks. The European Commission has proposed a treatment of equity holdings, and of fixed income products, on the basis of an objective assessment of a 99.5 per cent probability (within a 1 year time horizon) that firms will be able to meet their obligations. This approach was confirmed when the Solvency II Directive was adopted in 2009.

A wide range of international organisations have commented on the effects that Solvency II could have on the investment patterns of the European insurance industry, including on the availability of equity finance for small and medium-sized enterprises and on infrastructure.

The Government give appropriate and proportionate weight to the views of such organisations when formulating its overall negotiating position.

Asked by ***Lord Myners***

To ask Her Majesty's Government which body will determine the activities in which a ring-fenced retail bank can engage under the interim proposals made by the Independent Commission on Banking. [HL11203]

Lord Sassoon: The Government look forward to receiving the Independent Commission on Banking's final report on 12 September. The Government will then decide on the right course of action.

Banking: European Central Bank

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government what would be the extent of the United Kingdom's exposure in the event of a failure of the European Central Bank. [HL11018]

The Commercial Secretary to the Treasury (Lord Sassoon): I refer the noble Lord to the answer I gave on 29 June 2011 (*Official Report*, col. *WA 422*).

Banking: Iceland

Questions

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Lord Sassoon on 7 July (*WA 90*), whether they will ask the Financial Services Compensation Scheme (FSCS) to cease pressing those with unclaimed deposits from failed Icelandic banks to reclaim their money; how much in each of the failed banks has been deemed ineligible for compensation by the FSCS; and whether the Chancellor of the Exchequer has the power to withdraw the offer of repayment to those with deposits of over £50,000 that have not sought recompense. [HL11087]

The Commercial Secretary to the Treasury (Lord Sassoon): Contacting potential claimants in a failed institution is a matter for the Financial Services Compensation Scheme (FSCS), which operates independently from Government.

The Government do not hold information on ineligible deposits, which is also a matter for the FSCS.

The previous Chancellor of the Exchequer announced that retail deposit holders in the failed Icelandic banks would be compensated in full. The Government intend to review this position once the banks' legal liability to customers ends.

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Lord Sassoon on 11 July (*WA 123*), whether they have extrapolated and accumulated the amounts so far recovered from each of the failed Icelandic banks and the respective administrators' charges; and whether they will publish the totals in the *Official Report*. [HL11282]

Lord Sassoon: Recoveries from the Icelandic Accounts are provided in HM Treasury's 2010-11 annual accounts. Information on the Icelandic Banks can be found on pages 188 - 191. The accounts are available online at: www.hm-treasury.gov.uk/d/annual_report_accounts 140711.pdf

As of 31 March 2011, a total of £275.5 million had been paid by the Heritable administrators and £1.6 billion by the KSF administrators, in respect of combined Financial Services Compensation Scheme and HM Treasury claims.

The administrators' charges are deducted from the administration directly and are not paid by HM Treasury. These can be found in the administrators' reports, available online at:

KSF

www.kaupthingsingers.co.uk/Files/CustomerCreditorInformation/KSF_Progress_Report_April_2011.pdf

Heritable

www.heritable.co.uk/Uploads/Documents/news/Eighth_Report.pdf

Landsbanki

www.lbi.is/library/Opin-gogn/skyrslan/Creditors_Meeting_19may2011_eng%20-%20open%20site.pdf

Banks: Stress Tests

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether the Financial Services Authority was fully consulted at all stages on the 2011 bank stress tests conducted by the European Banking Authority; and whether they agreed with the methodology and the proposed form of disclosure of the results. [HL11113]

The Commercial Secretary to the Treasury (Lord Sassoon): The Financial Services Authority (FSA), as a member of the European Banking Authority (EBA), has been closely involved with the stress test design and implementation.

FSA involvement predates the establishment of the EBA at the beginning of 2011. The FSA has been involved in both the technical level of the stress test design and implementation, in the governance of the EBA through FSA representation at the EBA Board of Supervisors and Board of Management, and through the secondment of an FSA stress test expert to the

EBA Quality Assurance Task Force, to help ensure consistent application of the stress test across EU banks.

EBA decisions are made by the Board of Supervisors and inevitably involve some compromises to reach agreement. However, the FSA believes this year's EU-wide stress test is credible and robust, and, taken as a whole, is tougher than last year's Committee of European Banking Supervisors' stress tests, with a tough peer review process and a tighter definition of Core Tier 1 capital.

The FSA believes in the value of transparency and orderly disclosures of relevant risk information to the market on a comparable basis. The EBA stress test and risk exposure disclosure templates should help market participants to reach better informed and more balanced judgments about the relative risk and soundness of individual financial institutions.

Benefits

Question

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government how many citizens of other European Union countries have claimed welfare benefits from their own country of origin while residing in the United Kingdom. [HL11190]

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): Under EU regulations on the co-ordination of social security for migrant workers, benefit entitlements are, broadly, determined by where a citizen has worked and paid their insurance contributions. If an EU citizen resident in the UK were claiming a benefit from their country of origin, that information is not required by my department unless that person is also trying to claim a benefit in the UK. There are therefore no figures available for such cases.

Bilderberg Organisation

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government, further to the Written Answer by Lord Sassoon on 28 June (*WA 404*) concerning the attendance of the Chancellor of the Exchequer at the Bilderberg conference on 9–12 June, what is the purpose of the Bilderberg Organisation; what subjects are discussed at their conferences; whether these are conducted by an agenda; whether minutes of proceedings are published; and what benefits accrue to the United Kingdom from the participation of Ministers of the Crown in these conferences. [HL10848]

The Commercial Secretary to the Treasury (Lord Sassoon): The Bilderberg meetings are attended by politicians and business people from around the world who come together to discuss topics of significance for international policy makers. Ministers in previous Administrations have attended these meetings and they are also attended by former Ministers.

Copies of any agenda and minutes of the meetings are not publicly available as they are part of ongoing policy formulation and their release could prejudice UK economic interests and international relations. The informal nature of discussions provides space for wide ranging discussions and for frank and candid exchange of views.

Further information is available via the conference organiser's website: http://www.bilderbergmeetings.org/meeting_20.

BSkyB

Questions

Asked by ***Lord Myners***

To ask Her Majesty's Government whether discussions between the Secretary of State for Culture, Media and Sport and News Corporation in connection with a possible bid for BSkyB have prejudiced the Secretary of State's freedom to refer the matter of the proposed bid to the Competition Commission. [HL10917]

Baroness Rawlings: Not at all. The Secretary of State for Culture, Olympics, Media and Sport announced on 11 July that the matter was being referred to the Competition Commission. The noble Lord will be aware that on 13 July News Corporation dropped its proposals to buy the remaining shares in BSkyB.

Asked by ***Lord Mawhinney***

To ask Her Majesty's Government whether there are any legal impediments which would prevent the Secretary of State for Culture, Media and Sport delaying for a year his decision on News Corporation's bid to buy the remaining shares in BSkyB.[HL10963]

Baroness Rawlings: The Secretary of State for Culture, Olympics, Media and Sport referred the matter to the Competition Commission for consideration on 11 July. However, as the noble Lord will be aware, on 13 July News Corporation dropped its proposals to buy the remaining shares in BSkyB. If the bid had not been withdrawn, on receipt of the Competition Commission's advice, the Secretary of State would have been able to take as long as necessary to make his decision.

Burma

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what assessment they have made of the number of displaced people in Burma's Kachin State following the ending of the cease-fire agreement between the Burmese Army and the Kachin Independence Army. [HL10909]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): The Government are deeply concerned by reports that the ceasefire agreement in Kachin State has broken down, leading

to renewed conflict and the internal displacement of up to 20,000 people, according to local sources. The number of people who may have crossed the China-Burma border as a result of the fighting is hard to determine as access to information about the situation on the ground is limited. We understand that conflict is reported to have started over local objections to a Chinese hydro-electric dam construction project, but tensions in ethnic areas are increasing following efforts by the Government to force armed ethnic groups to join a national border guard force.

Our ambassador to Rangoon raised concerns with the Burmese Government on 9 and 10 June. We also remain in close contact with UN agencies and other organisations working in the areas affected by the fighting. We are clear that peace and stability in Burma can be achieved only through a process of genuinely inclusive dialogue that addresses the concerns and longstanding grievances of ethnic groups.

Businesses

Question

Asked by ***Lord Teverson***

To ask Her Majesty's Government what steps they are taking to enable viable firms to remain in business during the collection of revenues from the small and medium-sized business sector from HM Revenue and Customs. [HL11071]

The Commercial Secretary to the Treasury (Lord Sassoon): HMRC's Business Payment Support Service (BPSS) aims to provide a high-profile and fast-track gateway into the decision-making process for businesses seeking time to pay (TTP) and to give quick decisions in the simpler and lower risk cases. Between its launch in November 2008 and the end of March 2011, some 428,800 arrangements were granted through the BPSS, involving £7.37 billion of tax. £6.31 billion has already been paid to HMRC from mature arrangements. Its launch did not, and does not, affect HMRC's underlying policy or approach to TTP, which has not changed.

Caste Discrimination

Question

Asked by ***Lord Harries of Pentregarth***

To ask Her Majesty's Government, in response to the recommendation by the United Nations Committee on the Elimination of Racial Discrimination on "descent-based discrimination" in the United Kingdom, whether they will inform the committee of the outcome of any research into caste-based discrimination. [HL9475]

Baroness Verma: We anticipate that the outcome of the recent research into caste-based discrimination in the United Kingdom carried out by the National Institute for Economic and Social Research will form part of the Government's evidence to the forthcoming review by the Committee on the Elimination of Racial Discrimination.

Clostridium Sordelli

Questions

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government how many diagnosed cases of Clostridium sordelli there were each year since 2005; and how many deaths have resulted from the infection, broken down by patient age, sex and the source of the bacteria. [HL11060]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): Clostridium sordelli is an infrequent human pathogen that can cause a range of infections.

Information on diagnosed cases is not collected centrally.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government, since 2005, what medical treatment was undertaken on patients within (a) 7 days, (b) 14 days, (c) 21 days, and (d) 28 days prior to their diagnosis of Clostridium sordelli. [HL11062]

Earl Howe: Treatment details for individual patients who may be infected with Clostridium sordelli are not collected centrally.

Cornwall: Stannary Law

Questions

Asked by ***Lord Laird***

To ask Her Majesty's Government what is their relationship with the Stannary Parliament in Cornwall. [HL10948]

The Minister of State, Ministry of Justice (Lord McNally): The Stannary Parliament last met in Cornwall in 1753. The Government have no relationship with it.

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Lord Wallace of Tankerness on 11 July (*WA 119*), what role stannary law plays in Cornwall, in the light of the primacy of law passed by the United Kingdom Parliament. [HL11245]

Lord McNally: Stannary law oversees the administration of equity for the region's tin mining interests. The Devon and Cornwall Stannary Courts were merged following the Stannaries Act 1855, but their powers were later transferred to county courts by the Stannaries Court (Abolition) Act 1896. If an issue of stannary law was raised it would be for a court to decide in the context of a particular case what account, if any, is to be taken of stannary customs.

Corruption

Question

Asked by ***Lord Wills***

To ask Her Majesty's Government what estimate they have made, following the Transparency International report of 15 June Corruption in the UK, of corruption in (a) central government, and (b) local government. [HL10960]

Lord Taylor of Holbeach: The Government take seriously any allegation of corruption. We expect Ministers, civil servants and political advisers to abide by the law and conduct government business in accordance with standards set out in the Ministerial Code, the Civil Service Code and the Code for Special Advisers.

We have also put transparency at the centre of what we do. We have an ambitious programme of work to make the public sector more transparent and accountable so as to strengthen the public's trust in government.

Fraud is a priority. The National Fraud Authority estimates that £21 billion is lost to fraud in the public sector each year. Of this, £15 billion is due to fraud in the tax system, £1.5 billion in the benefits system, £2.6 billion in central government and £2.1 billion in local government. The Government's Counter Fraud Task Force, chaired by the Minister for the Cabinet Office, is overseeing a programme of work to tackle the estimated £21 billion lost to fraud in the public sector each year. It has already delivered £12 million in savings, by undertaking pilots using innovative technology to prevent and detect fraud. These pilots are expected to save £1.5 billion over the next four years.

The National Fraud Authority has also been working with council chief executives, finance directors and professional bodies to develop a local government fraud strategy. The strategy aims to identify the key fraud risks faced by local government and the common measures that can be taken to improve the prevention and detection of fraud and realise savings.

Diplomatic Immunity: Serious Offences

Questions

Asked by ***Lord Corbett of Castle Vale***

To ask Her Majesty's Government how many foreign nationals, listed by home country, suspected of serious criminal offences claimed diplomatic immunity to avoid arrest and charge in the Metropolitan Police area in each of the past three year years. [HL10872]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): Under the Vienna Convention on Diplomatic Relations 1961, diplomats are expected to obey the law of the receiving state. The Foreign and Commonwealth Office (FCO) takes all allegations of illegal activity seriously. When advised of an alleged offence by the police, the FCO always raises the issue with the mission concerned, seeks waivers when requested by police and for the most serious offences, seeks the immediate withdrawal of the diplomat.

Under the Vienna Convention on Diplomatic Relations 1961, a diplomat may only be arrested by the police if a waiver of immunity has been granted by the sending State. Waivers of immunity were requested in 11 cases involving allegations of serious offences during the previous three years. Seven of the diplomats were withdrawn from the UK.

Asked by ***Lord Corbett of Castle Vale***

To ask Her Majesty's Government whether it is the practice to rescind the credentials of those diplomatic staff and their named relatives who claim immunity to avoid arrest and charge on suspected criminal offences. [HL10873]

Lord Howell of Guildford: Under the Vienna Convention on Diplomatic Relations 1961, diplomats are expected to obey the law of the receiving state. The Foreign and Commonwealth Office (FCO) takes all allegations of illegal activity seriously. When advised of an alleged offence by the police, the FCO always raises the issue with the mission concerned, seeks waivers when requested by police, and for the most serious offences seeks the immediate withdrawal of the diplomat.

Driving: Mobile Phones

Question

Asked by ***Lord Moonie***

To ask Her Majesty's Government how many people were convicted last year of offences which included using a mobile phone while driving. [HL11213]

The Minister of State, Ministry of Justice (Lord McNally): 32,520 persons were found guilty at all courts in England and Wales in 2010 for using a mobile phone while driving.

The figures given on court proceedings relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences, it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

Economy: Northern Ireland

Question

Asked by ***Lord Kilclooney***

To ask Her Majesty's Government, further to the Written Answer by Lord Sassoon on 7 July (*WA 95*), whether their consultation paper Rebalancing the Northern Ireland Economy was made known to any newspaper or radio broadcasters outside

Belfast; and whether the existence of the consultation paper was advertised in any newspaper or radio station in Northern Ireland. [HL11098]

The Commercial Secretary to the Treasury (Lord Sassoon): The Government recognise the importance of engaging fully with individuals, practitioners, businesses and other organisations in the development of tax policy.

In addition to the press invited to the launch event on 24 March, which I detailed in my Answer of 7 July, the Chancellor announced the consultation in his Budget speech, which was broadcast live on national television. The consultation was not advertised in the media. However, it was published on the HM Treasury website and there has been considerable media interest which has generated significant coverage in Northern Ireland, as well as some coverage nationally.

Embryology

Questions

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 23 June 2010 (*WA 184*), how many cybrid embryos have been generated with eggs from non-human species in total according to records held by the Human Fertilisation and Embryology Authority (HFEA); and how many other classes of "admixed human" embryos have been generated. [HL11064]

To ask Her Majesty's Government, further to the Written Answer by Lord Hunt of Kings Heath on 7 November 2002 (*WA 145*), how many human embryos have been (a) created, (b) frozen, (c) destroyed, (d) implanted, and (e) experimented upon. since the passage of the Human Fertilisation and Embryology Act 1990. [HL11065]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Human Fertilisation and Embryology Authority (HFEA) has advised that the most recent information it holds shows that 155 embryos, defined as human admixed embryos by Section 4A(6)(a) of the Human Fertilisation and Embryology Act 1990, as amended, have been created. No other forms of embryo creation, as defined by Section 4A(6), have been reported.

The HFEA has also advised that its register does not hold the information based on the specific categories listed in the noble Lord's question. The information as contained in the HFEA register on 14 July 2011, for the period ending 30 June 2010, which is the latest verified period, is shown in the following table.

Creation and Usage of Human Embryos 1991-2010

Created through all forms of IVF	*Stored for later use*	*Discarded in the course of treatment*	*Transferred for implantation*	*Given for research*
3,144,386	764,311	1,455,832	1,252,526	101,605

Notes:

1. The figures relate to activity that the HFEA began recording in 1991 and reflect, for example, that a number of embryos were already in storage at that time.

2. The HFEA has advised that figures are not collected routinely on the number of embryos allowed to perish, either because the statutory storage period has expired or because a patient had requested it.

3. HFEA has used the overall number of embryos created for any use. This includes embryos created by patients who do not want to start treatment immediately, e.g. cancer patients, and also embryos created specifically for research.

4. The numbers of embryos in each category in the table do not add up to the total number of embryos created because embryos can be included in multiple categories.

Source:
Human Fertilisation and Embryology Authority

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government, for each year since 2003, how many (a) applications were made, and (b) licences were issued, for tissue typing; and for which diseases the licence applications were approved in each respective year. [HL11106]

Earl Howe: The Human Fertilisation and Embryology Authority (HFEA) has advised that since October 2009, it has published all prelimplantation genetic diagnosis (PGD) licensing decisions on its website, including where PGD with Human Leukocyte Antigen (HLA) tissue typing applications are considered. This information is set out in the following table.

PGD: Applications Considered and Conditions Approved By HFEA

Year	*Number of applications considered by Executive Licence Panel*	*Number of licences*	*Conditions approved*	*Conditions not approved*
2009 (since October)	2	2	Fanconi's Anaemia A Fanconi's Anaemia C	n/a
2010	9	8	Diamond Blackfan Anaemia Sickle Cell Anaemia Recessive Dystrophic Epidermolysis Bullosa Beta Thalassaemia X-linked h IgM Syndrome	One Beta Thalassaemia application
2011	6	6	Beta Thalassaemia Sickle Cell Anaemia	n/a

PGD: Applications Considered and Conditions Approved By HFEA

Year	*Number of applications considered by Executive Licence Panel*	*Number of licences*	*Conditions approved*	*Conditions not approved*
			Fanconi Anaemia A Diamond Blackfan Anaemia	

Source:
Human Fertilisation and Embryology Authority

The HFEA has also advised that before October 2009, PGD decisions, including HLA, were not published. However, the authority publishes a table on its website that lists all PGD/HLA conditions that have been licensed since 2003. This table can be found at: www.hfea.gov.uk/cps/hfea/gen/pgd-screening.htm

In the table on the authority's website, HLA conditions are marked with an asterisk.

Energy: Electricity

Question

Asked by ***Baroness Byford***

To ask Her Majesty's Government what was the rated capacity for electricity generation from onshore and offshore wind at the beginning of 2008, 2009, 2010 and 2011. [HL11168]

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Lord Marland): The table below shows installed capacity for onshore and offshore wind, as at the end of the year.

	End of 2007	*End of 2008*	*End of 2009*	*End of 2010*
Onshore wind installed capacity (MW)	2,083.4	2,820.2	3,483.2	4,036.7
Offshore wind installed capacity (MW)	393.8	586.0	941.2	1341.2

Data from tables DUKES 7.4 (end-2007 and end-2008) and ET 7.1 (end-2009 and end-2010), available at: http://www.decc.gov.uk/en/content/cms/statistics/energy_stats/source/renewables/renewables.aspa.

Energy: Gas Safety

Questions

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what action they are taking to ensure that the gas industry funds safety awareness programmes embracing the risk of carbon monoxide deaths and injuries. [HL11104]

To ask Her Majesty's Government whether the current Ofgem price control review will put in place requirements on the industry to run and fund safety awareness programmes embracing the risk of carbon monoxide deaths and injuries. [HL11105]

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Lord Marland): Under the terms of the gas supply licence, suppliers are required to provide customers with gas safety information at least once a year. Ofgem monitors suppliers compliance with licence conditions and can take enforcement action where required.

Ofgem has also set up a working group to encourage the gas distribution network (GDNs) companies to consider a range of carbon monoxide awareness initiatives. The GDNs are instigating a number of trials during 2011 to look at a variety of methods for protecting customers from carbon monoxide poisoning. The outcome of these trials will help define specific outputs which the distribution companies will have to deliver as part of the next price control in April 2013.

The Health and Safety Executive (HSE) assesses the effectiveness of consumer awareness campaigns by the gas safe register through a series of key performance indicators (KPIs). These include specific targets to raise awareness of the risks of carbon monoxide poisoning and latest survey results show that 80 per cent of consumers were aware of the dangers of carbon monoxide and steps they could take to protect themselves.

EU: Coastguard Service

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government what assessment they have made of proposals for a European Union coastguard service; whether such proposals would involve a transfer of competence to the European Union; what would be the effect on the United Kingdom coastguard service of such proposals; and whether agreement to such proposals would be made by qualified majority voting or unanimity. [HL11314]

Earl Attlee: A European Coastguard Service is not a concept that the UK would support. Her Majesty's Coastguard has a long and proud history and has a worldwide reputation for excellence.

As part of the proposed revisions to the European Maritime Safety Agency's (EMSA) founding regulations, the European Commission has proposed doing a feasibility study into a European Coastguard system. The proposed regulation has not yet been agreed and is currently being considered.

EU: Flag and Logo

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government what is their assessment of the proposition by the Rapporteur of the European Parliament's Culture, Sport and Education Committee that the European Union Flag should be flown at big sporting occasions and that competitors should display the European Union logo on their clothing; and whether such a policy would be decided by qualified majority voting or unanimously. [HL11040]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): We believe that decisions on which flags and logos are worn or displayed at big sporting occasions are for individual competing teams and event organisers to make, not the European Union.

EU: Regulations

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government whether they will publish in one document details of all the regulations, directives and other agreements they have made with the European Union since May 2010 which have transferred new powers to the institutions of the European Union. [HL11015]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): This Government have agreed that there should be no further transfer of power or competence from the UK to the EU over the course of this Parliament. In that context this Government have made no regulations, directives or other agreements with the European Union since May 2010 which have transferred new powers to the institutions of the European Union.

Female Genital Mutilation

Questions

Asked by ***Baroness Tonge***

To ask Her Majesty's Government whether they plan to collate statistics on the levels of female genital mutilation in the United Kingdom.[HL10964]

To ask Her Majesty's Government what plans they have to prosecute those who perform female genital mutilation in the United Kingdom.[HL10965]

To ask Her Majesty's Government what plans they have to protect temporary United Kingdom residents from female genital mutilation. [HL10966]

To ask Her Majesty's Government what they are doing to combat female genital mutilation in the United Kingdom. [HL10967]

To ask Her Majesty's Government what assessment they have made as to whether to launch a nationwide campaign highlighting the dangers of female genital mutilation in the United Kingdom. [HL10968]

To ask Her Majesty's Government who will be responsible for commissioning female genital mutilation services under proposals for general practitioner commissioning of healthcare services. [HL10969]

The Minister of State, Home Office (Baroness Browning): Female genital mutilation is an illegal and unacceptable form of child abuse and a form of violence against girls and women that the Government are committed to eradicating. We want to protect current and future generations of girls from this abuse and to ensure that those girls and women living with the consequences of FGM are given the care and support they deserve.

Our focus is prevention. The Government have recently (February 2011) launched multi-agency practice guidelines for front-line professionals such as teachers, GPs and nurses. The guidelines aim to raise awareness of FGM, highlight the risks that people should be aware of and set out clearly the steps that should be taken to safeguard children and women from this abuse. Legislation alone cannot eliminate the practice so our resources will be aimed at raising awareness of the law on FGM and the health implications with communities and front-line practitioners. The guidelines are a key step in ensuring that professionals are able and confident to intervene to protect girls at risk. In addition, more than 40,000 leaflets and 40,000 posters on the prevention of FGM have been circulated to schools, health services, charities and community groups around the country.

FGM's prevalence is difficult to estimate because of the hidden nature of the crime. However, a study based on the 2001 Census suggested that over 20,000 girls under the age of 15 could be at high risk of FGM in England and Wales each year, and nearly 66,000 women in England and Wales are living with the consequences of FGM.

FGM has been explicitly illegal since 1985 when the Prohibition of Female Circumcision Act 1985 was passed. The Female Genital Mutilation Act 2003 (which came into force on 3 March 2004) repealed and replaced the 1985 Act and made it an offence for the first time for UK nationals or permanent UK residents to carry out FGM abroad, or to aid, abet, counsel or procure the carrying out of FGM abroad, even in countries where the practice is legal. To reflect the serious harm that FGM causes, the Act also increased the maximum penalty from five to 14 years' imprisonment. There have so far been no prosecutions under the 2003 Act. Research suggests that the most likely barrier to prosecution is the pressure from family or wider community that leads cases to go unreported. The CPS is due to publish new legal guidance on FGM later this summer to ensure that it is able to prosecute cases of FGM that satisfy the evidential and public interest tests within the Code for Crown Prosecutors.

Temporary United Kingdom residents (refugees and asylum seekers whose application is still being considered, and anyone who has been lawfully living in the UK for 12 months immediately prior to treatment) are afforded the protections available to permanent UK residents, including access to 15 specialist clinics in the NHS which treat women and girls who have been subjected

to FGM. These clinics have trained and culturally sensitive staff who offer a range of confidential healthcare services for women and girls including reversal surgery. These clinics are open to women to attend without referral from their own doctors. These clinics are funded by local PCTs.

In relation to responsibility for commissioning female genital mutilation services, the consultation paper *Healthy Lives, Healthy People: consultation on the funding and commissioning routes for public health* proposed that local authorities should be responsible for working in partnership to tackle issues such as social exclusion including violence prevention. This could include supra-local commissioning of services such as female genital mutilation (FGM) clinics. The consultation closed on 31 March 2011 and the Government will be publishing their response shortly.

Asked by ***Baroness Tonge***

To ask Her Majesty's Government why there have been no prosecutions for Female Genital Mutilation in the United Kingdom; and what discussions they have held with officials from other countries where successful prosecutions have taken place. [HL11002]

The Advocate-General for Scotland (Lord Wallace of Tankerness): The Crown Prosecution Service (CPS) prosecutes cases that have been investigated and referred to it by the police. Every case that is referred to the CPS for a charging decision is reviewed in accordance with the full code test set out in the Code for Crown Prosecutors (the code). This requires that there is sufficient evidence and that it is in the public interest for a prosecution to proceed. To date, there have been no prosecutions of cases involving female genital mutilation (FGM) as there has been insufficient evidence to provide a realistic prospect of conviction. A case that does not pass the evidential stage of the full code test must not proceed no matter how serious or sensitive it may be. However, agencies are working closely together to raise awareness and encourage reporting of FGM, so that they can be thoroughly investigated and evidence gathered.

The CPS is a member of the Cross-Governmental Female Genital Mutilation Steering Group to help tackle this practice, but it has not held discussions with officials from other countries on this issue. The Foreign and Commonwealth Office is in regular dialogue with their counterparts in other countries on wider FGM matters. In January 2011, the UK's Cross Government FGM Co-ordinator visited Ethiopia and highlighted a number of areas for improving our work on FGM, particularly in community engagement and international diaspora relations, so that the practice of FGM can be eradicated.

Asked by ***Baroness Tonge***

To ask Her Majesty's Government who, other than general practitioners, will be responsible for commissioning Female Genital Mutilation Services under their proposals for reform of the National Health Service. [HL11003]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The department proposed in *Healthy Lives, Healthy People: consultation on the funding and commissioning routes for public health* that female genital mutilation (FGM) clinics should be commissioned by local authorities. The consultation closed on 31 March and the department published its response to the consultation feedback on 14 July. The response makes clear that on the basis of feedback from stakeholders, the department has changed its position and can now confirm that the FGM services will be commissioned by the National Health Service. Further details on arrangements for this commissioning will be announced in due course.

Finance: Collateral Transformation

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether collateral transformation poses an added risk to financial systems; and whether steps will be taken to collect and publish data and enhance transparency in this area. [HL11112]

The Commercial Secretary to the Treasury (Lord Sassoon): Ongoing regulatory reform is likely to change significantly the quantity and quality of collateral that market participants require as part of their business.

Potential risks associated with this have been noted by the UK authorities. In its June 2011 Financial Stability Report, the Bank of England discussed transactions involving collateral transformation, described as collateral swaps.

The Financial Policy Committee (FPC) has advised the Financial Services Authority that its bank supervisors should monitor closely the risks associated with these types of transactions. The FPC also expressed its support of international initiatives to improve the availability and quality of data on intra-financial system activity.

The UK authorities are working both domestically and internationally to assess any risks that may be presented by the way that firms access the collateral they need, with a view to ensuring that those risks are appropriately mitigated in an internationally consistent manner.

Financial Services Compensation Scheme

Question

Asked by ***Lord Teverson***

To ask Her Majesty's Government what submissions they intend to make to the European Commission concerning the proposed Investor Compensation Schemes Directive; and when they expect the new Directive to take effect. [HL11141]

The Commercial Secretary to the Treasury (Lord Sassoon): As with all European directives, the Government have engaged closely with the European Commission, other European institutions and other member states on the investor compensation schemes directive.

Negotiations on the general approach to the investor compensation schemes directive are still ongoing and will continue into the autumn. The new directive will

not take effect until final agreement is reached between the Council and European Parliament; it is not clear when this will be achieved.

Firearms: Licensing

Questions

Asked by ***Viscount Astor***

To ask Her Majesty's Government whether it is permissible to have separate shotgun and firearms licences in England, Scotland and Wales. [HL9723]

To ask Her Majesty's Government whether an applicant can obtain separate shotgun and firearms licences from different police authorities in England, Scotland and Wales. [HL9724]

The Minister of State, Home Office (Baroness Browning): Under the provisions of the Firearms Acts, it is necessary to have separate certificates for Section 1 firearms and Section 2 shotguns although these may be issued on a co-terminous basis and for a reduced fee if the applicant so wishes. Applications for the grant of a firearm or shot gun certificate must be made in the prescribed form to the chief officer of police for the area in which the applicant has his principal place of residence, whether that is in England, Wales or Scotland.

First World War: Pardons

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what representations they have made to the Government of the Republic of Ireland concerning the issuing of pardons to those former members of the Irish army who were court martialled and had their rights to state employment and benefit, including pensions, removed because they joined the Crown forces during World War II. [HL11242]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): There have been no representations to the Irish Government regarding the matter.

Government Departments: Hampton Principles

Question

Asked by ***Baroness Byford***

To ask Her Majesty's Government to which government departments the Hampton Principles apply. [HL11165]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): The Hampton Principles apply to all government departments.

Sir Philip Hampton's 2005 review, *Reducing administrative burdens: effective inspection and enforcement*, considered how to reduce unnecessary administration for businesses, without compromising the UK's excellent regulatory regime.

As a result of the final recommendation, "creating a business-led body at the centre of government to drive implementation of the recommendations and challenge departments on their regulatory performance", the Government created the Better Regulation Executive (BRE) to oversee the reduction of regulatory burdens on business, and hold government departments and regulators to account.

Government Departments: Marketing

Question

Asked by ***Baroness Gibson of Market Rasen***

To ask Her Majesty's Government whether there is a consistent set of metrics within government departments tasked with carrying out marketing activities, in order that the impact of marketing campaigns in the short, medium and long term can be assessed, and the value of consistent investment in Government marketing initiatives be recognised and receive on-going commitment of funds. [HL10897]

Lord Taylor of Holbeach: The Central Office of Information's (COI) evaluation team and the Government Communication Network (GCN) provide best practice marketing evaluation guidance and resources for government departments. Current guidance publications are available via the COI website: http://coi.gov.uk/guidance.php?page=389

Government Departments: Regulators Compliance Code

Question

Asked by ***Baroness Byford***

To ask Her Majesty's Government whether the Regulators Compliance Code for the Department for Environment, Food and Rural Affairs has been amended since June 2008; and, if so, how. [HL11166]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): There is one Regulators Compliance Code (the Compliance Code) for Government and not separate departmental ones.

The Government laid a draft of the Compliance Code before Parliament on 15 October 2007. The Compliance Code was issued by the Minister for the Cabinet Office on 17 December 2007 under Section 22(1) of the Legislative and Regulatory Reform Act 2006. It came into force on 6 April 2008. It has not been amended.

Government Departments: Research and Data

Questions

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government, further to the Written Answer by Baroness Browning on 23 June (*WA 334–6*), what was the reasoning for terminating the research "Evaluation of serious organised crime task force programme". [HL10588]

The Minister of State, Home Office (Baroness Browning): The research "Evaluation of serious organised crime task force programme" was terminated during a period of general budget reductions across the Home Office. An assessment of the merits of continuing the research was made relative to other organised crime work, including research, and it was considered best value for money to terminate this work and prioritise resources elsewhere.

Asked by ***Lord Lea of Crondall***

To ask Her Majesty's Government what data they collate on the proportion of the workforces based in (a) the United Kingdom, and (b) overseas, for the top 20 companies based in the United Kingdom. [HL11081]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): The Government do not hold data on overseas employment of UK companies.

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government, further to the Written Answer by Lord Henley on 21 June (*WA 279*), what was the variation agreed in the project ″minimising medicine use in organic dairy herds through animal health and welfare planning″; and for what reason. [HL11123]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Henley): All Defra evidence contracts are closely monitored by Defra specialists working with policy colleagues. Contract variations are required if there are significant changes to any of the details in the original agreement (e.g. costs, required outputs, timetable, research team, etc).

The project titled "Minimising medicine use in organic dairy herds through animal health and welfare planning (ANIPLAN)" was initiated as a result of the co-operation in CORE Organic under an EU supported ERA Network, within which European research funding organisations set up co-operation between national research activities in organic food and farming.

A no cost extension to this project was agreed from 30 April 2010 to 1 November 2010, following a request by the project consortium to the CORE Organic Project Co-ordinators, to organise and hold a final workshop, and be able to include the findings of this in the final report.

Further information on CORE Organic can be obtained at www.coreorganic.org.

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government further to the Written Answer by Lord Henley on 21 June (WA 279), what was the variation agreed in the project "UK eutrophying and acidifying atmospheric pollutants (UKEAP)"; and for what reasons. [HL11194]

Lord Henley: All Defra evidence contracts are closely monitored by Defra specialists working with policy colleagues. Contract variations are required if there are significant changes to any of the details in the original agreement (eg costs, required outputs, timetable, research team, etc).

In June 2010 the Defra contract UK Eutrophying and Acidifying Atmospheric Pollutants (UKEAP) was amended to include £23,030 of additional work. The work was to establish the levels of fluoride deposition in the UK following the continued eruption of the volcano Eyjafjallajökull, in Iceland. This included increasing the frequency of sampling from fortnightly to weekly at 8 PrecipNet sites for a three-month period; the addition of the fluoride ion to the list of species analysed for all samples for the three-month period; and the additional analysis of samples from the nominated eight sites that were collected before the eruption.

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government, further to the Written Answer by Lord Henley on 21 June (*WA 279*), what was the variation agreed in the project "Research into noise and vibration from building mounted micro-turbines"; and for what reasons. [HL11197]

Lord Henley: All Defra evidence contracts are closely monitored by Defra specialists working with policy colleagues. Contract variations are required if there are significant changes to any of the details in the original agreement (eg costs, required outputs, timetable, research team, etc).

In June 2010 the Defra contract ″Research into noise and vibration from building mounted micro-turbines″ was amended due to the supplier having made an error in the financial section of its tender bid. The supplier is not VAT registered and included an element of VAT in its bid. The contract was amended to reflect the correct cost of the contract.

Government Departments: Websites

Question

Asked by ***Lord Hollick***

To ask Her Majesty's Government what was the nature and type of information they requested from Google on 1,162 occasions in the six months to 31 December 2010, as detailed in Google's latest Transparency Report; and which government bodies made the requests. [HL10940]

The Minister of State, Home Office (Baroness Browning): The Home Office does not believe that Her Majesty's Government have requested the information Google specifies in its latest Transparency Report directly. We believe this information relates to communications data requests made mainly by law enforcement agencies.

Communications data are information about the who, where and when of communications such as phone calls and e-mail. It does not include the content of communications. This information is retained by communications service providers for a period for their own business purposes.

Under the Regulation of Investigatory Powers Act 2000 (RIPA), specified public authorities may require specific communications data to be provided to them by a communications service provider in order to fulfil one of a number of statutory purposes specified in the Act—such as the prevention and detection of crime.

Health: Care Assistants

Question

Asked by ***Lord MacKenzie of Culkein***

To ask Her Majesty's Government whether they will introduce minimum standards of education for health care assistants. [HL11031]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): There are no plans at present to introduce minimum standards of education for healthcare assistants.

The Government advocate the benefits of a strong support workforce that is driven by local service need. It is therefore the local healthcare providers which are best placed to decide how to organise the skills mix of their workforce in order to achieve better quality outcomes and value for money for their patients.

Local managers and employers, while required to conform to national standards, must be free to manage their own support workforce teams to meet the health service needs of the communities they serve.

Health: Complementary and Alternative Medicines

Question

Asked by ***Lord Wigley***

To ask Her Majesty's Government whether, in the light of the European Directive on traditional herbal medicinal products, herbal products will still be allowed to be sold in the United Kingdom as food supplements. [HL11101]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): A herbal product which falls outside the definition of a medicine and which is sold as a food or food supplement is unaffected by the European directive on traditional herbal medicinal products. In the United Kingdom, the decision as to whether a product falls within the definition of a medicinal product is made by the Medicines and Healthcare products Regulatory Agency (MHRA) on a case by case basis using the definition of that term contained in Article 1 of directive 2001/83/EC together with relevant legal precedent and the MHRA's own published guidance. The European directive on traditional herbal medicinal products did not amend that definition.

Health: Donor Organs

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether any human organs have been imported from China since (a) 2000, and (b) 2006; if so, how many and of what type; and whether checks were made in all cases to verify that they had been obtained with full consent. [HL11116]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): No organs have been imported from China to be allocated for transplantation in the United Kingdom.

Health: Reciprocal Agreements

Questions

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 4 July (*WA 10*), why no payments were made to the United Kingdom in the last three years for European Union nationals resident in the United Kingdom for healthcare costs, and sickness and maternity benefits under EU regulations by Austria, Cyprus, the Czech Republic, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Poland, Slovakia and Slovenia, and by the Netherlands for the last two years; how much were any United Kingdom claims actually made to those countries; and what was the accumulated total paid to those countries by the United Kingdom over the past three years for the same costs. [HL11034]

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 4 July (*WA 10*), whether there is a time limit on backdating payments to European Union countries making claims for healthcare and social security costs under European regulations for United Kingdom pensioners, dependants of pensioners, and for dependants of residents in those countries of their nationals working in the United Kingdom. [HL11086]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): European Union (EU) Regulations 1408/71 and 574/72 have no time limits for introducing claims or paying those claims for healthcare benefits in kind. All claims and payments made up to and including the end of the financial year 2009-10 were in accordance with the regulations. Individual member states have been able to decide when to submit and pay claims. The United Kingdom submits claims for residents from other member states once the average costs for the relevant year have been published in the Official Journal of EU.

For treatment provided under Regulations 883/2004 and 987/2009, which succeeded 1408/71 and 574/72, there are time limits for the introduction and payment of claims.

Total average cost claims submitted by the UK to the countries referred to in the financial years 2007-08,

2008-09 and 2009-10 are set out in Table 1. Over 95 per cent. of the claims were submitted in the year 2009-10. This corrects the earlier information I gave the noble Lord on 13 July, *Official Report*, col. (*WA 181*).

The total amounts paid to those countries in the financial years 2007-08, 2008-09 and 2009-10 are set out in Table 2.

Table 1

EEA Medical Costs

UK Claims Submitted in 2007-08, 2008-09 and 2009-10[1] for Articles 94 and 95[2]

Austria	£703,000
Cyprus	£0
Czech Republic	£9,000
Iceland	£0
Latvia	£0
Liechtenstein	£0
Lithuania	£0
Luxembourg	£0
Netherlands[3]	£3,431,000
Poland	£15,000
Slovakia	£0
Slovenia	£0
Total	£4,200,000

Notes:

1. Country totals are rounded to the nearest £1,000. Overall totals are rounded to the nearest £100,000. Sub-totals may not add up to totals due to rounding.

2. Pensioners, dependents of pensioners, and dependents of workers not resident in same member state as the worker.

3. Final value of UK claims as determined in accordance with the bilateral arrangement with Netherlands

Table 2

EEA Medical Costs

Total Payments to Member States 2007-08, 2008-09 and 2009-10[1]

Payments for Article 94 and 95 Claims[2]	*Payments To Member States £ Equivalent[3]*
Austria	£3,674,000
Cyprus	£15,728,000
Czech Republic	£107,000
Iceland	£0
Latvia	£32,000
Liechtenstein	£0
Lithuania	£9,000
Luxembourg	£0
Netherlands	£7,311,000
Poland	£0
Slovakia	£7,000
Slovenia	£95,000
Total	£27,000,000

Notes:

1. Country totals are rounded to the nearest £1,000. Overall totals are rounded to the nearest £100,000. Sub-totals may not add up to totals due to rounding.

2. Pensioners, dependents of pensioners, and dependents of workers not resident in same member state as the worker.

3. £ equivalent totals based on exchange rates at the time of the payment.

Horn of Africa

Questions

Asked by ***Lord Cameron of Dillington***

To ask Her Majesty's Government what measures they will put in place to ensure that the money spent through the United Nations World Food Programme in the Horn of Africa goes to where it is most needed. [HL11077]

Baroness Verma: The Secretary of State is committed to ensuring that humanitarian interventions supported by the UK reach the most vulnerable in the most efficient manner possible.

In response to the current crisis in the Horn of Africa the Department for International Development (DfID), where possible, will undertake live programme monitoring including of UK funded World Food Programme (WFP) activities. Upon completion of these programmes DfID aims to carry out final evaluations where it is able to do so. Such measures are normal DfID practice and play an important role in assessing the impact of our support.

Asked by ***Lord Cameron of Dillington***

To ask Her Majesty's Government what discussions they have had with the head of the United Nations World Food Programme about emergency food distribution in the Horn of Africa. [HL11078]

Baroness Verma: The Department for International Development (DfID) remains in close contact with the World Food Programme (WFP) regarding the organisation's emergency operations in the Horn of Africa. The Secretary of State for International Development and the head of WFP, Josette Sheeran, have discussed WFP's response to the situation in the region. Going forward DfID will continue discussions with WFP and other humanitarian actors responding in the Horn.

House of Lords: IT

Question

Asked by ***Lord Avebury***

To ask the Chairman of Committees whether he will make netbooks available as an alternative to laptops for Members. [HL11174]

The Chairman of Committees (Lord Brabazon of Tara): There are no plans to provide Members with netbooks. Past assessments of these products have shown that they cannot run the House security software. The Information Committee plays an advisory role in matters such as this and members of that committee are currently conducting a trial of tablet computers. As part of this trial, the committee will assess whether such devices may assist Members in their parliamentary work, having regard to their compatibility with the parliamentary network, information security guidelines and cost. The committee will evaluate the results of the trial at the end of the year.

House of Lords: Work Experience

Question

Asked by ***Lord Roberts of Llandudno***

To ask the Chairman of Committees whether the House of Lords Administration will increase the number of work experience placements offered within the House of Lords. [HL11191]

The Chairman of Committees (Lord Brabazon of Tara): The House of Lords Administration offers work placements, for a maximum of one week, to students aged between 15 and 18. Placements are available in June and July only. There is no set limit on the number of placements offered and those seeking placements are allocated to offices according to their preferences. The number of placements which can be made in each individual office is a limiting factor and depends on the predicted workload of the office concerned. In June and July 2011, 46 applications for placements were received, and 26 placements were undertaken.

Human Rights

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government why the United Kingdom representative at the 115th meeting of the Committee of Ministers of the Council of Europe did not raise or discuss the question of the decision by the European Court of Human Rights in the case of Hirst (No. 2) v the United Kingdom on the voting rights of prisoners; who was the representative; why no resolution was proposed; and whether they will propose a resolution at the next meeting on the problems and issues as they relate to the United Kingdom. [HL11037]

The Minister of State, Ministry of Justice (Lord McNally): At its 1115th meeting the committee adopted a decision in respect of Hirst (No. 2) v the United Kingdom which can be found here: https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1115/28&Language=lanEnglish&Ver=original&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679

The Government were represented at the meeting by the deputy head, UK delegation to Council of Europe. Since the UK has until 11 October to introduce legislative proposals to Parliament, there was no need for a discussion or a resolution on implementing prisoner voting rights at the meeting. The Government are considering the next steps. The Committee of Ministers next meets in September.

Hunting Ban

Question

Asked by ***Lord Moonie***

To ask Her Majesty's Government how many people were convicted last year of breaching the hunting ban. [HL11215]

The Minister of State, Ministry of Justice (Lord McNally): 36 persons were found guilty at all courts in England and Wales in 2010 (latest available) for offences under the Hunting Act.

The figures given on court proceedings relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

Immigration

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Baroness Browning on 6 July *(WA 78)*, (a) what is the evidence from economic literature that, in the absence of non-European Union student workers, non-migrant labour will not be sufficient; and (b) whether the figure used in the published Impact Assessment of a loss of output of £2 billion to the United Kingdom economy was based on the assumption that none of the current output by students could be effected by British workers. [HL11084]

The Minister of State, Home Office (Baroness Browning): The economic literature for the UK has provided no evidence of displacement by migrants, either for students in employment or non migrant workers generally.

On this basis, the student impact assessment assumed that none of the lost output is taken up by British workers. As set out in the Written Answer on 6 July *(WA 78)* "it is not clear that this necessarily applies at a time when growth in the economy is less well-established. If there was some displacement, the economic impacts would be significantly lower".

The Home Secretary has commissioned the Migration Advisory Committee to research the labour market, social and public service impacts of migration, including the issue of displacement, and it is due to report in November.

Immigration: Deportation

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether they will undertake a review of the ways in which private security companies carry out enforced removals of individuals from the United Kingdom, in the light of complaints that have arisen. [HL11010]

The Minister of State, Home Office (Baroness Browning): Private sector escorting companies operate within a clear framework set out in legislation and in a

set of operating standards and instructions which are published on the UK Border Agency's website. The role of escorts is also subject to oversight by Her Majesty's Chief Inspector of Prisons, who undertakes both announced and unannounced inspections.

The UK Border Agency expects escorts to carry out their work with the utmost professionalism and sensitivity and has, over the past few years, introduced a number of measures to ensure the protection of staff and detainees. These include the use of contract monitors at the main airports used for departures, and an independent monitoring board at Heathrow Airport.

Detainee custody officers (DCOs) are accredited by the UK Border Agency to fulfil their functions, which includes using reasonable force as a last resort to ensure an individual complies with their removal. All DCOs are trained in control and restraint techniques accredited by the National Offender Management Service (NOMS), and receive refresher training every 12 months as a condition of their individual accreditation to work as a DCO. Restraint training is delivered by professionals and we are satisfied that the techniques are safe. We have, however, asked NOMS to conduct a fundamental review of the techniques used in order to see whether they can be made even safer. This review is ongoing.

We are satisfied that private sector escorting companies have acted professionally, ensuring that those in their custody are treated with dignity and care. Where detainees complain that the use of force has been excessive, the matter is investigated by the UK Border Agency's professional standards unit. If a complainant is unhappy with the response they can ask for the issue to be re-examined by the Prisons and Probation Ombudsman, whose role was extended in 2006 to investigate complaints by immigration detainees.

Independent Commission on Banking

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether the Independent Banking Commission will be required to support its recommendations by a full cost-benefit analysis; and whether it will examine the competitive impact of its proposals or whether this will be subject to separate review. [HL11114]

The Commercial Secretary to the Treasury (Lord Sassoon): The Independent Commission on Banking (ICB) has been tasked with considering the structure of the UK banking sector and with looking at structural and non-structural measures to reform the banking system and promote competition.

The ICB's terms of reference state that it will have regard to the legal and operational requirements of implementing the options under consideration, as well as the importance of generating practical recommendations. It will also take into account the findings of ongoing EU and international work and inform the UK Government's approach to international discussions on the financial system.

The commission is required to have regard to the Government's wider goals of financial stability and creating an efficient, open, robust and diverse banking sector, with specific attention paid to the potential impact of its recommendations on:

financial stability;

lending to UK consumers and businesses and the pace of economic recovery;

consumer choice;

the competitiveness of the UK financial and professional services sectors and the wider UK economy; and

risks to the fiscal position of the Government.

The Government look forward to receiving the ICB's final report on 12 September 2011. The Government will then decide on the right course of action.

India: Commonwealth Games

Question

Asked by ***Lord Harrison***

To ask Her Majesty's Government what steps they are taking to assist British companies who are yet to receive payment from the Government of India for contracts relating to the 2010 Commonwealth Games. [HL11227]

The Minister of State, Department for Business, Innovation and Skills & Foreign and Commonwealth Office (Lord Green of Hurstpierpoint): The Government are aware of the difficulties that some British companies have had in receiving payment for services provided during the Commonwealth Games. We have raised our concerns with the Indian Government at ministerial level and our officials in the high commission in Delhi are in regular touch with senior officials across the many different ministries involved to try to find a resolution.

Israel and Palestine

Question

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what further reports they have received from the Israeli and Palestinian authorities on (a) the treatment, and (b) the condition of incarceration, of child prisoners in Israeli prisons. [HL11058]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): We continue to monitor this issue and often receive reports from various non-governmental organisations including Defence for Children International. The UK remains concerned about the number of children currently being held in Israeli prisons. We raise our concerns with the Israeli Government about the application of due process and the treatment of Palestinian detainees, including where children are involved, on a frequent basis. Most recently my honourable friend Alistair Burt raised this during his recent visit to the region

and our ambassador in Tel Aviv has raised the issue of Israel's treatment of Palestinian children with Education Minister Saar and the Ministry of Foreign Affairs' principal legal adviser Daniel Taub.

The noble Baroness may be interested to hear that alongside our existing projects, our consulate general in Jerusalem has recently secured funding to fund the UK Bar Committee for Human Rights to come to the Occupied Palestinian Territories in September 2011 to research a report about the treatment of children arrested and detained in the Israeli military court system.

We shall continue to raise our concerns with the Israeli authorities and issue statements when appropriate.

Legal Aid

Question

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government what is their assessment of the impact on the provision of free and reliable legal advice on immigration and refugee issues of the entry into administration of the Immigration Advisory Service, the winding up of Refugee and Migrant Justice, and the cuts in legal aid. [HL11059]

The Minister of State, Ministry of Justice (Lord McNally): The position of both the Immigration and Asylum Service (IAS) and Refugee and Migrant Justice (RMJ) is not a direct consequence of the proposed legal aid reforms, not least because these reforms have yet to be implemented. The primary concern for the Government and the Legal Services Commission is to ensure clients of the IAS and RMJ continue to get the help they need.

These are only two providers in a much wider market and there is significant long term interest in this work from other providers, both not-for-profit organisations and private solicitor firms.

The LSC ran a tender round for new immigration and asylum contracts in October last year and there was an increase in the number of offices that applied to do the work and bids for more than double the amount of cases that were available. The LSC has already received 140 expressions of interest to take on this work.

All immigration and asylum providers will continue to be expected to meet the same high quality standards that are in place. These include compulsory accreditation schemes for all advisers and supervisors. We will seek to ensure that the interests of this vulnerable group are properly protected.

Malawi

Question

Asked by ***Lord Ashcroft***

To ask Her Majesty's Government what evidence they have received that the Government of Malawi purchased an executive jet for the President of Malawi while receiving budget support from the United Kingdom Government. [HL10979]

Baroness Verma: The Government of Malawi did purchase an executive jet for the President of Malawi in 2009 while receiving general budget support from the UK through the Department for International Development (DfID) in 2009.

DfID cut £3 million from its planned £22 million general budget support in 2009 due to concerns about the implications of the purchase of the jet for sound public financial management and for the Government of Malawi's commitment to poverty reduction.

The UK Government suspended general budget support to Malawi indefinitely in July 2011. The Secretary of State for International Development took the decision after the Government of Malawi repeatedly failed to address UK concerns over economic management and governance.

This comes as the Government reduce general budget support across the world by 43 per cent and tighten up the principles on which budget support agreements are made more generally.

Media: News International Ltd

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether they will review whether to continue to buy advertising space from News International. [HL10868]

Lord Taylor of Holbeach: Since the introduction of spending controls across Government on marketing and advertising in June 2010, there has been a 68 per cent reduction in government spend on advertising and marketing through the Central Office of Information (COI), from £532 million in 2009-10 to an estimated £168 million in 2010-11.

The Government therefore currently have no planned advertising commitments with News International.

National Insurance

Questions

Asked by ***Lord Boswell of Aynho***

To ask Her Majesty's Government what action they are taking to reduce the discrepancy between the total of national insurance numbers issued and the numbers of active workers or retired people registered in the system. [HL11180]

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): There is no discrepancy relating to the number of national insurance numbers issued.

The latest available figures (Feb 2011) show a total of 83.36 million national insurance number (NINo) records on the department's Customer Information System (CIS). This includes NINos of people known to be living abroad and 19.63 million NINos relating to deceased persons.

There are legitimate reasons why the number of NINos is greater than the number of the adult population. For example, there are UK citizens living abroad in receipt of UK social security benefits.

In 2007 a full categorisation of the NINo stock was undertaken and the results at that time were as follows:

2007 NINo stock categorisation:

55.1 million Active accounts—ie those showing current or recent use of the NINo;

16.8 million accounts relating to people who are now deceased; and

4.9 million inactive accounts—ie those showing no recent activity (and which do not fall into the deceased person account category) such as people who have moved abroad.

The NINo stock increases every year due to NINos being allocated to young people reaching the age of 16 and individuals entering the UK from abroad who require a NINo for employment purposes

Once a NINo is allocated it needs to remain on the department's computer system. This is because the NINo provides a permanent numerical link between the individual and their national insurance contribution record, which determines entitlement to contributory benefits and state pension. The NINos of deceased individuals are retained on the system as a partner may make a claim for a contributory benefit, which is dependent on the contribution record of the deceased.

The retention of the NINo for deceased persons on our systems—clearly marked as such to DWP staff—also provides an important counterfraud measure in that it prevents fraudsters from hijacking these numbers.

Asked by ***Lord Hodgson of Astley Abbotts***

To ask Her Majesty's Government, further to the Written Answer by Lord Freud on 13 July (*WA 189*), how many of the 63.73 million not-deceased holders of national insurance numbers have been in active employment in the past 24 months, broken down by nationality. [HL11254]

Lord Freud: Information detailing how many of the 63.73 million not deceased holders of national insurance numbers have been in active employment in the past 24 months is not available as it could be achieved only at disproportionate cost.

National Probation Service: Training

Question

Asked by ***Baroness Howe of Idlicote***

To ask Her Majesty's Government whether any probation officers in England and Wales have been trained in the use of the domestic abuse, stalking and harassment and honour based violence risk model. [HL11066]

The Minister of State, Ministry of Justice (Lord McNally): The Probation Service has 5,758 probation officer staff employed by 35 probation trusts and working in many different locations. There is no single central point for management information relating to training in the use of the domestic abuse, stalking and harassment and honour based violence risk model.

To obtain the information requested would involve identifying and contacting sources of information in many different locations and would thus incur costs far in excess of £700.

National Research Ethics Service

Questions

Asked by ***Lord Willis of Knaresborough***

To ask Her Majesty's Government when they will lay before Parliament regulations to establish the Special Health Authority to accommodate the National Research Ethics Service; and when it will be fully operational. [HL11231]

To ask Her Majesty's Government how many staff are employed by the National Research Ethics Service; and how many of those posts are covered by locum, agency or other temporary staff. [HL11232]

To ask Her Majesty's Government how they will protect the United Kingdom ethical review process after the National Research Ethics Service is replaced by the Special Health Authority. [HL11233]

To ask Her Majesty's Government (a) what is the proposed timescale for the setting up of the new Health Research Regulatory Agency; (b) what functions currently carried out by other bodies will be transferred into that Agency; and (c) what is the proposed timescale for such transfers. [HL11234]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Government announced in the *Plan for Growth* at the time of the Budget in March that we would create a Health Research Authority (HRA) to combine and streamline the approvals for health research that are presently scattered across many organisations, in order to reduce the regulatory burden and increase the speed and cost-effectiveness of developing new treatment and care in the United Kingdom. We said we would establish the HRA this year, initially as a special health authority with the National Research Ethics Service (NRES) as its core.

We plan to make and lay the relevant statutory instruments this autumn to establish the HRA as a special health authority later this year. It is to take on substantive functions from the date of its establishment. The new body will be set up to focus on health research regulation. It will in the first instance bring together in one place the work of the bodies that presently provide the NRES. The new body will be well placed to make preparations for taking on board additional functions when it becomes a non-departmental public body (NDPB), subject to primary legislation.

The NRES is currently a division of the National Patient Safety Agency (NPSA). The NPSA has 25 posts within the NRES head office. It also contracts with other bodies to host a further 117 posts within NRES regional centres. Of the 25 head office posts, 20 are filled by NPSA employees on permanent contracts and four by secondees or other non-permanent workers, while one is currently vacant.

The NRES will not be replaced by the HRA. It will be a division at the core of the HRA. The NRES currently works with the devolved Administrations to promote a robust, consistent system of research ethics review across the UK. The HRA will continue this work. It will also take on the current appointing authority functions of strategic health authorities. Further consideration will be given to the extent to which it may be able to take on or carry out other functions under current legislation so that it can foster improvements across many other parts of the regulatory environment for research.

Where we can achieve these improvements without primary legislation, we shall. Where primary legislation is required in order to develop the role of the HRA and consolidate functions, it will be introduced in a later Bill. For example, further primary legislation is needed to transfer functions from the Human Fertilisation and Embryology Authority (HFEA) and the Human Tissue Authority (HTA).

In addition to the core NRES functions and those currently performed by the HFEA and HTA, we are exploring the possibility of a number of other functions moving to the HRA when it becomes an NDPB. The aim is to streamline the approval and compliance processes and requirements for health research, as described in the *Plan for Growth*.

News International Ltd

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether they will ask HM Revenue and Customs to investigate whether News International has made ineligible claims for tax deductible payments. [HL10915]

The Commercial Secretary to the Treasury (Lord Sassoon): Decisions about whether or not to investigate any taxpayer are a matter for the Commissioners of HM Revenue and Customs. Decisions are taken based on the Commissioners' assessment of the risk of tax loss.

NHS: EU Nationals

Question

Asked by ***Baroness Gardner of Parkes***

To ask Her Majesty's Government what action they are taking to recover the unpaid sums due to the National Health Service for the treatment of European Union Nationals. [HL11080]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): Under European Union (EU) regulations, member states are required to make payment where a valid claim is made by another member state for treatment provided. A member state that fails to make such payment will be in breach of the regulations and subject to possible infraction proceedings by the European Commission.

The Government are continuing to strengthen the data capture process to ensure that the United Kingdom claims all the money to which it is entitled from other member states. This work includes areas such as the European health insurance card and the registration of EU pensioners that come to the UK to live.

The UK is not entitled to claim reimbursement for EU nationals, of working age, who lawfully reside in the UK and pay contributions to the UK system.

NHS: Medical Training Initiative

Questions

Asked by ***Lord Crisp***

To ask Her Majesty's Government how many doctors from Sub-Saharan Africa are currently receiving training in the United Kingdom as part of the Medical Training Initiative for international doctors. [HL11074]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): In 2010-11, 21 doctors from sub-Saharan Africa were receiving training as part of the medical training initiative for international doctors.

Asked by ***Lord Crisp***

To ask Her Majesty's Government what assessment they have made of the impact on doctors from Sub-Saharan Africa who are receiving training in this country of the decision to restrict their stay in the United Kingdom to one year. [HL11075]

The Minister of State, Home Office (Baroness Browning): In our consultation document *Employment-Related Settlement, Tier 5 and Overseas Domestic Workers*, published on 9 June, we are consulting on changes to Tier 5. This includes a proposal to cap leave across the Tier 5 temporary worker route, which includes government authorised exchange schemes of which the medical training initiative is one. The consultation invites views on this proposal and a decision has not been made. Any impact will be assessed in the light of responses to the consultation.

Northern Ireland Office: Taxis

Questions

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Lord Shutt of Greetland on 19 May (*WA 362*) concerning the use of taxis by the staff of the Northern Ireland Office, under what circumstances are taxis used between a residential address and a government building; and to whom in the Northern Ireland Office such arrangements are allowed. [HL11331]

Lord Shutt of Greetland: Taxis are only used by staff in the Northern Ireland Office travelling between a residential address and a government building for work-related purposes and where it is the most cost

effective means of transport, or to assist staff working unsocial hours taking account of both cost and availability of public transport. The arrangements apply to all Northern Ireland Office staff where these circumstances prevail.

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Lord Shutt of Greetland on 6 June (*WA 52*) concerning a taxi journey from home to work by a member of the staff of the Northern Ireland Office on 13 May, when was the expense authorised; by whom; and why. [HL11334]

Lord Shutt of Greetland: The expense for the taxi journey was authorised on 12 May 2011 by the appropriate line manager. Authorisation was given to accommodate a member of staff working unsocial hours taking account of both cost and the availability of public transport.

Ofcom

Questions

Asked by ***Lord Whitty***

To ask Her Majesty's Government which government department is the sponsoring department for Ofcom. [HL10886]

Baroness Rawlings: Following the machinery of government changes in January 2011, the Department for Culture, Media and Sport (DCMS) became the sole sponsor of Ofcom. Previously, DCMS shared sponsorship of Ofcom with the Department for Business, Innovation and Skills (BIS). When Ofcom takes responsibility for postal services from Postcomm later this year, BIS will sponsor the postal services work that Ofcom will do.

Asked by ***Lord Myners***

To ask Her Majesty's Government on how many occasions in each of the last eight years Ofcom has carried out fit and proper reviews. [HL10985]

Baroness Rawlings: The matter raised is an operational one for the independent regulator, the Office of Communications (Ofcom), which is accountable to Parliament rather than Ministers. Accordingly, my officials spoke to Ofcom, who advised:

"Ofcom is the communications regulator in the UK responsible for the licensing of television and radio services. Ofcom has a positive duty under the Broadcasting Acts 1990 and 1996 to be satisfied that any person holding a broadcasting licence is, and remains, fit and proper to hold those licences.

Ofcom routinely assesses all new applicants for broadcasting licences and we have a continuing duty to be satisfied that all holders of broadcasting licences remain fit and proper.

There has been one occasion when Ofcom has determined that it was not satisfied that two licence holders were fit and proper to continue to hold their licences. This concerned licences held by Bang Media (London) Ltd and Bang Channels Ltd. The notice of revocation was published on 25 November 2010 and can be found in full on Ofcom's website".

Olympic and Paralympic Games 2012

Question

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government, further to the Written Answer by Baroness Garden of Frognal on 4 July (*WA 22*), when Ministers will agree the principles of the Government's ticket allocation for the 2012 Olympic Games; and whether they will place a copy of the principles in the Library of the House when they have done so. [HL10972]

Baroness Garden of Frognal: The development of the ticketing strategy is on-going and is not likely to be completed until much nearer to the Games. After the Games, the Government will publish a list of those guests to whom they allocated tickets, and the cost to Government of those tickets.

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government, further to the Written Answer by Baroness Garden of Frognal on 4 July (*WA 22*), how many of the tickets that have been allocated to the Government for the 2012 Olympic Games are for sessions when medals will be awarded. [HL10973]

Baroness Garden of Frognal: 50 per cent of the Government's allocation of 8,815 tickets are for sessions when medals will be awarded.

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government, further to the Written Answer by Baroness Garden of Frognal on 5 July (*WA 48*), how many tickets for the 2012 Olympic Games will be reserved for International Federations to apply for; and which are eligible to apply. [HL10974]

Baroness Garden of Frognal: A total of 8.8 million Olympic tickets are available. 5 per cent of these tickets are available for purchase by the International Olympic Committee, international federations and other global sports bodies represented at the Games, international broadcast rights holders and prestige ticketing partners. There are 26 sports in the Olympic Games, each with its own international federation that governs that sport. Each orders a small number of tickets, primarily for their own sport. These are separate to the 75 per cent of tickets made available through the UK application process.

Of the remaining Olympic tickets 12 per cent are for purchase by the 205 national Olympic committees competing in the Games and 8 per cent for purchase by sponsors and stakeholders (global and domestic).

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government, further to the Written Answer by Baroness Garden of Frognal on 4 (*WA 22*), whether they will publish a full list of all business leaders allocated tickets for the 2012 Olympic Games. [HL10975]

Baroness Garden of Frognal: After the Games, the Government will publish a list of those guests to whom they allocated tickets, including business leaders, and the cost to the Government of those tickets.

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government, further to the Written Answer by Baroness Garden of Frognal on 4 July (*WA 22*), whether the domestic political leaders allocated tickets for the 2012 Olympic Games will be required to pay for them. [HL10976]

Baroness Garden of Frognal: The allocation of tickets to domestic political leaders will be limited to those who have a specific job to do at Games time in support of government objectives. Government departments will be charged for the tickets they request.

Palestine

Question

Asked by ***Lord Turnberg***

To ask Her Majesty's Government what funding they have provided in the last 12 months to schools under the Palestinian jurisdiction. [HL11137]

Baroness Verma: The UK provided £30 million in financial assistance to the Palestinian Authority (PA) in the financial year 2010-11 through a World Bank trust fund. This helped the PA provide basic services, such as healthcare and education, to Palestinians in both the West Bank and Gaza. The PA spent 18.2 per cent of its budget on education in 2010.

Peru

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what financial assistance they provided to population control programmes operating in Peru between 1996 and 1998. [HL11063]

Baroness Verma: The Department for International Development's (DfID) total gross public expenditure for Peru in the years 1996-97 and 1997-98 were £3,537,000 and £4,097,000 respectively. Total DfID spending, across all countries on health and population, was £116.11 million in 1996-97 and £117.44 million in 1997-98.

It is not possible to disaggregate these figures further without incurring disproportionate cost.

Police: Databases

Question

Asked by ***Baroness Miller of Chilthorne Domer***

To ask Her Majesty's Government by what name the database on which police keep records of domestic extremists is known to the Association of Chief Police Officers; and what discussions have been held with Ministers regarding this database and citizens' right to privacy. [HL9307]

The Minister of State, Home Office (Baroness Browning): The National Domestic Extremism Unit database holds information on domestic extremism. Ministers routinely discuss a range of policing matters and citizens' rights to privacy with a wide range of bodies. The police must at all times comply with the legal framework governing the management of police information.

Police: Training

Questions

Asked by ***Baroness Howe of Idlicote***

To ask Her Majesty's Government what procedures police forces in England and Wales use in assessing risk in domestic abuse, stalking and harassment and honour based violence cases. [HL11067]

To ask Her Majesty's Government whether there is any evidence from domestic homicide reviews undertaken since 2001 that the training of police officers in England and Wales on risk identification, assessment and management is adequate. [HL11068]

The Minister of State, Home Office (Baroness Browning): Evidence from domestic homicide reviews has informed the development of risk assessment tools and police training—including the development of the domestic abuse, stalking and honour based violence (DASH) risk identification, assessment and management model accredited for use throughout the UK.

On 13 April, the Home Office implemented Section 9 of the Domestic Violence, Crime and Victims Act 2004. This means that local areas and agencies are expected to undertake a multi-agency review following a domestic violence homicide to assist all those involved in the review process in identifying the lessons that can be learnt from domestic homicides with a view to preventing future homicides and violence.

The Home Office is establishing an expert group which will have responsibility for quality assuring the reports and cascading lessons learnt nationally. Our overall aim is to identify the lessons that can be learnt from domestic homicides with a view to preventing future homicides and violence.

To date no reviews have completed under the statutory guidance.

Asked by Baroness Howe of Idlicote

To ask Her Majesty's Government how they will ensure that the Domestic Abuse, Stalking and Harassment and Honour Based Violence Risk Model is used as an accredited training package in the light of restrictions on police budgets in England and Wales. [HL11069]

Baroness Browning: The Association of Chief Police Officers (ACPO) Council accredited the domestic abuse, stalking and honour based violence (DASH) Risk identification, assessment and management model to be implemented across all police services in the UK from March 2009. Although we understand that the majority of forces currently use DASH it is for individual forces to decide which risk assessment models to use and the training their officers and staff receive.

Prison Service: Corruption

Question

Asked by ***Lord Ramsbotham***

To ask Her Majesty's Government what anti-corruption measures and procedures are currently in place in the prison service; and what is their estimate of the level of corruption in the prison service. [HL11171]

The Minister of State, Ministry of Justice (Lord McNally): The National Offender Management Service (NOMS), in partnership with law enforcement agencies, is fully committed towards preventing, detecting and acting robustly against all forms of corrupt activity.

A dedicated corruption prevention unit (CPU) continues to work with regional corruption prevention managers, prisons and partner agencies to raise staff awareness, develop an understanding of the extent and nature of staff corruption and where practicable, to prosecute identified instances of corrupt behaviour. Each prison has an identified local corruption prevention manager with responsibility for raising awareness of the risks from corruption, helping staff in reporting and taking forward action in including working with the police in support of prosecution.

A joint memorandum of understanding was agreed between the Association of Chief Police Officers (ACPO) and NOMS in October 2008 and gives the primacy for investigating and prosecuting individual cases of staff corruption to the police. Where there is insufficient evidence to support police prosecution, NOMS uses internal disciplinary proceedings to take action, up to and including dismissal, of any member of staff who is found to be involved in corrupt activities

The majority of staff working in prisons perform their duties with the utmost professionalism and integrity. Criminal activity is by nature covert and difficult to quantify. No organisation, including the Prison Service, can provide accurate estimates of the level of corruption.

Prisoners: Voting

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Lord Howell of Guildford on 21 March (*WA 123*), which Council of Europe countries do not permit prisoners to vote; of those that do, what are the arrangements in place to enable them to vote; and whether any require prisoners to attend a polling station to exercise their right. [HL11038]

The Minister of State, Ministry of Justice (Lord McNally): I understand Lord Howell of Guildford placed information in the Library of the House on prisoner voting rights in Council of Europe member states. This information note can be found at the following address: http://deposits.parliament.uk/

It can be searched using the following reference: DEP2011-0663 Lords 14/04/2011 Foreign and Commonwealth Office DEP2011-0663.DOC

The House of Commons Library has separately produced a table showing prisoners' voting rights in a number of Council of Europe member states: http://www.parliament.uk/briefing-papers/SN01764

There are gaps in both lists and some slight discrepancies between the two. This will reflect non-responses to requests for information from some member states and the difficulty determining with certainty the precise regimes in place for prisoners voting given differences in political and judicial systems and processes between member states.

Public Expenditure

Question

Asked by ***Lord Wigley***

To ask Her Majesty's Government whether they will provide an analysis of the non-identifiable spending over the past five years on recreation, culture and religion as summarised in table 9.12 of Public Expenditure Statistical Analyses 2011. [HL11102]

The Commercial Secretary to the Treasury (Lord Sassoon): Table 9.12 in the Public Expenditure Statistical Analyses 2011 National Statistics release shows that in each of the past five years, approximately one-third of expenditure on recreation, culture and religion was non-identifiable. Expenditure is non-identifiable when it cannot be classified as benefiting particular regions or countries and is deemed to be incurred on behalf of the United Kingdom as a whole.

The table below shows the detail on items of non-identifiable recreation, culture and religion spending, the majority of which is Department for Culture, Media and Sport spending. The largest area of spend is broadcast licence revenue.

Non-Identifiable Spending on Recreation, Culture and Religion (£ Millions)

Dept Name	*Spending Area*	*2005-06*	*2006-07*	*2007-08*	*2008-09*	*2009-10*
Business, Innovation and Skills	P25 5040244 Spectrum Efficiency Scheme	7	6	0	0	0
	P25 SO40281 Arts and Humanities Research Council	0	0	7	8	0
Department for Culture, Media and Sport	P36 S050508 Olympics	0	99	386	1,096	1,088

Non-Identifiable Spending on Recreation, Culture and Religion (£ Millions)

Dept Name	*Spending Area*	*2005-06*	*2006-07*	*2007-08*	*2008-09*	*2009-10*
	P36 S180300 Broadcast licence revenue	3,305	3,430	3,558	3,466	3,650
Department of Communities and Local Government		0	0	0	0	2
	P08 5500060 Olympics Contributions					
Grand Total (£ millions)	3,311	3,536	3,950	4,569	4,740	

Public Sector: Marketing

Question

Asked by ***Baroness Gibson of Market Rasen***

To ask Her Majesty's Government what is their response to the finding in the Chartered Institute of Marketing white paper on public sector marketing that to bring about positive behaviour, change needs enough time to embed. [HL10896]

Lord Taylor of Holbeach: The Central Office of Information (COI) has published a guide to communications and behaviour change for government communicators. http://coi.gov.uk/documents/commongood/commongood-behaviourchange.pdf.

Railways: Intercity Express and Electrification

Question

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government what are the current estimated costs of building the Intercity Express Programme train when built as an all electric version and as a bi-mode (diesel and electric) version respectively. [HL11145]

Earl Attlee: The eventual cost of building the rolling stock is an issue for Agility Trains, the train manufacturer. As the procurement process has not yet concluded, details of Agility's latest costs remain confidential to Agility Trains and the Department for Transport.

Railways: Theft

Question

Asked by ***Lord Berkeley***

To ask Her Majesty's Government by how much theft of railway cable has increased in the past six years; what effect this has had on the safety, performance and costs of the railway; and what action they will take to strengthen the legislative basis for dealing with the problem. [HL11299]

Earl Attlee: Officials from the Department for Transport met recently with Home Office officials to discuss the issue of metal theft and to explore possible options to combat this crime, which affects not just the railways but also the power supply industry, churches and other historic buildings.

Metal theft including cable theft has emerged as one of the fastest growing crime types. It hits the railway particularly hard and causes levels of disruption out of all proportion to the value of the material stolen. The increase in cable theft has mirrored the soaring price of copper on world markets. The Deputy Chief Constable for the British Transport Police (BTP), who is also the Association of Chief Police Officers (ACPO) lead for metal thefts, has described the thefts as one of the force's biggest challenges after terrorism. ACPO in conjunction with the Home Office have devised a national four element strategy which focuses on:

increasing the effort required to steal metal;

increasing the risk to offenders;

reducing the ease and rewards to offenders stealing stolen metal; and

increasing the risk for the dealers handling stolen metals.

BTP has a number of dedicated pro-active cable crime teams operating in areas of the country that suffer from cable theft. This year, with the support of Network Rail, BTP is deploying even more officers and crime scene investigators to problem locations. BTP continues to work closely with train operators, other police forces, the scrap metal industry and others with an interest to eradicate the problem. Methods used to deter and catch the thieves include a dedicated BTP task force with increased patrols, intelligence led policing and additional dedicated officers; the use of the Network Rail helicopter, CCTV, forensic marking, trembler alarms and other devices to protect the cable; the introduction of new type of cable that is easier to identify and harder to steal; and fast response teams to get trains on the move as quickly as possible following an incident.

Information relating to cost of replacement cables and disruption to services is not held by the Department for Transport but by Network Rail. The national figures for cable theft (May 2011) are detailed below:

Financial Year	*No. of incidents"*	*Delay minutes[1]*	*Compensation cost**	*Total Cost***
2010-11	995	365,265	£12,137,220	£16,510,663
2009-10	656	321,570	£10,931,350	£13,961,998
2008-09	742	283,167	£7,858,516	£12,264,682

Financial Year	No. of incidents"	Delay minutes[1]	Compensation cost*	Total Cost**
Total	2,393	970,002	£30,927,086	£42,737,343

Hours Delay
2010-11—6,088
2009-10—5,360
2008-09—4,719

Notes

" Number of incidents which caused delay to the operational network. It does not include thefts from depots, engineering sites or redundant cable.

[1] Delay minutes show the inconvenience experienced by the passenger and vary with each incident. If the theft is on a busy mainline then they rack up much quicker than on quieter suburban lines. Delay per incident is decreasing as Network Rail teams become more efficient at locating and fixing the problem.

* Compensation costs (known as schedule 8 costs) are paid to train and freight operators for the disruption caused by the delay. This is a substantial part of the cost to the industry of cable theft but does not include the cost of staff time to repair and replace the cable, replacement cable itself and the cost of mitigation measures such as security patrols and investment in new technology. The amount of compensation paid depends on the type of services delayed.

** Total Cost comprises schedule 8 (compensation to train operators), as well as the average cost of replacement cable; average maintenance cost of attending to the fault and average opportunity cost of diverting this labour from elsewhere.

Railways: Train Design

Questions

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government, following the award of the new intercity trains contract to Hitachi, how many jobs created (a) in Newton Aycliffe, and (b) overseas, will be for (1) skilled workers involved in designing and building trains, and (2) assembly and servicing workers. [HL11090]

Earl Attlee: Agility Trains, a consortium of Hitachi and John Laing, remains preferred bidder for the Intercity Express Programme contract. The assembly and maintenance of the new trains will be undertaken in the UK. Hitachi has suggested that at least 500 skilled jobs will be created at the company's proposed new manufacturing and assembly facility in Newton Aycliffe, and many thousands more will be safeguarded in the associated maintenance work and wider supply chain. The company has said that it intends to use local suppliers where possible. It has not identified the number of additional jobs that would be created abroad as a result of the contract.

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government whether any discussions took place with, and any concessions were offered by, the Government of Japan during negotiations with Hitachi regarding the new intercity trains contract about the ability of British engineering companies to compete in Japan. [HL11091]

Earl Attlee: On each of the occasions that the Secretary of State has met the Japanese ambassador to the UK and other Japanese government officials, he has emphasised the importance and benefits of allowing British companies to compete on a level playing field for engineering and other contracts within Japan. Furthermore, the Foreign and Commonwealth Office continues to ensure that this matter is raised in the EU-Japan regulatory reform dialogue.

Railways: Waterloo International

Question

Asked by ***Baroness Valentine***

To ask Her Majesty's Government what plans they have to bring Waterloo International station back into use for passengers. [HL9649]

Earl Attlee: The Government wish to see the former international platforms at Waterloo station brought into domestic use.

DfT and Stagecoach Southwest Trains (SSWT) are currently in discussions to add capacity into Waterloo as part of the high level output specification (HLOS) programme.

Network Rail is developing plans to accommodate longer trains at Waterloo. The infrastructure requirements for these trains will include bringing the former international platforms back into domestic use, subject to value for money and affordability constraints.

Schools: Streaming

Question

Asked by ***Lord Blackwell***

To ask Her Majesty's Government what are the latest data obtained by Ofsted on the extent of setting and streaming in schools, broken down by subject and year group; and what guidance on setting is currently given to schools. [HL10805]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): Ofsted holds data on the number and proportion of lessons observed during inspections in which setting, streaming or banding by ability is used. Its data do not separately identify these categories. Since the data are based on lessons seen by inspectors, they may not represent arrangements in the school as a whole, and may not therefore be an indicator of the use of these forms of grouping at a national level.

Ofsted has provided the attached data, which gives summary grouping information for 2009-10 covering English, mathematics and science in primary and secondary schools.

The department has not provided specific guidance to schools on setting. However, case studies showing the effective use of setting in schools will be made available on the department's website shortly.

Primary schools: Lessons observed on inspection by lesson grouping 2009-10 (all subjects)

	Number				Percentage		
Year Group	*Total*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*
1	8817	516	8170	131	6	93	1
2	7301	601	6633	67	8	91	1
3	8560	890	7564	106	10	88	1
4	6510	719	5722	69	11	88	1
5	7932	1206	6632	94	15	84	1
6	7047	1532	5453	62	22	77	1
Total	46167	5464	40174	529	12	87	1

Primary Schools: Mathematics

	Number				Percentage		
Year Group	*Total*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*
1	3067	179	2854	34	6	93	1
2	2554	274	2266	14	11	89	1
3	3053	522	2494	37	17	82	1
4	2341	444	1874	23	19	80	1
5	2966	776	2164	26	26	73	1
6	2745	924	1795	26	34	65	1
Total	16726	3119	13447	160	19	80	1

Primary Schools: English

	Number				Percentage		
Year Group	*Total*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*
1	3837	299	3480	58	8	91	2
2	3202	302	2861	39	9	89	1
3	3212	319	2853	40	10	89	1
4	2412	240	2138	34	10	89	1
5	3090	379	2664	47	12	86	2
6	2877	558	2291	28	19	80	1
Total	18630	2097	16287	246	11	87	1

Primary Schools: Science

	Number				Percentage		
Year Group	*Total*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*
1	503	8	485	10	2	96	2
2	406	4	401	1	1	99	0
3	626	10	608	8	2	97	1

Primary Schools: Science

	Number				Percentage		
Year Group	*Total*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*
4	502	7	493	2	1	98	0
5	543	8	529	6	1	97	1
6	457	15	439	3	3	96	1
Total	3037	52	2955	30	2	97	1

Secondary schools: Lessons observed on inspection by lesson grouping 2009-10 (all subjects)

	Number				Percentage		
Year Group	*Total*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*
7	4345	1527	2770	48	35	64	1
8	4557	2014	2506	37	44	55	1
9	4736	2209	2491	36	47	53	1
10	4973	2113	2786	74	42	56	1
11	3964	1785	2132	47	45	54	1
Total	22575	9648	12685	242	43	56	1

Secondary Schools: Mathematics

	Number				Percentage		
Year Group	*Total*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*
7	756	467	286	3	62	38	0
8	697	506	188	3	73	27	0
9	720	531	185	4	74	26	1
10	885	637	246	2	72	28	0
11	737	544	189	4	74	26	1
Total	3795	2685	1094	16	71	29	0

Secondary Schools: English

	Number				Percentage		
Year Group	*Total*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other[1]*
7	743	367	362	14	49	49	2
8	815	462	342	11	57	42	1
9	804	474	324	6	59	40	1
10	890	540	341	9	61	38	1
11	795	515	274	6	65	34	1
Total	4047	2358	1643	46	58	41	1

Secondary Schools: Science

	Number				*Percentage*		
Year Group	*Total*	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other*[1]	*Class setted, streamed or banded by ability where pupils are placed within an ability range within the school*	*Mixed ability class*	*Other*[1]
7	479	217	257	5	45	54	1
8	571	362	209	0	63	37	0
9	600	388	210	2	65	35	0
10	746	487	252	7	65	34	1
11	622	403	219	0	65	35	0
Total	3018	1857	1147	14	62	38	0

[1] this refers to lessons where other forms of grouping are used

Shipping: Piracy

Questions

Asked by ***Lord Tebbit***

To ask Her Majesty's Government, further to the statement by Lord Howell of Guildford on 29 June (*Official Report*, col. 1758) "that armed guards on UK registered vessels would be technically illegal", under what statute that is so. [HL10783]

Earl Attlee: At present, published government policy is strongly to discourage the deployment of private armed guards on board UK flag vessels, but HMG are now considering amending this to a position which recognises that engaging armed personnel is an option for UK flagged ship owners to combat piracy in exceptional circumstances.

The Home Office is currently looking at the applicability of UK firearms legislation on board UK flag ships on the high seas. If legal opinion is that the Firearms Act 1968 does apply, a decision will need to be made as to whether it is appropriate and feasible to grant the authority of the Secretary of State for the possession of prohibited firearms (classes of firearms that are not sanctioned to be kept on board as part of ships equipment) in these circumstances. On the assumption that the Firearms Act 1968 does apply to UK flagged ships on the high seas, without such an authority it would be illegal to carry such firearms on board UK flagged ships. Even in circumstances where possession of firearms is duly authorised, their use must also be lawful. Use of such weapons other than in self defence or defence of others risks criminal (and civil) liability.

Asked by ***Lord Tebbit***

To ask Her Majesty's Government how many alleged pirate vessels have been intercepted during anti-piracy operations off Somalia by the Royal Navy; how many have been returned to the alleged pirates; and what fuel and provisions have been given to their crews. [HL10784]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): Since October 2008, when the UK began counter-piracy operations off the Horn of Africa, there have been 31 separate interceptions of suspected pirate vessels by the Royal Navy. On 24 occasions, those intercepted were allowed to use one or more of the intercepted craft to return to Somalia, with enough of their own fuel and provisions to reach land. On five occasions it was necessary to give the suspected pirates an adequate supply of fuel, food or water to safely reach nearest land.

In a number of the aforementioned cases, where more than one suspected craft has been intercepted, the suspects have been transferred to one vessel to return to land, and the others destroyed. 20 such vessels have been destroyed to date. Furthermore, five vessels have been returned to their rightful owners.

Shipping: Towing Vessels

Question

Asked by ***Lord MacKenzie of Culkein***

To ask Her Majesty's Government whether the Stornoway and Lerwick based emergency towing vessels will be withdrawn in September; and, if so, what alternative arrangements have been put in place to deal with any future shipping casualties or emergencies in the northern waters of the United Kingdom. [HL11033]

Earl Attlee: The Maritime and Coastguard Agency continues to discuss this matter with all interested parties.

An announcement about arrangements after 30 September 2011 will be made in due course.

Smoking

Question

Asked by ***Lord Moonie***

To ask Her Majesty's Government how many people were convicted last year of breaching the smoking ban. [HL11214]

The Minister of State, Ministry of Justice (Lord McNally): 78 persons were found guilty at all courts in England and Wales for smoking in a smoke free place in 2010.

The figures given on court proceedings relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

Court proceedings data for 2011 are planned for publication in the spring of 2012.

Social Care: Funding

Question

Asked by ***Lord Warner***

To ask Her Majesty's Government what resources could be made available to improve the funding of adult social care by (a) withdrawing all free television licences for elderly persons; (b) restricting such licences to those who pay no tax or pay tax at the basic rate only; (c) withdrawing all free travel passes to people over 75 years of age; (d) restricting free travel passes to people over 75 years of age; (e) withdrawing payment of winter fuel allowance; (f) restricting payment of the winter fuel allowance to people over 75 years of age; and (g) restricting payment of the winter fuel allowance to those who pay no tax or pay tax at the basic rate only.

[HL11161]

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): The table below provides estimates of the expenditure associated with various forms of support for older people. The figures are expressed in cash terms and rounded to the nearest £10 million.

The estimates are based on Department for Work and Pensions expenditure forecasts combined with information on the tax paid by older people from Her Majesty's Revenue and Customs Survey of Personal Incomes, and information on the overall numbers of pensioners from the Office for National Statistics population projections.

Support for older people, millions of pounds, cash terms

	2011-12	*2012-13*	*2013-14*	*2014-15*	*2015-16*
(a) All TV licences	590	620	640	680	730
(b) TV licences for those above the basic rate of tax	20	20	20	20	20
(e) All Winter Fuel Payments	2,140	2,120	2,100	2,090	2,080
(f) Winter Fuel Payments to those aged under 75	1,120	1,090	1,050	1,010	970
(g) Winter Fuel Payments to those above the basic rate of tax	80	90	90	90	90

The Government are preserving key benefits for older and vulnerable people and are committed to protecting the statutory entitlement for concessionary bus travel, ensuring that older people can maintain greater freedom and independence.

In 2008-09, approximately £860 million was spent by local authorities on reimbursement to bus operators for statutory and discretionary concessionary travel schemes for older and disabled people in England.

Trip rates among the over 60s from the National Travel Survey 2008-09 indicate that of those bus boardings per person per year by individuals over the age of 60, around 65 per cent are by individuals aged between 60 and 75; and around 35 per cent are by individuals aged 75 and over.

It could therefore be estimated that (c) costs would be reduced by around £300 million per year if the scheme withdrew free travel passes to people over 75 years of age; and (d) costs would be reduced by around £560 million per year if the scheme restricted free travel passes to people aged 75 and over.

Cost reductions would be smaller if local authorities replaced the removal of the statutory scheme with a local discretionary scheme.

Sudan

Questions

Asked by ***The Earl of Sandwich***

To ask Her Majesty's Government what assessment they have made of the current food security situation in South Sudan and the extent to which those shortages have arisen from drought or conflict.

[HL10951]

Baroness Verma: According to the most recent survey by the World Food Programme (WFP), about 12 per cent of households were severely food insecure and 36 per cent could be assessed as moderately insecure. The rate of severe food insecurity is likely to have increased since the last survey mainly due to global and local food inflation: the latter partly caused by

border closures with the Republic of Sudan as well as the impact of the influx of returnees and internal displacement caused by conflict.

The WFP reports that the current drought in the Horn of Africa will effect South Sudan in two ways. The pastoralist belt in Eastern Equatoria is part of the same livelihood zone as Northern Kenya and is therefore also affected by the drought; and the steep increase in the price of maize in Uganda is affecting South Sudan since Eastern Equatoria, Central Equatoria, Jonglei and Lakes States import key food commodities from Uganda, mostly maize grain and maize flour

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what assessment they have made of the role of the United Nations Mission in Sudan during recent violence. [HL11024]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): The Government of Sudan have the primary responsibility to protect civilians. We are aware of suggestions that UN peacekeepers may not have responded to recent violence as robustly as their mandate permitted. We have encouraged the Under Secretary-General at the UN Department of Peacekeeping Operations to examine these claims.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what assessment they have made of reports that violence in Sudan has driven tens of thousands of civilians into hiding in the Nuba Mountains; and what steps they are taking to provide protection and humanitarian assistance to them. [HL11025]

Lord Howell of Guildford: We are extremely concerned at the impact on civilians of the ongoing violence in Southern Kordofan, have repeatedly condemned the lack of access afforded to the humanitarian agencies that are attempting to assist those affected, and have called for that access to be granted by all parties. The UK contributed £40 million to the Common Humanitarian Fund in 2011 that will be used to provide safe water, sanitation and emergency shelter to those affected by conflict and internally displaced people in Sudan, including this latest violence. We also allocated a further £15 million for an emergency fund focused on responding to any secession-related crises, which enabled the UN promptly to start the humanitarian response in Abyei and Southern Kordofan.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government in what ways United Nations Security Council Resolution 1590, requiring ″particular attention″ to be given to the ″protection of vulnerable groups including internally displaced persons″ and to ″take necessary action to protect civilians under imminent threat of physical violence″ has been put into effect in South Kordofan. [HL11026]

Lord Howell of Guildford: In response to the violence in Southern Kordofan, the UN Mission in Sudan set up an area known as the protective perimeter, adjacent to its own compound in Kadugli, where those that had initially been sheltering in churches and hospitals could be provided with humanitarian assistance. This area had provided shelter for an estimated 11,000 internally displaced persons by 20 June.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government whether they raised concerns about the military build-up of Sudanese Government troops and vehicles in a camp at Kadugli, immediately adjacent to the United Nations Mission in Sudan (UNMIS) camp; whether they queried the relationship between the two forces; and what was their response to reports that UNMIS officials prevented civilians with links to opposition groups from being given refuge there. [HL11027]

Lord Howell of Guildford: The UK Special Representative for Sudan first raised our concerns at the build-up and activity of Sudanese armed forces in Southern Kordofan and in Kadugli with the Sudanese Government on 30 May 2011. We have repeatedly made our concerns known since then, including when the Sudanese Foreign Minister Dr Karti visited London on 6 June 2011. We are aware of the reports to which the noble Lord refers, and have encouraged the Under Secretary-General at the UN Department of Peacekeeping Operations to examine these claims.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government whether they have sought a witness statement from the Bishop of Kadugli regarding allegations concerning the role of United Nations peacekeepers in the killing of civilians by Sudanese armed forces; and whether they intend to ask for a referral of these killings and violence against civilians seeking refuge in the Nuba Mountains, to the International Criminal Court. [HL11028]

Lord Howell of Guildford: We remain extremely concerned about the situation in Southern Kordofan and continue to monitor it closely. We are aware of reports, including from the Bishop of Kadugli, that UN peacekeepers may not have responded to recent violence to the extent that their mandate authorised. We have encouraged the Under Secretary-General at the UN Department of Peacekeeping Operations to examine these claims. We will, if necessary, consider action to refer the situation in Southern Kordofan to the International Criminal Court.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government how the United Nations peacekeepers in Sudan were selected; what role the Government of Sudan played in selecting those United Nations peacekeepers; and whether the suitability of Egyptian soldiers for this mission was queried by other members of the United Nations. [HL11029]

Lord Howell of Guildford: The recruitment of peacekeeping troops for UN peacekeeping operations is a matter for the UN Secretary-General and the UN Department of Peacekeeping Operations. The United Nations has no standing army or police force. For every new United Nations peacekeeping operation, the UN Secretariat must seek contributions of military, police and other personnel from member states who are under no obligation to provide them.

United Nations peacekeeping operations are deployed with the consent of the main parties to the conflict. As a particular conflict develops, worsens, or approaches resolution, the UN Secretariat will normally consult in confidence with UN member states, the parties on the ground, regional actors and potential contributing countries with the aim of identifying possible options for United Nations engagement.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what assessment they have made of (a) United Nations' and local estimates of the numbers of people displaced in Darfur between January and April of this year; and (b) the humanitarian and security implications for Darfur. [HL11211]

Baroness Verma: We remain deeply concerned about the humanitarian and security situation in Darfur. The United Nations estimates that over 70,000 people have been displaced in Darfur this year through a combination of military campaigns and inter-tribal conflict. We continue to urge that UNAMID and all humanitarian personnel be granted full and unhindered access to those affected.

We welcome the recent signing of the Doha Document for Peace in Darfur between the Government of Sudan and the Liberation and Justice Movement. We continue to urge all other armed groups to agree an immediate ceasefire and to reach a common agreement based on the Doha Document.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what recent reports they have received about the humanitarian crisis facing displaced people in Darfur and what assessment they have made of the effectiveness of the African Union and United Nations hybrid operation in Darfur in protecting civilians.[HL11266]

Baroness Verma: We are deeply concerned about the ongoing fighting between Sudanese Armed Forces and rebel groups that is exacerbating the humanitarian situation in Darfur with over 70,000 people displaced this year.

UNAMID operates in extremely challenging conditions and is hampered by restrictions to its movement by the Government of Sudan and armed groups. We urge UNAMID to fulfil its mandate, particularly to provide security for the delivery of humanitarian assistance and on the protection of civilians, and to act robustly to the current security challenges it faces.

Syria

Question

Asked by ***Lord Patten***

To ask Her Majesty's Government, further to the Written Answer by Lord Howell of Guildford on 11 May (*WA 246*), whether there is any further news of Ms Hassan; and whether they have received any further estimate of the number of human rights campaigners who have disappeared in Syria. [HL11096]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): PEN International reported on 8 June that the novelist Raghdah Sa'id Hassan was released on 2 June following a presidential amnesty of 31 May. We are seeking to verify the information, but welcome this news if the report is true.

I refer the noble Lord to my response of 12 May 2011 (*Official Report*, col. *WA 246*) with regard to the estimates for the number of human rights campaigners detained in Syria.

Taxation

Question

Asked by ***Lord Teverson***

To ask Her Majesty's Government how many businesses HM Revenue and Customs has put into administration during 2010 and 2011 following its attempts to collect taxes due. [HL11072]

The Commercial Secretary to the Treasury (Lord Sassoon): During 2010 and 2011 (to date), HMRC has sought an administration order from the courts and had the order granted in 51 instances.

HMRC very rarely puts companies into administration. The figure of 51 quoted above relates to one case involving a number of linked companies.

Taxation: Corporation Tax

Question

Asked by ***Lord Kilclooney***

To ask Her Majesty's Government how many submissions on devolving corporation tax were made to the HM Treasury consultation on Rebalancing the Northern Ireland economy by the original closing date of 24 June; how many persons attended the high level consultation meeting on 7 July; how this meeting was publicised across Northern Ireland; and which organisations were invited to attend. [HL10933]

The Commercial Secretary to the Treasury (Lord Sassoon): Initial analysis suggests that around 450 responses had been received by 24 June 2011 in response to the HM Treasury consultation on rebalancing the

Northern Ireland economy and that by the time the consultation closed on 8 July, over 700 responses were received.

Excluding Ministers and officials from the Northern Ireland Executive, NIO and HM Treasury, a total of about 25 people attended the consultation meeting on 7 July. Invitees included representatives from a broad spectrum of organisations. A full list is given below:

Construction Employers Federation, Queen's University, the Law Society, NI Human Rights Commission, Deloitte, PricewaterhouseCoopers, NI Manufacturing Group, BDO, Northern Ireland Council for Voluntary Action, Ernst & Young, University of Ulster, the Federation of Small Businesses, Irish Congress of Trade Unions (NI Committee), NI Public Service Alliance, Colleges NI, the Economic Reform Group, Committee for the Administration of Justice, Invest NI, the Centre for Competitiveness, NI Food and Drink Association, Ulster Society Charted Accountants Ireland, the Confederation of British Industry, KPMG, Enterprise NI, Momentum, Manufacturing NI, NI Chamber of Commerce, NI Independent Retail Trade Association, and the Institute of Directors.

The list of invitees was drawn up in consultation with the Northern Ireland Office and the NI Departments for Finance and Personnel and Enterprise, Trade and Investment.

Transport: Public Address Systems

Question

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government what guidance they publish about the clarity of public address systems on modes of transport. [HL11279]

Earl Attlee: Requirements for clarity in public announcements at stations are set out in the Accessible Train Station Design for Disabled People Code of Practice and in guidance on writing a disabled persons' protection policy for rail operator franchises, both published by the Department for Transport.

Statutory Instrument 1990 No. 660, the Merchant Shipping (Emergency Information for Passengers) Regulations 1990, sets out a requirement for public address systems for all ships certified to carry more than 20 passengers.

In addition, there are requirements under the Persons for Reduced Mobility Technical Specifications (PRM TSI) for Interoperability for trains, but these are not published in guidance by the Department for Transport.

Turks and Caicos Islands

Question

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government what discussions they have held with residents of the Turks and Caicos Islands regarding the new draft constitution; and what have been the results of those discussions. [HL11152]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): There has been a comprehensive 15 month process of consultation on revisions to the 2006 Turks and Caicos Islands Constitution.

In early 2010 a UK adviser, Kate Sullivan, was appointed to make recommendations for constitutional and electoral reform. She published an initial set of recommendations in July 2010 and consulted widely, including holding public meetings, in the Turks and Caicos Islands. Political parties, civil society and members of the public had an opportunity to comment. Revised recommendations were published in November 2010 and a draft constitution was published on 8 March.

A team from the Foreign and Commonwealth Office visited the Turks and Caicos Islands in May for public consultations on the draft constitution. The team held public meetings on all the permanently populated islands and met with a wide range of Turks and Caicos Islands society, including political parties, local communities, the Advisory Council and the Consultative Forum. It heard suggestions on many issues, including the voting system, a transparent path to citizenship and the powers of the governor.

Following those meetings, the Minister for the Overseas Territories invited a delegation from the Turks and Caicos Islands to visit London from 15 to 16 June so that he could hear first hand their views on the draft constitution. The delegation included representatives of political parties, the Advisory Council, Consultative Forum, the church, the youth ambassador and the chair of the All Party Commission. The talks concluded with the announcement of a final constitution package.

Vehicles: Articulated Trucks

Question

Asked by ***Lord Steel of Aikwood***

To ask Her Majesty's Government what new size of articulated trucks they plan to propose permitting on British roads. [HL11253]

Earl Attlee: The Government's proposals are set out in the consultation document available on the Department for Transport's website. We expect to respond to the consultation in the autumn.

Vehicles: Lorry Semi-trailers

Questions

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what advice they have received from the European Commission about their proposal for permitting longer semi-trailers of up to 2.05 metres on British roads and whether such a proposal would be consistent with European Union directive 96/53/EC. [HL11251]

Earl Attlee: Since the previous Question on this subject from the noble Lord, officials have received a letter dated 30 June from the Commission. The letter confirmed that directive 96/53/EC permits longer semi-trailers only if the criteria for one of the exemptions set out in Article 4.4 are fulfilled. The Government's view, previously communicated to the Commission, is

that our proposals for longer semi-trailers fulfil the criteria for exemption in Article 4.4 (b), because their loading length (15.65 metres) can also be achieved by existing rigid/drawbar combinations. The Commission's letter did not address this point.

Asked by ***Lord Steel of Aikwood***

To ask Her Majesty's Government when they expect to make a decision about the proposed new size of articulated trucks permitted on British roads. [HL11252]

Earl Attlee: We expect to respond to the consultation in the autumn.

Visas

Questions

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government what assessment they have made of the impact of current visa requirements for short-term visitors on foreign artists, photographers and musicians seeking entry to the United Kingdom. [HL10987]

The Minister of State, Home Office (Baroness Browning): Foreign artists of various disciplines successfully use the different routes of entry which the immigration system provides for those coming to the United Kingdom, depending on their purpose in coming and intended length of stay. Tier 5 of the points-based system has a category specifically for creative artists coming for periods of up to a year where the purpose involves paid work. They may currently be granted an additional 12 months maximum period if the original sponsor requires the migrant to stay beyond the original period granted. Creative artists who are non-visa nationals entering the UK for a period of three months or less do not require a visa although they still need a certificate of sponsorship. Outside the points-based system, the entertainer visitor visa enables entry, for up to six months, for those coming to perform at or take part in important cultural festivals and for other specific purposes such as charity events and music competitions.

The Government are reviewing all immigration routes of entry. We are consulting currently on Tier 5 of the points-based system and will look at the issue of entry by short-term visitors as part of this work.

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Baroness Browning on 6 July (WA 86), where an employer has agreed a scale rent dispensation with HM Revenue and Customs to reimburse allowable travel and subsistence expenses incurred by employees in performing their duties, whether such payments are excluded from the salary package that counts towards the appropriate salary for issue of Tier 2 intra-company transfer visas. [HL11159]

Baroness Browning: The UK Border Agency will not take into account any payments which are made purely for the purpose of reimbursing expenses incurred by employees in performing their duties as opposed to payments to cover the cost of living in the UK.

It is not relevant to the decision whether or not an employer has agreed a scale rate dispensation in relation to such payments.

Asked by ***Lord Laird***

To ask Her Majesty's Government whether the outsourcing companies Tata Consultancy Services, Wipro, Infosys and Cognizant Technology Services, when seconding workers to the United Kingdom and seeking intra-company transfer visas, have agreed scale rates with HM Revenue and Customs to cover subsistence, accommodation and business travel-related expense payments made to their seconded employees; if so, whether they will publish those scales; and what are the proportions allowed for each type of payment. [HL11243]

The Commercial Secretary to the Treasury (Lord Sassoon): HM Revenue and Customs may agree that an employer can use scale rates for the purposes of determining whether certain expenses payments can be made without deduction of tax and national insurance contributions. Where such scale rates are agreed individually with an employer as part of a dispensation, the agreement is subject to taxpayer confidentiality rules and the information requested in relation to the companies in question is covered by the same rules of confidentiality that apply to all taxpayers.

Young People: Politics

Question

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government how they will encourage young people to vote, particularly those who have not expressed any interest in politics. [HL11187]

The Minister of State, Ministry of Justice (Lord McNally): The Government encourage all eligible individuals to engage with the democratic process and to vote. This is especially important among young people, who are traditionally under-represented in figures on registration and turnout. The Government, politicians, political parties, electoral administrators and wider groups with an interest in the democratic process all have a role to play in encouraging participation.

In particular, the Government have responsibility for the statutory framework for electoral registration in the UK. 16 and 17 year olds can already apply to register as "attainers" to ensure they are able to vote as soon as they turn 18. In the context of the move to individual electoral registration, we are considering how to make it as easy and secure as possible for citizens to register to vote and we are exploring how online services might support this. Further research will also be conducted to identify the groups that are currently under-registered including young people.

The research findings will be used to inform our approach to improving registration levels among these groups and will also inform wider work to promote public awareness of registration and participation of young people in the voting process.

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